

Evidence regarding the future regulatory status of glufosinate ammonium in Europe is irrelevant. This case concerns trace amounts of LLRICE in commercial rice. It is important for the jury to understand that the presence of LLRICE in commercial rice did not pose a threat to human safety and that the plaintiffs are not pursuing such a claim. To that extent and that extent only, safety needs to be addressed.

However, evidence concerning the safety of the chemical glufosinate ammonium does not bear on the question of whether the presence of trace amounts of LLRICE in commercial rice posed a threat to human safety. First, U.S. commercial rice does not contain glufosinate ammonium. That is because rice that has been produced from conventional seed containing trace amounts of LLRICE seed would never be treated with the Liberty herbicide (if it were, the conventional rice would die). Any suggestion that LLRICE sprayed with glufosinate ammonium poses a threat to human safety—with which the Bayer Defendants vigorously disagree—has no relevance here as the LLRICE that was found in the commercial rice supply was never sprayed with glufosinate ammonium. Accordingly, to the extent plaintiffs contend this evidence rebuts any contention of the Bayer Defendants, this “safety” evidence is irrelevant, and its introduction can only serve to prejudice the Bayer Defendants and confuse the jury.

Nor is the European regulatory status of glufosinate ammonium relevant to plaintiffs’ future damages claim. That determination merely calls into question whether LLRICE sprayed with glufosinate ammonium could be exported to Europe *after* 2017. Ex. E, First Bellwether Trial Tr. vol. 13B, 34:7-18, Nov. 19, 2009; Ex. F, First Bellwether Trial Tr. vol. 16B, 41:2-14, 57:4-58:6, Nov. 24, 2009. Plaintiffs only claim future damages through 2014. The issue of whether European resistance to importing U.S. rice will decrease between now and 2014—

thereby decreasing plaintiffs' future damages claim—is simply unaffected by the possibility that European permits relating to glufosinate ammonium will expire in 2017.

For example, Europe already has lifted the emergency measures that had been an impediment to U.S. rice exports. *See* Ex. G, Reuters, *Update 1- EU Lifts Restrictions on US Rice Imports-Official*, Apr. 19, 2010. It is possible that the European Union could adopt a policy permitting the low level presence of genetically modified material in commercial grain. Either of these policy changes could lead to an increase in U.S. rice imports to Europe. But neither depend upon LLRICE (sprayed with Liberty herbicide) being commercially grown in the United States and approved for import in Europe. Rather, such policies would merely establish a tolerance for the presence of trace amounts of LLRICE in rice varieties that are not treated with the Liberty herbicide.

The evidence concerning the European regulatory treatment of glufosinate ammonium is not only irrelevant, it is highly prejudicial. It was used in the First Bellwether Trial to falsely suggest that LLRICE and the Liberty herbicide (if commercially grown for food) would pose a threat to human health. It also unduly delayed the trial, and its introduction in the forthcoming trial could require the Bayer Defendants to offer evidence concerning the safety of glufosinate ammonium to rebut plaintiffs' false safety claims. *See, e.g.*, Ex. F, First Bellwether Trial Tr. vol. 16B, 56:6-17 (Ms. Gadsby explaining that Mr. Davis' suggestion that glufosinate ammonium is a carcinogen is false). Such a sideshow can be avoided by excluding this irrelevant and prejudicial evidence. *United States v. Waloke*, 962 F.2d 824, 830 (8th Cir. 1992) (affirming exclusion of evidence under Rule 403 that would have lead to “collateral mini trials”).

CONCLUSION

For these reasons, plaintiffs should be prohibited from introducing evidence or argument concerning the European regulatory determination relating to glufosinate ammonium.

Dated: December 21, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2010, 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/ Stephen J. Cowen

EXHIBIT A

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

In Re: Genetically-Modified Rice
Litigation

No. 4:06-MD-1811

PRESENT: The Honorable Catherine D. Perry, Presiding

ATTORNEYS FOR PLAINTIFF: Don M. Downing, Grant L. Davis,
Gretchen Garrison, William B. Chaney

ATTORNEYS FOR DEFENDANT: Mark E. Ferguson, Eric R. Olson,
Stephen Cowen, Glen E. Summers

JURY TRIAL

Volume XIIIA
Morning Session

November 19, 2009

TERI HANOLD HOPWOOD, RMR, CRR
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St. Louis, Missouri 63102

1 full copy of the document.

2 THE COURT: Give him a copy. That might be easier.

3 MR. DAVIS: I would be happy to give him one.

4 THE WITNESS: Okay.

5 Q. Ready?

6 A. Yes.

7 Q. Last paragraph. So, the first sentence says, "No
8 glufosinate tolerance exists for use on glufosinate on
9 transgenic rice," correct?

10 A. Correct.

11 Q. In addition --

12 A. In 1999 on April 15th.

13 Q. Yes. "In addition to food and feed clearance, consultation
14 with the FDA has not been completed for the events LLRICE 06
15 and LLRICE 62. Therefore, neither transgenic rice material
16 treated or not treated with glufosinate can enter the food or
17 feed chain at this time. Additionally, we have not yet
18 acquired approval from other countries to freely import or
19 consume products derived from these rice events. Rice
20 harvested from these events and its products cannot enter the
21 international market." Have I read that properly?

22 A. Yes.

23 Q. Do you agree with that?

24 A. As of the 15th of April, 1999, yes.

25 Q. Well, I want to make it bigger. If Liberty herbicide is

1 not approved, then Liberty Link rice cannot be freely, legally
2 moved in this country, correct?

3 A. I don't see that connected.

4 Q. You don't? Okay. Well, did you know that there was a
5 large quantity of rice that was destroyed because it had
6 glufosinate ammonia on it and Liberty was not approved?

