

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

IN RE GENETICALLY MODIFIED RICE LITIGATION)	CASE No.: 4:06MD01811-CDP
This document relates to:)	Case No.: 4:09-CV-00087-WAP-DAS
Goldfield Plantation, et al.)	
v.)	
Bayer AG, et al.)	

RESPONSE TO COURT ORDER

The Court issued an Order on July 27, 2011, being Docket Entry #4264, stating that a number of pending producer motions would be denied as moot absent good cause. Included in the Court’s Order was Plaintiffs’ Motion and Supporting Memorandum for Leave to File Second Amended Complaint (“Motion for Leave”).(Docket Entry #4131). Plaintiffs respectfully request that the Court refrain from dismissing their pending Motion for Leave. In support of their response, Plaintiffs state as follows:

1. Plaintiff’s filed a Motion and Supporting Memorandum for Leave to File Second Amended Complaint (“Motion for Leave”) together with a proposed Second Amended Complaint on March 25, 2011.(Docket Entry #4131). The proposed Second Amended complaint seeks to add additional producer plaintiffs to this action.

2. “Amended complaints may not be filed until the court has ordered leave to do so.” *Mayer v. AT & T Information Systems, Inc.*, 867 F.2d 1172, 1173 (8th Cir. 1989). Because amendments require leave of the Court, the date of the motion seeking leave to amend a

complaint (not the date authorizing amendment or the date of filing of the amended complaint) is the relevant date for determining whether an action has been timely filed under the applicable statute of limitations. *Id.* Plaintiffs' proposed Second Amended Complaint adding additional plaintiffs would, therefore, be deemed filed as of March 25, 2011 (subject to any relation back arguments).

3. Although there is a settlement agreement in this litigation, it is contingent on a minimum participation level among all rice producers. Additionally, each individual rice producer has the option as to whether they wish to participate in the settlement or continue to pursue relief through litigation. As a result, the settlement agreement will not resolve the claims of the producers added to this case through the proposed Second Amended complaint unless both the minimum settlement participation threshold is met (or waived) and the producers added have elected to participate in the settlement.

4. If the claims of any producer added through the proposed Second Amended Complaint are not resolved through settlement, the date of filing of their claim may be relevant in future litigation. Denial of the pending Motion for Leave could therefore prejudice these plaintiffs by potentially forcing these producers to file another Complaint at a later date, which may be deemed untimely.

5. Plaintiffs respectfully suggests that the Court either (1) leave the motion pending until such time as the producers to be added have fully resolved their claims through settlement or (2) grant the Motion for Leave and deem the proposed Second Amended Complaint filed. No prejudice would result to the Defendants for the reasons set forth in the Motion for Leave, which the Defendants never opposed.

WHEREFORE, Plaintiffs pray that the Court grant the relief requested.

Respectfully submitted,

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By: /s/ Warren B. Bell
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 3rd day of August, 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/ Warren B. Bell