

First farmer lawsuit on deck against Syngenta over China trade

June 5 2017, by Jim Suhr



This April 18, 2017, file photo shows the suburban Minneapolis headquarters of Syngenta in Minnetonka, Minn. A trial is poised to begin Monday, June 5, against Swiss agribusiness giant Syngenta over its decision to introduce a genetically engineered corn seed variety to the U.S. market before China approved it for imports. (AP Photo/Jim Mone, File)

The first of tens of thousands of U.S. lawsuits will go to trial on Monday in Kansas against Swiss agribusiness giant Syngenta over its decision to introduce a genetically engineered corn seed variety to the U.S. market before China approved it for imports.

The lawsuits allege Syngenta's move wrecked an increasingly important export market for U.S. corn and resulted in price drops that hurt all producers. Court filings show Syngenta aggressively marketed the seeds even when it knew Chinese approval was going to be a problem.

Plaintiffs' experts estimate the economic damage at about \$5 billion, though Syngenta denies its actions caused any losses for farmers.

Monday's trial in Kansas City, Kansas, involves four Kansas farmers representing roughly 7,300 farmers from that state, according to William Chaney, an attorney for the plaintiffs. It will mark the first test case. The second, involving about 60,000 cases, goes to trial July 10 in a state court in Minnesota, where Syngenta's North American seed business is based in suburban Minneapolis. The two cases are meant to provide guidance for how the complex web of litigation in state and federal courts could be resolved.

A look at some of the issues:

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THE PROBLEM

Syngenta decided to commercialize its Viptera brand of [genetically modified corn](#) seeds before China approved importing it. Syngenta invested over \$100 million and 15 years in developing Viptera, which has a trait called MIR162 that protects against pests such as earworms, cutworms, armyworms and corn borers.

With U.S. government approval, Syngenta began selling Viptera in the U.S. for the 2011 growing season. But China didn't approve it until December 2014.

Court papers show that Syngenta initially assured stakeholders that China would approve MIR162 in time for the 2011 crop. But the date kept slipping. Some exporters sent shipments containing the trait to China anyway. After two years of accepting them, China began rejecting them in late 2013.

One expert working for the plaintiffs estimated the damage to U.S. farmers to be \$5.77 billion; another pegged it at \$4.68 billion.

Most plaintiffs didn't grow Viptera, but China excluded their grain, too, because elevators and shippers typically mix grain from large numbers of suppliers, making it difficult to source corn that was free of the trait. So they say all farmers were hurt by the resulting price drop.

THE LEGAL LANDSCAPE

The Kansas litigation has been consolidated before U.S. District Judge John Lungstrum in Kansas City, Kansas, where the trial is scheduled to take at least 20 days.

The Kansas trial and the one in Minnesota will serve as bellwether trials, which courts often use when there are large numbers of lawsuits concerning similar legal issue. Attorneys can see how juries react and determine whether to settle other cases or take them to trial.

A few thousand other less advanced cases have been consolidated with a federal judge in Illinois, while lawsuits by grain handlers including Cargill and Archer Daniels Midland are pending in Louisiana.

SYNGENTA'S DEFENSE

Syngenta attorney Mike Jones said the company sold a legal product fully approved for sale in the U.S. and other key importing countries, and that it complied with industry standards for international marketing. The company also argues that China's rejection had no meaningful impact on U.S. corn prices.

Syngenta points to U.S. Department of Agriculture figures showing that China was just a small market for U.S. corn in 2010 when Syngenta launched Viptera. The company says it was larger market forces, and not China's decision, that drove prices down.

Jones said corn prices fell sharply in 2013, even before China rejected its first shipment, because of a bumper U.S. crop that brought prices down from record highs. Jurors will see evidence that the rejections conveniently let the Chinese walk away from contracts they signed when prices were much higher, he said.

ABOUT THE JUDGE

Yale-educated John Watson Lungstrum, appointed to the federal bench in 1991 by then-President George H.W. Bush, is a Kansas City, Missouri, native, national merit scholar and Army veteran who got his law degree from the University of Kansas, where he served as editor-in-chief of the school's law review. He served as the Kansas district's chief federal judge from 2001 through 2007.

THE TIMING

The Kansas trial comes as ChemChina—a state-owned conglomerate also known as China National Chemical Corp.—closes in on its \$43 billion acquisition of Syngenta. Chinese companies are engaged in a multibillion-dollar global buying spree to acquire technology and brands to improve their competitive edge as explosive growth in their home economy slows.

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