

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

IN RE GENETICALLY MODIFIED)	
RICE LITIGATION)	4:06 MD 1811 CDP
)	
This Document Relates to:)	
<i>Riceland Foods, Inc. v. Bayer AG, et al.,</i>)	
4:09 CV 433 CDP)	

**PLAINTIFFS’ LEADERSHIP GROUP’S RESPONSE IN OPPOSITION TO
RICELAND FOODS, INC.’S REQUEST FOR AN EXTENSION OF TIME TO
RESPOND TO THE MOTION TO ENFORCE THIS COURT’S COMMON BENEFIT
ORDER AS TO RICELAND FOODS, INC.**

Plaintiffs’ Leadership Group¹ respectfully submits this opposition to Riceland Foods, Inc.’s (“Riceland”) request for an extension of time until February 14, 2011, to respond to Plaintiffs’ Leadership Group’s Motion to Enforce This Court’s Common Benefit Order as to Riceland Foods, Inc., (Dkt. No. 3904) (“Motion to Enforce”). Plaintiffs’ Leadership Group opposes Riceland’s request for the following reasons:

1. In their pending Motion to Enforce, Plaintiffs’ Leadership Group respectfully requested that the Court adjudicate this important Common Benefit Order enforcement issue on or before the presently-scheduled, February 10, 2011 status conference in this MDL proceeding.

2. Plaintiffs’ Leadership Group did not select this schedule lightly, nor is it without purpose. Rather – and contrary to Riceland’s assertions in its extension motion – Plaintiffs’

¹All defined terms in this document have the same meaning as in the Motion to Enforce and the corresponding memorandum of law in support of the Motion to Enforce filed on January 18, 2011. (Dkt. No. 3904 and 3905, respectively)

Leadership Group may be unduly prejudiced if their Motion to Enforce is not adjudicated by that February 10th status conference date.

3. The reason for this requested schedule is to afford Plaintiffs' Leadership Group a reasonable degree of flexibility to pursue its common benefit enforcement claims against Riceland in the *Meins* action, should this Court conclude that it lacks jurisdiction over Riceland.

4. Should Plaintiffs' Leadership Group be required to commence such state court intervention practice, they would need to do so prior to the entry of a judgment in the *Meins* action. See *UHS of Arkansas, Inc. v. Sherwood*, 752 S.W.2d 36, 38 (Ark. 1988) ("The general rule is that post-judgment intervention will be allowed only upon a strong showing of entitlement by the applicant or a demonstration of unusual and compelling circumstances and the courts have shown a strong reluctance to grant intervention after a final judgment.").

5. Plaintiffs' Leadership Group's concern about judgment being entered in the *Meins* action in the near future is not without cause. Indeed, although Riceland asserts that no settlement has been reached in the *Meins* action, it is clear that negotiations are currently ongoing. Unless Riceland were to agree to provide Plaintiffs' Leadership Group sufficient advance notice of a proposed entry of judgment in the event Riceland settles its claims against Bayer, so as to enable Plaintiffs' Leadership Group to timely intervene in the *Meins* action prior to such a judgment being entered, then Plaintiffs' Leadership Group runs the real risk that Riceland will attempt to evade its Common Benefit obligations by settling its claims against the Bayer Defendants before this Court rules on the pending Motion to Enforce.

6. Correspondingly, the state court trials that have taken place to date have been materially shorter than the bellwether trials before this Court.² Riceland's upcoming state court trial, *Meins v. Bayer AG*, cv-2008-108, pending in the Circuit Court of Arkansas County, Arkansas, (the "*Meins* trial") could finish in a matter of days, as opposed to weeks. As explained in their memorandum in support of their Motion to Enforce (Dkt. No. 3905), and as discussed above, Plaintiffs' Leadership Group may be barred from intervening in the *Meins* trial to protect their interests if this Court does not exercise its continuing jurisdiction over Riceland or if this issue is not otherwise resolved prior to entry of judgment in the *Meins* trial. It is for that reason that expeditious adjudication of the pending Motion to Enforce is required.

7. Riceland's reasons for the requested extension are not compelling. Riceland argues that it is currently preparing for the *Meins* trial. However, its requested extension through February 14, 2011 – one day before the scheduled start date of the *Meins* trial – would seem to only make it more difficult for Riceland's counsel to be both ready for trial and be in a position to respond to the Motion to Enforce. The timing of Riceland's requested extension thus appears to be little more than a stalling technique, designed to further prejudice Plaintiffs' Leadership Group's ability to protect and seek enforcement of its common benefit interests.

8. Earlier today, Riceland's counsel contacted Plaintiffs' Co-Lead Counsel, Adam Levitt, to meet and confer about the requested extension. During the meet and confer, Mr. Levitt, on behalf of Plaintiffs' Leadership Group, proposed a five (5) day extension – through February 2, 2011 – for Riceland to file its opposition to the Motion to Enforce. Plaintiffs' Leadership Group would then file its reply memorandum on or before February 8, 2011, thus

² Indeed, *Sims v. Bayer CropScience, LP*, cv-2009-118-3, in Desha County, Arkansas, was tried in eight trial days.

enabling this Court's adjudication of the Motion to Enforce on or before the February 10, 2011 status hearing date. Riceland rejected this compromise proposal.

CONCLUSION

For all of the foregoing reasons, as well as for the reasons set forth in their Motion to Enforce and their Memorandum in support thereof, Plaintiffs' Leadership Group respectfully requests that this Court deny Riceland's request for an extension to file its opposition brief to the Motion to Enforce, or in the alternative, require Riceland to submit any opposition brief no later than February 2, 2011.

Dated: January 25, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 25th day of January, 2011, 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/ Adam J. Levitt