



JUNE 2023

# FARM LITIGATION REPORT





## Don's Opening Statement

Don Downing    [ddowning@grgpc.com](mailto:ddowning@grgpc.com)

Welcome to the second issue of the GRG Farm Litigation Report. We truly appreciate the good feedback in response to our first issue and look forward to providing you with additional issues periodically as developments warrant. And please keep those comments coming in — we want to make this newsletter as helpful and interesting to you as possible.

Before I give you a preview of the articles in this issue, I want to address an important topic that affects us all — one that, unfortunately, threatens to undermine faith in our court system. I am talking about the polarization in our country. While it used to be said that “reasonable minds can disagree,” today we are often encouraged to believe that those who disagree are necessarily unreasonable or even evil. Too often, disagreements become heated and hard feelings persist. It does not have to be this way.

When I was young, my late father had a wise saying he would use whenever a disagreement would begin to become heated. Raised on a farm in the Missouri bootheel and elected to the Missouri House of Representatives for 20 years, he would effectively diffuse the situation by declaring: “There are usually three sides to every issue — your side, my side and the right side — and the right side is somewhere in-between your side and my side.” That type of self-deprecating humor — and truth — would open the door to finding common ground and lead to mutual respect and trust.

Polarization can lead to lack of mutual respect and trust and to a loss of faith in our institutions. Our court system is one institution that has come under recent scrutiny and suspicion. Our court system is not perfect, and sometimes it may not work the way you think it should. But my experience in over 40 years of working in that system tells me that it works far more often than not. And in our many cases for farmers, it has worked very well.

Our court system is the great leveler. Farmers with little or no money to spend on a lawyer but with a good case can take on a giant, multi-billion dollar corporation and win. It is never easy, and corporate defendants will sometimes drag out litigation over many years to make it as painful as possible. But in the end, if you have a good case, the jury usually gets it right.

Faith in our court system — and in our farmer clients — is why our firm is willing to invest millions of dollars of its own money and tens of thousands of attorney hours to fight major corporations on behalf of farmers. Our faith is justified. We have been able to recover nearly \$3 billion for farmers in the last 15 years. We will continue to fight the good fight to protect our clients.

The moral of the story is this: no matter how disgusted or disenchanted you may become in today's world with the non-stop division on all sides, don't lose faith in the institutions that matter most. Our court system is one of those institutions.

Now, turning to a preview of this issue — we feature an interview with one of our farmer clients, Bret Kendrick, a corn farmer in Kansas. Bret served as one of our class representatives in the largest agricultural case in US history — the Syngenta Corn Litigation. He explains what it was like to be at ground zero in this nationally prominent case, from the time he originally became involved all the way through his testimony at trial and the jury's verdict awarding \$217.7 million to our class of Kansas corn farmers. As many of you know, that verdict led to a record \$1.51 billion settlement for US corn farmers. You will hear his story from a farmer's perspective, not from a lawyer's perspective. You also will hear from farmer clients Richard and Katrina James about dicamba damage to their watermelon crop in 2019 and 2021 and their efforts to obtain compensation for that damage.

GRG attorney Kaitlin Bridges offers tips and reminders on how best to preserve evidence if you believe you have suffered a yield loss from herbicide drift, off-target movement or other man-made crop damage. Preservation of evidence of your herbicide injury and yield loss can be critical to the success of any case you may later choose to bring.

GRG attorney Joan Lockwood, one of our firm's personal injury attorneys, shares her recollections about a tragic interstate collision case she handled involving a tractor-trailer hitting a vehicle driven by a farmer. The farmer, his wife and their two children lost their lives. Joan explains how the economics of the family's farming operation played into the compensation ultimately received by the surviving relatives through a settlement.

We also have updates to our previous reports on the status of the dicamba litigation (including the settlement), paraquat (including our continuing monitoring of potential adverse health effects), the Tractor Hydraulic fluid litigation, and the farmers' right-to-repair issue.

We at GRG consider it an honor and a privilege to be able to represent farmers. Farmers are the backbone of our country and vital to our national economy. They not only feed us, but also feed millions of people around the world. As Thomas Jefferson wisely observed, "cultivators of the earth are the most valuable citizens." We hope to continue to earn your trust.

We sincerely hope you enjoy this issue.

Very truly yours,

*Don Downing*



IMAGE BY KEN HAINES FROM PIXABAY (CCO 1.0)

The choice of a lawyer is an important decision and should not be based solely upon advertisements. Past results obtained on behalf of clients is not in any way a guarantee of future results in that every case is different and must be judged on its own merits.

