

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

IN RE: GENETICALLY MODIFIED	§	
RICE LITIGATION	§	Case No. 4:06-MD-01811-CDP
	§	
This document relates to:	§	
The Texana Rice Mill, Ltd., et al. v.	§	
Bayer Cropscience, L.P., et al.	§	
Case No. 4:07-CV-00416-CDP	§	

**MOTION TO INTERVENE OF
EAGLE LAKE RICE DRYER, INC.**

Eagle Lake Rice Dryer, Inc. (“Eagle Lake”) moves the Court for an order, pursuant to FED. R. CIV. P. 24(a), granting Eagle Lake intervention as of right in this action in order to give notice that it has been given a Turnover Order against Plaintiff Texana Rice, Inc. (“Texana”), a Co-Plaintiff in this action. In support of this Motion, Eagle Lake would respectfully show as follows:

I. Background

1. On April 14, 2011, Eagle Lake was awarded a judgment in the 329th Judicial District Court of Wharton County, Texas, against Texana for \$105,415.20, plus attorneys’ fees in the amount of \$16,730.00, taxable costs of court, and interest on the total amount at a rate of 5% per annum from the date of judgment until the judgment is paid, plus appellate fees in the event of any appeal (the “Judgment”). A true and correct copy of the Judgment is attached and incorporated as Exhibit “A.” The Judgment is final, fully enforceable, and due to Eagle Lake.

2. On June 24, 2011, the Honorable Judge Randy M. Clapp entered a Turnover Order pursuant to Section 31.002 of the Texas Civil Practice and Remedies Code. A true and

correct copy of the Turnover Order is attached as Exhibit “B.” Through the Turnover Order, Judge Clapp ordered Texana to turn over all proceeds realized from this lawsuit, whether through settlement or through a judgment obtained against and satisfied by Bayer AG, Bayer CropScience AG, or any other Defendant in such suit, and up to an amount sufficient to satisfy the Judgment and other court-ordered fees and costs, and to pay such amounts into the registry of the 329th Judicial District Court of Wharton County, Texas. Eagle Lake asks that this Court take notice of the Turnover Order and take all actions the Court deems proper and necessary to aid in the enforcement of Judge Clapp’s order.

II. Standards for Intervention

3. Under FED. R. CIV. P. 24(a)(2), upon timely application, anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action, and the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties. Notably, Rule 24 must be liberally construed in favor of applicants for intervention. *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998); *United States v. Union Elec. Co.*, 64 F.3d 1152, 1158 (8th Cir. 1995).

4. To intervene as of right under Rule 24(a)(2), an applicant must satisfy the following four requirements: (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair its ability to protect that interest; and (4) the applicant’s interest must be inadequately represented by the existing parties to the suit. *Ford v. City of Hunstville*,

242 F.3d 235, 239 (5th Cir. 2001), citing *Taylor Communications Group, Inc. v. Southwestern Bell Tel. Co.*, 172 F.3d 385, 387 (5th Cir. 1999); *Taylor v. Southwestern Bell Tel. Co.*, 251 F.3d 735, 741 (8th Cir. 2001).

5. The opinion and Order from one Court in the Northern District of Texas—Dallas Division is instructive in this case. See *Acceptance Ins. Co. v. Newport Classic Homes, Inc.*, Civ. Action No. 3:99-CV-2010-BC (N.D. Tex. May 11, 2001) (A copy of the Order is attached as Exhibit “C”). In *Acceptance*, Judge Boyle granted a third-party intervention in order to protect that party’s interest in a Turnover Order received in a state court action. *Id.* Based on the Turnover Order, the Court found that the third party’s interest in the federal case was such that it would necessarily be impaired unless they were allowed to intervene. *Acceptance Ins. Co. v. Newport Classic Homes, Inc.*, Civ. Action No. 3:99-CV-2010-BC, 2001 WL 1478791, *1 (N.D. Tex. Nov. 19, 2001).

