



Monsanto Sues Midwest Farmers for Saving Soybean Seeds

Subject: Monsanto sues farmers

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HEADLINE: Soybean-Seed Lawsuits Pit Farmers against Biotechnology Companies

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BODY:

When the bean police came for the Mayfield brothers, they went looking for help and found attorney Dale Reesman.

Reesman is a lawyer in Boonville, where he's practiced law since 1959 in an inconspicuous office by the riverfront. For the past 10 years, Reesman has been taking in a rather strange bunch of clients: family farmers.

"There's not a whole heck of a lot of money in it," Reesman said. "But it's great fun. If you can save one farm, that's a good thing." If he hasn't earned a lot of money, he has earned a reputation for beating the odds, even winning a case against the U.S. Department of Agriculture. About two-thirds of his clients are farmers.

John and Paul Mayfield, who farm in Arkansas, came to Reesman with a case unlike any he had ever seen. The brothers are being sued by Monsanto, the multinational corporation that's a pioneer of genetic engineering.

Five years ago, the brothers bought their first crop of the company's genetically engineered Roundup Ready soybeans. When they did that, they entered into a whole new set of rules for growing crops, rules that eventually landed them in a lawsuit.

The case will be the first of its kind to go to court if there's no settlement by the scheduled trial date in May. Monsanto has filed a number of suits, but most farmers settle out of court rather than submit to a costly legal battle.

The odds of winning a case are daunting. Genetically engineered crops are a revolution in terms of money and power. Companies that create and sell the crops also patent them, giving them massive control over the plants and every generation of offspring from those plants.

Monsanto can legally patent crops like Roundup Ready soybeans because the plants are basically creations of the company -- there is no way they could possibly exist naturally. They contain genes from bacteria or other organisms spliced together in laboratories. The engineered beans are immune to Monsanto's Roundup pesticide, which kills almost everything that is green.

When farmers buy the seed, they have to sign a contract that outlines the rules of use. For example, they are not allowed to save any of the seed from their crop to plant the next season. Saving seed is a common practice used for thousands of years, but Monsanto forbids it, requiring farmers to buy new seed from the company every year.

Monsanto accuses the Mayfields of saving and replanting 800 bushels of Roundup Ready beans as well as selling some of the seed illegally.

The case started about two years ago, when a stranger knocked on the Mayfields' door. "This detective came in, sat down in the living room and said 'You've been accused of bagging, cleaning and selling seed,' " Paul Mayfield recalled.

"I said, 'Fella, I haven't done it, and you'll have to show me my accuser and prove I did it,' " Mayfield said.

But Mayfield said the detective wouldn't identify the accuser. He only said it came from an anonymous tip.

Monsanto has a toll-free line set up to accept calls from people who suspect farmers of violating the company's rules. The company runs ads in magazines and on the radio encouraging people to turn in those they suspect of breaking a Monsanto contract. When the company gets a tip, it sends detectives out to investigate. The detectives search farmers' fields and go through documents to find out how much seed farmers bought and how much grain they've sold, trying to ferret out those who save it.

Court documents show that one of Monsanto's detectives searched the Mayfields' farm in 1998, taking samples from 1,261 acres of soybeans. All the beans were determined to contain the Roundup Ready gene. According to Monsanto, the Mayfields had signed a contract in 1998 stating that they only planted about 800 acres of Roundup Ready. All those extra acres of beans were grown from saved seed, the company charges.

According to court documents, Monsanto is suing the Mayfields for at least \$ 75,000, including punitive damages. "That's just an astronomical amount for the amount we're farming," Mayfield said.

A Monsanto magazine ad says the company is investigating 329 farmers for saving seed, including 36 in Missouri. Monsanto spokesman Bryan Hurley said the company has to make sure farmers play by the rules when they grow Monsanto's crops or face consequences. "If one farmer is saving seed, he's cheating his neighbor who isn't, and his neighbor is being penalized for being honest," he said.

Hurley pointed out that farmers enter into the contracts voluntarily. He said crops like Roundup Ready soybeans have become popular because of the great benefit they give farmers. If farmers want the benefit, they should be willing to play by the rules, he said.

Suing farmers who violate contracts is a way to keep everyone honest, Hurley said. Any money Monsanto wins is donated to the American Farm Bureau to pay for scholarships, he said, so the company isn't looking to profit. "We would seek to level the playing field. What a lot of farmers have told us is that they want a level playing field," he said.

But to Dale Reesman, who has decided to take on Monsanto and its legal team, the playing field doesn't seem so level. "I guess you could say I like tilting against windmills."

About the same time Paul Mayfield's grandfather founded the family farm at the turn of the century, a man named John Queeny started a small chemical business out of his garage in St. Louis. He named the firm after his wife, Olga Monsanto. Since that time, his company has become a global powerhouse, with annual sales of about \$ 10 billion.

Monsanto has become a leader in the biotechnology revolution. Genetically engineered crops are beginning to spread all over the world, and many of them are created in the company's research center in the St. Louis suburb of Chesterfield. The research center is a cluster of modern office buildings crowned with huge greenhouses, hidden from the nearby suburbs by green rolling hills. At night, the area glows from greenhouse lights that raise tomorrow's crop of engineered plants.

A tour of the research center shows what's behind genetically engineered crops and why it's so important for Monsanto to patent them. Tour guide Ray Duke, 62, has worked for Monsanto for 40 years. He said he gives tours during his retirement because he's so excited about biotechnology. He walks through the labs and down the corridors like a kid in a candy shop, smiling and talking excitedly for hours about the technology he thinks can save the world.

