

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

*In re*  
*Genetically Modified Rice Litigation*

Master Case No. 4:06MD1811CDP

TILDA LTD.

PLAINTIFF

v.

No. 4:07-cv-00457CDP<sup>1</sup>

RICELAND FOODS INC.;  
PRODUCERS RICE MILL, INC.;  
BAYER CROPSCIENCE INC.;  
BAYER CROPSCIENCE LP;  
BAYER CROPSCIENCE HOLDING, INC.;  
BAYER CROPSCIENCE, LLC; and  
BAYER CORPORATION

DEFENDANTS

PRODUCERS RICE MILL, INC.

CROSS-CLAIMANT and  
THIRD PARTY PLAINTIFF

v.

BAYER CROPSCIENCE LP  
and  
BAYER CROPSCIENCE HOLDING INC.,  
BAYER CORPORATION, BAYER CROPSCIENCE AG,  
BAYER AG, and BAYER BIOSCIENCE NV

CROSS-CLAIM DEFENDANT

THIRD PARTY DEFENDANTS

**JOINT MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 41(a)(2), Tilda Ltd. (“Tilda”), Producers Rice Mill, Inc. (“PRM”), Riceland Foods, Inc. (“Riceland”) and the Bayer defendants jointly move the Court to dismiss a portion of this action on the following terms:

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<sup>1</sup> Transferred from the United States District Court for the Eastern District of Arkansas, No. 4:07-cv-0052SWW.

- a. The claims of Tilda asserted in this action against PRM, Riceland and the Bayer defendants are dismissed with prejudice.
- b. The cross-claims and third party claims asserted by PRM and Riceland against the Bayer defendants in this action seeking contribution and/or indemnity from the Bayer defendants for any damages PRM and/or Riceland might have been adjudicated to pay Tilda, and only in this action, are dismissed as moot, in light of the dismissal of Tilda's claims against PRM and Riceland. The affirmative claims asserted by PRM against the Bayer defendants in this action for money damages suffered by PRM including but not limited to those reflected in Dennis Arnie's Reports dated October 12, 2009, May 18, 2010, June 21, 2010 and any subsequent Dennis Arnie Report are not dismissed.
- c. The dismissals are the product of extra-judicial resolution and do not constitute adjudications on the merits, and the order has no precedential, *res judicata* or collateral estoppel effect in any other actions, federal or state, except insofar as any attempted re-litigation by Tilda of the claims contained in Tilda's amended complaint.
- d. The parties and this Court acknowledge that PRM's independent claim for damages against the Bayer defendants in this action remains pending and there are other actions pending in federal and state courts that generally involve the alleged contamination of United States rice with genetically modified rice. However, those actions turn on different transactions and occurrences than those that are the subject of Tilda's claims in this action and involve potentially different causes of action and governing law than those that are the subject of Tilda's claims in this

action. Accordingly, the order of dismissal in this action is intended solely to effect the final disposition of a portion of this action, excluding the affirmative claims asserted by PRM against the Bayer defendants in this action which are not dismissed and such dismissal does not constitute either a first dismissal or a subsequent dismissal for purposes of Fed. R. Civ. P. 41(a)(1)(B) or any similar state rule or statute.

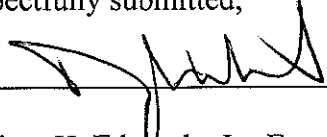
- e. Each party shall bear its own costs and attorneys' fees except to the extent that the Defendants are required to hold back and set aside 9% of any gross recovery obtained by Tilda for placement into Lead Counsel's common benefit trust fund pursuant to this Court's Order of February 24, 2010.
- f. This Joint Motion to Dismiss is made without prejudice to Tilda's right to appeal the Court's ruling as to the Common Benefit Fund, and it is specifically intended that the Court retain jurisdiction to address any pleadings and/or motions related to any such appeal by Tilda.

A proposed order containing these terms accompanies this motion.

WHEREFORE, the parties to this action jointly request the Court to enter an order of dismissal in accordance with the terms of this motion.

Respectfully submitted,

By: \_\_\_\_\_

  
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*Attorneys for Plaintiff, Tilda Ltd.*

*/s/ Roger McNeil (w/ permission)*

\_\_\_\_\_  
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*Attorneys for Producers Rice Mill, Inc.*

*/s/ Chris Hohn (w/ permission)*

\_\_\_\_\_  
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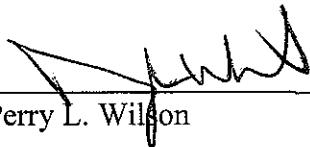
*/s/ Glen Summers (w/ permission)*

\_\_\_\_\_  
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*Attorneys for the Bayer Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT ON October 29, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the individuals designated on the clerk's service list for this case.

  
\_\_\_\_\_  
Perry L. Wilson

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EASTERN DIVISION

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BAYER AG, and BAYER BIOSCIENCE NV

CROSS-CLAIM DEFENDANT

THIRD PARTY DEFENDANTS

**ORDER OF DISMISSAL**

Before the Court is the parties' joint motion to dismiss a portion of this action. Having considered their motion, it is hereby ORDERED:

- a. The claims of Tilda Ltd. ("Tilda") asserted in this action against Producers Rice Mill, Inc. ("PRM"), Riceland Foods, Inc. ("Riceland") and the Bayer defendants are dismissed with prejudice.

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<sup>1</sup> Transferred from the United States District Court for the Eastern District of Arkansas, No. 4:07-cv-0052SWW.

- b. The cross-claims and third party claims asserted by PRM and Riceland against the Bayer defendants in this action seeking contribution and/or indemnity from the Bayer defendants for any damages PRM and/or Riceland might have been adjudicated to pay Tilda, and only in this action, are dismissed as moot, in light of the dismissal of Tilda's claims against PRM and Riceland. The affirmative claims asserted by PRM against the Bayer defendants in this action for money damages suffered by PRM including but not limited to those reflected in Dennis Arnie's Reports dated October 12, 2009, May 18, 2010, June 21, 2010 and any subsequent Dennis Arnie Report are not dismissed.
- c. The dismissals are the product of extra-judicial resolution and do not constitute adjudications on the merits, and the order has no precedential, *res judicata* or collateral estoppel effect in any other actions, federal or state, except insofar as any attempted re-litigation by Tilda of the claims contained in Tilda's amended complaint.
- d. The parties and this Court acknowledge that PRM's independent claim for damages against the Bayer defendants in this action remains pending and that there are other actions pending in federal and state courts that generally involve the alleged contamination of United States rice with genetically modified rice. However, those actions turn on different transactions and occurrences than those that are the subject of Tilda's claims in this action, involve potentially different causes of action and governing law than those that are the subject of Tilda's claims in this action, and/or include parties that are not party to Tilda's claims in this action. Accordingly, the order of dismissal in this action is intended solely to

effect the final disposition of a portion of this action, excluding the affirmative claims asserted by PRM against the Bayer defendants in this action which are not being dismissed, and does not constitute either a first dismissal or a subsequent dismissal for purposes of Fed. R. Civ. P. 41(a)(1)(B) or any similar state rule or statute.

- e. Each party shall bear its own costs and attorneys' fees except to the extent that the Defendants are required to hold back and set aside 9% of any gross recovery obtained by Tilda for placement into Lead Counsel's common benefit trust fund pursuant to this Court's Order of February 24, 2010.
- f. The Court retains full jurisdiction to address any pleadings and/or motions related to any appeal by Tilda of the Court's ruling as to the Common Benefit Fund.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2010.

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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE