



## Monsanto Case Demonstrates the Value of Your Client's Intellectual Property

**Monsanto Co. v. Roeder, 2009 WL 4907014 (Bankr. N. D. Iowa)(Dec. 14, 2009)**

For several years, the Monsanto Company has successfully defended its patented, herbicide-resistant "Roundup Ready" seed (mostly soybeans) against infringement by farmers. Federal courts have held that by law, damages must exceed the "technology fee" that Monsanto charges farmers for each purchased bag of seed. (See, e.g., *Monsanto v. McFarling*, Fed. Cir. 2007). In a recent decision, *Monsanto v. Tidball*, (E.D. Mo 2009), the court found that the full cost of a bag of seed is a valid starting point for calculating a reasonable royalty; any damages below that point would only create a windfall for infringing farmers.

### **Stolen seed didn't save the farm.**

At age 67, Ronald Roeder had been an Iowa farmer for most of his life. For over 20 years he was also a dealer who distributed the patented Roundup Ready seed. Nevertheless, when his farm fell into financial troubles, Roeder stole Roundup seed from his son. From 2003 to 2006, he saved and planted nearly 640 bags of resistant seeds, but he also bought Roundup seed in a rough 3 to 1 ratio (saved seed to new), at about \$26.50 per bag.

Roeder couldn't save his farm, however, and filed for bankruptcy in 2007. Monsanto maintained its patent infringement claim was non-dischargeable. The farmer admitted his infringement; the only issues were damages and the maliciousness of his conduct (enhanced damages).

Monsanto's financial expert first calculated a reasonable royalty using the hypothetical negotiation standard in the *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, (S.D.N.Y. 1970). Given average Iowa farm prices and crop yields during the three years of infringement, he estimated the farmer's net income per acre and assumed that Monsanto would settle for no less than 75% of this amount, or \$135 to \$149 per acre. However, this failed to include the farmer's leasing costs.

The expert used a second approach, which relied on

1. capturing real cost savings of the resistant seed;
2. the value of higher yields;
3. Monsanto's monitoring costs, and

4. non-financial benefits (convenience, environmental safety) as identified by a nationwide survey of farmers. Per-acre royalties ranged from \$96 to \$114 under this approach, for a total of just over \$100,000 in damages.

### **Court begins with a bag of seed.**

Citing McFarling, the court started the dealer's price for a bag of patented seed. Multiplying this by the number of bags the farmer would have needed during the infringing years, the court reached a total of approximately \$16,855 in baseline damages. It further found that the farmer acted maliciously, with full knowledge that he would cause Monsanto financial harm. (As an experienced seed dealer, he was "fully aware of the critical features" of the patented technology; he'd also stolen seed and tried to conceal his infringement through legitimate purchases.) Enhanced damages were appropriate, the court said, and multiplied the baseline rate by three, for roughly \$50,500 in damages.

Monsanto claimed this amount punished the farmer for the bare minimum, and "only because he got caught." The court agreed, adopting most of the expert's benefits/risk model (the non-financial elements were too speculative) to reach damages of \$64,350, which the court doubled to \$128,700. Had there been evidence the farmer sold or transferred saved seed, the court might have found his conduct more egregious (and trebled the damages), but "there was not." It did charge him with \$100,000 of Monsanto's attorneys' fees, bringing the farmer's total non-dischargeable debt to just over \$230,000.

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