

BREAKING

## Roundup Maker to Pay \$10 Billion to Settle Cancer Suits

Bayer faced tens of thousands of claims linking the weedkiller to cases of non-Hodgkin's lymphoma. Some of the money is set aside for future cases.



By Patricia Cohen

June 24, 2020, 1:02 p.m. ET

Bayer, the world's largest seed and pesticide maker, has agreed to pay more than \$10 billion to settle tens of thousands of claims in the United States that its popular weedkiller Roundup causes cancer, the company said Wednesday.

The figure includes \$1.25 billion to deal with potential future claims from people who used Roundup and may develop the form of cancer known as non-Hodgkin's lymphoma in the years to come.

"It's rare that we see a consensual settlement with that many zeros on it," said Nora Freeman Engstrom, a professor at Stanford University Law School.

Bayer, a German company, inherited the legal morass when it bought Roundup's manufacturer, Monsanto, for \$63 billion in June 2018. It has repeatedly maintained that Roundup is safe.

The settlement, which covers an estimated 95,000 cases, was extraordinarily complex because it includes separate agreements with 25 lead law firms whose clients will receive varying amounts.

Most of the lawsuits filed early on were brought by homeowners and groundskeepers, although they account for only a tiny portion of Roundup's sales. Farmers are the biggest customers, and many agricultural associations contend glyphosate, the key ingredient in Roundup, is safe and effective.

Bayer still faces at least 25,000 claims from plaintiffs who have not agreed to be part of the settlement.

"This is nothing like the closure they're trying to imply," said Fletch Trammell, a Houston-based lawyer who said he represented 5,000 claimants not taking part in the settlement. "It's like putting out part of a house fire."

But Kenneth R. Feinberg, the Washington lawyer who oversaw the mediation process, said he expected most current plaintiffs to eventually join the settlement.

"In my experience, all those cases that have not yet been settled will quickly be resolved by settlement," said Mr. Feinberg, a veteran mediator best known for running the federal September 11th Victim Compensation Fund. "I will be surprised if there are any future trials."

Bayer said the amount set aside to settle current litigation was \$8.8 billion to \$9.6 billion, including a cushion to cover claims not yet resolved. It said the settlement included no admission of liability or wrongdoing.

The coronavirus outbreak, which has closed courts across the country, may have pushed the plaintiffs and the company to come to an agreement.

"The pandemic worked to the advantage of settlement because the threat of a scheduled trial was unavailable," Mr. Feinberg said.

Talks began more than a year ago at the prompting of Judge Vince Chhabria of U.S. District Court in San Francisco, who was overseeing hundreds of federal Roundup lawsuits.

Judge Chhabria appointed Mr. Feinberg to lead negotiations for an agreement that would include all the cases, including thousands of others filed in state courts and other jurisdictions.

The \$1.25 billion set aside for future plaintiffs will be applied to a class-action suit being filed in Judge Chhabria's court on behalf of those who have used Roundup and may later have health concerns.

Part of the \$1.25 billion will be used to establish an independent expert panel to resolve two critical questions about glyphosate: Does it cause cancer, and if so, what is the minimum dosage or exposure level that is dangerous?

If the panel concludes that glyphosate is a carcinogen, Bayer will not be able to argue otherwise in future cases — and if the experts reach the opposite conclusion, the class action's lawyers will be similarly bound.



Pressure on Bayer for a settlement has been building over the past year after thousands of lawsuits piled up and investors grew more vocal about their discontent with the company's legal approach.

Just weeks after the deal to purchase Monsanto was completed in 2018, a jury in a California state court awarded \$289 million to Dewayne Johnson, a school groundskeeper, after concluding that glyphosate caused his cancer. Monsanto, jurors said, had failed to warn consumers of the risk.

In March 2019, a second trial, this time in federal court in California, produced a similar outcome for Edwin Hardeman, a homeowner who used Roundup on his property, and an \$80 million verdict.

Two months later, a third jury delivered a staggering award of more than \$2 billion to a couple, Alva and Alberta Pilliod, who argued that decades of using Roundup caused their non-Hodgkin's lymphoma.

"Plaintiffs have gone to the plate three times and hit it out of the park," Ms. Engstrom at Stanford said. "When you see they're batting a thousand, and thousands more cases are waiting in the wings, that spells a very bleak picture for Monsanto."

All three monetary awards were later reduced by judges and Bayer appealed the verdicts, but the losses rattled investors and the stock price tumbled sharply.

Glyphosate was introduced in 1974, but its journey to becoming the world's No. 1 weedkiller gained momentum in 1996 after Monsanto developed genetically modified seeds that could survive Roundup's concentrated attacks on weeds.

Farmers quickly latched onto the agricultural products to reduce costs and increase crop yields. In the United States, for example, 94 percent of soybean crops and roughly 90 percent of cotton and corn now come from genetically altered seeds.

Those seeds have ensured that Roundup's continued popularity even though many competitors entered the market after the glyphosate patent expired in 2000. Farmers were also able to abandon some pesticides and herbicides considered more dangerous at the time.

By contrast, consumers around the world were profoundly worried about the effects of eating genetically modified food and the chemical's environmental impact.

Long-simmering anxieties exploded in 2015 when the International Agency for Research on Cancer, an arm of the World Health Organization, announced that glyphosate could "probably" cause cancer.

Rather than ending the debate over glyphosate's safety, the report became another battlefield where opponents argued about the influence of politics on science.

Monsanto denounced the findings, arguing that years of research in laboratories and in the field had proved glyphosate's safety. Regulators in a string of countries in Asia, Australia, Europe and North America have mostly backed Monsanto's — and now Bayer's — position.

The longest and most thorough study of American agricultural workers by the National Institutes of Health, for example, found no association between glyphosate and overall cancer risk, though it did acknowledge that the evidence was more ambiguous at the highest levels of exposure.

The Environmental Protection Agency ruled last year that it was a "false claim" to say on product labels that glyphosate caused cancer. The federal government offered further support by filing a legal brief on the chemical manufacturer's behalf in its appeal of the Hardeman verdict. It said the cancer risk "does not exist" according to the E.P.A.'s assessment.

Then in January, the agency issued another interim report, which "concluded that there are no risks of concern to human health when glyphosate is used according to the label and that it is not a carcinogen."

This week, a federal judge in California referred to the agency's pronouncement when it ruled that the state could not require a cancer warning on Roundup, writing that "that every government regulator of which the court is aware, with the exception of the I.A.R.C., has found that there was no or insufficient evidence that glyphosate causes cancer."

The National Association of Wheat Growers, the National Corn Growers Association and the U.S. Durum Growers Association, among other farm groups, supported Bayer's challenge.

Critics have countered that regulators based their conclusions on flawed and incomplete research provided by Monsanto. Several cities and districts around the world have banned or restricted glyphosate use, and some stores have pulled the product off its shelf.

Part of the discrepancy between the international agency's conclusions and so many other investigators' findings is related to differences in the questions that were asked and the way the data was selected and analyzed.

The international agency, in essence, was asking whether glyphosate has the potential to cause cancer. Its researchers judged the chemical "probably carcinogenic to humans," and added it to a list that already included beef, pork, mobile phone use, dry cleaning and working night shifts. Glyphosate escaped a stronger classification — "carcinogenic to humans" — that includes bacon, red wine, sun exposure,



tobacco and plutonium.

Government regulators, by contrast, are looking at the risk that glyphosate will actually cause cancer given most people's levels of exposure. Sharks, for example, are potentially dangerous. But people who stay out of the water are not at much risk of being attacked.

Several scientists on both sides of the divide, though, acknowledge that there is still a lot they don't know about the longer-term effects of such a widely used chemical.

In court, lawyers argued over the available scientific evidence. Perhaps most damaging for the defendants, though, were revelations that reinforced Monsanto's image as a company that people love to hate.

Monsanto's aggressive tactics to influence scientific opinion and discredit critics undercut the company's credibility. It had taken aim at hundreds of activists, scientists, journalists, politicians, and even musicians. At one point, a team monitored Neil Young's social media postings after he released an album, "The Monsanto Years," in 2015 and a short film that attacked the company and genetically modified food.

"There's a fair amount of evidence about Monsanto being pretty crass about this issue," Judge Chhabria of the U.S. District Court in San Francisco said when he reviewed the Hardeman verdict last summer. "Monsanto didn't seem concerned at all about getting at the truth of whether glyphosate caused cancer."

A confidential report from a consulting firm that Monsanto hired in 2018 also warned that the company's scorched-earth tactics were not helping. Even among people within the E.P.A. who viewed glyphosate as safe, the report said, "there is frustration over what some see as your stubborn resistance to taking seriously evidence that challenges your thinking."

With Bayer's purchase in 2018, the Monsanto brand ceased to exist, but the shadows on its public image persisted.

Patricia Cohen covers the national economy. Since joining The Times in 1997, she has also written about theater, books and ideas. She is the author of "In Our Prime: The Fascinating History and Promising Future of Middle Age." @PatcohenNYT • Facebook



EXCLUSIVE

## South Africa Production Rebates Under Fire

By CHRISTOPHER VOURLIAS

THE MOTION PICTURE Assn. has raised concerns that recent changes to South Africa's tax incentive scheme and other regulatory proposals could stunt the development of the country's film industry, according to an MPA rep.

Under the new guidelines, productions that fail to meet certain benchmarks for supporting black-owned businesses are faced with the prospect of not receiving any cash rebate, even as their eligibility won't be determined until after production wraps. Speaking on behalf of the MPA, Marianne Grant described the new tax rules as "an untenable" → **REBATES CONTINUED P.32**

EXCLUSIVE

## China's HGC Unveils Toon Trio at Market

By PATRICK FRATER

CHINA'S HGC Entertainment Group is launching a trio of completed Chinese animation movies at this week's American Film Market. It will also handle Asian sales of Norwegian adventure film "Amundsen." (See story, page 6.)

"The Wind Guardians" is the story of a blind boy whose mother makes a dreadful trade with a monster in order to restore her son's sight. He has to understand and break the spell that has transformed her. Directed by Liu Kuo, the → **HGC CONTINUED P.32**

## First Look: Walken and Drivin'



Christopher Walken stars in "Percy," for which Concourse Film Trade launched worldwide sales at AFM. Walken plays a farmer who is battling a conglomerate that accuses him of stealing its seeds. Supporting staff includes Zach Braff and Christina Ricci. Daniel Beckerman and Ethan Lazar produced through their company Scythia Films. Productivity Media and Concourse Media co-financed and executive produced.

EXCLUSIVE

## Bac Turns 'Visceral' With Jardin Thriller

By ELSA KESLASSY

GEORGINA CAMPBELL ("Black Mirror") and Faye Dunaway are set to star in "Visceral," a female-driven action thriller that will mark the English-language debut of Frederic Jardin ("Sleepless Night"). Bac Films has come on board to handle international sales and distribution in France.

Marco Cherqui at CPB Films ("A Prophet") is producing the thriller with Frida Torresblanco at Braven Films ("Disobedience"). Jeff Elliott, David Grumbach ("The Leisure Seeker"), Eric Laufer and Giovanna Randall will serve as executive producers.

The movie reunites Jardin, Cherqui and Grumbach, who had worked together on "Sleepless Night." Jeff Elliott ("Poison Rose,"

"Imperium") at Brickell and Broadbridge is financing.

"Visceral" marks Jardin's follow-up to "Sleepless Night," which sold to more than 30 territories and was remade in the U.S. with Jamie Foxx and Michelle Monaghan. Jardin also successfully leaped into TV and directed Canal Plus's critically acclaimed series "Spiral" and "Braquo."

"Visceral" stars Campbell as Julie, a young cardiac surgeon who is trying to save a boy waiting for a heart transplant. When a compatible and available organ is finally assigned to him, Julie picks it up but is kidnapped by a Russian mafia family who also wants the heart in order to save their grandmother.

→ **'VISCERAL' CONTINUED P.34**

EXCLUSIVE

## Hughes, Jovovich Topline Gans' Action 'Corto'

By DAVE MCNARY

TOM HUGHES AND Mila Jovovich will star in the swash-buckling adventure movie "Corto Maltese" with French director Christophe Gans attached.

Gans, whose credits include the French "Beauty and the Beast," "Silent Hill" and "Brotherhood of the Wolf," will direct from a script by William Schneider. Samuel Hadida is producing the film through his Davis Films alongside Spain's production and distribution company TriPictures. Christian Mercuri's Capstone Group is starting sales at the American Film Market.

Producers see "Corto Mal" → **'MALTESE' CONTINUED P.34**

EXCLUSIVE

## 'Chambermaid' Bound for N.A. Via Kino Lorber

By EMILIO MAYORGA

NEW YORK-BASED Kino Lorber has taken North American rights to "The Chambermaid," the feature debut of Mexico's Lila Aviles that took the best film and the Warrior of the Press awards at Morelia Intl. Film Festival last week.

"The Chambermaid" will get an U.S. premiere on Nov. 10 at the AFI Fest in Los Angeles. A national theatrical release is scheduled for summer 2019.

Kino Lorber senior vice president Wendy Lidell said, "Using an incredible economy of" → **'CHAMBERMAID' CONTINUED P.34**



Percy Schmeiser of Bruno, Sask., is an international folk hero after taking on biotechnology giant

# Fight against Monsanto vaults farmer into spotlight

BY KRISTA FOSS

**M**onsanto did not know what it was getting into when it tried to teach Percy Schmeiser a lesson.

Two years after losing a patent dispute with the biotechnology giant, the 71-year-old grain farmer from Bruno, Sask., has taken his story — and his message about farmers' rights — from Brazil to Bangladesh, from Australia to Austria.

He has at least as many international gigs as boy band 'N Sync this year, yet the jet lag is not slowing him down.

In the fall, he visited South Africa. In March, he was in Thailand. This week he kicks off a tour that will take him through Europe. Then he's off to Seattle, Wash., followed by a spin through South America.

"It has been pretty hectic," he said recently.

Farmers groups, environmentalists and United Nations policymakers all want to hear Mr. Schmeiser's tale of being taken to court over the kind of canola found growing in his fields four years ago.

Some will pay his air fare and expenses to have him tell it in person (he doesn't charge speaking fees.)

And the next time this grandfather of 14 will be back home in Saskatchewan is mid-May, when a Saskatoon judge is to hear his appeal of the March, 2000, ruling that made him an international folk hero.

"Monsanto couldn't have picked a worse person to get into a fight with," said Pat Mooney, the executive director of the Winnipeg-based technology watchdog group ETC, who has seen Mr. Schmeiser speak at international forums.

"He's articulate and emotional, and he always creates a stir when he tells his story."

Born and raised in Bruno, a farming community 90 kilometres northeast of Saskatoon, Mr. Schmeiser has grown canola, wheat and legumes on 1,400 acres of land for the last 47 years.

In the last two years, it has become increasingly difficult for him to maintain his packed travel itinerary and his grain farm. This year, he will rent out most of his land to neighbours and cultivate just 300 acres himself with the help of family.

In 1998, Monsanto informed him he was infringing on their patent for a herbicide-resistant strain of canola, called Roundup Ready, because they had found it growing in his fields. He had not paid the necessary fees to cultivate it.

Mr. Schmeiser argued that the seed had blown into his field or had been dumped there by accident, and that made Monsanto's patent invalid. Monsanto wanted to settle out of court, but Mr. Schmeiser refused.

A federal court judge ruled in March, 2000, that it was unlikely the patented canola ended up growing in Mr. Schmeiser's fields



PETER WILSON/SASKATOON STARPHOENIX

Farmers groups, environmentalists and United Nations policymakers are all want to hear Percy Schmeiser's David-and-Goliath story.

**'Sometimes we wake up in the middle of the night and ask ourselves, "What did we get ourselves into? We could lose everything we worked our whole lives for."'**

by accident and that he must have knowingly harvested the patented strain without informing Monsanto. "What the judgment said was it doesn't matter how Monsanto seeds get into your fields; it's their property. All the farmers' rights go out the window," Mr. Schmeiser said.

The case cost Mr. Schmeiser and his wife Louise \$200,000 in legal fees. To pay, they mortgaged their land and gutted their retirement savings. But the judge also awarded costs to Monsanto, which this fall asked for nearly \$1-million.

"Sometimes we wake up in the middle of the night and ask ourselves, 'What did we get ourselves into? We could lose everything we worked our whole lives for,'" said Mr. Schmeiser.

But rather than sit at home and fret, Mr. Schmeiser has turned himself into a global poster boy for the rights of small farmers.

Through his Web site ([www.percyschmeiser.com](http://www.percyschmeiser.com)), which touts his story as "the classic David vs Goliath struggle," he has raised tens of thousands of dollars to pay for next month's appeal.

The site sports a photograph of him holding the Mahatma Gandhi award, presented to him in Delhi in 2000 for his work promoting non-violent improvement of humanity.

Meanwhile, Monsanto Canada is resigned to losing the public-relations battle, as long as it wins in court.

"We knew going into this that this was a no-win situation for us in the public's eye. It has all the classic things that people can take a spin on," said Trish Jordan, Monsanto Canada spokeswoman. "The bottom line is that this case for us is about protecting intellectual property. There are 30,000 farmers who use this technology in Canada and pay to use it."

Ms. Jordan said the company is not at all worried about Mr. Schmeiser's appeal and she noted

he has not paid "one cent" of the costs owed to Monsanto.

But high-profile lawsuits against Monsanto are not likely to end with Mr. Schmeiser's appeal.

Earlier this year, the Saskatchewan Organic Directorate launched a class-action suit against Monsanto and Aventis claiming that pollen drift and contamination from their genetically modified strains of canola have made it impossible for Saskatchewan farmers to grow certifiably organic canola.

Mr. Schmeiser has also registered a lawsuit against Monsanto for damages related to alleged contamination of his fields by Roundup Ready canola, a suit he hasn't yet had time to pursue.

"My wife said we won't live long enough to see the end of it," he said.



*Please do not remove* *A. Lohmeyer*

## THE CANOLA LAWSUIT

# David and Goliath in a food fight

**Monsanto Co. alleges farmer unlawfully used its genetically modified canola seed**

BY DANIEL GIRARD  
WESTERN CANADA BUREAU

BRUNO, Sask.

**A** MAN with a quarter-century in elected office and a pickup truck with a vanity licence plate bearing his name is hardly afraid of being the centre of attention.

But even for Percy Schmeiser the notoriety from his fight with an American multinational over canola seed has become a bit overwhelming.

"I'm supposed to be semi-retired," he says. "I'd rather be fishing."

Instead, Schmeiser, 69, who has farmed near this town of 700 people for more than 40 years, is in hot water with Monsanto Co., the biochemical giant. It alleges he violated its patent by using the company's genetically modified canola seed in his fields without permission.

Monsanto and its Canadian subsidiary launched a lawsuit against Schmeiser two years ago. Attempts at mediation have failed. The trial is set to begin June 5 in Saskatoon.

Monsanto wants Schmeiser to admit breaking the rules and to pay the same \$15-per-acre (about \$37 per hectare) fee it charges 20,000 farmers across Western Canada for using its patented canola seed with a herbicide-tolerant gene. It's also seeking an un-

It turns out the plants were Monsanto's genetically altered canola. Schmeiser has launched a counter lawsuit, seeking \$10 million from Monsanto for contaminating his farm and the environment, defamation and trespassing to get crop samples.

"I didn't want to be a hero or a saint but felt that what was happening was wrong," says Schmeiser, who decided to fight Monsanto after talking it over with Louise, his wife of 48 years. "We felt our freedoms were being challenged and we had to take a stand."

That stand has raised Schmeiser to a public profile he never imagined. There have been the obvious comparisons with David and Goliath. But there are also global implications for the business of genetically modified foods and family farmers' rights in an increasingly corporate industry.

Schmeiser's fight has captured media attention from around the world, particularly Europe, where the debate over genetically modified organisms is most intense. Reporters from Dutch TV and newspapers in Britain and France are the latest visitors to Bruno, 75 kilometres east of Saskatoon.

"Sometimes I wake up asking myself what I've got myself into, but I've never doubted it was the right thing to do," says Schmeiser, who was mayor of Bruno in the 1960s and '70s and a two-term Liberal member of the Saskatchewan legislature.

"But I'm also not stupid," says the father of five and grandfather of 13. "I know who I'm up against and I know they've got deep pockets."

St. Louis-based Monsanto is perhaps best known as a maker of PCBs and the Vietnam War herbicide Agent



GLEN BERGER FOR THE TORONTO STAR

**FIGHTING FOR A PRINCIPLE:** Percy Schmeiser, 69, says he should be semi-retired instead of having to fight off giant U.S. biochemical company. "I'd rather be fishing."

stringent contracts with the company. They pay for one-time use of the seed and cannot save leftovers for future use or sale.

claims that the seed could have blown on to his fields from passing trucks or neighbours using Roundup Ready: "If we didn't feel our case was that

you have more power and money over them and that makes it easier for you to win."

There have also been three times as many phone calls and donations from \$5 to \$1,000 — more than \$10,000 in total — to help pay for legal costs which, Schmeiser says, approach \$100,000 even with lots of free time donated by lawyers.

Louise Schmeiser, 68, who has high blood pressure, blacked out last summer and fell down the cellar stairs damaging her neck and eye. It's impossible to definitively lay blame, her husband admits, but the stress at the time was intense.

But Louise is determined to keep fighting. She's angry that instead of approaching them, Monsanto used private investigators to snoop in their fields and visit the local canola cleaning mill to examine their crops.

"I couldn't go to Monsanto and take anything of theirs," she says. "What I hope comes of this is some protection of farmers' rights. If they win this case, then those rights are gone."

Many of the residents of Bruno are tired of hearing about Schmeiser and Monsanto. Some are jealous of his success over the years or angry with him after run-ins over farming practices, one resident says.

"But even those farmers that don't like him still want to see him win," the resident says. "They just don't want to admit it."

As he drives along the road looking at fields that his grandfather settled early last century, Schmeiser remains convinced of two things: He did nothing wrong and he cannot turn back now.



