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Lend Me Your Ear: An Update on the Syngenta Corn Case for Indiana Corn Farmers

By William Chaney, Gray Reed & McGraw

If you've been keeping up with the Syngenta corn case, you know that in February 2015, the United States District Court in Kansas City named me co-lead counsel for plaintiffs in the multi-district litigation cases filed against Syngenta. The other co-lead counsel are Don Downing of Gray, Ritter & Graham, P.C. in St. Louis, Scott Powell of Hare Wynn Newell & Newton in Birmingham and Patrick Stueve of Stueve Siegel Hanson LLP in Kansas City.

We have been working virtually full time representing corn farmers in the United States (plaintiffs) who allege that Syngenta prematurely and irresponsibly sold Agrisure Viptera and Duracade, causing significant losses to corn farmers across the country. It is estimated by the plaintiffs that U.S. corn producers lost between \$5-7 billion in current and future revenue because China stopped importing U.S. corn when Syngenta's new genetically modified trait contaminated export shipments from the United States. China had not yet approved that corn for import when Syngenta started selling its seed on a widespread basis across the U.S. We claim those losses were suffered by all corn producers (including crop-share landlords) who marketed corn in the fall of 2013 or later.

In September, the Honorable John W. Lungstrum in the U.S. District Court for the District of Kansas ruled that the hundreds of thousands of corn farmers' claims against Syngenta may proceed as a class action on behalf of farmers in eight states and a nationwide class of farmers for claims asserted under the federal Lanham Act. The Lanham Act claim would include farmers from Indiana as well as



other states. The negligence claims under each state's laws and the federal Lanham Act claim were permitted to proceed in this case by Judge Lungstrum in his earlier Sept. 11, 2015, order on Syngenta's motion to dismiss. (A copy of that order and a copy of the recent class certification order can be found at www.SyngentaCornLitigation.com).

Courts use this approach of selecting a smaller grouping of states when large numbers of plaintiffs are proceeding on the same theory or claim and there is no other feasible way for the courts to handle the enormous caseload. These representative state class cases could proceed to trial and the results could be used to determine how the remaining state class cases should be handled.

The eight states selected as initial state classes are Missouri, Nebraska, South Dakota, Arkansas, Iowa, Ohio, Illinois and Kansas. Judge Lungstrum certified these state class cases as well as the claims under the Lanham Act as a class action covering farmers in every state.

What does this mean for Indiana corn farmers?

Even though Indiana was not a state selected for approval as an individual state class, farmers from Indiana will still benefit from the court's class certification because:

1. We submitted a claim for all corn farmers nationwide that Syngenta misrepresented certain facts about Viptera as part of the federal Lanham Act claim.
2. We would anticipate that the court would certify a class of Indiana farmers at an appropriate time to maintain consistency with this ruling.

What's next?

Now that a class is certified, the Court will authorize the mailing of a notice to corn producers within the class describing the benefits and consequences of remaining in the class. The notice was filed to the Court for authorization on Oct. 17, 2016. We expect a ruling by early December.

Farmers who grew Viptera or Duracade and farmers who have filed their own individual cases in state courts in Minnesota are not included in the class.



All corn farmers in the U.S. who sold corn after Nov. 18, 2013, and who did not purchase or grow Viptera or Duracade corn will automatically be included in the class unless they formally opt-out. The notice will have instructions for those wishing to opt out.

Lots of lawyers are out there soliciting clients. I urge any farmer considering whether to retain an individual lawyer to wait for the Court's notice before making a decision. The Court has not yet set a deadline for farmers to decide whether they want to be excluded from the class.

The Court has set the first trial for June 5, 2017, in Kansas City, Kansas.

To stay updated on the Syngenta corn case, visit www.SyngentaCornLitigation.com.

About William Chaney

Bill is an attorney at Gray Reed & McGraw and thrives on complex commercial litigation and multi-party lawsuits. He has recovered a significant amount on behalf of clients prosecuting claims ranging from fraudulent investments to genetically modified crops. On the defense side, Bill has successfully defended cases with claimed damages exceeding several hundred million dollars. Over the years, Bill has developed a diverse commercial litigation practice, earning a reputation as a creative and effective deal-maker in even the most vehemently disputed lawsuits. Bill also enjoys working with investors who want to establish new ventures or enter into general business transactions. Bill received his J.D. from Southern Methodist University Dedman School of Law, and attended Trinity University for his undergraduate education.