

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

In Re Pet Foods Products Liability) Civil Action No. 07-2867 (NLH)
Litigation))
) MDL Docket No. 1850

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR APPOINTMENT OF INTERIM COUNSEL**

Plaintiffs in the numerous actions listed below respectfully submit this memorandum of law in support of their motion for an order appointing the law firms of Berger & Montague, P.C., Wexler, Toriseva, Wallace LLP, Coughlin Stoia Geller Rudman & Robins LLP, and Hagens Berman Sobol Shapiro LLP (collectively "Proposed Co-Lead Counsel Group") as Interim Counsel in these consolidated class actions pursuant to Fed. R. Civ. P.23(g)(2)(A). Although Plaintiffs believe that their counsel are eminently well-qualified to prosecute this litigation on behalf of the putative, class, Plaintiffs recognize that the Proposed Co-Lead Counsel Group satisfies the requirements of the Federal Rules and will ably serve plaintiffs in this complex litigation.

PROCEDURAL HISTORY

Wolf Haldenstein Adler Freeman & Herz LLP, Larry D. Drury Ltd., and the Progressive Law Group, LLC, (collectively "Plaintiffs' Counsel") commenced an action in the Southern District of New York, styled *Cashman v. Menu Foods Midwest Corp., et al.*, No. 07-cv-3236 (S.D.N.Y). Additionally, Plaintiffs' Counsel was formally retained by 570 other class members in 42 states and the District of Columbia. Plaintiffs' Counsel, in conjunction with the established law firms listed below, also commenced the following actions which were transferred to this Court:

- *Johnson v. The Procter and Gamble Co., et al.*, No. 07-C-0159-C (W.D. Wis.) (the second-filed action in this MDL naming Menu Foods defendants, and first-filed action naming Procter & Gamble and Iams defendants);
- *Rozman v. Menu Foods Midwest Corp., et al.*, No. 07-1808 (D. Minn.);
- *Connerton v. Menu Foods Corp., et al.*, No. 07-CV-10797 (D. Mass.); and
- *Tompkins v. Menu Foods Midwest Corp., et al.*, No. 1:07-cv-00736-JLK (D. Colo.) (as amended, the only action naming several defendant pet food producers other than Menu Foods, Del Monte, and Nestle defendants).

Plaintiffs' Counsel also have communicated with more than 2,000 additional pet owners concerning their claims that arise out of the circumstances of this case and we speak on their behalf as well.

Subsequent to the filing of the *Cashman* case, Plaintiffs in that action took several steps to proactively litigate, including participating in pre-trial conference proceedings, entering into a scheduling order with the defendants, propounding discovery, and obtaining from defendants an agreement to respond to their discovery demands, which agreement, despite Judge Rakoff's order, they have refused to honor.

As a whole, Plaintiffs' Counsel in the above-actions identified and tackled the litany of issues at play in this MDL litigation from the start of the first pet food recall, by way of (1) discussions with class members, defendants, experts, government officials, and non-profit organizations, (2) conducting a multitude of legal and fact research and investigation, and (3) developing pleadings, and other documents.

On June 19, 2007, the Judicial Panel on Multidistrict Litigation (JPML) issued a Transfer Order, pursuant to 28 U.S.C. §1407, transferring 12 related cases to the United States District

Court for the District of New Jersey for consolidation or coordination. Subsequently, on June 28, 2007, the JPML issued a Conditional Transfer Order transferring all other “Tag-Along Actions,” including Plaintiffs’ action, to United States District Court for the District of New Jersey.

ARGUMENT

Rule 23(g) of the Federal Rules of Civil Procedure, provides for the appointment of “interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P.23(g)(2)(A). Attorneys appointed to serve as Interim Counsel “must fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In selecting Interim Counsel, the courts must consider the following factors: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(C)(I). No single factor is determinative; all factors must be considered. *See* Advisory Committee Notes to Rule 23(g) (2003 Amendments).

While Plaintiffs believe that Plaintiffs’ Counsel should be entitled to appointment as Interim Counsel because they meet all the criteria under Fed. R. Civ. P. 23(g)(1)(B) and represent a diverse spectrum of nearly 600 class members, Plaintiffs’ Counsel nevertheless support the appointment of the Proposed Co-Lead Counsel Group as being in the best interest of all class members.

The Proposed Co-Lead Counsel Group satisfies all of the criteria listed above. Indeed, they have actively litigated and protected the interests of all class members by seeking various

orders from this Court to protect against the defendants and their conduct. Finally, as detailed in their pleadings, the Proposed Co-Lead Counsel Group has extensive experience in handling class actions and complex litigation matters.

The Proposed Co-Lead Counsel Group has a long-established working relationship with other firms in the plaintiffs bar, including Plaintiffs' Counsel, and they are committed to continuing their cooperative approach of zealously representing the interests of the proposed class, while avoiding any unnecessary duplication of efforts or waste of legal or judicial resources. Indeed, the Proposed Co-Lead Counsel Group, recognizing the interest of our almost 600 retained clients and the additional 2,000 class members who have contacted us and with whom we have communicated, have included Larry D. Drury, Daniel Krasner, or Gregory Nespole in all substantive discussions with defense counsel.

Finally, our clients support exploring an early resolution of this action. We believe that a speedy settlement can best be achieved by appointing the Proposed Co-Lead Counsel Group as Interim Counsel so that they may reach out to all concerned counsel and conduct settlement negotiations with defendants on an expedited basis without the internal divisions that might occur should the Court appoint other interim counsel. Indeed, that is the sole reason we are not contending for Interim Counsel.

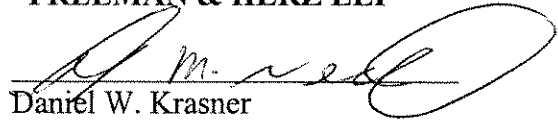
CONCLUSION

For all of the foregoing reasons, Plaintiffs' Counsel respectfully request that law firms of Berger & Montague, P.C., Wexler, Toriseva, Wallace LLP, Coughlin Stoia Geller Rudman & Robins LLP, and Hagens Berman Sobol Shapiro LLP be appointed Interim Counsel and Trujillo Rodriguez & Richards, LLC, as Liaison Counsel in the instant MDL action.

Dated: September 5, 2007

Respectfully submitted,

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