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## GUEST COLUMN

### Interview with GRG Client Bret Kendrick

Bret Kendrick farms in western Kansas and served as a class representative in our litigation against Syngenta. We represented classes of corn farmers from most of the corn-producing states, including Kansas. They were harmed when Syngenta decided to commercialize a new GMO corn variety that had not been approved in China, one of our major export markets. Syngenta had been warned by Cargill and other grain companies that doing so risked loss of the important Chinese market, but Syngenta chose to do it anyway. Sure enough, when China detected the unapproved GMO trait

in corn shipments from the US, it stopped taking US corn, causing the price farmers received to fall. We tried the case in June 2017. It resulted in a \$217.7 million verdict for the class of Kansas corn farmers, which included Bret. That verdict led to a \$1.51 billion settlement for all corn farmers nationwide, the largest agricultural settlement in US history. We thought you would enjoy hearing about the litigation from a farmer's perspective, so we interviewed Bret and recorded the interview. Here it is, as edited.

#### **How did you get to be a class representative in the Syngenta case?**

I remember walking into my insurance company's office and speaking to a local attorney and his brother. They were talking about this and asked me if I would be interested in becoming involved. I said yes and asked what would be involved. They said I would have to fill out some paperwork, allow my farming entity's name to be listed as a class representative in the lawsuit and explained that more work may be needed. Later, the attorneys who were more directly involved in the lawsuit explained the additional work that would be needed. I agreed to move forward both with my claim and as a representative for other corn farmers.

#### **What work did you have to do during the litigation in the months leading up to the trial?**

Before the trial, I had to produce documents supporting my claim. These included FSA 578 forms, APH reports from my insurance provider, and various documents from my bank. The FSA office, my insurance provider and my bank had all the documents I needed and it was pretty easy to gather them up and get them to whoever was requesting them. But the deposition was a different deal.

#### **Describe the process of preparing for and giving your deposition, which was an interview with Syngenta's attorneys in which you offered sworn testimony regarding your claim.**

I remember going to Dodge City and meeting with my attorneys to prepare for the deposition and then giving it the following day. My attorneys gave me a rundown of what would likely be covered in the deposition. They instructed me not to elaborate beyond what was asked in each question.

During the deposition, an attorney for Syngenta proceeded to ask me every question he possibly could regarding my farming operation. It was a long, drawn out and very unpleasant experience. It lasted from 9:00 until about

4:00 or 4:30, with a little break for lunch. I thought that many of the questions were completely irrelevant to the litigation, and I don't think the good Lord has ever been asked those types of questions! To be honest, I did not like Syngenta's attorney at all. But in the end, everything worked out fine.

### **Describe your experience at the trial.**

I attended every day of the three-week trial. I had never seen a trial before and didn't really know how it all worked. The trial took place in Kansas City, Kansas. The accommodations provided by my attorneys were absolutely phenomenal. I was able to speak with my attorneys everyday at the courthouse and hotel, even on days when I wasn't testifying or preparing to testify. Throughout the trial, the camaraderie and togetherness among our team members felt family-like. It really was a great experience. What Syngenta did just wasn't right, we were fighting to make things right for all the farmers that were hurt. Going into the courtroom each day, I felt like I didn't have anything to worry about because I had the good guys on my side.

Judge Lungstrum was a very intelligent, level-headed, honest, and just judge. He did a fantastic job making sure nobody got an advantage. Sometimes, I didn't agree with what he was saying but I understood why he was saying it. He was fair to both sides throughout the trial.

The jury selection process was also fantastic. There were two people on the jury in particular that I can remember. There was a younger girl and an older woman. The older woman looked at me and gave me this nice little smile every time she walked out, and the younger lady would also look my way with a pleasant looking smile. This made me feel really good and gave me confidence throughout the trial – like we were talking to friends.

Overall, I thought the trial went really well.

### **How was your experience testifying at trial?**

At first, it was a little bit nerve-racking. I was nervous when I got up there, but I was well prepared ahead of time and knew the questions Don was going to ask me. Once I had answered the first few questions, I became more comfortable, and things went smoothly after that. After Don asked his questions, the Syngenta attorney came up, and I thought he was really nice to me. I was prepared for the subject matter he covered and was able to answer his questions without issue.

### **How did you go about your days during the trial?**

Every evening after trial, we'd all drive back to the hotel, and we'd discuss what had happened that day. Our team would then get back to work, and they would work until 3, 4, 5 AM every morning. I really didn't realize the amount of time and the people involved in doing this. These guys weren't just working farmers' hours, these guys were working *overtime* – I mean Zero Dark Thirty, burning that midnight oil, and then getting up to be at the courthouse by 9 AM. To be able to work those hours and still be able to function at the level that they needed to at the trial, I got to take my hat off to them and say that was very impressive.

