

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

**IN RE GENETICALLY MODIFIED RICE  
LITIGATION**

**4:06 MD 1811 CDP**

**This Document Relates to:**

*Gulf Pacific Rice Co., Inc., et al v.  
Bayer CropScience LP, et al*  
**Case No. 4:08-cv-1545-CDP**

**PLAINTIFFS’ STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON DEFENDANTS’ AFFIRMATIVE DEFENSES NO. 6 AND 8**

Pursuant to Federal Rule of Civil Procedure 56(a) and (c), and E.D. Mo. L.R 4.01(E), Plaintiffs GULF PACIFIC RICE CO., INC., GULF RICE MILLING, INC., and HARVEST RICE, INC. (collectively, “Plaintiffs”) submit the following statement of undisputed material facts in support of their Motion for Partial Summary Judgment on Defendants’ Affirmative Defenses Nos. 6 and 8.

1. Defendants Bayer CropScience LP, Bayer CropScience Holding Inc., Bayer CropScience LLC, Bayer CropScience Inc., Bayer Corporation, and Stoneville Pedigreed Seed Company’s live pleading asserts the following as Affirmative Defense No. 6:

The Plaintiffs’ claims are barred or limited by their own negligence, carelessness, and/or comparative fault, which was a direct and proximate cause of any injuries and/or damages allegedly sustained. See Tex. Civ. Prac. & Rem. Code §33.001, et. seq.

*See Answer and Defenses of Bayer CropScience LP, Bayer CropScience Holding Inc., Bayer CropScience LLC, Bayer CropScience Inc., Bayer Corporation, and Stoneville Pedigreed Seed*

Company (D.I. 22), an excerpted portion pertinent to this motion is attached hereto as Exhibit 1, at 37 (Affirmative Defense No. 6).

2. Defendants Bayer AG, Bayer CropScience AG, Bayer CropScience Holding SA, and Bayer BioScience NV's live pleading asserts the following as Affirmative Defense No. 6:

The Plaintiffs' claims are barred or limited by their own negligence, carelessness, and/or comparative fault, which was a direct and proximate cause of any injuries and/or damages allegedly sustained. *See* Tex. Civ. Prac. & Rem. Code §33.001, et. seq.

*See* Answer and Defenses of Bayer AG, Bayer CropScience AG, Bayer CropScience Holding SA, and Bayer BioScience NV (D.I. 23), an excerpted portion pertinent to this motion is attached hereto as Exhibit 2 at 36 (Affirmative Defense No. 6).

3. Defendants Bayer CropScience LP, Bayer CropScience Holding Inc., Bayer CropScience LLC, Bayer CropScience Inc., Bayer Corporation, and Stoneville Pedigreed Seed Company's live pleading asserts the following as Affirmative Defense No. 8:

The Plaintiffs' claims are barred to the extent it has failed to mitigate, minimize, or avoid alleged damages, if any.

*See* Exhibit 1 at 37.

4. Defendants Bayer AG, Bayer CropScience AG, Bayer CropScience Holding SA, and Bayer BioScience NV's live pleadings asserts the following as Affirmative Defense No. 8:

The Plaintiffs' claims are barred to the extent it has failed to mitigate, minimize, or avoid alleged damages, if any.

*See* Exhibit 2 at 36.

5. Defendant Starlink Logistics, Inc., asserts as its Ninth Defense:

To the extent that the facts and evidence developed during investigation and discovery may warrant, SLLI maintains its right to assert that Plaintiffs' claims are barred to the extent Plaintiffs have failed to mitigate, minimize, or avoid alleged damages, if any.

See Exhibit 3 at 15.

6. Defendants have not disclosed any testifying expert witness who will provide opinion testimony that Plaintiffs were negligent, that Plaintiffs' negligence was a proximate cause of the damages for which they seek to recover from Defendants, that Plaintiffs failed to exercise ordinary care in mitigating their damages, or the amount of damages that Plaintiffs failed to mitigate.

Dated: June 14, 2011.

Respectfully submitted,

LOOPER REED & McGRAW, P.C.

By: /s/ Andrew K. York

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ATTORNEYS-IN-CHARGE FOR PLAINTIFFS  
GULF PACIFIC RICE CO., INC.  
GULF RICE MILLING, INC., AND  
HARVEST RICE, INC.

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this 14th day of June, 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/ Andrew K. York  
ANDREW K. YORK

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

*In re*  
*Genetically Modified Rice Litigation*

Master Case No. 4:06MD1811CDP  
MDL Docket No. 1811

This document relates to:

GULF PACIFIC RICE CO., INC.,  
GULF RICE MILLING, INC., AND  
HARVEST RICE, INC.,

Plaintiffs,

C.A. NO. 4:08-CV-01545-CDP

v.

JURY TRIAL DEMANDED

BAYER CROPSCIENCE, L.P., ET AL.

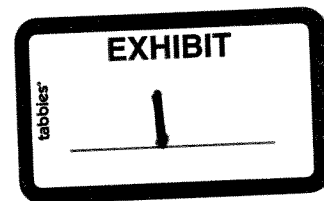
Defendants.