7 A. I wasn't aware of that.

8 Q. Okay. Well, let's get to something else, okay? You're
9 familiar with the European Parliament, correct?

10 A. Correct.

11 Q. You are familiar with the fact that the European Parliament
12 has banned Liberty herbicide because they found it's harmful to
13 human beings, and they are phasing it out of use in Europe,
14 correct?

15 A. Your first statement was incorrect, they have not banned
16 Liberty herbicide. That is not a correct statement.

17 Q. They have said they will no longer renew Liberty herbicide
18 in Europe, correct?

19 A. What they have done is undertaken a reclassification based
20 on existing data, and amended the label of glufosinate, I
21 should say, in Europe, but the Annex I expiring, which is the
22 approval process in Europe, it doesn't expire until 2017.

23 Q. Well, is this true, that as part of this process, the
24 Swedish laboratory that was called upon to determine whether
25 hundreds and hundreds of herbicides were safe found that

1 Liberty herbicide is a carcinogen, it affects -- is toxic as
2 far as reproduction, and it's a mutagen, correct?

3 A. I don't know the results of that laboratory, but what I do
4 know is that the herbicide is approved in Europe.

5 Q. Well, let me then hand you -- would it be helpful to you to
6 see the laboratory results in order to answer that last
7 question?

8 A. I am not an expert on these.

9 Q. Well, I'm going to hand you what is Exhibit 103. Excuse
10 me, 1003. Can we put that on the screen but not show it to the
11 jury yet?

12 THE COURT: Hold on. Take it down please.

13 Q. So, you are familiar with these 22 chemicals, some are
14 herbicides and some are fungicides, that were ruled
15 inappropriate because of safety, human safety, correct?

16 A. You asked a number of questions there.

17 Q. All right, let me go one at a time. When you looked at
18 this Exhibit 103 --

19 THE COURT: 1003.

20 Q. Excuse me, 1003, you see glufosinate, that glufosinate is
21 Liberty herbicide, that's glufosinate, correct?

22 A. Yes.

23 Q. Under that, it gives three initials over on the right, C,
24 M, and R. If you go to the back page, go to the back page
25 where it has the C, C is a carcinogen, the R is classified as

1 toxic for reproduction, and the M is a mutagenic, correct?

2 A. That's what the classification says.

3 Q. All right. So, if you go back to the front, under where
4 Liberty herbicide is, the glufosinate, it has it listed as a
5 carcinogenic and classified as toxic to reproduction, and a
6 mutagenic, correct?

7 A. The abbreviations stand for those listed on the back page,
8 yes. I am not a toxicologist. I cannot interpret these
9 results. It requires somebody with very specialized education
10 in toxicology to interpret these results.

11 Q. Okay. Well, let's just go through the things you might
12 know. You are an educated man, correct?

13 A. On some things, yes.

14 Q. Do you know a carcinogenic is something that causes cancer?

15 A. Correct.

16 Q. Do you know that classified as toxic for reproduction --
17 what is that?

18 A. Well, it affects the offspring.

19 Q. And then a mutagenic, can you tell us what a mutagenic is?

20 A. Some alteration to the DNA, but again, I would say, I mean,
21 I know what they mean. The interpretation of the results
22 requires specialized toxicology, and it goes on to say that
23 it's listed on Annex I, which is approved, and it's expiring --
24 current expiry approval is 2017, so it is approved by the
25 European Union.

1 Q. Okay. Well, let's go through that then, just to make sure
2 we're all in agreement. So, in January of this year -- you
3 understand what the European Parliament is, correct?

4 A. Uh-huh.

5 Q. Say yes or no.

6 A. Yes. Sorry.

7 Q. And the European Parliament has ruled that Liberty
8 herbicide in all these other 22 items will not be reapproved
9 for use in Europe, correct?

10 A. Let's be clear. We should not call it Liberty herbicide.
11 It's glufosinate ammonia, the active ingredient.

12 Q. Before when I talked to you about Liberty, I tried to talk
13 to you about there is different amounts in different crops and
14 you said no, it's glufosinate ammonia?

15 A. We're not talking about the formulation here.

16 Q. One thing we can't do, because Teri is the court reporter
17 here, and she is the most important person in the room, next to
18 the judge, and so we can't talk over each other. So I will
19 promise to try to let you finish your answer. But, I thought
20 you told me that when I said there is different formulations,
21 you said it's glufosinate ammonia, correct?

22 A. Liberty herbicide is formulated from glufosinate ammonia.
23 Glufosinate ammonia is the active ingredient, and I think
24 that's what we're talking about, yes.

25 Q. And I think it's like 81 percent of Liberty is glufosinate

1 ammonia, correct?

2 A. I couldn't give you that.

3 Q. Would it help you if I put up Exhibit 1000, which is the
4 Liberty herbicide instruction sheet? Would that tell you?

5 A. I'm not denying that Liberty contains glufosinate ammonia.
6 I'm only suggesting that for the purposes of looking at the
7 approval in Europe, they are approving the active ingredient,
8 not the formulated product.

9 Q. Well, let me -- I know we're in the middle of two different
10 documents, but to be clear, can you put up 1000? Is
11 Exhibit 1000 that's on the screen in front of you, can you
12 describe what that is?

13 A. It's a data sheet for Liberty.

14 Q. What did you call it?

15 A. A data sheet for Liberty.

16 Q. Does that remind you that there is something such as this?

17 A. Well, it says that Liberty is 18.91 percent, not
18 81 percent.

19 Q. You are right. The glufosinate ammonia is the active
20 ingredient, correct?

21 A. Correct.

22 Q. And it's a very strong active ingredient, isn't it?

23 A. It is a good herbicide, good and safe herbicide.

24 Q. It's a good and safe herbicide?

25 A. Yes.

1 Q. And that good and safe herbicide the European Union has
2 decided should not be renewed in Europe any more, correct?

