

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

APR 10 2020

JAMES W. McCORMACK, CLERK
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PLAINTIFFS

**DONNIE B. MITCHELL, Individually and as Representative of
D.B. MITCHELL FARMS, LLC;
D.B. MITCHELL FARMS, LLC**

vs.

Civil Case No. 2:20-cv-81-BSM

**MONSANTO COMPANY;
BASF SE; and
BASF CORPORATION**

DEFENDANTS

COMPLAINT

COMES NOW Plaintiffs, Donnie B. Mitchell, Individually and as Representative of D.B. Mitchell Farms, LLC; and D.B. Mitchell Farms, LLC, and for their first Complaint against the named Defendants herein, state as follows:

NATURE OF THE ACTION

This action is brought by farmers who have suffered damage as a result of the design, development, promotion, and sale of a genetically engineered trait conferring resistance to dicamba expressly for the purpose of spraying dicamba herbicide over the top of growing plants as part of a dicamba-based crop system. Defendants knew that dicamba, highly volatile and prone to drift, is ruinous to susceptible non-dicamba resistant plants and crops. Not only did Defendants release their dangerous system onto the market, creating high risk of harm, but everything they did and failed to do increased that risk, all but ensuring damage to non-dicamba resistant plants and crops. That damage in fact served Defendants' purpose of pressuring farmers to purchase dicamba-resistant seed out of self-protection. Defendants created and carried out a scheme of ecological disaster for their financial gain and to the detriment of the very persons they knew would be harmed.

This case assigned to District Judge Miller
and to Magistrate Judge Harris

PARTIES

Plaintiffs

1. Donnie B. Mitchell is a citizen of Mississippi who farms in Lee County, AR, and Tunica, MS. In 2017, Mr. Mitchell grew non-dicamba resistant cotton and soybeans in Arkansas and Mississippi damaged by dicamba. Mr. Mitchell lived in Lee County, Arkansas at the time of the loss in 2017.

2. D.B. Mitchell Farms, LLC is a limited liability company formed in Arkansas who farms in Lee County, AR, and Tunica, MS. In 2017, D.B. Mitchell Farms, LLC grew non-dicamba resistant cotton and soybeans in Arkansas damaged by dicamba.

Defendants

3. Monsanto Company (“Monsanto”) is a corporation organized and existing under the laws of the State of Delaware with its corporate headquarters and principal place of business in St. Louis County, Missouri.

4. Monsanto designs, develops, manufactures, licenses, and sells biotechnology, chemicals, and other agricultural products, including herbicides and seed genetically modified to produce crops resistant thereto. These include Roundup Ready 2 Xtend Soybean (“Xtend soybeans”), Bollgard II XtendFlex Cotton (“Xtend cotton”) and a herbicide known as XtendiMax with VaporGrip Technology® (“XtendiMax”).

5. Along with BASF SE and BASF Corporation, Monsanto developed, and also licenses and sells a genetically engineered trait in soybean and cotton seed, and seed containing that trait, for intended use with dicamba herbicide, marketed and sold in states including those alleged in this action.

6. BASF SE is a corporation organized and existing under the laws of Germany with its overall headquarters in Ludwigshafen, Germany. BASF SE describes itself as the largest chemical company in the world. In materials describing the company, BASF SE lists one of its “Country Headquarters” as BASF Corporation, 100 Park Avenue, Florham Park, NJ.

7. BASF Corporation is a company organized and existing under the laws of the State of Delaware, with corporate headquarters at 100 Park Avenue, Florham Park, New Jersey and/or research headquarters at 26 Davis Drive, Research Triangle Park, NC. BASF Corporation is the largest affiliate of BASF SE and the second largest producer and marketer of chemicals and related products in North America. It is a subsidiary and North American agent for BASF SE.

8. BASF Corporation is the entity whose name and address appears on labels of the the dicamba herbicide known as Engenia. Dr. Jeffrey Birk (BASF, 26 Davis Drive Research Triangle Park, NC), is listed as “registrant” on the EPA Notice of Pesticide Registration for Engenia (EPA Reg. No. 7969-345) dated December 20, 2016. On information and belief, Dr. Jeffrey Birk is a Regulatory Manager at BASF Corporation.

