

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

**IN RE GENETICALLY MODIFIED
RICE LITIGATION**

**4:06 MD 1811 CDP
ALL CASES**

JOINT STATEMENT OF LEAD COUNSEL

Pursuant to Case Management Orders (CMO) Nos. 4 and 5, Lead Counsel for Plaintiffs and Defendants have met and conferred as directed in said Orders and report to the Court as follows:

I. JURISDICTIONAL ISSUES

A. Discovery Directed to Domestic Defendants.

On June 7, 2007, Plaintiffs in the Consolidated Complaint served 59 Requests for Production and on June 29, 2007 served 10 Interrogatories directed to each of the domestic Defendants.

1. Requests for Production. Defendants provided to Plaintiffs responses to the Requests for Production on July 27, 2007, and supplemental responses on September 14, 2007. Documents have been produced on a rolling basis on July 27, August 3, August 17, August 31, September 14, September 28, October 19 and November 17, 2007. As of the date of the last status conference, held on September 20, 2007, Defendants had produced approximately 158,849 pages of documents responsive to the Jurisdictional Requests for Production. Since then, Defendants have produced an additional 76,364 pages of documents for a total of 235,213 pages in response to the jurisdictional requests for production. Defendants have agreed to

produce a limited number of additional documents. Defendants are presently processing those documents and plan to produce them on or before December 15, 2007. Counsel have met and conferred successfully on multiple occasions in good faith attempts to resolve objections to the Requests for Production. That process continues and the parties anticipate that most, if not all, remaining objections will be resolved.

2. Interrogatories. Defendants provided Plaintiffs responses to the Interrogatories on August 28, 2007. Counsel have met and conferred successfully on multiple occasions in good faith, attempting to resolve objections to Interrogatories. That process continues and the parties anticipate that most, if not all, remaining objections will be resolved.

B. Discovery Directed to Foreign Defendants.

On October 28, 2007, Plaintiffs in the Consolidated Complaint served 86 Requests for Production and on November 7, 2007, Plaintiffs served 10 Interrogatories directed to each of the foreign Defendants.

1. Requests for Production. Defendants' responses to the Requests for Production are due on December 12, 2007. Defendants file herewith a Motion for Protective Order which seeks to prohibit, or severely restrict, the production of documents in response to the Requests for Production. The parties will brief this motion and will be prepared to argue the motion at the Status Conference on November 29, 2007.

2. Interrogatories. Defendants' responses to the Interrogatories are due on January 7, 2008. Defendants are reviewing the Interrogatories. It is anticipated timely responses will be served and counsel will meet and confer in good faith in an attempt to resolve any objections.

C. Briefing and Hearing on the Jurisdictional Motions.

In CMO 5, the Court set a briefing schedule commencing on February 29, 2008, and concluding on March 31, 2008.

(Plaintiffs' position is that due to unexpected delays in completing jurisdictional discovery, an extension of the deadlines previously set by the Court is necessary. Plaintiffs disagree with Defendants' contention that the jurisdictional briefing needs to be completed before the class certification hearing. Plaintiffs are, nonetheless, willing to acquiesce to this point at this time, and their proposed briefing schedule set forth below accomplishes that objective. Plaintiffs propose that each deadline in the jurisdictional briefing schedule be extended for the same six week time period that Defendants seek to extend their response date to the class certification motion. These extensions would result in Plaintiffs' brief in opposition to the jurisdictional motions being due April 11, 2008, Defendants' reply being due on May 2, 2008, and Plaintiffs' surreply being due on May 12, 2008. Plaintiffs propose that the hearing on the jurisdictional motions be held on May 21, 2008 – the day before the class certification hearing – so that non-local counsel may attend and participate in the hearings on both motions during the same trip.)

[Defendants' position is that they would like to resolve the threshold issue of jurisdiction as early as reasonably possible. If Defendants' Motion for Protective Order Regarding Jurisdictional Motions is granted, Defendants do not seek relief from the present briefing schedule and request a hearing on any date as is convenient to the Court from and including April 14, 2007. In the event that Defendants' Motion for Protective Order is denied, Defendants believe the present schedule will need to be delayed for a substantial period of time so that briefing does not commence until such time has as Defendants can reasonably produce the documents requested by Plaintiffs and allowed by the Court. Moreover, the briefing, expert

disclosure, and hearing schedule relating to class certification would need to be adjusted accordingly if jurisdictional issues are to be resolved prior to the hearing on class certification.]

II. MERITS DISCOVERY

A. Plaintiffs' Discovery Directed to Domestic Defendants in the Consolidated Complaint.

Plaintiffs served 69 Requests for Production on each of the domestic Defendants in the Consolidated Complaint on July 6, 2007. Plaintiffs served 19 Interrogatories on July 10, 2007.

