

FILED
United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS

February 28, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

In re: SYNGENTA AG MIR 162 CORN
LITIGATION (Toups/Coffman Plaintiffs’
Counsel)*

Nos. 19-3008, 19-3022, 19-3079, 19-3176,
19-3280

In re: SYNGENTA AG MIR 162 CORN
LITIGATION (Kansas Common Benefit
Firms)*

Nos. 19-3032, 20-3002

In re: SYNGENTA AG MIR 162 CORN
LITIGATION (Byrd/Shields Group)**

No. 19-3174

In re: SYNGENTA AG MIR 162 CORN
LITIGATION (Johnson Becker, PLLC)

No. 19-3175

In re: Syngenta AG MIR162 (Hossley-
Embry Group)

No. 19-3178

In re: SYNGENTA AG MIR 162 CORN

* The parties to the appeals filed by Toups/Coffman Plaintiffs’ Counsel and the Kansas Common Benefits Firms can be found in the *Joint Response on Parties to these Appeals* filed on March 15, 2019.

** The parties to the appeals filed by the Byrd/Shields Group can be found in the *Response on Parties to Appeal No. 19-3174* filed on September 18, 2019, the *Supplemental Response on Parties to Appeal No. 19-3174* filed on October 9, 2019, and the court’s order of November 25, 2019.

LITIGATION (Law Office of Craig Eiland, P.C.)

No. 19-3279

In re: SYNGENTA AG MIR 162 CORN LITIGATION (Demerath Group)

No. 19-3284

**Appeals from the United States District Court
for the District of Kansas
(D.C. No. 2:14-MD-02591-JWL-JPO)**

Eric Alan Isaacson, Law Office of Eric Alan Isaacson, La Jolla, California (Mitchell A. Toups, Weller, Green Toups & Terrell, LLP, Beaumont, Texas; Richard L. Coffman, The Coffman Law Firm, Beaumont, Texas; D. Allen Hossley, Hossley-Embry, LLP, Dallas, Texas, with him on the briefs), the Toups/Coffman Plaintiffs' Counsel & Hossley-Embry for the Kansas Pool Appellants.

Christina J. Nielsen, Nielsen Law Firm, Woodbridge, Virginia, Jeffrey A. Lamken, Eric R. Nitz, and Caleb Hayes-Deats, MoloLamken LLP, Washington, D.C., William P. Ferranti, The Ferranti Firm LLC, Portland, Oregon, and Thomas J. Wiegand and Matthew J. Fisher, MoloLamken, Chicago, Illinois, for the Minnesota Appellants Watts Guerra, LLP, Paul Byrd Law Firm, PLLC, and Shields Law Group, LLC.

David Campbell, O'Hanlon, Demerath & Castillo, PC, Austin, Texas (Justin B. Demerath, O'Hanlon, Demerath & Castillo, PC, Austin, Texas; A. Craig Eiland, The Law Offices of A. Craig Eiland, PC, Austin, Texas, with him on the briefs), for the Illinois Appellants, and Clayton A. Clark and Scott A. Love, Clark Love Hutson, Houston, Texas, and Martin J. Phipps, Phipps Anderson Deacon LLP, San Antonio, Texas, and Peter J. Flowers, Meyers & Flowers, LLC, St. Charles, Illinois, joined in the supplemental brief for The Clark/Phipps Group.

Timothy J. Becker (Michael K. Johnson with him on the briefs) Johnson Becker, PLLC, Saint Paul, Minnesota, for Appellants.

Bradley T. Wilders, Stueve Siegel Hanson LLP, Kansas City, Missouri, and William Lewis Garrison, Jr., Heninger Garrison Davis, LLC, Birmingham, Alabama (Patrick J. Stueve and Rachel Schwartz, Stueve Siegel Hanson LLP, Kansas City, Missouri; Don M. Downing and Gretchen Garrison, Gray, Ritter & Graham, P.C., St. Louis, Missouri; William B. Chaney and Drew York, Gray Reed & McCraw, LLP, Dallas, Texas; Scott

Powell, Bruce McKee and Tempe Smith, Hare Wynn Newell & Newton, Birmingham, Alabama; the MDL Co-Lead Plaintiffs’ Counsel on behalf of Kansas Common Benefit; and Daniel E. Gustafson, Gustafson Gluek PLLC, Minneapolis, Minnesota; Lewis A. Remele, Jr., Bassford Remele, A Professional Association, Minneapolis, Minnesota and William R. Sieben, Schwebel Goetz & Sieben PA, Minneapolis, Minnesota the Minnesota Co-Lead Counsel; and Christopher A. Seeger, Stephen A. Weiss, Diogenes P. Kekatos, Seeger Weiss LLP, Ridgefield Park, New Jersey, the Settlement Class Counsel; Christopher B. Hood, Heninger Garrison Davis, LLC, Birmingham, Alabama, the Illinois Mass Action Lead Counsel, with them on the briefs) for the Joint Appellees.

