

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED) 4:06MD1811 CDP
RICE LITIGATION)

This Order Relates to:

Riviana Foods, Inc. v. Bayer AG, et al.

4:08CV375 CDP

MEMORANDUM AND ORDER

This case is set for trial on April 19, 2010, as one of several bellwether trials scheduled in this MDL proceeding. Plaintiff Riviana Foods, Inc. has moved to sever its claims against Riceland Foods and Producers Rice Mill from its claims against the Bayer defendants. Riviana asks that the upcoming bellwether trial involve only the claims against Bayer. Riviana's motion states that it is seeking both severance under Rule 21, Fed. R. Civ. P., and separate trials under Rule 42(b). As some of the defendants have pointed out, severance of claims is different from bifurcation of trial. I believe that holding separate trials of Riviana's claims against the Bayer defendants is in the interests of justice and judicial economy.

A trial court may bifurcate a trial in the interests of economy or convenience. *See* Fed. R. Civ. P. 42(b). Riviana's claims against Bayer are primarily tort claims, while its claims against Riceland and Producers are primarily

contract claims, although they depend to some extent on the outcome of Riviana's claims against Bayer. Riceland and Producers also have cross-claims for indemnity and/or contribution against Bayer. Some of Riviana's claims are asserted on behalf of itself, while others are asserted on behalf of its affiliates.

Removing the Riceland and Producers issues from this trial will avoid a great deal of confusion. Separate trials will streamline the evidence and simplify the law and the instructions to the jury. No party has shown that it will be prejudiced by bifurcating the trial of these separate claims, and no party will suffer any substantive loss of rights. We will simply have two trials instead of one. After we know the result of the first trial, we will schedule the second one, assuming the parties still wish to have the trial in this district.¹ I will order that Riviana's claims against Riceland Foods and Producer's Rice Mill be heard in a separate trial, which will be held sometime after the conclusion of the upcoming bellwether trial. The upcoming trial will involve only Riviana's claims against the Bayer defendants.

Accordingly,

¹The previously filed *Lexecon* waiver would not be affected by the severance, although the parties could agree to trial in the transferor forum, if for some reason they chose to do that. Absent agreement, of course, the second trial would be held here.

IT IS HEREBY ORDERED that Riviana Foods' motion to for separate trials [#2552] is GRANTED.

A handwritten signature in black ink, reading "Catherine D. Perry". The signature is written in a cursive style with a horizontal line underneath it.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of March, 2010.