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## Percy Schmeiser, un rebelle contre les OGM

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C'était au printemps. La visite du centre de recherche sur les plantes transgéniques de Monsanto, à Saint-Louis, dans le Missouri, s'achevait. Les deux chargés de communication, affables et pédagogiques, avaient montré les chambres chaudes où des chercheurs préparent de nouveaux organismes génétiquement modifiés (OGM), les serres où ils poussent, les équipements permettant d'opérer l'insertion des gènes dans les plantes. On parlait de choses et d'autres, et puis on demanda : *"Au fait, où en est l'affaire Schmeiser ?"* Le ton des deux hommes, employés de Monsanto depuis plus de vingt ans, changea soudain, un éclair haineux passa dans leurs yeux, et, pendant dix minutes, ils vitupérèrent ledit Schmeiser avec une authentique colère : *"Schmeiser, c'est un menteur, un voleur, un écolo de luxe !"*



# David gegen Gen-Goliath

➤ Das Ehepaar Schmeiser kämpft für unmanipulierte Pflanzen  
➤ Ikonen des weltweiten Widerstands / „Es geht um unsere Zukunft“



Ein kämpferisches Paar: Louise und Percy Schmeiser (beide 78) zwischen den Tomaten-Stauden eines Hamburger Bio-Bauern

Wie Revolutionäre sehen sie nicht gerade aus. Im Gegenteil: Das ältere Ehepaar, das da im Wintergarten des Biohofs Schumann bei Elmshorn sitzt, ist konservativ gekleidet mit Hemd und Bundfaltenhose und trinkt zum Apfelkuchen ganz spießig einen Filterkaffee. Und doch ist Hamburg, wo die beiden 78-Jährigen am Freitag von der GAL-Bürgerschaftsfraktion im Rathaus empfangen wurden, nur eine weitere Station auf dem kämpferischen Feldzug der beiden Kanadier. Dem Feldzug von Louise und Percy Schmeiser gegen die Gentechnik.

„Es geht um die Zukunft dieser Welt“, sagt Percy Schmeiser als Erklärung für seinen unermüdlichen Tatendrang und den seiner Frau. „Es geht um unsere Kinder, Enkel und alle kommenden Generationen. In Europa habt ihr noch die Wahl. Wir haben sie nicht mehr.“

Dreizehn Jahre ist es her, dass in Kanada und in den USA der Anbau genmanipulierter Pflanzen zugelassen wurde. Dreizehn Jahre, die die Landwirtschaft in Nordamerika komplett verändert haben. „Wenn Gen-Pflanzen einmal da sind, beherr-

„Es geht um unsere Kinder, Enkel und alle kommenden Generationen“

Percy Schmeiser (78)

schen sie alles. Wind, Pollenflug und Bienen verbreiten die Samen. In Kanada gibt es heute keinen organischen Raps und kein organisches Soja mehr“, warnt Schmeiser.

Ein Nebeneinander von Gen-Anbau und natürlicher Landwirtschaft ist nicht möglich – so lautet die wichtigste Botschaft der Schmeisers, die selbst zu Opfern der Ausbreitung wurden. 40 Jahre lang baute das Farmer-Ehepaar auf seinen 700 Hektar großen Ländereien Raps an. Dann kam die Gen-Zulassung. Und nur ein Jahr später Monsanto. Der weltgrößte Saatgut-Konzern nahm Proben von Schmeisers Feldern und wies dort seine eigene Gensaat nach.

Konsequenz: Die Schmeisers wurden wegen Lizenzverletzung verklagt, Monsanto forderte 260 000 Euro Schadenersatz. Alternativ bot der Konzern an zu verzichten, sollten die Schmeisers in Zukunft nur noch Monsanto-Saat kaufen. Das Ehepaar, dessen Felder durch Pollenflug verunreinigt worden waren, wehr-

te sich. Der Kampf Davids gegen Goliath begann. 2004 endete er vor dem Obersten Gerichtshof: Monsanto bekam Recht – alle Lebensformen, die die patentierten Gene enthielten, seien Eigentum des Konzerns. Zwar mussten die Schmeisers keinen Schadenersatz zahlen, dafür aber die Prozesskosten tragen.

Damit war der Kampf aber noch längst nicht beendet. Die Schmeisers machten weiter, reisen bis heute viele Monate im Jahr um die Erde, um ihre Botschaft zu verbreiten. 2007 erhielten sie dafür den Alternativen Nobelpreis. Stecken auch Rachegefühle dahinter? „Nein“, sagt Percy Schmeiser. „Ich war viele Jahre Politiker im Parlament von Saskatchewan. Ich respektiere gegnerische Meinungen. Hier geht es um mehr.“

Es dürfe keine Patente auf Lebensformen geben, meint der renitente Farmer. Das wichtigste

te sei jedoch die Widerlegung einer Lüge: „Ich höre auch hier in Europa oft die Argumente für Gen-Pflanzen, die man uns 1996 erzählt hat: hohe Ernten, weniger Chemikalien, Bekämpfung des Hungers.“ Nichts davon sei wahr. Das hätten auch verschiedene wissenschaftliche Untersuchungen gezeigt. „Der Nährwert der Gen-Pflanzen liegt nur bei 50 Prozent der biologischen Produkte.“ Zudem seien die Erträge der Bauern

gesunken – bei Soja um 15 Prozent, bei Raps um sieben. Hinzu komme, dass die Bauern jetzt drei Mal so viele Pestizide brauchen, weil neues Super-Unkraut entstanden sei. Schmeiser: „Durch die flächendeckende Kontamination haben die Bauern in Kanada die Wahlfreiheit verloren. Wir wollen den Bauern in der Heimat unserer Großeltern helfen, diese Freiheit zu bewahren.“

NINA GESSNER



2007 wurde Percy Schmeiser und seine Frau für ihr Engagement der Alternative Nobelpreis verliehen.

## Gentechnik in der EU

➤ Warum Gentechnik? Mit Hilfe von Gentechnik kann das Erbgut eines Organismus verändert werden. Dies soll bei Nutzpflanzen dafür sorgen, dass sie gegen Schädlinge resistent sind oder besonders gesundheitsfördernde Stoffe enthalten.

➤ Was sind gentechnisch veränderte Lebensmittel? Der Begriff umfasst neben gentechnisch veränderten Organismen wie Genmais auch Produkte, die solche enthalten (etwa Joghurt mit gentechnisch veränderten Bakterien) oder aus solchen hergestellt wurden (Öl aus gentechnisch veränderten Sojabohnen). In der EU müssen alle gentechnisch veränderten Lebensmittel gekennzeichnet werden, Ausnahme sind tierische Produkte wie Milch, Fleisch und Eier. Zur Orientierung gibt es auch für diese Produkte seit August ein einheitliches Logo „Ohne Gentechnik“ (s. oben).

➤ Wo werden Gen-Nahrungsmittel angebaut? Kommerziell angebaut wird mittlerweile in 25 Ländern. Nach Angaben der internationalen Biotechnik-Agentur ISAAA stieg die weltweite Anbaufläche für Gen-Pflanzen vergangen Jahr auf 125 Millionen Hektar. Dies ent-

spricht der 3,5-fachen Größe Deutschlands. Am häufigsten angebaut werden Soja, Mais und Baumwolle. Die größte Anbaufläche haben die USA mit 62,5 Millionen Hektar, danach folgen Argentinien (21 Mio Hektar) und Brasilien (15,8). Deutschland liegt mit unter 100 000 Hektar auf Platz 22. Die einzige Gen-Pflanze, die in der EU angebaut werden darf, ist der Genmais MON 810. Allerdings haben inzwischen sechs Staaten den Anbau untersagt. Deutschland verbietet ihn im April 2009. Im vergangenen Jahr wurde der Mais in sieben Ländern kommerziell angebaut – auf 108 000 Hektar. Die größte Fläche hatte Spanien. In Deutschland darf seit April auf einem Versuchsfeld die Genkartoffel Amflora angebaut werden.

➤ Was sind die Risiken? Gentechnik-Gegner befürchten, dass das ins Erbgut eingeschleuste Gift auch nützliche Insekten wie Käfer, Schmetterlinge und Bienen töten könne. Außerdem bemängeln sie, dass die Auswirkungen auf die Gesundheit von Menschen und Wildtieren noch nicht ausreichend erforscht ist. Durch Pollenflug kann das künstliche Genmaterial sich mit gentechnikfreiem vermischen.





Percy Schmeiser of Bruno, Sask., is an international folk hero

# Fight against Monsanto vaults farmer into spotlight

BY KRISTA FOSS

**M**onsanto did not know what it was getting into when it tried to teach Percy Schmeiser a lesson.

Two years after losing a patent dispute with the biotechnology giant, the 71-year-old grain farmer from Bruno, Sask., has taken his story — and his message about farmers' rights — from Brazil to Bangladesh, from Australia to Austria.

He has at least as many international gigs as boy band 'N Sync this year, yet the jet lag is not slowing him down.

In the fall, he visited South Africa. In March, he was in Thailand. This week he kicks off a tour that will take him through Europe. Then he's off to Seattle, Wash., followed by a spin through South America.

"It has been pretty hectic," he said recently.

Farmers groups, environmentalists and United Nations policy makers all want to hear Mr. Schmeiser's tale of being taken to court over the kind of canola found growing in his fields four years ago.

Some will pay his air fare and expenses to have him tell it in person (he doesn't charge speaking fees.)

And the next time this grandfather of 14 will be back home in Saskatchewan is mid-May, when a Saskatoon judge is to hear his appeal of the March, 2000, ruling that made him an international folk hero.

"Monsanto couldn't have picked a worse person to get into a fight with," said Pat Mooney, the executive director of the Winnipeg-based technology watchdog group ETC, who has seen Mr. Schmeiser speak at international forums.

"He's articulate and emotional, and he always creates a stir when he tells his story."

Born and raised in Bruno, a farming community 90 kilometres northeast of Saskatoon, Mr. Schmeiser has grown canola, wheat and legumes on 1,400 acres of land for the last 47 years.

In the last two years, it has become increasingly difficult for him to maintain his packed travel itinerary and his grain farm. This year, he will rent out most of his land to neighbours and cultivate just 300 acres himself with the help of family.

In 1998, Monsanto informed him he was infringing on their patent for a herbicide-resistant strain of canola, called Roundup Ready, because they had found it growing in his fields. He had not paid the necessary fees to cultivate it.

Mr. Schmeiser argued that the seed had blown into his field or had been dumped there by accident, and that made Monsanto's patent invalid. Monsanto wanted to settle out of court, but Mr. Schmeiser refused.

A federal court judge ruled in March, 2000, that it was unlikely the patented canola ended up growing in Mr. Schmeiser's fields



Farmers groups, environmentalists and United Nations policy makers all want to hear Mr. Schmeiser's tale of being taken to court over the kind of canola found growing in his fields four years ago.

**'Sometimes we wake up in the middle of the night and ask ourselves, "What did we get ourselves into? We could lose everything we worked our whole lives for."'**

by accident and that he must have knowingly harvested the patented strain without informing Monsanto. "What the judgment said was it doesn't matter how Monsanto seeds get into your fields; it's their property. All the farmers' rights go out the window," Mr. Schmeiser said.

The case cost his wife Lou fees. To pay, he sold land and gave up savings. But the costs to Monsanto were asked for near

"Sometimes in the middle of the night, we wake up and ask ourselves, 'What did we get ourselves into? We could lose everything we worked our whole lives for.'"

But rather than fret, Mr. Schmeiser turned himself into a global rights of small farmers.

Through his cyschmeiser.com story as "the underdog struggle," thousands of people have appeared



# International folk hero after taking on biotechnology giant



PETER WILSON/SASKATOON STARPHOENIX

Environmentalists and United Nations policymakers are all want to hear Percy Schmeiser's David-and-Goliath story.

