

## BUSINESS

# Bayer, BASF Ordered to Pay \$265 Million in Weedkiller Crop-Damage Suit

Ruling in dicamba herbicide case comes as Bayer fights separate litigation over Roundup spray



Farmer Bill Bader sued Bayer and BASF, alleging a herbicide made by the companies damaged his peach trees.

PHOTO: BRYCE GRAY/ASSOCIATED PRESS

*By Jacob Bunge*

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A jury ruled against Bayer AG [BAYRY 0.24% ▲](#) and BASF SE [BASFY -0.18% ▼](#) in a crop-damage case, awarding \$265 million to a Missouri peach farmer who claimed the companies encouraged farmers to irresponsibly spray a hard-to-control weedkiller.

Peach farmer Bill Bader sued the pesticide-and-seed makers after he said thousands of his fruit trees sustained damage in 2015 and 2016. The damage, he alleged, was caused by a herbicide called dicamba that drifted from neighboring cotton fields, planted with dicamba-resistant biotech seeds developed by Bayer and BASF.

The legal battle over dicamba deepens Bayer's legal troubles over its top-selling herbicides. The Bader Farms Inc. case was the first involving dicamba to go to trial and a bellwether for about

35 similar lawsuits filed by farmers seeking damages in Illinois, Arkansas, Missouri and other states.

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The ruling in a federal court in Missouri on Saturday comes as the Environmental Protection Agency is set to decide by the end of this year whether farmers will continue to be allowed to spray the companies' dicamba-based herbicides on crops.

Bayer separately is fighting more than 42,000 plaintiffs claiming its biggest-selling herbicide, Roundup, caused their cancer. The company has argued that decades of scientific research, as well as reviews by regulators including the EPA, prove Roundup's safety. Bayer has lost the first three cases to go to trial, and is appealing those rulings.

A Bayer spokesman said that the company planned to appeal the Bader Farms verdict, and that dicamba remains a valuable tool for farmers that can be used safely. A BASF spokeswoman said the company would consider its legal options and keep working with farmers to mitigate dicamba-related crop damage.

"We feel that justice was served," said Bev Randles, an attorney with Randles & Splittgerber LLP, who represented Mr. Bader.

Don Downing, an attorney with law firm Gray, Ritter & Graham P.C. who is representing other plaintiffs suing the companies over dicamba damage, said the verdict will encourage other farmers to file lawsuits.

The judgment awarded to Mr. Bader represented \$15 million in damages to compensate Mr. Bader for losses sustained from dicamba damage and \$250 million in punitive damages.

BASF and Monsanto Co., the biotech seed giant Bayer acquired for \$63 billion in 2018, developed their dicamba-based herbicides and related biotech seeds to help make up for Roundup's waning power to kill some weeds. Monsanto's introduction in the 1990s of biotech

crops engineered to withstand Roundup made it the default weed spray for Midwestern farmers, but also led weeds to evolve to survive it. That forced farmers to eventually supplement Roundup with other, more potent herbicides.

Dicamba has been shown in university field trials and farm research to be prone to evaporating off fields where it is sprayed and drifting, posing a threat to nearby crops, trees and residential gardens. Bayer and BASF have said their new formulations of the herbicide, called XtendiMax and Engenia, hold better to where they are sprayed.

The companies began marketing dicamba-resistant seeds in 2015, before the EPA had approved the companies' related herbicides, according to Mr. Bader's complaint. Mr. Bader alleged that by selling those seeds before regulators approved the new dicamba herbicides, Bayer and BASF knowingly gave farmers an incentive to illegally spray the dicamba-resistant crops with older forms of dicamba, which more easily evaporate and drift.

"Monsanto took numerous steps to mitigate, and warn about, potential risks associated with its products," a Bayer spokesman said.

Mr. Bader runs what he estimated in court documents to be Missouri's biggest peach farm, producing some 5 million pounds of the fruit annually. Damage to his trees from nearby spraying cost him hundreds of thousands of dollars in lost sales, and lab tests by state agricultural officials confirmed dicamba symptoms, he alleged.

Bayer and BASF contested those claims, arguing that crop disease, severe weather and other herbicides caused the damage, in addition to Mr. Bader's own mismanagement. Bayer officials have attributed most dicamba damage complaints in recent years to farmers' own spraying errors.

Farmers and weed scientists over the past four years have blamed XtendiMax and other dicamba-based herbicides for damaging millions of acres of soybeans and other crops.

Steve Smith, senior director of agriculture for Indiana tomato company Red Gold Inc., for years has sought tighter dicamba restrictions and testified on Mr. Bader's behalf in the Missouri trial, saying that Bayer and BASF ignored the risks of their dicamba-based crop systems.

“I hope that the regulatory agencies will take a look at what was proved in this case and react,” Mr. Smith said.

Despite some farmers’ complaints, the EPA in 2018 reapproved Bayer and BASF’s dicamba herbicides for a two-year period, while tightening rules for how they can be sprayed.

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