### **What did it feel like waiting for and then hearing the verdict for \$217.7 million for the class of Kansas corn farmers you represented?**

When the judge gave the instruction to the jurors and sent them to deliberate, we were all wondering how it was going to go. I can remember a lot of tension, anxiety, and a little bit of nervousness. The jurors started walking back in, and I was looking at those two women that I talked about earlier – neither of them looked at me at all. I was

sitting by Don's paralegal, Jackie. I looked to her, and I told her that every time those two had come in they had given me a smile, and I said I had just watched, and they walked in and never even made eye contact with me. I remember thinking, "Oh we're done, we're in trouble." But then, after everyone was seated, the nice, older lady turned and looked at me and winked. Jackie saw it too, and we both squeezed each other's hands, and at that point I knew we were going to win, and it just felt so good. The judge then read the verdict form, which awarded us the full amount we asked for, which was \$217.7 million! We obviously were very happy with the verdict and had a really good celebration. This was an incredible, life-changing experience from start to finish. I am grateful to have been a part of it.



BRET KENDRICK AND DON DOWNING (CENTER) WITH THE SYNGENTA TRIAL TEAM IN THE COURTROOM SHORTLY AFTER THE JURY RETURNED THE \$217.7 MILLION VERDICT.

## Our experience in pursuing dicamba injury claims with Gray Ritter Graham

### GRG client testimonial from Richard and Katrina James

We have been running a family watermelon farm near Sikeston, Missouri for over 40 years. Each year, we farm anywhere from 40 to 60 acres of watermelons on different plots of land in the area. Upon harvest, we take the loads to our stand in Sikeston. Over the years, we have developed relationships with various wholesalers and individual customers who purchase from us at the stand. For the most part, we have enjoyed tremendous success over the years and have established a great reputation among our customers. However, due to dicamba damage on our farm in recent years, our reputation has been jeopardized.

As watermelon growers, we have no way to prevent chemical damage to our crop if applications are made nearby during the growing season. We are at the mercy of those around us. With dicamba, in our area in particular, the chemical often becomes loaded in the air during the season, and it will cause damage to nearly every non-tolerant crop. When this happens, there is simply nothing we can do to avoid damage.

In 2019 and 2021, our farm was completely devastated by dicamba damage – so much so that we could not bring the crop to harvest both years. Dicamba exposure damages the canopy of foliage protecting the watermelon fruit. With no protection from the canopy, the infant watermelon fruit suffers increased sun exposure and eventually rots. This is exactly what happened to our crop.

The lost revenue each year nearly put us out of business. We were in desperate need of help. Fortunately for us, we found Jack Downing at GRG who was able to work with us to secure fair compensation for our losses both years in a timely manner. We truly appreciate what he and those on his team at GRG have done for us.



THE JAMES' WATERMELON STAND IN SIKESTON MISSOURI

# Preserving Evidence of Crop Damage

Kaitlin Bridges kbridges@grgpc.com

Dealing with crop damage is an unfortunate but common occurrence in farming. When it happens, your focus may understandably be on counteracting the effects of the damage. However, when the circumstances are such that a lawsuit may result, there are a few steps you should take to ensure that your damages are adequately documented, and you increase the chances of obtaining a full recovery.

**Photograph the damage.** While inspecting your fields, take a variety of photos from various angles and distances, making sure to capture the full nature of the damage. Confirm that the photos are clear and unobstructed before moving on. Videos or drone footage can also be useful, depending on the scale of the damage. Document each of the fields that has damage, even if the damage looks the same. Consider also documenting undamaged fields as a comparison. Take more photos than you think necessary – your attorney will thank you.

**Note where photographs are taken.** While taking photos, keep detailed notes on the exact location of the photos, when they were taken, and by whom. This is especially important if multiple fields are damaged, so photos and videos can be identified and distinguished later. Most smartphones will store time, date, and GPS coordinates automatically, but it is also best to manually record location details using more recognizable terms, such as the FSA Farm, Tract, and Field numbers.

**Keep good records.** In addition to noting the location of photos, make notes about what you observed before, during and after the damage-causing event. Include details about observed symptomology at various points in time. Make notes detailing all important or relevant conversations about the damage. Even if you think you will remember, write it down. Keep everything together in one place.

