

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

**IN RE GENETICALLY MODIFIED RICE
LITIGATION**

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**FIRST REMAND GROUP
LOUISIANA PLAINTIFFS¹**

**BAYER’S MOTION TO EXCLUDE EXPERT TESTIMONY
UNDER RULE 702 AND INCORPORATED BRIEF**

Pursuant to Federal Rule of Evidence 702, the Bayer Defendants² hereby move to exclude, in its entirety, the testimony of Dr. Babcock, to limit and exclude testimony from Dr. Carter from his April 2010 Report, and limit the testimony of Dr. Van Acker, Dr. Halsey and Mr. Stein as follows:

1) prohibiting Dr. Van Acker, Dr. Halsey and Mr. Stein from offering any opinion or other testimony concerning the meaning or interpretation of any law or regulation, including 7 C.F.R. § 340, or the legal consequences of being identified as the “Applicant/Responsible Party” in a field trial notification;

2) precluding Dr. Van Acker, Dr. Halsey and Mr. Stein from offering opinions or other commentary concerning the Bayer Defendants’ state of mind, culpability and intent, except

¹ The Louisiana plaintiffs in the first remand group are listed in the Bayer Defendants’ Brief in Support of Summary Judgment for the First Group of Louisiana Remand Cases at 1 n. 1, D.E. 3606.

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.

to the extent they can compare specific, actual conduct by the Bayer Defendants to the relevant standard of care as evidenced by the conduct of other developers of GM crops;

3) precluding Dr. Van Acker, Dr. Halsey and Mr. Stein from acting as an advocate for the presentation of opinions and commentary based solely on select Bayer Defendant documents and deposition testimony; and

4) precluding Dr. Van Acker, Dr. Halsey and Mr. Stein from offering opinions on who or what “caused” the Starlink incident or what the Bayer Defendants “failed to learn” from it.

The facts and arguments supporting this motion with respect to Dr. Babcock, Dr. Van Acker, Dr. Halsey, and Mr. Stein are set forth in the Bayer Defendants’ Brief in Support of Their Motion to Exclude Testimony under Rule 702, D.E. 1437. In addition, all exhibits referenced in the brief are attached to the Affidavit of John Hughes, covering all briefs including summary judgment briefs, D.E. 1439.

The facts and arguments supporting this motion with respect to Dr. Carter are set forth in their Brief in Support of Their Motion to Limit Dr. Colin Carter’s Testimony Under Rule 702, D.E. 3916, filed on this date with respect to the remaining Arkansas plaintiffs in the initial trial pool.

Dated: January 20, 2011.

Respectfully submitted,

/s/John M. Hughes

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CERTIFICATE OF SERVICE

This is to certify that I have this 20th day of January, 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/John M. Hughes

John M. Hughes