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The case cost Mr. Schmeiser and his wife Louise \$200,000 in legal fees. To pay, they mortgaged their land and gutted their retirement savings. But the judge also awarded costs to Monsanto, which this fall asked for nearly \$1-million.

"Sometimes we wake up in the middle of the night and ask ourselves, 'What did we get ourselves into? We could lose everything we worked our whole lives for,'" said Mr. Schmeiser.

But rather than sit at home and fret, Mr. Schmeiser has turned himself into a global poster boy for the rights of small farmers.

Through his Web site ([www.percyschmeiser.com](http://www.percyschmeiser.com)), which touts his story as "the classic David vs Goliath struggle," he has raised tens of thousands of dollars to pay for next month's appeal.

The site sports a photograph of him holding the Mahatma Gandhi award, presented to him in Delhi in 2000 for his work promoting non-violent improvement of humanity.

Meanwhile, Monsanto Canada is resigned to losing the public-relations battle, as long as it wins in court.

"We knew going into this that this was a no-win situation for us in the public's eye. It has all the classic things that people can take a spin on," said Trish Jordan, Monsanto Canada spokeswoman. "The bottom line is that this case for us is about protecting intellectual property. There are 30,000 farmers who use this technology in Canada and pay to use it."

Ms. Jordan said the company is not at all worried about Mr. Schmeiser's appeal and she noted

he has not paid "one cent" of the costs owed to Monsanto.

But high-profile lawsuits against Monsanto are not likely to end with Mr. Schmeiser's appeal.

Earlier this year, the Saskatchewan Organic Directorate launched a class-action suit against Monsanto and Aventis claiming that pollen drift and contamination from their genetically modified strains of canola have made it impossible for Saskatchewan farmers to grow certifiably organic canola.

Mr. Schmeiser has also registered a lawsuit against Monsanto for damages related to alleged contamination of his fields by Roundup Ready canola, a suit he hasn't yet had time to pursue.

"My wife said we won't live long enough to see the end of it," he said.

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## Pollution

**David Adam,**  
*environment  
correspondent*

Tue 22 Jan 2008  
08.52 GMT



# Canadian farmer forces GM giant back to court

- **Monsanto accused of pollution over stray plants**
- **Campaigner believes case could trigger global claims**

He was portrayed as an environmental David who stood up to the corporate Goliath, and became a figurehead of the battle against the introduction of genetically modified crops everywhere. When Canadian farmer Percy Schmeiser was sued by Monsanto for growing the firm's **GM** crops, which he claimed blew on to his land, the company's eventual victory in the Canadian supreme court was overshadowed by accusations of aggressive tactics and corporate bullying.

### most popular



Arctic warming: scientists alarmed by 'crazy' temperature rises



Late-night hosts on Trump's Parkland comments: 'We already know how you react to combat'



Charlie Watts: it wouldn't bother me if Rolling Stones split



'Right to be forgotten' claimant wants to rewrite history, says Google





LAW

# Jury Awards Terminally Ill Man \$289 Million In Lawsuit Against Monsanto

August 10, 2018 · 10:04 PM ET

VANESSA ROMO



Plaintiff Dewayne Johnson, shown on July 9, listening to his attorney speak about his condition during the Monsanto trial in San Francisco. On Friday, a jury awarded Johnson \$289 million in damages after ruling that Monsanto intentionally concealed the health risks of its popular Roundup products.

*Josh Edelson/AP*



At 42, Dewayne Johnson developed a bad rash that was eventually diagnosed as non-Hodgkin's lymphoma.

Four years later Johnson — now near death, according to his doctors — has been awarded a staggering sum of \$289 million dollars in damages in a case against agricultural giant Monsanto.

The former school groundskeeper sued the company, arguing that an herbicide in the weed killer Roundup, likely caused the disease. His lawyers also contended Monsanto failed to warn consumers about the alleged risk from their product.

On Friday, a San Francisco jury agreed. They deliberated for three days before awarding Johnson \$250 million in punitive damages and \$39 million in compensatory damages.

"The jury found Monsanto acted with malice and oppression because they knew what they were doing was wrong and doing it with reckless disregard for human life," said Robert F. Kennedy Jr., one of Johnson's attorneys, according to the Associated Press.

"This should send a strong message to the boardroom of Monsanto," Kennedy added.

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Article continues below

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HEALTH

Monsanto Lawsuit Over Cancer Claims Can Proceed, Federal Judge Rules



Johnson's is the first of hundreds of cancer-patient cases against Monsanto and could be a bellwether of what lies ahead for the company.

As NPR's Bill Chappell reported:

"Claims against Monsanto received a boost in 2015, when the International Agency for Research on Cancer – part of the World Health Organization – announced that two pesticides, including glyphosate, are 'probably carcinogenic to humans.'

Monsanto is now facing hundreds of lawsuits, many of which were filed after that 2015 announcement. Dozens of the suits were joined to be heard in the court of U.S. District Judge Vince Chhabria – who, even as he allowed the case to proceed, said the plaintiffs 'appear to face a daunting challenge' in supporting their claims at the next phase of the case."



#### THE SALT

Local Courts Lift Arkansas Weedkiller Ban, Creating Chaos

"We were finally able to show the jury the secret, internal Monsanto documents proving that Monsanto has known for decades that ... Roundup could cause cancer," Johnson's lawyer Brent Wisner said in a statement, according to The Guardian.

Monsanto has consistently denied that glyphosate-based herbicides cause cancer.

"We are sympathetic to Mr. Johnson and his family," Monsanto Vice President Scott Partridge said in a statement following the verdict. "Today's decision does not change the fact that more than 800 scientific studies and reviews ... support the fact that glyphosate does not cause cancer, and did not cause Mr. Johnson's cancer."

He confirmed the company will appeal the decision "and continue to vigorously defend this product, which has a 40-year history of safe use and continues to be a vital, effective, and safe tool for farmers and others."



# MONSANTO COMPANIES DO NOT BUY

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Aunt Jemima	Lean Cuisine
Aurora Foods	Lipton
Banquet	Loma Linda
Best Foods	Marie Callenders
Betty Crocker	Minute Made
Bisquick	Morningstar
Cadbury	Ms. Butterworths
Campbells	Nabisco
Capri Sun	Nature Valley
Carnation	Ocean Spray
Chef Boyardee	Ore-Ida
Coca Cola	Orville Redenbacher
ConAgra	Pasta-Roni
Delicious Brand Cookies	Pepperidge Farms
Duncan Hines	Pepsi
Famous Amos	Pillsbury
Frito Lay	Pop Secret
General Mills	Post Cereals
Green Giant	Power Bar Brand
Healthy Choice	Prego Pasta Sauce
Heinz	Pringles
Hellmans	Procter and Gamble
Hershey's Nestle	Quaker
Holsum	Ragu Sauce
Hormel	Rice-A-Roni
Hungry Jack	Smart Ones
Hunts	Stouffers
Interstate Bakeries	Sweppes
Jiffy	Tombstone Pizza
KC Masterpiece	Totinos
Keebler/Flowers Industries	Uncle Ben's
Kelloggs	Unilever
Kid Cuisine	V8
Knorr	
Kool-Aid	
Kraft/Phillip Morris	



The national magazine of the Sierra Club

GO



# Missouri Farmer Wins \$265 Million Verdict Against Monsanto

Jury finds that because of dicamba, a peach farmer is going out of business

PHOTO BY JJ GOULIN/ISTOCK

BY [CAREY GILLAM \(/SIERRA/AUTHORS/CAREY-GILLAM\)](#) | FEB 25 2020

A Missouri peach farmer notched a rare courtroom victory this month, defeating the former Monsanto Co. and chemical giant BASF in the first of what is expected to be a series of court fights over claims that the companies are responsible for pesticide damage that has wiped out orchards, gardens, and organic farm fields in multiple states.

On February 14, a unanimous jury awarded Bill Bader and his family-owned Bader Farms \$15 million in compensatory damages. The following day, they added on another



\$250 million in punitive damages to be paid by Bayer AG (Monsanto's German owner) and BASF. The jury found that Monsanto and BASF conspired in actions that created what Bader's attorney called an "ecological disaster" designed to increase profits at the expense of farmers such as Bader.

The verdict followed three weeks of documentary evidence and testimony introduced in US District Court in Cape Girardeau, Missouri. The evidence proved that Bader Farms suffered extensive damage to its peach business from dicamba, a herbicide sprayed by neighboring farmers that drifted into the Bader orchard. The dicamba did so much damage that the Bader farm is essentially being forced out of business due to the loss of 30,000 peach trees, according to Bader attorney Bill Randles.

"It's very sad," Randles said in an interview with *Sierra*. "He's been the 'peach guy.' Now . . . his peach farm cannot survive."

The Bader lawsuit (<https://usrtk.org/wp-content/uploads/2020/01/Amended-complaint-Bader-v.-Monsanto.pdf>) is one of many brought by farmers around the country blaming Monsanto and BASF for dicamba damage to their fields, gardens, and trees. Dicamba has been used by farmers for decades to kill weeds on their fields but historically was not sprayed during hot summer months because of the tendency of the herbicide to become volatile and drift long distances where it could kill non-targeted plants.

Monsanto upended that caution when it introduced genetically engineered soybeans and cotton designed to tolerate a direct spray of dicamba. The company said fields planted with its new GMO crops (<https://www.roundupreadyxtend.com/products/Pages/default.aspx>) could be sprayed with new dicamba formulations developed by Monsanto and BASF that would not drift away from the targeted fields. That meant farmers buying the GMO seeds could use the dicamba herbicides at will to help fight weeds even during the warm months of the season and not worry about harming a neighbor's fields, the companies said.

Monsanto announced in 2011 (<https://www.reuters.com/article/us-food-summit-monsanto-idUSTRE72D8CT20110314?feedType=RSS&feedName=everything&virtualBrandChannel=11563>) that it would work with BASF to introduce the new dicamba system because its "Roundup Ready" system, which was based on the use of glyphosate herbicides and glyphosate-tolerant crops, had led to an epidemic of glyphosate-resistant weeds.

Scientists warned that while the new system might work well for people buying the special seeds, it would threaten the production of farmers growing anything other than Monsanto's GMO soybeans and cotton. Publicly, Monsanto and BASF scoffed at the concerns and assured regulators that their new dicamba cropping system would not create problems.



But internal corporate communications introduced at trial by Randles showed that the companies secretly predicted there would be thousands of complaints about dicamba damage and even planned how to avoid liability. The documents also showed that the companies believed many cotton and soybean farmers would buy the special GMO seeds not because they wanted or needed the weed control but as a defensive measure against drift.

“They knew they were going to hurt people, and they planned to make money off of it. It is that simple,” Randles said. “There were a lot of documents in which they privately acknowledged the harm they’re causing.”

The jury largely agreed with the Bader Farms’s allegations, finding that Monsanto was negligent in distributing its GMO dicamba-tolerant seeds before new herbicides were released, which encouraged farmers to spray old versions of dicamba. The jury also found that Monsanto and BASF were negligent because even their new dicamba herbicide formulations drifted off target despite the companies’ representations that they would not.

