

Syngenta GMO Corn Lawsuits and Their Effect on Farmers



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In what is believed to be the largest agricultural litigation settlement in U.S. history, a \$1.51 billion settlement was reached in March 2018 in the nationwide class action lawsuit filed in Kansas federal court over the release of Syngenta's Agrisure Viptera and Agrisure Duracade corn traits. Approved by the Court in December, 2018, the settlement covers all U.S. corn producers – farmers and crop-share landlords – as well as grain handling facilities and ethanol plants nationwide who sold corn priced after September 15, 2013. Per the settlement agreement, payments will likely go out in the second quarter of 2019. However, this may be delayed if any appeals to the settlement are filed.

What is Syngenta Accused of Doing?

In 2011, Syngenta, a Swiss-based agribusiness that conducts genomic research and produces agrochemicals and seeds, released a genetically modified corn seed known as Agrisure Viptera, which was genetically engineered to protect corn against damage from insects such as the corn borer and corn rootworm. When this product was released for farmers to purchase, it had been approved for sale in the United States, but had not yet been approved by several foreign countries, including China and the European Union. The lawsuits allege that, despite lacking international approval, Syngenta sold the GMO corn seed to hundreds of U.S. farmers leading to an estimated 3% of the current corn crop being grown from the engineered seed.

How Did China React?

In November 2013, China, one of the world's largest corn importers, detected Viptera corn in a shipment from the United States and consequently rejected the shipment. The methods by which American crops are gathered and distributed do not allow for the segregation of the unapproved GMO corn from approved corn. From the first refused shipment until February 2014, China rejected the majority of American corn. China then imposed a complete ban on the import of American corn, turning away nearly 3.37 million tons of corn. However, China was not the only country that rejected this GMO corn; 3.3 million metric tons of U.S. corn were rejected globally as of March 2014.

What Resulted?

China's decision to reject the shipments had consequences for corn farmers. According to the various lawsuits against Syngenta, there are claims that this resulted in a global collapse in corn prices. The lawsuits argue that any corn grower, regardless of whether or not they planted Viptera, may have been impacted by the global dip in corn prices, along with grain elevators, distributors, exporters, and transporters.

Cargill Enters the Fray

In September 2014, Cargill filed a lawsuit against Syngenta Seeds, Inc. in Louisiana state court, seeking damages from Syngenta for commercializing its Agrisure Viptera (MIR 162) corn seed before the product obtained import approval from China. (Cargill's grain export facilities in Reserve and Westwego, La. had loaded the vessels that were destined for and subsequently rejected by China.)

What is the Difference Between a Class Action and Multidistrict Litigation?

A class-action lawsuit involves similar claims by a group of people injured by one or more common defendants. Rather than go it alone, the plaintiffs choose to join others in a class action. An individual or small group of plaintiffs acts as a leader for a larger group of injured people. Class action lawsuits protect the interests of absent plaintiffs, allow the distribution of litigation costs among a large number of plaintiffs, and save

resources for all parties involved. Class-action lawsuits can end in settlements for all members before going to trial.

In the federal system, there exists the **Judicial Panel on Multidistrict Litigation** (MDL) Multidistrict litigation is a special procedure in which federal civil cases from around the country are transferred to one court. The cases must have one or more questions of fact (issues to be determined by looking at the evidence) in common. One judge manages the litigation during the pretrial and discovery process. This allows the court to address common issues that affect many cases at once. **That is what has occurred in the Syngenta corn matter.**

A class action is a single lawsuit with several similar claimants. MDL cases, sometimes referred to as “mass actions,” remain separate lawsuits. MDL cases are not consolidated for a common outcome in the same way that class-action members share in the same settlement or verdict. However, companies may choose to settle multiple MDL cases based on early trial results. Any firm that has contacted you will have the most up-to-date information about the status of cases already in the judicial pipeline.

Litigation Timeline

In October 2016, Southern District Court of Kansas Judge John Lungstrum granted class action status to more than 440,000 farmers accusing Syngenta of selling genetically modified corn seeds and costing them billions of dollars in lost revenue due to China resisting imports of U.S. corn. This class action included several “classes,” including a nationwide class of corn producers who DID NOT plant Viptera or Duracade corn seed. This class action status made it easier and less expensive for farmers to pursue their claims against Syngenta.

Syngenta petitioned the appeals court to hear arguments challenging Judge Lungstrum’s decision to certify two classes of corn farmers who are seeking damages for lost sales in 2013 or later. On December 7, 2016, a three-judge panel of the appeals court in Denver ruled that Judge Lungstrum’s opinion was “well-researched and reasoned, and, if any rulings are in error, those errors can be addressed on appeal, if necessary.”

A trial date of June 5, 2017 was scheduled along with a deadline of April 1 for farmers to decide whether to remain in the class action suit or opt out. It is important to understand that this trial in Kansas was to be a “test trial” designed to help the parties gauge the strengths and weaknesses of the claims and determine if settlement in an option.

In the meantime, in a Memorandum and Order written April 5, 2017, Judge Lungstrum rejected the basis for a nationwide class based on plaintiffs’ Lanham Act claim. The Lanham Act is a federal statute that governs, among other things, unfair competition. Specifically, the Act “provides for liability of one who makes false or misleading representations in commercial advertising or promotion.” Judge Lungstrum wrote that the plaintiffs could not show that a 2011 letter from a Syngenta employee to growers, which stated that Syngenta expected import approval from China for Viptera in March 2012, was enough to support its false advertising claim under the Lanham Act or that “the impact of the letter was great enough to cause the embargo that allegedly caused the price drop in this country.”

On June 23, 2017, after a half-day of deliberation, the jury in the “test trial” found Syngenta negligent and awarded \$217,700,000.00 in compensatory damages to the class of more than 7,000 Kansas corn growers, who were represented in the lawsuit by four Kansas corn producer plaintiffs. This paved the way for the other class actions suits.

In September 2017, parties in the remaining classes agreed to a settlement and were to submit settlement terms to the Court by mid-October. However, the parties filed a Joint Report with the Court on December 8, telling the Court that “despite months of settlement discussions, the parties have yet to reach agreement on all material terms for a settlement that would resolve the claims.” Plaintiffs requested the Court schedule pretrial deadlines for the class trials scheduled for 2018 as a further delay was unlikely to aid settlement discussions.

In an Order dated December 20, 2017, the Judge pushed back trial dates from April, 2018 to May, 2018 and scheduled a status conference with the parties for January 25, 2018. Class members had until August 10, 2018 to exclude themselves from, or object to, the settlement.

What is the Current Status of Litigation?

In what is believed to be the largest agricultural litigation settlement in U.S. history, a \$1.51 billion settlement was reached in March 2018. The settlement covers all U.S. corn producers – farmers and crop-share landlords – as well as grain handling facilities and ethanol plants nationwide who sold corn priced after September 15, 2013. Per the settlement agreement, payments will likely go out in the second quarter of 2019. However, this may be delayed if any appeals to the settlement are filed.

Special Note:

In April, 2017 China's Ministry of Commerce approved China National Chemical Corporation's (ChemChina) planned takeover of Syngenta. This was accomplished in June 2017.

The official Court website for the Syngenta matter. It is <http://www.cornseedsettlement.com/>.

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