



## EVERSOL'S weekly law

Contributed by Mark Grady

### GENETICALLY MODIFIED CROPS

Over the last decade, there has been a great deal of controversy over the introduction of Genetically Modified ('GM') Crops in Australia. In 2008 the NSW State Government lifted a ban on GM canola and also allowed for the growing of other GM crops subject to the approval of the Minister for Primary Industry.

There are a number of legal issues that may arise from the growing or not growing GM crops.

These include:

1. if a non-GM farmer's crop is contaminated with a GM crop and they seek compensation for the contamination. The farmer would bring an action against not only the specific farm responsible, but also against the manufacturer or distributor of the seed, the harvester that may have moved from farm to farm, and any other possible sources of the contamination;
2. if a non-GM farmer inadvertently grows a GM crop that has been spread from seed from nearby farms. The patent owner might then sue the farmer for infringing its patent as occurred in Canada in the matter of *Monsanto v Schmeiser Enterprises*. In this case Percy Schmeiser had grown GM canola which he didn't purchase from Monsanto, but which he said was distributed by wind from neighbouring farms or grain trucks. Percy Schmeiser also brought a cross claim against Monsanto for polluting his crop with the GM canola. The end result was the Canadian Supreme Court determined that Percy Schmeiser did not own the seeds or plants on his land, even though they had been distributed there by the wind or some other source outside of Mr Schmeiser's control. In what could be seen as a draw between the parties, Monsanto was unable to demonstrate that there had been any increase in yield or profits and therefore received no damages.

Out of these two different scenarios a number of insurance issues may arise. If a GM farmer contaminates a non-GM farm would a person's public liability policy cover the damage caused by such an event? Would another type of insurance policy be required? Would a public liability insurance policy cover Percy Schmeiser and his particular scenario?

If you should have any queries in respect to the above, please do not hesitate to contact Everingham Solomons.

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