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**Class Action Lawsuits and Anti-GM Litigation: The Legal Frontline of
Coexistence**

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Abstract:

In the debate surrounding the coexistence of GM and non-GM crops the use of the courts and litigation is becoming increasingly prevalent and increasingly problematic. The unintended presence of a GM event inevitably leads to the filing of a class action lawsuit, allegations of massive losses due to trade disruption and a protracted period of indecision and delay. This paper will examine this phenomenon and assert that it represents a form of legal “trench-warfare,” in that the exercise is relatively pointless, costly and ultimately solves nothing. After illustrating this assertion with reference to several lawsuits, the paper will frame these lawsuits through the wider lens of the large body of literature pertaining to class action lawsuits. Finally, the paper will conclude by arguing that a change in philosophy and approach to coexistence will be required if anti-GM litigation and class action lawsuits are to be avoided

Keywords: Class Actions, Litigation**JEL codes:**

1. Introduction

In the debate surrounding the coexistence of GM and non-GM crops the use of the courts and litigation is becoming increasingly prevalent and increasingly problematic. In the United States, the unintended presence of a GM event inevitably leads to the filing of a class action lawsuit, allegations of massive losses due to trade disruption and a costly period of indecision and delay. In other jurisdictions such as Canada¹ and Australia² anti-GM litigation has been less common, and noticeably less successful for plaintiffs. This paper will examine these two phenomena and assert that they constitute a form of legal “trench-warfare,” in that the exercise is relatively pointless, costly and ultimately solves nothing. After a brief description of several examples of these phenomena, the paper will discuss the literature pertaining to class action lawsuits. Finally, the paper will conclude by arguing that a change in philosophy and approach to coexistence will be required if anti-GM litigation and class action lawsuits are to be avoided.

2. Description of the Problem

While a debate about the true philosophical meaning of “co-existence” is beyond the scope of this paper, for present purposes I will suggest that from the perspective of litigants in both class actions and anti-GM litigation the notion of “co-existence” that best applies is a guarantee that their product is free from the presence of an unwelcome GM event. Litigation has usually revolved around claims for damages resulting from an inability to certify to either third parties or importing countries that their product is free from a particular GM event. Given the significant financial consequences that may result from an inability to provide such a guarantee, the stakes are very high in both class action and anti-GM litigation.

“Are GM crops “the next asbestos”? This question was posed in 2011 by a leading figure in the insurance industry.³ Liability for the health effects of asbestos exposure began to emerge in the 1980’s and it has since become one of the most expensive “mass-tort” exposures that the insurance industry has ever faced. In 2014, the Insurance Information Institute stated that “asbestos liability looks to be one of the largest ever faced by businesses in the United States and abroad. For the U.S. insurance industry asbestos-related losses could eventually reach as much as \$85 billion.”⁴ While there are several factors that render it highly unlikely that GM crops will ever become “the next asbestos”⁵ it is still noteworthy that the insurance industry considers them one of their top five potential risks for future mass-tort litigation alongside

¹ See e.g. *Hoffman v. Monsanto Canada Inc.* (2007), 2007 SKCA 47

² See e.g. *Marsh v Baxter* [2015] WASCA 169.

³ McLeod, D. “The Next Asbestos: Five Emerging Risks That Could Shift the Liability Landscape.” Business Insurance White Paper, Crain Communications, 2011. As cited in Carter, *infra*, note 9 at note 141.

⁴ Insurance Information Institute, Asbestos Liability Update, March 2014. Available at <http://www.iii.org/issue-update/asbestos-liability>

⁵ *Ibid.*

nanotechnology, climate change, cell phone and wireless radiation exposure and fracking.⁶ Again, while it is highly unlikely that the costs of anti-GM crop litigation will match asbestos, McLeod is clear that while the size of eventual liabilities from any of the top 5 risks remains to be seen:

All are expected to produce tort litigation and some of it may be very expensive for defendants and their insurers.⁷

With regards to GM crops, expensive litigation has already taken place and is likely to be a feature of the coexistence landscape for some time.

