

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Kevin Brown, et al.

v.

Civil No. 16-cv-242-JL

Saint-Gobain Performance  
Plastics Corp., et al.

**SUMMARY ORDER**

The claims in these consolidated environmental trespass actions arise from alleged chemical contamination from Saint-Gobain Performance Plastics Corp.'s facility in Merrimack, New Hampshire.<sup>1</sup> Two sets of plaintiffs -- called here, for purposes of brevity, the "Brown plaintiffs" and the "Dowling plaintiffs" -- have moved for appointment of their attorneys as interim co-lead counsel for purposes of, among other things, filing a consolidated complaint.<sup>2</sup> See [Fed. R. Civ. P. 23\(g\)](#). The Brown plaintiffs move for appointment of their counsel, Kevin Hannon and Paul DeCarolis, and the Dowling plaintiffs move for appointment of their counsel, Hunter Shkolnik and Lawrence Vogelmann. Both sets of plaintiffs oppose the appointment of the

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<sup>1</sup> This case was originally filed as four separate but related actions, three of which were purported class actions. Pursuant to the court's order of February 6, 2017 (doc. no. [48](#)), those cases were consolidated for all purposes.

<sup>2</sup> Brown Plaintiff's Mot. (doc. no. [53](#)); Dowling Plaintiffs' Mot. (doc. no. [58](#)).

other's counsel as co-lead interim counsel. The third set of plaintiffs (the "DeBlois plaintiffs"), who have opted out of the various class actions and have filed an individual complaint, join the Brown plaintiffs' motion.<sup>3</sup> For the reasons discussed below, the court appoints the Brown plaintiffs' counsel, Kevin Hannon and Paul DeCarolus, as interim co-lead counsel.

Pursuant to [Federal Rule Civil Procedure 23\(g\) \(3\)](#), "[t]he court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." In appointing interim lead counsel, the court considers the same factors as those it considers when choosing class counsel at the class certification stage:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class . . . .

[Fed. R. Civ. P. 23\(g\) \(1\) \(A\)](#). It may also take into account "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." [Id.](#)

[Rule 23\(g\) \(1\) \(B\)](#). The court must appoint counsel who will

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<sup>3</sup> DeBlois' Plaintiffs' Notice to Support Brown Plaintiffs' Mot. to Appoint Co-Lead Interim Class Counsel (doc. no. [54](#)).

“fairly and adequately represent the interests of the class.” [Id. Rule 23\(g\)\(4\)](#). “Ultimately, the court’s task in deciding these motions is to protect the interests of the plaintiffs, not their lawyers.” [In re Parking Heaters Memorandum Antitrust Litig., 310 F.R.D. 54, 57 \(E.D.N.Y. 2015\)](#) (internal quotations and citations omitted).

As an initial matter, it appears to the court that the attorneys and law firms vying to be appointed co-lead interim counsel are all eminently qualified for the position. Both sets of counsel have wide-ranging experience handling complex environmental class action litigation.<sup>4</sup> The various plaintiffs’ submissions to the court thus far indicate an extensive knowledge of the law applicable to those cases. And both sets of counsel have highlighted the significant resources they would commit to litigate these actions in an efficient manner.<sup>5</sup> The court is in the fortuitous position of selecting between two satisfactory options, who would serve the interests of the class well.

From that enviable position, the court appoints Hannon and DeCarolis for three reasons. First, the Brown plaintiffs’

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<sup>4</sup> [E.g.](#), Brown Plaintiffs’ Mot. (doc. no. [53-1](#)) at 6-11; Dowling Plaintiffs’ Mot. (doc. no. [58](#)) at 10-14.

<sup>5</sup> [E.g.](#), Brown Plaintiffs’ Mot. (doc. no. [53-1](#)) at 13; Dowling Plaintiffs’ Mot. (doc. no. [58](#)) at 14-15.

counsel appear to have done more work “in identifying or investigating potential claims in the action” before the suits were filed. [Fed. R. Civ. P. 23\(g\)\(1\)\(A\)\(i\)](#). In no way intending to characterize the Dowling plaintiffs’ counsel’s efforts as insufficient, it appears to the court that the Brown plaintiffs’ counsel took greater efforts before the suits were filed, including in identifying the proposed classes<sup>6</sup> and consulting with experts to define the claims.

Second, the Brown plaintiffs’ counsel have garnered the support of the third set of plaintiffs, the DeBlois plaintiffs.<sup>7</sup> Co-lead interim counsel in this consolidated action will of necessity represent the interests not only of the proposed classes, but also of these individual plaintiffs who have opted out of the class. Their support for the application of Hannon and DeCarolis weighs in that counsel’s favor.

Finally, the Brown plaintiffs’ counsel filed the first two of the four consolidated actions. Everything else being equal, that would tip the scale in their favor. See [Richey v. Ells](#),

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<sup>6</sup> The parties have proposed competing class definitions. The court will consider the appropriate definition of the classes in this action during the class certification stage, and here only addresses the efforts made to define the scope of the class in advance of the litigation.

<sup>7</sup> DeBlois Plaintiffs’ Notice (doc. no. [56](#)).

No. 12-CV-1831, 2013 U.S. Dist. LEXIS 7193, at \*7-8 (D. Colo. Jan. 17, 2013).

The court, of course, expects that co-lead interim counsel will solicit and consider the input of all counsel in prosecuting this action and proceeding toward class certification, and will take into account the interests of all plaintiffs. The court anticipates reviewing the status and makeup of class counsel in connection with motions for class certification.

For these reasons, the court GRANTS the Brown plaintiffs' motion to appoint co-lead interim counsel<sup>8</sup> and DENIES the Dowling plaintiffs' motion.<sup>9</sup> The plaintiffs shall file a consolidated complaint on or before **May 22, 2017**.

**SO ORDERED.**



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Joseph N. Laplante  
United States District Judge

Dated: May 11, 2017

cc: Kevin Scott Hannon, Esq.  
Paul M. DeCarolus, Esq.

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<sup>8</sup> Document no. [53](#).

<sup>9</sup> Document no. [58](#).

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