

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

In re: Syngenta Litigation

Case Type: Civil Other

This Document Relates to: ALL ACTIONS

Honorable Thomas M. Sipkins

Court File No.: 27- CV-15-3785

**ORDER ESTABLISHING COMMON
BENEFIT RULES**

On August 5, 2015, the Court entered an order appointing Co-Lead Counsel and Interim Class Counsel (collectively, for purposes of this Order, “Co-Lead Counsel”). *See* Order Appointing Lead Counsel (the “Leadership Order”). The Leadership Order requires counsel for plaintiffs to maintain contemporaneous records of their time and expenses devoted to this matter, and to submit those records on a monthly basis to Lewis A. Remele, Jr. (one of the Co-Lead Counsel). *Id.* at ¶ 1(n), 5.

On December 2, 2015, the parties to this litigation submitted a stipulated Common Benefit Order (the “CBO”), which was signed by the Court on December 5, 2015, and filed on December 7, 2015.¹ In the CBO, the parties make reference to certain Common Benefit Rules, defined in the CBO as

the rules adopted, and amended from time to time, by Co-Lead Counsel, which rules govern how and when counsel may perform Common Benefit Work and incur Common Benefit Expenses and submit their related time and expenses to Co-Lead Counsel.

¹ Unless otherwise defined herein, all capitalized terms in this Order shall incorporate by reference the capitalized terms used in the CBO.

See CBO, pg. 3. The purpose of this Order is to establish the Common Benefit Rules referenced in the CBO, so as to avoid confusion at a later time in this litigation as to the time and expenses that may be submitted to the Court and considered as part of any Common Benefit Award.²

I. COMMON BENEFIT RULES

The Court hereby adopts the following guidelines for the management of case-staffing, timekeeping, expense reimbursement, and related Common Benefit issues, submitted to it by Co-Lead Counsel. The Court further instructs Co-Lead Counsel to distribute any additional guidelines as may be necessary to ensure the efficient prosecution of this Litigation.

The recovery of any Common Benefit Award *shall be limited* to Participating Counsel (together with necessary staff of their respective firms)³. Participating Counsel shall be eligible to receive a Common Benefit Award only if the time expended, expenses incurred, or activity in question were: (a) for the Common Benefit of all producer and/or non-producer plaintiffs; (b) conducted by Co-Lead Counsel and their respective firms or otherwise appropriately authorized by Co-Lead Counsel; (c) timely submitted to Bassford Remele, P.A. in accordance with this Order; (d) reasonable; and (e) verified by an authorized individual (see sections I.A.5. and I.B.3.) *infra*, on behalf of the submitting law firm. Co-Lead Counsel is empowered to take all reasonable steps to review and audit these submissions.

As further detailed below, all counsel who seek to recover a Common Benefit Award shall keep contemporaneous record of their time and expenses, noting with specificity the

² A “Common Benefit Award” is defined in the CBO as a common benefit award made by the Court to counsel who performed Common Benefit Work or incurred any Common Benefit Expenses.

³ Participating Counsel is defined in the CBO as counsel who signed the MN Participation Agreement. *See* CBO, pg. 3.

amount of time, billing rate, and a brief, but detailed, description of the activity in question, along with a brief note indicating which Co-Lead Counsel authorized the activity in question, and the date of any such authorization. Regardless of any such counsel's adherence to the administrative constraints of these Common Benefit Rules, there is no guaranty that any of the time or expenses submitted by any counsel will be approved by the Court.