**ANSWER AND DEFENSES OF BAYER CROPSCIENCE LP,  
BAYER CROPSCIENCE INC., BAYER CROPSCIENCE HOLDING INC.,  
BAYER CROPSCIENCE LLC, BAYER CORPORATION AND  
STONEVILLE PEDIGREED SEED COMPANY**

COME NOW Bayer CropScience LP (“BCS”), Bayer CropScience Inc., Bayer CropScience Holding Inc., Bayer CropScience LLC (collectively the “BCS defendants”), Bayer Corporation and Stoneville Pedigreed Seed Company (“Stoneville”) and respond to Plaintiffs’ First Amended Complaint (“Complaint”) as follows:

**ANSWER TO  
I. INTRODUCTION**

1. The BCS defendants, Bayer Corporation and Stoneville state that the Complaint speaks for itself but deny the remaining allegations contained in paragraph 1. The BCS defendants, Bayer Corporation and Stoneville deny that they are liable to plaintiffs for compensatory or punitive damages in any amount whatsoever.



and/or superseding acts or omissions of parties or non-parties to this action for whose acts or omissions the BCS defendants, Bayer Corporation or Stoneville are not liable.

FIFTH DEFENSE

The BCS defendants, Bayer Corporation and Stoneville are not liable for the Plaintiffs' alleged injuries because the BCS defendants, Bayer Corporation and Stoneville owed no duty to the Plaintiffs.

SIXTH DEFENSE

The Plaintiffs' claims are barred or limited by their own negligence, carelessness, and/or comparative fault, which was a direct and proximate cause of any injuries and/or damages allegedly sustained. *See* Tex. Civ. Prac. & Rem. Code §33.001, et seq.

SEVENTH DEFENSE

The Plaintiffs' claims are barred by the doctrine of assumption of the risk.

EIGHTH DEFENSE

The Plaintiffs' claims are barred to the extent it has failed to mitigate, minimize, or avoid alleged damages, if any.

NINTH DEFENSE

The Plaintiffs' action is premature and should be dismissed under the doctrine of ripeness.

TENTH DEFENSE

The Plaintiffs have failed to join indispensable parties necessary for a just adjudication of this lawsuit.

- (c) the BCS defendants, Bayer Corporation and Stoneville be awarded their reasonable costs and expenses;
- (d) the Court grant such other relief as may be just, proper, and equitable.

JURY DEMAND

The BCS defendants, Bayer Corporation and Stoneville demand trial by jury.

Respectfully submitted, this 2<sup>nd</sup> day of March, 2009.

\_\_\_\_\_  
/s/ Lindy D. Brown

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CORPORATION AND STONEVILLE PEDIGREED SEED COMPANY

CERTIFICATE OF SERVICE

This is to certify that I have this 2<sup>nd</sup> day of March, 2009, electronically filed a copy of the foregoing with the Clerk of Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/ Lindy D. Brown  
Lindy D. Brown

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

*In re*  
*Genetically Modified Rice Litigation*

Master Case No. 4:06MD1811CDP  
MDL Docket No. 1811

This document relates to:

GULF PACIFIC RICE CO., INC.,  
GULF RICE MILLING, INC., AND  
HARVEST RICE, INC.,

Plaintiffs,

C.A. NO. 4:08-CV-01545-CDP

v.

JURY TRIAL DEMANDED

BAYER CROPSCIENCE, L.P., ET AL.

Defendants.

**ANSWER AND DEFENSES OF BAYER BIOSCIENCE NV, BAYER  
CROPSCIENCE HOLDING SA, BAYER CROPSCIENCE AG, AND BAYER AG**

COME NOW Bayer BioScience NV (“BBS NV”), Bayer CropScience Holding SA (“BCS Holding SA”), Bayer CropScience AG (“BCS AG”) and Bayer AG and respond to Plaintiffs’ First Amended Complaint (“Complaint”) as follows:

ANSWER TO  
**I. INTRODUCTION**

1. BBS NV, BCS Holding SA, BCS AG and Bayer AG state that the Complaint speaks for itself but deny the remaining allegations contained in paragraph 1. BBS NV, BCS Holding SA, BCS AG and Bayer AG deny that they are liable to plaintiffs for compensatory or punitive damages in any amount whatsoever.

ANSWER TO  
**II. PARTIES**



superseding acts or omissions of parties or non-parties to this action for whose acts or omissions BBS NV, BCS Holding SA, BCS AG and Bayer AG are not liable.

FIFTH DEFENSE

BBS NV, BCS Holding SA, BCS AG and Bayer AG are not liable for the Plaintiffs' alleged injuries because BBS NV, BCS Holding SA, BCS AG and Bayer AG owed no duty to the Plaintiffs.

SIXTH DEFENSE

The Plaintiffs' claims are barred or limited by their own negligence, carelessness, and/or comparative fault, which was a direct and proximate cause of any injuries and/or damages allegedly sustained. *See* Tex. Civ. Prac. & Rem. Code §33.001, et seq.

