

Syngenta Can't Appeal Ruling Letting GMO Corn MDL Proceed

By [Jody Godoy](#)

Law360, New York (October 19, 2015, 8:03 PM ET) -- [Syngenta](#) can't appeal a ruling allowing [Cargill](#) and other corn industry players to press multidistrict litigation claiming the Swiss agribusiness company tainted U.S. corn with genetically modified seed, causing China to block imports, a Kansas federal judge said Monday.

U.S. District Judge John W. Lungstrum issued the ruling from the bench during a status conference, according to attorneys for Cargill Inc. and other parties bringing the claims. Syngenta Corp. had asked the court to certify the ruling denying its motion to dismiss for appeal to the Tenth Circuit. Cargill, [Archer Daniels Midland Co.](#) and thousands of farmers, distributors and supply companies suing Syngenta urged the court not to disturb the ruling that allowed their economic loss and tortious interference claims to go forward.

In the suit, the corn industry parties claim they lost billions of dollars when China closed its doors as early as late 2013 to commingled corn grown by American farmers and blame Syngenta for failing to protect U.S. corn seed from being tainted with its genetically modified variant Viptera.

The [U.S. Department of Agriculture](#) had authorized the introduction of the trait in April 2010, but the Chinese government did not approve it until December 2014. Plaintiff Hadden Farms Inc. alleged in October 2014 that Chinese imports of U.S. corn had decreased by about 85 percent since November 2013.

In September, Judge Lungstrum dismissed some trespass claims from the litigation but allowed **claims for economic losses and tortious interference** to proceed, and held that Syngenta owed the corn industry members a duty to restrict the timing and manner of Viptera's release to avoid economic harm, according to court documents.

On Oct. 13, Syngenta **asked the court to certify** Judge Lungstrum's order so it could proceed with an interlocutory appeal, saying the order addressed "novel and controlling questions of law for which there are substantial grounds for difference of opinion."

Syngenta had argued that the ruling was the first to open the way for a tort-based duty around the

way GM seed producers introduce new strains in the U.S. because of restrictions in foreign markets. But the farms and agriculture companies said in their brief Friday that that reading overstates Judge Lungstrum's ruling.

The agriculture company had claimed the order creates an unprecedented obligation for it to protect other businesses from economic harm simply because they are interconnected as part of the corn industry.

But the corn industry members argued the court had also considered specific allegations that Syngenta foresaw the harm that would result from its actions and not only failed to mitigate it but actively did things that increased it.

Because the question of whether Syngenta owed a duty to other corn industry players is not a pure question of law but one of how the law applies in the circumstances, the company shouldn't be allowed to appeal the decision, they said.

Multiple plaintiffs say Syngenta's premature release of the corn seed cost the U.S. corn market between \$1 billion and \$3 billion because of the rejection and resulting seizures of U.S. containers and cargo ships transporting commingled U.S. corn to China.

Counsel for the parties did not immediately reply to requests for comment on Monday.

The plaintiffs are represented by [Stueve Siegel Hanson LLP](#), [Gray Ritter & Graham PC](#), [Gray Reed & McGraw PC](#), [Hare Wynn Newell & Newton LLP](#), [Greene Espel PLLP](#), [Sidley Austin LLP](#), [Becnel Law Firm LLC](#), [Thrash Law Firm PA](#), [Pendley Baudin & Coffin LLP](#) and others.

Syngenta is represented by Thomas P. Schult and Ryan C. Hudson of [Berkowitz Oliver Williams Shaw & Eisenbrandt LLP](#) and Michael D. Jones, Edwin John U, Patrick F. Philbin, Ragan Naresh and Patrick Haney of [Kirkland & Ellis LLP](#).

The case is In Re Syngenta AG MIR 162 Corn Litigation, case number [2:14-md-02591](#), in the U.S. District Court for the District of Kansas.

--Additional reporting by Vidya Kauri. Editing by Brian Baresch.