

2006 crop growing in the field, and I was very concerned because we was right at the time of harvesting of the 2006 crop, and so not only was we worried about could we sell that rice, but what was we going to do with the rice that we had in storage, and what were we going to do with the rice that we had to gather that 2006 season.

Q. How did you anticipate not being able to sell that rice would affect your family farming operation?

A. Like I said, we had quite a bit of debt, and if we can't sell our rice, we sure don't have the money to pay off what we owe. I was very much concerned, and I thought this possibly will even break our family and what I worked for for [sic] the last 35 years, I could lose it all right here.

Ex. A, First Bellwether Trial Tr. vol. 11A, 19:20-20:11, Nov. 17, 2009.

In the Second and Third Bellwether trials, the Bayer Defendants filed a motion in limine to exclude such testimony and any claims for emotional damages. *See* Bayer Defendants' Motion in Limine to Preclude Claims by Plaintiffs for Emotional Damages and to Exclude Evidence and Argument Regarding Emotional Distress, D.E. 2107, Dec. 18, 2009 and D.E. 2955, June 2, 2010. The Court twice granted this motion, holding that plaintiffs failed to plead this category of special damages under Federal Rule of Civil Procedure 9(g) and that plaintiffs should avoid overplaying their emotions. *See* Mem. & Order, D.E. 2260, Jan. 8, 2010 at 3-4 ("Jan. 8, 2010 Mem. & Order").¹ Absent a timely amendment to the complaint, the Court held that "it would be unfairly prejudicial to allow plaintiffs to submit a claim for emotional distress damages at this late date." *Id*; *see also* Ex. B, Third Pretrial Conf. Tr. 10:16-20, June 16, 2010.

This ruling was correct and applies for the upcoming trial, which—like the Second Bellwether trial where the Court granted Bayer's motion—is also being tried under Mississippi

¹ At the Fourth Bellwether Trial, the Court denied a similar motion made by Bayer, noting the peculiarities of Texas law governing that case: "This is different from my ruling in the prior case, and having reviewed the Texas law, and in particular the nuisance and the negligence things, I believe that it is appropriate, and I believe there was notice of this." Ex. C, Fourth Pretrial Conf. Tr. 63:4-10, Oct. 7, 2010. Mississippi law applies in this case, as it did in the Second Bellwether Trial, in which the Court excluded emotional damages evidence.

law. The same complaint and scheduling order for pleadings applies, and the Court's ruling should be dispositive of this motion. Furthermore, even if Plaintiffs had pleaded entitlement to emotional damages and the Court's prior ruling did not govern this trial, this motion should be granted because Mississippi law does not allow emotional distress damages for the basic negligence claim Plaintiffs assert. Finally, because emotional distress damages may not be pursued by Plaintiffs, any testimony regarding mental suffering is inadmissible as irrelevant and unduly prejudicial.

ARGUMENT

I. Plaintiffs Cannot Seek Emotional Damages Because They Failed To Plead Entitlement To Them

Rule 9(g) mandates that “[i]f an item of special damage is claimed, it must be specifically stated.” Fed R. Civ. P. 9(g). Rule 9(g) provides an independent ground for precluding plaintiffs from seeking emotional distress damages. “Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant’s conduct, and typically stem from and depend upon the particular circumstances of the case.” 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1310 (3d ed. 2004); see Miss. R. Civ. P. 9(g) (“When items of special damage are claimed, they shall be specifically stated.”). “[A] failure to plead with the requisite specificity . . . bars recovery for the items of special damage that are not set forth in the pleading” Wright & Miller, § 1312

“Emotional distress damages” are not the necessary or usual consequence of negligence, but “are a form of special damages which must be pled with specificity.” *Goods v. Horace Mann Life Ins. Co.*, No. 5:05cv169-DCB-JMR, 2006 WL 2474001, at *3 (S.D. Miss. Aug. 25, 2006) (citing Fed. R. Civ. P. 9(g)); see *United States v. Fresenius Med. Care N. Am.*, No. EP-07-CV-247-PRM, 2008 WL 4277150, at *9 n.10 (W.D. Tex. Sept. 2, 2008) (denying defendant’s

motion to dismiss plaintiff's claims because plaintiff properly "requested specific special damages, *i.e.*, emotional distress damages" under Federal Rule of Civil Procedure 9(g); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 765 (1985) (citing emotional distress as an example of special damages); *Smith v. DeBartoli*, 769 F.2d 451, 453 n.2 (7th Cir. 1985) (stating that injuries such as emotional distress are recovered only as special damages that must be alleged in the complaint to be recovered) (citations omitted).

