

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

In re Genetically Modified Rice Litigation

Master Case No. 4:06MD1811CDP
MDL Docket No. 1811

This document relates to:

TURNER GRAIN MERCHANDISING, INC., § PLAINTIFFS
TURNER COMMODITIES, INC., GERALD LOYD, §
JASON COLEMAN, DALE BARTLETT, BARTLETT §
FARMS, JOSEPH GRIFFITH, SCOTT GRIFFITH §
PARTNERSHIP, LP, SIDNEY CALDWELL, §
SIDNEY CALDWELL FARMS, JANET COLEMAN, §
and PEDO & MABEL, L.L.C. §

VS. § NO. 4:11-CV-256

BAYER CROPSCIENCE, LP, §
BAYER CROPSCIENCE HOLDING, INC., §
BAYER CORPORATION, BAYER AG, §
BAYER BIOSCIENCE NV AND §
RICELAND FOODS, INC. § DEFENDANTS

PLAINTIFFS' AMENDED MOTION TO REMAND

Plaintiffs file their Amended Motion to Remand pursuant to 28 U.S.C. § 1447, and move this Court for an order remanding this case to the Circuit Court of Monroe County, Arkansas.

A. PROCEDURAL AND FACTUAL BACKGROUND

1. This case is one of many lawsuits filed by Arkansas rice farmers against Riceland Foods, Inc. ("Riceland"), an Arkansas corporation, and the Bayer Defendants in various state courts throughout Arkansas relating to the contamination of the U.S. rice industry with genetically modified rice.

2. Bayer removed this action from Arkansas state court to the United States District Court for the Eastern District of Arkansas pursuant to 28 U.S.C. § 1332. Riceland has not joined in the removal.

3. As this case falls within the *In re Genetically Modified Rice Litigation*, it was transferred from the Arkansas Federal Court to this Court. During the transfer process from the Arkansas Federal Court to this Court, Plaintiffs' filed a Motion to Remand with the Arkansas Federal Court.

4. On February 8, 2011, this case was officially transferred into this Court and received Case No. 4:11-cv-00256-CDP. Accordingly, the deadline in this Court for Plaintiffs to file their Motion to Remand is March 8, 2011.

5. Plaintiffs hereby file their Amended Motion to Remand and Amended Brief in Support of Motion to Remand replacing any previously filed Motions to Remand or Briefs and argue that the Bayer Defendants' removal is improper. Specifically, removal in this case was improper pursuant to 28 U.S.C. § 1332, which provides that this Court does not have jurisdiction over Plaintiffs' claims without complete diversity of citizenship.

6. The Bayer Defendants did not obtain consent for removal from all named Defendants, including Riceland Foods, Inc., and did not provide any explanation for lack of consent in the Bayer Defendants' Notice of Removal as is required by 28 U.S.C. § 1446(b).

7. This Court as well as Judge Wilson and Judge Miller in the Eastern District of Arkansas, have issued multiple Orders remanding cases such as Plaintiffs' against Riceland Foods, Inc. ("Riceland"), and the Bayer Defendants back to state court in Arkansas. Plaintiffs adopt those Orders as if fully set forth herein.

8. In this removal, the Bayer Defendants improperly argue that diversity of citizenship exists because there is no reasonable basis in fact or law supporting a claim against Riceland because the statute of limitations ("SOL") expired for claims against Riceland. The Bayer Defendants' removal is frivolous and without merit.

9. As explained more fully in “Plaintiffs’ Amended Brief in Support of Motion to Remand,” complete diversity of citizenship does *not* exist because the SOL against Riceland has not expired and Riceland is *not* fraudulently joined. Some or all of Plaintiffs in this cause of action are members of Riceland and have colorable claims against Riceland. Accordingly, this Court should remand this case back to Arkansas state court.

B. CONCLUSION

10. Plaintiffs respectfully request the Court issue its Order granting Plaintiffs’ Motion as soon as possible so that Plaintiffs can proceed accordingly and avoid further delay including this case being transferred to the multi-district litigation that is pending in St. Louis, Missouri.

11. Plaintiffs also respectfully request this Court award reasonable attorney’s fees and expenses incurred by Plaintiffs in responding to this Notice of Removal and seeking remand pursuant to 28 U.S.C. § 1447(c).

12. Plaintiffs finally request this Court sanction Bayer pursuant to Fed. R. Civ. P. Rule 11, in an amount proportionate to their conduct and to deter repetition of Bayer’s removals in similar cases in Arkansas as this has simply become a pattern and practice of the Bayer Defendants. Plaintiffs also request any further relief to which they may be entitled.

Respectfully submitted,

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BY: /s/ Martin J. Phipps
MARTIN J. PHIPPS (Ark. Bar No. 2008108)

CERTIFICATE OF SERVICE

I, Martin J. Phipps, hereby certify that on March 7, 2011, I electronically filed the foregoing document with the Clerk of Court to be served by operation of the Court's CM/ECF upon the parties of record.

BY: /s/ Martin J. Phipps
MARTIN J. PHIPPS