

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

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LITIGATION)	
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**AMENDED JOINT REPORT OF LEAD COUNSEL ON
ISSUES TO BE RAISED AT FEBRUARY 19, 2009 STATUS CONFERENCE**

COME NOW Lead Counsel for Plaintiffs and Defendants and report that the following issues will be raised at the February 19, 2009 status conference:

1. Schedule for all cases not presently set for trial.
2. Argument on Plaintiffs' Motion to Voluntarily Dismiss Without Prejudice.
3. Argument on Defendant Bayer CropScience LP's Corrected Motion to Reconsider Case Management Order No. 14 relating to lifting the stay on amendment by Producers to add Louisiana State University as a party and issues relating to Louisiana State University's status in the litigation.
4. Argument on Bayer's Motion to Compel Discovery directed to Riceland
5. Issues relating to Rule 30(b)(6) depositions by Plaintiffs.
6. Affect on scheduling of ice storms in Southern Missouri and Northern Arkansas.
7. Discovery cut-off on document production.
8. Issues relating to additional discovery from trial pool plaintiffs.
9. Rickmers's Motion to Compel Production of Sworn Deposition Testimony Regarding GMO Topics in Schafer v. Riceland Foods, Inc. (Doc. 37 from Case No. 4:08-cv-00499 CDP).

JOINT PROPOSAL

(Issues on which the parties were unable to reach agreement are in colored type. Red sets forth Plaintiffs' position and blue sets forth Defendants' position.)

With respect to all producer cases not included within the Initial Trial Pool, the parties propose that these cases be divided into two categories: (1) cases that will be tried in this District; and (2) cases that will be remanded. A proposed schedule for each category of cases is set forth below.

I. CASES THAT WILL BE TRIED IN THIS DISTRICT

Trials Previously Scheduled

The Court has scheduled the first Producer trial to begin on November 2, 2009, and has indicated its intention to begin the next trial one week after completion of the first trial. These trials will involve the claims of four producers from the states of Missouri and Arkansas. The Court has set the third producer trial to begin on January 11, 2010. It will involve one or more producers from either Texas, Louisiana or Mississippi. Bayer has indicated that it will be involved in a state court trial in February that will last into March. Finally, the Court has scheduled a non-producer case, *Riviana Foods, Inc. v. Bayer CropScience, LP*, No. 4:08CV375CDP for trial on April 19, 2010.

Trial Schedule For Final Two Bellwether Trials

The Plaintiffs propose that the next trials scheduled be the final two “bellwether trials.” These trials would involve claims of producers from the two states whose producers were not included in the trial on January 11, 2010.

Defendants propose that the next trials scheduled be two additional “bellwether trials.” These trials would involve claims of producers included in the Initial Trial Pool or producers

from Louisiana, Mississippi, or Texas identified pursuant to CMO 14 whose claims were not the subject of earlier trials.

The parties propose that those trials be scheduled for May and June, 2010 and propose the following deadlines:

1. Selection of cases for final bellwether trials: Plaintiffs' Lead Counsel and Defendant's Lead Counsel shall select two cases from each remaining state (four cases total) for the final two bellwether trials no later than **July 20, 2009**.

Selection of cases for final bellwether trials: Plaintiffs' Lead Counsel and Defendant's Lead Counsel shall each select two plaintiffs (four plaintiffs total) from the Initial Trial Pool (inclusive of the cases identified from Louisiana, Mississippi, and Texas identified pursuant to CMO 14) for the final two bellwether trials no later than **July 20, 2009**.

2. Expert discovery: Plaintiffs must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **December 18, 2009**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **January 8, 2010**.

3. Defendants must disclose any expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **January 22, 2010**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **February 5, 2010**.

4. Dispositive and Daubert motions: The parties must file any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason by **February 26, 2010**. Briefs in opposition must be filed by **March 26, 2010**, and reply briefs must be filed by **April 9, 2010**.

