

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:)
)
The Kansas Class Trial)
_____)

ORDER CONCERNING TIME LIMITS

In this MDL, the claims of the Kansas class certified by the Court are scheduled to be tried to a jury in this Court over four weeks from June 5 through June 30, 2017. The parties have submitted a joint motion (Doc. # 3175) by which they request a ruling regarding the division of time for the parties' presentation of evidence at trial. The parties, after conferring, were not able to agree on a division and thus have submitted their separate proposals to the Court. Plaintiffs propose completing the presentation of their case-in-chief in the first two weeks, by the end of Friday, June 16. Defendants (hereafter "Syngenta") propose the use of a time clock, under which each side would have 45 total hours in which to complete its direct- and cross-examinations of the live witnesses and play any deposition excerpts.

The Court concludes in its discretion that plaintiffs' proposal is superior and reasonable. That proposal will give each side sufficient time in which to present its case. The Court first notes that its intent, consistent with its experience, is to receive 6.5 hours

of testimony each trial day, not merely the six hours assumed by the parties.¹ Thus, if evidence is presented over 17 trial days, there could be a maximum of 110 hours of testimony, not the 100 or 90 hours assumed by plaintiffs and Syngenta respectively. Plaintiffs would have at least 9 days, or more than 58 hours, in which to complete their case-in-chief, and plaintiffs represent that they can do so within that time.² Syngenta would have up to eight days or 52 hours (and possibly longer) in which to complete its case, which is ample in light of Syngenta's own proposal to limit each side's testimony to 45 hours—particularly given Syngenta's obvious incentive to insert as much of its own evidence as possible into plaintiffs' case-in-chief.

Syngenta complains that this proposal gives plaintiffs more time for their case-in-chief than it leaves for Syngenta. That disparity is minimal, however (approximately nine trial days to eight), and a longer period for plaintiffs' case is reasonable. Based on its 25 years of experience trying cases, the Court agrees with plaintiffs that in the normal

¹The Court's practice is to hear testimony from 9:00 a.m. to 5:00 p.m. each day (although a day might go longer so that a witness may be completed), with a one-hour lunch break and two other 15-minute breaks.

²One of plaintiffs' assumptions underlying their commitment to finish by June 16 is that Syngenta's cross-examinations will not exceed the direct examinations in total length. Even if that assumption does not prove true, plaintiffs should still be able to finish their case in that time. First, as noted above, the Court intends to exceed the six hours of testimony anticipated by plaintiffs for each day. Second, the Court does not intend to allow questioning by either side that is unnecessarily long or cumulative, and plaintiffs will be free to object on that basis at trial. Of course, if Syngenta's cross-examinations are reasonable but still much longer than anticipated, the Court is free to adjust plaintiffs' completion date, although it does not anticipate the need to do so.

course, the plaintiff's case-in-chief exceeds that of the defendant. The reasons for that (as noted by plaintiffs here) are fairly obvious—the plaintiff bears the burden of proof and essentially has the responsibility to present any background or foundational evidence for the jury's comprehension of the subject matter. Moreover, as noted above, the typical defendant seeks to inject as much of its own evidence into the plaintiff's case, which means that the defendant's case-in-chief is almost inevitably shorter (and often substantially shorter) than the plaintiff's case (even if the parties end up presenting testimony of equal duration). Moreover, although the parties anticipate the same number of live witnesses from each side, plaintiffs' deposition designations are much longer than Syngenta's. Syngenta has not suggested any reason why it should need as much time as plaintiffs for its case-in-chief, other than to refer to the existence of unnamed affirmative defenses. The Court concludes that it is reasonable to allow plaintiffs a slightly greater period of time in which to present their case-in-chief.

Each side argues that the other side's proposal presents a risk of unfair prejudice. The Court agrees with plaintiffs that the use of a time clock in this case would present plaintiffs with difficult choices regarding how much time to leave themselves for Syngenta's case-in-chief, and would also give Syngenta the ability to game the system somewhat (for instance in ordering its witnesses or in choosing to play more depositions than it would otherwise). Plaintiffs' proposal, however, creates little risk of prejudice to Syngenta in the Court's view. Syngenta argues that plaintiffs might engage in unnecessarily long cross-examinations to eat up time in Syngenta's case, but the Court

is confident in its ability (and Syngenta's) to prevent any unnecessary or cumulative questioning or other time-wasting. In short, Syngenta has not shown that there is a sound basis for the Court to alter its usual procedure, the use of which will allow for the presentation of the evidence in a manner that is best for the jury.

Thus the Court will not employ a time clock. Plaintiffs shall complete their case-in-chief no later than the end of the day on June 16. Syngenta shall complete its case no later than the end of the day on June 28. No rebuttal is contemplated. The Court will be vigilant in making sure that the parties present their cases efficiently and without unnecessary delay.³ Based on the parties' own time projections and the Court's intention to monitor the presentations, the Court is confident that the case will be completed within the scheduled time. The parties' joint motion is therefore **granted** as set forth herein.

IT IS SO ORDERED.

Dated this 24th day of May, 2017, in Kansas City, Kansas.

s/ John W. Lungstrum

John W. Lungstrum
United States District Judge

³As the Court has informed the parties, the Court insists that the parties make every effort to anticipate and present any disputes in a manner that will not delay the presentation of evidence to the jury, for instance by alerting the Court and making arguments before the trial day begins, during breaks, and after the jury goes home.