3 A. Further studies and data will have to be generated before
4 2017 to be able to continue its approval in Europe.

5 Q. I think -- let me ask you this. Obviously, you're with
6 Bayer, right?

7 A. Correct.

8 Q. So it was big news in Bayer when the European Union ruled
9 it would not in the future renew approval for glufosinate
10 because of human safety concerns, correct?

11 A. It wasn't big news to me.

12 Q. It wasn't big news to you. Was it big news to people who
13 sell Liberty herbicide?

14 A. I don't know.

15 Q. Well, when there is a product that you guys market and you
16 put on crops that people eat, and someone has found it to be a
17 carcinogenic, a toxic to reproduction, and a mutagenic, don't
18 you think that's worth paying a little attention to?

19 A. Yes, of course. Now, again, I would have to say it
20 requires the interpretation of a toxicologist. Clearly, in its
21 wisdom, the European Union has not banned the active ingredient
22 glufosinate ammonia. The approval is in place until 2017. The
23 whole approval process is an evolution. That's why we went
24 through this whole review recently of the last few years of all
25 active ingredients in the European Union. All data bases were

1 brought up to date using modern data to be able to analyze
2 whether or not they were safe for use. Liberty is --
3 glufosinate ammonia is one of those, and further data will be
4 generated prior to 2017 to continue its safe approval in the
5 European Union.

6 THE COURT: Counsel, I want to interrupt you. We're
7 going to take our lunch recess at this time. Members of the
8 jury, please remember the instructions I've given you earlier
9 about not discussing the case and keeping an open mind until
10 you've heard all of the evidence in the case. Court will be in
11 recess until 1:30. You may step down. We're in recess.

12 (Conference out of the presence of the jury.)

13 THE COURT: Mr. Davis, if you continue to
14 misrepresent the evidence in front of the jury to the extent
15 you just did, they are not going to trust you any more than I
16 do. 81 percent and 18 percent are pretty different.

17 MR. DAVIS: I got it backwards.

18 THE COURT: Yeah, I'm sure it was a mistake. Court
19 is in recess.

20 (A recess was taken.)

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REPORTER'S CERTIFICATE

I, TERI HANOLD HOPWOOD, RMR, Official Court Reporter for the United States District Court for the Eastern District of Missouri do hereby certify that the foregoing is a true and correct transcript of the proceedings had in this cause as same appears from my stenotype notes made personally during the progress of said proceedings.

/S/ Teri Hanold Hopwood, RMR
TERI HANOLD HOPWOOD, RMR
Official Court Reporter

Exhibit B

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

In Re: Genetically-Modified Rice
Litigation

No. 4:06-MD-1811

PRESENT: The Honorable Catherine D. Perry, Presiding

ATTORNEYS FOR PLAINTIFF: Don M. Downing, Gretchen Garrison,
William B. Chaney, Scott A. Powell (appearing by telephone),
Andrew York, Jason Sapp

ATTORNEYS FOR DEFENDANT: Mark E. Ferguson, Glen E. Summers,
John M. Hughes, Jameson Jones

ATTORNEY FOR SLLI: Vance Gibbs

PRETRIAL CONFERENCE

January 7, 2010

TERI HANOLD HOPWOOD, RMR, CRR
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1 close to the time period that Bayer's own expert is testifying
2 about what's going on in the industry, and given the limited
3 nature of that subsequent remedial measures evidence that has
4 been represented to me, that that's what's talked about, I'm
5 denying 2103. If the plaintiffs have something else that
6 happened after the discovery of this, or other evidence that
7 has not been disclosed to me in answer to my questions today,
8 and in the brief, then the plaintiff needs to tell me before
9 they introduce it, but it sounds like they don't, so 2103 is
10 denied.

11 2104, a motion in limine to exclude evidence and
12 argument regarding liability insurance. That is unopposed and
13 is granted.

14 2105, this is the defendants' motion in limine to
15 exclude irrelevant and unfairly prejudicial evidence. This is
16 granted in part and denied in part. As I ruled in the first
17 case, I agree that there will be no evidence of the defendants'
18 net worth during the initial phase of the trial. If we have a
19 punitive damages trial, there can be discussions of it at that
20 time. The breadth of the motion is too broad, so I'm not
21 excluding evidence of sales, profits, business projections,
22 etcetera, because that is relevant to the case.

23 I am granting it as to Frankenfood, and I will add fish
24 genes. I don't want to hear about fish genes being implanted
25 in tomato plants or flowers. We don't have any fish genes

1 here, so no animal genes please, because there is no evidence
2 they had anything to do with this case, and I don't think
3 anybody should talk about animal genes being inserted into
4 food.

5 However, the plaintiffs can talk about the artificial
6 nature of it. That was one of the things in the motion in
7 limine, and obviously, there is some artificiality here, and
8 the defendants can explain why it's not artificial, so that's
9 something you all can talk about. It's just the Frankenfood
10 and the fish or animal genes.

11 The punishment, I agree that there should be no argument
12 that compensatory damages or a finding of liability should be
13 used to punish the defendant, so I'm granting that in part and
14 denying it in part.

15 The motion in limine regarding the safety of glufosinate
16 ammonium, Motion Number 2106. I'm granting the motion in
17 limine and excluding from evidence the discussions regarding
18 the safety of glufosinate ammonium. Even if glufosinate
19 ammonium is not safe, that does not show that this rice was not
20 safe, and so I do not think it is relevant to this case.

21 I will tell you that I am concerned that some of the
22 defendants' arguments may make this relevant, and so I am
23 simply saying that, you know, as with others I'm granting the
24 motion in limine and excluding it as evidence, but to the
25 extent the plaintiffs believe that there is something the

1 defendant has presented to the jury that makes it necessary or
2 proper to bring up this evidence, you may approach the bench,
3 but I don't want the plaintiffs mentioning it in opening
4 statement, etcetera. So, I am granting this, but with the
5 reservation that if the defendant opens the door, I will
6 certainly reconsider. That's 2106.

