

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED) 4:06 MD 1811 CDP
RICE LITIGATION) ALL CASES

CASE MANAGEMENT ORDER NO. 5

Case Management Order No. 4 set the next status conference in this case for **November 29, 2007 at 11:00 a.m.** That conference remains set, but this order deals with some additional matters.

1. Jurisdictional Disputes

As directed following the last status conference, lead counsel have filed a report containing their briefing proposals for the pending jurisdictional motions related to the foreign Bayer defendants. Plaintiffs propose a somewhat longer schedule than defendants propose, but the more significant disputes relate to how this schedule will affect the rest of the case. Plaintiffs say that whether the proposal they make works depends on defendants promptly producing responses to jurisdiction-related discovery that plaintiffs have not yet served. Defendants say the jurisdictional issues should be decided before the class certification issues, which would significantly delay the schedule previously established.

I am concerned about delaying the class certification deadlines. The dispute

regarding the foreign defendants should not affect the plaintiffs' ability to file their class certification motion and memorandum, and so all of the plaintiffs' deadlines related to class certification remain as set in Case Management Order No. 3. At the next scheduling conference, I will consider any parties' requests to modify the deadlines that have not yet passed, but I expect the parties to meet the deadlines that come before that conference.

The following schedule shall apply for briefing the jurisdictional motions: Plaintiffs must file their briefs in opposition to the jurisdictional motions no later than **February 29, 2008**; defendants must file any reply briefs no later than **March 21, 2008**; and plaintiffs may file a surreply brief no later than **March 31, 2008**. Any requests to change or modify this schedule must be made in advance of the next scheduling conference, and I will set a date for a hearing on the motions at that conference.

2. Related State Cases and Potential Tag-Along Cases

In advance of the next status conference, lead counsel will be required to provide to the court a list of all pending related cases, whether pending in state or federal courts. The list should include all cases known to counsel where there are allegations of damages or harm caused by the genetically modified rice. The list must include:

- a. Style of Case, to include names of all parties, case number, court where pending.
- b. Name of judge handling and address and telephone number of that judges' chambers. If pending in a forum where there are not individual dockets, then the same information for the presiding judge of the forum.
- c. Names of all counsel of record and who they represent.
- d. A short description of the case, to include the causes of action alleged and the state or federal law on which it is based and whether it seeks class treatment, and, if so, the geographic scope of the class.
- e. Status of the case, for example, whether the case is at issue (i.e., answers filed for all defendants), whether discovery has commenced, whether motions are pending, whether set for trial, and any other significant events (e.g., whether case was removed to federal court and then remanded to state court; if pending in federal court whether motions are pending and whether any party has sought transfer to the MDL proceedings).

The report must include any cases pending as of the date of the report, to the best of counsel's knowledge. Lead counsel are expected to make reasonable inquiry in order to locate and report all pending cases, if possible. Lead counsel

will be expected to update the report on a regular basis (probably in advance of each status conference).

3. Websites

In the last status report plaintiffs' lead counsel provided the address for a website related to the litigation that they have established. I would like to know if there are any other websites known to counsel that are dedicated to this litigation or related litigation regarding genetically modified rice. I will expect counsel to include this information in the next and any later status reports.

Accordingly,

IT IS HEREBY ORDERED that the following schedule shall apply for briefing the jurisdictional motions related to the foreign Bayer defendants: Plaintiffs must file their briefs in opposition to the jurisdictional motions no later than **February 29, 2008**; defendants must file any reply briefs no later than **March 21, 2008**; and plaintiffs may file any surreply briefs no later than **March 31, 2008**.

IT IS FURTHER ORDERED that any requests to change or modify the schedule for briefing the jurisdictional motions must be made by motion filed no later than **November 20, 2007**. Any briefs in opposition to such motions must be filed no later than **November 26, 2007** and no further briefing will be allowed, but


I will expect counsel to address any such requests at the status conference.

IT IS FURTHER ORDERED that any requests to change or modify the schedule for discovery, briefing, or hearing the class certification motion must be made by motion filed no later than November 20, 2007. Any briefs in opposition to such motions must be filed no later than November 26, 2007 and no further briefing will be allowed, although I will allow counsel to address the issue at the status conference.

IT IS FURTHER ORDERED that no later than November 20, 2007 lead counsel must file a joint report that contains:

1. The information regarding any related state cases or potential tag-along cases set out above.
2. Proposals for a date for hearing the jurisdictional motions.
3. A detailed description of the progress of the case, the discovery undertaken and sought but not yet provided, any scheduling matters that are appropriate and not already covered by separate motions as set out above, including, if appropriate a schedule for all actions necessary to complete the pleadings, motions and discovery in the individual producer cases.

4. The Internet addresses for any websites known to counsel that are dedicated to this or to any related litigation.

A handwritten signature in black ink that reads "Catherine D. Perry". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 24th day of October, 2007.