Under Federal Rule of Civil Procedure 8(a), moreover, plaintiffs must plead all "claim[s] for relief[,] . . . [providing] . . . a demand for the relief sought." Fed. R. Civ. P. 8(a). At a minimum, this standard requires a well pleaded complaint to "put the defendant on notice as to the nature" of both the claim and requested relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 574 (2007). These standards mandate that courts preclude claims at trial for mental anguish damages when litigants have failed to properly plead entitlement to them. *See, e.g., Wood v. Old Sec. Life Ins. Co.*, 643 F.2d 1209, 1218 (5th Cir. 1981) (holding that a "claim for mental anguish damages properly was rejected by the trial court because it was not raised in either the pleadings or the pretrial order"); *see also Doss v. Morris*, 86 F. App'x 25, 28 (5th Cir. 2004) (holding that a plaintiff did not adequately plead a claim for intentional infliction of emotional distress when the plaintiff "did not claim to have suffered emotional distress of any kind in his pleadings"); *Barrow v. Greenville Indep. Sch. Dist.*, No. Civ.A.3:00CV0913-D, 2005 WL 39086, at *8 (N.D. Tex. Jan. 7, 2005) (noting that the plaintiff's complaint was devoid of facts sufficient to put the defendant on notice under Rule 8 that plaintiffs sought mental anguish damages), *aff'd*, No. 06-10123, 2007 WL 3085028 (5th Cir. Oct. 23, 2007); *Hardge-Harris v. Pleban*, 741 F. Supp. 764, 766 (E.D. Mo. 1990) (Gunn, J.) (citation omitted) (dismissing claims alleging negligent infliction of emotional distress when plaintiffs "failed to plead" a required element "that the emotional

distress was medically diagnosable or significant”). Plaintiffs in this case did not even *request* emotional distress damages in their complaint, let alone allege the requisite factual predicates.

Plaintiffs should also be precluded from seeking emotional distress damages because the Bayer Defendants did not have an opportunity to take discovery concerning such claims. Allowing plaintiffs to seek emotional damages at this stage would effectively grant plaintiffs leave to amend their pleadings on the eve of trial and would certainly cause “undue prejudice” to the Bayer Defendants. *Foman v. Davis*, 371 U.S. 178, 182 (1962). This Court should thus make clear again that no mental distress damages may be pursued.

II. Plaintiffs May Not Seek Damages For Mental Distress Under Mississippi Law

Under Mississippi law, plaintiffs are barred from seeking mental distress damages under a negligence cause of action. *See Am. Bankers’ Ins. Co. of Florida. v. Wells*, 819 So.2d 1196, 1209 (Miss. 2001) (“A plaintiff therefore may not recover emotional distress damages resulting from ordinary negligence, without proving some sort of physical manifestation of injury or demonstrable physical harm.”). Mississippi does recognize the “*separate tort*” of outrage (otherwise known as intentional infliction of emotional distress), but allows claims for mental distress damages only in well-defined circumstances. *Donald v. Amoco Prod. Co.*, 735 So.2d 161, 178 (Miss. 1999) (emphasis added). Plaintiffs, however, have failed to plead the tort of outrage or otherwise allege entitlement to emotional distress damages, and they are thereby precluded from raising such a claim at this stage.

Accordingly, plaintiffs should not be permitted to pursue such damages in this trial.

