

**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
FOR SEPTEMBER 20, 2007 STATUS CONFERENCE**

Pursuant to this Court's direction in Case Management Order No. 3 ("CMO3") (D.I. 292), Lead Counsel for Plaintiffs and Defendants have met and conferred on the issues outlined in the Order and report to the Court as follows:

I. PROGRESS IN CASE

A. Answers to the Consolidated Complaint

On June 21, 2007, Bayer CropScience, LP, Bayer CropScience, Inc., Bayer CropScience Holding, Inc., Bayer CropScience, LLC and Bayer Corporation, the "Domestic Bayer Defendants" and Defendant Starlink Logistics Inc. answered the Master Consolidated Class Complaint (D.I. 264) (the "Complaint"). Those Answers are located in the Master Case Docket at D.I. 315 and D.I. 309, respectively. The same day Bayer CropScience GmbH, Bayer CropScience AG, Bayer BioScience NV, and Bayer AG, the "Foreign Bayer Defendants" moved to quash service and to dismiss the Complaint on jurisdictional grounds (D.I. 310 through D.I. 314). The parties agreed to postpone briefing on those motions at that time pending actual service of defendants.

B. Service of Foreign Defendants

Service pursuant to the Hague Convention was made on Bayer CropScience AG on August 2, 2007, Bayer BioScience NV on August 3, 2007, and Bayer AG on August 11, 2007. Those Defendants dispute whether service was perfected pursuant to Hague Convention protocols. Those Defendants filed a Motion to Dismiss for Lack of Jurisdiction on September 5, 2007 (D.I. 353). Bayer CropScience GmbH has been merged into Bayer CropScience AG and is no longer in existence. For that reason it has not been served and has not answered or joined in the motion to dismiss. The parties have consented to staying determination of the Motion to Dismiss until jurisdictional discovery progresses and a schedule for submission of evidence and briefing is agreed upon or ordered by Court (D.I. 355).

C. Discovery

1. Jurisdictional Discovery.

Plaintiffs served the Domestic Bayer Defendants with Interrogatories and Requests for the Production of Documents regarding personal jurisdiction over the foreign defendants. Those defendants have filed responses and are producing documents on a rolling basis. On July 27, 2007, Defendants produced approximately 22,664 pages. On August 3, 2007, Defendants produced approximately 7,438 pages. On August 17, 2007, Defendants produced approximately 27,004 pages. On August 31, 2007, Defendants produced approximately 8,433 pages. The next production is expected on September 14, 2007, and will be approximately 100,000 pages. Additional productions are expected every ten to fourteen days until complete. The parties have met and conferred to delineate the precise information sought and to attempt to resolve objections. Substantial progress has been made, but the parties continue their efforts to resolve their differences. It is anticipated that production by Domestic Bayer Defendants will be substantially completed by November 15, 2007, subject to refinement of the requests agreed to in the course of meet and confer efforts and the resolution of objections.

Contemporaneous with these jurisdictional discovery efforts, the parties continue to negotiate a prospective compromise with respect to the jurisdictional issues regarding the Foreign Bayer Defendants. The parties will advise the Court as soon as possible whether these negotiations are ultimately successful or whether motion practice regarding this Court's jurisdiction over the foreign Bayer defendants will need to proceed.

2. Class and Merits Discovery.

a. Discovery from Plaintiffs named in the Consolidated Complaint.

Pursuant to CMO 3, all plaintiffs named in the Consolidated Complaint ("Class Plaintiffs") were to complete the Plaintiff Fact Sheet forms ("PFS Forms"), and produce the documents requested therein, no later than June 29, 2007. All Class Plaintiffs served their PFS Forms upon defendants on June 29, 2007, and voluntarily supplemented their responses with additional information responsive to questions asked on the PFS, at defendants' request, on August 8, 2007 and August 15, 2007.

Class Plaintiffs agreed to produce all documents and information relating to all of their row crop farming operations from 2003 to the present – in addition to the four categories of documents requested in the PFS forms. The Class Plaintiffs' expanded document production does not include their federal and state individual income tax returns. A dispute remains over whether the Class Plaintiffs should produce all or portions of their tax returns. Defendants agreed to an extension of the June 29, 2007 deadline by which the four categories of documents requested in the PFS form were to be produced. Class Plaintiffs began producing documents on June 29, 2007, and continued to produce their expanded scope of documents throughout the summer, producing additional groups of documents to defendants, on a rolling basis, on July 3, 2007, July 13, 2007, July 19, 2007, July 30, 2007, August 8, 2007, August 15, 2007, August 16,

2007, August 23, 2007, and September 4, 2007. To date, Plaintiffs have produced over 83,500 pages of hard copy documents and more than 11,100 pages of electronic discovery. In a letter dated September 4, 2007, counsel for Plaintiffs represented that the production of electronic documents was complete. The documents produced between June 29 and September 4, 2007, include those responsive to the four categories of documents requested in the PFS forms.

On or before September 20, 2007, Defendants will serve written discovery on each of the Class Plaintiffs. Pursuant to CMOs 1 and 3, responses to those document production requests will be due within 45 days of service and interrogatory responses will be due within 60 days of service. In an effort to expedite the case, however, plaintiffs have agreed to exercise their best efforts to expedite their responses to these written discovery requests.

b. Discovery from Producer Plaintiffs Not Named in the Consolidated Complaint.

Pursuant to CMO 3, rice producers named as plaintiffs in individual actions – but not included as named plaintiffs in the Consolidated Complaint (“Non Class Plaintiffs”) were to provide completed Plaintiff Fact Sheet (“PFS”) forms no later than August 6, 2007¹. By agreement, Non Class Plaintiffs began proffering their completed PFS forms to defendants on August 6, 2007 and have continued that production throughout August and September. To date, approximately 242 PFS forms have been provided (including 26 from the Class Plaintiffs as set forth in paragraph 2(a) above.) Lead Counsel for plaintiffs have advised defendants’ Lead Counsel that responses from the remaining Non Class Plaintiffs are ongoing and should be substantially completed after the harvest season is over and no later than December 15, 2007. Counsel continue to meet and confer as to the completeness of the responses and the need, if any, for supplementation.

c. **FSA File Inspections.** Pursuant to CMO 1, all Class Plaintiffs timely executed and delivered to counsel for Defendants authorizations to permit discovery from federal agencies regarding their participation in federal support or subsidy programs. Inspection of such files has been delayed while the parties attempted to resolve administrative and privacy issues raised by the FSA/USDA. The parties, in cooperation with FSA/USDA, are attempting to resolve these issues to permit production and copying of the relevant documents and believe a prompt and satisfactory resolution is likely that will not delay any other aspect of the case.

d. **Merits Discovery from Defendants.** On July 6, 2007 plaintiffs served their Request for Documents from All Domestic Defendants, except Starlink Logistics, Inc. On August 20, 2007 the Domestic Bayer Defendants served their written responses to plaintiffs' request for production. The Domestic Bayer Defendants have included documents also responsive to merits document production in their productions in response to jurisdictional discovery, but have focused on providing the responses to jurisdictional discovery. The production of documents responsive to merits requests will continue on a rolling basis until complete. Most documents already produced in the response to jurisdictional discovery are responsive to the merits discovery. On July 20, 2007, Plaintiffs served their First Set of Interrogatories on All Defendants Except Starlink Logistics, Inc. On September 10, 2007, Defendants served their responses. Counsel continue to meet and confer in an effort to resolve issues relating to the Domestic Bayer Defendants' discovery responses.

e. **Depositions.** A Rule 30(b)6 deposition is scheduled for September 25, 2007 at Virginia Polytechnic Institute and State University in Blacksburg, Virginia. Lead Counsel are coordinating with the parties in the scheduling of additional individual and 30(b)(6)

¹ While CMO 3 required Non Class Plaintiffs to provide completed PFS forms to defendants, those Non Class Plaintiffs were relieved of the requirement of responding to the four document requests in the PFS.

depositions, including the depositions of the Class Plaintiffs and Bayer representatives. Lead Counsel will draft and disseminate protocols governing conduct of depositions to ensure a fair and orderly procedure, giving all interested parties an opportunity to examine witnesses.

f. **Subpoena duces tecum.** Plaintiffs have served the following subpoena *duces tecum*:

Third Party	Date Served
Arkansas State Plant Board	August 1, 2007
BASF Corporation	July 26, 2007
Dale Bumpers College of Agricultural Food and Life Science	August 1, 2007
Dale Bumpers National Rice Research Center	August 1, 2007
Horizon Ag	July 23, 2007
Louisiana State University and Agricultural and Mechanical College	August 21, 2007 (re: merits) and August 22, 2007 (re: jurisdiction)
Monsanto Company	July 30, 2007
Riceland Foods, Inc.	August 1, 2007
RiceTec, Inc.	July 24, 2007
Virginia Polytechnic Institute and State University	July 24, 2007

Lead Counsel for Plaintiffs are working with counsel for the subpoenaed third parties (“Third Parties”) to attempt to resolve disputes regarding these subpoenas as they arise. Certain Third Parties have begun rolling productions of documents responsive to the subpoenas. All documents produced will be served upon Lead Counsel and made available to all parties promptly after receipt from the subpoenaed parties.

g. **Sharing of Discovery Obtained in Consolidated Action with All Parties.**

By agreement of Lead Counsel, copies of all discovery, discovery responses and documents produced by defendants or by any third party pursuant to subpoena, will be made available to all parties in accordance with a protocol to be developed by Lead Counsel.