2.1 StarLink Litigation⁸

In September 2000 genetic material from Aventis' StarLink corn was discovered in Kraft Taco shells. StarLink had been approved for use by the USDA as animal feed in 1998 but was not approved for human consumption as it contained a potentially allergenic protein.⁹ As a result of this discovery, several hundred food products were recalled, US corn exports were significantly affected and the price of corn dropped by over 6%. Ultimately, it is estimated that US corn farmers suffered a US \$500M loss.¹⁰ Strauss notes that:

As a result of the StarLink® corn contamination, consumers and farmers in class action lawsuits sued the biotech manufacturer, Aventis. The company shouldered the cost of recalling the product and destroying the remaining seed inventory, detecting and eliminating any residual StarLink® in the U.S.corn supply, and settling class actions with consumers who allegedly suffered allergic reactions (despite the fact that no such reactions were proven) for nine million dollars and corn growers who allegedly suffered depressed corn prices as a result for another \$110 million.¹¹

2.2 Liberty Link Litigation¹²

In August 2006, traces of an unapproved rice variety were found in a shipment of rice from the US to the EU. The rice in question was identified as Aventis Liberty Link rice, a variety of GM rice developed by Aventis to be resistant to the herbicide Liberty. While field tests of the variety had been conducted across the United States, the variety was never approved by the USDA. By 2007 it had become apparent to the USDA that 2 main rice varieties had been contaminated

⁶ *Ibid.*

⁷ *Id.*

⁸ For an excellent discussion of the StarLink case and its immediate aftermath see: Taylor, M., Tick, J., 2001. The StarLink Case: Issues for the Future. Pew Initiative on Food and Biotechnology, Washington, DC.

⁹ See Carter, C., Gruere, G, 2012. New and Existing GM Crops: In Search of Effective Stewardship and Coexistence. N.E.U.L.J. 4, 169-207 at 182.

¹⁰ See Carter, C., Smith, A, 2007. Estimating the Market Effect of a Food Scare: The Case of Genetically Modified StarLink Corn. As cited in Carter, *ibid* at 186.

¹¹ Strauss, D.M., 2010. We Reap What We Sow: The Legal Liability Risks of Genetically Modified Food. Journal of Legal Studies in Business. 16, 149-177 at 161.

¹² For a detailed description of this litigation see Strauss, *ibid.*, at 156-160.

with Liberty Link. As a result of this contamination, the EU imposed strict measures to limit contamination. The consequences of these measures were catastrophic for the US rice industry. As Carter notes:

US farmers export approximately 50% of their long-grain rice. The EU was a significant importer of US rice but this trade came to a virtual halt following the Liberty Link contamination, and it has not fully recovered. Overall, more than 80% of the US exports to the EU have been lost since the beginning of the 2006-2007 marketing year.¹³

Given the scale of the contamination, numerous class actions were launched against Bayer CropScience and the damage payouts were becoming increasingly significant:

As of early 2011, the total judgments and settlement imposed on Bayer in a few cases amounted to US \$250M. Four hundred and fifty lawsuits were launched against the Company. On July 1, 2011, Bayer finally agreed to pay US \$750M in compensation to rice farmers in Arkansas, Louisiana, Mississippi, Missouri and Texas to settle these lawsuits.¹⁴

2.3 Oregon Soft Wheat Litigation

In May 2013, glyphosate resistant wheat was found growing on a farm in Oregon. Monsanto had tested this wheat at 16 sites in Oregon between 1998 and 2005 but the project was discontinued and the product was never made commercially available.¹⁵ In response to the discovery, key export markets began to restrict American wheat imports or impose stricter testing regimens on shipments.¹⁶ Four lawsuits were initially filed in Idaho, Kansas and Washington including one from advocacy group The Center for Food Safety. Announcing the suit, their Executive Director stated:

Monsanto has put our farmer's wheat export market at grave risk. Billions of dollars, and our food supply, is at risk because of Monsanto's negligence. They must be held accountable.¹⁷

The lawsuits were consolidated into a multi-district litigation in October 2013 but before they could proceed to trial Monsanto announced that a settlement had been reached in November 2014. Monsanto agreed to pay US \$250,000 to promote wheat research, and US \$2.125M to compensate farmers who grew soft when in Washington, Oregon and Idaho between May 30 and November 30 2013:

¹³ See Carter et al, *supra*, note 9 at 191 & 193.

¹⁴ *Ibid.* at 194.

¹⁵ Pollack, A., 2013. Modified Wheat is Discovered in Oregon. New York Times, New York at B-6.