7 Motion Number 2107, the motion in limine regarding the
8 claim for emotional damages. I am taking that under
9 advisement. I am not ruling on it today. By the end of the
10 day tomorrow, I will send you an order telling you that,
11 because I know you need to know before Monday whether you have
12 that claim or not, and so I will issue an order by the end of
13 the day tomorrow, but I'm not prepared to do that today.

14 MR. HUGHES: Your Honor, if I may, and we don't
15 think that the fact that we get depositions on Saturday should
16 influence your decision --

17 THE COURT: What depositions do you have on
18 Saturday?

19 MR. HUGHES: You granted us an hour of additional
20 deposition time with each of the plaintiffs to explore the
21 future damages claims that they have, and we don't think that
22 the fact we have those depositions is relevant to your decision
23 on the emotional damages issue, which to the extent that you
24 permit these plaintiffs to seek emotional damages, we would ask
25 that the scope of those depositions be expanded to include both

Exhibit C

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

_____)
IN RE GENETICALLY MODIFIED RICE) No. 4:06-MD-1811-CDP
LITIGATION)
_____)

PRETRIAL CONFERENCE

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

JUNE 16, 2010

APPEARANCES:

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1 Sorry.

2 MS. HOEKSTRA: Sorry about that. Not waving around
3 and asking them questions about things it doesn't say on it
4 but asking them specifically if they are aware that there is
5 any question as to the safety relating to the future approvals
6 for glufosinate ammonia. The fact that there is a future
7 possibility of acceptance of 62 or opening the markets for 601
8 can be contradicted if the same witness has the same opinions
9 as to that there is no question as to the safety or review of
10 safety in the future. The documentation that would be used is
11 just showing that there is a concern and that there is a
12 re-evaluation process that is going on, not asking them that
13 it says it will be denied for sure but showing that there is a
14 possibility, the same as there is the possibility of
15 acceptance.

16 THE COURT: Okay. So let me hear the response from
17 the defendants then.

18 MR. FERGUSON: Your Honor, in the first trial, there
19 was discussion of Bayer's hopes for future approval of the
20 LibertyLink Rice 62. In the second trial, there was not, and
21 I think that is the dichotomy. I don't intend to go across
22 that line. I will say that there is an application pending
23 because that is part and parcel of the historical reason why
24 Bayer continued to pursue LibertyLink rice, but I do not
25 intend to have anybody say we expect that it will soon be

1 approved. Absent that, I don't think any of this has a basis
2 for coming in. The other thing is that the documents that
3 have been tendered so far are all hearsay without foundation,
4 and I don't think any of them can come in separately either,
5 and Your Honor's observation about the cross-examination in
6 the first trial would have been one of my observations as
7 well.

8 THE COURT: Well, but I think there could be --
9 depending on what your witnesses say, there could be
10 legitimate areas of cross examination, and depending on what
11 your witnesses say, it would be -- I would find it very hard
12 to believe that they could say, oh, I don't know anything
13 about this. And so I'm going to grant this motion in limine.
14 My concern in the first place -- in the first case was that I
15 didn't know the foundation of the documents that were being
16 used, and I had a question about whether the plaintiffs'
17 lawyer had a good faith basis for asking the question. And in
18 particular, I looked at those documents, I haven't looked at
19 them since, and I don't think they said that it was a known
20 carcinogen or that it was a proved known reproduction risk,
21 which I believe were some of the things that the plaintiffs
22 have said, but they may say that, I don't know, but it seemed
23 to me at the time that they did not. But I think that this is
24 an area where the defendants certainly could open the door,
25 and I would allow cross examination if the defendant did so.

1 So I am granting the motion in limine, but if the plaintiff
2 believes the defendants opened the door, if the plaintiffs
3 wants to question, then the plaintiff should approach the
4 bench and tell me that and at that time be prepared to show me
5 the factual basis for your asking the questions.

6 MS. HOEKSTRA: Yes, Your Honor.

7 THE COURT: So that one's granted but could be
8 changed depending on the opening the door. Let's talk about
9 the Thibodeaux Ag damages, and I did review the response that
10 was filed this morning. Hold on just a second. Let me find
11 it. Okay. So as I understand it, the defendants' argument
12 is -- well, let me hear from the defendant. You're basically
13 saying this entity didn't exist, and, therefore, they cannot
14 be a plaintiff in the case, and the plaintiffs filed a
15 response yesterday that said they are essentially a successor
16 in interest. I mean, I may be overgeneralizing it. So what
17 is the defendants' position?

18 MR. OLINDE: Well, the defendants' position is this,
19 Your Honor, that -- and Mr. Kingsdorf touched on it, but in
20 this trial for the Thibodeaux entities, there are two named
21 entities as parties and plaintiffs for the trial. It's
22 Thibodeaux Land Company, which is a corporation, and there's
23 Thibodeaux Bros. Farm, which is a partnership. Under
24 Louisiana law, those are really the only two entities who are
25 plaintiffs. There was back in December 17th of 2008, the

1 parties had to select which particular parties would go
2 forward in this case as parties for the trial, and they did
3 the lexicon waivers, and the only two parties which were named
4 from Louisiana were these two parties/plaintiffs before us,
5 and the document number is 987. So at that time, of course in
6 December '08, there is two parties which are going forward as
7 plaintiffs. Now remember, this Thibodeaux Land Company, the
8 corporation, still exists. It has filed a tax return --
9 Mr. Thibodeaux has testified to that -- in 2008, 2009. It has
10 employees. The partnership, Thibodeaux Bros. Farms, also
11 exists. It has a tax return, employees. Now what happened --
12 what occurred here and the reason this came up is because in
13 one of the expert reports, Mr. Casiday's report, which I saw
14 after reviewing it, that back in 2006, Thibodeaux Land Company
15 and Thibodeaux Bros. Farm together, they had a total of
16 4,788 acres of crop land of which 2,390 acres were long-grain
17 rice, okay? That is how much they had in 2006.

