

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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IN RE GENETICALLY MODIFIED RICE)	4:06 MD 1811 CDP
LITIGATION)	
)	ALL CASES
_____)	

This document relates to:

Case No. 4:10-cv-1849; *Lowry Robinson, et al v. Bayer CropScience, LP et al*

**PLAINTIFFS’ REPLY TO PLC’S RESPONSE TO
PLAINTIFFS’ MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE
PURSUANT TO RULE 41(A)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE
OF PLAINTIFFS LOWRY E. ROBINSON AND C&L PLANTING GROUP OUT OF TIME**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiffs, LOWRY E. ROBINSON, and C&L PLANTING GROUP, by undersigned counsel submit this Reply in Support of their Motion for Voluntary Dismissal Without Prejudice Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

1. PLC requests the Court grant Plaintiffs’ motion only on the condition that, should Plaintiffs choose to re-file, Plaintiffs be bound by this Court’s Order regarding the common benefit trust fund, regardless of whether such filing be in federal or state court.

2. This Honorable Court has recognized that it has no jurisdiction over cases brought in any state court to require a hold-back from any judgment or settlement reached therein. Order dated Feb. 24, 2010 (D.I. 2574). Despite this, PLC has requested the Court step beyond its jurisdiction and impose such a condition on the dismissal of these particular Plaintiffs’ claims without prejudice.

3. In support of their Response, PLC attaches a portion of the telephone conference held on February 19, 2009. Even in that conference, the Court questions the enforceability of an

order conditioning the voluntary dismissal and/or re-filing of a plaintiff's claims. The reasoning behind the Court's conditioning was that Bayer and the plaintiffs were in the middle of a long discovery dispute over documents to be produced and plaintiffs wanted out. That is simply not the case at hand with these Plaintiffs nor is it even close.

4. As Eighth Circuit case law, as well as the telephone conference to which PLC refers, demonstrates, Rule 41(a)(2) conditions are typically and primarily imposed to protect defendants when a plaintiff moves to voluntarily dismiss a case after significant time has been spent preparing a defense.

5. Plaintiffs' case was just recently transferred into the MDL proceedings on or about September 24, 2010. The Bayer Defendants filed their Answer to Plaintiffs' Original Complaints on or about September 22, 2010, while the case was pending in the Eastern District of Arkansas.

6. Bayer has not responded and/or objected to Plaintiffs' motion.

7. In summary, PLC is seeking extraordinary and questionable relief in their Response to these two Plaintiffs' Motion by asking the Court to condition such a dismissal without prejudice with the requirement of a hold-back from any re-filed case, federal or state. PLC is simply attempting to circumvent the issue of the Court's jurisdiction, which the Court has previously addressed.

8. Counsel for these Plaintiffs has not filed any other motions such as this to justify PLC's assertion that a mass exodus may occur without conditions placed on this single dismissal without prejudice. While circumstances can never be predicted for certain, counsel for these Plaintiffs does not intend to file any further such motions at this time.

WHEREFORE, Plaintiffs, LOWRY E. ROBINSON, and C&L PLANTING GROUP, submit this Reply in Support of their Motion for Voluntary Dismissal Without Prejudice and

respectfully requests the Court enter an Order dismissing their Original Complaint without prejudice and that said voluntary dismissal without prejudice be entered into the record of the Court without condition. Plaintiffs previously provided a proposed Order as an exhibit to their original motion (D.I. 3507).”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 26th day of October, 2010, electronically filed a copy of the foregoing with the Clerk of the Court to be served by operation of the court's electronic filing system upon the parties of record.

/s/ Martin J. Phipps
MARTIN J. PHIPPS