¹⁶ Bucner, A., 2013. Monsanto GMO Wheat Class Action Lawsuits Grouped in MDL (Multi-district litigation). Available at <http://www.topclassactions.com>

¹⁷ Comments of Andrew Kimbrell. See, Center for Food Safety, 2013. Class Action Lawsuit Filed Against Monsanto. Available at <http://www.centerforfoodsafety.org/press-releases/2284>

Rather than paying the costs of protracted litigation, this agreement puts that money to work in research and development efforts for the wheat industry, while providing a negotiated level of compensation for farmers. Resolution in this manner is reasonable and in the best interest of all the parties.¹⁸

2.4. Class Action Litigation Over Syngenta's Viptera Product Line

US regulators approved Agrisure Viptera for sale in 2010 and the product was commercially launched in August 2010 in advance of the 2011 planting season.¹⁹ In addition to domestic approval, Syngenta also received import approval from Canada, Japan, Australia, Brazil, Mexico, New Zealand, South Korea, Russia and Taiwan. Significantly, import approval was also sought from China but had not been achieved by product launch.

In October 2014, four specialist class action law firms began an action against Syngenta for damage caused to U.S. corn farmers by China's rejection of shipments containing traces of Viptera corn. The suit seeks damages of approaching \$1bn and has so far enlisted over 300 farmers.²⁰ Potentially affected corn farmers are encouraged to join the litigation at a website established by the law firms that clearly outlines the arguments that will be pursued:

If you've arrived here, you are probably a corn farmer feeling the financial impact of Syngenta's bioengineered corn. A recently filed class action lawsuit alleges that Switzerland-based Syngenta knowingly marketed two genetically modified strains of corn - Agrisure Viptera and Agrisure Duracade – that are illegal in China. When China detected a genetic trait found in Viptera (MIR162), they stopped accepting shipments. That caused the price of corn to plummet. That affects you, your farm and your family.²¹

Syngenta has stated that it will vigorously defend its actions:

We developed a superior product that helps farmers; we applied for and received government approvals from the U.S. and major export markets at the time; and we submitted an import application to the Chinese government that was timely, accurate and complete. Syngenta believes the lawsuits are without merit and strongly upholds the right of growers to have access to approved new technologies that can increase both their productivity and crop yields. The issues involved in these cases are extremely important and affect every American farmer's right to benefit from new technologies that help grow better crops. When a U.S.-approved product like Agrisure Viptera (event

¹⁸ Comments of Kyle McClain, Chief Litigation Counsel for Monsanto. See <http://news.monsanto.com> for Wednesday November 12, 2014.

¹⁹ Syngenta's Agrisure product line contains the MIR162 insecticidal trait. This trait provides protection against the "multi-pest complex" which Syngenta asserts costs US farmers over \$1bn per annum in lost yield and grain quality.

²⁰ See www.syngentacornlitigation.com

²¹ *Ibid.*

MIR162) is kept out of a market for political and economic reasons, farmers — and consumers — lose.²²

In addition to these class action lawsuits, Syngenta's Viptera product line, and its effect on corn exports to China, was the subject of litigation between Syngenta and Bunge Ltd²³, and Syngenta and Cargill.²⁴

3. The Merits of Class Action Lawsuits?

While forms of "group litigation" can be traced as far back as 13th Century England, the modern manifestation of the class action lawsuit can be found in Rule 23 of the American Federal Rules of Civil Procedure. More specifically they can be traced to the 1966 amendments to Rule 23 when:

Opt-out class actions became the standard, and this revision of the FRCP is considered the direct predecessor of modern class-action law. This law became increasingly important in the U.S. in the 1960s and 1970s when it was used by leaders of the civil rights movement, environmentalists and consumer advocates.²⁵

Class-action lawsuits are arguably the most unpopular and oft-criticised form of litigation. They are also a polarizing phenomenon:

Class action adherents would have us believe it is a panacea for a myriad of social ills, which deters unlawful conduct and compensates those injured by it. Catch phrases such as "therapeutic" or "prophylactic" and "taking care of the smaller guy" are frequently

²² See Bennett, D. 2015. GMO corn trait class action suits consolidated. Delta Free Press, Kansas City, Feb 18, 2015. In September 2015, a Federal Judge refused Syngenta's motion to dismiss the action and the suit will now go to trial. It is noteworthy that the plaintiff's lawyers are the same lawyers that negotiated the \$750M US LibertyLink settlement. See: <http://www.prnewswire.com/news-releases/ruling-means-syngenta-corn-multidistrict-litigation-may-proceed-forward-towards-trial-300147081.html>