1. Requests for Production. Defendants served responses to the Requests for Production on August 20, 2007, and supplemental responses on September 14, 2007. Documents have been produced on a rolling basis. To date, Defendants have produced a total of approximately 521,505 pages of documents – of which approximately 233,136 of those pages were responsive to both jurisdictional and merits requests. Counsel have met and conferred successfully on multiple occasions in good faith attempts to resolve objections to the Requests for Production. That process continues and the parties anticipate that most, if not all, remaining objections will be resolved.

2. Interrogatories. Defendants served responses to the Interrogatories on September 10, 2007. Counsel have met and conferred successfully on multiple occasions in good faith attempts to resolve objections to the Interrogatories. That process continues and the parties anticipate that most, if not all, remaining objections will be resolved.

B. Defendants' Discovery Directed to the Producer Plaintiffs.

1. Named Plaintiffs.

a. PFS Forms and Documents. Plaintiffs' position is as follows:

(Substantially complete PFS forms have been provided by all Named Plaintiffs. Most of the documents requested in the PFS forms, along with virtually all documents related to the Named Plaintiffs' row crop farming operations, were produced, on a rolling basis, between June 29, 2007 and November 13, 2007. In an effort to expedite production of all of the Named Plaintiffs potentially discoverable documents, the vast majority of these documents were produced prior to any formal request by Defendants. In total, the Named Plaintiffs have produced 106,890 pages of documents. It is anticipated that by the November 29, 2007 status conference, the Named Plaintiffs' relatively few remaining documents will have been produced.)

Defendants' position is as follows:

[In CMO 3, all Plaintiffs named in the Consolidated Complaint were ordered to provide completed PFS forms, along with the documents requested therein, no later than June 29, 2007. The Named Plaintiffs provided PFS forms to Defendants beginning June 29, 2007. Substantially complete PFS forms have now been provided by all Named Plaintiffs. Most of the documents requested in the PFS forms have been produced by the Named Plaintiffs on a rolling basis between June 29 and November 13, 2007. In addition, Plaintiffs voluntarily produced 106,890 pages of documents they represent to be related to their row crop farming operations. It is anticipated that by the November 29, 2007 status conference, the relatively few remaining documents requested in the PFS forms will have been produced.]

b. Interrogatories. On September 14, 2007, Defendants served Interrogatories on the Plaintiffs named in the Consolidated Complaint. Plaintiffs served their responses on October 5, 2007 and October 9, 2007, and their supplemental responses on November 5, 2007 and November 14, 2007. Counsel have met and conferred successfully on multiple occasions in good faith attempts to resolve objections to the Interrogatories. That

process continues and the parties anticipate that most, if not all, remaining objections will be resolved.

c. Requests for Production. On September 19, 2007, Defendants served Requests for Production on the Plaintiffs named in the Consolidated Complaint. Plaintiffs served their responses on October 5, 2007. Counsel for Plaintiffs and Defendants have met and conferred in good faith and have successfully resolved all objections except that to Request No. 3 which requests Plaintiffs to produce “state and federal tax returns from 2003 to the present for yourself and all farming entities in which you have or have had an interest.” Defendants’ Motion to Compel will be filed herewith. The parties will brief the motion and be prepared to present oral argument at the November 29, 2007 Status Conference.

d. Requests for Admission. On September 19, 2007 Defendants served Requests for Admission on the Plaintiffs named in the Consolidated Complaint. Plaintiffs served their responses on October 9, 2007, October 16, 2007, and October 19, 2007. Counsel have met and conferred successfully on multiple occasions in good faith attempts to resolve objections to the Requests for Admission. That process continues and the parties anticipate that most, if not all, remaining objections will be resolved.

e. Depositions. Depositions of the named Plaintiffs and 10 of the 15 additional Producer Plaintiffs permitted by CMO 3 are scheduled to begin on or about December 10, 2007 and conclude by February 15, 2008.

f. FSA Documents. Defendants have received authorizations from all named Plaintiffs to review FSA documents relating to their farming operations. The authorizations and requests for documents have been delivered to all applicable FSA offices. Those offices are responding and the parties expect that this document production will be

substantially completed by December 31, 2007 if all FSA offices continue to cooperate in locating and copying the requested documents.

2. Producer Plaintiffs Not Named in the Consolidated Complaint.

(Approximately 290 PFS forms have been produced by Producer Plaintiffs with cases pending in the MDL (including 56 PFS forms that were provided in cases that were voluntarily dismissed and 26 PFS forms from the Named Plaintiffs in the Consolidated Complaint). Approximately 121 PFS forms in cases filed prior to the Court's entry of CMO 3 still need to be produced. Now that the harvest season is over, Plaintiffs anticipate that a substantial number of these additional PFS forms will be produced in the coming weeks. In addition, as to cases filed after the entry of CMO 3, PFS forms are not yet due. Plaintiffs estimate that approximately 137 PFS forms from Producer Plaintiffs in those later-filed cases will need to be produced.

