

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, DC 20549

Plaintiff,

v.

MONSANTO COMPANY,
800 North Lindbergh Boulevard
St. Louis, MO 63167

Defendant.

Civ. Act. No. __-____

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the "Commission") alleges for its Complaint against Defendant Monsanto Company ("Monsanto") as follows:

SUMMARY

1. In 2002, a senior Monsanto manager (the "Senior Monsanto Manager"), who was responsible for certain activities in the Asia Pacific region, authorized and directed an Indonesian consulting firm to make an illegal payment totaling \$50,000 to a senior Indonesian Ministry of Environment official ("the Senior Environment Official"). This bribe was made to influence the Senior Environment Official to repeal an unfavorable decree that was likely to have an adverse effect on Monsanto's business. Although the payment was made, the unfavorable decree was not repealed.

2. In addition, from 1997 to 2002, Monsanto inaccurately recorded, or failed to record, in its books and records approximately \$700,000 of illegal or questionable payments made to

various Indonesian government officials. The approximate \$700,000 was derived from a bogus product registration scheme undertaken by the Indonesian affiliates. In certain instances, entries were made in the books and records of the Indonesian affiliates that concealed the source, use and true nature of these payments, violating Monsanto's accounting policies, controls, and procedures.

3. By reason of the conduct described herein, Defendant Monsanto violated Sections 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 30A(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), 78m(b)(5) and 78dd-1] ("Exchange Act") and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] thereunder.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Exchange Act Sections 21(d)(3), 27, and 32 [15 U.S.C. §§ 78u(d)(3), 78aa, 78ff]. In connection with the conduct described herein, the Defendant Monsanto, directly or indirectly, made use of the means and instrumentalities of interstate commerce, or the mails in furtherance of the acts, practices, and courses of business alleged in this Complaint.

5. Certain of the acts, practices, and courses of business alleged in this Complaint occurred within this judicial district, and, therefore, venue is proper pursuant to Section 27 of the Exchange Act.

DEFENDANT

6. Defendant Monsanto is a Delaware corporation based in St. Louis, Missouri and a global producer of technology-based solutions and agricultural products for growers and downstream customers in agricultural markets in the United States and abroad. Monsanto's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and is listed on the New York Stock Exchange.

FACTS

7. In addition to its pesticide business, Monsanto develops and produces various genetically-modified organisms (“GMOs”). GMOs are promoted as being better than conventional crops because they resist disease and pestilence, and produce higher yields. Monsanto wanted to increase acceptance of GMO crops in Indonesia. To do so, in 1998 Monsanto retained a Jakarta-based investment consulting firm (“Consulting Firm”) that represented U.S. companies in Indonesia.

8. The Consulting Firm employed a United States national (“the Consulting Firm Employee”) and assigned him to lead Monsanto’s account. The Consulting Firm Employee worked closely with the management team of the Indonesian affiliates and the Senior Monsanto Manager who was responsible for certain activities in the Asia Pacific region. The Senior Monsanto Manager is a citizen of, and was based in, the United States.

9. On behalf of Monsanto, the Senior Monsanto Manager, management of the Indonesian affiliates, and the Consulting Firm Employee lobbied for Indonesian legislation and ministerial decrees favorable to GMO crops. Thereafter, in February of 2001, Monsanto obtained limited approval from Indonesia’s Ministry of Agriculture, for farmers in South Sulawesi, Indonesia to grow Monsanto’s Bollgard Cotton, a GMO crop.

10. Later in 2001, the Ministry of Environment issued a decree amending Indonesia’s longstanding law requiring an environmental impact assessment (“AMDAL”) as a condition for approval for certain projects. The AMDAL decree required, for the first time, certain agricultural products, such as Monsanto’s Bollgard Cotton, to undergo an environmental impact assessment prior to cultivation within Indonesia. The decree was likely to have an adverse effect on Monsanto’s business interests in Indonesia. Thus, through its Indonesian affiliates and the Consulting Firm, Monsanto lobbied for repeal of the decree.

A. Payment to the Senior Environment Official In Violation of the Foreign Corrupt Practices Act (“FCPA”)

11. Due to a change in administration, in August of 2001, new Ministry of Environment officials were appointed. Monsanto focused its lobbying efforts on the repeal of the AMDAL decree and met on multiple occasions with the Senior Environment Official. Near the end of 2001, when it became clear that the lobbying efforts were having no effect on the Senior Environment Official, the Senior Monsanto Manager told the Consulting Firm Employee to “incentivize” the Senior Environment Official with a cash payment of \$50,000.

12. The Consulting Firm Employee discussed the payment with the Senior Environment Official and, while the Senior Environment Official did not promise to repeal the AMDAL amendment, the Senior Environment Official indicated to the Consulting Firm Employee that he would try to cause the amendment to be repealed.

