

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

_____)	
IN RE GENETICALLY MODIFIED RICE)	4:06 MD 1811 CDP
LITIGATION)	
)	TRIAL COMMENCING
)	JANUARY 18, 2011

**PLAINTIFFS' RESPONSE TO BAYER DEFENDANTS' MOTION
IN LIMINE TO EXCLUDE EVIDENCE DESCRIBING AGGREGATE
COMPENSATION PAID TO ANY EXPERT WITNESS**

Bayer seeks exclusion of any evidence regarding the amount of time or compensation received by any expert. This issue was fully briefed by the parties before the first trial. (Dkt. # 1709 and 1810). Bayer adopts by reference the arguments made in support of its prior motion on the subject. For the sake of judicial economy, Plaintiffs do the same.

Further, the Plaintiffs are aware that in this Court's prior rulings, the Court has allowed the plaintiffs to cross-examine Bayer's experts on the expert's hourly charge, but not the total amount billed to Bayer. However, the Plaintiffs would respectfully call to the Court's attention that both the Fifth Circuit and the District Courts in Mississippi allow cross-examination on **both** the hourly charges as well as the total amount billed, even on past cases. The Fifth Circuit has ruled that the information that the Plaintiff intends to cross-examine these experts on is proper. *Collins v. Wayne Corporation*, 621 F.2d 777 (5th Cir. 1980), superceded on other grounds¹. In *Collins*, the Fifth Circuit held, "cross-examination of an expert witness regarding fees earned in prior cases is not improper." *Id. at 783*. The Fifth Circuit explained its reasoning as follows:

¹ The holding of *Collins* with respect to the preservation of error and contemporary objections was superceded by the amendment of F.R.E. 103(a), which does not change the holding of impeachment by prior fees charged by the expert.

No one questions that cross-examination to show the bias of a witness or his interest in a case is entirely proper. Impeachment of witnesses through a showing of bias or interest aids the jury in its difficult task of determining facts when it is faced with contradictory assertions by witnesses on both sides of the case. A pecuniary interest in the outcome of a case may, of course, bias a witness. A showing of a pattern of compensation in past cases raises an inference of the possibility that the witness has slanted his testimony in those cases so he would be hired to testify in future cases.

Id. at 784-5.

District Courts in Mississippi agree that *Collins* is controlling and it is clear that the testimony sought in cross-examination is entirely proper in Mississippi Federal Courts. The Plaintiffs attach and Order of the Honorable W. Allen Pepper, Jr., District Judge of the Northern District of Mississippi denying a motion in limine which would have prevented cross-examination of the Defendant's experts on both their hourly charges and the total amount billed in past cases. See Exhibit "1" attached to this motion.

Further, Plaintiffs' Response to Bayer Defendants' Motion in Limine to Exclude Evidence Describing Aggregate Compensation Paid to Any Expert Witness (Dkt. # 1810) is incorporated by reference.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 7th 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/ Ralph E. Chapman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

MARTHA WILLIS, Individually, and
as Mother and Next Friend of
JALESSA WILLIS, a Minor,

PLAINTIFF,

VS.

CIVIL ACTION NO. 2:07CV062-P-A

KIA MOTORS CORPORATION and
KIA MOTORS AMERICA, INC.,

DEFENDANTS.

ORDER

This matter comes before the court upon the defendants' motion *in limine* regarding references to experts' personal financial information [267]. After due consideration of the motion and the responses filed thereto, the court finds as follows, to-wit:

The motion should be granted insofar as the plaintiff conceded in her response brief that they will not inquire into the defense experts' personal gross income or income taxes.

The motion should be denied regarding the alleged amounts paid by Ford Motor Company, another automobile manufacturer, to the companies for whom the defense experts worked. Such evidence has potential impeachment value and is therefore relevant and not unfairly prejudicial.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendants' motion *in limine* regarding references to experts' personal financial information [267] is **GRANTED IN PART AND DENIED IN PART** as explained above.

SO ORDERED this the 29th day of July, A.D., 2009.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE

