

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

IN RE GENETICALLY MODIFIED RICE
LITIGATION

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

**THE BAYER DEFENDANTS' MOTION IN LIMINE TO
EXCLUDE EVIDENCE AND ARGUMENT REGARDING OTHER CLAIMS
OR LITIGATION INVOLVING THE BAYER DEFENDANTS**

The Bayer Defendants respectfully submit this motion *in limine* to exclude evidence or argument regarding other litigation or claims involving the Bayer Defendants, including any Bayer entities that are not before this Court. As the Court is aware, hundreds of different plaintiffs have filed suit against the Bayer Defendants in the wake of the August 18, 2006, United States Department of Agriculture announcement that commercial long-grain rice samples contained trace amounts of LLRICE. The fact that other farmers have filed suit is not relevant to the claims of the plaintiffs in this trial and its introduction would prejudice the Bayer Defendants. Furthermore, plaintiffs should be prohibited from introducing evidence or presenting arguments relating to other claims or litigation unrelated to LLRICE. The Court granted an identical, unopposed motion for the first four bellwether trials. *See* Ex. A, First Bellwether Pretrial Conf. Tr. 36:14-23, Oct. 29, 2009; Ex. B, Second Bellwether Pretrial Conf. Tr. 66:24-67:9, Jan. 7, 2010; Ex. C, Third Bellwether Pretrial Conf. Tr. 41:23-25, June 16, 2010; Ex. D, Fourth Bellwether Pretrial Conf. Tr. 64:6-7, Oct. 7, 2010.

ARGUMENT

The Eighth Circuit has recognized that “[e]ven when relevant to show a party’s motive or intent, prior bad acts or lawsuits often invite the jury to base its decision upon sheer hostility

toward a party or upon the impermissible inference that the party acted in conformity with its prior misdeeds.” *Porous Media Corp. v. Pall Corp.*, 173 F.3d 1109, 1117 (8th Cir. 1999). Here, there is no doubt that the evidence would be prejudicial to the Bayer Defendants if plaintiffs are allowed to introduce evidence of other lawsuits or claims. The jury might conclude, contrary to law, that the mere existence of multiple lawsuits against the Bayer Defendants sufficiently proves that they somehow are at fault.

Furthermore, evidence of other claims or lawsuits is also irrelevant to anything that plaintiffs must prove here. Claims alleged in lawsuits are “evidence” of nothing, but are instead merely untested hearsay. *See Johnson v. Ford Motor Co.*, 988 F.2d 573, 579 (5th Cir. 1993) (trial court properly excluded summary of claims, lawsuits, and complaints, “which amounts to nothing more than a summary of allegations by others which constitute hearsay”). And the fact that lawsuits or claims have been filed after August 18, 2006, logically cannot be relevant to the issues of notice or knowledge, or any other issue in this case. *See Crump v. Versa Prods., Inc.*, 400 F.3d 1104, 1119 (8th Cir. 2005) (upholding district court’s exclusion of evidence of forty-four other similar accidents which occurred after plaintiff’s accident). This Court has precluded similar evidence of other lawsuits and claims. *See, e.g., J.B. Hunt Transp. v. Gen. Motors Corp.*, 52 F. Supp. 2d 1084 (E.D. Mo. 1999) (Perry, J.) (granting defendants’ motion to exclude two lists of lawsuits or claims arising from other automobile accidents); *Morris v. Lanpher*, Case No. 05-0362-CV-W-FJG, 2007 U.S. Dist. LEXIS 21656, at *3-4 (W.D. Mo. Mar. 27, 2007) (granting defendants’ motion in limine and excluding evidence of other lawsuits against defendants).

CONCLUSION

For the above reasons, the Bayer Defendants respectfully request that this Court again grant their motion *in limine* to preclude evidence regarding other litigation or claims involving the Bayer Defendants.

Dated: December 21, 2010

Respectfully submitted,

/s/ Stephen J. Cowen

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ATTORNEYS FOR THE BAYER DEFENDANTS

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 MR. FERGUSON: We're not going to have them --

2 THE COURT: Neither side is going to ask their
3 experts or the other side's experts about the portions I've
4 excluded.

5 MR. FERGUSON: I raise it, of course, because in
6 reports, there will be a list of factors, and one of them may
7 have been the sentence that's missing here.

