



Saskatchewan Organic Directorate
Organic Agriculture Protection Fund
Box 130 Canwood, SK S0J 0K0 CANADA
Phone: 306-468-2218 Fax: 306-468-2346
email: lester.wyatt@saskorganic.com
website: www.saskorganic.com



*'To Champion The Development of Organic
Agriculture In A Democratic Manner'*

** Food For Life **

*'To preserve and protect
organic food and
fibre production'*

Media Release

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Court hears farmers' bid for class certification in GMO liability case

The class certification hearing for the certified organic farmers of Saskatchewan versus Monsanto and Bayer, *Hoffman et al versus Monsanto et al*, was held at the Court of Queen's Bench in Saskatoon, Saskatchewan on November 1, 2 and 3, 2004. *Hoffman et al versus Monsanto et al* stands to establish Monsanto and Bayer's liability for losses due to contamination of certified organic crops and farms by the two companies' genetically engineered canola.

GMO contamination has occurred to the point that farmers have all but stopped attempting to grow certified organic canola in Saskatchewan. Farmers have thus been denied the opportunity to serve the growing and lucrative market for certified organic canola which was developing at the time GMO canola was introduced. Furthermore, GMO canola from neighboring farms increasingly appears as weeds or volunteers in certified organic fields. It must be removed, and steps must be taken to ensure that GMO canola does not contaminate current or future crops in that field in order to maintain certified organic status for the crop, field or farm.

The costs of cleaning GMO canola are presently born by the certified organic farmers. If successful, this case will instead place liability for these costs and losses on the corporations that developed and commercialized these GMO crops.

The class certification hearing dealt with **five questions** in order to determine whether this case meets the requirements for class certification under the Class Actions Act of Saskatchewan.

- Do the pleadings disclose a cause of action?
- What are the common issues between the members of the class?
- Is there an identifiable class of persons?
- Is class action the preferable procedure for the resolution of the common issues?
- Is the representative plaintiff appropriate?

The pleadings are set out in our statement of claim (see <http://www.saskorganic.com/oapf/legal.html>). Briefly, **the cause of action** is to determine if, as we claim, the companies have liability and owe damages arising from strict liability, negligence, nuisance and/or trespass, as well as from violation of the Environmental Management and Protection Act of Saskatchewan (EMPA), EMPA 2002 and the Environmental Assessment Act of Saskatchewan.

Legal counsel identified 41 issues of fact and law that comprise the **common issues** to be tried. A key point in the common issues is the separation of liability from damages. The liability issues are common issues, which will need to be tried. A method of ascertaining the individual damages arising from the liability would be decided for each class member in a second process set out by the Court.

We propose that the **identifiable class of persons** would be all certified organic grain farmers who were certified at any time between January 1, 1996 and the date of class certification. Since organic

certification requires extensive and meticulous record-keeping, it will be possible to make a clear distinction between those inside and those outside of this class definition. We argue that this is the narrowest definition of the class that would include all who have suffered damages as outlined in the statement of claim.

We argue that a class action is the ***preferable procedure*** for this legal action. Class actions are meant to provide access to justice for groups of people who would not have the capacity to do so if they were to act individually. This class action provides a way for many small farmers to confront two multinational corporations, something that is beyond the means of any individual.

Class actions provide for judicial economy – a wise use of the Court's time when compared with the resources that would be required for hundreds of individual trials. The costs of preparing thousands of pages of legal documents, research reports and briefs; the costs of providing dozens of expert witnesses; travel costs and court time will be incurred once, by one class action for a trial that will set an important precedent.

Class actions should lead to behaviour modification. If we are ultimately successful in this case, companies that introduce GMO crops would have to take measures to prevent contamination of other crops, and would be liable for the market loss and/or clean-up costs if contamination occurred in spite of these measures.

The ***representative plaintiffs*** in this case are Larry Hoffman, L.B. Hoffman Farms Inc. and Dale Beaudoin. Larry and Dale are long-time certified organic farmers with experience growing certified organic canola. Larry decided not to include canola in his crop rotations after GMO canola was introduced so as to avoid contamination. Dale grew his last crop of canola in 1999. When he delivered it, the buyer tested it and refused to take it when it was found to be contaminated with GMO canola. L.B. Hoffman Farms Inc. is the incorporated family farm operation that Larry operates.

Larry Hoffman and Dale Beaudoin understand and agree that as representative plaintiffs they are undertaking a duty to represent the interests of the whole class, not merely their own interests.

In his concluding remarks, Zakreski quoted from a survey of organic traders indicating that the market for certified organic canola was expected to grow from 20 to 60 per cent per year, similar to the growth of other organic crop markets in the same period and that it was lucrative – an uncontaminated producer car shipment was sold for \$18.50/bushel in 1999. GMO contamination has all but reduced this market to zero.

Judge Smith reserved judgment. We expect she will deliver her decision early in the new year.

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For more information please contact:

Arnold Taylor, Chair, OAPF Committee, phone: (306) 252-2783 or (306) 241-6125

Marc Loiselle, Research Director, OAPF Committee, phone (306) 258-2192 or (306) 227-5825

For details of the class action suit, please see <http://www.saskorganic.com>