

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

IN RE GENETICALLY MODIFIED RICE LITIGATION)))))	4:06 MD 1811 CDP
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This Applies to the Following Case:

Kennedy Rice Dryers, LLC
v. Bayer CropScience, LP

Case No. 4:07-cv-01773-CDP

**JOINT MOTION INCORPORATING PRIOR BRIEFS AND JOINT
STIPULATION ON DEFENSES AND CAUSES OF ACTION**

In an effort to narrow the issues the Court must resolve Kennedy Rice Dryers LLC (“Kennedy”) and the Bayer Defendants have reached a set of agreements. While preserving their appellate rights and their respective positions on the propriety of the Court’s prior rulings, both sides agree that some of the Court’s rulings will apply to this case. They agree that further briefing and factual citations are unnecessary at this stage and that the Court’s rulings from its orders at docket entries 1200, 1604, 2705, and 2981 will remain the same on these issues.

Kennedy and the Bayer Defendants jointly move to have the Court deem the following motions, briefs, exhibits, attachments, and any related statements of facts and the Court’s rulings on the below issues from prior MDL trials filed in and applicable to this case.

- Both Parties’ Daubert Motions on Liability Experts: Kennedy and the Bayer Defendants incorporate prior motions to exclude and limit the testimony of the liability experts disclosed in this case, which consist of Drs. McHughen, Helms, Van Acker, Halsey, and Stein. D.E. 1436, 1437, 1438, 1440, 1443, 1444, 1501, 1503, 1508, 1519, 1566, 1570, 1576, 2681, 2682,

2684, 2685, 2822, 2824, 2830, 2876, 2877, 3213, 3214, 3215, 3300, 3301, 3313, 3317, 3361, 3352, 3356.

- Plaintiffs' Motion on Successor, General Partner, and Agency Status: Kennedy and the Bayer Defendants incorporate the parties' respective briefs on successor liability at docket entries 1445, 1446, 1449, 1507, 1582, 2692, 2693, 2705, 2819, 2833, 2880, 3231, 3495, 3365, 3305, 3230, 3231, and 3232.
- Bayer Defendants' Motion on Express Federal Preemption: The Bayer Defendants incorporate their motions and briefs that Kennedy's claims are preempted at docket entries 1053 and 1165. Kennedy incorporates its response at docket entry 1139.
- Plaintiffs' Motion for Summary Judgment on Agency Status of LSU: Kennedy incorporates the motions and briefs filed by the Louisiana MDL plaintiffs at docket entry 2683. The Bayer Defendants incorporate their response at 2826. The parties agree that the Court's denial of the motion for summary judgment in the order at docket entry 2981 applies for this stage of the case but Kennedy reserves the right to argue that the evidence at trial warrants a different result.

In addition, the parties stipulate to the following agreements. These agreements do not require action by the Court at this time.

- Kennedy withdraws its claim of negligence *per se*, and the Bayer Defendants withdraw their corresponding affirmative defense 13 (compliance with statutes). These withdrawals do not affect any party's ability to argue that the Bayer Defendants did or did not comply with the federal regulations or that the regulations are relevant to the standard of care. Both sides maintain their arguments on the meaning of the regulations presented in prior briefs at docket entries 1448 and 1505.
- Kennedy withdraws its claim of strict liability. The Bayer Defendants withdraw their defenses under the Louisiana Product Liability Act and agree that they will not invoke the exclusive remedy provision or any other provision of the Louisiana Products Liability Act to argue that Kennedy's other claims are barred.
- Kennedy withdraws its claims of public nuisance, constructive fraud, and declaratory judgment.
- The parties agree that the propriety of instructing the jury on *res ipsa loquitor* will be addressed at the jury charge conference and that both parties reserve their right to argue that the doctrine does or does not apply based on the facts presented at trial.

- The Bayer Defendants withdraw their affirmative defense of assumption of the risk. Kennedy agrees that this withdrawal does not affect Bayer's right to argue assumption of the risk with respect to the comparison of fault under Louisiana law. Kennedy, however, reserves the right to oppose such argument.
- The Bayer Defendants withdraw their defense based on state of the art and industry standards. Kennedy agrees that this withdrawal does not affect in any way Bayer's ability to put on evidence of compliance with industry standards and argue that such compliance is relevant to show the absence of negligence. Kennedy, however, reserves the right to oppose such argument.
- The Bayer Defendants withdraw their defense of unavoidable circumstances. Kennedy agrees that this withdrawal does not affect Bayer's right to present evidence and argument that best efforts were used and the release was unavoidable, but Kennedy reserves the right to oppose such argument.
- The Bayer Defendants withdraw their asserted right of contribution against Kennedy. Kennedy agrees that this withdrawal does not affect the Bayer Defendants' rights of contribution against third parties, but Kennedy reserves the right to oppose such argument.
- The Bayer Defendants withdraw other affirmative defenses based on ripeness, failure to join indispensable parties, unclean hands, waiver, estoppel, laches, act of god/force majeure, improper venue, lack of solidary liability, and standing.

Dated: June 14, 2011

Respectfully submitted,

/s/ John M. Hughes

John M. Hughes

Bartlit Beck Herman Palenchar & Scott LLP

1899 Wynkoop Street, 8th Floor

Denver, Colorado 80202

Counsel for Defendants

And

/s/ Shawn Foster (w/consent)

Shawn Foster

Davis, Bethune & Jones, LLC

1100 Main St., Suite 2930

Kansas City, MO 64105

Counsel for Kennedy Rice Dryers, LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 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/ John M. Hughes

John M. Hughes