

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED) 4:06 MD 1811 CDP
RICE LITIGATION) ALL CASES

CASE MANAGEMENT ORDER No. 3

At the status conference held on May 31, 2007, the parties explained their areas of disagreement regarding proposed schedules and procedures for the pretrial preparation of these cases. This order, along with the others entered earlier, sets out the parties' agreements as well as my resolution of their disputes.

On the crucial dispute about what should happen with the individual producer cases while discovery and motions related to the Master Consolidated Class Action Complaint are being resolved, I believe that certain things can go forward in those cases, but that for the sake of efficiency many things should be delayed for a short time. As set out in Case Management Order No. 1, motions to remand to state court and motions related to jurisdiction and service will go forward. I will continue the stay of other pleadings and motions in those cases. I expect to establish a schedule for those cases at the next status conference. I will require all producer plaintiffs to file plaintiff fact sheets, but most producer plaintiffs who are not named in the Consolidated Complaint will not be required to produce documents or provide other discovery until further order.

All plaintiffs and all defendants are covered by the preservation order and the protective order entered earlier this week. All plaintiffs and all defendants are covered by the document production protocol order, but the parties are encouraged to meet and consider whether this order should be modified for the non-producer plaintiffs and for the non-Bayer defendants.

This order supplements Case Management Order No. 1; unless specifically state otherwise, all provisions of Case Management Order No. 1 remain in effect.

IT IS HEREBY ORDERED that:

I. PRODUCER PLAINTIFFS' FACT SHEETS ("PFS")

The parties have reached agreement on the form and content of the PFS, a copy of which is attached to the Joint Statement of Lead Counsel as Exhibit A (docket entry 285-1). All plaintiffs named in the Consolidated Complaint will provide to defendants' lead counsel completed PFS forms, along with the documents requested therein, no later than **June 29, 2007**.

All producer plaintiffs whose suits are already pending in this court will provide completed PFS forms to defendants' lead counsel no later than **August 6, 2007**, without responding to the four document requests in the PFS. Any producer plaintiffs whose cases are transferred to this court after today will provide completed PFS forms within sixty (60) days of the case being opened in this

district.

Defendants will select fifteen (15) producer plaintiffs (not named in the Consolidated Complaint) who must produce the documents required by the PFS no later than 30 days after lead defense counsel notifies lead plaintiffs' counsel, in writing, of the identity of the selected plaintiffs. The selected plaintiffs must then submit to deposition, upon notice, according to a schedule that will be negotiated between lead counsel.

No other discovery may be taken of any producer plaintiffs not named in Consolidated Complaint, until further order of the Court.

II. REQUESTS FOR ADMISSIONS ("RFA")

RFAs may be served any time after the commencement of discovery on **July 6, 2007**. Plaintiffs and defendants named in the Consolidated Complaint may each collectively serve up to 200 RFAs. Of those 200 RFAs, up to twenty (20) of them may require individual responses by each plaintiff or each defendant named in the Consolidated Complaint. The 200 RFA limit shall not include RFAs relating to the authenticity, genuineness of signature, status as business record or other such formal issues related to the admissibility of documents. The parties agree to meet and confer on such formal issues so as to diminish, to the extent possible, the need for RFAs relating to documents.

III. SCHEDULE FOR FILING ADDITIONAL PLEADINGS

A. Response to Consolidated Complaint

All defendants named in the Consolidated Complaint and who are properly served before June 21, 2007, will file a response no later than **June 21, 2007**. All defendants who are served with the Consolidated Complaint on or after June 21, 2007, shall file a response as required by the Federal Rules of Civil Procedure.

B. Response to Non-Producer Cases

All defendants named and properly served in any non-producer case on file in this district as of May 31, 2007, shall file a responsive pleading on or before **July 13, 2007**. Any defendants served in a non-producer case after May 31, 2007, or in a case transferred here after that date shall file responses as required by the Federal Rules of Civil Procedure.

