

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

**IN RE GENETICALLY MODIFIED RICE
LITIGATION**

)
) **4:06 MD 1811 CDP**
)
) **TRIAL COMMENCING**
) **JANUARY 18, 2011**

**THE BAYER DEFENDANTS’ MOTION IN LIMINE TO EXCLUDE EVIDENCE AND
ARGUMENT REGARDING “MORAL DUTIES” OR “BUSINESS ETHICS”**

The Bayer Defendants respectfully submit this motion *in limine* requesting an order from the Court prohibiting the use of testimony on “moral duties” or “business ethics.” Certain questions asked of the Bayer Defendants’ witnesses during depositions, and testimony given by plaintiffs’ experts related to: (i) the supposed “moral” duties or “ethical” obligations of the Bayer Defendants and (ii) the Bayer Defendants’ allegedly improper intent or motive. In response to a similar motion, the Court in the First, Second, Third, and Fourth Bellwether Trials “caution[ed]” counsel about the use of testimony regarding the ethical and moral obligations of the Bayer Defendants.¹ The Bayer Defendants respectfully request that the court give the same guidance that trial testimony and questioning should be limited to issues relevant to the common law and codified “legal” standards that govern the case rather than any abstract ethical or moral obligations.

¹ The Court explained: “I don’t want to hear a lot about well, you know, “Did you do the right thing,” or “Would you do the right thing.” . . . I just don't think this is something where we need to be hearing about morals or ethics. There are some rules and there are things they have to follow, or company policies, did you follow your policy, that’s certainly legitimate, but, it’s not an issue of who is moral and who is not.” Ex. A, First Bellwether Pretrial Conf. Tr. 48:3-13, Oct. 29, 2009; *see also* Ex. B, Second Bellwether Pretrial Conf. Tr. 67:10-22, Jan. 7, 2010 (“My ruling is the same as it was before.”); Ex. C, Third Bellwether Pretrial Conf. Tr. 41:12-22, June 16, 2010; Ex. D, Fourth Bellwether Pretrial Conf. Tr. 71:25-72:6, Oct. 7, 2010.

ARGUMENT

This case presents questions about the identification of relevant legal duties and obligations, whether any such duties and obligations were breached, and if so, the amount of any recoverable damages. These questions lie within the province of the Court and the jury and leave no room for testimony about “moral” or “ethical” obligations. The intent or motive behind the Bayer Defendants’ conduct is not an element in any of plaintiffs’ claims, and neither is the morality or ethics of the Bayer Defendants’ conduct.

Further, such testimony would pose a significant risk of unfair prejudice and jury confusion. Testimony about what is purportedly “fair,” “moral,” or “ethical” would surely confuse the jury, which the Court will instruct on the appropriate “legal” standards and principles.

Consequently, testimony touching upon “moral duties” or “business ethics” is not only irrelevant but also clearly excludable under Federal Rule of Evidence 403. *See In re Rezulin Prods. Liab. Litig.*, 309 F. Supp. 2d 531, 545 (S.D.N.Y. 2004) (testimony about “ethical” obligations inadmissible under Rule 403 because “it would be likely unfairly to prejudice and confuse the [jury] by introducing the ‘experts’ opinions and rhetoric concerning ethics as alternative and improper grounds for decision on bases other than the pertinent legal standards”).

Such testimony would not be admissible as a lay opinion because ethical obligations are not facts that can be “rationally based on the perception of the witness.” *United States v. Espino*, 317 F.3d 788, 796-97 (8th Cir. 2003). Furthermore, morality and business ethics are not areas of “scientific, technical, or other specialized knowledge” susceptible to expert testimony. Fed. R. Evid. 702; *see also In re Baycol Prods. Litig.*, 532 F. Supp. 2d 1029, 1053 (D. Minn. 2007)

(expert testimony about “corporate ethics and morality” ruled inadmissible for being “merely speculation or pure conjecture”).

CONCLUSION

For the foregoing reasons, the Bayer Defendants respectfully request that this Court give the same guidance it previously gave regarding the irrelevancy of testimony regarding moral and ethical obligations of the Bayer Defendants.

Dated: December 21, 2010

Respectfully submitted,

/s/ Stephen J. Cowen

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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, Adam J. Levitt, Joe R.
Whaley, Jason D. Sapp
ATTORNEYS FOR DEFENDANT: Mark E. Ferguson, Eric R. Olson,
Stephen Cowen, Glen E. Summers, Terry Lueckenhoff, Vance Gibbs
ATTORNEY FOR RICELAND FOODS: Christopher Hohn
ATTORNEY FOR EUROPEAN NON-PRODUCERS: John Baker (by telephone)
ATTORNEY FOR RIVIANA FOODS, INC.: Charles L. Schlumberger (by
telephone)

PRETRIAL CONFERENCE
October 29, 30, 2009

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

1 their people what to do.

