

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

IN RE GENETICALLY MODIFIED
RICE LITIGATION

This Document Relates to:
*Pete Crymes d/b/a Pete Crymes Farms v.
Riceland Foods, Inc., et al.,*
4:11CV00257 CDP

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**PLAINTIFFS’ LEADERSHIP GROUP’S REPLY
TO BAYER CROPSCIENCE LP’S RESPONSE
TO PETE CRYMES FARMS’ MOTION TO REMAND**

Plaintiffs’ Leadership Group respectfully submits this Reply to Pete Crymes d/b/a Pete Crymes Farms’ Motion to Remand (D.I. 4064 in MDL; D.I. 16 in *Crymes*). This Reply was necessitated by Bayer CropScience LP’s (“Bayer”) erroneous contentions in its March 10, 2011 Response to Pete Crymes Farms’ Motion to Remand, concerning Arkansas’s adoption of the *American Pipe* tolling doctrine (D.I. 4116 in MDL; D.I. 17 in *Crymes*).

In its Response, Bayer contends that “[t]he *American Pipe* tolling doctrine has never been adopted in Arkansas, and Eighth Circuit case law suggests that the Arkansas savings statute, which tolls the statute of limitations by providing a plaintiff one year to file previously dismissed claims, should apply.” Bayer’s Response Brief at 7 n.1 (citing *Great Plains Trust Co. v. Union Pac. R.R. Co.*, 492 F.3d 986, 992 (8th Cir. 2007)).

Bayer’s assertion that Arkansas has not adopted the *American Pipe* tolling doctrine is incorrect. Indeed, on at least two occasions, the Arkansas Supreme Court has recognized the

tolling of applicable statutes of limitations during the pendency of class action proceedings. *See Blaylock v. Shearson Lehman Brothers, Inc.*, 954 S.W.2d 939, 941 (Ark. 1997) (finding that the state law cause of action would have been time-barred, “except that the commencement of a class action tolls the running of the statute as to purported members of the class during the pendency of the litigation”) (citing *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974)); *Ford Motor Credit Co. v. Nesheim*, 696 S.W.2d 732, 736 (Ark. 1985) *overruled on other grounds by Int’l Union of Elec. Radio & Mach. Workers v. Hudson*, 747 S.W.2d 81 (Ark. 1988) (“The United States Supreme Court has held that the filing of a class action tolls the statute of limitations as to all asserted members of the class.”) (citing *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983)).

In attempting to advance its anti-tolling argument, Bayer also misconstrues the Eighth Circuit’s opinion in *Great Plains Trust Co. v. Union Pacific Railroad Co.*, 492 F.3d 986 (8th Cir. 2007). In *Great Plains*, the Eighth Circuit applied the Kansas savings statute¹ instead of tolling the statute of limitations during the pendency of the class action litigation because the Kansas Supreme Court had specifically determined that “the effect of the *American Pipe* rule under Kansas law was to preserve the class members’ right to file suit after the dismissal of the first class action within the time allowed by the Kansas savings statute.” *Id.* at 997-98 (citing *Waltrip v. Sidwell Corp.*, 678 P.2d 128, 133 (Kan. 1984)). This does not mean that the state savings statute supplants *American Pipe* tolling as a matter of course, as Bayer suggests. Rather, *Great Plains* applies the principle, originally set forth in *Chardon v. Soto*, 462 U.S. 650 (1983), that in cases involving state law causes of action, state law generally controls the limitations period and the tolling thereof, as long as the federal interest in class action procedure is protected. *See*

¹ A savings statute provides additional time to bring a cause of action that would otherwise be barred by the applicable statute of limitations in certain situations. *See, e.g.*, KAN. STAT. ANN. § 60-518 (“If any action be commenced within due time, and the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff . . . may commence a new action within six (6) months after such failure.”).

Great Plains, 492 F.3d at 997-98. Thus, under *Great Plains*, Arkansas state law, which has recognized *American Pipe* tolling during the pendency of class actions, controls. As such, the shorter state savings statute would not apply, and instead the statutes of limitations should be tolled during the pendency of the related class action(s).

Dated: March 21, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 21st day of March 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/ Don M. Downing