

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

Triple Eaton Farms, LLC, a
Mississippi limited liability
company,

Plaintiff,

vs.

Monsanto Company, BASF SE, and
BASF Corporation,

Defendants.

Case No. 2:20-cv-101-KS-MTP

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Triple Eaton Farms, LLC brings these claims against defendants Monsanto Company, BASF SE, and BASF Corporation, and states as follows:

NATURE OF THE ACTION

Plaintiff suffered damages 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.

PARTIES

Plaintiff

1. Triple Eaton Farms, LLC is a limited liability company registered to do business in Mississippi. Plaintiff's sole member is Arthur Eaton, a citizen of Mississippi. In 2017, Plaintiff farmed a variety of fruits and vegetables, including tomatoes and watermelon, in Jefferson Davis County, Mississippi that were damaged by dicamba. In

2018, Plaintiff farmed peppers in Jefferson Davis County, Mississippi that were damaged by dicamba.

Defendants

2. 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.

3. 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”).

4. Monsanto 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 Mississippi.

5. 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, New Jersey.

6. 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, North

Carolina. 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.

7. BASF Corporation is the entity whose name and address appears on labels of the dicamba herbicide known as Engenia. Dr. Jeffrey Birk (BASF, 26 Davis Drive Research Triangle Park, North Carolina), 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.

8. 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, New Jersey 07932.

9. 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>.

10. “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.

11. 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>.

12. BASF Corporation is an agent through which business in North America is conducted. Jurisdictional contacts of BASF Corporation are attributable to BASF SE.

13. In addition, and on information and belief, BASF SE and BASF Corporation each has participated directly in the events alleged herein pertaining to the design, development, release, promotion, marketing, and sale of the dicamba-based crop system.

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