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K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.

2006 AUG 1 PM 2 05

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 12**

**IN RE KINDER MORGAN, INC.
SHAREHOLDERS LITIGATION**

Consol. Case No. 06 C 801

ORDER APPOINTING INTERIM LEAD PLAINTIFFS AND LEAD COUNSEL

This consolidated action comes before the Court for the appointment of interim Lead Plaintiffs and interim Lead Counsel. On July 27, 2006, a hearing was conducted by telephone in order to allow those seeking leadership positions to supplement the written materials which they had filed with the Court. Following the hearing, the Court received a letter by fax from Samuel K. Rosen dated July 21, 2006. In addition, the Court received a Supplemental Submission in Support of Plaintiff Bolton's Motion Seeking Interim Lead Counsel Appointment; Affidavit of the City of Inkster Policemen and Firemen Retirement System; and, Second Affidavit of Benjamin Rozwood. Thus, since the issues relating to appointment of interim Lead Plaintiffs and interim Lead Counsel have now been fully briefed and argued, the Court deems this matter to be submitted for decision.

I. PROCEDURAL HISTORY

On June 23, 2006, the Court entered an Order consolidating seven (7) separate cases involving similar questions of law and fact arising out of the announcement that Kinder Morgan, Inc., a Kansas corporation which is headquartered in Texas, had received a private offer from a group of investors to purchase the public shareholders' stock for \$100 per share. In addition, the Court ordered that any other related action which may be filed in the future shall also be consolidated into this action pursuant to D.C.R. 3.205. In the Order, the Court also appointed John R. Hamilton to serve as "coordinating counsel" in the consolidated action since he is an experienced attorney licensed to practice law in Kansas, he is familiar with the local rules of the Third Judicial District, and he regularly practices in the District Court of Shawnee County, Kansas.

On June 27, 2006, the Court issued a Letter Decision directing those attorneys who seek to be appointed as Lead Counsel to submit additional information. The Letter Decision listed 17 specific items of information which would be taken into consideration by the Court. The requested items focus on the professionalism, training and experience of the attorneys who will actually be working on this case. Furthermore, the Letter Decision requested additional information regarding any Plaintiffs who are seeking to serve as a representative of the purported class. In response to the Court's Letter Decision, the Court received additional information from three (3) groups of Plaintiffs and their attorneys seeking to be appointed to leadership positions in this consolidated action.

The groups applying to serve as interim Lead Plaintiffs and interim Lead Counsel are:

1. Plaintiffs' Hodge, Cohen and Teamsters, who are represented by John R. Hamilton, Samuel K. Rosen, Jennifer K. Hirsh, Lee D. Rudy and Trevan Borum;

2. Plaintiffs' Bolton and Inkster, who are represented by Charles T. Schimmel, W. Gregory Wright, Brian J. Robbins, Benjamin Rozwood, Sharla N. Hilburn, George E. Barrett, Douglas S. Johnston, Jr., and Timothy J. Miles; and,

3. Plaintiffs' Land and Geiger, who are represented by Diane A. Nygaard, Susan F. Meagher, Jason M. Kueser, Pamela S. Tikellis, Robert J. Kriner, Jr., A. Zachary Naylor and Daniel J. Brown.

The Court finds that each group has submitted the information requested by the Court. In reviewing the information which has been submitted, the Court further finds that each Plaintiff seeking to serve as representative of the purported class is qualified to do so. Moreover, the Court finds each of the attorneys who have submitted applications to the Court to be well-qualified and competent to provide legal representation to the purported class. As such, the Court is faced with a difficult job of attempting to determine who should serve as interim Lead Plaintiffs and interim Lead Counsel in this consolidated action.

II. ANALYSIS AND AUTHORITIES

A. Factors Considered.

In Kansas, those seeking to serve as representative parties may do so only if they "will fairly and adequately protect the interests of the class." *See* K.S.A. 60-223(a)(4). Moreover, K.S.A. 60-223(d) grants the Court authority to "make appropriate orders . . . to prevent undue repetition or complication in the presentation of evidence or argument . . . imposing

conditions on the representative parties . . . and . . . dealing with similar procedural matters.” Thus, the Court finds that it is appropriate at this time to appoint interim Lead Plaintiffs and interim Lead Counsel to “fairly and adequately protect the interests of the [purported] class” and “to prevent undue repetition or complication” during the course of this litigation.

In addition to the factors set forth in its Letter Decision entered on June 27, 2006, the Court has considered various other factors as set forth in the *Manual for Complex Litigation* (2005). These factors include, but are not limited to, counsel’s experience in handling complex litigation, counsel’s knowledge of the applicable law, counsel’s commitment to the litigation, counsel’s work on this case, counsel’s ability to work with the other attorneys in this case, counsel’s willingness to coordinate this litigation with the lawsuit currently pending in Texas, and counsel’s willingness to conduct the litigation in an economical manner. Using these factors, the Court has attempted to identify the litigation team which will be in the best position to protect the interests of the entire class in a cooperative and professional manner.

All of the Plaintiffs in this consolidated action made a conscious decision to file Petitions in the District Court of Shawnee County, Kansas. In addition to applying the laws of this state, “Kansas courts have a long history of looking to the decisions of the Delaware courts involving corporation law.” *See Arctic Financial Corporation v. OTR Express*, 272 Kan. 1326, Syl. 1, 38 P.3d 701 (2002). Thus, training and experience in both Kansas and Delaware law is of particular importance in this case.

