

Crystal Sugar CEO Contests Subpoena in Sweetener Lawsuit

DAVE KOLPACK, Associated Press

FARGO, N.D. (AP) — Lawyers for the corn syrup industry said Wednesday that American Crystal Sugar Co. CEO David Berg would be a good witness in a federal lawsuit filed by refined sugar manufacturers because his company isn't directly involved in the case and he can be more forthcoming than other industry executives.

Berg, head of the largest sugar beet processor in the country, is contesting a subpoena to testify in the case, in which the sugar makers are suing over the corn syrup industry's marketing claim that sugar and high-fructose corn syrup are nutritionally the same.

American Crystal, which is based in Moorhead, Minnesota, and has plants in three states, declined to participate in the lawsuit, which was filed in California in 2011. Berg's lawyer, David Bunde, said the company was worried about the time and money that would be spent in litigation and preferred the issue be debated with the U.S. Food and Drug Administration.

Bunde said Berg has no information relevant to the lawsuit and other officials are better qualified to testify.

Cornelius Murphy, the lawyer for the corn syrup group, replied that his team has exhausted its attempts to get information from plaintiffs, a couple of whom gave hundreds of "I don't recall" responses during depositions. Berg would have less bias than other sugar executives because he is a "bystander" in the case, Murphy said.

Murphy said his legal team is allowed 10 individual depositions and would not have wasted one on Berg if it didn't think he had important information.

"This is not a fishing expedition," Murphy said.

The case, Murphy said, is a "major complex legal matter in which the plaintiffs are seeking hundreds of millions in damages."

The corn syrup backers are especially interested in an ad-hoc committee formed in 2008 by the Sugar Association and chaired by Berg to oppose syrup producers' efforts to have their product labeled "corn sugar." Bunde said the group discussed strategy and tactics to fight the relabeling campaign, but nothing technical that would apply to the lawsuit.

"We have the right to examine Berg and others about the work of that committee," Murphy said.

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Court documents filed earlier included an internal email from Berg about trying to delay or stop a petition submitted by corn refiners asking the FDA to approve the "corn sugar" designation.

"We can oppose them with blunt force, or with degrees of finesse, but we have to oppose them," Berg wrote. "And there will be a fight when we do."

Murphy said Berg also would be asked about the campaign for Pepsi Throwback, an all-sugar version of the soft drink that was introduced on a limited basis in 2009. American Crystal was the leading supplier of sugar for that product, Murphy said.

Sugar, Bunde countered, is a highly-regulated industry and the information the corn syrup people want can be found through open records requests rather than a "seven-hour deposition" of someone who is "busy with other things to do."

Murphy said the interview of Berg would take no more than four to five hours and his team would be flexible on a location.

U.S. District Judge Ralph Erickson said he would rule by next week.

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