Bayer said that it would appeal the verdict and that there was “no competent evidence presented” (<https://media.bayer.com/baynews/baynews.nsf/id/Bayer-to-swiftly-appeal-jury-decision-in-dicamba-case?Open&parent=news-overview-category-search-en&ccm=020>) attaching liability to Monsanto’s products. BASF said it was “surprised by the jury’s decision” (<https://www.basf.com/global/en/media/news-releases/2020/02/p-20-131.html>) and would join in the appeal.

“BASF is convinced of the safety of its products when they are used correctly following the label instructions and stewardship guidelines,” the company said in a statement.

Lawsuits similar to Bader’s have been brought by roughly 140 farmers and have been combined as multidistrict litigation (MDL) in the federal court in Cape Girardeau. The same judge who oversaw the Bader trial, Judge Stephen Limbaugh, is overseeing the MDL.

Randles said he is confident that the jury verdict will be upheld.

“They’re going to pay. Can they stall it? Yes,” Randles said. “Can they overturn it? No.”

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# Monsanto vs. Schmeiser enters phase two

By Sean Pratt  
Saskatoon newsroom

The lawyer for Bruno, Sask., farmer Percy Schmeiser says the judge who determined Schmeiser was guilty of violating Monsanto's Roundup Ready patent made 17 fundamental errors in his decision.

Terry Zakreski outlined those errors in front of three Federal Court of Appeal justices last week. But his case boiled down to two key points — the fact that Schmeiser never sprayed his 1998 canola crop with Roundup and the claim that Monsanto violated Schmeiser's property rights by seizing the farmer's seed.

Schmeiser was found guilty of growing Roundup Ready canola without a licence by a Federal Court of Canada judge during a widely publicized trial last year. A few months after justice Andrew MacKay's March 29, 2001, decision Schmeiser filed an appeal. That appeal was heard last week in a Saskatoon courtroom.

Zakreski told the appeal court that three key facts came out in the original trial. The trial judge said there was no evidence that Schmeiser had purchased any brown bag seed or that he had segregated any of the Roundup Ready canola found in his fields. But the "coup-de-grace" was that the trial judge determined the farmer did not spray his 1998 canola crop with Roundup.



## Failed appeal could leave farmer broke

*A ruling against Schmeiser will cost the farmer between \$172,832 and \$288,935*

Saskatoon newsroom

Perhaps fittingly, Percy Schmeiser's appeal came to a close with lawyers spitting about money.

At the end of the second day of proceedings, lead lawyers for Schmeiser and Monsanto Canada duked it out about how much profit the Bruno, Sask., farmer derived from his 1998 canola crop.

According to Schmeiser's lawyer, Terry Zakreski, profit determination was one of 17 errors that Federal Court justice Andrew MacKay made in finding Schmeiser guilty last year of violating Monsanto's patent for the Roundup Ready canola gene.

Schmeiser is appealing the March 29, 2001, decision and supplementary judgment in which MacKay awarded Monsanto \$153,000 in legal costs and the profits from Schmeiser's 1998 canola crop, which he determined to be \$19,832.

Monsanto lawyers say the case is all about protecting the company's patent. Schmeiser says it's about property rights and the right of a farmer to grow his own seed.

But at the heart of the Schmeiser appeal is a battle about money — Monsanto's ability to control the profits derived from growing Roundup Ready canola and Schmeiser's attempt to avoid paying hundreds of thousands of dollars to the chemical company.

As it stands, Schmeiser is on the hook for \$172,832, but the appeal could end up costing him a whole lot more or a whole lot less.

If he wins the appeal, he may owe nothing. If he loses, he could end up paying

Evidence in the trial showed that Schmeiser didn't spray his canola crop with Roundup so he never made "one nickel of profit" from the genetically modified canola found on his land, said Zakreski. Therefore, taking away all of the profit from his canola crop was "inequitable and unjust."

Monsanto's cross appeal also focused on MacKay's profit figure. Company lawyers pointed out that during a cross examination in the original trial, Schmeiser's accountant determined that the profit from the farmer's 1998 canola crop was \$105,935, about \$86,103 more than the amount awarded to Monsanto.

MacKay's award was scaled back from that \$105,935 figure because it didn't include Schmeiser's labour costs, which should be recognized in a proper accounting of profits.

But during the appeal, Monsanto lawyer Art Renaud argued the onus was on Schmeiser's lawyers to prove those costs, something they never did during the original trial.

Neither argument seemed to sway the appeal judges, who indicated that \$19,832 was a good compromise. At one point during the appeal, justice Julius Isaac expressed his views to Zakreski.

"The trial judge must be right if you are unhappy with it and Mr. Hughes is unhappy with it."

"He was asked for the moon and he didn't give it to them."

Toward the end of the appeal, Zakreski pointed out that in pre-trial documents, Monsanto was originally seek-



the original trial. The trial judge said there was no evidence that Schmeiser had purchased any brown bag seed or that he had segregated any of the Roundup Ready canola found in his fields. But the "coup-de-grace" was that the trial judge determined the farmer did not spray his 1998 canola crop with Roundup.

MacKay ruled that growing the Roundup Ready canola, harvesting it and selling it to a crushing plant constituted using the invention without permission. But Zakreski argued that Schmeiser would have to spray the crop with Roundup to use the invention.

"(MacKay) misconstrued the patent by saying that we don't need to spray."

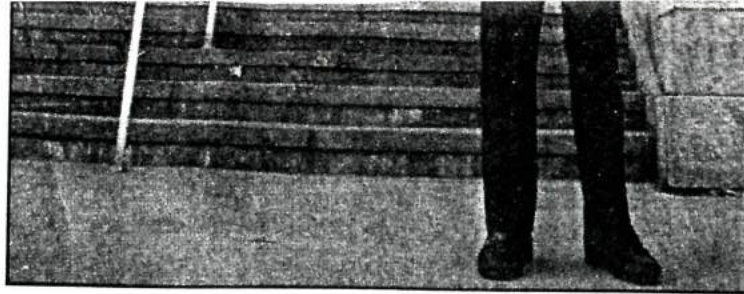
In his response, Monsanto's lead lawyer Roger Hughes said the trial judge made no errors. He said Schmeiser grew the genetically modified crop and sold it.

"That's use. Even the Oxford Dictionary agrees with me on that," said Hughes.

He said there is nothing in Monsanto's patent claims that says a farmer must spray Roundup to infringe the patent and cited previous decisions that came to a similar conclusion. He also came up with an example of his own.

"If I have a bulletproof vest, do I first have to take a bullet to infringe it?"

The other main point raised by Zakreski during the appeal was that if genetically modified canola pollen drifts onto a farmer's land, it should become the property of the farmer.



Bruno, Sask., farmer Percy Schmeiser was in court this week, appealing a ruling that found him guilty of patent infringement.

(WP photos by Sean Pratt)

"The judge says it doesn't matter how it gets on your land and we say it does. That is crucial," said Zakreski.

He called what happened in the Schmeiser case "conscripted patent infringement" and said it was an "unfair burden" for a farmer to have to prove where his crop came from.

Later in the appeal he argued that Schmeiser's right not to be subjected to unreasonable search and seizure was violated when Monsanto's private investigators obtained some of the seed Schmeiser had taken to Humboldt Flour Mills.

Justice Julius Isaac told Zakreski that he wasn't going to be convinced that any of Schmeiser's rights and freedoms guaranteed under the charter had been violated.

"Go ahead and make it, but it's not your best point," he said.

During his response, Hughes said that Zakreski's charter arguments were not valid and should not be used in such a case.

"We are here to interpret a patent case," said the lawyer.

He said the GM canola did not drift onto Schmeiser's property, but was knowingly planted by the farmer in 1998. Schmeiser testified that he used seed from the 1997 fields where he had discovered Roundup Ready plants to seed 1,030 acres of canola in 1998.

"He had an opportunity to use some other seed in some other bin but what did he do? He used this seed," Hughes told the three justices.

Hughes said Monsanto had a court order to obtain samples of Schmeiser's crop, so even if the Humboldt Flour Mills evidence was disallowed, there are other samples that show the concentration of Roundup Ready canola in Schmeiser's fields was 95 percent.

**"I'd have to sell the rest of my land. It would totally destroy me as a farmer"**

— Percy Schmeiser, farmer, appellant

santo's ability to control the profits derived from growing Roundup Ready canola and Schmeiser's attempt to avoid paying hundreds of thousands of dollars to the chemical company.

As it stands, Schmeiser is on the hook for \$172,832, but the appeal could end up costing him a whole lot more or a whole lot less.

If he wins the appeal, he may owe nothing. If he loses, he could end up paying Monsanto another \$86,103 plus legal costs associated with the appeal, which a company spokesperson has estimated at around \$30,000. That would bring Schmeiser's total bill to \$288,935, not

including his own legal expenses.

Zakreski told the three Federal Court of Appeal justices that MacKay went too far in granting relief. He said the objective of the trial

judge should not have been to punish Schmeiser but to prevent "unjust enrichment" of the farmer.

was a good compromise. At one point during the appeal, justice Julius Isaac expressed his views to Zakreski.

"The trial judge must be right if you are unhappy with it and Mr. Hughes is unhappy with it.

"He was asked for the moon and he didn't give it to them."

Toward the end of the appeal, Zakreski pointed out that in pre-trial documents, Monsanto was originally seeking a much smaller profit figure of \$35,034. Hughes said Monsanto was prepared to accept that figure in an attempt to bring the issue to a close, but Zakreski declined the offer.

Schmeiser said if he loses the appeal, it will leave him broke.

"I'd have to sell the rest of my land. It would totally destroy me as a farmer," said Schmeiser on the steps of the Saskatoon courthouse.

Monsanto spokesperson Trish Jordan said any money the company gets from the trial will be placed in its corporate giving program, which helps fund groups like 4-H.

— PRATT

## Accidental sowing a violation

Saskatoon newsroom

A lawyer for Monsanto Canada says even if a farmer unknowingly grew Roundup Ready canola that drifted onto his land, that person would technically be violating the company's patent.

Roger Hughes told three Federal Court of Appeal justices that, "Yes, technically he's infringing under those circumstances."

But he said Monsanto has publicly stated that it only protects its patent in situations where it believes there has been a deliberate violation of its intellectual property — such as the Percy Schmeiser case.

Hughes was responding to a hypothetical question raised by one of the three judges hearing an appeal of a 2001 Federal Court of Canada deci-

sion that found Schmeiser guilty of infringing Monsanto's patent on Roundup Ready canola.

The judges were clearly surprised by Hughes' assertion that a farmer could unknowingly break Monsanto's patent through circumstances beyond their control.

"That's a tough one, Mr. Hughes, I have to tell you," said judge Julius Isaac. "Without knowledge?"

Hughes reiterated his point that in "99.9 percent" of reported violations, Monsanto works out some kind of mutually agreeable arrangement with farmers who find Roundup Ready canola on their land.

It is only when a farmer is suspected of deliberately violating the patent that Monsanto pursues legal action.