**Consider further assistance.** It is a good idea to have someone else observe what you are observing. Ask your crop scout or a neighbor to walk your fields with you. Ask them to take notes along with you. Consider whether any testing can or should be done to determine the cause of the damage. Note that you may have an obligation to report the damage to your state department of agriculture, plant board or other appropriate agency. Even if no obligation exists, it is best to file complaints with these agencies immediately, when you first notice symptomology in your fields.

**Focus on yield.** When it comes time to harvest (assuming there is something to harvest), pay special attention to capturing the yield on the damaged fields. Try not to comingle crops from damaged and undamaged fields. The goal is to be able to identify the specific yield on each damaged field. Ideal forms of documentation include Annual Production History (“APH”) reports from your insurance provider or scale tickets showing your yields on individual fields.

**Contact an attorney.** If you believe you may have a legal claim as a result of the crop damage, contact an attorney as soon as possible. The earlier, the better.







# Dicamba Claims Update

**Jack Downing** [jdowning@grgpc.com](mailto:jdowning@grgpc.com)

The \$400 million nationwide dicamba settlement claims process is nearing its conclusion. The settlement provides compensation to farmers for soybean injury due to off-target movement of dicamba from 2015 to 2020. The settlement will ultimately result in just compensation for many farmers around the country.

Non-soybean growers also were injured by off-target movement of dicamba from 2015 to 2020. Dozens of those growers have settled their claims and received compensation.

Dicamba injury in years following 2020 is not included in the settlement. We have been working with growers who suffered dicamba injury due to off-target movement of dicamba in 2021 and 2022 and have already successfully recovered for a number of them. We will continue to help farmers as they experience dicamba injury.

To the extent you believe you had dicamba injury to your soybeans or other crops in 2021 or 2022, or have crops exhibiting dicamba symptomology in 2023, it is important to maintain any and all records showing evidence of your injury, including photographs, crop scout reports, notes of observations of any third parties or experts that saw your damaged fields, all records showing your historical yields in the affected fields, and any other documents you believe would be useful. Monsanto also has requested that it be afforded an opportunity to observe the damage while it exists in the fields. We urge you to notify us immediately when you observe dicamba damage so that we can notify Monsanto promptly.

If you or anyone you know has suffered Dicamba injury in recent years, please feel free to reach out to our firm with any question you or others might have or for assistance or answers. Any questions you may have can be directed to Jack Downing ([jdowning@grgpc.com](mailto:jdowning@grgpc.com)).



SOYBEANS SHOWING THE CUPPED LEAVES WHICH ARE A SYMPTOM OF DICAMBA INJURY.  
PHOTO BY: UNIVERSITY OF ARKANSAS SYSTEM DIVISION OF AGRICULTURE CC BY-NC 2.0



# GRG Represents Family of Deceased Hog Farmer in Truck Accident Case

Joan Lockwood

For decades, GRG has represented people involved in collisions with trucks. We are keenly aware of the legal issues (e.g., multiple defendants, state and federal regulations, and various employment relationships) that arise in trucking cases. A number of the trucking cases GRG has handled have involved clients or surviving family members facing economic harm from an agricultural loss.

In one such case, we represented the surviving relatives of two parents and their two children who were killed in a tragic interstate collision with a tractor-trailer. Only one child, a son, survived the collision.

The harms and losses suffered by the family were obviously substantial. One unique aspect of this significant case was that the father was involved in his family's large hog farming operation. We created a damage model to demonstrate the effect of his death on the hog farming operation. Understanding the farm operations, including the projected operations and costs and the changes in the industry, was essential to maximizing our clients' recovery. We hired an agricultural economist to quantify the agricultural loss and the damage to the hog farm operations due to the death of the father, who was one of the key operators of the farm.

Damage quantification for livestock losses involve many considerations. A damage model often requires consideration of market price fluctuations, the type of livestock involved in the operation, the age and weight of livestock at the time of loss and the end purpose of the livestock. In this particular case, the hogs were used both for breeding and market purposes. Given the high value of the hogs and the labor required to successfully run the farm, the loss of the father had an extremely detrimental impact on the operation. As such, the damages in this case were sizeable. After arduous litigation, we were able to successfully recover a confidential settlement for the family. This served as a positive step in providing the family with the financial compensation and the emotional closure necessary to move on from the accident.

We are highly experienced and equipped to handle tractor trailer cases as well as wrongful death or injury cases involving a variety of agricultural losses. If you have been involved in an accident with a tractor-trailer, please don't hesitate to get in touch with the attorneys at GRG to schedule a free consultation.





## Paraquat MDL Update

Cort VanOstran [cvanostran@grgpc.com](mailto:cvanostran@grgpc.com)

**Gray Ritter Graham is continuing to accept cases from farmers diagnosed with Parkinson's disease resulting from paraquat exposure.** Multi-District Litigation (often referred to as an "MDL") remains ongoing to provide compensation to individuals diagnosed with Parkinson's disease resulting from paraquat exposure. There are presently thousands of cases in the MDL, including several farmers represented by GRG.

Parkinson's disease is serious, incurable, and may be a real threat facing anyone in the agricultural industry who has been using Gramoxone or other paraquat products since 1964. Many farmers suffering from Parkinson's disease around the country have filed lawsuits seeking to hold Gramoxone's manufacturers (including the Chinese-owned company Syngenta) accountable for this devastating disease.

The MDL is pending in the United States Court for the Southern District of Illinois in East St. Louis – right across the river from Gray Ritter Graham's offices in downtown St. Louis. Any questions you may have can be directed to Cort VanOstran ([cvanostran@grgpc.com](mailto:cvanostran@grgpc.com)) or Tom Neill ([tneill@grgpc.com](mailto:tneill@grgpc.com)).

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## Tractor Hydraulic Fluid MDL Update

Don Downing [ddowning@grgpc.com](mailto:ddowning@grgpc.com)

In the last issue of the GRG Farm Litigation Report, we explained that our firm was asked to assist in the representation of farmers and others in Multi-District Litigation involving tractor hydraulic fluid. That lawsuit alleges that defendants misled consumers as to the suitability of certain "303" THF products for use in tractors and other equipment. Those products are: Super S Super Trac 303 Tractor Hydraulic Fluid, Suiper S 303 Tractor Hydraulic Fluid, Cam2 Promax 303 Tractor Hydraulic Oil, and Cam2 303 Tractor Hydraulic Oil. The lawsuit seeks damages that would be equivalent to return of the purchase price for every consumer who purchased these products as well as other compensation including damage to equipment in which the fluid was used.

Dozens of depositions have now been taken, and hundreds of thousands of documents have been produced. Each side has retained experts who have prepared reports and given their depositions. Plaintiffs' motion and supporting brief for class certification have recently been filed, and we expect that a class certification hearing will be held this fall. The parties have agreed to try to resolve this litigation through mediation, and have agreed upon a mediator and a mediation schedule. Plaintiffs have recently submitted their mediation statement to the mediator. If the case is not settled through mediation, we would expect the court to decide the class certification motion later this year, and schedule a trial for sometime in 2024.

We will keep you posted with any important developments. If you have purchased any of these products and believe you have suffered damage as a result, please contact us.

# Farmers Slowly Winning the Battle Against Manufacturers on Right-to-Repair Issue

Jack Downing [jdowning@grgpc.com](mailto:jdowning@grgpc.com)

In the last edition of our newsletter, I discussed the then current state of affairs on the hotly contested right-to-repair issue involving farmers and equipment manufactures. Since then, there have been promising developments expanding farmers' ability to make repairs to their own machinery.

In January, John Deere signed a formal memorandum of understanding with the American Farm Bureau Federation. The memorandum provides that John Deere will allow farmers to conduct repairs to its machines themselves or at third-party repair shops. To do this, John Deere will allow farmers and third parties access to the operational software running the machines, so that repair diagnostic tools can be utilized to identify necessary repairs and maintenance. Previously, John Deere maintained exclusive control over the software, which forced farmers to have all repairs done by a John Deere representative.

Although the memorandum, on its face, seems like progress for the farmers, it could deter states from enacting their own right-to-repair laws. As part of the memorandum of understanding, if any state creates an independent right-to-repair law, John Deere can withdraw from the agreement. With the reduced threat of state legislation (which could further expand farmers' repair rights), John Deere is able to control and limit the types of repairs that can be made independently.

Notwithstanding the agreement, in recent months, many states have passed bills protecting farmers' right to repair. In April, Colorado became the most recent state – creating a law which forces the original equipment manufacturers to provide all materials needed to conduct independent repairs to farming machinery.

Since 2021, when the Federal Trade Commission vowed to crack down on its enforcement of right-to-repair laws and regulations, many measures have been taken to expand farmers' rights in this area. As time passes, it seems we are moving in the right direction, with more actions being taken to empower farmers to conduct a wider variety of repairs without assistance from the OEMs. If you feel these right-to-repair issues have affected your farming operation, we encourage you to explore your legal options.



JOHN DEERE TRACTOR IN FIELD: PHOTO BY WERKTUIGENDAGEN: FLICKR: DSC\_0642





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