A. Eagle Lake has Timely Sought This Intervention

6. Courts consider several factors to determine whether an application is timely. These include the stage of the proceedings at the time of the intervention; whether there will be prejudice to the existing parties from applicant’s timing in seeking to intervene; the prejudice a would-be intervenor would suffer if not allowed to intervene; and any reason for the timing. See *Engra Inc. v. Gabel*, 958 F.2d 643, 644 (5th Cir. 1992). Eagle Lake filed its motion at the earliest practicable time after it was awarded the Turnover Order from Judge Clapp on June 24, 2011, and it became apparent that Eagle Lake would have to act to protect its interest in the Turnover Order relating to the proceedings before this Court. Since June, Eagle Lake has attempted to work with Texana in order to come to terms with the Judgment obtained by Eagle Lake. To date, however, Eagle Lake has been unsuccessful in obtaining

an agreement. Eagle Lake does not intend to delay the proceedings already before this Court but, rather, wants to be protected in the event a settlement or a judgment is entered in favor of Texana. Moreover, this intervention is necessary in order to protect Eagle Lake's interest in the Judgment and Eagle Lake would be "substantially prejudiced if they are not allowed to intervene as they have a significant interest in this case." (See Exhibit "C," at p. 4).

B. Eagle Lake Has an Interest Relating to the Property in the Underlying Action

7. As recognized by the Court in *Acceptance*, the second requirement for intervention of right is that the applicant must have an interest relating to the property or transaction that is the subject of the underlying action. "This interest must be 'direct, substantial, [and] legally protectable.'" *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994) (quoting *Piambino v. Bailey*, 610 F.2d 1306, 1321 (5th Cir.), cert. denied, 449 U.S. 1011 (1980)); *U.S. v. Union Elec. Co.*, 64 F.3d 1152, 1161 (8th Cir. 1995). The Court in *Acceptance* looked to the Turnover Order's language which expressly gave the applicant an interest in the underlying case and found, "The Turnover Order clearly gives the [third party] a direct, substantial and legally protectable interest in this action." (See Exhibit "C," at p. 5). Likewise, the Turnover Order before this Court provides:

IT IS THEREFORE ORDERED that TEXANA RICE, INC. turn over the proceeds realized from the suit styled *Texana Rice Mill, Ltd. and Texana Rice, Inc. vs. Bayer CropScience LP, et al.*, Case #3:06-cv-00725, In the United States District Court, Southern District of Texas (Galveston Division) transferred to, *In Re Genetically Modified Rice Litigation*; Case # 4:06 MDL 1811 CDP; In the United States District Court, Eastern District of Missouri; (*Texana Rice Mill, Ltd. et al. vs. Bayer CropScience LP et al.*; Case # 4:07 CV 416 CDP), whether through settlement or through judgment obtained against and satisfied by Bayer AG, Bayer CropScience AG or any other Defendant in such suit, and up to an amount sufficient to satisfy

the Judgment and other court-ordered fees and costs, and pay such amounts into the registry of this Court.

(See Exhibit "B"). Because the Turnover Order grants Eagle Lake an interest in the underlying case, Eagle Lake is entitled to intervene.

C. The Disposition of this Case Will Impair Eagle Lake's Ability to Protect Its Interest and Eagle Lake's Interests Are Not Adequately Protected by Texana.

8. Upon information and belief, Texana's sole remaining asset is its stake in the underlying case. Eagle Lake must intervene in this suit in order to protect its interest and right to recovery of the Judgment entered by Judge Clapp on April 14, 2011. Eagle Lake cannot rely on Texana to protect its interest in that Judgment from the recovery Texana receives in this case. Should Texana recover monies from the Bayer defendants, there is nothing guaranteeing Texana's satisfaction of the Judgment from the 329th Judicial District Court of Wharton County, Texas. Thus, every element required under Rule 24 to entitle Eagle Lake to intervention has been met here.

III. Conclusion and Prayer

9. For these reasons, Eagle Lake Rice Dryer, Inc. moves the Court for an order granting Eagle Lake's intervention as of right in this action in order to give notice that it has been given a Turnover Order against Plaintiff Texana Rice, Inc. ("Texana"), a Co-Plaintiff in this action. Eagle Lake seeks all other relief to which it is justly entitled.

Respectfully submitted,

Doyle, Restrepo, Harvin & Robbins, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2011, a true and accurate copy of the foregoing document has been delivered to all counsel of record via the Court's electronic delivery system. Copies have also been delivered via facsimile to the following:

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