18 Well, in March of 2008, what happened is an entity
19 called -- a partnership, Thibodeaux Ag Group, was formed. Now
20 it's not a party to this litigation, but it is a separate
21 entity. Now this Thibodeaux Ag Group as a partnership in 2008
22 when it first started, it had 8,084.40 acres of crop land,
23 4,370.7 long-grain rice acres. So what you are doing is in
24 2008, it's doubling in a sense the amount of long-grain rice
25 and doubling the amount of crop land. Now Thibodeaux Ag Group

CERTIFICATE

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I, Angela K. Daley, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 115 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 18th day of June, 2010.

/S/Angela K. Daley
Angela K. Daley, CSR, RMR, FCRR, CRR
Official Court Reporter

Exhibit D

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

In Re: Genetically-Modified Rice
Litigation

No. 4:06-MD-1811

PRESENT: The Honorable Catherine D. Perry, Presiding
ATTORNEYS FOR PLAINTIFF: Don M. Downing, Adam J. Levitt,
Gretchen Garrison, William B. Chaney, Jason Sapp, Jennifer M.
Hoekstra, Stacey T. Kelly
ATTORNEYS FOR DEFENDANT: Mark E. Ferguson, John M. Hughes
Hughes, Jamison R. Jones, Terry Lueckenhoff
Also Appearing: Martin Phipps
Appearing by telephone: Christopher Hohn, Alex Gray, David
Tyler, John Galvin

Status Conference and Pretrial Conference
October 7, 2010

TERI HANOLD HOPWOOD, RMR, CRR
Thomas F. Eagleton Courthouse
111 South Tenth Street
St. Louis, Missouri 63102

1 3475, and my question to the plaintiffs is, again, I need to
2 know exactly what evidence it is you wish to introduce that
3 would be covered by this motion and how you intend to introduce
4 that evidence.

5 MS. KELLY: Your Honor, our position is the same as
6 it was --

7 THE COURT: That's not good enough on this one. I
8 need to know exactly what it is you intend to introduce and how
9 you intend to do that.

10 MS. KELLY: We would like to question on
11 cross-examination if the defense brings up the fact that they
12 think that Europe is likely to approve Liberty Link 62 or any
13 of the 600 series, we would like to question them about the
14 European Parliament's decision not to renew the registration
15 for Liberty herbicide.

16 THE COURT: And your factual basis for asking that
17 question is what? What has the European Union decided? In the
18 first trial, what I believe was presented and the way the
19 questions were asked, it was a misrepresentation of at least
20 the one document that was being waved around in court, and I
21 need know what your factual basis is for asking this question
22 because if in fact they didn't decide not to renew it -- I
23 mean, are you going to ask, "Didn't you know the European Union
24 has decided this is a known carcinogen that causes birth
25 defects?" I believe was a misrepresentation and was asked in

1 the first trial, so I need to know exactly how you're going to
2 do it and what your factual basis for bringing that is.

3 MS. KELLY: We're not planning to bring in the
4 document about the carcinogen risk, but we would like to bring
5 in some documents that show that the European Parliament
6 decided at least as of now not to renew the registration and
7 question the witness on whether or not they are aware that this
8 has taken place.

9 THE COURT: I'm granting this motion in limine as to
10 what the EU has said, and I will not allow you to ask the
11 question except if you believe that you want to do that on
12 cross-examination, I just said we're not going to have long
13 side bars but this will be a long side bar -- if you think
14 you're entitled to ask that question, you need to approach me
15 and tell me, and if there is a break, you know, if the witness
16 has testified before the break, and you know your cross is
17 going to start, I would like to do it whenever we can do it at
18 a break if possible, and if you want to ask those questions,
19 what I want to see is what evidence there is that shows there
20 is a factual basis for this because my recollection of the
21 evidence before was something that said, "This is one among a
22 list of things that will not be renewed unless something else
23 happens," and I need to know if that's -- and that was as to
24 the Liberty -- I don't know if that was to the Liberty
25 herbicide, I believe it was, but I would like to know if that's

1 the case because I think based on the evidence as I've heard it
2 in this case, there is a difference in what people might be
3 saying about rice that has been sprayed with Liberty herbicide
4 while it was growing, and then been harvested, and then it
5 comes into the country, and whether that's safe, as opposed to
6 whether Liberty herbicide itself is safe as it's being sprayed
7 in your backyard. The latter might be relevant if they were
8 going to start growing Liberty rice in Europe. I haven't heard
9 any evidence that anybody wants to, or that there is a whole
10 lot of rice being grown in Europe, but maybe there is, and so
11 I'm going to want some very -- if the plaintiffs think they
12 should be able to introduce this, then you're going to need to
13 be very specific with me as to the factual basis for it because
14 this is the kind of thing that is unfairly prejudicial if
15 someone does start jumping up and down talking about, you know,
16 the EU has decided this stuff is like DDT or something, or that
17 the rice will kill you, you know. If that's something that
18 you're going to be arguing, you're going to have to show me a
19 factual basis.

20 I wouldn't normally require you to show me this much
21 factual basis for a cross examination question, but in this
22 case because of what happened in the first bellwether trial,
23 which I thought was very improper, that's why I'm doing it.
24 Just so you know, that's why.

