

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

_____))
IN RE GENETICALLY MODIFIED RICE) **4:06 MD 1811 CDP**
LITIGATION) **ALL CASES**
_____))

and

**IN THE CIRCUIT COURT OF ASHLEY COUNTY, ARKANSAS
CIVIL DIVISION**

**BAYOU GRAIN AND CHEMICAL CORPORATION,
A LOUISIANA PARTNERSHIP, DOMICILED
IN PARKDALE, ASHLEY COUNTY, ARKANSAS**
Plaintiff

vs.

Case No. CV10-92-3

BAYER CROPSCIENCE, LP, et al.
Defendants

and

**IN THE CIRCUIT COURT OF ASHLEY COUNTY, ARKANSAS
CIVIL DIVISION**

DAVID DENNIS, et al.
Plaintiffs

vs.

Case No. CV10-91-3

BAYER CROPSCIENCE, LP, et al.
Defendants

and

**IN THE CIRCUIT COURT OF STUTTGART COUNTY, ARKANSAS
NORTHERN DISTRICT
(CIVIL DIVISION)**

**HOLLY RIDGE RICE & GRAIN TERMINAL,
A LOUISIANA PARTNERSHIP, DOMICILED
IN RICHLAND PARISH, LOUISIANA**
Plaintiff

vs.

Case No. CV-2010-68

BAYER CROPSCIENCE, LP, et al.
Defendants

and

IN THE CIRCUIT COURT OF DUNKLIN COUNTY, MISSOURI
DIVISION I

CHARLES R. HAYNES, BRENDA HAYNES,
JOE HAYNES, MARY HAYNES,
HAYNES FARM PARTNERSHIP,
WESLEY DAVIS, JOE DAVIS,
DAVIS BROTHERS FARMS,
ROBERT DAVIS, PENNY DAVIS,
BIG LAKE FARMS, WT MOODY, LLC,
TRADE DISTRIBUTION, INC.,
COMMONWEALTH LLC, NELSON AG,
JERRY JONES, CHRIS JONES, STEVE REID,
PAMALA REID, REID FARMS,
and ROSELAND FARMS, INC.

Plaintiffs,

vs.

Case No. 10DU-CC00129

BAYER CROPSCIENCE, LP, et al.
Defendants.

PLAINTIFFS' NOTICE TO TAKE VIDEOTAPE DEPOSITION OF
DEFENDANT BAYER CROPSCIENCE LP'S
CORPORATE REPRESENTATIVE AND SUBPOENA DUCES TECUM

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, and Missouri and Arkansas Rules of Civil Procedure, plaintiffs in the above-styled cause will take the videotaped deposition of the corporate representative of **Bayer CropScience LP** on 1st day of **February, 2011** commencing at **8:00 a.m.**, to be held at the law offices of **Bartlit Beck Herman Palenchar & Scott, LLP, 1899 Wynkoop**

Street, 8th Floor, Denver, Colorado 80202. The deposition will be taken pursuant to, and for all purposes allowed by the Federal, Missouri and Arkansas Rules of Civil Procedure, including perpetuation at trial, before an officer duly authorized to take depositions and swear witnesses.

The deponent is requested to bring with him to the deposition the items listed on Exhibit A to this Notice.

The following describes the subject matter on which examination is requested with reasonable particularity:

I. DEFINITIONS

1. “Active File” means any electronic data file that can be used by an electronic data processing system in any manner without modification or reconstruction. An Active File is any electronic data file that has not been deleted or otherwise destroyed and/or damaged and which is readily visible to the operating system and/or the software with which it was created.

2. “Bayer AG” means Defendant Bayer AG and shall include its affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents, representatives, as well as its predecessors in interest or name.

3. “Bayer BioScience NV” means Defendant Bayer BioScience NV and shall include its affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents, representatives, as well as its predecessors in interest or name.

4. “Bayer Corporation” means Defendant Bayer Corporation and shall include its affiliated corporations, parents, subsidiaries, divisions, subdivisions,

managers, directors, officers, employees, agents, representatives, as well as its predecessors in interest or name.

5. “Bayer CropScience AG” means Defendant Bayer CropScience AG and shall include its affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents, representatives, as well as its predecessors in interest or name.

