

EXHIBIT 5

**Carter and Babcock Deposition
Transcripts Only**

**Other Deposition Transcripts
Filed Under Seal**

**Dr. Bruce Babcock
taken February 6, 2008**

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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IN RE: GENETICALLY) 4:06 MD 1811 CDP
MODIFIED RICE)
LITIGATION)
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February 6th, 2008

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Videotape deposition of BRUCE A.
BABCOCK, Ph.D., held at the offices of Wolf
Haldenstein Adler Freeman & Herz, LLP,
55 West Monroe Street, Suite 1111, Chicago,
Illinois, commencing at 9:11 a.m., on the
above date, before Michael E. Miller,
Registered Diplomate Reporter and Certified
Realtime Reporter.

GOLKOW TECHNOLOGIES, INC.
One Liberty Place, 51st Floor, 1650 Market St.
Philadelphia, PA 19103
877.370.3377

1 long-grain rice." Do you see that?

2 A. That's correct.

3 Q. What do you mean by "United
4 States long-grain rice producers" in
5 paragraph 6 of your declaration?

6 A. I mean long-grain rice
7 producers. It's the -- in aggregate, the
8 financial impacts of -- what I mean by that
9 is the financial impact from a systemic
10 change in price that could be caused by a
11 change in export demands.

12 Q. But my question is: You used
13 the term "United States long-grain rice
14 producers."

15 A. I mean rice farmers of
16 long-grain rice. Producers -- farmers that
17 produce long-grain rice.

18 Q. Would a person who's an
19 employee on a rice farm that works every day
20 producing long-grain rice as an employee
21 qualify under your definition as a
22 "long-grain rice producer"?

23 A. My definition of a "long-grain
24 rice producer" would be one who has a

1 financial interest in the crop.

2 Q. Would your definition of a
3 "long-grain rice producer" --

4 A. Who own -- let me -- I'm sorry
5 for interrupting, but who has a financial
6 interest; by that, I mean who owns the crop
7 that has been harvested.

8 Q. Does your definition of a
9 "long-grain rice producer" include a
10 landowner who receives a portion of the crop
11 as rent for allowing others to farm on their
12 land?

13 A. A landowner that crop shares
14 owns part of the crop, so yes.

15 Q. Your definition of "long-grain
16 rice producer" includes landlords who own a
17 portion of the crop due to some rental
18 arrangement, but would exclude landlords who
19 receive, for example, cash rent for their --
20 use of their land?

21 A. That's correct.

22 Q. Have you reviewed
23 Professor Carter's declaration in this case?

24 A. Well, I don't want to be -- I

1 essentially, it's an error term. It's a
2 fixed error term. It's the difference,
3 basically, that gets calculated between the
4 level of the variable and the equation.

5 Q. But wouldn't the -- changing
6 the parameter, the first line, US_RIGPOB,
7 largely account for any errors?

8 A. Yes. Yes. So you can either
9 account for error -- so if you fix the RIGPOB
10 at a fixed number throughout every year, then
11 there will be an error just from the changes
12 in -- or you can change US_RIGPOB every year,
13 and then there would be no error.

14 So the two are essentially
15 id- -- not identical, because they can be
16 used for different purposes, but essentially,
17 they do the same thing. As you can see
18 mathematically, you add them together, they
19 come up to one number. So you can either fix
20 one and allow the other to vary, or you can
21 not fix the one and set that one equal to
22 zero.

23 Q. So in the Houston export price
24 equation that you propose to use in your

1 model, you calculate that price using past
2 Houston export price information, all rice
3 farm price, Thai rice price, all beginning
4 rice stocks, five parameters that you set
5 plus an error correction, correct?

6 A. That's correct.

7 Q. And where do you get the
8 information for the five parameters that you
9 propose to use?

10 A. Those are basically taken as
11 reasonable values for how export prices
12 change with regards to changes in the
13 right-hand side, the other variables.

14 Q. But are those parameters
15 calculated with some statistical certainty,
16 or are they put in with your judgment?

17 A. These are mostly judgmental
18 about how things move together in the
19 economy. There is some literature out there
20 that advises as to what those parameters
21 ought to be, but primarily, that relies on
22 the judgment of -- of professional modelers.

23 Q. And then if we look up at the
24 first page -- or let me rephrase, the first

1 output of your proposed model, correct?

2 A. Not in a -- not in a
3 statistical sense. That is correct.

4 Q. So from a statistical sense,
5 there's no way to estimate the potential
6 error, statistically, of the parameters you
7 use in your model?

8 A. Not in a classical statistical
9 way.

10 Q. There's no way to measure the
11 error of the output of your model using
12 classical statistics, correct?

13 A. There's no way to estimate the
14 distribution of -- of the error around the
15 prediction from the model, in a classical
16 statistical way.