5. Trial settings: May and June, 2010.

Trials Of Remainder Of Initial Trial Pool Producers' Claims

Beginning in July, 2010, Plaintiffs propose that the remaining producers in the Initial Trial Pool be scheduled for trial. Assuming the “bellwether trials” all consist of two producers, that would leave some 24 producers in the Initial Trial Pool – eight from Missouri, eight from Arkansas, three from Texas, three from Mississippi and two from Louisiana. Plaintiffs propose that those trials be scheduled consecutively with one week breaks between each trial, and that the claims be grouped for trial as follows:

- Three Mississippi producers
- Two Louisiana producers
- Three Texas producers
- Eight Arkansas producers
- Eight Missouri producers

Plaintiffs propose the following deadlines for these trials:

- For the Mississippi, Louisiana and Texas producers' claims:

Beginning in July, 2010, Defendants propose that the remaining producers in the Initial Trial Pool be scheduled for trial. Defendants further propose that those trials be scheduled consecutively with one week breaks between each trial, and that the claims be grouped for trial as follows:

- Missouri producers
- Arkansas producers
- Louisiana, Mississippi, and Texas producers

Defendants propose the following deadlines for these trials:

- For the Missouri producers' claims:
 - Expert Discovery: Plaintiffs must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **February 5, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **February 19, 2010**.
 - Defendants must disclose any expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **March 5, 2010**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **March 19, 2010**.
 - Close of Discovery: All discovery shall be completed by **March 19, 2010**.
 - Dispositive and *Daubert* motions: The parties must file any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason by **April 9, 2010**. Briefs in opposition must be filed by **May 7, 2010**, and reply briefs must be filed by **May 23, 2010**.
 - Trial setting: **July, 2010** (Louisiana producers); **August, 2010** (Mississippi producers); and **September, 2010** (Texas producers).
 - Trial setting: **July, 2010**.
- For the Arkansas producers' claims:

- Expert Discovery: Plaintiffs must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **May 7, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **May 21, 2010**.
- Defendants must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **June 4, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **June 18, 2010**.
- Close of Discovery: All discovery shall be completed by **June 18, 2010**.
- Dispositive and *Daubert* motions: The parties must file any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason by **July 9, 2010**. Briefs in opposition must be filed by **July 30, 2010**, and reply briefs must be filed by **August 13, 2010**.
- Trial Setting: October, 2010.
- Trial Setting: September, 2010.
- For the Missouri producers' claims:
- For the Louisiana, Mississippi, and Texas producers' claims:
 - Expert Discovery: Plaintiffs must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **June 11, 2010**, and shall make these

expert witnesses available for depositions, and have depositions completed, no later than **June 25, 2010**.

- Defendants must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **July 9, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **July 23, 2010**.
- Close of Discovery: All discovery shall be completed by **July 23, 2010**.
- Dispositive and *Daubert* motions: The parties must file any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason by **August 13, 2010**. Briefs in opposition must be filed by **September 10, 2010**, and reply briefs must be filed by **September 24, 2010**.
- Trial Setting: November, 2010.
- Trial Setting: October, 2010 (Louisiana producers); **November, 2010** (Mississippi producers); and **December, 2010** (Texas producers).

Trials Of All Remaining Producers' Claims That Will Be Tried In This District

The parties propose that the claims of all remaining producers whose claims will be tried in this District be scheduled for trial beginning in early 2011, and that each trial involve a larger number of producers than are included in the trials of the Initial Trial Pool Plaintiffs.

First Group Of Remaining Producer Cases That Will Be Tried In This District

Plaintiffs propose that Plaintiffs' Lead Counsel and Defendants' Lead Counsel each select by **July 20, 2009** fifteen Missouri producer cases and five Arkansas producer cases for

case-specific fact discovery.

