

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

*In re*  
*Genetically Modified Rice Litigation*

Master Case No. 4:06MD1811CDP

RICKMERS REISMUEHLE GMBH

PLAINTIFF

v.

No. 4:08-CV-00499-CDP<sup>1</sup>

RICELAND FOODS, INC.

DEFENDANT

RICELAND FOODS, INC.

THIRD-PARTY PLAINTIFF

v.

BAYER CROPSCIENCE LP; BAYER  
CROPSCIENCE HOLDING INC.; BAYER  
CORPORATION; BAYER CROPSCIENCE AG;  
BAYER AG AND BAYER BIOSCIENCE nv

THIRD-PARTY DEFENDANTS

**JOINT MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 41(a)(2), Rickmers Reismuehle GmbH (“Rickmers”), Riceland Foods, Inc. (“Riceland”) and the Bayer third-party defendants jointly move the Court to dismiss this action on the following terms:

- a. The claims of Rickmers asserted in this action against Riceland are dismissed with prejudice.
- b. The third party claims asserted by Riceland against the Bayer third-party defendants in this action, and only in this action, are dismissed as moot, in light of the dismissal of Rickmers’ claims against Riceland.

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<sup>1</sup> Transferred from the United States District Court for the Eastern District of Arkansas, No. 4:07-cv-0733JMM.

- c. The dismissals are the product of extra-judicial resolution and do not constitute adjudications on the merits, and the order has no precedential, *res judicata* or collateral estoppel effect in any other actions, federal or state, except insofar as any attempted re-litigation by Rickmers of the claims contained in Rickmers' amended complaint.
- d. The parties and this Court acknowledge that there are other actions pending in federal and state courts that generally involve the alleged contamination of United States rice with genetically modified rice. However, those actions turn on different transactions and occurrences than those that are the subject of this action, involve potentially different causes of action and governing law than those that are the subject of this action, and/or include parties that are not party to this action. Accordingly, the order of dismissal in this action is intended solely to effect the final disposition of this action and does not constitute either a first dismissal or a subsequent dismissal for purposes of Fed. R. Civ. P. 41(a)(1)(B) or any similar state rule or statute.
- e. Each party shall bear its own costs and attorneys' fees.

A proposed order containing these terms accompanies this motion.

WHEREFORE, the parties to this action jointly request the Court to enter an order of dismissal in accordance with the terms of this motion.

Respectfully submitted,

/s/ John K. Baker

John K. Baker, Esq.

Alex T. Gray, Esq.

**MITCHELL WILLIAMS**

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*Counsel for Plaintiff,*

*Rickmers Reismuehle GmbH*

/s/ Chris Hohn (with permission)

Christopher Hohn, Esq.

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St. Louis, MO 63101

*Attorneys for Riceland Foods, Inc.*

/s/ Lester Houtz (with permission)

Lester Houtz, Esq.

**BARTLIT BECK HERMAN PALENCHAR  
& SCOTT LLP**

1899 Wynkoop Street, 8<sup>th</sup> Floor

Denver, CO 80202

*Attorneys for the Bayer Defendants*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT ON December 6, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the individuals designated on the clerk's service list for this case.

/s/ John K. Baker

John K. Baker

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BAYER AG AND BAYER BIOSCIENCE nv

THIRD-PARTY DEFENDANTS

**ORDER OF DISMISSAL**

Before the Court is the parties' joint motion to dismiss this action. Having considered their motion, it is hereby ORDERED:

- a. The claims of Rickmers Reismuehle GmbH ("Rickmers") asserted in this action against Riceland Foods, Inc. ("Riceland"), are dismissed with prejudice.
- b. The third party claims asserted by Riceland against the Bayer third-party defendants in this action, and only in this action, are dismissed as moot, in light of the dismissal of Rickmers' claims against Riceland.
- c. The dismissals are the product of extra-judicial resolution and do not constitute adjudications on the merits, and the order has no precedential, *res judicata* or collateral estoppel effect in any other actions, federal or state, except insofar as

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any attempted re-litigation by Rickmers of the claims contained in Rickmers' amended complaint.

- d. The parties and this Court acknowledge that there are other actions pending in federal and state courts that generally involve the alleged contamination of United States rice with genetically modified rice. However, those actions turn on different transactions and occurrences than those that are the subject of this action, involve potentially different causes of action and governing law than those that are the subject of this action, and/or include parties that are not party to this action. Accordingly, the order of dismissal in this action is intended solely to effect the final disposition of this action and does not constitute either a first dismissal or a subsequent dismissal for purposes of Fed. R. Civ. P. 41(a)(1)(B) or any similar state rule or statute.
- e. Each party shall bear its own costs and attorneys' fees.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2010.

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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE