

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED) Case No. 4:06MD1811 CDP
RICE LITIGATION) ALL CASES

CASE MANAGEMENT ORDER No. 13

This order applies to all cases, including all producer and non-producer cases, and results from the discussion held at the telephone conference on December 18, 2008. This Order modifies previous Case Management Orders in some respects, but except to the extent changed, all previous orders remain in effect.

The main dispute discussed in the conference relates to the selection of bellwether trial cases and the question of whether full discovery, including discovery of expert witnesses on issues of individual damages, will be conducted in all the cases selected for the Initial Trial Pool. I will not, as defendants suggest, exclude plaintiffs from Louisiana, Mississippi, and Texas from the Initial Trial Pool. I also will not, as plaintiffs suggest, change the deadlines for discovery. I believe an appropriate resolution of this issue is to keep the schedule that is currently in place (set by Case Management Order 11) for the 34 cases selected to be part of the Initial Trial Pool (listed in docket # 987), but to limit somewhat the discovery requirements. In particular, the

plaintiffs will be required to provide full discovery, including the discovery for all expert witnesses (including any on issues of individual damages) for the Arkansas and Missouri producer cases under the deadlines previously set in CMO 11. With regard to the Louisiana, Mississippi, and Texas producer plaintiffs, plaintiffs will be required to do full discovery as set out in CMO 11 *except* that discovery related to individual damage expert witnesses will be delayed until a later date.

This means that the trials to begin in November of 2009 will necessarily be selected from the 20 Arkansas and Missouri cases already selected as part of the Initial Trial Pool. Additionally, one non-producer case, Riviana Foods, Inc. v. Bayer CropScience AG et al., 4:08CV375CDP, will be added to the trial pool and will be governed by the deadlines set out in Case Management Order 11. Riviana will be the third case reached for trial, following the Arkansas and Missouri initial trials. I will not, however, join any Texas producer cases to the Riviana case for trial, as suggested by the plaintiffs.

As the parties will have completed all discovery in the Louisiana, Mississippi, and Texas Initial Trial Pool Cases except for expert witness discovery related to individual damages, those cases should be ready for trial shortly after the completion of the first three trials. I will require lead counsel to

propose a schedule at the next conference for completion of expert discovery and selection of cases for initial trials for claims from each of those states.

Accordingly,

IT IS HEREBY ORDERED:

1. The requirements for expert discovery contained in paragraph 4 of CMO 11 are modified to provide that the Louisiana, Mississippi, and Texas Initial Trial Pool plaintiffs need not provide discovery regarding expert witnesses on the issue of individual damages by the deadlines in that paragraph. A new deadline for discovery related to these expert witnesses (and any defendants' responsive expert witnesses) will be set by later order.

2. Paragraph 5 of CMO 11 is modified as follows: All Initial Trial Pool case discovery shall be completed by **August 14, 2009**, *except* for individual damage expert witness discovery for the Louisiana, Mississippi, and Texas Initial Trial Pool plaintiffs.

3. The deadlines set in paragraphs 6 and 7 of CMO 11 now apply to the Arkansas and Missouri Initial Trial Pool cases, and not to the Louisiana, Mississippi and Texas Initial Trial Pool cases.

4. Riviana Foods, Inc. v. Bayer CropScience AG et al., 4:08CV375CDP, is now governed by CMO 11, and will be the third case reached for trial, following the Arkansas and Missouri initial trials.

5. In advance of the January 29, 2009 telephone conference, lead counsel must provide a proposal for completion of the outstanding expert discovery, required motion practice, and trials of Initial Trial Pool cases from Louisiana, Mississippi, and Texas.

6. The motions related to production of plaintiff fact sheets [#985 and 986] are GRANTED to the following extent: Paragraphs 2 and 3 of CMO 10 are modified to provide that plaintiffs who have not yet produced their plaintiff fact sheets and related documents may produce the documents on a rolling basis, but

no later than **January 15, 2009**, and defendants shall have until **January 31, 2009** to provide notices of deficiency. Plaintiffs have fourteen days after receipt of any notice of deficiency to cure the deficiency.

7. Defendants shall provide an updated list of cases pending in other federal or state courts by **January 5, 2009**.

8. **Additional Leadership Counsel**: To aid in scheduling and other matters, I am appointing additional liaison counsel for various groups, with the idea that these lawyers will coordinate activities for each designated group, and will be the “point person” for opposing counsel regarding scheduling issues as to these groups of parties.

Attorney Christopher Hohn, Thompson Coburn, One US Bank Plaza, Suite 26, St. Louis, MO, 63101 is designated as liaison counsel for the non-Bayer defendants.

Attorney John K. Baker, Mitchell and Williams, 425 West Capitol Ave., Suite 1800, Little Rock, AR, 72201 is designated as liaison counsel for the European non-producer plaintiffs: Rickmers Reismuehle GmbH, Veetee Rice Limited, and Tilda Ltd.

Attorney William Chaney will continue to be the main liaison counsel for the non-producer plaintiffs, other than the European plaintiffs listed above.

9. The parties are granted relief from the 15-page limit on briefs in Local Rule 7-4.01(D), and are granted leave to file briefs up to 25 pages in length.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of December, 2008.