8 THE COURT: And I think we have discussed this
9 before, but it's my general practice that reports themselves
10 are hearsay, and the witnesses will testify as to their
11 opinions, and the jury may hear them to the extent I have
12 overruled the Daubert motions.

13 MR. FERGUSON: I was thinking more on impeachment
14 rather than in direct using the report.

15 THE COURT: That would be foolish for anyone to do.

16 MS. GARRISON: That would be foolish.

17 MR. FERGUSON: Point number two is the jury will now
18 be given a copy of a report that is an investigation of Bayer
19 with a lot of stuff taken out, and I wonder if the jury could
20 be instructed that the materials that are taken out are simply
21 matters that are irrelevant, and they don't go one way or the
22 other to the issues you're to decide.

23 THE COURT: There is no problem with doing that, is
24 there, Ms. Garrison?

25 MS. GARRISON: No.

1 THE COURT: We can do that. Remind me when you want
2 me to give that instruction. If somebody reminds me to say it,
3 I'll say this is the instruction about redacted exhibits. I'll
4 say to the jury, "A lot of these exhibits may have parts taken
5 out because we've taken out parts that aren't relevant. Don't
6 worry about that, they are not relevant for your consideration,
7 you shouldn't consider it anyway," and it wouldn't be
8 necessarily specific to this exhibit, but the first time it
9 comes up, somebody can remind me and I'll give that
10 instruction.

11 Defendant's motions in limine. There was one big
12 motion, and it had a lot of subparts. Some of those I really
13 do not need to hear argument on. Let me start by asking the
14 two obvious ones. Ms. Garrison, you all did not file an
15 objection to -- or whoever is speaking for the plaintiffs, for
16 the subpart 3, defendant's liability insurance, and subpart 8,
17 defendant's other claims or litigation involving the Bayer
18 defendants. So I assume I can grant those two subportions of
19 Motion in Limine Number 1708, is that correct?

20 MR. DOWNING: Yes, Your Honor. We have been
21 informed that there is no liability insurance, and we wouldn't
22 do it anyway.

23 THE COURT: Subparts 3 and 8 are granted. What I
24 need is somebody from the plaintiff to be standing up at the
25 lectern because I'm going to be asking you, I'm not sure if I

1 will entirely, but I'm going to be asking you what is it you
2 would introduce that would be covered by this motion in limine.
3 So, let me go through the others I see no reason for
4 discussion. I have reviewed the briefs thoroughly, and on
5 subpart 2, which is the motion to exclude cumulative testimony
6 of plaintiffs' experts, I am denying that as a motion in
7 limine. You can make an objection if you think they are being
8 cumulative, but I'm not going to go through in advance and tell
9 them what they can and cannot say because I think the
10 plaintiffs have a right to pick and choose how they present
11 these experts at trial.

12 Subpart 6, unrelated wrongful acts. This is either moot
13 because the plaintiffs said they wouldn't do it anyway, or it's
14 way too vague, and so I'm denying this as a motion in limine.
15 If you think they are getting into something, you can jump up
16 and object, of course.

17 Number 7, the same. I think that's just too vague for
18 me to say you can't talk about other general corporate
19 wrongdoing. You can't talk about anything that's not relevant
20 to this case, and I just don't know exactly what would be
21 covered by that, and I'm denying it as a motion in limine. I'm
22 not going to in advance set that rule.

23 Now, the next one I don't need any discussion on is
24 Number 10, which is improper punitive damages evidence. All
25 improper evidence is excluded, but I am just denying this for

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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

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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 future damages and emotional damages, and we would be given a
2 half hour additional time in each of those depositions, a
3 conditional request.

4 THE COURT: I understand. I did not know. I did
5 grant you an hour for that, and I didn't know that we were
6 doing it Saturday. I assumed it had already happened. I
7 thought when you said an hour deposition on Saturday, I thought
8 that was a hypothetical situation. I understand that point,
9 and I will take that into consideration. My order will address
10 that.

11 MR. HUGHES: Thank you, Your Honor.

12 THE COURT: If I deny the motion, my order will
13 address whether you're allowed to do that. 2107 is under
14 submission. I'm not ruling on it yet.

