

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re Wholesale Grocery Products
Antitrust Litigation

PRETRIAL ORDER NO. 1
Court File No. 09-MD-2090 ADM/AJB

This Order Relates to All Actions

Kevin M. Magnuson, Esq., Kelley, Wolter & Scott, PA, Minneapolis, MN; Richard B. Drubel, Esq., Boies, Schiller & Flexner, LLP, Hanover, NH; and Daniel A. Kotchen, Kotchen & Low, LLP, Washington, D.C., appeared for and on behalf of Plaintiffs D&G, Inc., d/b/a Gary's Foods and Robert Wentworth Jr., Inc., d/b/a Rangeley IGA.

Vincent J. Esades, Esq., Rachel Stoering, Esq., Heins, Mills & Olson, PLC, Minneapolis, MN; Joel C. Meredith, Esq., Daniel B. Allanoff, Esq., Meredith, Cohen, Greenfogel & Skirnick, PC, Philadelphia, PA; Edward T. Dangel, III, Esq.; Dangel and Mattchen, LLP, Boston, MA; and Christopher Cole, Esq., Sheehan, Phiney, Bass & Green, PA, Manchester, NH, appeared for and on behalf of Plaintiff DeLuca's Corp.

Kathleen C. Chavez, Esq., Foote, Meyers, Mielke & Flowers, LLC, St. Charles, IL; and Peter L. Currie, Esq., The Law Firm of Peter L. Curie, PC, St. Charles, IL, appeared for and on behalf of Plaintiff Blue Goose Super Market, Inc.

W. Joseph Bruckner, Esq., Elizabeth R. Odette, Esq., Lockridge, Grindal, Nauen, PLLP, Minneapolis, MN; and Richard L. Creighton, Jr., Esq., Keating, Muething & Klekamp, PLL, Cincinnati, OH, appeared for and on behalf of Plaintiff Charles W. Prather Company, Inc., d/b/a Prathers IGA.

Stephen P. Safranski, Esq., K. Craig Wildfang, Esq., Robins, Kaplan, Miller & Ciresi, LLP, Minneapolis, MN, appeared for and on behalf of Defendant Supervalu, Inc.

Charles A. Loughlin, Esq., Howrey LLP, Washington D.C., and Todd A. Wind, Esq., Fredrikson & Byron, PA, Minneapolis, MN, appeared for and on behalf of Defendant C&S Wholesale Grocers.

The Judicial Panel on Multidistrict Litigation has transferred certain antitrust actions relating to Defendant Supervalu, Inc. and Defendant C&S Wholesale Grocers to this Court for coordinated pretrial proceedings. On December 3, 2009, a status conference was held before the undersigned United States District Judge, and the Court heard oral argument on Plaintiffs D&G,

Inc., d/b/a Gary's Foods ("Gary's Foods") and Robert Wentworth Jr., Inc., d/b/a Rangeley IGA's ("Rangeley IGA") Motion for Appointment of Co-Lead Counsel and Liaison Counsel [Docket No. 4] and Plaintiff DeLuca's Corp.'s Motion for Appointment of Interim Lead Counsel and Interim Liaison Counsel [Docket No. 8]. Gary Foods and Rangeley IGA's motion, which is also supported by Plaintiff Blue Goose Super Market, Inc. ("Blue Goose"), requests that the Court appoint the law firms of Boies, Schiller & Flexner, LLP ("Boies Schiller") and Kotchen & Low, LLP ("Kotchen & Low") as co-lead counsel and the law firm of Kelley, Wolter & Scott, PA ("Kelley Wolter") as liaison counsel. DeLuca's Corp.'s competing motion, which is also supported by Plaintiff Charles W. Prather Company, Inc., d/b/a Prathers IGA ("Prathers IGA"), requests that the Court appoint the law firm of Meredith, Cohen, Greenfogel & Skirnick, PC ("Meredith Cohen") as interim co-lead counsel and the law firm of Heins, Mills & Olson, PLC ("Heins Mills") as interim liaison counsel.

