

Bill No. 5
Date 2-4-05
SB 218



NORTHERN PLAINS

RESOURCE COUNCIL

SB 218: THE FARMER PROTECTION ACT

Shifting Liability for Genetically Engineered Wheat to Patent-Holding Companies

OVERVIEW

Montana is the nation's third largest producer of hard red spring wheat. Over 7,000 family wheat farms generate \$800 million in economic activity in Montana each year. Roughly 60% of the state's wheat is exported, primarily to Japan, South Korea, Taiwan, and the Philippines. Each export market represents decades' worth of careful cultivation. To preserve them, farmers and grain handlers pay close attention to the quality of grain shipments. Pacific Rim customers, in turn, appreciate the high protein content and purity of Montana's hard red spring wheat.

THE PROBLEM: UNDUE RISKS TO FARMERS

Companies who produce and patent genetically engineered grains own the rights to the technology contained in each seed. While biotech companies enjoy the privileges that come with ownership, they have sought to shift associated responsibilities to others. Farmers who purchase genetically engineered seeds must sign *Technology Use Agreements* that specifically shield the patent company from liability for contamination or other adverse impacts. The effect of technology use agreements is to pit farmer against farmer when conflicts arise.

- If a farmer plants genetically engineered wheat according to the patent company's instructions and unintentionally contaminates a neighbor's field or grain elevator, the farmer is liable for any damages.
- Farmers who don't plant genetically engineered grains face additional risks. Biotech companies have sued farmers for having genetically engineered seeds on their land, even if the farmer didn't plant them.
- Montana farmers could lose Asian export markets if their wheat is contaminated by genetically engineered wheat. The biotechnology companies that introduce these crops are not liable for this damage.
- Because of risks associated with genetically engineered crops, insurance companies won't insure them against contamination. Contamination is considered an "act of God."

Monsanto, the largest biotech company producing genetically engineered crops, has filed at least 90 lawsuits involving more than 100 farmers for patent infringement for genetically engineered crops found on their land.

- Those lawsuits have been filed in more than 20 states.
- The "mean" settlement is roughly \$75,000; the highest was \$2 million.
- More than 50% of the lawsuits were heard in Missouri courts where Monsanto is headquartered.

THE SOLUTION: THE FARMER PROTECTION ACT

Biotechnology companies produce these technologies, knowing contamination will occur. The company must be held responsible for their product and pay for associated damages. SB 218 sponsored by Sen. Jon Tester D-Big Sandy, would protect farmers by making sure biotechnology companies are liable for damages caused by genetically engineered wheat and preventing biotechnology companies from suing farmers who don't intentionally grow genetically engineered wheat if it's found on their land. In addition, SB 218 would ensure that seed contracts would follow Montana law, suits involving patent holding companies and farmers are heard in Montana courts, and patent holding companies take every step to minimize the possibility of contamination.

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By Registered Mail

November 12, 1998

Mr. Edward Zielinski
P.O. Box 1226
Danora (Makado), Saskatchewan

Dear Mr. Zielinski:

As you know on July 22, 1998, Monsanto with the assistance of Robinson Investigation Ltd. conducted an investigation (Investigation) to determine whether you had improperly planted Roundup Ready® Canola in 1998 without being licensed from Monsanto Canada Inc. A copy of our standard 1998 License Agreement (TUA) is attached for your review.

We have completed our Investigation and have very good evidence to believe that Roundup Ready canola was planted on approximately 250 acres of land identified as SE 28-30-2, NE 28-30-2 and SE 19-30-2 in violation of Monsanto's proprietary rights.

The planting of Roundup Ready Canola without a license is a serious violation of Monsanto's proprietary rights.

Prior to making any final decision as to what steps we will be taking, and in an attempt to resolve this issue in a timely and economical manner, we are prepared to refrain from commencing any legal proceedings against you subject to the following:

1. You forthwith pay to Monsanto the following sum: $250A \times \$115/A = \$28,750.00$
2. You acknowledge Monsanto has the right to take samples from all of your owned or leased land and storage bins for three years from the date of this letter.
3. You agree not to disclose the specific terms and conditions of this Settlement Agreement to any third party.
4. You agree that Monsanto shall at its sole discretion have the right to disclose the facts and settlement terms associated with the investigation and this Settlement Agreement.

Acceptance of this offer will be acknowledged by forwarding to Monsanto a certified cheque for \$28,750.00 and a duplicate signed copy of this letter by December 14, 1998.

Yours truly,

MONSANTO CANADA INC.



Keith A. MacMillan
Director, Legal Affairs

READ AND AGREED TO THIS _____ DAY OF _____, 1998

SIGNED:

Billings Gazette

THURSDAY, JANUARY 20, 2005

The Source

BUSINESS

Monsanto's 'seed police' cracking down on farmers

By PAUL ELIAS
Associated Press

SAN FRANCISCO — Monsanto Co.'s "seed police" snared soy farmer Homan McFarling in 1999, and the company is demanding he pay it hundreds of thousands of dollars for alleged technology piracy.

McFarling's sin? He saved seed from one harvest and replanted it the following season, a revered and ancient agricultural practice.

"My daddy saved seed. I saved seed," said McFarling, 62, who still grows soy on the 5,000-acre family farm in Shannon, Mississippi, and is fighting the agribusiness giant in court.

Saving Monsanto's seeds, genetically engineered to kill bugs and resist weed sprays, violates provisions of the company's contracts with farmers.

Since 1997, Monsanto has filed similar lawsuits 90 times in 25 states against 147 farmers and 39 agriculture companies, according to a report issued last week by The Center for Food Safety, a biotechnology foe.

In a similar case a year ago, Tennessee farmer Kem Ralph was sued by Monsanto and sentenced to eight months in prison after he was caught lying about a truckload of cotton seed he hid for a friend.

Ralph's prison term is believed to be the first criminal prosecution linked to Monsanto's crackdown. Ralph has also been ordered to pay Monsanto more than \$1.7 million.

Monsanto is attempting to protect its business from pirates in much the same way the entertainment industry does when it sues underground digital distributors exploiting music,



Associated Press

Mississippi soy farmer Homan McFarling closes the cattle gate to his farm in South Lee County, near Tupelo, Miss. Monsanto Co.'s "seed police" snared McFarling in 1999, and the company is demanding he pay it hundreds of thousands of dollars for alleged technology piracy because he saved seed from one harvest and replanted it the following season.

movies and video games.

In the process, it has turned farmer on farmer and sent private investigators into small towns to ask prying questions of friends and business acquaintances.

Monsanto's licensing contracts and litigation tactics are coming under increased scrutiny as more of the planet's farmland comes under genetically engineered cultivation.

Some 200 million acres of the world's farms grew biotech crops last year, an increase of 20 percent from 2003, according to a separate report released recently.

Many of the farmers Monsanto has sued say, as

McFarling claims, that they didn't read the company's technology agreement close enough. Others say they never received an agreement in the first place.

The company counters that it sues only the most egregious violations and is protecting the 300,000 law-abiding U.S. farmers who annually pay a premium for its technology. Soy farmers, for instance, pay a "technology fee" of about \$6.50 an acre each year.

Some 85 percent of the U.S. soy crop is genetically engineered to resist Monsanto's herbicide Roundup, a trait many farmers say makes it easier to weed their fields and ultimately cheaper to grow their crops.