II. Scheduling

A. Non Producer Cases

1. Pending Motions to Remand

Presently pending before this Court are motions to remand the following four (4) non producer cases: *The Simpson Company v. Bayer CropScience, L.P., et al.*, Case No. 4:07 CV 00875 CDP; *Texana Rice Mill, Ltd., et al v. Bayer CropScience, L.P., et al.*, Case No. 4:07 CV 00416 CDP; *Beaumont Rice Mills, Inc. v. Bayer CropScience, L.P., et al.*, Case No. 3:06 CV 00802 CDP; and *Randy Schafer, et al. v. Riceland Foods, Inc., et al.*, Case No. 4:06 CV 1407 GH.

2. Case Management Order No. 4.

Lead Counsel, after consulting with other plaintiff and defense counsel, have agreed on provisions to promote the efficient operation of the litigation, including specific revisions to prior orders relating primarily to the Non Producer Parties in Non Producer cases. Those provisions are contained in Proposed Case Management Order No. 4 (“CMO 4”), which is attached hereto. Lead Counsel have agreed to the provisions of CMO 4 and ask this Court to adopt them. While Lead Counsel have tried to develop a consensus, there may be some issues on which a consensus does not exist. CMO 4 reflects Lead Counsel’s attempt to accommodate all parties’ desires while still promoting efficiency and avoidance of duplication and burden on parties and witnesses.

3. Non Producer Cases.

Under the provisions of CMO 4, the Non Producer Parties are permitted to proceed with discovery in the Non Producer cases directed to any parties in the litigation except the Producer Plaintiffs. The Non Producer Parties are permitted under CMO 4 to serve interrogatories, requests for production of documents, and requests for admission only upon the Defendants in the Consolidated Complaint. The Non Producer Parties may also proceed with discovery from

third parties. Deposition discovery and the issuance of non-party subpoenas are subject to coordination with Lead Counsel in order to promote efficiency and prevent duplication.

Because discovery undertaken in the Consolidated Action will substantially reduce the need for additional discovery in the Non Producer cases, Lead Counsel propose that discovery initiated by Non Producer Parties directed to Producer Plaintiffs and the defendants named in the Consolidated Complaint be limited as set forth in the attached CMO 4. Most importantly, discovery in those cases will not be duplicative of discovery in the Consolidated Action. Non Producer Parties, however, shall be provided responses to all discovery and documents produced by Defendants in the Consolidated Complaint and shall be entitled to participate in all depositions of such Defendants and non-parties. Counsel for Non Producer Parties may also request of Lead Counsel that specific individual or Rule 30(b)(6) depositions be scheduled. Lead Counsel have agreed to consider such requests and attempt to accommodate those requests to the extent that they efficiently move the litigation forward. The necessity for, and any limitations upon, additional discovery by Non Producer Parties directed to Producer Plaintiffs and the Defendants in the Consolidated Complaint should be reviewed as discovery progresses and be subject to further determination by the Court after a report by Lead Counsel and interested Non Producer Parties.

B. Individual Producer Cases.

Pursuant to Paragraph IX.C. of CMO 3, the Court has requested the parties to this action “propose a schedule for all actions necessary to complete pleadings, motions and discovery in the individual producer cases.” After careful consideration, defendants’ and plaintiffs’ Lead Counsel believe that the efficient administration of these actions, given plaintiffs’ claims under Rule 23 of the Federal Rules of Civil Procedure, can best be achieved by this Court extending its stay of proceedings in each of the individual producer cases until after this Court adjudicates

Class Plaintiffs' motion for class certification, or until further order of the Court, except as set forth below.

1. Discovery.

Discovery undertaken in the Consolidated Action will substantially reduce the need for discovery on many issues in the individual cases, and, as set forth above, will be made available to counsel for all parties, including counsel for the Individual Producer Plaintiffs, in accordance with a protocol to be developed by Lead Counsel. Discovery in the Individual Producer cases should be stayed pending further order of Court, except for completion of a PFS by all Individual Producer Plaintiffs and the production of documents and depositions by the fifteen such plaintiffs selected by Defendants pursuant to CMO 3.

IV. Other Issues

Lead Counsel for plaintiffs advise the Court that on August 24, 2007, they launched a case information website, which can be found at www.bayerricelitigation.com.

Dated this 14th day of September, 2007.

Respectfully Submitted,

/s/ Don M. Downing

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CERTIFICATE OF SERVICE

This is to certify that I have this 14th day of September, 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/ Don M. Downing

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