25 Now, let's move on to Docket Number 3399, and that's the

1 defendants' motion to preclude evidence of moral duties and
2 business ethics, and as I did before, I am going to deny this
3 motion in limine because, for example, the stewardship
4 standards do talk about being ethical, however I am cautioning
5 the plaintiffs as I have before that if they start belaboring
6 this, I will probably start sustaining some objections.

7 The issue in the case is not, you know, is Bayer moral
8 or ethical, but was it negligent in this case, and so I'm
9 denying the motion in limine, but I'm not necessarily saying
10 that you can use that evidence in any unfair way.

11 Now, I have a question. Let me ask -- let's talk about
12 StarLink. I'm going to deny the motion in limine as to the
13 StarLink evidence, Motion Number 3395, on the same basis I did
14 before. I believe that this is part of the evidence in this
15 case, especially as it goes to the knowledge of Bayer and the
16 notice it had about issues in terms of continuing damage in the
17 market place, if something were, the continuing damages, and so
18 I'm going to deny that motion, and also because I believe
19 trying to excise any StarLink evidence would be really
20 impossible. It would look to the jury like we were hiding
21 things. The StarLink evidence is all over the case and all
22 over the documents. The conversations that people at Bayer had
23 with one another refer to it, etcetera, and those were relevant
24 topics, and there is so much relevant evidence that does
25 include this, that's another reason for not granting that

1 all Tuesday morning.

2 (A recess was taken.)

3

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REPORTER'S CERTIFICATE

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I, TERI HANOLD HOPWOOD, RMR, CRR, Official Court

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Reporter for the United States District Court for the Eastern

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District of Missouri do hereby certify that the foregoing is a

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true and correct transcript of the proceedings had in this

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cause as same appears from my stenotype notes made personally

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during the progress of said proceedings.

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/S/ Teri Hanold Hopwood, RMR, CRR

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TERI HANOLD HOPWOOD, RMR, CRR

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Official Court Reporter

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Exhibit E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED RICE
LITIGATION

)
) No. 4:06-MD-1811-CDP
)
)
)

JURY TRIAL

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

VOLUME XIII-B
(Afternoon Session)
NOVEMBER 19, 2009

APPEARANCES:

For Plaintiffs:

Don M. Downing, Esq.
Gretchen Garrison, Esq.
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Grant L. Davis, Esq.
DAVIS, BETHUNE & JONES L.L.C.

William B. Chaney, Esq.
Andrew K. York, Esq.
LOOPER REED & MCGRAW

For Defendants:

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Eric R. Olson, Esq.
Stephen Cowen, Esq.
BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

REPORTED BY:

Gayle D. Madden, CSR, RDR, CRR
Official Court Reporter
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102
(314) 244-7987

1 happened, yes.

2 MR. DAVIS: That's all I have.

3 THE COURT: Redirect.

4 MR. FERGUSON: Yes, Your Honor. There's one document
5 that we're just getting. If I could have a moment to get
6 that, I'd appreciate it.

7 THE COURT: Yeah, go ahead.

8 Members of the Jury, if you want to stand up and
9 stretch, you can while we're doing this.

10 Yeah, you, too, definitely.

11 MR. DAVIS: I'm going to start, Your Honor. We're
12 still pulling this one document that comes up in response to
13 some of those matters.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MR. FERGUSON:

17 Q Mr. Kneen, Mr. Davis suggested to you that LibertyLink
18 rice couldn't be moved in the United States without herbicide
19 approval, and you said you didn't see how the two were
20 connected. Do you recall that?

21 A I do.

22 Q What did you mean by that?

23 A Well, LibertyLink rice can be moved with the appropriate
24 permits and protocols in place. It doesn't have to have the
25 herbicide associated with it.

1 Q And --

2 A The seed -- the seed can be moved. Sorry.

3 Q And a deregulated LibertyLink rice event -- how does
4 that -- does that need the approvals that you were talking
5 about?

6 A No, absolutely not.

7 Q Now, he also suggested to you that Europe has banned
8 Liberty herbicide, is that true?

9 A That's what he said. My rebuttal was that glufosinate
10 ammonium is still approved in Europe.

11 Q So is what Mr. Davis suggested true?

12 A No.

13 Q Now, are LibertyLink soybeans still going to Europe with
14 approval?

15 A Yes.

16 Q Are -- is LibertyLink canola still going into Europe with
17 approval?

18 A Yes.

19 Q Are you aware of any country in the world that has banned
20 Liberty herbicide?

21 A No.

22 Q Do you know of any that has banned glufosinate?

23 A No.

24 Q Are you -- there was a suggestion you saw that Liberty
25 was 81 percent glufosinate, and you said you didn't think so.

1 Do you recall that?

2 A I do.

3 Q And then we saw the actual documents, and it was just the
4 opposite?

5 A Correct.

6 Q All right. That's a big difference, isn't it?

7 A It is. Huge.

8 Q Now, there was also some reference to a European
9 laboratory. Do you recall that?

10 A Yes.

11 Q And did that document say anything on it concerning the
12 question of whether Liberty -- excuse me -- whether
13 glufosinate, the active ingredient of Liberty, is banned in
14 Europe, as Mr. Davis suggested?

15 A No, it does not. In fact, it says it's approved.

16 Q And you talked about additional information that would be
17 provided in the course of dealing with the European regulatory
18 system. What did you mean by that?

19 A Well, our scientists will analyze the data and the
20 toxicology specialists and the risk assessment specialists,
21 and we will do studies as necessary to demonstrate the
22 continued safety of glufosinate ammonium.

23 Q Now, I want to just make sure we've got our record
24 straight because I noticed Mr. Davis marked his chart up here.
25 He said LibertyLink herbicide is glufosinate ammonium, but is

CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 139 inclusive.

