

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

IN RE GENETICALLY MODIFIED RICE LITIGATION))))))	4:06 MD 1811 CDP TRIAL COMMENCING OCTOBER 12, 2010
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**THE TEXAS PLAINTIFFS’ MOTION TO
REFRAIN FROM BIFURCATING TRIAL OR, ALTERNATIVELY, TO
LIMIT BIFURCATION TO THE AMOUNT OF EXEMPLARY DAMAGES**

Plaintiffs Gaulding Farm, John Gaulding and John M. Donaho, partners of Gaulding Farm; James Gentz, Jr. and Carol Barton Gentz; Richard Lee Hafernicks and Robbie Hafernicks, d/b/a Lee and Robbie Hafernicks Farms (collectively, the “Texas Plaintiffs”), hereby move to conduct the upcoming bellwether trial without bifurcation, or alternatively, to limit bifurcation solely to the issue of the amount of any punitive damages award. In support of their motion, the Texas Plaintiffs state as follows:

1. Federal Rule of Civil Procedure 42(b) provides that “[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues. . . .” In the first two bellwether trials, the Court separated punitive damages issues from compensatory liability and damages issues.

2. As set forth in detail in the Texas Plaintiffs’ memorandum in support accompanying this motion, bifurcation is the exception to the general rule that all trial issues proceed in a single, uninterrupted proceeding. The Texas Plaintiffs’ respectfully submit that

none of the factors set forth in Rule 42(b) weigh in favor of bifurcation, that bifurcation here significantly prejudices the Texas Plaintiffs and that this action should be tried in a single, continuous proceeding.

3. Alternatively, to the extent that the Court finds bifurcation appropriate, bifurcation should be limited to only the issue of the *amount* of any punitive damage award. As discussed in detail in the Texas Plaintiffs' memorandum in support, such a division would be consistent with Texas Code of Civil Practices and Remedies Code (Tex. Civ. Prac. & Rem. Code § 41.009), would support the federal courts' role in diversity cases, and would more closely resemble the likely procedure in future Texas remand cases.

WHEREFORE, the Texas Plaintiffs pray that the Court refrain from bifurcating this trial. Alternatively, the Court should limit bifurcation to the amount of punitive damages, as provided by Texas state law.

Dated: September 20, 2010

Respectfully submitted,

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Plaintiffs' Executive Committee

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 20th day of July, 2010, 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_____