

Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

Corn Farmers Face March 21 Deadline To “Opt Out” of Proposed StarLink Class Action Lawsuit

Market Report	Yr Ago	4 Wks Ago	3/7/03
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$73.07	\$80.03	\$76.72
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	90.67	82.79	80.92
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	95.85	88.84	88.39
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	112.41	121.07	118.37
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	*	31.50	35.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	101.92	96.54	94.07
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	*	91.25	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	141.72	165.52	180.60
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	2.94	3.79	3.61
Corn, No. 2, Yellow Omaha, bu	1.87	2.33	2.32
Soybeans, No. 1, Yellow Omaha, bu	4.37	5.48	5.54
Grain Sorghum, No. 2, Yellow Kansas City, cwt	3.61	4.55	4.38
Oats, No. 2, Heavy Minneapolis, MN, bu	2.44	2.27	2.10
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	60.00	150.00	150.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	65.00	80.00	77.50
Prairie, Sm. Square, Good Northeast Nebraska, ton	92.50	115.00	115.00
* No market.			

This article is taken from a longer article by D.L. Uchtmann, University of Illinois Professor of Agricultural Law discussing the proposed StarLink litigation settlement. The text of the entire StarLink article is available at www.farmdoc.uiuc.edu/legal/pdfs/DeadlineStarLink. If you have questions about the StarLink settlement, Professor Uchtmann's article is a good starting point. Additional questions should be referred to your attorney.

In late February 2003, corn growers began receiving notices of a possible settlement of StarLink related class action lawsuits. Some farmers ignored the notice because they did not plant StarLink seed. *However, these non-StarLink growers are the very people who have a stake in the proposed settlement.* The notices advised farmers of a proposed \$110 million settlement and identified legal deadlines faced by participating corn growers. The first deadline is **March 21, 2003**, the date by which farmers must notify the court that they **do not** wish to be part of the proposed settlement (the settlement “opt out” deadline). Other key dates are **April 7** (court hearing in Chicago regarding fairness of proposed settlement), **May 31** (filing deadlines for most claims) and **July 31** (filing deadline for other claims).

In simple terms, farmers would return the settlement exclusion form by the March 21 deadline only if they wished **not** to participate in the StarLink settlement. Farmers who wished not to participate in the settlement would include farmers who intended to sue the StarLink manufacturer directly. If you harvested corn for grain between 1998-2002 and don't opt out, you **will be** part of the settlement, and would probably receive between \$1-\$2 for each of your 2000 harvested corn acres. For most farmers this would be the preferred alternative.

The purpose of this article is educational. It is not a



substitute for studying the information contained in the settlement notice itself. A copy of the notice is available at the StarLink settlement website:

www.non-starlinkfarmerssettlement.com

Background. StarLink was a type of genetically modified, bio-engineered corn developed by Aventis Crop Science USA (now known as StarLink Logistics, Inc. or “SLLI”). StarLink was genetically altered to contain an insecticidal protein, known as Cry9C, that enabled it to resist various corn pests such as European corn borer. StarLink was sold in the U.S. between May 1998 and October 2000. StarLink corn was approved for feed use, but not for human consumption or for export. However, StarLink became mixed with other corn destined for food use and export. StarLink was voluntarily withdrawn from the market in October 2000.

In response to the discovery of StarLink in food and export channels, Aventis (1) located the remaining StarLink corn, and (2) paid damages (i) to StarLink growers, (ii) to non-StarLink corn growers whose crops were contaminated by Cry9C, and (iii) to elevators handling corn mixed with StarLink corn.

The StarLink incident arguably damaged the reputation of the U.S. as a supplier of quality corn for export and may have depressed U.S. corn prices. SLLI was sued by several non-StarLink corn growers; most of these class action lawsuits were consolidated and transferred to the U.S. District Court for the Northern District of Illinois (Eastern District) in Chicago. The proposed \$110 million settlement would resolve these lawsuits.

March 21 Opt Out Deadline. The proposed StarLink settlement class includes farmers and others with a financial interest in non-StarLink corn harvested between 1998-2002. You may be included in the StarLink settlement class if one of the following describes you:

1. You operated a farm from which non-StarLink corn was harvested in 1998, 1999, 2000, 2001 or 2002, whether or not your crops or corn stores suffered actual Cry9C contamination; or

2. You operated a farm from which non-StarLink corn was harvested at any time since 1998 and suffered actual Cry9C contamination of your crops or corn stores.

If you are in either category, you have until **March 21, 2003** to **remove** yourself from the settlement class by sending the required letter postmarked no later than March 21, 2003. If you **do** remove yourself, you **will not** participate in the StarLink \$110 million settlement, but you will be able to initiate your own StarLink lawsuit. If you do nothing, i.e., if you **do not** remove yourself from the settlement class by March 21, you **will** be eligible to participate in the \$110 million settlement and you do release any legal claims

arising from the StarLink incident.

Professor Uchtmann estimates that farmers who **do not** remove themselves from the StarLink settlement class are likely to receive between \$1-\$2 (one to two dollars) per 2000 corn acre. Participating growers with no 2000 corn acres will be compensated for 10 percent of their corn acres harvested from 1991-2002.

What happens if a person remains in the StarLink settlement class? If the person submits a proper claim for corn loss, and if the settlement is approved by the Federal Judge, this person will receive about \$1-\$2 per acre for the farmer’s year 2000 non-StarLink corn acres harvested for grain. The cost of receiving this payment is relatively low: essentially, it involves properly completing and submitting the Proof of Claim form; agreeing to release the defendants from further StarLink-related liability; and authorizing the claims administrator to obtain any documents regarding the farmer’s corn crop from the USDA, the Farm Service Agency, and the farmer’s insurance carrier or any other relevant entity (in case a farmer’s claim is investigated).

One producer question posed to me is whether a farmer who does not opt out and remains in the settlement pool could be responsible for any litigation costs. The answer is no: the litigation is on the verge of being settled and paying all litigation costs will be part of the settlement. So a grower should not opt out of the settlement simply to avoid potential legal costs associated with the lawsuit.

For more information, read the complete text of Professor Uchtmann’s paper. If you have additional questions, contact your attorney.

J. David Aiken, (402) 472-1848
Professor (Water & Agricultural Law Specialist)
daiken@unl.edu