A. Common Benefit Work

1. Authorization for Compensable Common Benefit Work

“Common Benefit Work” is defined in the CBO as “work performed by or for Co-Lead Counsel in furtherance of their duties in this proceeding, which work is performed for the common benefit of all Producers and Non-Producers.” Authorization to perform Common Benefit Work shall be obtained from Co-Lead Counsel under the procedures outlined herein, which procedures may be modified by subsequent Order of the Court on ex parte application by Co-Lead Counsel should Co-Lead Counsel deem such modification prudent, in their sole discretion.⁴

2. Common Benefit Work Must Be Authorized in Writing by Co-Lead Counsel

All Common Benefit Work must be approved by Co-Lead Counsel, in writing. While such Common Benefit Work should generally be approved in writing prior to its undertaking, Co-Lead Counsel may retroactively authorize any Common Benefit Work it deems appropriate, in their sole discretion.

⁴ Unless authorized or confirmed in writing by Co-Lead Counsel, no time spent developing or processing individual issues in any case for an individual client, soliciting potential clients, or performing any other unauthorized work will be considered as part of any Common Benefit Award, and thus, should not be submitted. No individual client-related time, except for work authorized by Co-Lead Counsel related to potential bellwether cases or to class representatives in a Master or Consolidated Class Complaint, will be considered Common Benefit Work.

3. Common Benefit Rules related to Common Benefit Work

The following are some specific examples of Common Benefit Rules and the manner in which they pertain to certain activities likely to be conducted in this matter:⁵

a. Depositions:

Co-Lead Counsel shall exercise discretion, judgment, and prudence to designate only that number of attorneys to participate in any given deposition that is commensurate with the nature of that deposition so as to avoid over-staffing. Time and expenses for counsel not authorized by Co-Lead Counsel to attend the deposition shall not be considered Common Benefit Work.

b. Conference Calls and Meetings:

Conference calls and meetings held at the direction of Co-Lead Counsel for discussion of case management, coordination, or litigation activity are generally considered Common Benefit Work. Calls and meetings solely to impart status information generally are not Common Benefit Work as to those listening. Counsel designated by Co-Lead Counsel to run or participate in those calls, on the other hand, are generally working for the Common Benefit by keeping other attorneys educated about the litigation and their time is generally to be considered Common Benefit Work. During such telephone or conference calls and meetings, there is a presumption that only the authorized active participants' time will qualify as Common Benefit Work, although exception may be made as determined by Co-Lead Counsel.

c. Litigation Status Conferences:

Status conferences will be held so that the litigation moves forward and legal issues are resolved with the Court. Counsel may attend any status conference held in open court, but mere

⁵ These examples are non-exclusive, as any number of situations requiring such an analysis may arise.

attendance at or listening to a status conference will not be considered Common Benefit Work and expenses incurred in relation thereto will not be considered Common Benefit Expenses. Attorneys designated by Co-Lead Counsel to prepare agendas, confer with opposition counsel, otherwise address issues that will be raised at a given status conference, or otherwise approved by Co-Lead Counsel to be present at a status conference, are generally considered to be performing Common Benefit Work. Similarly, any attorney whose attendance at a status conference is specifically requested by the Court to address a common issue may submit his or her time for evaluation as Common Benefit Work.

d. Identification and Work-Up of Experts:

Identification, interviews, discussions, preparation of reports, and all other matters involving experts on common issues, experts relating to cases selected as bellwether cases, or experts related to a Master or Consolidated Individual or Class Complaint, are generally considered Common Benefit Work. All fees and expenses related to experts retained without authorization by Co-Lead Counsel are ineligible for consideration for any Common Benefit Award.

e. Attendance at Seminars:

Fees or expenses related to the attendance at any seminars or Continuing Legal Education programs are generally ineligible for consideration for any Common Benefit Award, unless approved by Co-Lead Counsel prior to attendance, in writing.

f. Document Discovery:

All work performed and expenses incurred in connection with document discovery (including meet-and-confers with opposing counsel and any motions to compel) relating to common issues and authorized by Co-Lead Counsel generally qualify as Common Benefit Work

and Common Benefit Expenses. If an attorney elects to review documents without prior authorization by Co-Lead Counsel, such review is generally not considered Common Benefit Work. It is the Court's expectation that counsel will minimize the number of individual timekeepers from a single law firm to ensure the efficiency of time spent on this litigation. Descriptions associated with "document review" must contain sufficient detail to allow those reviewing the time entry to generally ascertain what was reviewed.