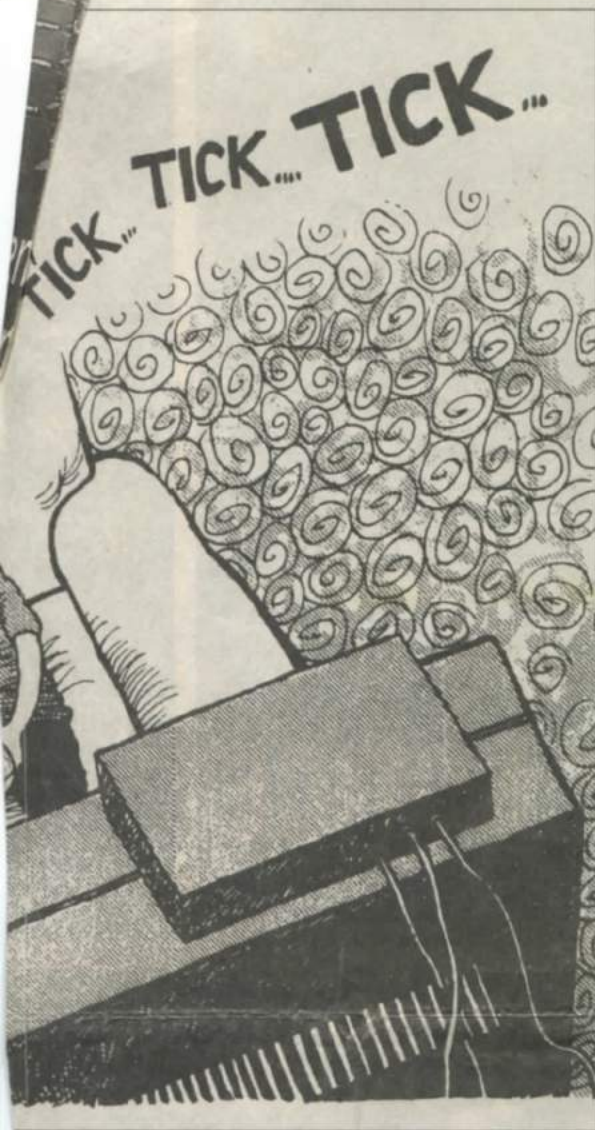
— PRATT



Monsanto spokesperson Trish Jordan addresses the media outside the courthouse in Saskatoon.



SP APRIL 15/05



# Convicted farmer makes unlikely hero for rural lifestyle

By Robert Wager

*The following is the viewpoint of the writer, a biotechnology instructor at Malaspina University College in Nanaimo, B.C.*

A tremendous amount of misinformation spread by groups with an agenda makes it tough for the public to separate the wheat from the chaff when it comes to genetically engineered crops and food. The Percy Schmeiser case used by Michael Mehta in his viewpoint *Biotechnology could destroy rural social fabric* (SP, April 14) to illustrate the danger to privacy posed by the technology, is a prime example.

Biotechnology has engineered herbicide tolerant crops. HT crops are unaffected when sprayed with particular broad-spectrum herbicides, such as the Roundup Ready (RR) crops produced by Monsanto.

RR canola allows a farmer to spray a canola crop with Roundup and only the weeds will die. If a farmer plants these HT varieties, he can expect higher yields, plus cheaper and easier weed control. The Canadian Canola Growers Association says biotech canola seeds have reduced chemical use by 29 per cent, and increased profits by \$5.80 per acre.

Today, 70 per cent of Canadian canola farmers grow herbicide tolerant varieties — a rapid change, given that GE canola varieties only have been available for eight years.

Biotech seeds are more expensive, and farmers who want to grow them must sign a technology use agreement promising not to save and replant the biotech seeds. More than 30,000 Canadian farmers, who know first-hand the benefits to the environment and their bottom-line from growing GE crops, have signed such agreements.

A reality of modern agriculture is that farmers rarely save seeds anymore. Most buy hybrid seed varieties, which must be repurchased annually.

In 1997, Schmeiser sprayed "a good three acres" of his canola crop with Roundup. One might ask why a farmer would purposely spray a herbicide that should destroy three acres of his crop? Once it was clear that the canola in this field was herbicide tolerant, Schmeiser decided to harvest the seed from there

and save it to plant the next year. Clearly, most farmers would have realized the canola in the field was Roundup tolerant, since it survived.

The next year, he planted 1,030 acres with the saved seed, knowing that the use of such GE seed required a technology use payment. The result was 1,030 acres of 95-98 per cent Roundup-tolerant canola. When this high level (equivalent to commercial grade seed) was discovered, Monsanto asked Schmeiser to pay the fee of \$15 per acre. He refused, and the court cases began.

The Federal Court on March 29, 2001, found Schmeiser guilty of patent infringement. Said Judge Andrew MacKay: "He planted his crop for 1998 with seed that he knew, or ought to have known, was Roundup-tolerant." Schmeiser appealed.

By now, his legal warchest was growing, in part, with significant support from groups opposed to GE crops.

On Sept. 4, 2002, the Federal Court of Appeals upheld the verdict, rejecting all 17 points raised by Schmeiser's counsel. That decision was appealed to the Supreme Court, this time with a twist.

Instead of arguing that Schmeiser did not violate Monsanto's patent, his lawyer argued that the company's patent on Roundup Ready canola was invalid on grounds that no one should be able to patent a life-form.

What started as an obscure case between a farmer and a multinational corporation blossomed into a show watched closely by the entire biotechnology industry.

Ramifications would be huge should the court rule against Monsanto's patent. It would mean no patent protection for biotech products in Canada, leading to their mass exodus from this country. Clearly, this was the agenda of Schmeiser's financial backers.

Fortunately, the Supreme Court found Schmeiser guilty, too. Canada is one of the world leaders in agricultural biotechnology, and the courts have determined that will continue.

People should understand this was not a David vs. Goliath case but a Goliath vs. Goliath case, with David as the frontman. The real players were the biotechnology industry and the multinational, billion-dollar anti-biotechnology industry.

## INIONS

### Canada's interests

ers aren't dy- there are no tion and there threat, that's ading intelli- t was always um's removal diers and cit- th it. fence. Canada reignty. Some

suggest that without joining, the U.S. wouldn't defend us, but I'm not too worried. Those who are can just move to the U.S.

Critics can label me anti-American if it makes them feel good. Maybe they believe the world should follow the Bush doctrine, but I reserve my right not to.

Donald Koenig Beatty

### unity cheap, liberating

cost of gaso- rance, mainte- replacement at easy: establish estyle. niking because

This city also has an excellent and ever-improving public transit system.

Liberate yourselves from the needless tyranny of private vehicle ownership. You might just discover the big truth — one does not need a car.

Peter Gravlin Saskatoon



SP APRIL 19/05

SPH STAR PHOENIX APRIL 19/05

## Fitness must become top priority for education

The lack of physical fitness as described in the story *Saskatonians fattest in country* (SP, April 7) — especially among our youth — is an epidemic that needs to be taken as seriously as youth alcohol abuse, drug use and smoking.

Parents need to take responsibility for their own futures, and the futures of their children. They should not rely on government and schools to do for them what they can do for themselves.

They need to look after their own health and physical fitness, so that they don't become future expensive burdens on society. In this situation, society needs to intervene for its own protection.

### Correction

Percy Schmeiser lost a civil suit to Monsanto. He was not convicted of a crime as indicated in a headline on the April 15 Op-ed page. The SP regrets the error.

Among other things, this means treating physical fitness, nutrition and wellness as a non-negotiable top-priority in our school curriculum and programs. This means restoring compulsory daily physical education programs, including:

- Allocating more budget money to be used solely for physical education and wellness;

- Recruiting and retaining front-line health care and wellness teachers;

- Allocating more time in school timetables for physical education; and

- Using our community resources to make activity spaces such as gymnasiums and running tracks, as well as outdoor activity spaces and pools, easily accessi-

ble to our schools and youth.

I disagree with the article's contention that poor people cannot afford healthy food. Healthy food is not more expensive. It's just less convenient, takes more planning and requires time to shop for and to prepare.

Denis Hall

Director, YAS Summer Sports Programs for Youth

## Chief's view seems to condone racism

Until recently I believed that the aboriginal community represented a path towards a more enlightened and open society. Perhaps this is too idealistic. Some recent comments with respect to the Ahenakew trial by aboriginal leaders are affecting my viewpoint.

One example of this possible defence of racism can be construed from comments attributed to Manitoba Chief Terrance Nelson (*Ahenakew trial could lead to violence: Manitoba chief*, SP, April 12).

Although it is reported that he doesn't agree with Ahenakew's views, it is also reported that he believes the publicity around the trial will turn Ahenakew into a martyr and increase aboriginals' hatred of Jews.

Is this a rationalization for reverse racism? Is this chief saying racism that springs from the aboriginal community is somehow justified? If so this shows either malice or thoughtless leadership.

A person such as Nelson should realize that transparent

hypocrisy will only damage the First Nations' cause. How can leaders of a community that is fighting racism be taken seriously when they are perceived — or even risk being seen — as racists?

If the majority of the aboriginal community is as shocked as I am over this, I wish it would make a stand against all racism, and not just fight for the exclusive right to be the only racists.

John Kaufman  
Saskatoon

BY GARRY TRUDEAU

## Joni Mitchell Discovery Centre bad idea

The Joni Mitchell Discovery Centre is an incredibly stupid idea (*Birkmaier finds little support for Joni Mitchell centre*, SP, April 8).

To begin with, she's not originally from Saskatoon, which makes the city look pathetic when citizens try to claim her as the city's own.

Besides, what has Mitchell ever done for Saskatoon to war-

rant receiving such an honour? The reason Burton Cummings has a place named after him is because he promotes Winnipeg and deserves the recognition.

As well as being more talented, Theresa Sokyrka has done more for Saskatoon and Saskatchewan in her short career than Mitchell has in her entire life. Furthermore, how would such a discovery centre be supported?

Would city council have to increase property tax in order to cover the operating costs for this centre? There goes the mayor's promise (or "goal") of any future tax freeze.

Finally, Mitchell doesn't seem at all interested so why not leave her alone? Even a statue and bench are too much.

Richard Sinclair  
Saskatoon









United Nations

# WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT











THE  
RIGHT  
LIVELIHOOD  
AWARD

HONOUR

SUPPORT

EDUCATE

INFORM



# *Percy and Louise Schmeiser*

( 2007 , Canada )





# Roundup back in Schmeiser field

By Sean Pratt  
Saskatoon newsroom

He is as persistent as the Roundup Ready canola that keeps appearing in his fields.

Percy Schmeiser is back in the news, threatening to file a lawsuit against his nemesis, Monsanto Canada.

The Bruno, Sask., farmer, who lost a high-profile legal battle against the biotech company that made it to the Supreme Court of Canada, is butting heads with Monsanto again over Roundup Ready plants on his land.

Schmeiser, who is prohibited by the courts from growing Monsanto's genetically modified canola, contacted the firm in late September about volunteer plants that he said had invaded his 50-acre, chemical-fallow field.

"It's almost identical to how my field was contaminated in 1998," said the farmer, who travels the world speaking about his fight with Monsanto.

According to the 2004 Supreme Court ruling, 95 to 98 percent of the 1,000 acres of canola Schmeiser grew in 1998 comprised Roundup Ready plants he knowingly cultivated.

Schmeiser, who has never admitted to planting brown bag seed despite being found guilty by three different courts of violating Monsanto's patent, claimed this latest incident parallels what happened seven years ago.

"If I would have seeded canola I could have had another lawsuit on my hands," he said.

On Sept. 21 he called Monsanto and requested that the company remove the unwanted plants.

Monsanto responded to Schmeiser's



Percy Schmeiser squats in a 50 acre field that contains Monsanto's Roundup Ready canola volunteers. (WP photo by Michael Raine)

call by sending a team of investigators to his farm where they confirmed Roundup Ready canola was growing in his field.