Before **HOLMES**, Chief Judge, and **BACHARACH** and **McHUGH**, Circuit Judges.

HOLMES, Chief Judge.

These appeals concern attorneys’ fees awarded following a historic class action settlement. Numerous plaintiffs from multiple different states—but, mainly, Kansas, Minnesota, and Illinois—sued Syngenta AG (“Syngenta”), an agricultural company. The suits against Syngenta were organized into complex, federal multi-district litigation (“MDL”) based in a court in the United States District Court for the District of Kansas (“Kansas district court”). Syngenta ultimately settled with the class action plaintiffs. The Kansas district court allocated approximately \$503 million in attorneys’ fees and expense awards stemming from the settlement to the myriad firms participating in the class action.

Appellants in this case—the various plaintiffs’ lawyers and law firms that took part in the MDL against Syngenta—challenge numerous orders published by the Kansas district court concerning the apportionment and allocation of that \$503 million fee pie. Having concluded it possessed significant authority to craft the allocation of attorneys’ fees in the most reasonable manner, the Kansas district court had adopted a two-stage, “general approach” of an appointed special master to the allocation of the attorneys’ fee

award—“by which the award is first allocated among the three common benefit pools [i.e., for Kansas, Minnesota, and Illinois] and the IRPA pool [i.e., the pool for individually retained private attorneys],” Joint App., Vol. 23, at 5357 (Kan. D. Ct. Mem. and Order, filed Dec. 31, 2018) (“December 31, 2018, Fee Allocation Order”), and then, second, disbursed to individual firms. Appellees—also lawyers and law firms from Kansas, Minnesota, and Illinois, that acted as co-lead counsel (“CLCs” or “Leadership”) and by-and-large, spearheaded the litigation against Syngenta in the three main fora—oppose Appellants’ arguments, and they ask us to affirm the Kansas district court’s fee-allocation orders.¹

Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we fully **affirm** the Kansas district court’s post-judgment attorneys’ fees orders challenged in these appeals.

¹ The three relevant groups of appellees in this action are the following: (a) the Kansas CLC, comprised of lawyers from Stueve Siegel Hanson LLP, Gray, Ritter, & Graham, P.C., Hare Wynn Newell & Newton, Gray Reed & McGraw, LLP, and all other firms and lawyers working at their direction; (b) the Minnesota CLC, comprised of lawyers from Gustafson Gluek, PLLC, Bassford Remele, A Professional Association, Schewebel Goetz & Sieben PA, and all other firms and lawyers working at their direction; and (c) Heninger Garrison Davis, LLC, the law firm appointed as lead counsel in the relevant action in the U.S. District Court for the Southern District of Illinois which was also appointed Coordinated Action Plaintiffs’ Liaison Counsel in that district. Seeger Weiss LLP, which was the Settlement Class Counsel in this action, is also a party to the appeal as an appellee. These law firms and attorneys name themselves as the Joint Appellees in this action.

I. Background

A. Summary of the Litigation

The appeals at issue here stem from various lawsuits filed against Syngenta. Syngenta commercialized and released two genetically modified (“GMO”) corn seeds under the brand names Agrisure Viptera and Agrisure Duracade before obtaining China’s regulatory approval to import such genetically modified seeds. After discovering the Syngenta GMO corn seeds in its American imports, China closed its markets to American corn, depressing corn prices and thereby injuring producers. Beginning in 2014, corn farmers and others in the corn industry filed thousands of lawsuits against Syngenta in several federal and state jurisdictions; these suits took various forms, including class actions, mass tort actions, and individual actions.²

In December 2014, the Judicial Panel on Multidistrict Litigation consolidated hundreds of these suits into an MDL centered in the Kansas district court. A similar process occurred in Minnesota, where thousands of suits were consolidated in a state court (“Minnesota state court”). And finally, similar suits were litigated in a court in the United States District Court for the Southern District of Illinois (“Illinois district court”).

² Some corn producers who initially opted to file individual actions against Syngenta, as opposed to joining a class action lawsuit, had a change of heart and regretted their choice of pursuing individual claims. They separately sued the attorneys who allegedly inflated their legal fees by touting the benefits to them of pursuing individual lawsuits, while concealing the benefits of class litigation. That lawsuit was ultimately dismissed by the Kansas district court as part of the MDL at issue here, a dismissal that we affirmed in *Kellogg v. Watts Guerra LLP*, 41 F.4th 1246 (10th Cir. 2022).

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