

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE: SOCIETY INSURANCE CO.	)	
COVID-19 BUSINESS	)	MDL No. 2964
INTERRUPTION PROTECTION	)	
INSURANCE LITIGATION	)	Master Docket No. 20 C 5965
	)	
	)	Judge Edmond E. Chang
	)	
	)	Magistrate Judge Jeffrey I. Cummings
This Document Relates to All Cases	)	

**CASE MANAGEMENT ORDER NO. 3**

This Order appoints the Co-Lead Counsel team for the Plaintiffs. The bottom-line is that all five counsel on the Interim Steering Committee are appointed as Co-Lead Counsel. As expected, the reasons that supported the appointment of those lawyers to the Interim Steering Committee also justify their appointment as Co-Lead Counsel. R. 58 (Case Management Order No. 2). They bring the right mix of expertise in the pertinent area of law, leadership experience in other MDLs or class actions, and representativeness of different perspectives (both substantively in Illinois and non-Illinois cases and strategically in factual development and in considering the pluses and minuses of mass actions versus class actions). *See* Manual for Complex Litigation (4th) § 10.224 at 27 (2004) (discussing relevant factors). So it is not surprising that the Court concludes that the same five lawyers shall serve as Co-Lead Counsel.

What *is* surprising is the kerfuffle that broke out amongst the three camps of attorneys in the applications for Co-Lead Counsel. R. 78, 83, 84, 90, 94, 95. The Court

considered a more direct verbal statement of its disappointment during a hearing. But there are better uses of time given the need to expedite the decisional process on the bellwether motions. Suffice it to say just three things in this Order. First, there is no need to wait for those bellwethers to be decided to appoint Co-Lead Counsel; if there are good reasons down the line to separate litigative responsibility amongst the Co-Lead Counsel team, then the Court would expect that the team can handle that on its own without the Court's intervention—though the Court would not hesitate to intervene if the Plaintiffs are being disserved. Second, counsel should bear in mind that there is such a thing as a *proportional* response to perceived slights. *Cf.* R. 90. Third, the Court would have expected—and will continue to expect—that a team of such extraordinarily accomplished lawyers would be able to address differences of this sort by conferring amongst themselves, by providing advance notice to each other, and, if unable to resolve them, then by civilly presenting differences in a joint filing (a process which by itself would channel the lawyers into narrowing their disagreements). Enough said on this issue.

The following lawyers are appointed as Co-Lead Counsel:

Adam J. Levitt of DiCello Levitt Gutzler  
W. Mark Lanier of The Lanier Law Firm  
Timothy W. Burns of Burns Bowen Bair  
Shelby Guilbert, Jr. of King & Spalding  
Shannon McNulty of Clifford Law Offices

The appointments are effective for a one-year period and will expire on December 13, 2021, and the appointments subsume and replace the Interim Steering Committee. A reapplication process will be established at an appropriate time in advance

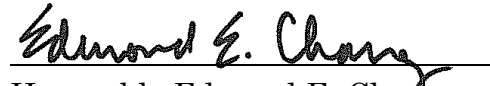
of the expiration date. Applications for reappointment will be required to include references to the nature and scope of the applicant's work, including time and resources expended during the previous term. Just as with the Interim Steering Committee, the Court expects that the lawyers tapped for leadership will assign work as appropriate to the lawyers on the Plaintiffs' side most capable of performing the tasks that will advance the litigation.

For the next step of the litigation, on review of the briefing in the bellwether motions, the Court is drafting an order describing an issue on which oral argument would assist in the deliberative process. The status hearing of December 13, 2020 is reset to January 14, 2021, at 9:30 a.m. (Central), and the order will be posted in advance of the argument so that both sides can prepare. The hearing will take place via telephone conference.

Separately, on Society Insurance's motion to cite the supplemental authority from the Circuit Court of Door County in Wisconsin (*Al Johnson's Swedish Restaurant & Butik, Inc. v. Society Ins.*, Case No. 2020-cv-000052), R. 100, the motion is denied, although without prejudice. There is no statement of conferral with the then-Interim Steering Committee, as required by the Court's Case Management Procedures. In any event, Society may refile the motion after conferral. The Court again encourages the parties to only cite supplemental authority that breaks truly new ground, either based on the substantive reasoning (that is, deploying new reasoning not otherwise already presented), or based on the court of issuance (that is, the first

time that a particular court has decided the coverage issue), or on some other novel basis. Any future motion to cite supplemental authority must specify the basis for the motion.

ENTERED:

  
Honorable Edmond E. Chang  
United States District Judge

DATE: December 13, 2020