g. Motions:

All research, drafting, and presentation of motions and responses to motions on common issues and authorized by Co-Lead Counsel are generally considered Common Benefit Work.

h. Review of Filings and Orders:

Mere review of filings and orders by counsel other than Co-Lead Counsel or Liaison Counsel generally does not qualify as Common Benefit Work. It is anticipated that there will be a large number of filings in this case. Those attorneys working on assignments by Co-Lead Counsel requiring them to reasonably review, analyze, or summarize certain filings and substantive orders of this Court in connection with their assignments are doing so for the Common Benefit. In addition, it is expected that Co-Lead Counsel and Liaison Counsel, as well as members of the Executive Committee, will review case management and substantive orders of the Court as part of their leadership responsibilities. Reasonable time spent reviewing these court rulings and orders by court-appointed leadership generally will be considered Common Benefit Time.

i. Emails and Correspondence:

Except for Co-Lead Counsel, Liaison Counsel, and those designated by Co-Lead Counsel to work on assignments requiring them to review emails and correspondence, time recorded for

reviewing emails and other correspondence is generally not compensable as Common Benefit Work. For example, review of an email or other correspondence sent to dozens of attorneys to keep them informed on a matter on which they are not specifically working would not generally be compensable as Common Benefit Work.

j. Written Discovery:

Those attorneys designated by Co-Lead Counsel to review discovery are working for the common benefit and their time will be accordingly considered Common Benefit Work. All other counsel reviewing such discovery responses are doing so for the benefit of their own clients, and such review will not be considered Common Benefit Work.

k. Plaintiff Fact Sheets:

On January 11, 2016, the Court ordered that each individual Producer Plaintiff having a case before the Court is required to prepare a Plaintiff Fact Sheet as outlined pursuant to such order. Because the preparation of such Plaintiff Fact Sheets is a task oriented towards the maintenance of individual cases in the Minnesota MDL, time expended for that purpose is not generally considered Common Benefit Work. However, Co-Lead Counsel may authorize any such time as Common Benefit Work, including retroactively, in their sole discretion.

l. Travel Time:

Reasonable travel time may be compensable as Common Benefit Work, to the extent necessary and approved by Co-Lead Counsel in connection with assigned Common Benefit Work.

4. Inquiries Regarding Common Benefit Work

In the event counsel are unsure if the action they are about to undertake is considered Common Benefit Work they shall inquire with Co-Lead Counsel in advance as to whether such

time may be compensable. Co-Lead Counsel reserves the discretion to approve any such action after such action is performed for submission for a Common Benefit Award.

5. Verification of Common Benefit Work

The forms prepared by Co-Lead Counsel detailing potential Common Benefit Work shall be submitted by an individual within each submitting firm upon whose representations Co-Lead Counsel may reasonably rely with respect to the accuracy of such submission. By permitting such individual to submit monthly time and expense reports to Co-Lead Counsel, the submitting firm authorizes that individual for that express purpose.

B. Common Benefit Expenses

1. Authorization for Compensable Common Benefit Expenses

“Common Benefit Expenses” are defined in the CBO as expenses incurred by counsel who performed Common Benefit Work, which work compelled such expenses. Expense submissions shall be made to Bassford Remele, P.A., on a monthly basis, by deadlines to be set by Co-Lead Counsel, and in accordance with the guidelines set forth herein. Only reasonable expenses incurred while performing work specifically authorized in writing by Co-Lead Counsel will be eligible for consideration as part of any Common Benefit Award. Except for reasonable travel expenses incurred by Participating Counsel for Common Benefit Work previously authorized by Co-Lead Counsel, any expense over \$500 must be specifically approved or confirmed in writing by Co-Lead Counsel.⁶

⁶ By way of example, Participating Counsel are not required to receive authorization from Co-Lead Counsel for reasonable travel expenses incurred for attendance at Litigation Status Conferences or depositions when attendance has been previously approved in writing by Co-Lead Counsel. However, all such travel expenses remain subject to the limitations set forth herein.