13. In order to fund and to conceal the \$50,000 payment, the Senior Monsanto Manager devised a scheme involving false invoices from the Consulting Firm that were submitted to Monsanto. The Senior Monsanto Manager sent several e-mails, processed on a server located in the United States, to the Consulting Firm Employee and spoke to him in person regarding the scheme. During the planning of the payment to the Senior Environment Official, the Senior Monsanto Manager told the Consulting Firm Employee not to discuss the payment with any other employee of Monsanto.

14. As part of the scheme, the Senior Monsanto Manager instructed the Consulting Firm Employee to make the false invoices total \$66,000, so that the amount paid by Monsanto would include the amount necessary to cover the tax consequences of the Consulting Firm reporting Monsanto’s payment as consulting fee income. The Senior Monsanto Manager instructed the Consulting Firm Employee to draft several invoices, detailing hours that the

Consulting Firm Employee spent traveling on two trips to the United States; in December of 2001 he accompanied the Minister of Environment to St. Louis, in January 2002 he was to accompany the Minister of Agriculture to St. Louis. The false invoices were submitted to Monsanto in the United States on December 20, 2001, several weeks before the second trip occurred.

15. Despite Monsanto's retainer arrangement with the Consulting Firm, the invoices included detailed charges for hours allegedly expended by the Consulting Firm Employee. The invoices were different from the Consulting Firm's previous invoices because the amount charged was based on the hours allegedly spent on the trips whereas normally the Consulting Firm only billed the standard retainer amount plus any expenses. The improper invoices also included charges for hours of other Consulting Firm employees who did not travel to the United States. The breakdown accompanying the invoices made it appear as though other Consulting Firm employees also traveled to the United States. Despite the obvious irregularities in the invoices, the Senior Monsanto Manager approved the false invoices and convinced other Monsanto managers to approve the false invoices for payment.

16. In order for the Consulting Firm Employee to withdraw \$50,000 from the Consulting Firm's Indonesian bank account, he needed the approval of the president of the Consulting Firm. During the time that the Consulting Firm Employee was having discussions with the Senior Monsanto Manager and the Senior Environment Official, he spoke to the Consulting Firm's president, informed the president of the plan to bribe the Senior Environment Official, and gave the president periodic updates. The Consulting Firm's president then authorized the Firm's accounting department to release \$50,000 in U.S. currency to the Consulting Firm Employee.

17. On or about February 5, 2002, the Consulting Firm Employee visited the Senior Environment Official at his home. The Consulting Firm Employee briefly spoke with the Senior Environment Official, informed the Senior Environment Official that he had the money, and then gave an envelope containing \$50,000 in one hundred dollar bills to the Senior Environment Official. After the meeting, the Consulting Firm Employee separately reported back to both the Senior Monsanto Manager and the Consulting Firm's president and informed each that he had given the money to the Senior Environment Official. In early March, the Consulting Firm received payment on the false invoices submitted to Monsanto to fund and conceal the bribe. However, despite the cash payment, the Senior Environment Official never repealed the AMDAL requirement for Monsanto's products.

B. Other Payments Violative of the FCPA

18. Monsanto first became aware of possible financial irregularities within its Indonesian affiliates in March of 2001. Monsanto began an internal investigation, which continued at the direction of the Board of Directors. As a result of the investigation, Monsanto notified the Commission of books and records and compliance irregularities involving Monsanto's Indonesian affiliates. While Monsanto's investigation uncovered numerous questionable payments, which Monsanto disclosed to the Commission, it did not uncover the payment to the Senior Environment Official described above.

19. The Indonesian affiliates established more than twenty nominee companies in Indonesia without the knowledge of Monsanto. Several of these nominees were purportedly established to hold pesticide product registrations on Monsanto's behalf in exchange for a fee. During the review period, the Indonesian affiliates paid false product registration fees totaling approximately \$787,202 to at least two nominee companies established by the Indonesian affiliates. The false registration fees, which were based on a percentage of sales of certain

products, were paid to the two nominee companies despite the fact that other companies held the product registrations on Monsanto's behalf. The legitimate holders of the product registrations did not charge Monsanto any such fees.

20. The Indonesian affiliates used the nominees to inflate sales of Monsanto's pesticide products between the Indonesian affiliates and the nominees. This was done through a scheme of over-invoicing, in most cases, and by "ghost" sales, in other cases. The management team for Monsanto's Indonesian affiliates then siphoned monies from these unauthorized and improperly documented sales to, in part, finance payments to Indonesian government officials.