C. Partial Stay of Individual Producer Cases

Except for motions relating to remand to state court and motions challenging personal jurisdiction or service (which are governed by paragraphs A-5 and A-6 at pages 4-5 of Case Management Order No. 1, issued on April 18, 2007), no responses to any of the individual producer cases shall be filed until further order of the Court.

D. Amendment of Pleadings; Joinder of Additional Parties

Except for good cause shown, motions to amend pleadings or to join additional parties in the non-producer cases or with regard to the Consolidated Complaint, must be filed no later than **January 15, 2008**. No amendments of pleadings shall be made or sought in any individual producer case until further Order of the Court.

IV. DEPOSITIONS

A. Scheduling of Depositions

Lead counsel will jointly coordinate the scheduling of all depositions. Lead counsel will meet and confer on the order and scheduling of all depositions and attempt to schedule depositions in an orderly manner that will facilitate the progress of the litigation and minimize, to the extent possible, the burdens on parties and witnesses. Counsel for parties who seek depositions of parties or third party witnesses shall notify lead counsel of the identity of the deponent. Lead counsel will meet and confer in an attempt to schedule the requested depositions consistent with the orderly and efficient administration of this litigation. **Lead counsel shall electronically file all notices of deposition on the E.D. Mo. ECF system.**

B. Conduct of Depositions

Lead counsel will meet and confer on jointly employing the services of court reporters for the litigation. Any party may request that a deposition be videotaped by giving lead counsel notice of such request seven (7) or more days before the scheduled date of the deposition. All objections, other than for form, foundation, or privilege, are preserved. An objection by counsel for any plaintiff or defendant shall be interpreted as an objection on behalf of all other plaintiffs or defendants.

C. Jurisdictional Depositions

Depositions taken for the purpose of determining the jurisdiction of this Court over defendants named in the Consolidated Complaint may be scheduled at any time after proper service of that defendant, unless the unserved defendant consents otherwise. Such consent shall not be construed as a waiver of that unserved defendant's rights in any manner, including that defendant's right to challenge or otherwise contest jurisdiction. Jurisdictional discovery may begin immediately.

D. Class and Merits Depositions

Other depositions may commence August 20, 2007.

E. Payment of Experts' Fees and Expenses

Each party shall be responsible for the fees and expenses of its own expert(s) in connection with any depositions.

F. Cross Noticing with State Actions

All depositions in this litigation may be cross noticed in any related action pending in state court, and may be used in any case in these MDL proceedings, and, if allowed by the applicable state law, in any related state court proceedings.

G. One Deposition for Each Witness

Unless good cause is shown, no witness shall be deposed more than once in the litigation. A party seeking a second deposition of a witness shall provide lead counsel, in writing, an explanation of the need for a second deposition and a list of the subjects on which it seeks to depose the witness. The second deposition shall be permitted only upon consent of lead counsel or an Order of the Court for good cause shown.

V. CLASS CERTIFICATION

Any motion for class certification and supporting memorandum shall be filed by **November 15, 2007**. Defendants will file any response thereto by **January 15, 2008**, and plaintiffs will file their reply memorandum by **March 14, 2008**. The Court will hold a hearing on the motion for class certification on

Thursday, May 1, 2008.

VI. CLASS CERTIFICATION EXPERT WITNESSES

Plaintiffs shall disclose all expert witnesses they intend to use in support of class certification, and shall provide the reports required by Fed. R. Civ. P. 26(a)(2), no later than **November 15, 2007**, and shall make said experts available for deposition no later than **December 20, 2007**. Defendants shall identify any expert witnesses they intend to use in opposition to class certification, and shall provide the expert reports required by Fed. R. Civ. P. Rule 26(a)(2), no later than **January 11, 2008**, and shall produce said experts for deposition no later than **February 15, 2008**. Plaintiffs shall provide any rebuttal expert report no later than **February 29, 2008**, and shall produce said experts for deposition no later than **March 17, 2008**. Rebuttal expert reports shall be permitted only to the extent permitted by Eighth Circuit and Eastern District of Missouri law. Any motion to strike, exclude, or limit the testimony of an expert on class certification issues shall be filed by **March 31, 2008**. The responses to any such motion shall be filed by **April 14, 2008**, and replies by **April 21, 2008**. Any motions to exclude experts' testimony will be heard on the same day as the class certification hearing.

