

Monsanto Wins \$7.7b Lawsuit in Brazil - but Farmers' Fight to Stop Its 'Amoral' Royalty System Will Continue

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A Brazilian appeals court has [decided](#) in favor of Monsanto, the global agribusiness conglomerate, in a landmark class-action lawsuit filed by Brazilian farmers' unions.

The court's nine justices unanimously ruled on Oct. 9 that farmers cannot save seeds for replanting if the seeds are harvested from Monsanto's patented Roundup Ready soybeans, which are genetically engineered to withstand direct application of the company's Roundup herbicide.

The Brazilian ruling aligns with [similar decisions in the U.S.](#) and [Canada](#). Courts in all three countries determined that, as a product of genetic engineering, Roundup Ready soybeans are protected by domestic patent law.

In a [public statement](#), Monsanto – which was [acquired by Bayer](#) in 2018 – said the decision will strengthen “agricultural innovation in Brazil.”

How strict patenting of seeds affects innovation, however, is a [matter of debate](#). And the lawsuits challenging Monsanto's [aggressive pursuit of its patent rights](#) raise a vexed legal issue: When intellectual property laws that protect companies conflict with the rights of farmers to plant their fields, who should win?

Monsanto 'owns everything'

The Brazilian lawsuit is a sign of [growing uneasiness](#) with the control Monsanto has over farmers, my [research](#) on [biotechnology and seeds](#) finds.

Founded as a chemical manufacturer in 1901, Monsanto has invested heavily in agricultural biotechnology to become the [world's largest seller of seeds](#). Its biotech seeds have proved attractive to farmers because they [simplify farm management](#). Monsanto says its genetically modified seeds also [increase crop yields](#), and thus farmer income – but evidence on this subject is [not probative](#).

In the United States and Canada, Monsanto requires buyers of its genetically modified seeds to [sign extensive licensing contracts](#) that prevent them from saving seeds. North American farmers who violate those agreements have been sued for [patent infringement](#) and compelled to pay [tens of thousands of dollars in damages](#).

In Brazil, Monsanto charges 2% royalties on the sale of its patented soybeans, a [conventional industry practice](#). More unusually, the company charges an additional royalty – 3% of farmers’ sales – when soybeans are [grown from saved Roundup Ready seeds](#).

Soybeans are [Brazil’s biggest export](#). The royalties in dispute in the class action, which is likely to be [appealed to the Brazilian Supreme Court](#), are estimated at [US\\$7.7 billion](#).

“I can’t stand it anymore – seeing those Monsanto people showing up at the grain elevator and behaving as if they own everything,” one grain cooperative manager told the Brazilian Congress during a special commission on agriculture I attended in December 2017.

‘Amoral’ royalty collection

The Brazilian appeals court’s Oct. 9 decision reverses a past ruling establishing the rights of small farmers in Brazil.

In their original petition, farmers’ unions in 2009 asserted that Monsanto’s royalty collection system is arbitrary, illegal and abusive. They argued that it extends Monsanto’s intellectual property rights to their own production and violates their right to freely save seeds for replanting, as guaranteed under [Brazil’s Plant Variety Protection Act](#).

In April 2012, a [civil court agreed with the farmers](#), affirming their rights to save seeds and sell their harvests as food or raw material [without paying royalties](#).

Monsanto got this ruling [overturned](#) on appeal. The Brazilian farmers’ unions then appealed that decision, leading to the Oct. 9 ruling against them.

“Monsanto is amoral,” Luiz Fernando Benincá, a soybean producer and litigant in the class action suit told me in January 2017. “It will do anything for profits.”

Controversial products and practices

Monsanto is accustomed to litigation. Several of its other products – such as [Agent Orange](#), the synthetic chemicals [PCBs](#) and, more recently, the glyphosate-based herbicide [Roundup](#) – have been embroiled in [legal controversies](#).

For decades, the St. Louis-based company, valued at [\\$63 billion last year](#), used its deep pockets and large teams of lawyers to [intimidate farmers and defeat opponents](#) in courts.

From 1997 to 2018 Monsanto won [every single intellectual property lawsuit that went to trial in the U.S. and Canada](#).

It has had less success abroad. Courts in Argentina, the European Union and other countries with [stronger farmers’ rights](#) have [checked](#) the company’s [aggressive use of royalties to profit off the byproducts of patented products](#).

Judges in these cases confront a tricky legal issue.

In theory, a genetically engineered DNA sequence like the one that confers herbicide resistance to Monsanto’s Roundup Ready soybeans can be protected under patent law. Yet the plant variety in which the genetic sequence is introduced may also be legally protected, as it is under Brazil’s Plant Variety Protection Act.

In practice, however, it is virtually impossible to separate genetically engineered DNA sequences from the rest of the physical plant. So the two laws – one recognizing the rights of farmers to save seeds for replanting in their fields, the other protecting Monsanto’s intellectual property – conflict with each other.

Defend farmers or protect corporations?

Faced with this conundrum, the [Canadian](#) and [U.S. Supreme Courts](#) have ruled that the exclusive rights of a patent holder over plant genetic sequences extend to the plants themselves, thereby allowing companies like Monsanto to prohibit farmers from saving seeds.

Brazil has effectively agreed with this interpretation – for now. The lawyer for the Brazilian farmers unions, Néri Perin, says the ruling “disregards Brazil’s [international commitment](#) to guarantee farmers’ rights.”

But more troubles await Bayer-Monsanto.

In a separate lawsuit, Brazilian soybean farmers are challenging the [validity of Monsanto’s patent on second-generation Roundup Ready soybeans](#). In India, the [courts have been asked to rule](#) on the validity of Monsanto’s patent for a cotton variety genetically engineered to be insect resistant.

Monsanto has long had the upper hand over the farmers who use its products. But the momentum may be shifting.

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