No client-related expenses, except for certain expenses relating to potential bellwether cases or expenses related to class representatives in a Master or Consolidated Class Complaint, shall be considered Common Benefit Expenses.

2. Common Benefit Rules related to Common Benefit Expenses

The following are some specific examples of Common Benefit Rules and the manner in which they pertain to certain expenses likely to be incurred in this matter:

a. Travel Limitations:

Only reasonable expenses will be reimbursed. Except in extraordinary circumstances approved by Co-Lead Counsel, all travel reimbursements are subject to the following limitations:

i. Airfare:

Ordinarily, only the price of the lowest available, convenient coach fare seat will be reimbursed. Business/First Class Airfare will not be reimbursed. In the event that non-coach air travel is utilized, including economy plus or premium economy, the attorney shall be reimbursed only to the extent of the lowest available, convenient coach fare, which must be contemporaneously documented. If non-coach, private or charter travel is elected, the applicant is required to document what the lowest available, convenient coach fare in effect at that time was, and that is all that can be reimbursed.

ii. Hotel:

Hotel room charges for the average available room rate of a business hotel, such as the Hyatt, Hilton, Westin, and Marriott hotels, in the city in which the stay occurred, will be reimbursed. To the extent hotel stays are related to appearances in Hennepin County District Court, Liaison Counsel shall attempt to negotiate a reduced rate for a hotel located near their offices for the benefit of all counsel. The maximum reimbursable nightly rate shall be \$600.00,

unless otherwise approved by Co-Lead Counsel. Co-Lead Counsel may authorize any such expense as a Common Benefit Expense, including retroactively, in their sole discretion

iii. Meals:

Meal expenses must be reasonable. Expenses that significantly exceed the meal allowances for federal employees may not be approved for reimbursement. There will be no reimbursement for alcoholic beverages, room service, mini-bar items, or movies.

iv. Cash Expenses:

Miscellaneous cash expenses for which receipts generally are not available (*e.g.*, tips, luggage handling) will be reimbursed up to \$50.00 per trip, as long as the expenses are properly itemized.

v. Automobile Rental:

Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles are available. Counsel must submit evidence of the unavailability of non-luxury vehicles. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form and only the non-luxury rate may be claimed.

vi. Mileage:

Mileage claims must be documented by stating origination point, destination, total actual miles for each trip and rate per mile paid by the attorney's firm. The rate will be the IRS Standard Business Mileage Rate for the period in which the mileage was driven.

b. Non-Travel Limitations:**i. Telephone Charges:**

Common Benefit long distance, conference call, and cellular telephone charges must be documented as individual call expenses in order to be compensable. Copies of the telephone bills must be submitted with notations as to which charges relate to the case. Such charges are to be reported at actual cost.

ii. Shipping, Overnight, Courier, and Delivery Charges:

All claimed Common Benefit shipping, overnight, courier, or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.

iii. Postage Charges:

A contemporaneous postage log or other supporting documentation must be maintained and submitted for Common Benefit postage charges. Such charges are to be reported at actual cost.

iv. Facsimile Charges:

Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$0.50 per fax (not per page).

v. In-House Photocopy:

A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is \$0.10 per page for in-firm photocopies and any necessary vendor photocopies shall be at actual cost.

**vi. Computerized Research: Lexis, Westlaw, or
Bloomberg:**

Claims for Lexis, Westlaw, Bloomberg, or other computerized legal research expenses should be in the exact amount charged to the firm and appropriately allocated for these research services.