²³ Syngenta had sued Bunge for refusing to accept deliveries of Viptera Corn into its warehouse facilities. The case was settled out of court in late 2014. The terms of the settlement were not disclosed. See *Syngenta Seeds Inc. v. Bunge North America*, U.S. District Court, Northern District of Iowa, No. 11-cv-04074

²⁴ On September 12, 2014 Cargill commenced legal action against Syngenta alleging that it has lost over \$90M because Syngenta began selling Viptera corn prior to obtaining Chinese export approval. Cargill alleges that Syngenta's decision led to widespread infiltration of MIR 162 into the US corn supply and that any shipment of corn to China would be likely to contain traces of Viptera:

"Cargill is a supporter of innovation and the development of new GMO seed products. But we take exception to Syngenta's actions in launching the sale of new products like MIR 162 before obtaining import approval in key export markets for U.S. crops. Syngenta's actions are inconsistent with industry standards and the conduct of other biotechnology seed companies."

See: Pearson, D. 2014. *Cargill v. Syngenta: Biotechnology and Trade*. Cato Institute, October 1, 2014. Available online at: <http://www.cato.org/blog/cargill-v-syngenta-biotechnology-trade>

²⁵ See, A History of Class Action Lawsuits. Class Action Law Center. Available at : <http://classactionlawsuitcenter.com/history-of-class-action-lawsuits/>

trumpeted. Its opponents have rallied around characterizations of the procedure as a form of “legalized blackmail” or a “Frankenstein Monster.”²⁶

Despite such criticism, there is nothing inherently or philosophically wrong with class action lawsuits. Hensler and Rowe note:

We begin with the premise that private class actions for money damages can yield significant social benefits. Class actions for damages can provide compensation for modest but non-trivial losses suffered by widely dispersed but similarly positioned persons as a result of the negligence or illegal behavior of others, allowing recovery for losses that cannot practically be achieved through individual litigation. In this way, damage class actions can...supplement regulatory enforcement by administrative agencies that are underfunded, susceptible to capture by the subjects of their regulation, or politically constrained. Damage class actions also may provide efficient management and resolution of large numbers of similar claims when individual litigation is feasible, but its costs would be extraordinarily high.²⁷

However, they caution that:

Despite these benefits, however, the financial incentives that fuel private class action litigation have the potential to undermine these goals. Private litigation that duplicates effective regulatory enforcement may impose additional costs without commensurate benefits. Non-meritorious class actions filed by lawyers who expect defendants to be willing to pay something simply to ensure that the class counsel will “go away,” as well as class action settlements that bear little relation to the merits of the claims, dilute the deterrent effect of class action litigation.²⁸

What is apparent is that while class actions and associated forms of mass tort litigation can serve legitimate purposes, they are also prone to abuse. What is also clear is that the subject areas which they embrace have expanded over time. The traditional realm of such litigation was product liability and personal injury damage claims. However, Hensler notes the rise of “the new social policy torts: suits against tobacco and gun manufacturers and against managed care organisations (HMO’s).”²⁹

What are we to glean from this? Firstly, class-action law suits and similar forms of litigation have always had social policy reform as part of their *raison d’etre*. This may be news to some, but it shouldn’t be:

²⁶ Miller, A.R., 1979. Of Frankenstein Monsters and Shining Knights: Myth, Reality, and the “Class Action Problem.” Harv. L. Rev, 92, 664-694 at 665.

²⁷ Hensler D, H., Rowe, T, D. 2001. Beyond “It Just Ain’t Worth It”: Alternative Strategies for Damage Class Action Reform. 64, Law and Contemporary Problems 137-161 at 137.

²⁸ *Ibid.*

²⁹ Hensler, D.R., Revisiting the Monster: New Myths and Realities of Class Action and Other Large Scale Litigation. 2001. 11, Duke J. Comp & Int’l L. 179-213 at 180.

Interestingly, few of the journalists covering this [new social policy] litigation and few of the political commentators seem to know that there is a long history of using class actions as a tool for social policy change.³⁰

In regards to the new social policy tort actions Hensler notes:

Public officials and private attorneys are collaborating on this litigation, which also has the support of advocacy groups such as public health organisations, gun control advocates and consumer health care advocates. Indeed, these lawsuits bear more resemblance to the “social impact” litigation that some 1966 Civil Rules Advisory Committee members said they wanted to facilitate than do the consumer class actions and mass tort class actions³¹

Given their history, and their progressive development, it should come as no surprise that class-action lawsuits form part of the legal landscape surrounding the introduction of GM crops.

