

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>IN RE SYNGENTA AG MIR162 CORN LITIGATION</b>	§ § § § § §	<b>No. 2:14-MD-02591-JWL-JPO</b>
<b>THIS DOCUMENT RELATES TO:</b>	§	<b>MDL No. 2591</b>
<b>ALL CASES</b>	§	

**TOUPS/COFFMAN PLAINTIFFS’ MOTION TO (i) DELAY CONSIDERATION OF  
THE REQUEST FOR PRELIMINARY APPROVAL OF THE MEDIATED  
SETTLEMENT AGREEMENT, (ii) BE APPOINTED TO THE PLAINTIFFS’  
SETTLEMENT NEGOTIATION COMMITTEE, AND (iii) COMPEL THE  
PRODUCTION OF DOCUMENTS AND INFORMATION**

**TO THE HONORABLE UNITED STATES DISTRICT COURT:**

The over 9000 individual corn producer plaintiffs in forty-four states farming approximately 2.9 million acres of corn on the average during each year in the damages period who are represented by Mitchell A. Toups and Richard L. Coffman in this litigation (collectively, Toups/Coffman Plaintiffs) respectfully move the Court to (i) delay consideration of the soon-to-be-filed request for preliminary approval of the mediated settlement agreement (MSA) (which Toups/Coffman Plaintiffs understand has been signed), (ii) appoint a representative of the Toups/Coffman Plaintiffs to the Plaintiffs’ Settlement Negotiating Committee (Committee), and (iii) compel the production of certain related documents and information.<sup>1</sup>

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<sup>1</sup> In further support of this motion, attached are the Declarations of Mitchell A. Toups (**Exhibit A**) and Richard L. Coffman (**Exhibit B**), both of which (along with the other Exhibits) are incorporated herein, by reference.

**THE TOUPS/COFFMAN PLAINTIFFS**

Counsel for the Touns/Coffman Plaintiffs first got involved in this litigation in 2014 when they were contacted by former clients in the Genetically Modified Rice Litigation, a similar case that was settled in 2011.

Since that time, Touns/Coffman Plaintiffs' counsel have spent countless hours meeting with corn producers in the fields, in barns, across the hoods of trucks, in restaurants, in barber shops, and around kitchen tables to discuss the litigation and answer their questions. Touns/Coffman Plaintiffs' counsel also have communicated with numerous corn producers via telephone and email (many were surprised and delighted that counsel actually took their calls and responded to their emails when other lawyers didn't). Touns/Coffman Plaintiffs' counsel also regularly update their clients (and non-clients) about the litigation via letters, cards, and email posts through their dedicated case website, [www.corncasesettlement.com](http://www.corncasesettlement.com).

Equally as important, from the beginning of their involvement in the litigation, Touns/Coffman Plaintiffs' counsel and their extended staffs have tirelessly worked with their clients and their clients' local Farm Services Administration (FSA) offices to secure their clients' 2013-2017 Form 578s and other supporting documents as required by the Court (at the urging of Class Counsel) and in preparation for filing their settlement claims.

The Touns/Coffman Plaintiffs filed their first case in April 2015. They have filed many cases since. All told, the Touns/Coffman Plaintiff group comprises over 9000 individual corn producer plaintiffs in forty-four states farming approximately 2.9 million acres of corn on the average during each year in the damages period. On information and belief, the Touns/Coffman Plaintiffs have filed the most individual producer plaintiff cases in the federal MDL proceeding. The Touns/Coffman Plaintiffs also produced 15 of the 48 bellwether plaintiffs in the federal MDL

proceeding, all of whom, with the assistance of Toups/Coffman Plaintiffs' counsel, participated in the full discovery process supporting the litigation, including responding to written discovery and sitting for their depositions.

In short, Toups/Coffman Plaintiffs and their counsel have been heavily involved in the litigation from its earliest stages. They are not newcomers to the party.

### **THE RADIO SILENT SETTLEMENT SPECIAL MASTER**

On March 21, 2016, the court appointed Ellen K. Reisman (Reisman) as the settlement special master "to explore settlement of all the cases, in all of the courts in which they are pending" (Doc. #1745). **Exhibit C.**

On June 8, 2016, Richard Coffman (Coffman), one of Toups/Coffman Plaintiffs' counsel, reached out to Reisman to introduce the Toups/Coffman Plaintiff group and requesting a seat at the settlement negotiating table. Coffman and Reisman had a conference call on June 24, 2016. Among other things, Toups/Coffman Plaintiffs' counsel reiterated their desire to be included in the settlement discussions. Reisman promised to add Toups/Coffman Plaintiffs' counsel to the settlement email distribution list. That, however, never happened.

Thereafter, Coffman sent follow-up email information requests to Reisman to no avail. From January 12 to January 19, 2018, Coffman sent three emails to Reisman asking to participate in the settlement distribution model negotiations. **Exhibit E.** She finally responded on January 20, 2018 (after the third email request), directing Coffman to contact Chris Seeger or another Committee member about the status of the discussions. **Exhibit F.** But Coffman did not ask for a status report; as counsel for a significant number of producer plaintiffs, he asked to be included in the settlement distribution model negotiations. She dodged my very precise request.

But in any event, that was the point of Coffman contacting Reisman in the first place. The Committee was not complying with the Court's order (**Exhibit D**, below) to confer with other individual producer plaintiffs' counsel regarding the negotiations. Moreover, when Mitch Toups (Toups), Toups/Coffman Plaintiffs' co-counsel asked a Committee member (Mikal Watts) for specific information about the negotiations, Mr. Watts declined, informing Toups that the information was confidential. *See* **Exhibit G**.