6. “Bayer CropScience GmbH” and “BCS GmbH” mean Defendant Bayer CropScience GmbH and shall include its affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents, representatives, as well as its predecessors in interest or name.

7. “Bayer CropScience Holding, Inc.” means Defendant Bayer CropScience Holding, Inc. and shall include its affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents, representatives, as well as its predecessors in interest or name.

8. “Bayer CropScience, Inc.” means Bayer CropScience, Inc. and shall include its affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents, representatives, as well as its predecessors in interest or name.

9. “StarLink Logistics, Inc.” means the company formerly known as Aventis CropScience USA Holding, Inc. and now known as StarLink Logistics, Inc. and any of its affiliated corporations, parents, subsidiaries, divisions, subdivisions, officers, directors, managers, employees, agents, or representatives.

10. “Domestic Defendants” means any one or more of the following companies: Bayer CropScience, LP; Bayer CropScience, Inc.; Bayer CropScience Holding, Inc.; Bayer CropScience, LLC; Bayer Corporation and StarLink Logistics, Inc., as well as their respective affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents, representatives as well as their predecessors in interest or name.

11. “Defendants” means, individually and collectively, Bayer AG, Bayer CropScience AG, Bayer CropScience GmbH, Bayer CropScience Inc., Bayer BioScience NV, Bayer CropScience LP, Bayer CropScience Holding, Inc., Bayer CropScience, LLC, Bayer Corporation, and StarLink Logistics, Inc. and includes their respective affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors, officers, employees, agents and representatives as well as their respective predecessors in interest or name.

12. “Communication(s)” mean(s) the transmission, sending, or receipt of information of any kind (in the form of facts, ideas, inquiries, or otherwise), by or through any means including, but not limited to, speech, writings, language (machine, foreign or otherwise), computer electronics of any kind (including, but not limited to, e-mail or instant messaging), magnetic tape, videotape, photographs, graphs, symbols, signs, magnetic or optical disks, floppy disks, compact discs, CD-ROM discs, other removable or transportable media, sound, radio, or video signals, telecommunication, telephone, teletype, facsimile, telegram, microfilm, microfiche, photographic film of all type, or other media of any kind.

13. “Concerning” shall mean relating to or otherwise logically or factually connected with the subject matter of the inquiry or request.

14. “Custodian” means a person who has custody of information or a document prior to collection for production.

15. “Document(s)” is synonymous and equal in scope to usage of this term in Fed. R. Civ. P. 34(a) and to the terms “[w]ritings and recordings,” “photographs,” “original” and “duplicate” defined in Fed. R. Evid. 1001. Document means the original (or an identical duplicate if the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any medium upon which intelligence or information can be recorded or retrieved – including, but not limited to, documents fixed in tangible media or electronically or digitally stored on disk or tape in a native format. This includes, without limitation, all Electronic Data, Active Files, and Communications. “Document(s)” further includes the original and each non-identical copy of any book, pamphlet, periodical, letter, memorandum, diary, calendar, telex, electronic mail message, instant message, telegram, cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, record, drawing, sketch, graph, index, list, tape, stenographic recording, tape recording, photograph, microfilm, invoice, bill, order form, receipt, financial statement, accounting entry sheet or data processing card, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced, reproduced, or stored, which is in Your possession, custody, or control.

16. “Electronic Data” means the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description whether inscribed by mechanical, facsimile, electronic, magnetic, digital, or other means. Electronic Data includes, by way of example only, computer programs (whether private, commercial, or work-in-progress), programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, instant messaging, operating systems, source code of all types, peripheral drivers, batch files, ASCII files, and any and all miscellaneous files or file fragments, regardless of the media on which they reside and regardless of whether such Electronic Data consists in an Active File, Deleted File, or file fragment. Electronic Data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROMs, DVDs, removable media such as Zip disks, Snap servers, Jaz cartridges, and their equivalent, magnetic tapes of all types, microfiche, punched cards, punched tape, computer chips, on or in any other vehicle for digital data storage or transmittal. The term electronic data also includes the file, folder tabs or containers and labels appended to, or associated with, any physical storage device associated with each original or copy thereof.

17. “Employee(s)” means any person who acted or purported to act on behalf of another person or persons, including, but not limited to, all past and present directors,

officers, executives, agents, representatives, attorneys, accountants, independent contractors, advisors, and consultants of such other person or persons.