Dated at St. Louis, Missouri, this 20th day of November, 2009.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter

Exhibit F

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

_____)
IN RE GENETICALLY MODIFIED RICE)
LITIGATION,) No. 4:06-MD-1811 CDP
_____)
_____)

JURY TRIAL

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

VOLUME XVI-B
(Afternoon Session)

NOVEMBER 24, 2009

APPEARANCES:

For Plaintiffs: Don M. Downing, Esq.
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(APPEARANCES CONTINUED ON PAGE 2)

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PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION

1 **Hearing of the Jury As Follows:)**

2 THE COURT: State your objection.

3 MR. FERGUSON: There is no proper foundation for this
4 exhibit. It's hearsay and she has not identified it as
5 accurate or anything.

6 THE COURT: And your response?

7 MR. DAVIS: My response is that now we have had this
8 identified by two people as to what it is. This is the
9 Swedish Chemicals Agency findings on these herbicides.

10 THE COURT: Yeah, the objection is sustained. I
11 don't know that you have had it identified as any such thing.

12 **(The Following Proceedings Were Held Within the Hearing and**
13 **Presence of the Jury.)**

14 Q (By Mr. Davis) The European Parliament on 1002 issued a
15 press release that went along with passing this.

16 A Could I have a copy of that please?

17 Q Yes, you may.

18 A Thank you.

19 Q Are you aware that -- do you want time to read this?

20 A I'm generally familiar with it.

21 Q Okay. So you're aware that the European Parliament
22 approved new European Union pesticide legislature?

23 A I guess I'm not sure what the source of this document is.
24 I am familiar with the 91414 process and how it affects
25 glufosinate. I can't speak to whether this particular

1 document is official or not. I can't really tell.

2 Q Okay. Well, the first question is this. Are you and
3 your company aware that legislation was passed in January of
4 this year under the European Parliament banning certain
5 pesticides?

6 A I know that there was a legislation that has been in
7 process in Europe, and I know it changes some of the
8 procedural natures of how chemical products are regulated. I
9 can't speak to the details because that's not my specialty. I
10 have been briefed about the impact of that on glufosinate, and
11 I know that our understanding is that we have a renewal, that
12 we've been renewed until 2017, and that there are concrete
13 actions that we can take between now and 2017 to be eligible
14 for re-renewal, and those activities are ongoing.

15 Q So you do know something about this. I am not just
16 making this stuff up; right? You understand that there is a
17 law that was passed in the European Parliament in January of
18 2009; correct?

19 A And I can't speak to the details of whatever is in that
20 law or whatever. I don't know with that level of detail
21 because I am in the bioscience business, so I get my briefings
22 and I don't get briefing on the whole law. I get briefing on
23 how it impacts our product, glufosinate.

24 Q Well, were you aware that certain highly toxic chemicals
25 would be banned if they were classified as a carcinogenic, a

1 mutagenic, or toxic to reproduction?

2 MR. FERGUSON: Your Honor, he just cut out an
3 important part of that document in reading it.

4 THE COURT: Sustained.

5 MR. DAVIS: Okay. I'll read it. I was asking a
6 question. I'll read it again.

7 THE COURT: Why don't you all approach the bench.

8 **(A Bench Conference Was Held On the Record and Outside of the**
9 **Hearing of the Jury As Follows:)**

10 THE COURT: Can I see the document? All right. Your
11 objection?

12 MR. FERGUSON: My objection is that she has indicated
13 that she is not familiar with the details of the legislation,
14 and now as a further set of questions, all he is doing is
15 reading a hearsay document at her and asking if she agrees
16 with those things. I don't think that is proper.

17 MR. DAVIS: Your Honor, several things. First, she
18 obviously knows more about it than she says because she starts
19 talking about 2017 and what they are going to try to do to get
20 re-approved in 2017. But in direct, they brought out that
21 there was European Commission approval of LL62 and how they
22 thought that they'd been told -- and I didn't object when they
23 said this -- they had been told that this was going to get
24 approved, LL62.

25 MR. FERGUSON: That is not at all what was said.

1 A True.

2 Q Bayer has people working to try to persuade people in
3 Parliament to allow glufosinate ammonia to be renewed;
4 correct?

5 A False.

6 Q You knew about this issue before you came into court and
7 I started asking you questions; true?

8 A True.

9 Q You've been briefed on it by Bayer; true?

10 A True.

11 Q You've been briefed before about what the chemical
12 Swedish agency found; correct?

13 A I don't believe I've had this level of detail, so I would
14 say that is false.

15 THE COURT: You keep saying that is not a finding.
16 What is that?

17 THE WITNESS: I believe it was a task assigned by the
18 European Commission to this group, and it's more a cataloging
19 process than an analysis process. Does that make sense?

20 THE COURT: What were they cataloging the appendix
21 to?

22 THE WITNESS: A bunch of different chemical end
23 points I guess maybe is the easiest way to say, and so
24 things -- if you look through the chemical end points
25 associated with any particular product and you put them

1 in different boxes, then you fell into categories that were
2 reported here. So I know we fall into category R2. What
3 exactly is the details of R2, off the top of my head I can't
4 tell you, I'm sorry.

5 THE COURT: Go ahead, Mr. Davis.

6 Q (By Mr. Davis) My question is this, you told me
7 repeatedly that I was wrong in what I said. If you don't know
8 about it, then how can you tell me I'm wrong?

9 A What you were saying was that glufosinate is a
10 carcinogen, and to my knowledge, glufosinate isn't a
11 carcinogen. The CMR has something to do with the
12 categorization section, and under that categorization title,
13 there is an R1 and R2 and an R3, and there is a T1, T2, T3,
14 and I think there is an M1, M2, M3, and if it was -- and there
15 might be a C1, 2, 3 that might have to do with carcinogens.
16 But I'm not aware that our product isn't a carcinogen. I
17 think it's got a reproductive category under this process.

