

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

**IN RE GENETICALLY MODIFIED RICE
LITIGATION**

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This filing relates to the following case:

Gulf Pacific Rice Co., Inc.
v. Bayer CropScience LP

Case No. 4:08-cv-01545-CDP

THE BAYER DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, the Bayer Defendants hereby move for summary judgment on the claims brought by plaintiffs Gulf Pacific Rice Co., Inc., Gulf Rice Milling, Inc., and Harvest Rice, Inc. (collectively “Gulf Pacific”).

The Bayer Defendants move for summary judgment on the following grounds:

1. That Gulf Pacific’s claims are barred by the economic loss doctrine;
2. That Gulf Pacific’s claims fail as a matter of law for lack of proximate cause;

If the economic loss rule or the motion based on express federal preemption is granted on all of Gulf Pacific’s claims, it will end Gulf Pacific’s case against the Bayer Defendants in its entirety. Any more limited ruling will limit claims and types of damages, but will not dispose of the entire case.

Specifically, the Bayer Defendants seek the following relief:

First, summary judgment entered in favor of all the Bayer Defendants on all claims on the ground that such claims are barred in their entirety by the economic loss doctrine.

Second, and in the alternative, summary judgment entered in favor of the Bayer Defendants under the economic loss doctrine on Gulf Pacific's claims for returned rice shipments and Gulf Pacific's yet-unquantified claim based on lost instant-rice sales.

Third, summary judgment entered in favor of the Bayer Defendants on Gulf Pacific's margin-squeeze and lost-production claims for failure to establish proximate cause.

The facts and arguments supporting this motion are set forth in a brief, filed herewith, addressing each of the issues set forth above. In addition, one statement of undisputed facts and the Affidavit of John M. Hughes containing all referenced exhibits is filed herewith.¹

¹ The Bayer Defendants and Gulf Pacific are jointly filing a separate stipulation asking the Court to deem certain prior motions and briefs filed in other MDL cases filed and ruled on in this case. The parties have agreed, with the Court's blessing, that the Court's rulings will remain the same on those issues, with each side preserving any appellate rights on those issues.

Dated: June 14, 2011

Respectfully submitted,

/s/ John M. Hughes

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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