



Syngenta Corn Lawsuit: Answers to Producers' Questions

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Recent lawsuits filed against Syngenta related to MIR162 corn seed have U.S. corn producers asking questions about how the litigation might affect them. Here are some frequently asked questions regarding the status of the litigation.

• What is the case about?

- For the 2011 crop year, Syngenta began marketing corn seed containing a genetically modified trait, MIR162, to farmers in the United States. Although the varieties Viptera and Duracade were approved by the United States, several important export markets, including China, had not given approval. (Duracade was not marketed until 2014.)
- In mid-November 2013, China tested some U.S. corn shipments and discovered they included the MIR162 trait. China immediately began rejecting U.S. corn shipments.
- In December 2014, China approved MIR162, but still has not approved Event 5307, an additional genetically modified trait in Duracade. Although MIR162 is approved, it is unclear whether, or when, trade with China for U.S. corn will resume.
- Numerous lawsuits have been filed across the country against Syngenta seeking damages resulting from the disruption in the trade of U.S. corn and dried distillers grain (DDGs) with China due to the presence of the MIR162

trait. The plaintiffs allege that the loss of the Chinese export market has caused significant market loss damages to corn farmers and non-producers. The plaintiffs complain that the disruption of the Chinese market decreased overall demand for U.S. corn, resulting in lower prices farmers receive for their crop.

• Who has sued Syngenta?

- Farmers and others in the industry, including Cargill, Archer Daniels Midland (ADM), and other exporters of corn and DDGs have filed lawsuits.

• What claims are being made?

- Many claims have been made against Syngenta, but most complain of Syngenta's premature release of corn with the MIR162 trait before obtaining approval from China, a major market. Additional claims are leveled against Syngenta's failure to follow through on representations made to the United States Department of Agriculture (USDA) and industry stakeholders in the application to approve MIR162 that Syngenta would channel the MIR162 corn away from nonapproving markets such as China.
- For a comprehensive example of the claims made against Syngenta, read the Master Consolidated Class Action Complaint

filed on March 13, 2015, in the federal multidistrict proceedings pending in Kansas City. A link to download that complaint is <http://www.grayreed.com/portalsresource/ProducerPlaintiffsMCAComplaint.pdf>.

- **How have producers allegedly been damaged?**

- Studies by the National Grain and Feed Association and the North American Export Grain Association published in April 2014 estimated that the industry as a whole was damaged by at least \$1 billion and as much as \$2.9 billion. That study projected preliminary market losses to producers of at least \$0.11 per bushel, and recent estimates now set that loss at \$0.20 to \$0.30, or more, per bushel. Experts will need detailed studies to assess the exact magnitude of the losses. In these lawsuits, the plaintiffs contend that the damages to producers will continue until trade with China resumes and is reestablished to the levels projected before this trade disruption.

- **Where have the cases been filed and what is the current status?**

- Cases have been filed across the country in both federal and state courts. The cases in federal court have been consolidated and transferred for multidistrict proceedings (MDL) in the United States District Court for the District of Kansas in Kansas City, Kansas. The judge is John W. Lungstrum.
- Judge Lungstrum appointed four co-lead counsels to represent the plaintiffs in the MDL proceedings—Don M. Downing of Gray, Ritter & Graham in St. Louis, Missouri; William B. Chaney of Gray Reed & McGraw in Dallas, Texas; Scott A. Powell of Hare Wynn Newell & Newton in Birmingham, Alabama; and Patrick J. Stueve of Stueve Siegel Hanson in Kansas City, Missouri.

- Judge Lungstrum ordered that the plaintiffs file their consolidated complaint in federal court on March 13 and ordered that Syngenta produce to the lead counsel for plaintiffs records from Syngenta's 2011 lawsuit against Bunge, all of Syngenta's regulatory filings for these products with both the USDA and China, and the stewardship agreements used by Syngenta from 2010 to the present.
- The federal cases will remain consolidated and before Judge Lungstrum throughout the discovery process. Then, if no settlement can be reached by the parties, the cases may be tried, with some possibly sent back to their original district courts for trial and others tried in federal court in Kansas City, or in state courts, if pending there.

- **What is the schedule for hearings or other litigation events?**

- Two hearings are set in the Kansas City multidistrict proceedings:
 - On April 8, 2015, a hearing will be conducted via telephone on a proposed common benefit order being considered by the court.
 - On April 27, 2015, the court will hold a hearing on motions to send some cases back to state court, including those filed by Cargill and ADM.

During the course of the case, additional hearings and matters will be heard and the court will enter scheduling orders detailing what will happen and when. The current order, Scheduling Order No. 1, was entered on February 4, 2015 and can be accessed at www.ksd.uscourts.gov/scheduling-order-no-1-doc-123/.

- The court's website at www.ksd.uscourts.gov/syngenta-ag-mir162-corn-litigation will be updated to provide more current information.



- **What if I did not grow Viptera or Duracade?**

- Plaintiffs allege the loss of China, a significant U.S. corn export market, decreased demand for U.S. corn around the world. Further, they allege this decreased demand caused a drop in the market price for all U.S. corn, regardless of its variety. These lawsuits seek to compensate U.S. farmers who did not grow Viptera or Duracade for damages they suffered because of Syngenta's failure to take proper steps to ensure its Viptera corn was channeled so it would not end up in the part of the U.S. corn supply that was exported.

- **What if I did grow Viptera or Duracade?**

- If you grew Viptera or Duracade and would like to investigate whether you have a claim, contact an attorney to advise you. To date, most of the lawsuits filed involve only farmers who did not plant or purchase Syngenta's Viptera or Duracade seeds.

- **If I want to participate in the litigation, do I need to file a lawsuit now?**

- Whether you want to participate in the litigation is up to you. Although many of the lawsuits already filed have been filed as class actions brought on behalf of all U.S. corn farmers who did not grow Viptera or Duracade, contact an attorney to make sure your rights against Syngenta are protected. The law provides a time limit to bring a lawsuit if you wish to do so. An attorney can advise you regarding when you must file your claims. The Texas A&M AgriLife Extension Service does not take a position or offer any advice as to whether or when you should file a lawsuit.

- **If I choose to participate in the litigation, what type of information will I have to provide during discovery?**

As with all litigation, a plaintiff must provide any information deemed by a court to be a proper subject of discovery in the case. For more detailed advice and information, discuss this issue with an attorney.

- **How are U.S. exports of corn affected going forward?**

- China approved MIR162 in December, but as of now, it is uncertain if, or when, exports to China will resume, much less whether those exports will reach the levels projected before this disruption of trade with China.

- **How do I find out more information?**

- The Texas A&M AgriLife Extension Service is not involved in the cases and offers no opinions regarding the litigation or claims made. Because circumstances can quickly change during the litigation process, speak to an attorney to answer any questions regarding your rights or the status of the case.
- The federal court in Kansas City has established an official website providing orders and information regarding the MDL proceedings being heard by Judge Lungstrum. That website is <http://www.ksd.uscourts.gov/syngenta-ag-mir162-corn-litigation>.
- The co-lead counsel, appointed by Judge Lungstrum, have set up their own website at www.syngentacornlitigation.com.

All photos courtesy of Texas Corn Producers.

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