

Ruling Means Syngenta Corn Multidistrict Litigation May Proceed Forward towards Trial

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U.S. District judge rejects Syngenta's primary legal defenses against thousands of U.S. corn producers and non-producers

A recent ruling by a Kansas federal judge cleared the way for farmers, grain handlers and exporters to proceed towards trial in their suits against Syngenta claiming that the company's sale of its Viptera and Duracade corn seed interrupted trade with China and harmed the market for U.S. corn.

Federal U.S. District Judge John W. Lungstrum rejected Syngenta's two primary legal defenses in denying Syngenta's motion to dismiss in substantial part. Syngenta had argued for the entire case to be dismissed.

Judge Lungstrum issued his 116-page ruling on Friday, Sept. 11, after reviewing hundreds of pages of written briefs and oral arguments presented by the plaintiff co-lead counsel team and Syngenta.

The co-lead plaintiff counsel, which includes Don Downing of [Gray, Ritter & Graham](#); William Chaney of [Gray Reed & McGraw](#); Scott Powell of [Hare, Wynn, Newell & Newton](#); and Patrick Stueve of [Stueve Siegel Hanson](#), allege, among other things, that Syngenta was negligent in the timing, scope and manner of commercializing Viptera and Duracade genetically modified corn in the United States knowing that China had not yet approved the corn. China was a major importer of U.S. corn and stopped accepting virtually all U.S. corn shipments. As a result, prices for U.S. corn were depressed, economically damaging U.S. corn growers and others in the industry, according to the plaintiffs.

Judge Lungstrum rejected Syngenta's argument that the company had no duty to protect the farmers, exporters and others in the industry who had brought suit. In his ruling, the judge said "the law reasonably imposes a duty on a manufacturer to exercise reasonable care not to commercialize and sell its product in a way that creates a risk of widespread harm resulting from the intended use of the product by all of its customers."

Based on the allegations in the complaint, the Court made two other key observations: (1) "[t]his case involves a risk of harm to other participants in an inter-connected market, participants whom Syngenta has appeared to embrace as stakeholders, and thus who are especially vulnerable to the wrongful acts alleged by plaintiffs"; and (2) Syngenta had actually represented that it would take steps to protect the industry from the very harm which had occurred.

"This is a big win for the American corn farmer," said Gray, Ritter & Graham's Downing. "We believe the court's ruling thoroughly addresses and rejects the primary legal defenses asserted by Syngenta, namely, that it had no

duty to avoid conduct that it knew was likely to harm corn farmers and others and that the economic loss doctrine barred those claims.”

Publicly available estimates of economic damages in early 2014 ranged from \$1 billion to \$2.9 billion, although Downing explained that actual damages may now be substantially higher given that U.S. corn exports to China have yet to recover. “We believe that the interruption of the corn trade with China that continues to this day has contributed to the lower prices received by corn farmers and others in the industry in recent years,” said co-lead counsel Stueve.

Co-lead counsel Downing, Powell and Chaney also led the team that obtained a \$750 million settlement in 2011 on behalf of U.S. rice farmers who similarly suffered financially due to genetically modified rice seed. Both Chaney and Powell said they look forward to trying these cases against Syngenta.