

## ALERTS

### Food, Drug & Device Law Alert - FDA Declines Courts' Requests To Define "Natural" With Respect To GMO Foods

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The FDA recently issued a letter to three federal district court judges declining the courts' requests to adopt a definition of "natural" or to state whether the terms "natural" or "all natural" can be used to refer to foods containing genetically-modified organisms (GMOs) to help resolve pending consumer class actions over the term. The FDA cited three reasons for its decision not to define the term(s): (1) it would prefer to use a public, administrative process than to define the term in the context of private litigation; (2) the definition implicates other agencies, most notably, the USDA; and, (3) the FDA has limited resources and other matters currently take priority.

As noted in our August 2013 Alert on the issue, Judge Yvonne Gonzalez Rogers of the Northern District of California started the trend in *Cox v. Gruma Corp.*, a case in which the plaintiff alleges that Gruma's use of "all natural" on its tortilla shells violates various consumer protection laws because they contain genetically-modified corn. In *Van Atta v. General Mills*, pending in Colorado and involving GMOs in granola products, a magistrate judge agreed with Judge Rogers and recommended a stay of proceedings in the case pending the FDA's response to Judge Rogers's request. Most recently, in *Barnes v. Campbell Soup Co.*, also pending in the Northern District of California and involving GMOs in various soups, a different judge also stayed the case pending the FDA's response.

These cases are potentially quite important because there are many pending consumer class actions, particularly in California, over whether the use of some variant of the term "all natural" is proper in light of one or more ingredients in the food at issue. Indeed, some quip that food labeling litigation has replaced tobacco and asbestos as the favorite category of suit for the plaintiffs' bar. Thus, the FDA's response to the request by these courts, and the courts' further actions based on the response, could resolve or guide the resolution of many of these cases.

In a related development, the Grocery Manufacturers' Association has recently filed a citizen's petition asking FDA to state that GMO foods may be labeled "natural." The FDA alluded to the possible filing of this petition in its letter, but did not state whether it is willing to take up the issue using that procedure, which does allow for public comment.

A copy of the FDA's letter can be [found here](#).

A copy of our prior Alert can be [found here](#).

For more information, contact the Barnes & Thornburg attorney with whom you work or one of the following attorneys:

**Food, Drug & Device:** Lynn Tyler at (317) 231-7392 or

## RELATED PEOPLE



**Lynn C. Tyler, M.S.**

Partner  
Indianapolis

P 317-231-7392  
F 317-231-7433  
[lynn.tyler@btlaw.com](mailto:lynn.tyler@btlaw.com)



**Joan L. Long**

Of Counsel (Retired)

P 312-214-4576  
[joan.long@btlaw.com](mailto:joan.long@btlaw.com)

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[lynn.tyler@btlaw.com](mailto:lynn.tyler@btlaw.com); or Hae Park-Suk at (202) 408-6919 or [hae.park.suk@btlaw.com](mailto:hae.park.suk@btlaw.com).

**Advertising and Marketing:** Joan Long at (312) 214-4576 or [joan.long@btlaw.com](mailto:joan.long@btlaw.com); or Olivia Fleming at (317) 231-6444 or [olivia.fleming@btlaw.com](mailto:olivia.fleming@btlaw.com).

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