

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE: GENETICALLY MODIFIED)	4:06 MD 1811 CDP
RICE LITIGATION,)	Judge Catherine D. Perry
)	
This document relates to:)	
)	
Kennedy Rice Dryers, LLC)	
v. Bayer CropScience LP, et al)	
(EDMO C.A. #4:07-cv-1773-CDP)	
)	

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
ON DEFENDANTS' AFFIRMATIVE DEFENSE NO. 4 - INTERVENING
AND/OR SUPERCEDING ACTS OR OMISSIONS**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Kennedy Rice Dryers, LLC, who, for the reasons more fully assigned in the attached Memorandum of Authorities, does hereby move this Honorable Court for partial summary judgment on Defendants' Affirmative Defense No. 4.

Respectfully submitted:

DAVIS, BETHUNE & JONES, LLC

/s/ Shawn G. Foster
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**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION
FOR PARTIAL SUMMARY JUDGMENT ON DEFENDANTS’
AFFIRMATIVE DEFENSE NO. 4**

MAY IT PLEASE THE COURT:

Plaintiff, Kennedy Rice Dryers, LLC., submits this Memorandum in Support of its Motion for Partial Summary Judgment on Defendants’ Affirmative Defense No. 4.

I.

INTRODUCTION

Plaintiff, Kennedy Rice Dryers, LLC, (hereinafter referred to as “KRD”), is both incorporated and domiciled in the State of Louisiana. Thus, Louisiana law is applicable. Plaintiff and Defendants have entered into various stipulations and agreements regarding certain claims, causes of action and affirmative defenses. However, the parties were unable to reach an agreement with regard to Defendants’ Affirmative Defense No. 4 wherein Defendants allege intervening and/or superceding acts or omissions of parties or non-parties as a defense to liability.¹

¹ Bayer CropScience LP and Bayer Corporation’s Amended Answer is DE 18; Bayer AG and Bayer CropScience AG’s Amended Answer is DE 25; and Starlink Logistic, Inc.’s Amended Answer is DE 17.

Starlink Logistics' Fifth Defense sets forth intervening and/or superceding cause. However, for purposes of this Motion, all defenses are collectively referred to as the "Fourth Affirmative Defense." As a non-producer, KRD was not included in the Master Complaint or responsive pleadings thereto. However, the discovery conducted in the MDL on the issue of intervening or superceding acts or omission is applicable to the KRD proceeding.

II.

ADOPTION OF PRIOR PLEADINGS

This identical issue has been briefed and decided by the Court. Thus, to avoid duplicative briefing, Plaintiff adopts, as if set forth herein at length, the following pleadings which have addressed this issue:

- 1) Plaintiffs' Statement of Undisputed Facts in Support of Plaintiffs' Motion for Partial Summary Judgment on Affirmative Defense Nos. 4 and 14, and all exhibits attached thereto filed by the Missouri Plaintiffs on August 17, 2009. (DE 1433);
- 2) Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment on Defendants Affirmative Defenses Nos. 4 and 14 (DE 1432);
- 3) Plaintiffs' Reply in Support of Motion for Partial Summary Judgment on Defendants' Affirmative Defenses Nos. 4 and 14 (DE 1567);
- 4) Louisiana *Bellwether* Plaintiffs' Motion for Partial Summary Judgment on Defendants' Affirmative Defenses Nos. 4 and 14 (DE 2688);
- 5) Louisiana *Bellwether* Plaintiffs' Reply Memorandum in Further Support of Motion for Partial Summary Judgment on Defendants' Affirmative Defenses Nos. 4 and 14 (DE 2879);

- 6) Plaintiffs' Motion for Partial Summary Judgment on Defendants' Affirmative Defenses Nos. 4 and 14 (DE 1431, 1432, 1433);
- 7) Plaintiffs' Reply Memo (DE 1567);
- 8) Mississippi Plaintiffs' Motion for Partial Summary Judgment on Defendants' Affirmative Defenses Nos. 4 and 14 (DE 1759).

This Court, in two orders, has granted partial summary judgment on the intervening/superseding cause issue. In the Court's order entered on June 7, 2010 (DE 2981), the Court held, utilizing Louisiana law:

The evidence adduced by Bayer reveals that the negligence of third parties, if any, was foreseeable and reasonably anticipated by defendants. As the "responsible party" allowed to introduce LL601 and LL604 into the environment, Bayer had a duty to introduce those products without negligence. Contamination of non-GM rice by LL601 and LL604 is the known and foreseeable risk that Bayer had a duty to prevent. As a matter of law, plaintiffs are entitled to summary judgment on defendants' affirmative defense of intervening cause. (DE 2981, at p.9.)

This court also entered an identical order, based on the same reasoning in DE 1604, entered October 9, 2009, at 25-27;

As this Court held in DE 2981, a tortfeasor will not be relieved of the consequences of his or her negligence unless the intervening cause superseded the original negligence and alone produced the injury. Adams v. Rhodia, Inc., 983 So.2d 798, 808 (La. 2008) There are no factual distinctions regarding this issue that differentiate KRD from the Louisiana *Bellwether* plaintiffs or any of the other plaintiffs who have successfully moved for summary judgment on this issue. The uncontested facts again establish that KRD is entitled to summary judgment as a matter of law on Defendants' Affirmative Defense No. 4.

Respectfully submitted:

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