9. Chemical manufacturers and importers are required to develop a Safety Data Sheet for each hazardous chemical they produce. *See* 29 CFR 1910.1200(g). A Safety Data Sheet for Engenia dated January 16, 2017 identifies BASF SE (67056 Ludwigshafen, Germany), as the supplier of the safety data, with a “Contact address” of BASF Corporation, 100 Park Avenue, Florham Park, NJ 07932.

10. BASF SE is a global company that extensively integrates operational, managerial, and financial resources across entity lines. BASF SE and its group of entities operate by business segments or “divisions.” Employees have reporting relationships and carry on activities defined not by corporate relationships but by such business or operational segments. “Agricultural

Solutions” and/or “Crop Protection” is a business segment within and supported by this integrated organization. For example, entities within the BASF organization share operational systems and services including finance, legal, taxes, intellectual property, investor relations, communications and government relations, human resources, engineering and site management, environmental protection, and health and safety. BASF Website, “Organization of the BASF Group,” <https://www.basf.com/en/company/about-us/strategy-and-organization/structure.html>.

11. “Within BASF Group, BASF SE takes a central position: Directly or indirectly, it holds the shares in the companies belonging to the BASF Group, and is also the largest operating company.” BASF SE Webpage, “About Us,” <https://www.basf.com/de/en/company/about-us/strategy-and-organization.html>. The BASF SE Board of Executive Directors is responsible for overall management of the company, and BASF SE exercises authority and control over BASF Corporation and its operations. BASF SE and BASF Corporation share one or more officers and/or directors. On information and belief, at least two of the three current BASF Corporation directors are current or former director of BASF SE. BASF Corporation does not function independently but under the BASF umbrella where the BASF group operates a unitary business.

12. BASF SE coordinates crop protection activities from the BASF Agricultural Center in Limburgerhof, Germany. *See* BASF Brochure (BASF SE/Global Communications Crop Protection, 2016), <https://industries.basf.com/assets/global/corp/en/Agriculture/Crop%20Protection/Brochure%20Crop%20Protection%20Englisch.pdf>.

13. BASF SE and BASF Corporation regularly refer to themselves as “BASF” with no further description, and unless otherwise indicated, are herein referred to collectively as “BASF”.

14. As more fully described herein, Monsanto and BASF have since at least 2007 entered into one or more agreements in order to, and did, engage in a partnership, joint venture,

joint enterprise, or similar relationship to develop technologies for a dicamba-based crop system, respecting which they jointly fund projects and share risks and profits. They jointly developed the dicamba-resistant trait, as well as dicamba formulations for application over the top of crops grown from that trait, entered into reciprocal licensing arrangements, engaged in joint field testing, jointly developed stewardship guidelines, and otherwise acted at all relevant times together in designing, developing, marketing, manufacturing, licensing and sale of the dicamba-based crop system. On information and belief, a substantial portion of these activities occurred in this district.

15. Among other things, BASF provided Monsanto with the dicamba formulation that became XtendiMax. BASF markets and sells its own dicamba herbicide Engenia specifically for use with seed containing the dicamba-resistant trait.

16. At all relevant times, Monsanto and BASF acted together and in concert as joint-venturers, joint enterprises, partners and co-conspirators who shared financial risks and benefits, proprietary dicamba formulations and bioengineered crop traits, collaborated in and jointly conducted field testing, marketing, promotion, training, and other shared activities all with the common interest and purpose of creating ever more demand for seed with the dicamba-resistant trait and further use of dicamba, each acting in its own right and as agent for the other.

JURISDICTION AND VENUE

17. This Court has jurisdiction over the subject matter of this lawsuit pursuant to U.S.C. § 1332(d) because there is complete diversity of parties. Plaintiffs individually also seek more than \$75,000 for damages, punitive damages and also injunctive relief.

18. Plaintiffs are residents and citizens of Arkansas and Mississippi who have property affected by Defendants' conduct and represent similarly situated injured persons and entities from various state injured by Defendants uniform corporate conduct and partnership in the release of an

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