Nos. 20-3663, 20-3665

United States Court of Appeals
for the
Eighth Circuit

JOHN S. HAHN,
Special Master,
BADER FARMS, INC.,
Plaintiff-Appellee,
BILL BADER,
Plaintiff,
vs.
MONSANTO COMPANY,
Defendant-Appellant,
BASF CORPORATION,
Defendant-Appellant.

On Appeal from the Unites States District Court
for the Eastern District of Missouri, No. 1:16-cv-00299-SNLJ
The Honorable Stephen N. Limbaugh, Jr., District Judge

PLAINTIFF-APPELLEE BADER FARMS, INC.'S ANSWER BRIEF IN NOS. 20-3663, 20-3665

Billy R. Randles
Beverly T. Randles
Angela M. Splittgerber
RANDLES & SPLITTGERBER, LLP
5823 N. Cypress Ave.
Kansas City, Missouri 64119
Tel. (816) 744-4779

Tracey F. George
L. Benjamin Mook
DAVIS GEORGE MOOK LLC
1600 Genessee, Ste. 328
Kansas City, MO 64102
Tel. (816) 569-2629

Counsel for Plaintiff-Appellee Bader Farms, Inc.

Dated: May 5, 2021

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

SUMMARY OF THE CASE

Monsanto and BASF negligently commercialized their dicamba-tolerant ("Xtend") crop system knowing farmers would spray deadly, off-label dicamba in 2015-2016 and even "lower-volatility" dicamba would cause massive off-target injury in 2017-present. Defendants did so "with the expectation" this damage to farmers would help them sell more product. As a result, Bader Farms' peach orchards were (and are) pummeled each year with dicamba sprayed over Xtend crops, costing millions in lost profits and rendering the peach operations unsustainable.

After a three-week trial, Plaintiff submitted negligent design and failure to warn claims. The jury, correctly instructed with Missouri Approved Instructions, awarded Plaintiff $15 million in compensatory and $250 million in punitive damages and found Defendants acted in a joint venture and conspiracy. In an 88-page, post-trial order, the District Court rejected Defendants' arguments raised on appeal (reducing only punitive damages to $60 million).

Thirty minutes per side is adequate argument given the District Court's exhaustive analysis. Plaintiff requests equal time to Defendants' combined allotment because they appeal the same issues but divide responsibility for the arguments.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eighth Circuit Local Rule 26.1A, Plaintiff-Appellee Bader Farms, Inc. ("Bader Farms"), a non-governmental entity, states that Bader Farms has no parent company, no subsidiary that is not wholly owned, and no publicly held company owns 10 percent or more of its stock.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

TABLE OF CONTENTS

SUMMARY OF THE CASE ii

CORPORATE DISCLOSURE STATEMENT iii

TABLE OF CONTENTS iv

TABLE OF AUTHORTIES viii

STATEMENT OF THE CASE 1

1. **Dicamba.** 1
2. **Defendants Jointly Created A Dicamba-Tolerant System.** 1
3. **Defendants Ignored Warnings Against A Dicamba-Tolerant System.** 2
4. **Monsanto Concealed Dicamba Dangers.** 3
5. **Defendants Knew Farmers Would Spray Off-Label.** 4
6. **Defendants Adopted "Defensive Planting" Sales Strategies.** 5
7. **Monsanto Refused To Enforce Its Grower License To Prevent Off-Label Spraying.** 6
8. **Defendants Turned A Blind Eye, And A Dicamba Bomb Exploded.** 6
   a. Monsanto Ignored Off-Label Spraying And Damage Reports. 6
   b. Monsanto Denied Responsibility And Deflected Blame. 8
9. **Defendants' Completed System Improved Nothing, Defendants Blamed Farmers.** 9

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

10. Bader Farms' Orchards Are Unsustainable In A Sea Of Dicamba. 9

SUMMARY OF THE ARGUMENT 12

STANDARDS OF REVIEW 16

ARGUMENT 17

I. DEFENDANTS' NEGLIGENT COMMERCIALIZATION OF THEIR DICAMBA-TOLERANT SYSTEM CAUSED BADER FARMS INJURY. 17

A. Defendants Proximately Caused Bader Farms' Injury. 17

1. Third-Party Dicamba Misuse Was Foreseeable. 17

2. Defendants' So-Called "Warnings" Do Not Negate Foreseeability. 22

3. Monsanto Was Not Entitled To An Intervening, Superseding Cause Instruction. 23

B. Defendants' Negligent Conduct Caused Plaintiff's Damage. 25

1. Releasing Xtend Was Negligent. 25

2. Defendants' Spuriously Deny A "Dicamba-Tolerant System." 30

II. MISSOURI LAW ALLOWS BADER FARMS TO RECOVER LOST PROFITS. 31

A. The "Diminution-In-Land-Value" Method Is Inapplicable. 31

B. The District Court Correctly Applied Missouri Law Allowing Lost-Profit Recovery. 34

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.