Despite reservations about the claim, the company offered to hand pick the offending plants from the field once Schmeiser signed a legal release that all farmers with unexpected volunteer plants are asked to sign.

The document forever releases Monsanto from any lawsuits associated with their products and forbids the grower from disclosing the terms of the settlement.

For Schmeiser, that was too much.

"I flatly refused to sign any release

that would take my freedom of speech or my rights away."

He doesn't trust the biotech firm that engaged him in a legal battle that lasted six years.

"They must think I'm absolutely crazy I would ever sign my rights away," he said.

So on Oct. 21 Schmeiser began removing the plants himself, some of which were shattering, spreading seeds onto his field. He filled a half-ton truck with his first clearing attempt.

In a letter to the company, he estimated that damage to his farmland this year and the next is expected to exceed \$50,000. He said he will send

an invoice to Monsanto for the clean-up costs.

Monsanto spokesperson Trish Jordan said the company has done all it is going to do by offering assistance, which it was under no legal obligation to do in the first place.

"In this situation it would appear that Mr. Schmeiser is not really interested in assistance. He's interested in continuing his media campaign," said Jordan.

She said Schmeiser was treated no differently than any other producer requesting removal of unexpected Roundup Ready volunteers, despite "puzzling questions" about this par-

ticular situation.

The company's inspectors said the amount and uniformity of the plants across the 50 acres was not consistent with pollen flow and that it was highly unusual to have canola flowering in late September.

In a letter to the company dated Sept. 30, Schmeiser countered that the plants were not uniform, although there were more plants along the side of the field bordering a grid road, indicating the GM seed could have blown off trucks or from other farmer's fields. And he said volunteer canola will emerge any time of the year when soil and climate conditions are right.



May 22, 2004

## Monsanto Wins Patent Case on Plant Genes

By BERNARD SIMON

**T**ORONTO, May 21 - In a case central to the international debate over the right to patent gene-engineered organisms, Canada's Supreme Court ruled on Friday that a Saskatchewan farmer infringed Monsanto's patent on genetically modified canola, even though he said the seeds landed in his fields by accident.

While the ruling upholds Monsanto's patent rights, there is no immediate financial benefit to the company. The court said Monsanto was not entitled to profits earned by the farmer, Percy Schmeiser, from his genetically modified crop because he had not financially benefited from the plants' engineered ability to withstand Monsanto's herbicide Roundup.

Mr. Schmeiser and his supporters, including numerous farm and environmental groups, expressed disappointment that the court had confirmed Monsanto's right to patent a plant gene and control its use by farmers.

"It's not nearly the victory that we were looking for," Mr. Schmeiser said at a news conference in Saskatoon.

Pat Mooney, executive director of ETC, a nonprofit environmental group based in Winnipeg, Manitoba, said the ruling suggested that "wherever a gene wanders, it's under Monsanto's control."

But a patent law expert, Eileen McMahon, a partner at the Toronto law firm Torys, hailed the ruling as "a fantastic decision in terms of biotechnology and patents." According to Ms. McMahon, "we have a strong signal that cells and genes are patentable."

Monsanto also welcomed the decision, saying in a news release that it "has set a world standard in intellectual property protection."

While Canadian court decisions have no direct bearing on American law, Andrew Kimbrell, executive director of the Center for Food Safety in Washington, said that the Canadian judgment could nonetheless have an impact on similar claims by Monsanto against American farmers.

Almost 100 such cases have so far gone to trial in the United States, and farmers have paid penalties averaging \$100,000 each to Monsanto. Mr. Kimbrell said if American courts followed the Canadian court's example in not requiring Mr. Schmeiser to repay his profits, it might reduce the economic incentive for Monsanto to pursue other farmers.

The case involving Mr. Schmeiser, who is 73, had become a rallying point for critics of genetically modified plants. "He touched upon a long-standing issue that is not resolved globally," said Thomas Redick, a partner at Gallop Johnson and Neuman, a law firm in St. Louis.



In 1997, while spraying around power poles and ditches with Monsanto's Roundup herbicide near a three-acre canola field, Mr. Schmeiser noticed that some canola plants were unaffected by the weed killer. He then sprayed the entire field, and discovered that most of the plants were unfazed.

After he harvested that year's canola crop, Mr. Schmeiser stored a sizable quantity of seed from the Roundup-resistant plot, which he used as part of his planting the following year of 1,000 acres of canola.

A Monsanto investigator had taken samples in 1997 from canola plants growing along a road next to one of Mr. Schmeiser's fields. Testing revealed that the herbicide-resistant plants were Monsanto's genetically modified canola, known as Roundup Ready, which is specifically designed to resist Roundup herbicide. The company confronted Mr. Schmeiser in March 1998, warning him that planting the Roundup-resistant seeds he had saved would infringe the company's patent rights. He planted them anyway.

Mr. Schmeiser has surmised that the genetically modified seed either blew onto his property from neighboring farms or fell off passing trucks. Monsanto acknowledged that Mr. Schmeiser had never placed an order for Roundup Ready canola.

The company nevertheless contended that no matter how Mr. Schmeiser obtained the Roundup Ready product, he should have signed a "technology use agreement" and paid the regular licensing fee of 15 Canadian dollars an acre. Under the licensing agreement, farmers are not allowed to save any seed for replanting and must buy new seed each year from Monsanto.

In Friday's judgment, which upholds rulings by two lower courts, the Supreme Court concluded by a 5-to-4 margin that Mr. Schmeiser had "actively cultivated" Roundup Ready canola as part of his business, thereby infringing Monsanto's patent.

"We emphasize that we are not concerned here with the innocent discovery by farmers of 'blow-by' patented plants on their land or in their cultivated fields," the judges wrote.

Nor, they said, were they concerned with the scope of Monsanto's patent or "the wisdom and social utility of the genetic modification of genes and cells."

"The patented genes and cells are not merely a 'part' of the plant," the court said. "Rather, the patented genes are present throughout the genetically modified plant and the patented cells compose its entire physical structure."

Under Friday's ruling, Mr. Schmeiser is barred from using Roundup Ready canola unless he pays Monsanto's license fee. He must also hand over to the company any Roundup Ready seed still in his possession.

Nevertheless, the court set aside the lower courts' decision that Mr. Schmeiser owed Monsanto 19,800 Canadian dollars in profits. The Supreme Court ruled that Mr. Schmeiser had earned the same profit from the Monsanto product as he would have from ordinary canola. It also overruled the lower courts' decision that Mr. Schmeiser was responsible for Monsanto's legal costs.

Farmers and environmental groups, among others, have mounted campaigns in several parts of the world against patents on genetically modified products, on the grounds that no commercial enterprise has sole rights to a living organism.



A court in southeastern France fined three people 600 euros (\$722) each on Friday for destroying Monsanto test fields of genetically modified crops and awarded the company 4,000 euros in compensation for the damage. Similar charges have been brought in 11 other cases in France in the last six years.

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# The Washington Post

## Seeds of Discord; Monsanto's Gene Police Raise Alarm On Farmers' Rights, Rural Tradition; [FINAL Edition]

Rick Weiss. **The Washington Post**. Washington, D.C.: Feb 3, 1999. pg. A.01

**Full Text** (2708 words)

*Copyright The Washington Post Company Feb 3, 1999*

On a cold January morning in central Canada, Percy Schmeiser looks over his frozen fields. "Here's where all the trouble began," he says, pointing to where private investigators last year arrived uninvited and snipped samples of his crops for DNA tests.

Schmeiser, 68, has been farming these fertile acres all his life, growing canola for the valuable oil in its seeds. And as farmers have done for thousands of years, he has saved some seeds from each year's harvest to replant his fields the following season.

Now, he says, "for doing what I've always done," he is being sued by agribusiness giant Monsanto Co. in a landmark "seed piracy" case. The outcome could influence how much control biotechnology companies will have over the world's food supply in the next millennium, and is highlighting a major source of friction as the genetic revolution spills into the world of agriculture.

Schmeiser is one of hundreds of farmers in the United States and Canada who stand accused by Monsanto of replanting the company's patented, gene-altered seeds in violation of a three-year-old company rule requiring that farmers buy the seeds fresh every year. He vehemently denies having bought Monsanto's seeds, saying pollen or seeds must have blown onto his farm, possibly from a neighbor's land. It's the company, Schmeiser says, that ought to be rebuked for its pattern of "harassment."

Besides sending Pinkerton detectives into farmers' fields, the company sponsors a toll-free "tip line" to help farmers blow the whistle on their neighbors and has placed radio ads broadcasting the names of noncompliant growers caught planting the company's genes. Critics say those tactics are fraying the social fabric that holds farming communities together.

"Farmers here are calling it a reign of terror," Schmeiser says. "Everyone's looking at each other and asking, 'Did my neighbor say something?'"

Cases like Schmeiser's are also raising alarms within organizations that deal with global food security. That's because three-quarters of the world's growers are subsistence farmers who rely on saved seed.

"This is a very alien and threatening concept to farmers in most of the world," said Hope Shand, research director of Rural Advancement Foundation International, an international farm advocacy group based in Pittsboro, N.C. "Our rural communities are being turned into corporate police states and farmers are being turned into criminals."

Monsanto representatives say the company must strictly enforce the "no replant" policy to recoup the millions of dollars spent developing the seeds and to continue providing even better seeds for farmers. Already, they say, the new varieties are improving farmers' yields and profits and allowing them to abandon extremely toxic chemicals in favor of more environmentally friendly ones. A newer generation of engineered seeds, now under development, promises to produce food with enhanced nutritional value, providing a potential boon for the world's malnourished masses.

"This is part of the agricultural revolution, and any revolution is painful. But the technology is good technology," said Karen Marshall, a spokeswoman for Monsanto in St. Louis.

### Developing Products

A visit to Monsanto's 210-acre biotechnology complex, 25 miles west of St. Louis, offers ample evidence of how



difficult and expensive it is to develop new and useful varieties of gene-altered seeds.

It is the largest biotechnology research center in the world, featuring 250 separate laboratories, 100 room-sized plant growth chambers whose climates can be controlled from researchers' home computers if necessary, and two acres of greenhouses arrayed on the main building's enormous rooftop.

It was here that company scientists took a gene from a bacterium that produces an insect-killing toxin called "Bt" and transferred it to corn, cotton and other crops to make plants that exude their own insecticide. Here too, researchers gave crops a gene that allows them to survive Monsanto's flagship weed killer, Roundup, which normally kills them.

Monsanto estimates that it takes 10 years and about \$300 million to create commercial products such as these. For every new kind of engineered seed that makes it to field trials, 10,000 have failed somewhere along the development pipeline, officials say.

To recover this huge investment, the company has opted not to sell its engineered seeds in the traditional sense but to "lease" them, in effect, for one-time use only -- and to go after anyone who breaks the rules.

Suing one's own customers "is a little touchy," Marshall conceded. But after going to so much trouble to build a better seed, "we don't want to give the technology away."

It wasn't always this way. Until about a decade ago, crop and seed development in the United States and abroad was mostly a government business. The Department of Agriculture, in conjunction with the nation's land grant colleges and local agricultural extension agents, developed, tested and distributed new varieties of seeds, asking nothing more of citizens than that they pay their taxes. Under that system, patents were infrequently pursued and rarely enforced. And seed saving and trading were commonplace.