2 THE COURT: They are supposed to do something within
3 24 hours?

4 MR. DAVIS: If there is an APHIS violation, they are
5 supposed to report it. They agree to that. That's a factual
6 question. Okay, this happened? Yes. Did you report it? Yes
7 or no. So, that has nothing to do with, it seems to me, what
8 the motion is about.

9 They do seem to have a great deal of contempt for my
10 true/false questions, but my true/false questions I believe
11 stand for themselves, and they are factually accurate. All
12 they are -- at times in this case I found, Your Honor,
13 witnesses don't really give concise answers to clear questions,
14 so sometimes I would say, "Can you answer this true or false,
15 this rice couldn't be sold in the United States at this time."
16 They can answer it true, false, I don't know. They can answer
17 whatever they want. But, that's a completely separate issue
18 than I think the moral duties, and so as to the moral duties, I
19 think this falls into -- I'm not going to call them Enron,
20 we're not going to call them Enron.

21 Other than that, it's so vague at this point, I don't
22 know how to answer it. I don't think that we're going to be
23 out there saying -- we're going to stick to the facts and what
24 they did, but this is too ambiguous for me to say we're saying
25 yes or no to it.

1 THE COURT: I'm going to deny the motion in limine,
2 but I do caution you that -- everyone in the case -- that I
3 don't think we need to have a -- I don't want to hear a lot
4 about well, you know, "Did you do the right thing," or "Would
5 you do the right thing." I don't know what is in the
6 depositions, but on cross-examination, you know, you ask about
7 the facts and about the merits, and I think if it is something
8 about -- I just don't think this is something where we need to
9 be hearing about morals or ethics. There are some rules and
10 there are things they have to follow, or company policies, did
11 you follow your policy, that's certainly legitimate, but it's
12 not an issue of who is moral and who is not. Mr. Ferguson, you
13 wanted to say something?

14 MR. FERGUSON: I started to come up because I was
15 going to raise the point that you just answered for me. Thank
16 you.

17 THE COURT: That one is denied, but it's denied with
18 a lecture.

19 Then the next one, this was the fifth subpoint, and the
20 memorandum was Document 1713, and it talks about net worth or
21 financial condition, and I think I've already told you some of
22 this, about how to handle punitive damages, and the comparison
23 of the size and wealth of the parties is not appropriate in
24 arguments, but then it talks about inflammatory
25 characterization of LLRICE as the next topic, and that talks

1 about Frankenfood, and I think that -- I don't know, I just
2 couldn't tell.

3 You all seem to be talking about different things. When
4 the plaintiff responded, they said but this is so broad it
5 would keep us from talking about the business opportunity, or
6 what they were trying to do, and I did not intend -- I think
7 it's appropriate. Tell me your name.

8 MR. WHALEY: J.R. Whaley on behalf of the
9 plaintiffs.

10 THE COURT: Mr. Whaley. I'm not sure what the
11 plaintiffs are concerned about. Let's talk about the first
12 part. We've already talked about net worth, comparison of
13 sizes, but you say they are also asking to exclude anything
14 about their business practices. Are you asking that,
15 Mr. Olson?

16 MR. OLSON: Not at all, Your Honor. We are asking
17 that --

18 THE COURT: Sales, profits, or transactions was
19 included, is what they say. I'm not sure exactly where that
20 is. They say that you're asking about that.

21 MR. OLSON: Your Honor, I'm perhaps not the best
22 judge of this, but I read our motion as going to net worth or
23 financial condition, namely that the size of our company's
24 operations financially is irrelevant.

25 THE COURT: You said, "including sales profits or

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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
Thomas F. Eagleton Courthouse
111 South Tenth Street
St. Louis, Missouri 63102

1 supports his opinion, and then Mr. Downing will have to expand
2 his cross-examination appropriately. I am granting this motion
3 to allow evidence, and I will allow Dr. Kalaitzandonakes to
4 talk about that. That was 2108.

5 Then 2109, this is the Bayer defendants' motion in
6 limine to exclude evidence and argument concerning irrelevant
7 alleged wrongful conduct. There are three items listed here
8 that I did allow at the last trial that the defendant is
9 seeking to exclude. This is evidence concerning six
10 super-sized bags of LL 601 seed found at Jacko Garrett's Texas
11 farm in 2006, evidence concerning the samples taken from Jacko
12 Garrett's farm in the fall of 2006 that tested positive for LL
13 601 and LL 604, and evidence concerning the presence of LLRICE
14 in rice grown by Tim Croughan in 2006. I am denying this
15 motion in limine in its entirety. This evidence is admissible.
16 The plaintiffs may bring this out to talk about how this rice
17 seed was handled, and for the reasons they have stated, and I
18 do not think -- it's not 404(b) evidence, it's evidence about
19 this case. It's not other wrongful acts, it's evidence of the
20 entire, of how the rice was handled, and the testing was
21 handled, and it's evidence relating to the contamination that
22 was discovered in 2006, and I believe it is relevant evidence,
23 so that is denied. That is 2109.

24 2110, the defendants' motion to exclude evidence and
25 arguments regarding other claims and other litigation, I am

1 granting that. It is unopposed, and obviously you should not
2 be talking about other cases. I believe one witness said
3 something at the original trial that sort of touched on it, and
4 I would just urge you all, when that came out, it appeared to
5 me to be not anything anybody had planned for. I would
6 encourage you to tell your witnesses that this is the ruling.
7 We're not to talk about the fact that there are other farmers
8 bringing cases or anything else about other litigation. That's
9 2110. It's granted.

10 2111, the defendant has a motion regarding -- this is
11 the defendants' motion in limine to exclude evidence regarding
12 moral duties and business ethics. I am denying this motion in
13 limine. My ruling is the same as it was before. I am
14 cautioning the plaintiffs, I'm denying the motion in limine
15 because I believe there is some relevance of some of this
16 evidence and it comes up in a variety of ways, and it's not
17 appropriate for me to exclude it on a motion in limine, but I
18 was warning the plaintiffs that if you go too far, if you
19 overdo it, I will expect the defendants to object, and I will
20 expect, if it's really overdone, to grant that objection, so
21 that's going to have to come up as it does, but I'm denying it
22 as a motion in limine.

23 2113. This is the motion, the defendants' motion in
24 limine to limit the testimony of Robert Cummings. I am
25 granting this in part and denying it in part. My rulings are

1 the same as they were before. He can testify as he did before,
2 but he may not give opinions about future, you know, his
3 opinions about what's going to happen in the future, but I'm
4 not going to grant the motion in limine.

5 The last motion in limine is Docket Number 2114. This
6 is the Bayer defendants' motion in limine to exclude evidence
7 and argument concerning the Arkansas plaintiffs' alleged future
8 damages. I am denying that motion in limine, as with the other
9 one that was similar to future damages. I'm sure, whether I
10 say anything about it or not, I'm sure I will hear about that
11 as in a judgment as a matter of law motion, but it's denied as
12 a motion in limine. Those are my rulings on the motions in
13 limine.

14 Now I want to talk about some logistical things, and the
15 first one and most -- the one I care a lot about, I care about
16 all these, but I care a lot about this one, I would like to
17 hear about what your status on deposition designations is
18 because we wasted a lot of time and we heard a lot of
19 unnecessary depositions in the last trial. Tell me where you
20 stand because I know you were working on this, and you all did
21 talk to me on the phone, and I appreciated that, about your
22 efforts to resolve it and get things narrowed down as much as
23 you can. Where do you stand?

24 MR. HUGHES: Your Honor, we have been meeting and
25 conferring and trying to take some of the lessons we learned in

1 know the rules, if there is bad weather, there are
2 circumstances where we can give jurors motel vouchers so they
3 don't have to drive back and forth, and if they are further
4 than 100 miles away, we can do that as well, but it's not
5 normal.

6 Court is in recess. I will see you all Monday morning,
7 and I will send out orders by the end of the day tomorrow on
8 those two issues that I've told you I still need to look at.

9 (A recess was taken.)

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REPORTER'S CERTIFICATE

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/S/ Teri Hanold Hopwood, RMR

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TERI HANOLD HOPWOOD, RMR

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Official Court Reporter

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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:

For Plaintiffs:

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John F. Olinde, Esq.
Peter Rotolo, Esq.
CHAFFE MCCALL, LLP

1 motions in limine because they are to exclude evidence in the
2 plaintiffs' case, so they happen first. I am going to go
3 through them now and try to -- the first one -- I am trying to
4 take these in numeric order but starting with the defendants.
5 Defendants' motion in limine, docket number 2952, titled
6 Motion in Limine to Exclude Evidence and Argument Concerning
7 Irrelevant Alleged Wrongful Conduct, I will deny that motion
8 for the same reasons I did before. The things that are listed
9 there as irrelevant alleged wrongful conduct such as the super
10 sized bags of the Garrett 2006 samples, the Croughan rice, are
11 not irrelevant, and they are not other bad acts or other
12 things like that. They are things that are relevant to the
13 case, so I am denying that motion, and that is number 2952.

