

Asgrow Gains Landmark Ruling

KALAMAZOO, Mich. — Asgrow Seed Company recently gained a landmark judge's ruling that could have a dramatic impact on the way violation cases of the Plant Variety Protection (PVP) Act are tried in years to come.

The ruling, extended by Judge Donald E. O'Brien of the U.S. District Court for the northern district of Iowa, western division, provides a very important legal clarification of the PVP Corn Exemption or saved seed provision.

The ruling came in the case of Asgrow vs. Dennis and Becky Winterboer of Milford, Iowa.

"Some might look at this as a victory for Asgrow Seed Company. In reality it's a tremendous victory for all of agriculture," said Norman A. Braksick, president of Asgrow. "This case will help us pursue PVP violators more effectively and efficiently in the future. Reducing these PVP violations will allow us to continue our heavy investment in research and deve-

lopment of improved soybean varieties that benefit both farmers and consumers."

PVP was passed by Congress in 1970 to encourage the discovery, breeding, and development of improved plant varieties, and provides patent-like protection to companies developing new varieties. The act prevents others from engaging in the seed business with a protected variety without permission of the variety's owners. It does, however, allow farmers to save seed from protected varieties for their own planting needs.

Congress never expressly defined the limits of saved seed, and this exemption has been a major point of contention in several PVP violation suits filed for the last 21 years.

In the Asgrow vs. Winterboer case, the defendants argued that, as farmers, they had the right to sell up to 49 percent of their crop as seed. Asgrow countered that the PVP Crop Exemption allows far-

mers to save only enough seed to meet all their possible planting needs.

Judge O'Brien agreed. He ruled farmers like the Winterboers have the right to save one bushel of soybeans for every acre they could potentially plant the following year. For instance, an individual who farms 1,500 acres could save 1,500 bushels of soybeans for his planting needs. If he only planted 750 acres in beans the following year, he could sell the leftover seed to other farmers as long as all other requirements of the PVP law are met.

In this ruling, Judge O'Brien noted, "Clearly, the intent (of PVP) is to encourage companies to develop improved varieties of seed and to provide for these developers the right to protect this product from unauthorized sales by others. To allow the defendants to sell virtually unlimited amounts of the plaintiff's novel line of seed would lead to a result contrary to the

intent of the statute."

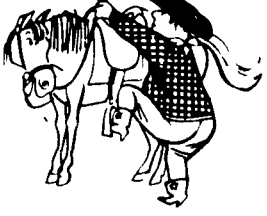
Braksick said, "We're very pleased with Judge O'Brien's ruling. His clear, legal definition of saved seed will put some new teeth in the PVP law. We'll be able to stop some willful infringers just by showing them this ruling. We'll also have an advantage in those future PVP suits in which legal action is taken."

Asgrow has had a history of success in PVP cases even before the landmark Winterboer ruling. Since 1985, the company successfully has completed 19 cases filed

against individuals or seed merchants in Indiana, Iowa, Louisiana, Mississippi, Tennessee, Texas, Arkansas, Missouri, and Minnesota.

The reason for the company's dogged pursuit of violators is simple, Braksick said. "The PVP law is only as strong as we make it. And we need a strong law so we'll continue to have the resources to develop superior products with higher yielding capabilities, increased disease and pest resistance, and value-added qualities."

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