18 THE COURT: So what do you think this list of 22
19 things is that he was showing you, this what's marked as 1003?

20 THE WITNESS: I'm not exactly sure. It's something
21 that's probably related to this task, but, you know, I don't
22 know whether it's an official document. I don't know whether
23 this is translated in the legislation somewhere. I know our
24 product got into Annex 1 inclusion. I know that that's said
25 in our group dozens of times a day when you talk about this,

1 so I know that the Annex 1 inclusion is correct. I know the
2 R2 inclusion is correct. I know the 2017 number is correct.
3 I don't know what the other things mean.

4 THE COURT: What does it mean to be in Annex 1
5 category?

6 THE WITNESS: It's a good thing. It means your
7 product's still being able to be sold until 2017. If you
8 hadn't made Annex 1, then you would be in a banned situation
9 already. And so every time you are talking about 22 chemicals
10 that were banned, I think that because we're in Annex 1, we
11 can't possibly be in that list. But you're getting into the
12 details, and I am not sure I would be quoting that properly.

13 THE COURT: Let me ask you this. You said that
14 you're aware of this law and you're aware it affects
15 glufosinate. What is your understanding of what the law does
16 and how it affects glufosinate?

17 THE WITNESS: My understanding is that it influences
18 how glufosinate will be re-reviewed when it comes up for
19 renewal, and that we have until 2017 to put in more
20 information to change the R2 classification to something else,
21 and we believe that that's fully doable scientifically. It
22 can be done in any one of several methods. So there is some
23 that have to do with consumer safety, and you could do a
24 certain kind of study. There are pieces that have to do with
25 metabolism, and we could do a different kind of study. So

1 there are multiple ways we could get the R2 classification
2 removed between now and 2017. I know that the same
3 information that triggered the R2 has gone into Canada very
4 recently, and Canada re-registered. So I don't think that
5 we're crazy to believe that the scientific information will
6 lead to a renewal.

7 THE COURT: But do I understand from what you said
8 then and what you said earlier, if you don't do those things,
9 then it will not be renewed; correct?

10 THE WITNESS: I believe that's probably one of the
11 outcomes. I don't know exactly what would --

12 THE COURT: Well, you keep saying if we do these
13 things, it might be renewed. We're confident it will be
14 renewed if we do these things. The flip side of that is if
15 you don't do those things, it won't be renewed, or are you
16 telling me you don't know if that is true or not?

17 THE WITNESS: I'm not as sure on that because the
18 focus has always been on how we're going to do it so it is
19 renewed.

20 THE COURT: So in your briefings, nobody told you
21 that?

22 THE WITNESS: They probably did, and right at this
23 moment I'm having trouble remembering it, I'm sorry.

24 THE COURT: Go ahead, Mr. Davis. Anymore questions
25 you want to ask her?

1 MR. DAVIS: A few more.

2 Q (By Mr. Davis) So this R2 classification means as it
3 stands now, you won't get renewed, correct, without anything
4 else happening?

5 A I'm not exactly sure. I wouldn't want to state that as a
6 fact that I knew for sure.

7 Q And I think you said -- well, you do know that the
8 Parliament's ruling had something to do with the 22 chemicals
9 that the Swedish Chemical Agency talked about; correct?

10 A I seem to recall a number 22. I don't remember a Swedish
11 connection in detail. I remember a Swedish connection in
12 general.

13 Q Okay. That's fair enough. Let me ask it a different
14 way. If I said it this way, which I think I did, but let me
15 make sure, that it's not saying it's banned today, but it is
16 saying it won't be renewed unless something different happens?

17 A And that I thought I said I'm not sure. I'm sorry I
18 can't remember that part of the briefing, but our briefings
19 tend to focus on what we will do to renew, not what happens
20 unless.

21 Q While we're in here right now, Your Honor, can I do a
22 couple more things, which is this, just say things like this,
23 there's been a great uproar by people like Green Peace over
24 this; correct?

25 A Green Peace has had impact on the chemical registration

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I, Angela K. Daley, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 111 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 24th day of November, 2009.

/S/Angela K. Daley
Angela K. Daley, CSR, RMR, FCRR, CRR
Official Court Reporter

Exhibit G



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UPDATE 1-EU lifts restrictions on US rice imports - official

Mon, Apr 19 2010

(Adds details, quotes, result of GM maize approval votes)

BRUSSELS, April 19 (Reuters) - The European Union has lifted restrictions on imports of rice from the United States that were imposed in 2006 after shipments were found to contain genetically modified rice not approved in the bloc, an EU official said on Monday.

U.S. rice imports to the EU have been at a virtual standstill since 2006 because the restrictions meant rice could be approved for sale only if accompanied by test documents proving they were free of GM rice LL 601, produced by Germany's Bayer CropScience (BAYE.BO: [Quote](#), [Profile](#), [Research](#), [Stock Buzz](#)).

"The proposal to lift the measure followed testing by the U.S. Rice Federation for the 2009 crop of harvested rice, which did not detect lots containing LL Rice 601," a spokesman for EU Health Commissioner John Dalli said in a statement.

The EU has also received assurances that U.S. exporters will continue to apply a strict testing plan to rice exported to Europe, the spokesman said.

The same committee of EU member state officials that agreed to lift the rice import restrictions failed to reach a decision on Monday on proposals to authorise imports to the EU of three GM maize varieties for use as food and feed.

The proposals covered new authorisations for two insect-resistant and herbicide-tolerant maize varieties, MON89034xNK603 and Bt11xGA21, developed by Monsanto and Syngenta respectively.

A third decision covered the renewal of an existing authorisation for the insect-resistant Bt11 maize, also developed by Syngenta.

As the committee failed to reach a majority decision for or against the proposals, they will now be sent to EU ministers for approval. (Reporting by Charlie Dunmore; Editing by James Jukwey)

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