

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: SYNGENTA AG MIR 162)	MDL No. 2591
CORN LITIGATION,)	
)	Case No. 14-md-2591-JWL
This Document Relates to All Cases <u>Except</u> :)	
)	
<i>Heartland Corn Prods. v. Syngenta</i>)	
<i>Seeds, LLC, et al.</i> , No. 20-2168)	
)	
_____)	

MEMORANDUM AND ORDER

This matter arising from multi-district litigation (MDL) comes before the Court for review of the special master’s Report and Recommendation (R&R) (Doc. #4596) concerning attorney fee awards from the IRPA pool previously established by the Court. The Court has received objections from two groups of plaintiffs’ attorneys: attorneys associated with the Toups and Coffman firms (collectively “Toups”) (Doc. # 4598); and the Shields, Paul Byrd, and Hossley-Embry firms (collectively “Shields”) (Doc. # 4599). As more fully set forth below, the Court **overrules** the objections, **adopts** the R&R in its entirety, and awards attorney fees in accordance with the R&R and its Exhibit 1.¹

¹ All pending attorney fee award petitions, to the extent they seek awards from the IRPA pool, are hereby granted and denied to the extent of the Court’s specific awards pursuant to Exhibit 1 to the special master’s R&R, as set forth herein.

I. Background

By Memorandum and Order of December 7, 2018, the Court granted final approval of a settlement agreement resolving claims against the Syngenta defendants, and it awarded one third of the settlement fund as attorney fees. *See In re Syngenta AG MIR 162 Corn Litig.*, 2018 WL 6436074 (D. Kan. Dec. 7, 2018). By Memorandum and Order of December 31, 2018, the Court allocated the attorney fee award among four pools: three common-benefit pools and a pool for individually-retained private attorneys (IRPAs). *See In re Syngenta AG MIR 162 Corn Litig.*, 2018 WL 6839380 (D. Kan. Dec. 31, 2018). The Court allocated \$60,400,000.00, constituting 12 percent of the total fee award, to the IRPA pool, which portion would be shared by IRPAs pro rata based on the ultimate recoveries by their claimant clients. *See id.* at *6-11. The Court concluded that such an amount, which was intended to result in a contingent fee for IRPAs of approximately 10 percent, was reasonable and appropriate in this case “for IRPAs who did not perform work (in addition to filing a case) that benefitted the entire settlement class” (such work benefitting the class would be compensated from the common-benefit pools). *See id.* at *6-10. In light of that conclusion concerning the reasonableness of this fee award, the Court further ruled that IRPAs could not recover additional fees from any client’s recovery based on a contingent-fee contract. *See id.* at *10.

After determining the amount allocated to the IRPA pool, the Court reopened the application period and set a new deadline to allow IRPAs who had not yet filed an application for attorney fees to seek an award from the IRPA pool, as long as the applicant represented a settlement class claimant prior to the Court’s preliminary approval of the

settlement. *See id.* The Court required any such application to include a list of all claimants represented by that attorney. *See id.* at *11. The Court ruled that specific awards from the IRPA pool would be “administered by this Court, in consultation with the Minnesota state court and the Illinois federal court, regardless of where an IRPA’s cases were filed,” which arrangement would allow for a consistent distribution of the fee awards from the IRPA pool. *See id.* The Court then adopted the following procedure for specific awards from the IRPA pool:

Once the amount of each claimant’s recovery from the settlement fund has been determined, the claims administrator, with oversight by the special master, shall calculate the *pro rata* IRPA award to be made from the IRPA pool to each attorney who has applied for a fee award, and the amount of an attorney’s proposed IRPA fee award shall be communicated to that attorney, who shall have the opportunity to object to the calculation by the administrator. After the administrator has attempted to resolve any objection, the master shall file a report and recommendation concerning the proposed distribution of the IRPA pool to particular attorneys or law firms, in which the master shall note any outstanding objections and her recommendations concerning those objections. Objections to that report and recommendation may be filed within 14 days, and the Court will then resolve any such renewed objections.

See id. Finally, by separate Order of January 4, 2019, the Court required each applicant for an award from the IRPA pool to submit certain information, including a signed retainer agreement or power of attorney, to the claims administrator in a particular form.

By separate orders, the Court subsequently awarded fees from the three common benefit pools and expenses to particular law firms. *See In re Syngenta AG MIR 162 Corn Litig.*, 2019 WL 1274813 (D. Kan. Mar. 20, 2019) (Kansas pool); *In re Syngenta AG MIR 162 Corn Litig.*, 2019 WL 3202256 (D. Kan. July 16, 2019) (Minnesota pool); *In re Syngenta AG MIR 162 Corn Litig.*, 2019 WL 6134520 (D. Kan. Nov. 19, 2019) (Illinois

pool); *In re Syngenta AG MIR 162 Corn Litig.*, 2020 WL 7344684 (D. Kan. Dec. 14, 2020) (indicative ruling that Court would modify common-benefit awards to effect a settlement on appeal); *In re Syngenta AG MIR 162 Corn Litig.*, 2019 WL 3251526 (D. Kan. July 19, 2019) (expenses). The distribution of the settlement fund to claimants is nearly complete, and all appeals concerning the approval of the settlement have been resolved (with only appeals concerning fee and expense awards remaining pending).

II. The Special Master's Report and Recommendation

In its allocation order, the Court extended the appointment of Ellen Reisman as special master to oversee the distribution of attorney fees as allocated by the Court. *See In re Syngenta*, 2018 WL 6839380, at *15. On May 14, 2021, the master filed her R&R concerning the awards of fees to specific attorney applicants from the IRPA pool, as requested by the Court. A summary of the R&R follows.

IRPAs made a total of 114,060 submissions. By each submission, a particular IRPA sought to recover a pro rata portion of the IRPA pool based on a particular settlement claim by a client claimant. The administrator first attempted to link each submission to a particular claim, by claimant identification number or by other means. The administrator then reviewed the supporting documentation for each submission. After sampling the submissions to test the accuracy of the administrator's coding of submitted documents, the master deemed accepted any submission supported by a legible retainer agreement or power of attorney that was signed by or on behalf of a claimant, dated on or before the date of the preliminary approval, and for which there was no competing submission. If there

were competing submissions linked to a single settlement claim, the master opted against splitting the award, as such a process would have been complicated and time-consuming, requiring additional information. Instead, in the case of competing submissions, the master made the award pursuant to the following principles: if no submission satisfied the requirements for an award, all were rejected; if only one submission satisfied the requirements, that submission was deemed accepted; and if multiple submission satisfied all requirements, the master accepted the submission of the IRPA designated as counsel by the claimant in the online claims portal, or in the absence of such a designation, accepted the submission with the earliest signed retainer agreement or power of attorney.

On February 18, 2021, applicant IRPAs received notice of the special master's preliminary determinations, including which submissions were accepted, which submissions were rejected (with the basis for the rejection), the estimated IRPA award for each accepted submission, and the procedure and deadline for appealing the initial determination to the master. The master received and resolved approximately 2,800 timely appeals. The master permitted the submission of additional supporting documents other than new retainer agreements and powers of attorney, which were not accepted because the IRPA submission deadline had already passed. Submissions were deemed accepted on appeal if additional documents satisfied the requirements for an award, including evidence linking a submission to a particular settlement claim and evidence establishing when an undated retainer agreement or power of attorney had been executed. In accordance with the Court's order allocating funds to the IRPA pool for IRPAs retained prior to preliminary settlement approval, the master rejected on appeal the argument that submissions based on

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