

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

**IN RE GENETICALLY MODIFIED
RICE LITIGATION**

)
) **4:06 MD 1811 CDP**
)
) **TRIAL COMMENCING**
) **JANUARY 18, 2011**
)

**PLAINTIFFS' OPPOSITION TO THE BAYER DEFENDANTS'
MOTION IN LIMINE TO EXCLUDE EVIDENCE
REGARDING BAYER'S CONTACT WITH COLIN CARTER**

Bayer seeks to exclude evidence that Bayer itself contacted Plaintiffs' economic expert, Colin Carter, asking that he serve as its damages expert in this case. This evidence is relevant not only to the credentials and reputation of Dr. Carter. More than that, however, Bayer has had direct, prior experience with Dr. Carter in the Starlink litigation. Dr. Carter prepared a damages analysis on behalf of the plaintiffs, submitted an expert report and was deposed in that case. Having that background, the fact that Bayer contacted Dr. Carter in this case is relevant to the reliability of his analyses and work product. "Rule 403 does not offer protection against evidence that is merely prejudicial in the sense of being detrimental to a party's case. The rule protects against evidence that is *unfairly* prejudicial." *U.S. v. Betcher*, 534 F.3d 820, 825 (8th Cir. 2008) (quoting *United States v. McCourt*, 468 F.3d 1088, 1092 (8th Cir.2006)) (emphasis original). "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *Id.* (citing *United States v. Adams*, 401 F.3d 886, 899-900 (8th Cir.2005) (quoting *United States v. Lupino*, 301 F.3d 642, 646 (8th Cir.2002)). The evidence is probative and there is no prejudice to Bayer that is undue.

Respectfully Submitted this the 7th day of January, 2011.

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By: /s/ Ralph E. Chapman

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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