3. Verification of Common Benefit Expenses

The forms detailing expenses shall be submitted by an individual within each submitting firm upon whose representations Co-Lead Counsel may reasonably rely with respect to the accuracy of such submissions. By permitting such individual to submit monthly expense reports to Co-Lead Counsel, the submitting firm authorizes that individual for that express purpose. Attorneys shall maintain all receipts for all expenses, which will be available to Co-Lead Counsel upon request. Credit card receipts (not the monthly statements) are an appropriate form of verification so long as accompanied by a declaration from counsel that the charge was incurred for the common benefit. Hotel costs must be proven with the full hotel invoice. The description of unclaimed expenses on the invoice may be redacted.

4. Shared Costs and Capital Contributions

Each Co-Lead Counsel and other counsel as designated by Co-Lead Counsel shall pay a monetary amount, as directed below, which shall be used to pay reasonable and necessary Common Benefit Expenses on an ongoing basis (the "Shared Costs"). The timing and amount of each contribution will be determined by Co-Lead Counsel and must be paid within thirty (30) days of the date of written request by Co-Lead Counsel. Failure to timely pay capital contributions as may be requested by Co-Lead Counsel throughout this litigation may be grounds

for barring counsel from submitting Common Benefit Work or Common Benefit Expenses for reimbursement at the discretion of Co-Lead Counsel.

All costs that fall under the following categories or other expenses incurred for the benefit of all producer or all non-producer plaintiffs as determined by Co-Lead Counsel shall be considered Shared Costs and shall qualify for submission and payment:

- Court, filing, and service costs related to common issues;
- Service costs, including translation fees, for service of the consolidated complaints on all domestic and foreign defendants named in those complaints;
- Deposition and court reporter costs for depositions (excluding those that are client-specific);
- Document depository creation, operation, staffing, equipment, and administration;
- Translation costs related to the above;
- Co-Lead Counsel, Liaison Counsel, or Executive Committee administration matters;
- Legal, financial institutional, and accountant fees relating to expenses;
- Expert witness and consultant fees and expenses whose opinions, advice, and/or testimony would be generic and for the common benefit of all producers and non-producers covered by a consolidated or master complaint. There shall be no reimbursement for case specific experts, except for liability and causation experts in class or bellwether cases, at the discretion of the Co-Lead Counsel;
- Printing, copying, coding, and scanning related to the above (out-of-house or extraordinary firm costs);
- Research by outside third-party vendors, consultants, or attorneys, and approved by Co-Lead Counsel;
- Investigative services approved by Co-Lead Counsel; and

- Special master and mediator costs.

No client-related costs, except for costs relating to potential bellwether cases or those expenses related to class representatives in a Master or Consolidated Class Complaint, shall be considered Shared Costs, unless exceptional circumstances exist. All Shared Costs must be approved by Co-Lead Counsel.

Co-Lead Counsel shall prepare and be responsible for distributing additional reimbursement procedures. Requests for payment shall include sufficient information to permit Co-Lead Counsel and a CPA, if engaged by Co-Lead Counsel, to account properly for expenses and to provide adequate detail to the Court.

5. Held Costs

“Held Costs” are Common Benefit Expenses carried by counsel in this Litigation and reimbursed as and when Co-Lead Counsel determines to do so. Held Costs are those that do not fall into the above Shared Cost categories but are incurred for the common benefit of all producers or non-producers covered by a consolidated complaint. No client-specific costs can be considered Held Costs, other than certain Common Benefit Expenses relating to class representative or potential bellwether plaintiffs at the discretion of Co-Lead Counsel.

Held Costs shall be recorded in accordance with the guidelines set forth herein and in additional procedures as prepared by Co-Lead Counsel.

