

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED
RICE LITIGATION

4:06 MD 1811 CDP

TRIAL COMMENCING
MAY AND JULY, 2011

**MEMORANDUM IN SUPPORT OF THE ARKANSAS PLAINTIFFS' MOTION TO
EXCLUDE REPORTS AND TESTIMONY OF CHERYL SHUFFIELD**

Plaintiffs, Rudy Hufford and Cheryl Hufford (partners of Hufford Farms); Ronald Catt (as husband and wife with Judy Catt); Gary Richey, Jeramy Richey, Tina Richey and Vicky Richey, members of Richey Farms, joint venture successor to R&R Farms Joint Venture; Mark Williams and Pamela G. Williams (individually and as partners of Williams Farms G.P.); Guy Brinkley; Aylene Williams individually and as trustee for the J.L. Williams Family Trust; Frank Binkley, Lynn Gene, Inc. Eifling Investment Co., Sam Don, Inc., Rebecca Lynne, Inc., Clayton Lee, Inc., Don L. Eifling, Inc., and D. Lynn Eifling, Inc. (partners of Don Eifling & Son), Jeffrey Keeter, Robert J. Venable and Robbin V. Tuller (partners of RJR Farms, Keeter Farms, Inc. and P&K, Inc.), Dennis Brown, Sherry Brown and Coty Brown (partners of Legacy Farms Partnership) (collectively the "Arkansas Plaintiffs"), have moved, pursuant to Rule 702 of the Federal Rules of Evidence and the principles of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to exclude all expert reports and testimony of Defendants' expert Cheryl Shuffield. The Arkansas Plaintiffs hereby incorporate by reference, the Memorandum in Support of Plaintiffs' Motion to Exclude Expert Designation, Report and Testimony of Cheryl Shuffield

and Robert Winter filed on August 17, 2009 and related exhibits (D.I. 1451) and the Reply in Support of Plaintiffs' Motion to Exclude Expert Designation, Report and Testimony of Cheryl Shuffield and Robert Winter filed on October 2, 2009 and related exhibits (D.I. 1571) (collectively, the "Prior Filings"). As stated in the Prior Filings, Shuffield's analysis and opinions do not meet the requirements set forth in Rule 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and should be excluded in their entirety.¹

In addition to the issues raised in the Prior Filings, Shuffield lacks any foundation for specific opinions regarding the Arkansas Plaintiffs' damages and has expressed no opinions as to the Arkansas Plaintiffs. The expert reports provided by Defendants related to the Arkansas Plaintiffs were coauthored by Cheryl Shuffield and Robert Winter. Both Shuffield and Winter clearly stated in their depositions related to their report that Winter was responsible for the opinions as to Arkansas plaintiffs and Shuffield was responsible for opinions relating to the Missouri plaintiffs included in the report. Deposition of Cheryl Shuffield attached hereto as Exhibit 1 at 60:2-61:16; Deposition of Robert Winter attached hereto as Exhibit 2 at 37:4-18. In fact, Shuffield was clear that she did not review any depositions of the Arkansas Plaintiffs in her other losses opinions or information related to the Arkansas Plaintiffs sales records. Shuffield Depo, Ex. 1 at 53:4-23; 109:13-25. No other report issued by Shuffield relates in any way to the specific damages of the Arkansas Plaintiffs. Due to her lack of investigation into the specific damage claims of the Arkansas Plaintiffs, Shuffield lacks the foundation necessary to offer any opinions specific to the Arkansas Plaintiffs damages under Rule 702 or *Daubert* and Shuffield has not, in fact, rendered any opinions specific to the Arkansas Plaintiffs. Defendants have

¹ As discussed with the Court during the telephone status conference on January 13, 2011, Defendants have recently identified Cheryl Shuffield as the expert that will testify at trial regarding the Arkansas Plaintiffs. This motion, however, is equally applicable to Defendants' expert Robert Winter who co-authored the expert reports and conducted the analysis specifically related to the Arkansas Plaintiffs.

agreed to produce any updates to the original Shuffield and Winter report regarding the Arkansas Plaintiffs and to present Shuffield for deposition regarding her specific opinions as to the Arkansas Plaintiffs. The Arkansas Plaintiffs expressly reserve the right to file additional objections regarding Shuffield's opinions regarding their damages.

WHEREFORE, the Arkansas Plaintiffs pray that the expert reports and testimony of Shuffield be excluded in their entirety.

Dated: January 20, 2011

Respectfully submitted,

GRAY, RITTER & GRAHAM, P.C.

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Plaintiffs' Executive Committee

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 20th day of January, 2011, 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/ Don M. Downing