

## Glycine Exporter Can't Dodge \$11M Smuggling Scheme Claim

By Tiffany Hu

*Law360 (August 13, 2018, 4:06 PM EDT)* -- A California federal judge struck down a food additive exporter's attempt to throw out claims saying it had smuggled glycine into the U.S. from China without paying more than \$11 million in required duties, calling the exporter's use of the Fifth Amendment "both a sword and shield."

U.S. District Judge Michael W. Fitzgerald on Friday denied UniChem Enterprises Inc.'s motion for summary judgment after it attempted to argue that relator David Ji had produced "no admissible evidence" in support of his claims that UniChem's president had worked with his father's company in China to smuggle the glycine imports into the U.S. before selling them at below-market prices.

Although the exporter had frequently invoked the Fifth Amendment in response to Ji's discovery requests, making it difficult to obtain "answers to highly relevant questions" or any relevant documents, Ji had presented enough evidence to show that UniChem sold Chinese glycine in the U.S., Judge Fitzgerald found.

"Defendants attempt to use their invocation of the Fifth Amendment as both a sword and shield, by refusing to participate in discovery, and then moving for summary judgment based on plaintiff's lack of evidence," the judge said. "Plaintiff has come forward with enough circumstantial evidence to demonstrate that, at the very least, defendants' motion is premature."

Ji, who filed the suit as a relator, or whistleblower, for the government, alleged in September 2014 that UniChem President ChenTao Hang and his father conspired to smuggle "literally tons" of glycine from China to the U.S. from 2009 to 2014 without paying duties.

During that period, imports of Chinese glycine were subject to an anti-dumping rate of more than 155 percent between 1995 to March 2011 and more than 453 percent after March 2011, according to the complaint. By allegedly mislabeling the glycine imports and describing them as glucosamine in the customs documents, UniChem avoided paying more than \$11 million in anti-dumping duties, Ji said.

But when Ji attempted to obtain relevant documents from UniChem, including in regard to sales of glycine and glucosamine, as well as various communications with importers and exporters, UniChem failed to produce any records from 2009 to 2004 and blamed computer server failures for its inability to do so, according to the filing.

Lawyers for Hang said he would invoke his Fifth Amendment rights regarding "anything that's relevant to this case." As a result, Hang purportedly refused to answer deposition questions relating to ownership of UniChem, identification of other employees and shareholders and sources of UniChem's products, among several other questions, the judge said.

"Defendants claim that plaintiff has come forward with no admissible evidence in support of either claim for relief," Judge Fitzgerald said. "The problem with defendants' argument is that plaintiff's dearth of evidence is largely the result of defendants' own conduct."

The judge also rejected UniChem's contentions against Ji's expert witness, finding the witness' opinions on Ji's methodology for analyzing import and export data "reliable and regularly used" at the summary judgment stage. Because there was "ample circumstantial evidence" supporting Ji's arguments, the judge found that an adverse inference regarding UniChem's Fifth Amendment invocations was appropriate.

Counsel for the parties did not immediately respond to requests for comment on Monday.

Ji is represented by Michael S. Magnuson of Michael S. Magnuson Law Offices.

The government is represented by Abraham C. Meltzer of the U.S. Department of Justice.

UniChem is represented Paul D. Murphy and Taylor T. Steele of Murphy Rosen LLP, Jason L. Liang, John K. Ly and Rachel T. Gezerseh of Liang Ly LLP and Travis J. Tom of Chang and Cote LLP.

The case is United States of America et al. v. Pacific Chemical International Inc. et al., case number 2:14-cv-07203, in the U.S. District Court for the Central District of California.

--Editing by Stephen Berg.