C. Timekeeping and Submission of Time and Expense Records

All time and expenses must be accurately and contemporaneously maintained and tracked. In order to qualify for a Common Benefit Award, counsel shall keep contemporaneous billing records of the time spent in connection with Common Benefit Work on this Litigation, indicating, with specificity, the hours and billing rate, along with a brief note indicating the

source of authorization for the activity in question, as well as a brief description of the particular activity. Time and expense submissions shall be made to Bassford Remele, P.A. on a monthly basis, by deadlines to be set by Co-Lead Counsel, in accordance with the guidelines set forth herein and using monthly reports to be distributed by Co-Lead Counsel so that Co-Lead Counsel may retain those forms for later submission to this Court if and when necessary. All time and expense reports shall be submitted on the last calendar day of each month and shall cover the time period through the end of the preceding month (*i.e.*, the January 31, 2016 submission should include all time and expenses incurred during the month of December 2015).⁷ Generally, only time and expenses incurred after the Leadership Order shall be submitted and considered as potential Common Benefit Work.⁸

D. Submission of Time Compilations to Court

Beginning on the first day of the month that begins at least sixty (60) days from the date of the entry of this Order, Co-Lead Counsel shall submit to the Court, for its *in camera* review, a compiled spreadsheet of time and expenses submitted by counsel performing Common Benefit

⁷ Although counsel should submit all Common Benefit Expenses incurred in a certain month in the submission made on the last calendar day of the next month, some third party billing and credit card statement schedules may make such expense submission difficult. In such circumstances and in compliance with guidelines developed by Co-Lead Counsel, counsel may submit expenses incurred in the previous two months that – because of circumstances outside the submitting counsel’s control – could not have been submitted by the Court-ordered deadline. Any common benefit expenses submitted more than three months in arrears shall not be considered as Common Benefit Expenses absent good cause as determined by Co-Lead Counsel.

⁸ In their discretion, Co-Lead Counsel may consider time and expense incurred before the Court’s August 5, 2015 Order as Common Benefit Work and Common Benefit Expenses if the time or expenses benefitted all producer or non-producer plaintiffs in a material and direct way. Time and expenses incurred in client solicitation, efforts to secure a leadership appointment, pre-appointment attendance at meetings of plaintiffs’ counsel, and attendance at the initial August 5, 2015 hearing and similar tasks shall not be approved.

Work. Such a compilation shall be submitted to the Court every two months, and shall cover the time and expenses incurred from the date of the Leadership Order until the end of the period ending one month before the submission date (i.e., on October 1, 2016, Co-Lead Counsel shall submit a time and expense compilation current through September of 2016).

E. Application for Distribution

Each Participating Counsel performing Common Benefit Work has the right to present a claim(s) for compensation and/or reimbursement through a procedure directed by Co-Lead Counsel prior to any distribution approved by this Court. Counsel who are not Participating Counsel *shall not be eligible* to receive a Common Benefit Award for any work performed or expenses incurred within the scope of this case. Any application for a Common Benefit Award in this case is subject to the exclusive jurisdiction of this Court. Additionally, this Court retains exclusive jurisdiction to adjudicate any and all disputes regarding, related to, or arising out of any Common Benefit Award in this case.

Co-Lead Counsel shall make recommendations to this Court for distributions to Participating Counsel performing Common Benefit Work and/or incurring Common Benefit Expenses. In the event that there is not unanimous agreement among Co-Lead Counsel, each Co-Lead Counsel shall have only one vote and each vote shall bear the same weight. A decision about the recommendation to the Court by the Co-Lead Counsel need only be made by a majority of votes. Co-Lead Counsel shall determine, in their own discretion, the most fair and efficient manner by which to evaluate all of the time and expense submissions in making its recommendation to this Court. This Court will give due consideration to the recommendation of Co-Lead Counsel in making its ruling on any Common Benefit Award.

II. NO FURTHER PROCEEDINGS REQUIRED

Nothing in this order shall be construed as requiring particular motions, stipulations, discovery, filings, or any other action by a party, nor shall this order be interpreted as requiring any particular pre-trial or trial proceedings.

IT IS SO ORDERED.

Dated this 5th day of August 2016.

By 
Thomas M. Sipkins
Judge of District Court