

## [Products Liability Law Daily Wrap Up, DAMAGES—CHEMICAL PRODUCTS—E.D. Mo.: BASF given a chance to contest responsibility for punitive damages in dicamba herbicide case, \(Feb. 21, 2020\)](#)

Products Liability Law Daily Wrap Up

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By Susan Engstrom

Although a jury assessed punitive damages only against Monsanto Co., the plaintiff/peach farmer has proposed a judgment stating that both companies are responsible for the \$250-million award.

Following a jury verdict finding Monsanto Co. and BASF Corp. liable for damages to a peach farm resulting from a dicamba-based herbicide that had drifted onto the farm's property, a Missouri federal judge has given BASF an opportunity to challenge the plaintiff's proposed judgment that the company share responsibility for a \$250-million punitive damages award the jury had assessed against Monsanto. BASF seeks to raise an objection to the extent punitive damages are imposed against it as a joint venturer with Monsanto ([Bader Farms, Inc. v. Monsanto Co.](#), February 20, 2020, Limbaugh, S.).

Last week, a federal jury in Missouri returned a verdict finding both Monsanto and BASF liable for negligent design and failure to warn, and awarded compensatory damages to the plaintiff, Bader Farms, Inc., in the amount of \$15 million [see *Products Liability Law Daily's* February 18, 2020 [analysis](#)]. The jury further concluded that the defendants had been acting as a joint venture and had conspired to create a market for their dicamba-based products by causing an ecological disaster. Finally, the jury imposed punitive damages in the amount of \$250 million against Monsanto.

In the current case, Bader Farms informally submitted a proposed judgment stating that both Monsanto and BASF are responsible for the \$250-million punitive damages award. BASF has informally sought to raise an objection to the judgment to the extent punitive damages are imposed against it as a joint venturer with Monsanto. Specifically, BASF asserts that it should not be responsible for any part of the award because, under state statute, "defendants shall only be severally liable for the percentage of punitive damages for which fault is attributed to such defendant by the trier of fact." The court noted, however, that this statute did not appear to apply to this case, in which no allocation of fault was necessary in light of the joint venture/conspiracy findings.

Although the court has informally stated its belief that a joint venturer is responsible for punitive damages assessed against its fellow joint venturer, the matter was not formally resolved. In addition, the court previously dismissed Bader Farms' claim for joint liability of its punitive damages count based on only limited briefing and Bader Farms' acquiescence in what appeared to be a different context.

Because BASF apparently was not given an opportunity to be fully heard on this matter and contends that entry of the punitive damages judgment against it will have significant collateral implications even if it is later reversed, the court is allowing additional briefing on that narrow issue. The court cautioned the parties not to relitigate the jury's joint-venture finding or other peripheral matters. The parties have until Tuesday, February 25, 2020, to file briefs.

The case is No. [1:16-cv-00299-SNLJ](#).

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Companies: Bader Farms, Inc.; Monsanto Co.; BASF Corp.

Cases: [CourtDecisions](#) [DamagesNews](#) [ChemicalNews](#) [MissouriNews](#)