

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

In re GENETICALLY MODIFIED) MDL – 4:06-md-1811 (CDP)
RICE LITIGATION)

This Documents Relates to:

JIM PENN and JOE PENN d/b/a)
PENN BROTHERS PARTNERSHIP,)

PENN BROTHERS LANDLEVELING, INC.,)

DENTON FARMS, INC.,)

BLANK DOG PLANTING COMPANY, GARY)
F. GOODE, TREY FARMS, INC., MK FARMS,)
INC., ANNA FARMS, INC., and 3G FARMS)

JERRY CATT and DONNA CATT,)

Plaintiffs,)

vs)

BAYER CROPSCIENCE LP, BAYER)
CROPSCIENCE AG, BAYER BIOSCIENCE)
NV, BAYER AG, BAYER CROPSCIENCE)
HOLDING, INC., BAYER CROPSCIENCE,)
INC, and STARLINK LOGISTICS INC.,)

Defendants.

NOTICE OF APPEAL

Notice is given that Defendants, BAYER CROPSCIENCE LP, BAYER
CROPSCIENCE AG, BAYER BIOSCIENCE NV, BAYER AG, BAYER
CROPSCIENCE HOLDING, INC., and BAYER CROPSCIENCE, INC, hereby appeal to

the United States Court of Appeals for the Eighth Circuit from the final judgment of the district court, entered in this action on February 11, 2010 (“The Judgment”) and from any and all adverse rulings incorporated in, antecedent to, or ancillary to the Judgment; and from any and all adverse interlocutory orders, judgments, decrees, decisions, rulings, and opinions that merged into and became part of the Judgment, that shaped the Judgment, that are related to the Judgment, and upon which the Judgment is based, and from the Court’s order of July 20, 2010 regarding post-trial motions (Docket #3181).

Dated: July 28, 2010

Respectfully submitted,

Bayer CropScience LP, Bayer CropScience AG,
Bayer BioScience NV, Bayer AG, Bayer
CropScience Holding, Inc., and
Bayer CropScience Inc.
By Counsel

By: /s/ Mark E. Ferguson
Mark E. Ferguson

William F. Goodman, III
Joseph J. Stroble
Elizabeth M. Gates
WATKINS & EAGER
The Emporium Bldg.
400 E. Capitol Street, Suite 300
Post Office Box 650
Jackson, Mississippi 39205-0650

Terry Lueckenhoff, #43843
FOX GALVIN LLC
One S. Memorial Drive, 12th Floor
St. Louis, Missouri 63102

Mark E. Ferguson
Stephen J. Cowen
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
Courthouse Place
54 West Hubbard Street, Suite 300
Chicago, Illinois 60654

Glen E. Summers
Lester Houtz
Eric R. Olson
John M. Hughes
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
1899 Wynkoop Street, 8th Floor
Denver, Colorado 80202

U.S. COURT OF APPEALS - EIGHTH CIRCUIT
APPELLANT'S FORM A
Appeal Information Form
To be filed with the Notice of Appeal

Appeal Docket No. _____

STYLE OF CASE:

COUNSEL: NAME, ADDRESS, AND TELEPHONE NUMBER

JIM PENN and JOE PENN d/b/a
PENN BROTHERS PARTNERSHIP,

PENN BROTHERS LANDELEVELING, INC.,

DENTON FARMS, INC.,

BLANK DOG PLANTING COMPANY, GARY F.
GOODE, TREY FARMS, INC., MK FARMS, INC.,
ANNA FARMS, INC., and 3G FARMS

JERRY CATT and DONNA CATT,

Appellee,

Don M. Downing
Thomas K. Neill
Erica L. Airsman
GRAY RITTER & GRAHAM, P.C.
701 Market Street, Suite 800
St. Louis, Missouri 63101
(314) 241-5620

Scott A. Powell
HARE, WYNN, NEWELL & NEWTON, LLP
The Historic Massey Building
2025 Third Avenue North
Suite 800
Birmingham, AL 35203
(205) 328-5330

William B. Chaney
LOOPER REED & MCGRAW
1601 Elm Street, Suite 4100
Dallas, Texas 75201
(214) 237 6403

Stacey T. Kelly
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC
55 W. Monroe Street, Suite 1111
Chicago, Illinois 60603
(312) 984-0000

VS.

