

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

**IN RE GENETICALLY MODIFIED RICE
LITIGATION**

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) **4:06 MD 1811 CDP**

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) **Trials Commencing**
) **May and July, 2011**
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)

**THE BAYER DEFENDANTS’ RESPONSE TO THE ARKANSAS PLAINTIFFS’
MOTION TO EXCLUDE DESIGNATION, REPORTS, AND
TESTIMONY OF RONNIE HELMS**

Arkansas Plaintiffs’¹ motion to exclude Dr. Ronnie Helms reprises a motion that the Court has already ruled on. The motion should be denied.

On August 17, 2009, the Missouri and Arkansas initial trial pool plaintiffs moved to exclude Dr. Helms (D.E. 1443). The Court’s October 9, 2009 Memorandum and Order for the most part denied that motion. Oct. 9, 2009 Mem. & Order at 28-30, D.E. 1604 (“October Order”); *see also* Dec. 9, 2009, Mem. & Order at 12-14, D.E. 2075 (“December Order”) (noting that the arguments regarding exclusion of experts by the Mississippi bellwether plaintiffs were the same as the arguments made by the Missouri and Arkansas plaintiffs and generally referencing the October 9, 2009 Order).

¹ 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 Vichy Richey, members of Richey Harms, 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 Investing 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”)

The Court ruled in its October Order that Dr. Helms may not testify about lost profits, because he is not an expert in economics. The Court also imposed the same limits on Dr. Helms' testimony as on all other experts' testimony: no testimony about hearsay statements, no testimony about conditions outside the relevant time frame, and no testimony about the meaning of the PPA regulations or the Bayer Defendants' compliance or non-compliance with those regulations. October Order at 28-30. In its December Order, the Court referenced the same arguments and ruled that the parties' experts were qualified through education and experience and could state their opinions in accordance with general principles of law under Federal Rule of Evidence 702. December Order at 12-14.

Apart from those restrictions in its October Order, however, the Court found that Dr. Helms "is qualified to talk about rice farming in general and most of the other subjects listed in his report." October Order at 30. The Court noted that the Missouri and Arkansas plaintiffs "object to Helms' testimony about almost everything"—including supervision of cooperators, rice pricing, the feasibility of using third-party auditors, and the advantages of genetically-modified rice—but held that Dr. Helms was qualified to testify on all those issues. *Id.* at 28, 30.

The current Arkansas Plaintiffs' motion to exclude Dr. Helms incorporates the earlier motion made by the Missouri plaintiffs and Arkansas (D.E. 1443, D.E. 1444) and mirrors the earlier motion filed by the Mississippi bellwether plaintiffs (D.E. 1683). The Arkansas Plaintiffs' again repeat the argument, made in both the Missouri and Arkansas Plaintiffs' motion and in the Mississippi Plaintiffs' motion for the January 2011 MDL trial (D.E. 3526), that Dr. Helms has no knowledge or opinion specific to the particular plaintiffs involved. That argument is beside the point because Dr. Helms has not been designated to give opinions specifically related to plaintiffs' (or any other plaintiffs') farming operations. Rather, Dr. Helms will testify

on the general areas discussed in his report and his deposition, including: (1) the variables that can affect rice farming costs, yields, and revenues; (2) industry standards of care for the development of genetically-modified rice; and (3) the reasonableness of the Bayer Defendants' actions in their work with Louisiana State University and the University of Puerto Rico. The court has repeatedly found that these are appropriate areas of testimony and that Dr. Helms is qualified to address these issues.

The Court's earlier order denying the Daubert challenge to Dr. Helms was correct. The Court should reaffirm that ruling here. In support of this position, the Bayer Defendants² incorporate by reference their response to the Missouri and Arkansas plaintiffs' motion as well as their responses to the Mississippi bellwether plaintiffs' motions. (D.E. 1501, D.E. 1928, and D.E. 3630).

² For purposes of this motion, the Bayer Defendants are Bayer CropScience LP, Bayer CropScience Holding, Inc., Bayer CropScience LLC, Bayer CropScience Inc., Bayer Corporation, Bayer BioScience NV, Bayer CropScience AG, and Bayer AG. Bayer CropScience AG, Bayer BioScience NV, and Bayer AG join these motions reserving all jurisdictional objections. The use of this shorthand reference does not concede that any particular defendant was engaged in any particular activity.

Dated: February 18, 2011.

Respectfully submitted,

/s/Lester C. Houtz

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CERTIFICATE OF SERVICE

This is to certify that I have this 18th day of February, 2011, electronically filed a copy of the foregoing with the Clerk of Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/Lester C. Houtz

Lester C. Houtz