Although the quantity of Kinder-Morgan stock owned by particular Plaintiffs as well as the date on which the stock was purchased has been considered, the Court has focused on the issue of quality of representation. Likewise, the Court has reviewed the various Petitions and other legal documents which have been filed in this case. In doing so, the Court found that all of the legal work performed to date has been of high quality.

B. Appointment of interim Lead Plaintiffs and interim Lead Counsel.

After due consideration, the Court has decided to appoint Robert P. Land and Dr. Douglas Geiger as the interim Lead Plaintiffs in this consolidated action. Furthermore, the Court has decided to appoint their attorneys, Diane A. Nygaard and Pamela S. Tikellis, as interim Lead Counsel for the Plaintiffs. In particular, the Court finds that Robert P. Land, who has owned stock in the corporation which ultimately became Kinder-Morgan for over 40 years, is uniquely qualified to represent the purported class. Moreover, the Court finds that Ms. Nygaard and Ms. Tikellis offer a unique blend of expertise in Kansas and Delaware law which should be beneficial in protecting the legal rights of the purported class.

The Court notes that Diane A. Nygaard has nearly 30 years experience as a lawyer. She graduated from Harvard Law School in 1977 and was admitted to the Kansas Bar in 1982. Ms. Nygaard has taught corporate and securities law at Washburn Law School in Topeka. She has also taught corporate law for the Kansas Bar Review. For the past 20 years, Ms. Nygaard has practiced law in Kansas City, where she has focused on securities litigation. Furthermore, both Ms. Nygaard and her law firm have AV ratings from Martindale-Hubbell.

Similarly, the Court notes that Pamela S. Tikellis has nearly 25 years experience as a lawyer. While attending Widener University School of Law, Ms. Tikellis served as Managing Editor of the *Delaware Journal of Corporate Law*. After graduation from law school in 1982, she was a law clerk for the Court of Chancery in Wilmington, Delaware. Ms. Tikellis currently serves on the Board of Bar Examiners for the State of Delaware and is the former Chair of the Ethics Committee of the Delaware Bar Association. Ms. Tikellis has substantial experience in shareholder/investor class actions. Like Ms. Nygaard, both Ms. Tikellis and her law firm have AV ratings from Martindale-Hubbell.

Since the Court recognizes that certain legal services can be more economically performed by a junior partner or associate, it also grants preliminarily approval to Robert J. Kriner, Jr., A. Zachary Naylor, Daniel J. Brown, Susan F. Meagher and Jason M. Kuesuer to perform professional legal services in this case. However, it is extremely important that Ms. Nygaard and Ms. Tikellis ensure that all of the legal work is performed in an efficient manner without duplication of effort. Moreover, the Court will hold Ms. Nygaard and Ms. Tikellis to their commitments to personally give “high priority” to this litigation.

C. Appointment of Coordinating or Liaison Counsel.

As indicated above, John R. Hamilton has been serving as “coordinating counsel” (a/k/a “liaison counsel”) in this consolidated action since June 23, 2006. “Routinely, liaison counsel will inform and assist lead counsel in complying with the Court’s procedural rules and dictates.” *In re Sprint Corporation Securities Litigation*, 164 F. Supp. 1240, 1245 (D.

Kan. 2001). In addition, coordinating or liaison counsel can assist the Court and the parties in other ways.

Some of the other ways in which coordinating or liaison counsel can be of assistance include:

“administrative matters, such as communications between the Court and other counsel (including receiving and distributing notices, orders, motions and briefs on behalf of the group), convening meetings of counsel, advising the parties of developments, and otherwise assisting in coordination of activities and positions. Such counsel may act for the group in managing document depositories and in resolving scheduling conflicts. Liaison counsel will usually have offices in the same locality as the court. The court may appoint (or the parties may select) a liaison for each side”

Manual for Complex Litigation § 10.221 (2005).

To date, the Court has found Mr. Hamilton to be effective in the role of coordinating or liaison counsel. Moreover, it is anticipated that his knowledge and experience practicing in the Third Judicial District will continue to benefit the Plaintiffs, their attorneys and the Court. Hence, assuming that he is still willing to serve, the Court finds that John R. Hamilton should continue as coordinating or liaison counsel in this consolidated action. In addition, the Court strongly encourages defense counsel to consider designating a Topeka attorney to serve in a similar capacity on behalf of the Defendants.

III. CONCLUSION

THEREFORE, for the reasons set forth in this decision, the Court finds that Robert P. Land and Dr. Douglas Geiger should serve as interim Lead Plaintiffs; that Diane A. Nygaard and Pamela S. Tikellis should serve as interim Lead Counsel on behalf of the Plaintiffs; and, that John R. Hamilton should continue to serve as the Coordinating or Liaison Counsel in this consolidated action. The Court further directs interim Lead Counsel to file an Amended Consolidated Petition in this action within 30 days from the date of this Order.

IT IS SO ORDERED.

Entered on this 1st day of August, 2006.

A handwritten signature in black ink that reads "David E. Bruns". The signature is written in a cursive style with a large, looping initial "D".

David E. Bruns
Judge of the District Court

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of August, 2006, she served a true and correct copy of the above and foregoing pleading by United States mail, first class postage prepaid as follows:

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