III. Testimony of Plaintiffs’ Emotional Distress Should Be Excluded Because It Would Be Irrelevant and Unfairly Prejudicial

Because plaintiffs may not claim emotional damages, they should also be precluded from testifying to their mental suffering. First, plaintiffs’ mental states are not even remotely relevant

to any issue in dispute and therefore must be excluded under Federal Rules of Evidence 401 and 402. The elements of plaintiffs' negligence claims depend solely on the reasonableness of the Bayer Defendants' actions and plaintiffs' injuries that proximately flow from them. *See Thomas v. Columbia Group, LLC*, 969 So.2d 849, 852 (Miss. 2007) ("The traditional elements of negligence are duty or standard of care, breach of that duty, proximate causation, and damages or injury."). Plaintiffs' nuisance claims, similarly, turn on the Bayer Defendants' use of their land and the plaintiffs' sustained injuries. *See Comet Delta, Inc. v. Pate Stevedore Co. of Pascagoula, Inc.*, 521 So.2d 857, 859-60 (Miss. 1988). Absent a claim for mental distress damages, testimony of emotional suffering is not relevant to any of these issues. *See, e.g., Perkins v. Funny Bone Comedy Club of Omaha, Inc.*, No. 8:06CV44, 2007 WL 1557127, at *1-2 (D. Neb. May 24, 2007) (holding that a claim of emotional distress "may have some relevance" only to the issues of front pay and mitigation of damages in a discrimination suit and not allowing presentation to the jury unless the defendant argued failure to mitigate); *Taylor v. Home Ins. Co.*, 777 F.2d 849, 859 (4th Cir. 1985) (reversing trial verdict on damages because "[w]hether the employer's action causes the employee emotional distress is not relevant to the issue of willfulness"); *Buscemi v. Pepsico, Inc.*, 736 F. Supp. 1267, 1272 (S.D.N.Y. 1990) (bifurcating trial because evidence of emotional distress was irrelevant to ADEA cause of action).

Furthermore, even if testimony of plaintiffs' emotional reactions to the injuries they allegedly sustained had some minute probative value, the evidence would be independently inadmissible under Rule 403 because that value would be "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Fed. R. Evid. 403. "[E]vidence of harm to a plaintiff, regardless of the cause, may result in sympathetic jurors more concerned with compensating plaintiff for his injury than whether or not defendant is at fault,"

and there is moreover a special danger of the “potential for evidence of plaintiff’s emotional distress to prejudice the jury.” *Buscemi*, 736 F. Supp. at 1272; *see also Falk v. Kimberly Servs., Inc.*, No. 92 C 1079, 1997 WL 201568, at *2 (N.D. Ill. Apr. 16, 1997) (“The parties agree that Plaintiff is neither seeking nor entitled to emotional distress damages. Accordingly, testimony by Enola Falk as to Plaintiff’s ‘emotional duress’ is not relevant, and, moreover, any probative value is substantially outweighed by the dangers of unfair prejudice and misleading the jury.”). Plaintiffs should not be allowed to pander to the jury’s sympathies and divert attention from the real issues in the case by testifying to their emotional distress.

CONCLUSION

For the above reasons, the Bayer Defendants respectfully request that this Court grant their motion *in limine* to preclude claims for emotional distress damages and to exclude all testimony relating to mental anguish.

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 XIA
Morning Session

November 17, 2009

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

1 Q. After you saw the market drop on that Monday after the
2 August 18th announcement, did you make some calls to try to
3 determine whether you would be able to sell your rice to the
4 people and the companies who normally purchased the rice?

5 A. Yes.

6 Q. Can you tell the jury about those calls?

7 A. When I called, I asked them, I said, you know, I said,
8 "What's happening? What kind of price can I get out of my
9 crop?" And they said, "Kenneth, you don't have no market." I
10 said, "You don't have no --" excuse me.

11 THE COURT: Members of the jury, we're going to take
12 a short recess. We'll be in recess about ten minutes. Please
13 remember the instructions I've given you previously about your
14 conduct during recesses.

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

16 THE COURT: So Mr. Bell, I'm assuming after all
17 this, after the length of time this case has taken and all the
18 things that have gone up to it, and sitting here two weeks,
19 you're pretty emotional about this. I'm going to take a short
20 break so you can try to get yourself together. I have a
21 feeling this is not your normal demeanor, but I understand it.
22 I want you to take a couple minutes and talk to Mr. Downing.
23 People are nervous all the time testifying here. Court will be
24 in recess.

25 (A recess was taken.)

1 THE COURT: You may be seated. You may proceed.

2 Q. (By Mr. Downing) Mr. Bell, before the break, you were
3 giving some testimony about calling around to purchasers of
4 your rice, who purchased your rice in the past right after the
5 August 18th announcement and trying to determine whether they
6 could purchase your rice at that time. What did you learn?

