



## Dicamba Lawsuits

This document summarizes legal action related to damage from dicamba herbicide drift since the introduction of dicamba-resistant crops in 2016. For more information and further resources see: <http://cehn-healthykids.org/herbicide-use/herbicide-timelines/#dicamba>.

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Case: *Bader Farms, Inc, et al V. Monsanto Company*

Date Filed: November 2016, Amended February 2017

Location: First filed in Circuit Court for Dunklin County, MO, then re-filed in U.S. District Court, Eastern District of Missouri, Southeastern Division

Plaintiff(s): Bader Farms, Inc. and Bill Bader

Defendant(s): Monsanto Company, Amended to add BASF

Firm(s): Randles and Splittgerber

Link to Brief: [https://www.gpo.gov/fdsys/pkg/USCOURTS-moed-1\\_16-cv-00299/pdf/USCOURTS-moed-1\\_16-cv-00299-0.pdf](https://www.gpo.gov/fdsys/pkg/USCOURTS-moed-1_16-cv-00299/pdf/USCOURTS-moed-1_16-cv-00299-0.pdf)

### SUMMARY:

This Missouri orchard was the largest peach grower in the state and saw dicamba damage to 7,000 peach trees in 2016 and 30,000 in 2017, with costs in the millions. Monsanto and BASF are listed in the complaint. " Bader's suit claims when Monsanto released the Xtend system prior to an EPA label, the company was fully aware the technology would be abused" (Bennett, 2017). The suit seeks punitive damages and claims "design defects and failure to warn, [and] negligent design and marketing" (Thurman et al., 2017), alleging that Monsanto actually encouraged farmers to use dicamba illegally on the new resistant crops.

Case: *Steven W. Landers, et al. v. Monsanto Company*

Date Filed: January 2017

Location: U.S. District Court, Eastern District of Missouri, Southeastern Division

Plaintiff(s): Steven and Delores Landers on behalf of plaintiffs from 10 states

Defendant(s): Monsanto Company

Firm(s): Randles and Splittgerber

Link to Brief: <https://www.leagle.com/decision/infldco20170818e20>

### SUMMARY:

This suit is spearheaded by Steven and Dee Landers from Missouri, soybean and corn farmers who had nearly half their acreage damaged, with a resulting loss in yield, due to dicamba drift in 2016. The suit also includes farmers with similar stories from Alabama, Arkansas, Illinois, Kentucky, Minnesota, Mississippi, North Carolina, Tennessee, and Texas. They allege damage from 2016 when dicamba-resistant seeds were released prior to the new formulations being available. They are seeking compensation for damage to crops and lost yields caused by dicamba use on these crops. The suit is moving forward in federal court after Monsanto's bid to have it dismissed failed in August 2017 (see link above).

Case: *Bruce Farms Partnership, et al. v. Monsanto Company, BASF SE, BASF Corporation*

Date Filed: June 2017

Location: U.S. District Court, Eastern District of Arkansas, Jonesboro Division

Plaintiff(s): Bruce Farms Partnership, Ronnie Bruce, Karen Bruce, Caleb Bruce, Curtis Nash, Dena Nash, LA Farms, Inc.

Defendant(s): Monsanto Company, BASF SE, BASF Corporation

Firm(s): Ducan Firm, Kelly Law Firm, and Paul Byrd Law Firm

Link to Brief: [http://static.lakana.com/nxsglobal/arkansasmatters/document\\_dev/2017/06/15/Dicamba%20Complaint%20-%20Class%20Action\\_1497537976264\\_22796036\\_ver1.0.pdf](http://static.lakana.com/nxsglobal/arkansasmatters/document_dev/2017/06/15/Dicamba%20Complaint%20-%20Class%20Action_1497537976264_22796036_ver1.0.pdf)

#### SUMMARY:

These farmers represent six Arkansas farms that grow soybeans and watermelons. Their suit include many similar complaints of damage and yield loss in 2016 as other lawsuits but add the claim that dicamba is **never** safe to spray during the growing season. The complaint states that "given the well-recognized nature and patterns of cultivation in these (and other) regions, the proximity of other non-Xtend crops and plants, and the foreseeable weather patterns and timing of likely application, damage to non-target crops and plants was inevitable and known to Defendants." Despite the companies claims to the contrary, farmers experience with the new formulations have shown that they are very prone to drift. "How could Monsanto not know? How did they test and where did they test?" asks attorney Paul Byrd (Bennett, 2017). Monsanto responded by claiming that 99% of Xtendimax applications in 2017 have shown "wonderful results" and that 77% of off-target movements occurred due to the label not being followed ( i.e., operator error).

Case: *Smokey Alley Farm Partnership, et al. v. Monsanto Company et al.*

Filed: July 2017

Location: U.S. District Court, Eastern District of Missouri, Eastern Division

Plaintiff(s): Smokey Alley Farm Partnership, Amore Farms, JTM Farms, Kenneth Loretta, Garrett Qualls Farm Partnership, Qualls Land Co., Michael Baioni, and McLemore Farms LLC

Defendant(s): Monsanto Company, BASF SE, BASF Corporation, BASF Crop Protection, DuPont Company and DuPont Pioneer.