15 2108, this is the Bayer defendants' motion to admit
16 evidence regarding the data series relied on by Dr.
17 Kalaitzandonakes. I am granting that motion, and I am allowing
18 them to talk about those other data streams. I understand it
19 will lengthen the trial, and it will require further
20 cross-examination, and may further confuse the jury, but I do
21 think it is a legitimate area for an expert to say I applied
22 this same method to some other sources. I don't want him to
23 say he did it for another case or anything like that, which I'm
24 sure you would not do, but he can say, "I looked at these other
25 sources," and he can say he thinks it's consistent and that it

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:

Don M. Downing, Esq.
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For Defendants:

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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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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 a usual negligence claim. In the nuisance sense, fear or
2 annoyance is sufficient evidence of emotional harm to recover
3 your emotional damages.

4 THE COURT: Okay. Well, here is my ruling on this.
5 I'm denying the motion in limine, and I am going to allow the
6 plaintiffs to seek this category of damages if they think they
7 have evidence to do so. This is different from my ruling in
8 the prior case, and having reviewed the Texas law, and in
9 particular the nuisance and the negligence things, I believe
10 that it is appropriate, and I believe there was notice of this.
11 We've been arguing about it since the first bellwether trial,
12 so I'm denying Motion Number 3385.

13 Now I'm going to give you some rulings I don't need to
14 hear any argument on, and I don't think these rulings will be a
15 surprise.

16 3386 is the motion to limit testimony about aggregate
17 compensation to experts. It's again opposed by the plaintiffs,
18 but I am granting that as before. You can ask the experts what
19 their hourly rate is, but no one will ask any of them what
20 their total claims are.

21 The next one I want to rule on is Motion in Limine
22 Number 3387 to limit evidence of future damages. I believe
23 that that -- and it argues that you cannot estimate future crop
24 yields, and I'm denying that motion in limine. I think the
25 future crop yields are something that can be sought from a

1 jury, and the jury can determine whether they think they are
2 too speculative, so that motion in limine is denied.

3 Down to Docket Number 3390 sought to limit evidence of
4 liability insurance. That was not opposed, and I am granting
5 it. There will be no evidence of that.

6 3392 I'm also granting, that is a motion that was not
7 opposed, a motion to exclude any evidence of other claims and
8 lawsuits.

9 3394 I am denying. That is the motion to preclude any
10 evidence about Bayer being listed as the responsible party, and
11 I am denying that as I believe this is relevant.

12 Some others we've got to talk about. Let's just go
13 through some of these others, and I'm taking these in docket
14 number order, even though it may not be in logical order.

15 Defendant's motion Docket Number 3382, the motion to
16 exclude Dr. Colin Carter's more aggressive damages, I'm not
17 really sure what we're fighting over here. I guess the
18 defendants don't want Dr. Carter to be able to say, "This is
19 the most conservative estimate, I did three other -- two other
20 calculations, and one of them is I think more realistic, but
21 I'm asking this one." Is that what we don't want him to say?

22 MR. HUGHES: That's basically right. The reason we
23 filed this motion was because there were some tables included
24 in the supplemental report of Dr. Carter and Mr. Frye which
25 actually went ahead and calculated these plaintiffs' damages

1 under his more aggressive scenarios, even though that report
2 said they wouldn't be presenting those numbers, and out of an
3 abundance of caution we filed the motion to make sure there are
4 no references to those more aggressive calculations.

5 In response, the plaintiffs raised a concern that we
6 were trying to limit or objecting to Dr. Carter's testimony
7 that he thinks that his figures that he has testified to in the
8 previous trials is conservative, and we are not objecting to
9 the admissibility of the testimony about his claimed
10 conservative nature of his damages similar to what he has given
11 in the prior trials. Of course, we disagree with that
12 conclusion, but we're not objecting to its admissibility, but
13 what we are objecting to is references to these others ways of
14 calculating damages and any suggestion that the damages should
15 be calculated according to those other more aggressive methods.

16 MR. SAPP: Your Honor, I think the plaintiffs have
17 no intention of providing the actual numbers from the two
18 alternative calculations. We aren't going to quantify that the
19 damage should be higher, but the issues with the motion that
20 the defendants represented, it's vague for us in presenting our
21 case on what exactly it is that they want to exclude. We don't
22 plan on providing any specific numbers, but we have in all the
23 trials both before and after the supplemental report discussed
24 the specific ways in which Dr. Carter's analysis is
25 conservative, that it is a conservative methodology, the

1 all Tuesday morning.

2 (A recess was taken.)

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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

7

District of Missouri do hereby certify that the foregoing is a

8

true and correct transcript of the proceedings had in this

9

cause as same appears from my stenotype notes made personally

10

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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