7 A. Well, I learned that we didn't have no market, and by
8 talking to different ones, I asked them, well, when or what,
9 when do you think we'll have it? Well, nobody knew. A few
10 weeks after that, you know, as time passed, and it was pretty
11 tough, tough on our family emotionally. The whole thing, I'm
12 trying to say, it was a traumatic experience.

13 Q. Mr. Bell, in your 25 years, 25 or 35 years of farming -- I
14 believe you said 25 in rice farming and 35 all along, is that
15 right?

16 A. Yes, sir.

17 Q. In all those years, has anything this bad ever happened to
18 your farming operation?

19 A. Never to us.

20 Q. Now when you heard that you were not able to sell your rice
21 at that time, what concerns did that raise in your mind?

22 A. Well, like I said before, I had quite a bit of rice stored
23 in the bins, and I had, like I mentioned, part of the 2004 and
24 '05 crop, and also I had the 2006 crop growing in the field,
25 and I was very concerned because we was right at the time of

1 harvesting of the 2006 crop, and so not only was we worried
2 about could we sell that rice, but what was we going to do with
3 the rice that we had in storage, and what were we going to do
4 with the rice that we had to gather that 2006 season.

5 Q. How did you anticipate not being able to sell that rice
6 would affect your family farming operation?

7 A. Like I said, we had quite a bit of debt, and if we can't
8 sell our rice, we sure don't have the money to pay off what we
9 owe. I was very much concerned, and I thought this possibly
10 will even break our family and what I worked for for the last
11 35 years, I could lose it all right here.

12 Q. Now, Mr. Bell, at some point later --

13 A. Yes.

14 Q. -- fortunately, you were able to sell your rice, were you
15 not?

16 A. Yes, I was.

17 Q. But when you were first advised that you could sell it,
18 were you asked to sign a certificate of any kind before they
19 would purchase it?

20 A. Yes. We sell -- you know like I say, we grow a lot of
21 rice, and we try to sell on barge lots, and to the different
22 buyers that I sell to, they asked me, said, "Kenneth," said,
23 "what you'll have to do if we buy, you'll have to sign a
24 certificate whereby stating that this is GMO free." Well,
25 about this time, we were already aware about the Cheniere, you

1 know, being contaminated, and so I know that we co-mingle
2 everything when we harvest it, it all goes in a bin, and we
3 don't know whether it's Cheniere variety or whatever variety,
4 but we put it in the tanks, what I'm talking about, the grain
5 tanks, and it's more or less co-mingled together, and I told
6 them, and I said, "I can't sign that because I can't guarantee
7 that it's not GMO because I planted the Cheniere variety rice
8 on some of our land."

9 Q. But ultimately, you were able to sell your rice?

10 A. Yes, after that, they said, "Well, we'll try to find a
11 market," and I think we found some markets within the states,
12 and even possibly Mexico was one of the first ones that started
13 buying some GMO rice.

14 Q. Did the fact that you were able to ultimately sell your
15 rice mean that you didn't suffer any losses as a result of this
16 contamination?

17 A. No, sir.

18 Q. Let's get to some of those losses right now. Mr. Bell, at
19 some point, did you become aware that two different rice
20 varieties, Cheniere and CL 131, had been found to be
21 contaminated and were banned for planting?

22 A. Yes, sir.

23 Q. Had you planted either of those varieties in 2006?

24 A. Yes, we had. We planted both Cheniere and CL 131.

25 Q. Over how many acres did you plant it?

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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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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 myself -- that we would either say this is all cases or we
2 would say this applies to a single case or a group of cases.
3 But if you say it's all cases and then you say it relates to a
4 single case, there is an ambiguity; right?

5 MR. CHANEY: I believe that is at the heart of the
6 problem.

7 THE COURT: Okay.

8 MR. CHANEY: And like said, there are some specific
9 instances in some of the deposition designations that will be
10 argued over with respect to the Louisiana Bellwether, and I'm
11 not intending to predetermine that argument, and, in fact,
12 talked to Mr. Downing, and there may be discussions among the
13 parties that may on an immediate basis resolve part of the
14 issue. But my concern in noting this item on the status
15 report now is on a go-forward basis.