18. “Person” means any natural person acting in any capacity or any entity or organization, including divisions, departments, and other units therein, and including, but not limited to, a public or private corporation, partnership, association, joint venture, committee, proprietorship, trust, estate, or any government or governmental body, including, but not limited to, any commission, board, bureau, or agency.

19. “You,” “Your” and “BCS AG” refer to Bayer CropScience AG, as defined above.

20. “Glufosinate” refers to “glufosinate-ammonium”, the active ingredient in Liberty Herbicide.

21. “Glufosinate-ammonium” is the active ingredient in Liberty Herbicide and several other Bayer herbicides, including Basta.

II. AREAS OF TESTIMONY

Pursuant to Federal, Missouri and Arkansas Rules of Civil Procedure, Plaintiffs request that Bayer CropScience LP designate one or more persons most knowledgeable with respect to the matters listed below.

1. Defendants’ knowledge of bills or laws proposed or enacted by the European Union Parliament that concern the topic of whether Liberty Herbicide or its active ingredient “glufosinate” will be renewed for use after its current status expires.
2. Defendants’ knowledge of European Union Parliament’s debate surrounding whether Liberty Herbicide or its active ingredient “glufosinate” is either safe or unsafe and/or toxic and all laws, rulings or regulations proposed or passed

- regarding the safety of Liberty Herbicide or its active ingredient “glufosinate”.
3. Defendants’ knowledge regarding internal briefings of Defendants’ employees regarding any findings of the Swedish Chemical Agency and/or any laws proposed or enacted by the European Union Parliament regarding or effecting Liberty Herbicide and/or its active ingredient “glufosinate”.
 4. Any and all documents that Defendants have created or possess regarding (a) the safety of Liberty Herbicide or; (b) the Swedish Chemical Agency rulings or findings on the safety of Liberty Herbicide or “glufosinate”; (c) the European Union Parliament rulings or proposed or enacted laws, or regulations concerning the renewal of Liberty or “glufosinate” in the European Union. (If any claim of privilege is alleged, please provide privilege log.)
 5. Defendants’ knowledge regarding any and all test results or findings by the Swedish Chemical Agency regarding the active ingredient in Liberty Herbicide “glufosinate” or glufosinate ammonium.
 6. Defendants’ knowledge regarding laws that were enacted or rulings by the European Parliament regarding Liberty Herbicide or its active ingredient glufosinate ammonium that were in part based upon the findings by the Swedish Chemical Agency.
 7. Any and all public or private positions that Defendants have taken with respect to Liberty Herbicide or “glufosinate” use in the European Union.
 8. Defendants’ communications with any government agency, commission or any other individuals and/or entities in Europe relating to Liberty Herbicide or “glufosinate”, including but not limited to the European Parliament, European

Union members, European Union Governments, Environment Ministers, Environmental Counsel, The Food and Safety Authority or any other entity in Europe regarding “glufosinate”.

9. Defendants understanding of the ruling on the status of renewal, and/or current ban and/or limitation of use of Liberty Herbicide or “glufosinate” in the European Union or consequences regarding the lack of renewal in 2017.
10. Any and all documents provided to any government agency and/or commission and/or parliament and/or any other entity in Europe regarding Liberty Herbicide or “glufosinate”, including but not limited to the European Parliament, European Union members, European Union Governments, Environment Ministers, Environmental Counsel, The Food and Safety Authority or any other entity in the European Union.
11. Defendants’ understanding of the proposed ban or ineligibility for renewal of certain herbicides suggested by the Swedish Chemicals Agency and approved by the European Parliament on January 13, 2009.
12. Defendants’ knowledge and understanding of the EU environmental ministers rejections of proposals to lift the prohibitions against genetically modified food.
13. Defendants’ knowledge and understanding regarding the European Union’s position regarding genetically modified crops.
14. Defendants’ position and understanding regarding the safety issues associated with Liberty Herbicide or “glufosinate”.
15. Defendants’ position, understanding and knowledge regarding any individual who can provide an explanation of test results by the Swedish Chemical agency.

16. Defendants' position, understanding and knowledge regarding Exhibit 1003 to the first Bellwhether case, which is attached, including the meaning of "CMR" and "(R2)".