In CMO 3, the Court permitted Defendants to select 15 Producer Plaintiffs, in addition to the 21 Named Plaintiffs in the Master Complaint, to produce documents required by the PFS forms and to submit to deposition. Defendants' counsel has already selected the first 5 of these Producer Plaintiffs. Some documents from those Plaintiffs have been produced and it is anticipated that the remainder will be produced by agreement by the date of the status conference. The parties agree that Defendants will select an additional 5 Producer Plaintiffs by December 7, 2007. Plaintiffs further propose that Defendants select their final 5 Producer Plaintiffs by January 7, 2008, and that those Plaintiffs expedite production of their documents and produce them no later than January 28, 2008. Plaintiffs propose that those Plaintiffs be required to submit to deposition no later than February 15, 2008.)

[Defendants' position is that in CMO 3, the Court ordered all Producer Plaintiffs with suits then pending before this Court to provide completed PFS forms no later than August 6,

2007. Producer Plaintiffs in cases transferred to the Court after the entry of CMO 3 were to provide such forms within 60 days of the case being opened in this district. The Producer Plaintiffs were not initially required to produce the four categories of documents requested in the PFS.

The Producer Plaintiffs began producing their completed PFS forms on August 6, 2007. As of November 20, 2007, approximately 222 PFS forms have been produced by Producer Plaintiffs with cases pending in the MDL. In addition, 63 PFS forms were produced by producer Plaintiffs who subsequently voluntarily dismissed their cases. Between 225 and 353 PFS forms remain to be produced. Of those, between 86 and 182 were originally due August 6, 2007, but have not been produced. Between 134 and 171 are not yet due under CMO 3, but will be due on or before December 26, 2007.

Under CMO 3 (at page 3), the Court permitted Defendants to select 15 Producer Plaintiffs who were not named in the Consolidated Complaint. The Court ordered those 15 to produce the four categories of documents listed in the PFS within 30 days of notification of their selection to Lead Counsel for Plaintiffs.

At the September 20, 2007 Status Conference, the Court was advised that a substantial number of the Non Producer Plaintiffs had failed to meet the June 29, 2007 deadline for PFS production set forth in CMO 3. The Court in CMO 4 ordered Defendants' Lead Counsel to select at least 5 producer Plaintiffs to produce the additional documents and ordered the selected Producer Plaintiffs to produce the required documents no later than November 15, 2007. CMO 4 stated that "Defendants will be expected to select the remaining ten individuals promptly upon receipt of the remaining plaintiffs' provision of their PFS's." (CMO at p. 9, ¶ 2)

On October 15, pursuant to CMO 4, Defendants' counsel selected five producer plaintiffs not named in the Consolidated Complaint to produce the documents required by the PFS. Those documents were to be produced by November 15, 2007. Some of the PFS documents have been produced and Plaintiffs' Lead Counsel have agreed that the remainder will be produced by the date of the status conference.

Defendants' have been unable to complete their selection of Producer Plaintiffs to provide additional documents and to submit to depositions because Plaintiffs have failed to meet the deadlines imposed by this Court under CMOs 3 and 4 to produce PFS forms. Defendants' suggestion to the Court is that Defendants select an additional 5 Producer Plaintiffs from the PFS forms completed by December 7, 2007 and that those Plaintiffs be ordered to produce the required documents by December 17, 2007. All remaining Producer Plaintiffs should be required to produce completed PFS forms no later than December 26, 2007. Defendants will select an additional 10 Producer Plaintiffs to provide the documents requested in the PFSs by January 11, 2008. Those Plaintiffs' should be ordered to produce the requested documents by January 18, 2008 and to submit to depositions no later than February 22, 2008. Failure of Producer Plaintiffs to comply with any new deadlines imposed by the Court should have appropriate consequences.]

C. Third Party Discovery.

Plaintiffs have served multiple document subpoenas on third parties and are in the process of meeting and conferring with those third parties and collecting the documents sought by those subpoenas. Counsel for Plaintiffs and counsel for the third parties have met and conferred successfully on multiple occasions in good faith attempts to resolve objections to the subpoenas. That process continues and counsel for Plaintiffs anticipate that most, if not all,

remaining objections will be resolved. Plaintiffs have served subpoenas upon the following third parties:

- Arkansas State Plant Board;
- BASF;
- Dale Bumpers College;
- Dale Bumpers National Rice Research Center;
- Horizon Ag;
- LSU;
- Monsanto;
- Riceland;
- RiceTec;
- Virginia Tech;
- BioDiagnostics (testing facility);
- Eurofins (testing facility);
- SGS North American (testing facility); and
- Biotechnology Industry Organization;