Secondly, given the increasingly lucrative nature of some class action lawsuits, and the predatory practices of some attorneys, it should come as no surprise that class action law suits pertaining to GM crops are becoming more common and more expensive. Returning to McLeod’s analysis, if GM crops are “the next asbestos,”³² then we can only expect an ever increasing flood of litigation (and litigators) chasing after the billions.

Research³³ has begun to emerge to support the assertions of those who believe that many class actions are increasingly non-meritorious and may be of little or no ultimate benefit to the class of plaintiffs who are ostensibly at the heart of the litigation:

The hard evidence shows that class actions do not provide class members with benefits anything close to the benefits claimed by their proponents, although they can (and do) enrich attorneys.³⁴

While the survey sample was small, largely due to the prevalence of confidentiality agreements surrounding agreed settlements, one notable finding of the research was that in over 80% of the lawsuits studied the percentage of class members receiving settlement funds ranged between 0.000006% and 12%.³⁵

Other research into the realities of class-action settlements also indicates other significant problems. The RAND Institute for Civil Justice has conducted several empirical studies on class actions producing similar results to those found in the Mayer Brown work. In particular, research has highlighted the disproportionately high payouts to attorneys when compared to

³⁰ *Ibid.*

³¹ *Id.*

³² *Supra*, note 3.

³³ Mayer Brown LLP. 2013. Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions. Available at <https://www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf>

³⁴ *Ibid.*

³⁵ *Ibid.*, at 2

payouts to actual class members.³⁶ For example, one study³⁷ found that in insurance class actions attorney's fees amounted to 47% of the total class-action payout.

4. Anti-GM Litigation and Class Actions outside the United States

While the class action lawsuit appears to be the vehicle of choice for attorneys and plaintiffs in the United States, the courts in several other jurisdictions appear unwilling to entertain such litigation. In the Canadian case of *Hoffman v Monsanto Inc*,³⁸ a group of organic canola farmers were seeking certification to bring a class action against Monsanto and Aventis for alleged GM contamination of their canola crop and the resulting financial losses. The Saskatchewan Court of Appeal refused to certify the class alleging both procedural difficulties with the class as described and, more tellingly, found that the plaintiffs had no recognised cause of action in tort law or under applicable legislation.

A similar conclusion was reached in the Australian case of *Marsh v Baxter*.³⁹ Marsh was an organic canola farmer and alleged that he lost his organic certification due to GM contamination caused by GM canola grown on Baxter's adjacent property. As with *Hoffman*, both the Western Australia Supreme Court and Court of Appeal found that Marsh had no established action in tort law with regards to alleged GM contamination from a neighbouring farm. Indeed, both courts went so far as to assert that Marsh's decision to seek organic certification may have actually made him less likely to succeed in any action as certification left him as an "abnormally sensitive" plaintiff. The comments of the Western Australian Appeal Court could not be clearer:

The fact that the appellants chose, for their own, presumably commercial reasons, to conduct their farming operations subject to contractual conditions of that kind [certified organic] , did not mean that the lawful use by neighbouring landowners of their own land in a way which affected the appellant's ability to comply with those conditions, constituted a wrongful interference with the appellants' use or enjoyment of their land. That is, the appellants could not, by putting their land to an abnormally sensitive use, thereby 'unilaterally enlarge their own rights' and impose limitations on the operations of their neighbours to an extent greater than would otherwise be the case.⁴⁰

A deconstruction of this analysis is not the purpose of this paper but suffice to say, the fact that legal systems in two jurisdictions that have significant potential coexistence issues have refused to provide any cause of action to plaintiffs in these circumstances is troubling. Coexistence is a "real" problem that requires creative legal solutions. Denying certification as a class (*Hoffman*) or actually suggesting that running a certified organic farm may actually make legal redress

³⁶ See the examples in Hensler, D.M., 1999. Class Action Dilemmas: Pursuing Public Goals for Private Gain. Rand Institute for Civil Justice.

³⁷ Pace, N.M., 2007. Insurance Class Actions in the United States. Rand Institute for Civil Justice.

