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Two Syngenta suits return to state court and more may follow

Jessica Dye

(Reuters) - A federal judge ruled that Syngenta AG can't stop two lawsuits accusing it of commercializing a genetically modified strain of corn banned in China from returning to state court, in an order that paves the way for many similar suits to be remanded from federal court.

On Tuesday, U.S. District Judge John Lungstrum in Kansas said the Swiss company had failed to show a basis for federal jurisdiction over the suits, which contain state-law claims and had originally been filed in Louisiana state court by agricultural giants Cargill and Archer Daniels Midland.

Their suits were among nearly 1,500 consolidated in multidistrict litigation led by attorneys from Gray Ritter & Graham, Gray Reed & McGraw, Hare Wynn Newell & Newton and Stueve Siegel Hanson.

The cases allege that Syngenta sold Agrisure Viptera (also known as MIR162 - a strain of insect-resistant genetically modified corn) seeds in the U.S. market despite the fact that it had been banned by the Chinese government, a major importer. When the seeds were discovered, U.S. corn trading with China nearly shut down, until China approved the seeds in December.

Plaintiffs are commercial corn farmers and exporters who say their income plummeted as a result of Syngenta's negligence. Hundreds of lawsuits were filed, and Syngenta removed many state cases to federal court.

Plaintiffs in the two suits, including Cargill and ADM, asked Lungstrum to remand their cases, saying Syngenta could not prove the federal court had jurisdiction to hear them.

Syngenta said the cases implicated the federal common law of foreign relations - arguing that, since the actions of a foreign government were in question, federal courts' interests trumped state courts'.

But Lungstrum disagreed and on Tuesday remanded the cases. Plaintiffs did not necessarily question the "validity or lawfulness of China's acts," and neither the U.S. nor China expressed interest in the proceedings. That lack of concern led him to conclude that any federal question was "not substantial," Lungstrum wrote.

Lungstrum, however, rejected a request to remand two other suits, because Syngenta had justified removal under the Class Action Fairness Act, which gives federal courts jurisdiction over large class actions.

In a separate order Tuesday, Lungstrum acknowledged his ruling will "result in the remand of many (MDL) cases to state court." He gave both sides until May 12 to tell him which cases had been removed to federal court solely on the foreign-relations issue. Syngenta will have until May 19 to tell him why those should not be remanded to state court.

A Syngenta spokesman said the company looked forward to defending the cases. Representatives for Cargill and ADM said they were pleased with the decision.

Lead plaintiffs' counsel said in a statement that they were encouraged by Lungstrum's rejection of Syngenta's efforts to make China the focal point of the litigation, rather than its own actions.

The case is In re: Syngenta AG MIR162 Corn Litigation, U.S. District Court for Kansas, No. 14-2591.

For all plaintiffs: Don Downing of Gray Ritter & Graham; Patrick Stueve of Stueve Siegel Hanson; Scott Powell of Hare Wynn Newell & Newton; and William Chaney of Gray Reed & McGraw.

For Cargill: Clifford Greene, John Ursu, X. Kevin Zhao and Janine Kimble of Greene Espel.

For ADM: David Graham, David Hoffman, Cornelius Vandenberg and Kelly Kribs of Sidley Austin.

For Syngenta: Michael Jones of Kirkland & Ellis and Thomas Schult of Berkowitz Oliver Williams Shaw & Eisenbrandt.

---- **Index References** ----

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