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Appeals Court Binds Monsanto to Promise Not to Sue Organic Farmers

(WASHINGTON, D.C. – June 12, 2013) – A three-judge panel at the Court of Appeals for the Federal Circuit ruled that a group of organic and otherwise non-GMO farmer and seed company plaintiffs are not entitled to bring a lawsuit to protect themselves from Monsanto's transgenic seed patents "because Monsanto has made binding assurances that it will not 'take legal action against growers whose crops might inadvertently contain traces of Monsanto biotech genes (because, for example, some transgenic seed or pollen blew onto the grower's land).'"

In the [ruling issued](#) in the case Organic Seed Growers and Trade Association et al. v. Monsanto, the Court of Appeals judges affirmed the Southern District of New York's previous decision that the plaintiffs did not present a sufficient controversy to warrant adjudication by the courts. However, it did so only because Monsanto made repeated commitments during the lawsuit to not sue farmers with "trace amounts" of contamination of crops containing their patented genes.

Plaintiffs' attorney, Dan Ravicher of the Public Patent Foundation (PUBPAT), views the decision as a partial victory. "Before this suit, the Organic Seed plaintiffs were forced to take expensive precautions and avoid full use of their land in order to not be falsely accused of patent infringement by Monsanto," said Ravicher. "The decision today means that the farmers did have the right to bring the suit to protect themselves, but now that Monsanto has bound itself to not suing the plaintiffs, the Court of Appeals believes the suit should not move forward."

The plaintiff farmers and seed companies began their legal battle in March of 2011, when they filed a complaint against agricultural giant Monsanto asking for a declaration that Monsanto's patents on genetically engineered seed were invalid or unenforceable. The plaintiffs were compelled to file the suit because Monsanto's patented seed can contaminate neighboring fields through various means including wind and insects, and the owners of those fields, such as plaintiffs, can then be sued by Monsanto for patent infringement.

The Organic Seed plaintiffs' [complaint](#) detailed Monsanto's abusive business and litigation tactics that have put several farmers and independent seed companies out of business. They also detailed Monsanto's history of ruthless patent enforcement, going so far as investigating as many as 500 farmers each year for patent infringement by trespassing onto their land. The plaintiffs further detailed the harms caused to society by Monsanto's GMO seed, including the proliferation of herbicide-resistant "superweeds" and environmental pollution. The plaintiffs set forth in their legal filings how the patents were legally deficient in several ways including that the covered technology has no beneficial social use and that the dozens of patents issued to Monsanto have illegally extended and entrenched its monopoly.

"Our priority and focus is protecting and supporting organic and real sustainable agriculture," said Marty Mesh, executive director of Florida Certified Organic Growers, a co-plaintiff in the lawsuit. "I am very disappointed at the Court's ruling in this case as we were also going to court seeking justice on the validity of Monsanto's patents. While I too am encouraged that Monsanto doesn't have the right to sue farmers for trace contamination, it would seem that as the patent holder who is promoting the use of patented technology

and making billions in sales selling chemicals tied to the use of seeds, they would bear responsibility for the global environmental damage in which they are responsible. When is that day in court?"

Mesh continues, "They clearly seem to have undue influence in regulatory agencies as well as in Congress with the recent Monsanto Protection Act. In addition, they have aggressively influenced publicly funded research institutions and universities. We had hoped the Courts would allow an opportunity for justice for farmers, consumers and the planet, so this is indeed disappointing."

While the court is relying on Monsanto's promise not to sue farmers for unintentional contamination, a growing number of America's farmers and consumers are concerned about genetic contamination of our food supply by Monsanto's transgenic crops. While this lawsuit seeks to protect contaminated farmers from being accused of infringing Monsanto's patents, the decision today allows farmers who are contaminated to sue Monsanto and Monsanto's customers for the harm caused by that contamination without fear of a retaliation patent infringement claim against them by Monsanto.

"Today's ruling may give farmers a toehold in courts regarding the unwanted contamination of their crops, but it does not protect our food supply from the continued proliferation of Monsanto's flawed technology," said Dave Murphy, founder and executive director of [Food Democracy Now!](#), a co-plaintiff in the lawsuit. "The real threat of continued contamination of our nation's food supply was only highlighted last week when Monsanto's unapproved GMO wheat was discovered in an Oregon farmer's field more than 10 years after it was legally planted in that state."

The discovery of GMO contamination sent shockwaves through the Western wheat growers community and resulted in Japan and South Korea temporarily halting the acceptance of American wheat imports.

Despite the Court of Appeals' Decision today the plaintiffs still have the right to ask the Supreme Court to review the Court of Appeals decision and ultimately reinstate the case. Ravicher said the Organic Seed plaintiffs are considering doing so.

More information about PUBPAT's suit against Monsanto's seed patents can be found at [PUBPAT > Monsanto Seed Patents](#).

ABOUT FLORIDA CERTIFIED ORGANIC GROWERS

Florida Organic Growers (FOG) is a non-profit organization established in 1987 to support and protect organic and sustainable agriculture. FOG's Education and Outreach Program promotes organic agriculture and healthy and just food systems, informing producers, consumers, media, institutions and governments about the benefits of organic and sustainable agriculture.

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