14 2954 is the argument that Bruce Babcock's testimony
15 is cumulative. I am denying that motion.

16 2955, emotional distress damages. The defendants'
17 motion to preclude claims for emotional distress and exclude
18 evidence and argument regarding emotional distress, I am
19 granting that motion. This is not a case where emotional
20 distress damages are sought. I will point out that whoever
21 thought they were being cute by finding a Missouri case where
22 I said you can't introduce emotional distress damages in the
23 case under the Missouri Human Rights Act unless you have
24 medical testimony was stretching pretty far to cite me that
25 case since that is a very peculiar issue under a Missouri

1 statute, and it is no longer the law, so I don't know why you
2 would find that and cite it to me, and I would just advise you
3 that you shouldn't think that just because I issued the
4 opinion, it's something you ought to cite, especially when
5 it's totally off point. This is not to say that the
6 plaintiffs can't describe what happened to them. I don't want
7 a lot of the inflammatory statements, but the plaintiffs are
8 going to describe what happened, and they are not seeking
9 emotional distress damages, so they need to be careful, but
10 I'm not saying they cannot say how they found out, what they
11 found out, etc.

12 2959, that is the defendants' motion in limine to
13 exclude evidence and argument regarding moral duties or
14 business ethics. And, you know, as I did before, I am denying
15 this motion, but I am cautioning the plaintiffs that this is
16 not a case where we are talking about ethics or moral duties.
17 We are talking about legal duties here, and so I am cautioning
18 the plaintiffs that if I think they are doing this
19 inappropriately, I will certainly sustain objections, but
20 there are times as the plaintiffs point out in their response
21 where Bayer itself makes reference to moral issues or business
22 ethics, and so, you know, I am not going to grant that motion.

23 Motion number 2962, the defendants' motion regarding
24 other litigation and claims to preclude any evidence of other
25 litigation or claims against Bayer, that is granted.

1 Motion number 2963, the defendants' motion -- or
2 docket number 2963, the defendants' motion to exclude evidence
3 and argument that the Bayer defendants were the responsible
4 party, that motion is denied.

5 2964, the defendants' motion in limine to exclude
6 improper argument concerning the StarLink incident, that
7 motion is denied. And to the extent that I am not explaining
8 my reasons for denying these, they are the same as they were
9 previously, or for my rulings I may supplement a little, but I
10 don't need to explain the reasoning all over again.

11 2965, the defendants' motion in limine to exclude
12 evidence describing aggregate compensation paid to any expert
13 witness, that motion is granted to the same extent as it was
14 before. Any expert witness may only be questioned about the
15 hourly rate, not about any total number of hours spent on this
16 case or these cases.

17 Then on 2966, the defendants' motion in limine to
18 exclude evidence and argument regarding liability insurance, I
19 am granting that motion.

20 2968, this is the Mr. Keith Glover motion, and as I
21 understand it, defendant wanted to exclude any conversations
22 Mr. Glover might want to testify that the Bayer people made
23 statements to him or assurances that there was no LLRICE in
24 the commercial stocks. I am denying the motion in limine as
25 to that area of testimony. He can testify about those

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
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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 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 motion in limine.

2 Now, one more I need to hear arguments on and evidence,
3 or arguments about, and this is Motion Number 3396, Docket
4 Entry 3396, and it's a motion to exclude any evidence about Lee
5 Hafernicks switch to corn because of the LL announcement, and
6 I'm confused as to what the evidence is on this. I think what
7 you're saying is that he's not seeking what we'll call any
8 alternative crop damages, but he is going to talk about
9 switching to corn, is that right?

10 MR. HUGHES: Your Honor, we recently took the
11 depositions of the three plaintiffs in this case, and during
12 this deposition, Mr. Hafernicks explained that in 2008, he grew
13 corn for the first time, he attributed that to Liberty Link.
14 He claimed that he was worse off growing corn in 2008 and 2009
15 than he would have been growing rice, and put all that at the
16 feet of Bayer.

17 This is a category of damage that has never been
18 disclosed despite specific interrogatory requests on the
19 subject. It has been in fact affirmatively disclaimed in the
20 plaintiff's response to our statement of undisputed facts on
21 summary judgment, and not calculated by plaintiffs' individual
22 damages experts.

23 THE COURT: Their response says that you are going
24 to argue, "Well, your damages, your future damages are
25 speculative because, look here, you switched to corn." Is 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

8

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.

11

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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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