Follow-up information requests to Reisman, including a request for the original Syngenta settlement term sheet, have gone unanswered. More radio silence. A series of February 23 emails from Coffman to Reisman requesting a status report (since a report had not been filed in compliance with the Court's previous order) and a copy of the MSA have also gone unanswered. **Exhibit H**. More radio silence. On February 26, 2018, Toups emailed a copy of the Court's August 8, 2017 order to Mikal Watts reminding him of the Committee's duties to the other producer plaintiffs' counsel. **Exhibit I**. Mr. Watts forwarded Toups' email to the other Committee members. **Exhibit J**. More radio silence.

**THE PLAINTIFFS' SETTLEMENT NEGOTIATION COMMITTEE AND THE SETTLEMENT DISTRIBUTION MODEL NEGOTIATIONS**

On August 8, 2017, "after consultation with Special Master Reisman and judges from the federal and state courts listed above, who are presiding over the Syngenta corn litigation, the [Kansas City federal] Court [found] it prudent and efficient to appoint a Plaintiffs' Settlement Negotiation Committee to work toward a fair and expeditious resolution of the matters discussed above." *See* Doc. #3366 at 2 (**Exhibit D**). Specifically:

This Plaintiffs' Settlement Negotiation Committee shall conduct settlement negotiations with Syngenta and Special Master Reisman, *shall confer with other Plaintiffs' counsel in the actions described above about such negotiations, and shall participate in such negotiations on their behalf*. The Court's judgment is that the Plaintiffs' Settlement Negotiation Committee appropriately balances the goals of representing the interests of

different groups of producer plaintiffs while maintaining a workably sized group to conduct settlement negotiations. *The Court anticipates that members of the Plaintiffs' Settlement Negotiation Committee will communicate with their co-counsel regarding settlement negotiations so that producer plaintiffs' interests are appropriately represented.*

*Id.* at 2-3 (emphasis added). The Committee consists of two lawyers representing the class actions (Chris Seeger and Dan Gustafson) and two lawyers representing the individual producer plaintiffs (Mikal Watts and Clayton Clark). *Id.* at 3.

Thereafter, on September 25, 2017, the Committee and Syngenta entered into an agreement containing broad settlement terms (*i.e.*, the Syngenta settlement term sheet that Toups/Coffman Plaintiffs' counsel have requested, but has never been provided). At that point, the Committee's charge shifted from negotiating a settlement with Syngenta to negotiating how the settlement would be divided and distributed between the class actions and the individual producer plaintiffs. These negotiations lasted well into 2018.

In violation of the Court's August 8, 2017 order, however, the Committee never reached out and conferred with the Toups/Coffman Plaintiffs' counsel about the settlement distribution model negotiations, did not negotiate on behalf of the Toups/Coffman Plaintiffs, and never communicated with the Toups/Coffman Plaintiffs' counsel about the negotiations. Incredibly, in a February 19, 2018 email, Toups was told that the Committee members were not allowed to disclose any details about the negotiations. **Exhibit G.** Thus, none of the interests of the substantial groups of individual producer plaintiffs not represented by Messrs. Watts and Clark, including, but not limited to, Toups/Coffman Plaintiffs, have been appropriately represented in the negotiations—much less, represented at all.

As of the date this motion was filed, and notwithstanding their requests, Toups/Coffman Plaintiffs' counsel have never seen the original Syngenta settlement term sheet, never seen the signed MSA or any drafts, and never seen any of the Committee's side agreements by and

between themselves. To add insult to injury, the Committee's actions apparently have been sanctioned by Reisman, the supposed neutral mediator.

**WHEREFORE**, the Toups/Coffman Plaintiffs respectfully request the Court to (i) delay consideration of the Plaintiffs' Settlement Negotiation Committee's anticipated request for preliminary approval of the version of the MSA negotiated and agreed to by the Plaintiffs' Settlement Negotiation Committee as it is currently constituted until such time as Toups/Coffman Plaintiffs' counsel have had an opportunity to review, provide input regarding (if and where necessary), and sign off on the MSA (or an amended version of the MSA), (ii) compel the Plaintiffs' Settlement Negotiation Committee and the Special Master to produce copies of the original Syngenta term sheet, all drafts of the MSA and the current version of the signed MSA, and all documents and information pertaining to any other written or unwritten side agreement(s), if any, by and between the Plaintiffs' Settlement Negotiation Committee members and/or other counsel, (iii) appoint a representative of the Toups/Coffman Plaintiffs to the Plaintiffs' Settlement Negotiation Committee to represent their interests and the interests of all other substantial groups of individual producer plaintiffs not represented by Plaintiffs' Settlement Negotiation Committee members, such lawyer to be a signatory to any MSA presented to the Court for consideration and preliminary approval<sup>2</sup>, and (iv) grant them such other and further relief to which they are justly entitled.

Date: February 27, 2018

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<sup>2</sup> Toups/Coffman Plaintiffs' counsel are experienced in class action and opt-out jurisprudence. They are qualified to represent, and will represent, the interests of all individual producer plaintiffs not represented by Plaintiffs' Settlement Negotiation Committee members in further settlement distribution model negotiations, and commit to regularly confer with such individual producer plaintiffs about the negotiations in compliance with the Court's August 8, 2017 order (**Exhibit D**).

Respectfully submitted,

By: /s/ Mitchell A. Toups

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**ATTORNEYS FOR THE TOUPS/COFFMAN  
PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the Toups/Coffman Plaintiffs' Motion to (i) Delay Consideration of the Request for Preliminary Approval of the Mediated Settlement Agreement, (ii) Be Appointed to the Plaintiffs' Settlement Negotiation Committee, and (iii) Compel the Production of Documents and Information was served on all counsel of record, via the Court's electronic filing system, on February 27, 2018.

/s/ Mitchell A. Toups

Mitchell A. Toups