"We have an obligation in our generation to leave the world in better shape than we found it," and genetically engineered crops can do just that, he said. They can help farmers cut down on pesticides use, he said, while saving them money and time and limiting pollution. Engineering also will allow farmers to grow more food on less land to feed a booming world population, he said.

But genetic engineering doesn't happen overnight, and it doesn't happen for free. Crops out on the market now actually were designed when the research center was built in 1984. Duke said it took 11 years to make the products a reality, costing the company hundreds of millions of dollars.

It's easy to see why development is so expensive. The crops start out as nothing more than a mass of mutant cells in a petri dish. The cells are engineered into plants, which are transferred to high-tech grow rooms. The rooms cost about \$ 250,000 each, and there are hundreds of them, each equipped to grow different crops. One room simulates the environment of Canada during July, perfect for growing wheat, while in the room next door soybeans flourish in a fake Missouri summer.

If Monsanto couldn't patent these genetically engineered crops, Hurley said, there wouldn't be an incentive to spend millions developing them. "It's a way for the company to capture the value of the crops," he said. "We see the protection of intellectual property as in the best interests of the entire agricultural industry."

But others worry patents give a company too much power over the world's seed supply. Roger Allison, who grows soybeans and raises hogs in Howard County, actively fights the spread of genetically engineered crops as a member of the National Family Farm Coalition.

The coalition helped file a class action lawsuit against Monsanto and other seed companies that accuses the firms of trying to monopolize the seed trade with patented crops. The suit, filed in Washington, D.C., in December, charges that Monsanto and other companies work together to fix prices and dominate the market.

Hurley denied those charges. He pointed out that the company broadly licenses patented crops to smaller companies for sale. But the seeds are still patented, and every company pays Monsanto royalties and sells the seed under contract.

Allison said the crops are going to accelerate the trend of family farmers going out of business and leave corporations in control of agriculture.

"I'm not into helping Monsanto, Pioneer and Novartis control all of agriculture," he said. "And I'm not into being a contract farmer. Why should I do all the work just so some huge corporation can make more money?"

Allison saves seed from his soybean crop every year to cut back on costs, something he couldn't do with Monsanto's crops. "The bean police would be out here, and I would be in court," he said.

For farmers, there couldn't be a worse time to be taken to court.

"If they win this suit, it would probably be disastrous to us," Paul Mayfield said.

Ever since the Mayfields took over their family's farm 25 years ago, they've managed to make ends meet through the hard times that have driven thousands of other farmers out of business.

Right now, the brothers are just trying to break even. Mayfield says if this season isn't dry, as the National Weather Service predicts, they might actually make some money. "What's killing us right now are the prices," he said.

Monsanto's suit isn't helping any. "This lawsuit has taken every penny and then some of any extra money we could come up with," Mayfield said.

When they took their case to Reesman, he became familiar with the revolution of biotechnology, then went straight for Monsanto's throat.

Reesman's argument in defense of his clients is a bold one. Instead of denying that the Mayfields violated Monsanto's contract, he argued that Monsanto has no right to patent plants in the first place.

"Patent law is basically set up for machines and things of that sort, but not things that self-replicate," he said. In other words, Reesman claims, patent law forbids people from recreating a machine or process someone else invented, but it doesn't pertain to something like a soybean plant that naturally recreates itself.

In fact, Congress went out of its way to create a special set of rules to protect plants in 1970 when it created the Plant Variety Protection Act.

The act has special provisions to ensure that a few companies don't have too much control over the seed supply. For example, farmers are allowed to save seed, and other companies are allowed to do research on protected plants. But a Supreme Court decision in the early '80s gave seed companies like Monsanto the right to patent genetically engineered crops. The court ruled that genetically engineered organisms basically are inventions.

But Reesman argues that Roundup Ready beans should fall under the rules of the Plant Variety Protection Act, and therefore a patent is invalid. A federal appeals court decision, however, crippled that argument before Reesman could run with it. The court ruled that the Pioneer seed company had the right to patent its seed, giving it a victory over an Iowa seed dealer who was reselling the seed.

Attorney Bruce Johnson represented J.E.M. Ag Supply Inc., the seed dealer, and used an argument similar to Reesman's. "Congress passed a specific statute for plants and established an agency to handle it," he said.

"It gives people rights that patent statutes don't give," Johnson said.

"They intended to allow crop saving and research so plants wouldn't get locked up in a few companies."

Johnson's argument was struck down in state court, and then by the appeals court. Both ruled that the patent would stand, a decision Pioneer applauded.

Reesman is still fighting Monsanto's right to patent Roundup Ready beans, but now he's relying more on the other leg of his legal argument -- that the Mayfields didn't sign a contract the first year they bought the seed, and they saved seed only from that crop.

Monsanto's attorneys said that argument sounds good, but has no real merit. In court documents, they say the Mayfields signed four contracts since that first year, so they knew the seed shouldn't be saved. The lawyers also point out that the seed bags had stickers on them alerting the Mayfields to Monsanto's patents.

Both sides in the lawsuit have asked the judge to make a summary judgment, which would end the case immediately based on their current arguments. If that doesn't happen, the case will be headed for court this spring in U.S. Eastern District Court in St. Louis.

Meanwhile, lawyer Bruce Johnson has applied for the U.S. Supreme Court to hear his case against Pioneer, arguing that the issue is one of great importance for the whole country. "The farmers and plant breeders," he said, "shouldn't lose the rights that Congress intended them to have."

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