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

Appellant

COUNSEL: NAME, ADDRESS, AND TELEPHONE NUMBER

Terry Lueckenhoff, #43843
FOX GALVIN LLC
One S. Memorial Drive, 12th Floor
St. Louis, Missouri 63102
(314) 588-7000

Mark E. Ferguson
Stephen J. Cowen
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
Courthouse Place
54 West Hubbard Street, Suite 300
Chicago, Illinois 60654
(312) 494-4400

Glen E. Summers
Lester Houtz
Eric R. Olson

John M. Hughes
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
1899 Wynkoop Street, 8th Floor
Denver, Colorado 80202
(303) 592-3100

William F. Goodman, III
Joseph J. Stroble
Elizabeth M. Gates
WATKINS & EAGER
The Emporium Bldg.
400 E. Capitol Street, Suite 300
Post Office Box 650
Jackson, Mississippi 39205-0650
(601) 965-1900

LIST ISSUES ON APPEAL (For administrative purposes). You may indicate that this also serves as your statement of issues under FRAP 10(b)(3). _____ Yes. No.

This case presents a number of substantial issues, including some of first impression in this Circuit. While Appellants are still in the process of determining which of many potential issues will be appealed, we currently anticipate that at least the following issues will be raised on appeal:

- Whether plaintiffs' common law tort and damages claims are expressly or impliedly preempted by the Plant Protection Act, 7 U.S.C. § 7701 *et seq.* and other statutes and regulations.
- Whether the district court erred in interpreting the federal regulations enacted pursuant to the Plant Protection Act, 7 C.F.R. § 340 *et seq.* in a manner inconsistent with the USDA's own understanding of its regulations.
- Whether plaintiffs' claims are barred by the Economic Loss Rule.
- Whether the district court properly exercised personal jurisdiction over Bayer AG, a German holding company which owns the stock of the operating companies which engaged in the relevant conduct.
- Whether the district court's evidentiary rulings, including its rulings on several motions *in limine* and *Daubert* motions, were in error and affected the Appellants' substantial rights.
- Whether there was sufficient evidence to support the jury's verdict, including the damages awarded and its finding of agency and joint venture liability against certain defendants.
- Whether the district court erred in instructing the jury, and in refusing to instruct the jury on certain issues as requested by Appellants.
- Whether the district court erred in allowing the plaintiffs to present the claims of other persons not parties to the action.

FOR LEAD COUNSEL ONLY

I have discussed settlement possibilities on appeal with my client.
This appeal is not amendable to settlement.

This action is part of a larger MDL proceeding, which has already involved and continues to involve a series of mediations and settlement discussions. As a result, further mediation efforts through this Circuit would not be of assistance.

Submitted by: /s/ Mark E. Ferguson July 28, 2010
Signature of Lead Counsel Date

INSTRUCTIONS:

Filing of appellant's Form A is required to be submitted to the Clerk of the District Court with the Notice of Appeal (8 Cir. Rule 3B). If inadvertently omitted, appellant may file Form A directly with the Clerk of the Court of Appeals before appeal is docketed. Forms are available at the District Court Clerk's Office and may be obtained electronically at:

www.ca8.uscourts.gov

Copy 1 - Send to Appellee (together with an uncompleted Form B)

Copy 2 & 3 - Send to Clerk, District Court with Notice of Appeal or Eighth Circuit (see above)

Copy 4 - Retain

UNITED STATES DISTRICT COURT
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RICE LITIGATION)

This Documents Relates to:

Jim Penn, et al.
v. Bayer CropScience LP, et al.

CERTIFICATE OF SERVICE

I, Carolyn Frantz, counsel for Appellant, do hereby certify that a true and exact copies of the foregoing “Notice of Appeal” and “Appeal Information Form” were served upon:

Don M. Downing
Thomas K. Neill
Erica L. Airsman
GRAY RITTER & GRAHAM, P.C.
701 Market Street, Suite 800
St. Louis, Missouri 63101
(314) 241-5620

Scott A. Powell
HARE, WYNN, NEWELL & NEWTON, LLP
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2025 Third Avenue North
Suite 800
Birmingham, AL 35203
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William B. Chaney
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1601 Elm Street, Suite 4100
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(214) 237 6403

Stacey T. Kelly
WOLF HALDENSTEIN ADLER FREEMAN &
HERZ LLC
55 W. Monroe Street, Suite 1111
Chicago, Illinois 60603
(312) 984-0000

via electronic filing and U.S. mail this 28th day of July, 2010.

/s/ Carolyn Frantz
Carolyn Frantz