³⁸ *Supra*, note 1.

³⁹ *Supra*, note 2.

⁴⁰ Comments of Justices Newness' & Murphy in *Marsh v Baxter*, *ibid* at paragraph 785.

even less likely (*Marsh*) does nothing to assist in the search for solutions to the problem of genuine agricultural coexistence.

Analysis and Conclusions

The foregoing analysis has illustrated the centrality of class-action lawsuits to debates over GM crops, alleged contamination and coexistence. Indeed, it can be argued that they are the main form of legal and regulatory tool currently operating in this arena in the United States. As such, the United States, and these class-actions, represent the front-line in a form of legal trench-warfare between opponents and proponents of GM crops. Given the fate of anti-GM lawsuits in Canada and Australia described earlier, it appears that the class action lawsuits in the United States are likely to remain the only front for some time. The research highlighted above demonstrates that this represents a genuine stalemate. Lawyers get paid, and class members may get some form of payout, but the key issues raised are not settled. None of the lawsuits highlighted above have resulted in a significant change in the coexistence debate, or can even be said to have made any demonstrable progress. The behaviours of key stakeholders have not changed. The fact patterns are remarkably similar, the payouts get larger and larger, but the macro issues are no closer to resolution. Indeed, some of the litigation highlighted above represents the worst of class-action lawsuits in that settlements were paid out to avoid simply further legal expense. Social policy reform this is not.

This is not to say that class action lawsuits over this issue should not be initiated. They are still a legitimate form of legal action in certain circumstances. However, they should not be the primary method by which coexistence is regulated. To be sure, they are part of the legal toolbox but they should not be the predominant tool. Class action litigation can be an effective supplement to regulatory enforcement⁴¹ but in the absence of actual regulations to supplement they become an overly blunt, and often mischievous, regulatory instrument.

So, in the absence of significant action on the part of government and regulators with regards to coexistence, what should be done? In short, all but the most important class actions must be avoided by better regulatory practices and oversight at the testing and approvals phases, and by improved product stewardship at the industry level. In other words, if more expensive, frivolous and unmeritorious claims are to be avoided then regulators and industry must do their utmost to avoid occurrences that give rise to these lawsuits in the first place. All of the litigation described above could have been prevented. Two of the cases discussed are particularly illustrative. The decision to allow StarLink to be approved for animal feed but not for human consumption is now seen as a key regulatory error. Carter's comments are clear:

The StarLink split license was flawed regulation from the beginning and was discontinued by the EPA.⁴²

⁴¹ See again the comments of Hensler, *supra*, note 29.

⁴² Carter, *supra*, note 9 at 186.

His comments with regard to the role of US government agencies in the Liberty Link litigation are even more damning:

The US government under-estimated the additional costs that farmers would incur in cases of accidental contamination. [They] demonstrated their ignorance when it established rules for the management of confined field trials, which resulted in a lack of comprehensive oversight, ultimately causing the accidental contamination. After investigating, the US government decided to take no action against Bayer CropScience, the company that had developed and field tested LibertyLink Rice, even though the accident caused farm losses of possibly over US \$1BN.⁴³

However, it is not simply regulators that must improve their performance and embrace change:

There is a strong reluctance to change. Biotechnology companies have developed guidelines around the issue of possible unintended movements but companies may not apply them consistently. Several grain associations have tried to adopt stewardship programs designed to manage market risks, but they have not all been successful⁴⁴

Conclusion

The class-action lawsuit is now a regular feature in the debates surrounding coexistence. They are time-consuming, expensive and do little or nothing to develop solutions to persistent coexistence problems. While lawsuits of this nature can have legitimate social and regulatory functions, many in the coexistence arena display the attributes of some of the more questionable forms of mass-tort litigation. It is imperative that both regulators, and industry, do more to prevent occurrences that give rise to these disputes. While some may argue that this is exactly the deterrent effect that class-actions and associated forms of litigation are supposed to elicit, at the present point in time they dominate the landscape and act as an expensive and time consuming distraction. Serious effort is required to ensure that do not become the norm and are viewed simply as a cost of doing business. In the absence of meaningful efforts to limit the influence and impact of class action lawsuits, GM crops may (in dollar terms at least) become "the next asbestos" by default.

⁴³ *Ibid*, at 197.

⁴⁴ *Ibid* at 207.