17 There are alternative ways that
18 one could use, using Bayesian statistical
19 ways, but -- like that's what I was referring
20 to would be quite complicated, so I did not
21 propose to do that.

22 Q. That's my next question: You
23 don't propose to measure with statistical
24 methodology the potential error that comes

1 out of the model you propose?

2 A. That is correct.

3 Q. If you could turn to page --
4 paragraph 33 of Exhibit 1687.

5 A. Paragraph -- I'm sorry, I went
6 to the page again. 33?

7 Q. Paragraph 33.

8 A. Paragraph 33? Okay.

9 Q. And you have a -- if I may, a
10 stylized equation, similar to what we've been
11 talking about earlier today --

12 A. That's correct.

13 Q. -- used in the SAS model you
14 propose.

15 And alpha-0 through alpha-4 are
16 all parameters?

17 A. That's correct.

18 Q. And this formula in
19 paragraph 33 of Exhibit 1687, you use in your
20 proposed model to calculate expected returns
21 from planting alternative crops to rice?

22 A. That's correct.

23 Q. The formula on paragraph 33 of
24 Exhibit 1687 is used to calculate expected

1 the announcement about Liberty Link rice on
2 August 18th, 2006 before any change was felt
3 in prices received by farmers?

4 A. No, it's an annual model. It's
5 the average price over the marketing year.

6 Q. If you turn to paragraph 46 of
7 your declaration, top of page 18 --

8 A. Yes.

9 Q. -- you say, "Because the
10 potential impact of the two LLRICE
11 contamination events affected U.S. long-grain
12 rice supplies and demand differently, the
13 methods of estimating the impact on market
14 price of U.S. long-grain rice using the model
15 are different." Do you see that?

16 By the "two LLRICE
17 contamination events," my understanding is
18 you're referring to news in August 2006 and
19 then news in March 2007 about Clearfield?

20 A. That's correct.

21 Q. What's the basis of your
22 opinion that the potential impact of the two
23 LLRICE contamination events affected U.S.
24 rice supplies and demands differently?

1 Q. And on paragraph 57 of your
2 declaration --

3 A. Okay.

4 Q. -- you say, "If the August 2006
5 LLRICE contamination event affected the
6 position of the export demand curve." Do you
7 see that?

8 A. (Nods head.)

9 Q. Do you use "if" because you
10 haven't run the model yet?

11 A. That's correct.

12 Q. So you don't know, sitting here
13 today, whether or not the export demand curve
14 for U.S. long-grain rice was, in fact,
15 affected by the August 2006 announcement?

16 A. That's correct.

17 Q. And if you turn to
18 paragraph 61, you refer to possible damages.
19 Do you see that?

20 A. Yes.

21 Q. Because you haven't run the
22 model yet, you don't know whether there are
23 any actual damages yet to U.S. long-grain
24 rice producers, correct?

1 A. That's correct. That

2 "possible" goes with that "if."

3 Q. If you turn back to

4 paragraph 46, the first sentence of that

5 paragraph, you say, "Because long-grain rice

6 seed availability was negatively impacted by

7 the March 2007 LLRICE contamination event,

8 the production cost per hundredweight of rice

9 in 2007 was higher than it otherwise would

10 have been"; is that right?

11 A. That's -- that's my

12 presumption. That's correct.

13 Q. How does seed availability

14 affect production cost?

15 A. The Cheniere rice that was

16 taken off the market was a popular rice

17 variety.

18 And the way I think of how

19 farmers buy rice seed, they typically buy the

20 rice seed that's most suitable for their

21 production situations, if -- and their

22 revealed preference for rice seed is shown by

23 which seed they buy.

24 So I make the presumption that

1 extent that cost curves shifted to the left
2 or supply curves shifted to the left, you
3 will actually see the market price be higher
4 than it otherwise would be because less rice
5 was produced.

6 Q. Does your proposed model have
7 any way of determining whether there -- let
8 me rephrase.

9 Does your proposed model give
10 any way of determining what the possible
11 price increase was due to a reduction in rice
12 acreage related to the Liberty Link news?

13 A. Yes.

14 Q. How does it do that?

15 A. I explain it in the chart.
16 If -- to the extent that the calibration on a
17 state level has shifted the supply curves to
18 the left, you can estimate what the price
19 would have been without that shift and then
20 compare it to the price with the shift.

21 Q. Aren't there other reasons why
22 the supply curve could shift to the left,
23 meaning less rice would be planted?

24 A. We control for what we think

Dr. Colin Carter
taken February 5, 2008

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1 this point. And, also, I'm going to
2 object to the extent that you're going
3 back and forth between the word
4 "farmer" and "producer."

5 So to the extent that you're
6 not using those words interchangeably,
7 why don't we decide which one you want
8 to use.

