

Farmers prevail in nine-year class action suit

By Barbara L. Jones

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A nine-year case that has resulted to date in a verdict of more than \$62 million was affirmed last week by the Minnesota Supreme Court.

The case, *Peterson et. al. v. BASF Corp.*, started life as a class action in Norman County brought under the New Jersey Consumer Fraud Act over claims that the defendant BASF Corp. marketed the same herbicide under two different names at two different prices, causing many farmers to purchase a more expensive herbicide. The class prevailed with a \$15 million verdict, trebled, plus attorney fees. After eight years of litigation the verdict has now grown to more than \$62 million.

The case went up to the U.S. Supreme Court, which remanded back to Minnesota after ruling in another case that federal law does not necessarily preempt state law in cases involving the Federal Insecticide, Fungicide and

Rodenticide Act (FIFRA). FIFRA — which gives the Environmental Protection Agency (EPA) the power to regulate labeling of certain agricultural substances — is the statute that BASF claimed preempted the plaintiffs' state law claims.

Prior to the remand the case had been before the Minnesota Court of Appeals twice and the Minnesota Supreme Court once.

Last week the Minnesota Supreme Court said the plaintiff's claims were not preempted by FIFRA because they concerned nonlabel deceptive statements and conduct and did not constitute a requirement for labeling or packaging.

"The duty the farmers' claims imposed on BASF was not to register and label [the two herbicides] as one product, but rather, having registered and labeled them separately, to refrain from deceptive statements about their EPA registration, their active ingredient composition, and their relative efficacy on major and minor crops," said the court.

One of the attorneys for the class expressed pleasure and relief at the development in the epochal class action.

"Evidence of BASF's deceit is overwhelming," said Douglas Nill, a Minneapolis lawyer who represents the farmers with Arizona lawyer Hugh Plunkett. "BASF's scorched-earth tactics evidence its grim message that it is a global chemical company with tremendous resources to hire large law firms who can pound lawyers for its customers into oblivion."

BASF announced immediately that it would petition the U.S. Supreme Court for review. "The company continues to strongly believe that the jury verdict was contrary to the federal law governing the safe sale and safe use of agricultural chemicals and will adversely impact the agricultural marketplace," said Jack Maurer, director of corporate communications for BASF, in a press release.

"The essence of this dispute is whether or not an agricultural chemical supplier may offer different products specialized for different crops based upon particular crop market needs, and whether a company's scientists' decision that more crop safety testing is needed before marketing a product for certain crops may be overruled as too cautious by a lay jury," he said.

The decision was written by Chief Justice Russell A. Anderson and decided by five justices, including one District Court judge, Timothy Bloomquist of the 10th Judicial District, sitting by appointment. Justices Alan C. Page and G. Barry Anderson recused themselves, and Justice Lorie Gildea was not on the court at the time of the argument. Bloomquist was chosen at random to sit on the case according to the court's standard procedure. 



Attorney Douglas Nill is preparing to distribute a fund of more than \$62 million but the defense plans to petition for review.