Plaintiffs propose the following deadlines for these cases:

1. Any amendment to the pleadings shall be filed by **August 17, 2009**.
2. Case-specific written discovery and notices of deposition related to these plaintiffs' claims may be served on or after **September 4, 2009**.
3. All case-specific fact discovery (except expert discovery) shall be completed by **March 5, 2010**.
4. Expert discovery: Plaintiffs must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **March 26, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **April 9, 2010**.
5. Defendants must disclose any expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **April 23, 2010**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **May 7, 2010**.
6. Dispositive and Daubert motions: The parties must file any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason by **May 28, 2010**. Briefs in opposition must be filed by **June 25, 2010**, and reply briefs must be filed by **July 9, 2010**.

7. Trial settings for the first group: **Early 2011**.

Second Group Of Producer Cases That Will Be Tried In This District

1. Selection of second group of producer cases that will be tried in this District: Plaintiffs' Lead Counsel and Defendants' Lead Counsel shall select by **January 22, 2010** an

additional fifteen Missouri cases and five Arkansas producer cases for case-specific fact discovery.

2. Any amendment to the pleadings shall be filed by **February 19, 2010**.

3. Case-specific written discovery and notices of depositions related to Plaintiffs' claims may be served on or after **March 5, 2010**.

4. All case-specific fact discovery (except expert discovery) shall be completed by **September 3, 2010**.

5. Expert discovery: Plaintiffs must disclose their expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **September 24, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **October 8, 2010**.

6. Defendants must disclose any expert witnesses related to issues of individual damages and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **October 22, 2010**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **November 5, 2010**.

7. Dispositive and Daubert motions: The parties must file any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason by **November 26, 2010**. Briefs in opposition must be filed by **December 24, 2010**, and reply briefs must be filed by **January 7, 2010**.

8. Trial settings for the second group: **Spring 2011**.

9. Additional cases that will be tried in this district will be selected and scheduled in a similar manner.

II. CASES THAT WILL BE REMANDED

For cases that will be remanded, Plaintiffs propose the following schedule:

First Group Of Cases To Be Remanded

1. No later than **March 13, 2009**, Defendants collectively and plaintiffs collectively, through Lead Counsel, shall each select from the cases that will be remanded an additional ten plaintiffs who filed cases in each of the following originating jurisdictions: Eastern District of Arkansas; Western District of Louisiana and Southern District of Texas. For these plaintiffs, the following deadlines shall apply:

- a. Any amendment to the pleadings shall be filed by **April 3, 2009**.
- b. Case-specific written discovery and notices of deposition related to these plaintiffs' claims may be served on or after **April 24, 2009**.

2. All case-specific fact discovery (except for expert discovery) for these cases shall be completed by **December 18, 2009**.

3. Any party to any of these cases may move, on or after **December 18, 2009**, for a suggestion of remand. Any opposition to the suggestion of remand shall be filed within fourteen days of the filing of that suggestion, and any reply shall be filed within seven days thereafter.

Second Group Of Cases To Be Remanded

1. No later than **November 2, 2009**, Defendants collectively and plaintiffs collectively, through Lead Counsel, shall each select from the cases that will be remanded an additional ten plaintiffs who filed cases in each of the following originating jurisdictions: Eastern District of Arkansas; Western District of Louisiana and Southern District of Texas.

2. Any amendment to the pleadings shall be filed on **November 23, 2009**.
3. Case-specific written discovery and notices of depositions related to these

plaintiffs; claims may be served on or after **December 18, 2009**.

4. All case-specific fact discovery (except for expert discovery) for these cases shall be completed by **August 20, 2010**.

5. Any party to any of these cases may move, on or after **August 20, 2010**, for a suggestion of remand. Any opposition to the suggestion of remand shall be filed within fourteen days of the filing of that suggestion, and any reply shall be filed within seven days thereafter.

6. Additional cases to be remanded will be selected and scheduled in a similar manner.

Respectfully submitted,

/s/ Don M. Downing

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2009, 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/ Don M. Downing_____