

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

**IN RE GENETICALLY MODIFIED RICE) 4:06 MD 1811 CDP
LITIGATION)
) TRIAL COMMENCING
) JUNE 21, 2010**

THE BAYER DEFENDANTS' ALTERNATIVE MOTION FOR A NEW TRIAL

Pursuant to Federal Rules of Civil Procedure 50(b) and 59, the Bayer Defendants,¹ against whom the jury returned a verdict, hereby move, in the alternative to their renewed motion for judgment as a matter of law, for a new trial on the claims brought by the plaintiff.

In the alternative, and in addition to the grounds raised in Bayer's Renewed Motion for Judgment as a Matter of Law Or, In the Alternative, A New Trial, Bayer moves for a new trial on the following grounds:

- 1) That the Court's ruling precluding the application of clear Louisiana law on comparative fault, its refusal to allow the jury to allocate fault, its erroneous "vicarious liability" instruction to the jury, rejection of Bayer's proposed jury instruction on "master-servant," and other erroneous rulings on "master-servant" and "comparative fault" affected Bayer's substantial rights;
- 2) That the Court's reversal, after the case was submitted to the jury, of its decision to not allow a copy of the federal regulations to be provided to the jury—and then sending a copy to the jury during deliberations—was improper and prejudicial and affected Bayer's substantial rights;

¹ All the Bayer Defendants against whom the jury returned a verdict join this motion. For brevity, and because they were collectively referred to as "Bayer" at trial, they are referred to collectively in this brief as "Bayer."

- 3) That plaintiff's improper evidence and argument throughout trial suggesting that a "violation" of federal regulations is negligence, the Court's rejection of Bayer's proposed jury instructions on "Federal Regulations," and "Responsible Party," and the Court's erroneous redaction of the USDA Report, each affected Bayer's substantial rights;
- 4) That the Court's allowing prejudicial testimony regarding irrelevant and prejudicial post-2001 alleged wrongdoing violated Bayer's substantial rights;
- 5) That the Court's allowing cumulative and prejudicial testimony regarding the StarLink incident affected Bayer's substantial rights; and
- 6) That the Court's error in admitting Dr. Babcock's testimony affected Bayer's substantial rights.

The facts and arguments supporting this motion are set forth in a Brief in Support, filed herewith, which addresses each discrete issue.

Dated: August 23, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Glen E. Summers
Glen E. Summers