9 MR. FERGUSON: Do you have the
10 question in mind?

11 A. I do, but I'm still confused
12 for two reasons: (A), it's not something I
13 was asked to look at; (B), in reading the
14 farmer depositions and my own experience in
15 agriculture, there are many different
16 variables in a lease arrangement.

17 In some cases, you call them a
18 landowner, but maybe they're paying for the
19 fertilizer, maybe they're paying a share of
20 the costs. So it's very hard to generalize.

21 BY MR. FERGUSON:

22 Q. Okay. That's fair enough.

23 Do -- you said you weren't
24 asked to consider that question --

1 about that. I don't feel comfortable just
2 answering off the cuff.

3 BY MR. FERGUSON:

4 Q. When you used the term
5 "producers" in your report, and today as you
6 talked about it, did you have a universe of
7 people in mind?

8 A. Not specifically.

9 Q. Even generally?

10 A. Generally, I --

11 Q. How would you define it,
12 generally?

13 A. Rice growers.

14 Q. Not including rice traders, I
15 imagine; is that right?

16 MR. LEVITT: Objection.

17 Objection to form.

18 A. By "rice trader," you mean?

19 BY MR. FERGUSON:

20 Q. Well, let me -- and I'll try to
21 be more specific.

22 A. Okay.

23 Q. So you're excluding those whose
24 business it is to trade futures?

1 just out of curiosity?

2 A. It's -- you know, it's not
3 uncommon, and I can't give you a name. But,
4 you know, I -- I'm very familiar with the
5 farm enterprise and how it interacts with the
6 futures market, and it would not surprise me.

7 Q. Okay. Well, when we're talking
8 about rice producers, would it be fair to say
9 at least we're excluding millers?

10 A. I don't include millers in the
11 term "producer," yeah.

12 Q. Okay. And would it be fair to
13 say we're also excluding nonfarmer future
14 traders, futures traders?

15 A. If someone has --

16 Q. A seat on the CBOT.

17 A. I wouldn't call them farmers or
18 producers.

19 Q. All right. Would it be fair to
20 say that your term "producer" at least
21 requires someone to have ownership of grain?

22 A. Some stake in the rice business
23 as a -- you know, on the production side of
24 it.

1 Q. Well, some stake in the
2 proceeds of sale of rice, wouldn't you say?

3 A. That sounds correct.

4 MR. FERGUSON: Okay. I
5 understand we're near the end of a
6 tape, so let's take a break.

7 THE VIDEOGRAPHER: The time is
8 now 11:25 a.m. This is the end of
9 Tape 2. We're going off the record.

10 (Recess taken, 11:25 a.m. to
11 11:35 a.m.)

12 THE VIDEOGRAPHER: The time is
13 now 11:35 a.m. This is the beginning
14 of Tape 3. We're back on the record.

15 BY MR. FERGUSON:

16 Q. Mr. Carter, you have in your
17 report proposed some methodologies for
18 estimating damage that producers may have
19 suffered in this case; is that right?

20 A. Correct.

21 Q. Have you actually reached any
22 estimate as to what damage producers may have
23 suffered in this case?

24 A. No.

1 that. I was not asked to examine that.

2 Q. All right. But do both of
3 those factors go into the basis?

4 A. If a farmer delivered a load of
5 rice that was of inferior quality, then it
6 would be discounted relative to the standard
7 on the Chicago contract; and it could be
8 referred to as a quality discount, or some
9 people might want to put it in the basis. I
10 think you could argue both ways.

11 Q. Okay.

12 A. And in a lot of cases, it
13 wouldn't be reported as a basis, but it might
14 be.

15 Q. Okay. Is it also true that the
16 quantity of stocks on hand in a particular
17 region and the ability to store stocks has an
18 impact on basis?

19 A. It could, because that would be
20 part of regional supply.

21 Q. Okay. Now, have you made any
22 effort to study whether the Liberty Link rice
23 issue has impacted the basis in any region of
24 the rice-producing part of the United States?

1 A. No.

2 Q. Do you have any -- have you
3 reached any opinion as to whether or not
4 there is a method for estimating for all
5 producers whether and to what extent there
6 might have been an impact on the basis from
7 the Liberty Link rice issue?

8 MR. LEVITT: In the context of
9 what he's done in this declaration so
10 far? What he was asked to do in this
11 context?

12 MR. FERGUSON: Let me ask what
13 effort he's made.

14 MR. LEVITT: Okay.

15 A. I was not asked to spell out
16 such a methodology --

17 BY MR. FERGUSON:

18 Q. Okay.

19 A. -- for the purposes of
20 declaration.

21 Q. And, therefore, am I correct
22 that you haven't done that?

23 A. I have not done that.

24 Q. Okay. Are you familiar with

1 Q. Okay. Well, if that's the
2 case, that's what I need to know. Is it
3 correct, then, you haven't reached an opinion
4 as to whether that price drop was associated
5 with the August 18th USDA announcement?

