

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

IN RE GENETICALLY MODIFIED RICE
LITIGATION

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FIRST GROUP OF
LOUISIANA REMAND
CASES

**THE BAYER DEFENDANTS’ RESPONSE TO THE FIRST REMAND PLAINTIFFS’
MOTION TO EXCLUDE RONNIE HELMS AND ALAN MCHUGHEN**

Plaintiffs’ Motion to exclude Dr. Helms and Dr. McHughen should be denied.

Dr. McHughen

Plaintiffs’ motion to exclude Dr. Alan McHughen reiterates prior plaintiffs’ motions on the subject. This Court’s prior rulings imposed certain restrictions on the testimony of all experts in the case, including Dr. McHughen. Oct. 9, 2009 Mem.& Order at 28-30, D.E. 1604 (“October Order”); *see also* Dec. 9, 2009, Mem. & Order at 10; 12-14, D.E. 2075 (“December Order”); June 7, 2010, Mem. & Order, D.E. 2981 at 10-11 (“June Order”).

The Bayer Defendants¹ stand by their position that Dr. McHughen’s testimony should be permitted in its entirety and hereby incorporate their responses to the Missouri, Arkansas and Mississippi bellwether plaintiffs’ prior motions (D.E. 1503, D.E. 1929 and D.E. 3629). At the very least, the Court should not impose any further restrictions on Dr. McHughen’s testimony.

¹ 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.

The Bayer Defendants, however, specifically ask this Court to reconsider its ruling that Dr. McHughen cannot disclose to the jury his reliance on certain “conversations with the USDA [or] APHIS” and certain statements from the USDA report. June Order at 11. The Bayer Defendants incorporate the argument made on this point in their Daubert response being filed today in response to the motion by the Arkansas MDL plaintiffs.

Dr. Helms

Plaintiffs’ motion to exclude Dr. Ronnie Helms relies solely on arguments this Court has already ruled on. The motion should be denied.

On August 17, 2009, the Missouri and Arkansas initial trial pool plaintiffs moved to exclude Dr. Helms (D.E. 1443). The Court’s October 9, 2009 Memorandum and Order for the most part denied that motion. Oct. 9, 2009 Mem. & Order at 28-30, D.E. 1604 (“October Order”); *see also* Dec. 9, 2009, Mem. & Order at 12-14, D.E. 2075 (“December Order”) (noting that the arguments regarding exclusion of experts by the Mississippi bellwether plaintiffs were the same as the arguments made by the Missouri and Arkansas plaintiffs and generally referencing the October 9, 2009 Order).

The Court ruled in its October Order that Dr. Helms may not testify about lost profits, because he is not an expert in economics. The Court also imposed the same limits on Dr. Helms’ testimony as on all other experts’ testimony: no testimony about hearsay statements, no testimony about conditions outside the relevant time frame, and no testimony about the meaning of the PPA regulations or the Bayer Defendants’ compliance or non-compliance with those regulations. October Order at 28-30. In its December Order, the Court referenced the same arguments and ruled that the parties’ experts were qualified through education and experience

and could state their opinions in accordance with general principles of law under Federal Rule of Evidence 702. December Order at 12-14.

Apart from those restrictions in its October Order, however, the Court found that Dr. Helms “is qualified to talk about rice farming in general and most of the other subjects listed in his report.” October Order at 30. The Court noted that the Missouri and Arkansas plaintiffs—like Plaintiffs here— “object to Helms’ testimony about almost everything”—including supervision of cooperators, rice pricing, the feasibility of using third-party auditors, and the advantages of genetically-modified rice—but held that Dr. Helms was qualified to testify on all those issues. *Id.* at 28, 30.

The Court’s earlier order denying the Daubert challenge to Dr. Helms was correct. The Court should reaffirm that ruling here. In support of this position, the Bayer Defendants incorporate by reference their response to the Missouri, Arkansas, and Mississippi bellwether plaintiffs’ motions. (D.E. 1501, D.E. 1928, and D.E. 3630).

Dated: February 18, 2011

Respectfully submitted,

/s/ Lester C. Houtz

Lester C. Houtz

William E. Goodman, III
Joseph J. Stroble
Elizabeth M. Gates
Watkins & Eager
The Emporium Bldg.
400 E. Capitol St., Suite 300
P.O. Box 650
Jackson, Mississippi 39205-0650

Mark E. Ferguson
**Bartlit Beck Herman
Palenchar & Scott LLP**
Courthouse Place
54 W. Hubbard Street, Suite 300
Chicago, Illinois 60654

Terry Lueckenhoff, #27810MO
Fox Galvin, LLC
One S. Memorial Dr., 12th Floor
Saint Louis, Missouri 63102

Glen E. Summers
Lester C. Houtz
Eric R. Olson
John M. Hughes
Jameson R. Jones
**Bartlit Beck Herman
Palenchar & Scott LLP**
1899 Wynkoop Street, 8th Floor
Denver, Colorado 80202

ATTORNEYS FOR THE BAYER DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Lester C. Houtz
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