The Gary's Foods' motion argues that Boies Schiller and Kotchen & Low are the originating counsel who filed the first of the four actions currently before the Court as a multi-district litigation and, as such, they should be appointed co-lead counsel. In addition, the motion argues that Kelley Wolter, the local counsel with whom Boies Schiller and Kotchen & Low have been working, should be appointed liaison counsel. The motion by DeLuca's Corp. proposes either Boies Schiller or Kotchen & Low to act as co-lead counsel alongside Meredith Cohen, but opposes appointing both Boies Schiller and Kotchen & Low, to the exclusion of Meredith Cohen. The Gary's Foods' motion proposes Heins Mills, the local counsel with whom Meredith Cohen has been working, be appointed liaison counsel.

Upon consideration of the various submissions by counsel, as well as the oral argument

heard on December 3, 2009, the Court finds that Kotchen & Low's efforts in originating the first action that was filed in the multi-district litigation warrants their inclusion as co-lead counsel. As evidenced by the competing motions and representations by counsel during the December 3, 2009 hearing, there apparently is some disagreement between the two "camps" of Plaintiffs as to how this case should proceed. In the interest of ensuring adequate representation of the entire class, the Court finds it appropriate to appoint all three candidates—Boies Schiller, Kotchen & Low, and Meredith Cohen—as co-lead counsel, with Boies Schiller acting as principal co-lead counsel. The Court is convinced that all three law firms will be able to work well together and therefore finds that establishing a steering committee is unnecessary.

With regard to the issue of liaison counsel, the Court discussed with the parties at the December 3, 2009 status conference a potential appearance of a conflict posed by Heins Mills's proposed involvement as liaison counsel. Heins Mills graciously offered to withdraw, and the Court accepts Heins Mills's offer. The other law firm proposed as liaison counsel, Kelley & Wolter, was recently appointed by the Court to work on a large project. Given that recent appointment, which will entail significant, ongoing responsibilities, Kelley & Wolter will not be appointed liaison counsel. At the December 3, 2009 status conference, the law firm of Lockridge, Grindal, Nauen, PLLP ("Lockridge"), offered that it would serve as liaison counsel, and the Court accepts Lockridge's offer.

Based on the foregoing, and upon careful consideration of the motions and supporting memoranda and affidavits, as well as the oral argument heard on December 3, 2009, **IT IS HEREBY ORDERED** that:

A. Co-lead Counsel

The Court designates the law firms of Boies, Schiller & Flexner, LLP; Kotchen & Low, LLP; and Meredith, Cohen, Greenfogel & Skirnick, PC as Plaintiffs' Co-lead Counsel. Co-lead Counsel will be responsible for coordinating the activities of Plaintiffs during pretrial proceedings and will:

1. Determine and present to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial proceedings;
2. Coordinate the initiation and conduct of discovery on behalf of Plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure relating to discovery or any other subsequent order of the Court;
3. Conduct settlement negotiations on behalf of Plaintiffs, but not enter binding agreements except to the extent expressly authorized;
4. Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for Plaintiffs is conducted effectively, efficiently, and economically;
5. Enter into stipulations with opposing counsel as necessary on issues relating to the litigation;
6. Prepare and distribute periodic status reports to the parties;
7. Maintain adequate time and disbursement records covering services of designated counsel and establish guidelines for approval by the Court as to the keeping of time records and expenses;
8. Monitor the activities Plaintiffs' designated counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
9. Establish and maintain an electronically accessible document depository; and
10. Perform such other duties as may be incidental to the proper coordination of Plaintiffs' pretrial activities or as authorized by further Order of the Court.

Counsel for Plaintiffs who disagree with Co-lead Counsel or who have individual divergent positions may present written and oral arguments, and otherwise act separately on

behalf of their client(s) as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of Co-lead Counsel.

B. Liaison Counsel

The law firm of Lockridge, Grindal, Nauen, PLLP is appointed as Plaintiffs' Liaison Counsel. Liaison Counsel will be responsible for:

1. Maintaining and distributing to Plaintiffs' counsel and to Defendants' counsel an up-to-date service list;
2. Receiving and distributing to Plaintiffs' counsel Orders from the Court and documents from opposing parties and counsel; and
3. Maintaining and making available to Plaintiffs' counsel, at reasonable hours, a complete file of all documents served by or upon each party.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: December 15, 2009.