6 A. I have not measured it. I have
7 not, you know, statistically measured the
8 relationship.

9 Q. Okay. Have you --

10 A. I'm not trying to be funny.

11 Q. I know it.

12 A. All I've done is reported the
13 facts, okay?

14 Q. So --

15 A. The announcement came out,
16 there's a big drop. It's very dramatic in
17 the chart. It appears as though, you know,
18 there's obviously a correlation; and the next
19 question is: Well, is there causation?

20 Q. And you haven't addressed that
21 question yet?

22 A. Not statistically.

23 Q. Well, have you addressed it in
24 any way?

1 A. In terms of reviewing the
2 available information, you know, what the
3 reports were saying, what USDA says and what
4 happened to trade. I mean, there was a fear
5 that exports to the EU would dry up, and that
6 happened.

7 Q. My question, though, was: Have
8 you reached a conclusion as to whether the
9 drop in price that you've noted that took
10 place shortly following August 18th, 2006 was
11 caused by the announcement made by the USDA
12 on that date that Liberty Link rice had been
13 found in conventional rice stocks?

14 A. I have not reached a firm
15 conclusion.

16 Q. Have you reached any
17 conclusion?

18 A. I've reached a conclusion that
19 they're corollated, and the facts are the
20 facts.

21 Q. Okay.

22 A. Price dropped, the announcement
23 happened the Friday before the big drop.

24 Q. Right.

1 And that's as far as you've
2 gone?

3 A. Yes, for the time being.

4 Q. Okay. Now, with respect to
5 March of 2007, you actually speak of a -- I
6 think the date is March 23rd?

7 A. I think it's March 5th,
8 actually.

9 Q. Well...

10 A. I believe it was the first week
11 of March.

12 MR. LEVITT: Uh-huh. Yeah. I
13 think you're around 12 or 13, Mark.

14 MR. FERGUSON: 12 or 13.

15 Thanks.

16 MR. LEVITT: Not a problem.

17 THE WITNESS: Yeah,
18 paragraph 31.

19 MR. LEVITT: Yeah.

20 BY MR. FERGUSON:

21 Q. Well, and you're right. I see
22 that you've got the March 5th date, but I
23 guess what I'm focusing on is the March price
24 drop that you've referenced in paragraph 8.

1 A. I didn't -- I didn't look into
2 the March incident in the same detail as I
3 did in August.

4 Q. Why not?

5 A. I thought I was being asked to
6 report the facts and sort of, you know, focus
7 on providing opinion as to whether or not an
8 appropriate methodology might be used.

9 So, you know, I did report the
10 fact that there was a second incident in
11 March, and it appears that it may have
12 affected the futures price, and just left it
13 at that.

14 Q. Well, let's talk about that for
15 a minute. What do you think the market
16 concluded about the supply and demand for
17 U.S. rice when the USDA announced a ban on
18 the planting and distribution of
19 Clearfield 131?

20 MR. LEVITT: Can you read that
21 back, please?

22 (The following portion of the
23 record was read.)

24 "QUESTION: Well, let's talk

1 about that for a minute. What do you
2 think the market concluded about the
3 supply and demand for U.S. rice when
4 the USDA announced a ban on the
5 planting and distribution of
6 Clearfield 131?"

7 MR. LEVITT: To the extent you
8 have a conclusion, go ahead.

9 A. I have not studied that
10 incident in any detail.

11 BY MR. FERGUSON:

12 Q. Do you have any sense of
13 whether it would be positive or negative for
14 the price of rice futures?

15 A. I haven't looked into it.

16 Q. So is that -- does that mean
17 you don't have a sense?

18 A. I have not looked into it, is
19 what I meant.

20 Q. Well, okay. Whether or not
21 you've looked into it, do you have an
22 opinion?

23 A. Well, I'm reluctant to say, if
24 I haven't looked at it.

1 Q. Okay. Is that another way of
2 saying you don't know yet?

3 A. You can put it that way.

4 Q. Okay. Thank you.

5 And then what impact do you
6 think the rice futures market took from an
7 announcement that Liberty Link Rice 604 was
8 the specific type of Liberty Link rice found
9 within Clearfield?

10 MR. LEVITT: Objection, form.

11 You can answer that.

12 A. I'll just repeat my answer:
13 The March incident is out there. I refer to
14 it in the declaration, but I have not studied
15 it to the same extent I did with August.

16 BY MR. FERGUSON:

17 Q. Okay.

18 A. And I'm sorry, I just didn't
19 look into it in sufficient detail to answer
20 your question.

21 Q. All right. Again, don't know
22 yet?

23 A. Don't know yet.

24 Q. Other than the two price