In addition, Defendants have served or are in the process of serving the following third parties with subpoenas:

- American Rice, Inc.;
- Archer Daniels Midland Company;
- Bertrand Rice, LLC;
- Buck Island Seed Co.;
- Bunge North America, Inc.;
- Cargill, Inc.;
- Carlson Mills, Inc.;
- Carwell Elevator Co., Inc.;
- Colorado County Rice Mill, Inc.;
- Crop Marketing Services;
- Douget-Dishman Rice Company, Inc.;
- Crop Marketing Services of Dumas, Inc.;
- Falcon Rice Mill, Inc.;
- GM Lawrence & Co.;
- Gulf Pacific Rice Company, Inc.;
- Gulf Rice Milling, Inc.;
- KBX, Inc.;
- Lickpond Rice & Grain Co.;
- Lockeby Rice and Grain, Inc.;
- Martin Rice, MO;
- Masterfood USA;

- Mississippi Rice & Grain Limited Liability Company;
- Northeast Arkansas Rice, Inc.;
- Pointsett Rice and Grain, Inc.;
- The Scoular Company;
- Scoular Grain Co.;

III. LIST OF RELATED STATE AND POTENTIAL TAG ALONG CASES

Attached hereto at Exhibit A is a list of all related state and potential tag along cases providing the specific information required by Section 2 of CMO 5.

IV. WEBSITES RELATED TO THIS LITIGATION

The following is a list of all websites known to Lead Counsel which are – or have been – related or dedicated to this litigation:

<u>URL</u>	<u>Launch Date</u>	<u>Termination Date</u>
www.bayerricelitigation.com	August 24, 2007	ongoing
www.ricelitigation.com	April 11, 2007	October 28, 2007
www.llrice601contaminationlitigation.com	April 11, 2007	October 28, 2007

V. CLASS CERTIFICATION BRIEFING AND HEARING

Due to unexpected delays in completing discovery, Lead Counsel for Plaintiffs and Defendants agree that the dates for briefing, expert disclosure and depositions, and the class certification hearing should be briefly extended from those previously set by the Court. The parties (Plaintiffs in red) [Defendants in blue] submit the following revised schedule:

A. (No Later Than December 27, 2007.)

[No Later Than December 7, 2007.]

Plaintiffs shall file their Motion for Class Certification, along with their Opening Memorandum. Plaintiffs’ Opening Memorandum shall not exceed 50 pages. Plaintiffs shall

disclose all expert witnesses they intend to use in support of class certification and provide the reports required by Fed. R. Civ. P. 26(a)(2).

B. No Later Than February 7, 2008.

Plaintiffs shall make their experts available for depositions.

C. No Later Than February 26, 2008.

Defendants shall file their Response to Plaintiffs' Opening Memorandum. Defendants' Response Memorandum shall not exceed 75 pages. Defendants shall disclose all expert witnesses they intend to use in opposition to class certification and provide the reports required by Fed. R. Civ. P. 26(a)(2).

D. No Later Than March 28, 2008.

Defendants shall make their experts available for deposition.

E. No Later Than April 11, 2008.

Plaintiffs shall identify any rebuttal experts and provide any rebuttal expert reports. Rebuttal expert reports shall be allowed only to the extent permitted by Eighth Circuit and Eastern District of Missouri law.

F. No Later Than April 25, 2008.

Plaintiffs shall make their rebuttal experts available for deposition.

G. No Later Than April 28, 2008.

Plaintiffs shall file their Reply Memorandum. Plaintiffs' Reply Memorandum shall not exceed (60) [30] pages.

H. [No Later Than May 6, 2008.

Plaintiffs shall file their Surreply Memorandum. Said Memorandum shall not exceed 30 pages.]

(Plaintiffs object to any Surreply Memorandum.)

I. On May 22, 2008.

The Court will hold a hearing on Plaintiffs' Motion for Class Certification.

VI. DEPOSITION PROTOCOLS

Lead Counsel for Plaintiffs and Defendants expect to reach agreement on Deposition Protocols to govern all depositions in this proceeding. Counsel will submit the Proposed Deposition Protocols prior to the November 29, 2007 Status Conference. Terms on which there is no agreement, if any, will be designated in (red for Plaintiffs) and [blue for Defendants]. The parties respectfully request that the Court resolve any disputed terms and approve the proposed protocols as a part of the forthcoming Case Management Order No. 6.

Dated this 20th day of November, 2007.

Respectfully Submitted,

/s/ Don M. Downing

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Lead Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have this 20th day of November, 2007, 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/ Terry Lueckenhoff

Terry Lueckenhoff