VII. MERITS EXPERT WITNESSES

For those cases filed or docketed in this court by December 1, 2007,

Plaintiffs shall disclose all expert witnesses other than those related to class certification issues and provide the reports required by Fed. R. Civ. P. 26(a)(2), no later than **August 1, 2008**. Plaintiff shall make said experts available for deposition no later than **September 1, 2008**. Defendants shall disclose all expert witnesses on issues other than class certification and shall provide the reports required by Fed. R. Civ. P. 26(a)(2), no later than **September 22, 2008**, and shall produce such witnesses for deposition no later than **October 22, 2008**. Plaintiffs shall designate any rebuttal experts and provide the reports required by Fed. R. Civ. P. 26(a)(2) by **November 21, 2008**, and shall produce such witnesses for deposition no later than **December 19, 2008**. Rebuttal expert reports shall be permitted only to the extent permitted by Eighth Circuit and Eastern District of Missouri law.

VIII. LIMITATIONS ON EXPERT DISCLOSURES

Discovery of experts shall be in accordance with Rule 26, local rules and applicable case law except that the parties will not seek to discover, and may not discover, the following communications and materials:

1. Drafts of expert reports, affidavits, declarations, or written testimony;
2. Written or oral communications relating to the drafts or final reports, affidavits, declarations, written testimony, or other written materials; and

3. Notes of discussions regarding a draft or final expert report, affidavit, declaration, or written testimony.

All parties intend, and the Court orders, that these limitations on disclosure shall apply to every case in this Action and to all related cases remanded or transferred from this Court, whether to state or federal court.

IX. CLOSE OF DISCOVERY

The parties shall complete all fact discovery in cases docketed by December 1, 2007, no later than **August 1, 2008** and shall complete all discovery by **December 19, 2008**. If any cases are filed or docketed in this Court after December 1, 2007, lead counsel for plaintiffs and applicable counsel for defendants shall meet and confer and submit a proposed scheduling order to govern fact and expert discovery in those cases.

X. DISPOSITIVE MOTIONS

For those cases filed or docketed in this court by December 1, 2007, all dispositive motions relating thereto shall be filed no later than **February 6, 2009**.

Any response briefs shall be filed within 30 days after the filing of the motion.

The movant shall reply within fourteen (14) days thereafter. Any *Daubert* motions relating to expert testimony to be offered at trial shall be filed by **February 6, 2009**, with responses due within 30 days and replies within fourteen (14) days

thereafter. If any cases are filed or docketed in this Court after December 1, 2007, lead counsel for plaintiffs and applicable counsel for defendants shall meet and confer and submit a proposed scheduling order to govern dispositive motions in those cases.

XI. OTHER ISSUES

A. Federal Record Authorizations

By agreement of the parties, the deadline for the named plaintiffs to deliver to lead defense counsel their executed federal record authorizations is extended to **June 8, 2007**.

B. Amendment to CMO No. 1, Paragraph B(7), Disclosure and Discovery – Request for the Production of Documents and Things

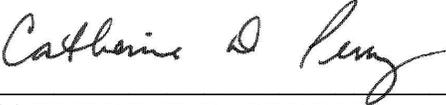
By agreement of the parties, the third sentence is amended to read as follows: All parties shall respond to requests for production **45** days after the requests are propounded.

C. Next Status Conference

The court will hold a status conference on **Thursday, September 20, 2007 at 11:00 a.m. in Courtroom 14 South**. Lead counsel must attend in person, and all other counsel are welcome to attend in person. For counsel who wish to appear by telephone, the Court will establish a procedure for conference call participation

and will notify counsel of the procedure at least one week before the conference.

Not later than **Friday, September 14, 2007** lead counsel shall file a joint statement which must describe in detail the progress of the case and propose a schedule for all actions necessary to complete pleadings, motions and discovery in the individual producer cases.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 7th day of June, 2007.