16 THE COURT: Okay. So is there any problem on a
17 going-forward basis that there can be some procedure for
18 either objecting to the "all cases" designation or clarifying
19 or somehow seeking clarification as to what is intended?

20 MR. FERGUSON: Well, as to an objection procedure, of
21 course not. I think that that is a reasonable approach. As
22 to a requirement of pre-designation of expected testimony that
23 may be relevant, I think that is a little difficult to do
24 because you don't know for sure what subjects may come up,
25 and, you know, I think in many cases, the things that have

1 come up that turn out to be relevant to the producer cases are
2 things that in large part relate to what is going on in the
3 marketplace. You know, when we started the first case, we had
4 kind of this future damages issue, and now we have gotten some
5 further actual factual observation, and a lot of the people
6 who are non-producers are in the markets that are being
7 discussed, and so that is why they become relevant, but it is
8 not always clear that that is the case. So what we have done
9 in those is to designate them as in "all cases" and for the
10 most part without objection. But if there is --

11 THE COURT: Well, do you designate them in all cases
12 and also in an individual case?

13 MR. FERGUSON: What we do is just simply to say "in
14 all cases." There have been a few that have not been
15 designated for all cases and have been designated only for
16 individual cases.

17 THE COURT: Okay.

18 MR. FERGUSON: But generally speaking when we think
19 there may be a possibility that evidence may come in for the
20 producer cases, we have designated "all cases". If there is a
21 sensible kind of quick resolution way to deal with the
22 objection process, I think that is very sensible.

23 THE COURT: So what do you propose? Tell me what it
24 should be.

25 MR. CHANEY: Well, part of it is governed by -- if

1 the parties have been discussing a deposition for weeks and
2 then just on the eve of deposition issue the notice, time
3 frames get real compressed. I would propose that there be a
4 three business day allowance to object to an "all cases"
5 designation unless the deposition is occurring much shorter
6 than that and have a shorter emergency objection time in those
7 instances. The problem comes with then how do we obtain a
8 resolution of the objection, and I'm at a loss to -- other
9 than conferring with counsel and sometimes we work it out and
10 sometimes we can't, and when we reach an impasse, the
11 procedure that would apply would be to involve the Court.

12 THE COURT: Okay. Well, I think what you need to do
13 is instead of my setting up a procedure, you all should
14 discuss it -- you know, you should talk to each other if this
15 comes up, and when it comes up, and I am not going to set a
16 deadline or a specific procedure, but I would expect you to
17 call each other and say I have got a problem. If you have
18 trouble getting through, then you should write a letter
19 objecting, and then if you have a dispute over it and the
20 deposition is getting ready to begin, then you can contact me
21 and see if I'm available by telephone to resolve the issue
22 because I think it's something that it is hard to set up a
23 procedure as you say that would really work and not be adding
24 sort of form over substance.

25 MR. CHANEY: That is precisely my concern.

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 C

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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 MS. GARRISON: If I could respond, Mr. York will
2 talk about the temporary versus permanent nuisance because he's
3 the Texas expert, but as to the latter point that Mr. Jameson
4 just raised, I think that, you know, Texas law doesn't have a
5 cause of action for negligent infliction of mental distress,
6 but it is abundantly clear in the case law that mental distress
7 damages is a category of general damages, and not under the --
8 not, well, not as restrained or constrained as Mr. Jameson just
9 read. There is one case that we cite in our brief --

10 THE COURT: That's okay. Mr. York, let me hear
11 about this temporary verses, tell me why Texas law doesn't say
12 what he said it said.

13 MR. YORK: In the Schneider case, and he actually
14 does point it out, and I believe we cited it also in our
15 objections to their proposed jury instructions on the types of
16 damages recoverable for the nuisance claims, that when the
17 plaintiff seeks damages for a permanent nuisance, in that
18 situation only you must show physical manifestation of the
19 emotional harm, but when you're seeking only a temporary, or
20 damages for a temporary nuisance, which is all we're doing
21 here, you're not required to have the physical manifestation,
22 and also just to make clear, and I think if Ms. Garrison
23 answered this correctly, it is for emotional harm under Texas
24 law for a nuisance, private nuisance claim, you do not have to
25 show the idea of mental anguish that is a higher standard under

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 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.

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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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