Exhibit A

1. **Any and all communications, documents, Electronic Data and/or material that state, discuss or mention** test results or findings by the Swedish Chemical Agency regarding Liberty Herbicide or "glufosinate".
2. **Any and all communications, documents, Electronic Data and/or material that state, discuss or mention** laws that were enacted or rulings by the European Parliament on January 13, 2009 regarding the banning or ineligibility of renewal for certain herbicides.
3. **Any and all communications, documents, Electronic Data and/or material that state, discuss or mention** any and all public or private positions that Defendants have taken with respect to Liberty Herbicide or "glufosinate" use in the Europe Union.
4. **Any and all communications, documents, Electronic Data and/or material that state, discuss, concern or mention** of Liberty Herbicide or "glufosinate" with any government agency, commission or any other individuals and/or entities in Europe, including but not limited to, the European Parliament, European Union members, European Union Governments, Environment Ministers, Environmental Counsel, The Food and Safety Authority or any other entity.
5. **Any and all communications, documents, Electronic Data and/or material that**

- state, discuss concern or mention** the current status of non renewal and/or limitation of use of Liberty Herbicide or “glufosinate” in the European Union.
6. **Any and all communications, documents, Electronic Data and/or material that state, discuss, concern or mention** Defendants’ communications with any government agency, commission or any other individuals and/or entities in Europe related to Liberty Herbicide or “glufosinate”, including but not limited to the European Parliament, European Union members, European Union Governments, Environment Ministers, Environmental Counsel, The Food and Safety Authority.
 7. **Any and all communications, documents, Electronic Data and/or material** provided to any government agency and/or commission and/or parliament and/or any other entity in Europe regarding Liberty Herbicide or “glufosinate”, including but not limited to the European Parliament, European Union members, European Union Governments, Environment Ministers, Environmental Counsel, The Food and Safety Authority or any other entity in the Europe Union.
 8. **Any and all communications, documents, Electronic Data and/or material that state, discuss concern or mention** Defendants’ understanding of the bioside ban or limitation of renewal of certain herbicides proposed by the Swedish Chemicals Agency and approved by the European Parliament on January 13, 2009.
 9. **Any and all communications, documents, Electronic Data and/or material that state, discuss, concern or mention** Defendants’ knowledge and understanding of the EU environmental ministers rejections of proposals to lift the prohibitions against genetically modified food.

10. **Any and all communications, documents, Electronic Data and/or material that state, discuss concern or mention** the European Union's position regarding genetically modified crops.
11. **Any and all communications, documents, Electronic Data and/or material that state, discuss, concern or mention** Liberty Herbicide or "glufosinate" and its use in the European Union, including but not limited, to emails, interoffice memos, testimony and presentations.
12. **Any and all communications, documents, Electronic Data and/or material that state, discuss, concern or mention** the safety issues associated with Liberty Herbicide or "glufosinate".
13. **Any and all communications, documents, Electronic Data, internal documents or briefings, and/or material that state, discuss, concern or mention** to explain to Bayer employees or others the Swedish Chemical Agency findings regarding Liberty Herbicide or its active ingredient "glufosinate".
14. **Any and all communications, documents, Electronic Data, internal documents or briefings, and/or material that state, discuss, concern or mention** to explain to Bayer employees or others the meaning, effect of or response to or any other description of the legislation proposed or enacted by the EU parliament regarding the lack of renewal of certain herbicides including Liberty Herbicide or "glufosinate".
15. **Any and all communications, documents, Electronic Data and/or material that state, discuss, concern, mention or indicate** the briefings that were referred to by Bayer employee Margaret Gadsby (in the first Bellwether case) regarding a

description, the effect of, or the response to either the findings of the Swedish Chemical Agency regarding Liberty Herbicide or its active ingredient “glufosinate” or EU parliament proposed or enacted legislation based on the Swedish Chemical Agency findings regarding Liberty Herbicide or its active ingredient “glufosinate”.

Respectfully requested,

/s/ Grant L. Davis

Grant L. Davis #34799

Timothy L. Brake #23802

Shawn G. Foster #47663

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(816) 421-1600

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 3rd day of December, 2010, electronically filed a copy of the foregoing with the Clerk of the Court to be served by operation of the Court’s electronic filing system upon the parties of record.

/s/ Grant L. Davis