21. From 1997 to 2002, Monsanto's Indonesian affiliates made at least \$700,000 of illicit payments to at least 140 current and former Indonesian government officials and their family members. The largest single set of payments was for the purchase of land and the design and construction of a house in the name of the wife of a senior Ministry of Agriculture official. The total amount of improper payments made in 1998 and 1999 for the house and land was the rupiah equivalent of \$373,990. Other examples of improper payments include, among others, payments to a senior official of Budget Allocation at the National Planning and Development Board, totaling \$86,690, and payments to other Ministry of Agriculture officials, totaling \$8,100. Other payments for travel and gifts (such as cellular phones and golf memberships) were also made by the Indonesian affiliates on behalf of various Indonesian government officials.

22. In addition, questionable payments were made concerning a cotton gin in South Sulawesi, Indonesia. In connection with the Sulawesi project, one of Monsanto's Indonesian affiliates, PTBS, entered into a ginning contract with an affiliate of the Consulting Firm. Under the ginning contract, PTBS paid the affiliate of the Consulting Firm to gin the cotton grown in South Sulawesi using cotton gins "rented" from the Indonesian Government. The Indonesian affiliates also paid fees of \$129,500 to two different Indonesian consulting firms to gain control

of the gin. At the same time, PTBS paid \$1,000 per month to the Indonesian Plantation Agency, which owned the gin that milled the cotton. Lastly, PTBS had instituted a program wherein PTBS paid local South Sulawesi Department of Agriculture officials a certain percentage of each kilogram of cotton fruit produced. Payments of approximately \$29,500 were made to various officials under this payment scheme.

C. Books and Records Violations

23. Monsanto's Indonesian affiliates failed to properly account for the illicit payments. Instead, members of the Indonesian management team used a complex scheme of bogus pesticide product registration fees and over-invoicing to finance off-book slush funds. These off-book accounts were the source for reimbursements to employees of the Indonesian affiliates for numerous improper payments made to Indonesian officials. These improper payments were inaccurately recorded by both the Indonesian affiliates and Monsanto as payments for bona fide services or bona fide product sales. The improper payments were then reflected in Monsanto's consolidated financial statements as payments for bona fide services or bona fide product sales.

D. Internal Controls Violations

24. During the review period, Monsanto lacked internal controls sufficient to detect or prevent the illicit payment schemes operated by the Indonesian affiliates. In fact, from 1996 to 2001 Monsanto did not conduct any internal audits of its Indonesian affiliates, nor were statutory audits conducted, which were required of PTBS under Indonesian law. Instead, Monsanto assumed the financial statement information it received from its Indonesian affiliates was accurate. Despite the statements being unaudited, Monsanto management did not require the Indonesian affiliates to substantiate the information in the financial statements. The absence of

effective internal controls enabled the Indonesian management team to conceal their illicit payment schemes.

FIRST CLAIM

Violation of Section 30A(a) of the Exchange Act [15 U.S.C. §78dd-1]

25. Paragraphs 1 through 24 are realleged and incorporated by reference.

26. As described above, Monsanto knowingly and corruptly authorized the making and made a payment of \$50,000 to a foreign official for the purposes of influencing an act or decision of such foreign government official in his official capacity in order to assist Monsanto in obtaining or retaining business in violation of the anti-bribery provision of the FCPA in Section 30A(a) of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM

Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]

27. Paragraphs 1 through 26 are realleged and incorporated by reference.

28. As a result of the above-described conduct, with respect to improper payments to foreign officials and others, Monsanto failed to make and keep books and records which, in reasonable detail, accurately and fairly reflected Monsanto's transactions and dispositions of its assets.

29. By reason of the foregoing, Monsanto violated the books-and-records provisions of the Exchange Act, Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

THIRD CLAIM

Violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]

30. Paragraphs 1 through 29 are realleged and incorporated by reference.

31. As a result of the above-described conduct, with respect to improper payments to a foreign official and others, Monsanto failed to devise and maintain a system of internal

accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for its assets.

32. By reason of the foregoing, Monsanto violated the internal control provisions of the Exchange Act, Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)].

FOURTH CLAIM

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]

33. Paragraphs 1 through 32 are realleged and incorporated by reference.

34. As described above, with respect to improper payments to a foreign official and others, Monsanto knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified any book, record, or account described in Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

35. By reason of the foregoing, Monsanto violated Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)].

FIFTH CLAIM

Violations of Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

36. Paragraphs 1 through 35 are realleged and incorporated by reference.

37. As described above, Monsanto with respect to improper payments to a foreign official and others, Monsanto, directly or indirectly, falsified or caused to be falsified, any book, record or account subject to Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

38. By reason of the foregoing, Monsanto violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240-13b2-1].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment against Monsanto that:

1. Orders Monsanto to pay a civil money penalty in the amount of \$500,000 pursuant to Exchange Act Sections 21(d)(3) [15 U.S.C. § 78u(d)(3)] and 32(c) [15 U.S.C. § 78ff(c)(1)(B)]; and
2. Grants such other and further relief as is just and proper.

Dated: January ___, 2005

Respectfully submitted,

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