

# Monsanto stays on the defense on dicamba as class action fight moves forward

From the Dicamba coverage by the Post-Dispatch series

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Mar 24, 2018



FILE PHOTO: Farmer Chris Crosskno watches as soybeans are loaded into his truck on Wednesday, Oct. 11, 2017, at I [jforbes@post-dispatch.com](mailto:jforbes@post-dispatch.com)

**W**ith the 2018 growing season gearing up, eyes on wide swaths of the nation's farmland are sure to look out for continued damage from dicamba — the **divisive weedkiller** blamed for damaging millions of acres of soybeans and other plants over the last couple of years.

But much attention will also be on a Missouri courtroom, where Creve Coeur-based biotech giant Monsanto is facing off in a proposed class action lawsuit with farmers who allege they were harmed by the hard-to-control herbicide notorious for its tendency to evaporate — or volatilize — and move to other nearby areas. A conference in Cape Girardeau Wednesday will set a schedule for the U.S. District Court's proceedings in the cases, where more than a dozen complaints are already in front of a federal judge.

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The controversy surrounding the hot-selling technology adds to Monsanto's busy legal docket, with antitrust hurdles from the company's proposed acquisition by Bayer swirling in the background, along with a separate class action suit over the carcinogenic potential of **glyphosate** — the active ingredient in Roundup.

The dicamba cases echo various complaints that have circulated since Monsanto's release in 2015 of its Xtend crop varieties genetically modified to tolerate the chemical. The trait enables farmers with Xtend cotton or soybeans to spray the crops

with dicamba for weed control — leaving their plantings unharmed but threatening other, non-tolerant crops and vegetation through either volatility or physical drift. Until last growing season, Xtend seeds had been on the market without the corresponding type of less-volatile dicamba spray, which had not secured regulatory approval. Its absence created a situation in which many farmers with dicamba-tolerant seeds chose to illegally use older versions of the chemical that are more prone to off-target movement. But even with the new, lower-volatility sprays available for the 2017 growing season, incidents of reported dicamba damage continued — and actually increased — spanning about **3.6 million acres** of U.S. soybeans.

Senath, Mo.-based Cow-Mil Farms, Inc., alleges in its lawsuit that reported dicamba damage has been both a predictable and profitable result of Monsanto's rollout of the Xtend product package.

“To Monsanto, it was foreseeable that farmers would spray dicamba on a seed designed to resist it, that old dicamba is volatile and would drift, that the Xtend seeds would eventually dominate the market, and that the farming communities in the affected states (including Plaintiffs and the Class) would suffer massive destruction to their crops,” says the complaint filed in the case.

Citing both farmers and weed scientists, other arguments outlined in the complaint include allegations that Monsanto sales representatives **privately condoned** unauthorized use of the herbicide and suggestions that damage is expected to continue, even with the availability of new “allegedly lower-volatility” dicamba formulations made by Monsanto and other companies, such as BASF.

“It's going to move off target,” said Don Downing, a lead lawyer behind the cases, from the St. Louis law firm Gray, Ritter and Graham. “There's no question, at least in the minds of the scientists at the universities.”

Downing said the scope of the proposed plaintiff class was still coming into focus, but estimated that they numbered “in the hundreds.”

Downing has a background highlighted by blockbuster settlements from biotechnology-related lawsuits. He was the co-lead counsel in a 2011 **settlement for \$750 million** between Bayer and U.S. long-grain rice farmers after exports were embargoed because the domestic supply was contaminated by an unapproved variety of seed. More recently, Downing **helped spearhead** the **\$1.5 billion settlement** reached earlier this month between Syngenta and corn farmers over a similar ban on exports, triggered when the domestic corn supply was contaminated by GMO varieties not approved overseas.

He says the dicamba cases have some parallels, in that “innocent bystanders” have allegedly been harmed by certain biotechnology products. But dicamba damage, he says, is different for farmers than the loss of an export market.

“Here you’ve got actual physical particles coming onto their land and damaging their crops,” Downing said.

He said that had led to a loss of choice for growers, with many feeling pressured to adopt the Xtend system for self-defense.

“They wanted to stay with their old seed, but they felt compelled to purchase it,” said Downing. “And they had to pay a premium for it.”

Monsanto, meanwhile, steadfastly denies that it is liable for any damages alleged in the cases.

Particularly when it comes to damage linked to older, illegal versions of dicamba, the company notes in court filings that it did not manufacture, distribute or sell the herbicides in question.

As for the continued dicamba complaints reported last year — when Monsanto’s own form of the chemical was among those on the market — the company suggested that there may not be sufficient evidence that crop yields were harmed, pointing to strong or even record harvests for soybeans per acre, including in states such as Arkansas, where the most dicamba complaints were recorded.

The company said it had “seen an enthusiasm from growers about not only the weed control last year, but the yields they were seeing,” according to Scott Partridge, Monsanto’s vice president of global strategy.

With weeds developing resistance to Roundup, Partridge said Xtend products were a needed tool for farmers — a sentiment plenty of **growers expressed** amid bumper crops last year.

"Demand for dicamba-tolerant seeds is going to double," said Partridge, noting that Monsanto anticipated adoption of Xtend soybeans to leap to more than half of U.S. soy plantings this year — to 43 million acres from nearly 21 million acres in 2017 — with cotton jumping to 7 million acres from 5 million. "That rate of adoption is phenomenal, and again it speaks to the value of the product."

Some investment analysts following the merger said they had stopped tracking the dicamba lawsuits, because they didn’t think it would affect the outcome of the deal. Monsanto also said it did not believe the class action would jeopardize the pending sale or Bayer’s outlook.

“(Bayer) understands the scientific aspect of this,” said Partridge. “We’re anxious to get on with it.”

**Editor's Note:** After this story was published, additional information about the anticipated reach of Xtend soybeans was included.

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