That began to change in the 1980s when Congress passed legislation, including the Bayh-Dole Amendment, that encouraged federal agencies to cooperate more closely with the private sector. In agriculture, that meant private seed companies could profit handsomely by selling seeds that were developed in large part with taxpayer dollars. Today, a handful of American and European agricultural companies control a major portion of the world's certified food seed supply.

Monsanto is the king of them all. Its gene alterations can be found in hundreds of crop varieties sold under license by many seed companies. And the total acreage devoted to gene-altered crops has increased astronomically since the first varieties were approved in 1996. This year, about half of the 72-million-acre U.S. soybean harvest is expected to be genetically engineered to tolerate Monsanto's Roundup. More than half of the 13 million acres of U.S. cotton will be engineered as well, as will be about 25 percent of the nation's 80 million acres of corn, either for Roundup resistance or to exude Bt.

"Farmers are going bonkers for these crops," said William Kosinski, a Monsanto biotechnology educator. "They've been very well received."

Although there are lingering concerns that in the long run genetically engineered crops could end up hurting the environment, the company argues that they could actually help. In one small study, the reduced use of pesticides with engineered plants appears to have resulted in increased survival of beneficial insects, which eat insect pests and serve as food for struggling songbird populations.

"Cotton growers are saying that the thing they're noticing is they're starting to hear birds again," said Hugh Grant, co-president of Monsanto's agricultural division.

#### Growers' Agreement

Tim Seifert and Ted Megginson are farm neighbors in Auburn, Ill., about 100 miles northeast of St. Louis. Between the two of them they farm about 4,400 acres, mostly soybeans and corn, and they will vouch for the quality of Monsanto's genes.

For the past two years, all 1,200 acres of Seifert's soybean fields have been planted with Monsanto's herbicide-tolerant Roundup Ready brand, and about half his other 1,200 acres are now devoted to the company's Bt-exuding "YieldGard" corn. Megginson started using Roundup Ready soybean seed last year, and both say they have obtained



good yields while using fewer toxic chemicals.

"It's made me a better farmer," Seifert said, warming his hands in Megginson's small, barn-side office. Most important, Seifert estimates he saved \$5 to \$6 an acre last year in reduced labor and pesticide costs.

But when conversation turns to the restrictions that come along with Monsanto's seed, Seifert and Megginson confess to being less than enthused. One irritation is the "Technology Use Agreement," which not only demands that farmers not save seed but also gives Monsanto the right to come onto their land and take plant samples for three years after the seeds are last purchased.

"Farmers don't like to sign anything," Seifert said, especially anything that gives up their rights to stop trespassers. "I have to admit, I balked a little."

But what has really irritated farmers has been Monsanto's aggressive efforts to track down seed savers, such as the company's widely advertised toll-free "tip line."

"Nobody likes to think that your neighbor is getting away with something while you are doing it on the uppity up, but we're all neighbors, too," Seifert said. In heated discussions at local farm meetings, he said, "the majority of farmers felt like they wouldn't squeal on each other."

Megginson and Seifert were also taken aback by the radio ads that Monsanto aired during the fall soybean harvest in which the company named farmers who had been caught saving seed -- ads the company calls "educational" and others call "intimidating."

One of those named farmers is David Chaney, who farms about 500 acres near Reed, Ky. Chaney admitted to replanting some of Monsanto's engineered soybean seed and trading some to other farmers in the area.

He settled with Monsanto, paying the company \$35,000 and signing an agreement that forbids him from criticizing the company. "I wish I could tell you the whole story," he said. "Legally they are right. But morally, that's something else altogether. Mostly I wish I'd bought their stock instead of their seed."

Perhaps most bothersome, he said, is knowing that someone he knows probably turned him in. "I hope I never know who," he said.

It's possible that no one turned Chaney in, because another of Monsanto's methods for catching seed pirates is to conduct random DNA tests on plants growing in the fields of farmers who have bought its seed in previous years.

The company has hired full-time Pinkerton investigators and, north of the border, retired Canadian Mounted Police, to deal with the growing work load -- a total now of more than 525 cases, about half of which have been settled. The company won't reveal details, but many of the settlements have been in the range of tens or hundreds of thousands of dollars each, and a settlement in the millions is expected soon, said Lisa Safarian, Monsanto's intellectual property protection manager.

The company has decided that the risk of alienating some farmers is more than offset by the benefit of being able to promise "a level playing field" for the vast majority of honest customers, Safarian said. Besides, she said, the money is going to a good cause: a Monsanto-created scholarship fund to help the children of farmers go to college.

### Rounding Up Evidence

But what about Schmeiser, who never bought engineered seeds from Monsanto, and never signed a grower agreement? According to some experts, his predicament suggests that Monsanto's policies could affect many more people than just its customers.

It was a Friday in July when he got a call from a local Monsanto representative. "We have heard a rumor that you are growing Roundup Ready Canola on your farm," the man said.

"I thought, 'Oh boy!'," Schmeiser said.

Schmeiser stands as straight as a silo and is not easily intimidated. He was the mayor of Bruno for 17 years, and for



five years was a member of the Saskatchewan legislative assembly. "I've seen a lot of politics," he says. "But I've never seen a situation to create hard feelings and divide people as what I'm seeing now."

The man from Monsanto asked Schmeiser for permission to test his plants. Schmeiser refused, so the company sampled some plants on a public right-of-way near his fields. Some of those apparently tested positive for Monsanto's gene, because a judge subsequently provided a court order allowing the company to take plants from Schmeiser's property.

The problem, Schmeiser says, is there's a lot of plants in the area with Monsanto's gene in them. Roundup Ready pollen from other farmers' fields is blowing everywhere in the wind, he says, and he's seen big brown clouds of canola seed blowing off loaded trucks as they speed down the road around harvest time -- spilling more than enough to incriminate an innocent farmer.

Back near his house, Schmeiser points to a wild canola plant poking out of the snow near the base of a telephone pole. "I sprayed Roundup around these poles twice last summer to control weeds," he says. How is it, he asks, that this canola plant survived?

Inside his modest, tidy home, he pulls out agricultural articles documenting many instances of Roundup Ready canola cross-pollinating with normal canola. Monsanto has a problem, says Terry J. Zekreski, Schmeiser's attorney in Saskatoon: It's trying to own a piece of Mother Nature that naturally spreads itself around.

Ray Mowling, a vice president for Monsanto Canada in Mississauga, agrees that some cross pollination occurs, and acknowledges the awkwardness of prosecuting farmers who may be inadvertently growing Monsanto seed through cross-pollination or via innocent trades with patent-violating neighbors. Nonetheless, he said, the company considers Schmeiser's "a critical case" to win if it hopes to protect its patent rights beyond its immediate circle of paying customers.

#### Killing a Cash Cow

Some say Monsanto could have done things differently. Berlin-based AgrEvo, for example, also sells engineered canola in Canada yet has chosen not to place restrictions on seed use. Its plan is to make money on its herbicide, Liberty, rather than on its Liberty-tolerant seeds. The more seeds sold, blown or given away, the better.

Monsanto, however, does not have that option. The U.S. patent on Roundup is on the verge of expiring, which means cheap generics will soon kill the company's 20-year-old cash cow. Monsanto will have to profit from Roundup-tolerant seeds, rather than from Roundup itself.

Representatives of other U.S. seed companies have taken a few potshots at Monsanto for how it has handled its war on piracy. Privately, though, they express relief that patent protection is Monsanto's problem, not theirs.

In a few years Monsanto may have a technical solution to its problem. The company is buying the commercial rights to a package of genes, developed in part by the federal government, that has come to be known as "Terminator." When inserted into seeds, the genes ensure that the resulting plants will never produce seeds of their own.

While the system could solve forever the seed piracy problem, it has already come under heavy fire from farmers and international agronomic groups because of its potential to starve subsistence farmers of the renewable seed they need. In any case, Terminator technology is not expected to be available commercially until 2005.

In Monsanto's view, there is no crisis today: Farmers can simply decide whether its seeds are worth the legal baggage they carry. And indeed, many farmers have already voted "yes" with their wallets.

"We're not doing this {farming} for a hobby. We're looking for net dollars," said Megginson, the Illinois farmer who has begun using Monsanto's genes. "They're not holding a gun to my head to make me buy their seeds."

Then again, that didn't help Schmeiser. He and others say they can't help but wonder whether high-tech agriculture -- and the escalating war over seed patent rights -- may ultimately rob farmers of the one thing they have historically cherished the most: The freedom to work their land as they wish.

"Every year I get catalogues from the seed salesmen, and more and more varieties have the Roundup Ready gene



even though I don't need it," said Vincent Moye, a farmer in Reinbeck, Iowa. "The government's looking at Microsoft too hard. This is a bigger monopoly. We're all gonna be serfs on our own land."

#### Growth in Gene-Altered Crops

Genetically engineered crops make up a large portion of agricultural production in the United States. Genetically engineered canola has not been approved for the United States, though it is grown in abundance in Canada. Here are some of the major engineered crops.

Roundup Ready refers to crops that are genetically altered to be resistant to the herbicide Roundup.

Bt refers to crops that are genetically altered to produce the natural insecticide *Bacillus thuringiensis*.

Note: 1998 figures are estimated; 1999 figures are projected.

Total U.S. production of crop, in acres, 1998

Soybeans

72 million

Cotton

13 million

Corn

80 million

Canola

14 million

SOURCES: Monsanto, National Agricultural Statistics Service, American Soybean Association

#### [Illustration]

PHOTO; RICK WEISS; INFO-GRAPHIC Caption: Canadian Farmer Percy Schmeiser Points To A Wild Canola Plant. "I Sprayed Roundup Around These Poles Twice Last Summer To Control Weeds," He Says.

Credit: Washington Post Staff Writer

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**BETWEEN:**

**MONSANTO CANADA INC. and MONSANTO COMPANY**

**Plaintiffs**

**and**

**PERCY SCHMEISER and SCHMEISER ENTERPRISES LTD.**

**Defendants**

**REASONS FOR JUDGMENT**

**MacKAY J.**

[1] This is an action heard in Saskatoon, against the defendants, pursuant to the *Patent Act*, R.S.C. 1985, c. P-4 (the "*Act*"), for alleged infringement of the plaintiffs' Canadian Letters Patent No. 1,313,830. The infringement alleged is by the defendants using, reproducing and creating genes, cells and canola seeds and plants containing genes and cells claimed in the plaintiffs' patent, and by selling the canola seed they harvested, all without the consent or licence of the plaintiffs. The commercial product resulting from the plaintiffs' development, from its patent and licensing agreements, is known as "Roundup Ready Canola", a canola seed that is tolerant of glyphosate herbicides including the plaintiffs' "Roundup".

[2] On consideration of the evidence adduced, and the submissions, oral and written, on behalf of the parties I conclude that the plaintiffs' action is allowed and some of the remedies they seek should be granted. These reasons set out the bases for my conclusions, in particular my finding that, on the balance of probabilities, the defendants infringed a number of the claims under the plaintiffs' Canadian patent number 1,313,830 by planting, in 1998, without leave or licence by the plaintiffs, canola fields with seed saved from the 1997 crop which seed was known, or ought to have been known by the defendants to be Roundup tolerant and when tested was found to contain the gene and cells claimed under the plaintiffs' patent. By selling the seed harvested in 1998 the defendants further infringed the plaintiffs' patent.