Firm(s): Peiffer Rosca Wolf, Dover and Dixon, and James and Carter

Link to Brief: <https://bloximages.newyork1.vip.townnews.com/stltoday.com/content/tncms/assets/v3/editorial/0/e6/0e6662c6-4578-5314-9bda-ca2904341079/597286103225b.pdf.pdf>

#### SUMMARY:

This class action suit was filed on behalf of a group of soybean farmers from Arkansas in Monsanto's home state of Missouri. Notably, this suit includes claims of anti-trust activity by BASF, Dupont, and Monsanto. They allege this was done purposefully, knowing that widespread introduction of dicamba-resistant technology would force famers to plant the resistant crops to limit damage. "[Farmers] want to plant seeds of their choice, but due to damage potential have to consider buying dicamba-tolerant soybeans from a defensive position," Attorney Paul Lesko (Bennett, 2017). They also allege that Monsanto privately assured farmers in 2016 that it would be "just fine" to spray dicamba otop of the new resistant crops, even though this use was not yet EPA approved and thus illegal (Grey, 2017).

Updated: February 14, 2018

Case: *B & L Farms Partnership, et al. v. Monsanto Company , BASF SE, BASF Corporation*

Filed: July 2017

Location: Circuit Court of Phillips County, Arkansas

Plaintiff(s): B&L Farms Partnership, Double A Farms, NJ&B Partnership, Neil Culp, Allen Culp, Pam Culp, Jill Culp, Ronnie George, R. P. George, Brian Chastain Farms, Josh Bartlett, Randle Foran, Randle Foran Farms, Borderline Farms, JV, and Wilson Application, LLC

Defendant(s): Monsanto Company, BASF SE, BASF Corporation, BASF Crop Protection, DuPont Company and DuPont Pioneer.

Firm(s): David A. Hodges and Daggett, Donovan and Perry

Link to Brief: <https://45ijagbx6du4albwj3e23cj1-wpengine.netdna-ssl.com/wp-content/uploads/Dicamba-Class-Action-Lawsuit-Arkansas.pdf>

#### SUMMARY:

On July 20, just one day after the Smokey Alley Farm Partnership case is filed in Missouri, 14 soybean farmers and an herbicide application company from Arkansas file a class action suit against Monsanto and BASF including a " litany of charges related to irresponsible marketing, product liability, breach of implied warranty, deceptive trade practices and more allegations" (Bennett, 2017). The plaintiffs seek financial compensation for losses, legal fees, and other damages.

Case: *Brian Warren and Warren Farms v. Monsanto Company et al.*

Filed: September 2017

Location: U.S. District Court, Southern District of Illinois

Plaintiff(s): Brian Warren and Warren Farms

Defendant(s): Monsanto Company, BASF SE, BASF Corporation, BASF Crop Protection, DuPont Company and Pioneer Hi-Bred International

Firm(s): Ronald E. Osman & Associates and Morgan & Morgan

Link to Brief: <https://www.classaction.com/wp-content/uploads/sites/33/2017/09/170911-Complaint-Dicamba-Warren.pdf>

#### SUMMARY:

This suit was brought after damages to soybean and pumpkin crops at Warren Farms in southern Illinois. This is the first suit stemming solely from damages in 2017, as well as the first to specifically request an injunction against further sales and marketing of dicamba-resistant crops and the new herbicide formulations, as well as monetary damages for the plaintiff and punitive damages for the defendants. The suit alleges that the companies knew that damage would occur and failed to warn the public and farmers of the risk of injury "because Defendants understood that such injuries would force farmers to defensively plant Xtend crops in future growing seasons and thereby increase the market for Xtendimax, Engenia, and Fexapan and Monsanto's Xtend soybean and cotton seeds" (excerpt from complaint, see link below).

Case: *National Family Farm Coalition, et al. v. United States Environmental Protection Agency and Monsanto Company*

Filed: February 2018

Location: U.S. Court of Appeals, Ninth Circuit

Updated: February 14, 2018

Plaintiff(s): Center for Biological Diversity, Center for Food Safety, Eathjustice, National Family Farm Coalition, Pesticide Action Network

Defendant(s): Environmental Protection Agency, Monsanto Company

Firm(s): Lawyers from the Center for Food Safety and Earthjustice

Link to Brief: [https://www.centerforfoodsafety.org/files/70-1-petitioners-opening-brief-public-version-extracted-292018\\_92774.pdf](https://www.centerforfoodsafety.org/files/70-1-petitioners-opening-brief-public-version-extracted-292018_92774.pdf)

#### SUMMARY:

This suit alleges that the EPA violated federal pesticide laws in the approval process for Monsanto's Xtendimax, as well as arguing that the agency failed to follow Endangered Species Act requirements to consult federal wildlife agencies to address the potential effects of Xtendimax on endangered species and critical habitats. In a news release: "The evidence shows that, rather than protecting farmers and the public interest, government officials rushed this pesticide to market without the rigorous analysis and data the law requires. There was good reason that decision had such devastating consequences last year: it was illegal." George Kimbrell, Center for Food Safety and lawyer on this case.

#### **References:**

Chris Bennett, "Dicamba Lawsuits Mounting," September 14, 2017, *AgPro*, <http://www.agprofessional.com/resource-centers/crop-protection/dicamba-lawsuits-mounting>.

Bryce Gray, "Class lawsuit takes aim at dicamba producers, accuses Monsanto reps of condoning illegal spraying," July 23, 2017, *St. Louis Post-Dispatch*, [http://www.stltoday.com/business/local/class-lawsuit-takes-aim-at-dicamba-producers-accuses-monsanto-reps/article\\_6b6226cf-a566-5877-b6ff-e20423429e4c.html](http://www.stltoday.com/business/local/class-lawsuit-takes-aim-at-dicamba-producers-accuses-monsanto-reps/article_6b6226cf-a566-5877-b6ff-e20423429e4c.html).

Carson Thurman, Preston Lee, Mary Margaret Gay, and John McCants, August 15, 2017, "Part Two: Dicamba Drift Issues Ensnaring Farmer," *Growing Georgia*, <http://growinggeorgia.com/features/2017/08/part-two-dicamba-drift-issues-ensnaring-farmers/>.