



**Liability Prevention for
Agricultural Biotechnology**




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Overview of Liability For Biotech Crops



- Starlink Corn & LL Rice Billions
- Monsanto Wheat Woes
- PMP Commingling Incidents
- Past Episodes of EU Trade Disruption in Corn
- Sup. C: Econ. "Contamination"
- Anticipatory Nuisance Looms



Biotech Crops – Past & Pipeline

- Herbicide-resistant soy, cotton, corn and canola dominates biotech sector – feed, fuel, and food
 - Reduced ag-chem benefit for agricultural workers
 - Food safety improved – better than organic? (mycotoxins etc.)
- Pipeline promises consumer health (Omega 3 soy) & environmental impact management
 - Feeds to reduce feedlot waste (P in manure)
 - More crop from a drop – drought-tolerance
- New Breeding methods on horizon



Starlink Corn

- Economic loss and bogus personal injury – both settle
- Motion to dismiss – Physical Injury from mix-in
- Sets stage for biotech seed company liability by recognizing claims for nuisance and negligence
- Damages paid in settlement were calculated based on the price impacts to commodity corn on the Chicago Board of Trade. Over \$700 million paid.
- Billion-dollar impact?

Liberty Link Rice Lawsuit

- 1999 – Bayer holds field trials in Louisiana near seed production – commingles.
- Spreads to four other states (MO, AR, TX, MI)
- Mid-2006 – tests find it in food (Japan), EU, Mexico and Japan halt US rice imports
- Nov '06 – USDA approves but it is still a “nuisance” from first mix-in
- Rice prices drop (\$1.1 billion in compensable economic impact?)

LL Rice Billion

- LL601 Rice found negligence applies if crops disrupt trade to the EU and other major markets.
- Arkansas courts applied punitive damages – citing successor to Aventis for Starlink
- Proposed \$750 million settlement with U.S. rice farmer.
- The settlements Bayer is entering into in *LL601 Rice* exceed \$1.2 billion, more than Starlink.
- Commentators have warned that growers may also be liable for disrupting trade

Monsanto Wheat Woes

- Monsanto won 2003, on economic loss doctrine - corn trade disruption with the EU.
- Assure seed purity
- Compensation for actual economic losses, if any
- Taken \$2.5 million in settlement



Novel Nuisance & Grain trade cases

- Coexistence of unapproved-overseas biotech crop is long-standing challenge
- Failures to get Major Market Approval – Growers Sue Seed Co.
 - RR Wheat litigation (Monsanto)
 - Seed company Syngenta sued over Major Market Approval in China?
 - Gene edited crops impacted?

Plant-Made Pharmaeucticals

- Prodigene commingling and penalties
- Controversy in MO – PMP rice kicked to the NW Corner, ended up in KS
- USDA APHIS revamped PMP rules to address gaps in oversight

APHIS ... allseye

REASONABLE CARE?

A. One m
from

B. 0.5
pharmi

C. 0.2
Current
Trial
Former I
Crops to
food

Geertson and NEPA “hard look”

- Geertson court “hard look”- USDA missed economic “contamination” to NonGMO
 - APHIS proposed some mitigation measures (segregate RR Alfalfa) -- national injunction
 - Remedy: Should each bale of RR Alfalfa be traced? (No?) – fields plowed under
- RR Sugar beets also sued (CA and DC)
- All approved w/o partial segregation.

Industry's Economic Stewardship

- U.S. Industry, not courts or USDA, establish “due care” for commingling at low levels (“LLP” or “adventitious presence “AP”) & Billion \$ debacles
- '98 - ASA-USB-NOPA closed-loop identity saved \$15 billion in exports – RR2X soy playing chicken w/EU
- '99 - NCGA “Know Before You Grow” – protected EU Gluten \$400 m. /yr., EU tolerance 0.5% to 0%.
- '15 - Syngenta China litigation – following LL rice and Starlink corn into the \$1+ billion club?

Anticipatory Nuisance & Biotech Crops

- 2005 - Hoffman v. Monsanto, Canada –denied injunction
- US law allows anticipatory injunctions
 - State laws vary in approaches
 - Federal law may work better in biotech crop setting.
 - Negligence in disrupting exports?
- Mediate to get good stewardship plan

Thanks!

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