SEVENTH DEFENSE

The Plaintiffs' claims are barred by the doctrine of assumption of the risk.

EIGHTH DEFENSE

The Plaintiffs' claims are barred to the extent it has failed to mitigate, minimize, or avoid alleged damages, if any.

NINTH DEFENSE

The Plaintiffs' action is premature and should be dismissed under the doctrine of ripeness.

TENTH DEFENSE

The Plaintiffs have failed to join indispensable parties necessary for a just adjudication of this lawsuit.

Respectfully submitted, this 2<sup>nd</sup> day of March, 2009.

/s/ Lindy D. Brown

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ATTORNEYS FOR BAYER BIOSCIENCE NV, BAYER CROPSCIENCE HOLDING  
SA, BAYER CROPSCIENCE AG AND BAYER AG

CERTIFICATE OF SERVICE

This is to certify that I have this 2<sup>nd</sup> day of March, 2009, electronically filed a copy of the foregoing with the Clerk of Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/ Lindy D. Brown  
Lindy D. Brown

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GULF PACIFIC RICE CO., INC.,  
GULF RICE MILLING, INC. AND  
HARVEST RICE, INC.

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vs.

BAYER CROPSCIENCE, LP;  
BAYER CROPSCIENCE INC.,  
BAYER CROPSCIENCE HOLDING, INC.;  
BAYER CROPSCIENCE LLC,  
BAYER CORPORATION,  
STONEVILLE PEDIGREED SEED  
COMPANY, BAYER BIOSCIENCE, NV,  
BAYER CROPSCIENCE HOLDING SA,  
BAYER CROPSCIENCE AG, BAYER AG,  
AND STARLINK LOGISTICS, INC.

No. 4:08-cv-02505

ANSWER AND DEFENSES OF DEFENDANT STARLINK LOGISTICS INC.

Defendant StarLink Logistics Inc. (“SLLI” or “this Defendant”), formerly known as Aventis CropScience USA Holding Inc., answers the Plaintiffs’ Original Complaint (“Complaint”) in the above-captioned action and allegations directed toward SLLI, upon knowledge as to itself and upon information and belief as to all others. Certain allegations of the Complaint are made as to all defendants without differentiation or specification as to the extent of reference to this Defendant or other individual defendants and/or other parties, persons or entities. For the purpose of clarity, SLLI responds herein to the allegations of the Complaint only insofar as such allegations pertain to SLLI. Except as otherwise expressly set forth below, SLLI denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in the Complaint to the extent that such allegations refer or relate to defendants, persons or entities other than SLLI. Subject to the foregoing, SLLI, by its counsel, responds to the Complaint as follows:

AS TO SECTION I TITLED “INTRODUCTION”

1. Paragraph 1 of the Complaint purports to summarize and characterize the



SEVENTH DEFENSE

Plaintiffs' equitable claims, if any, are barred because Plaintiffs had an adequate remedy at law. Further, Plaintiffs have not satisfied all prerequisites for injunctive relief.

EIGHTH DEFENSE

Plaintiffs are not entitled to equitable relief because it is duplicative of the relief Plaintiffs are seeking in other causes of action that have been plead.

NINTH DEFENSE

To the extent that the facts and evidence developed during investigation and discovery may warrant, SLLI maintains its right to assert that Plaintiffs' claims are barred to the extent Plaintiffs have failed to mitigate, minimize, or avoid alleged damages, if any.

TENTH DEFENSE

Plaintiffs' claim should be dismissed because they are preempted in whole or in part by applicable federal statues, regulations, guidances, notices, and policy statements, enacted and/or promulgated and/or issued by Congress, applicable federal agencies, and the White House, including without limitation the Plan Protection Act and Federal Food, Drug, and Cosmetics Act, and federal regulations thereunder, and the White House's Coordinated Framework for Regulation of Biotechnology Products.

ELEVENTH DEFENSE

Plaintiffs' claims are barred because all actions for which they seek to hold SLLI liable were done in compliance with applicable statutes and regulations.

TWELFTH DEFENSE

Plaintiffs' claims are barred because all actions for which they seek to hold SLLI liable were done in conformity with generally recognized, state-of-the-art standards in the industry.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred because of lack of standing.

WHEREFORE, SLLI prays that the Complaint be dismissed with prejudice, Plaintiffs' demands for relief be denied in every respect, SLLI be awarded its reasonable costs and expenses, and that the Court grant such other relief as may be just, proper and equitable.

Respectfully Submitted,

/s/ Charles W. Schwartz

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Christopher J. Bellotti  
State Bar No. 24043548  
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ATTORNEYS FOR DEFENDANT  
STARLINK LOGISTICS INC.

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2008, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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*Attorneys for Plaintiff*

And by e-mail and U.S. mail to the following counsel known by counsel to represent co-defendants:

John F. Sullivan III  
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*Attorneys for Bayer Defendants*

Other parties have yet to make an appearance.

/s/ Christopher J. Bellotti