

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

IN RE GENETICALLY MODIFIED RICE LITIGATION))))))))	4:06 MD 1811 CDP <u>ALL CASES</u>
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NOTICE OF FILING

Please take notice that filed herewith as Attachment 1 is a proposed Summary of the Case for Remand, jointly prepared by counsel for the Bayer Defendants, counsel from Plaintiffs' leadership group, and counsel for the Phipps Plaintiffs in compliance with the Court's Case Management Order No. 27(4)(e).

Dated: March 10, 2011

Respectfully submitted,

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Plaintiffs' Executive Committee

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 10th 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 _____

ATTACHMENT 1

Summary of the Case for Remand

Plaintiffs are long-grain rice farmers (sometimes called “producers”), from Arkansas, Louisiana, Missouri, Mississippi, and/or Texas, which are the primary rice-growing regions in the United States. Defendants are Bayer CropScience LP, Bayer CropScience Holding, Inc., Bayer CropScience LLC, Bayer CropScience, Inc., Bayer Corporation, Bayer BioScience NV, Bayer CropScience AG, Bayer AG (collectively, with their predecessors, “Bayer”) and Starlink Logistics Inc.

Bayer developed genetically modified (“GM”) rice known as “Liberty Link” rice, which is resistant to a particular herbicide sold by Bayer. Strains of this GM rice (known as “events”) included LLRICE 601 (“LL601”) and LLRICE 604 (“LL604”). Both were “regulated articles” subject to the Plant Protection Act, 7 U.S.C. §7701 et seq. and the regulations in 7 C.F.R. Part 340. Pursuant to a “notification” procedure (*see* 7 C.F.R. §§340.0 and 340.3), Bayer conducted field tests of LL601 and LL604 in 1999 through 2001 in a number of locations. Bayer used persons known as “cooperators” to field test LL601 and LL604, including LSU at the Rice Research Station in Crowley, Louisiana. On August 18, 2006, the USDA announced that LL601 had been found in the U.S. long-grain rice supply. In March 2007, the USDA announced that LL604 also had been found in the U.S. long-grain rice supply. There is no dispute that LL601 was found in the conventional rice variety Cheniere, and that LL604 was found in the conventional rice variety Clearfield (“CL”) 131, both at very low levels but widespread. Neither LL601 nor LL604 was approved by the USDA for sale or human consumption at the time it was discovered in the U.S. commercial rice supply. Upon petition from Bayer, LL601 was deregulated by the USDA in November, 2006. LL604 has not been deregulated. Producer Plaintiffs claim that as a result of the LL contamination, they suffered injuries, including price decline for their rice, and other losses specific to individual plaintiffs that might include, for example, expenses for additional cleaning of equipment, bins and other property, and inability to plant certain rice varieties (planting other crops or rice varieties instead which the plaintiff asserts was less lucrative).

There are farmer/producer lawsuits filed against Bayer in the United States District Courts of Arkansas, Mississippi, Missouri, Louisiana and Texas. These federal lawsuits were consolidated into a Multidistrict Litigation (“MDL”) case in the United States District Court, Eastern District of Missouri, before the Honorable Judge Catherine Perry. Judge Perry has coordinated the federal cases, but is now prepared to “remand” groups of those federal cases back to their respective originating U.S. District Courts for completion of expert discovery and jury trials.

Not all the plaintiffs are represented by the same counsel or asserting the same claims or damages. In the MDL litigation, some plaintiffs filed a Master Consolidated Class Action Amended Complaint, asserting a variety of claims, including negligence, negligence per se, public and private nuisance, violation of the North Carolina Unfair Practices Act, and strict products liability (which to date, no plaintiff in any bellwether trial has pursued). Judge Perry denied Plaintiffs’ motion for class certification, and also denied Bayer’s motion for summary judgment based on express preemption under the Plant Protection Act. The MDL proceeded with a series of bellwether trials, with plaintiffs of one, or more than one, state (Arkansas, Louisiana, Missouri, Mississippi and/or Texas) represented in each. Each side filed additional

motions for summary judgment, Daubert motions and other pre-trial matters, which Judge Perry ruled on as to each trial and according to federal law, or applicable state law where asserted.

Bayer sought summary judgment on all non-negligence counts, which Judge Perry granted except for the claim of private nuisance. Bayer denies that it was negligent, and also disputes the extent of plaintiff's asserted losses. Plaintiffs sought summary judgment on a number of defenses and issues, some of which Judge Perry granted and some of which she denied. Each side filed Daubert motions respecting expert witnesses, which Judge Perry denied in part and granted in part as to each bellwether trial.

In lieu of Rule 26 disclosures, Plaintiffs provided "Plaintiff Fact Sheets." Discovery pertaining to liability has been completed. For the first group of Plaintiffs' cases to be remanded, discovery is complete with regard to liability and both Plaintiffs' and Defendants' liability and general damages experts. *Daubert* challenges and responses to experts addressing liability and general damages are currently pending before Judge Perry. Motions for summary judgment on "common issues" as to all plaintiffs were ruled upon by Judge Perry in her Memorandum and Order of February 1, 2011, D.E. 3992. Discovery and expert disclosures with regard to Plaintiffs' individual damages will take place after remand, and any *Daubert* motions related to individual damages shall be handled after remand. Upon completion of the individual damages fact and expert discovery, the cases are ready for jury trial.

The deadlines for discovery and motions in cases in the second and third group of cases to be remanded proceed in a similar order, but have yet to be completed.