

Battle over?

- Some individual farmers will get \$250,000 in suit

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ADA, Minn. — Unless something new goes down, farmers should get the bulk of their payments in the \$62 million Poast herbicide marketing fraud case by this summer.

Ron Peterson can hardly believe it.

“There’s still another shoe to drop, believe me,” says a cynical Peterson of Buxton, N.D., a retired farmer and first among named plaintiffs in the Ronald Peterson et al. vs. BASF Corp. class-action lawsuit that is now more than a decade old.

Peterson was among about 25 farmers and others in the audience March 10 for what may be one of the last hearings in Norman County (Minn.) District Court in the case.

In his opening statement, the farmers’ attorney, Doug Nill of Minneapolis, repeated the news that the case is won. Lawyers have received their money in the case and it soon will be the farmers’ turn, he says.

The case amounts to a money judgment and interest totaling some \$62 million over the fraudulent marketing of Poast and Poast Plus herbicide from 1992 to 1996. Of the total in the fund, \$31.7 million is in a “common fund” for paying farmers and is accruing interest at about \$69,000 a month. Another \$30 million went for disbursement to legal counsel and other costs and were paid from August to December 2007.

Nill, a co-counsel for the case, says successful claims to the fund account for about 12.5 percent of the total money available, so that means 8- or 9-to-1 return on any damage differentials in fraudulent pricing. He says there are some individuals in the case who proved the use of more than 1,000 gallons of herbicide and will come into a payment of around \$250,000. Many farmers in the case will be receiving checks for thousands of dollars.

A winning process

On the stand at the March 10 hearing was Judge Lawrence D. Cohen of Minneapolis, a “senior judge” or retired from the 2nd Judicial District in Ramsey County in St. Paul, served as a “special master” to determine

whether claims were eligible for payment, seemed to enjoy his accomplishment.

Cohen, discussing his role in winnowing the claims to the real ones, was clearly delighted at his work.

“I know absolutely nothing about agriculture,” Cohen jokes, adding, “Apparently that qualified me.”

The claims boiled down simply to contracts and evidence, something Cohen is very clear on. He says the claims were put into several categories — valid, partially valid, denied, rejected as untimely or subject to objection and reconsideration. He is quick to praise Rust Consulting Inc. and project manager Kahalla Thompson for helping him to sort it all out.

There originally were 1,567 claims for compensation on 1.65 million gallons of Poast at the time the company was fraudulently differentiating prices with Poast Plus, a nearly identical product that was sold cheaper to soybean producers, while sugar beet, sun-

flower and other specialty crop growers had to pay more for Poast.

But the fact was there was only 925,427 gallons of Poast sold during the 1992 to 1996 claim period (excluding North Dakota, which was involved in an earlier settlement).

Cohen says he and investigators “touched every single one” of the claims. He ultimately rejected 433 claims totaling about 1.5 million gallons. There were only 433 objections to those rejections and fewer than 20 active objections involving only about 8,263 gallons, or about \$2 million.

Conversely, there were 1,043 claims approved for a total of 114,650 gallons of Poast. Another 91 claims were partly approved, for a total of 6,280 gallons.

The 120,930 gallons in valid claims accounts for 12.5 percent of the total gallons of Poast purchased during the claim period.

In his remarks to the court, Nill suggested Kraker approve a \$30 million “first-tier payment” and withhold \$2 million to cover objectors. If part of this \$2 million is left over, Nill says, it might be appropriate for the remaining funds to go to the Farmers Legal Action Group.

Cohen says there were a variety of reasons for individual claim rejections.

For some, farmers had sent in evidence of purchasing Poast Plus — not the higher-priced Poast in question. Others had offered handwritten receipts that were not believable, and others had gone to distributors to write notarized letters from sales people, “attesting broadly to sales,” but showing no documents. Some claims were from people who “had no idea what (price) they were selling Poast for,” he says. Some still are claiming payments in the matter, on grounds their receipts were lost in Red River Valley flooding.

Cohen took special notice to praise the integrity of Don Steinbeisser of Sidney, Mont., a “lead class representative” who struck to the rules.

► It’s been a decade-long slog for named plaintiffs in the class-action suit over Poast herbicide pricing, against BASF. Clockwise from front are Ron Peterson, Buxton, N.D.; and Owen Larson, Barry Thune and David Abentroth, all from Climax, Minn.



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◀ Doug Nill, attorney in the Ronald Peterson et al. vs. BASF AG case, says he’ll probably pull away from work as a trial lawyer after winning the case. The reason? Too much stress.

‘Irrational’ claim?

In trial, Steinbeisser talked about his 5,500-acre farm and how he used lots of Poast herbicide during the period, but only had sufficient receipts to cover 14 gallons, a fraction of what he probably used.

Steinbeisser, a former president of the American Sugarbeet Growers Association and a state legislator, didn’t try to seek payment for more than the 14 gallons he could prove.

Similarly, Nill asked Judge Michael Kraker deny a claim of 227,998 gallons by Agriliance L.L.C. (associated with Land O’Lakes Cooperative).

Agriliance didn’t show up for the hearing. The Agriliance claim forms were turned in Feb. 19, 2008, despite a May 16, 2007, deadline, so wasn’t timely in the first place.

Further, the claim was “irrational” because only farmers — end-users — were eligible for the claims.

Nill notes that Agriliance sells chemicals to other cooperatives, who in turn sell to farmer-customers. Some of those farmer-customers already had made claims, so allowing the Agriliance claim would have amounted to a “triple-dip.”

The court has scheduled June 25 to 27 hearings to consider objections by a Florida farmer and a Louisiana farmer. The lawyer for the Florida farmer indicated by video hearing conference call that he may challenge the proof standard. Nill says that “train has already left the station” because the proof standard was June 2007.

Nill, in his statement to the audience, noted the recent death of Hugh Plunkett, the lead trial counsel in the case that initially was decided by a 12-member jury in Norman County on Dec. 6, 2001. Plunkett died Oct. 15, 2007, shortly after the legal fees were released, but didn’t live to see the farmers paid.

“I was deeply honored to have tried a case with probably one of the greatest trial lawyers in the United States,” Nill says.

Peterson says that an unsung hero in the case is Sarah Vogel, a Bismarck, N.D., attorney and former North Dakota ag commissioner, who originally took up the issue with BASF over farmers who bought their Poast herbicide in North Dakota.