

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED) Case No. 4:06MD1811 CDP
RICE LITIGATION) ALL CASES

CASE MANAGEMENT ORDER No. 16

This Case Management Order results from the February 19 and March 5, 2009 scheduling conferences, and from the parties' supplemental filings received on March 10, 2009. It modifies provisions of CMOs ## 9, 11, and 14.

IT IS HEREBY ORDERED that the following supplemental schedule will apply and will be modified only upon a showing of exceptional circumstances:

**I. MODIFICATION OF PREVIOUS CMOs REGARDING
DISCOVERY IN AND MOTIONS IN PRODUCER TRIAL
POOL CASES**

This Order contains modifications of certain deadlines previously set. Lead counsel are reminded, however, that the discovery deadlines set out here and in CMOs 11 and 14 govern all thirty-four initial trial pool cases. This means that all discovery, both fact and expert, in the twenty Missouri and Arkansas initial trial pool cases will be completed by **August 14, 2009** (the last deadline in CMO # 11). All discovery, both fact and expert, in all fourteen initial trial pool cases from Louisiana, Texas and Mississippi will be completed by **September 25, 2009** (the last deadline in CMO # 14).

As set out in the previous CMOs, dispositive and *Daubert* motions in the four Missouri and Arkansas initial trial pool cases selected by the parties for the first two trials will be filed by **August 10, 2009** and will be fully briefed by **October 2, 2009**. I will notify the parties by **September 2, 2009** of the order of the first two bellwether trials. This selection will be made after I have seen the motions for summary judgment, although they will not be fully briefed.

CMO # 14 contemplated that dispositive and *Daubert* motions in six of the Louisiana, Mississippi and Texas initial trial pool cases would be filed in October of 2009, and that I would have seen those motions before setting the order of those trials, but this order changes that. Under this order, I will notify the parties of my selection of the cases for the third bellwether trial before the *Daubert* and summary judgment motions have been filed, and the motion deadlines for the third, fourth and fifth producer bellwether trials will be phased.

At the March 5 conference, the parties made differing proposals for the extension of certain discovery deadlines, and I told them my rulings on most of those disputes. Those rulings are incorporated here. I also asked them to supplement their proposals made before the February 19 hearing. Having fully considered their arguments and the supplemental reports filed on March 10, 2009, I will modify the schedule as follows:

1. Fact discovery in all initial trial pool cases shall be completed by **May 15, 2009**.

2. Expert discovery regarding issues of individual damages in the Missouri and Arkansas initial trial pool cases is extended as set out here. All other expert discovery in these cases remains as set forth in CMO # 11.

As to individual damages issues only, Missouri and Arkansas Initial Trial Pool plaintiffs must disclose expert witnesses and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **May 22, 2009**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **June 12, 2009**.

Defendants must disclose expert witnesses and provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **June 26, 2009**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **July 17, 2009**.

The deadlines for any rebuttal expert witnesses remains the same as set out in CMO # 11.

3. Expert discovery in the Louisiana, Texas and Mississippi initial trial pool cases remains as set by CMO # 14.

4. Selection of Cases for Third Bellwether Trial: As contemplated by CMO#11 and CMO#14, the third bellwether trial will begin on **January 11, 2010**. The trial will be of two cases or plaintiffs selected from the Louisiana, Texas and Mississippi cases as set out in CMO # 14, except that CMO # 14 is modified to provide that lead counsel shall file their selections of the six cases no later than **July 24, 2009**. I will notify the parties of my selection of the third bellwether trial no later than **August 5, 2009**.

5. Dispositive and Daubert Motions for Third Bellwether Trial: Motions in the cases selected for the third bellwether trial will be governed by the deadlines set out in CMO # 14. Specifically, for the third bellwether trial, 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 **October 15, 2009**. Briefs in opposition must be filed by **November 13, 2009**, and reply briefs must be filed by **November 30, 2009**.

6. Fourth and Fifth Producer Bellwether Trials: The fourth and fifth producer bellwether trials will be scheduled for May and June of 2010. The cases to be tried will be the remaining four cases previously selected by lead counsel on July 24, 2009 (in other words, they will be the Louisiana, Mississippi or Texas cases not selected for the third trial). I will notify the parties of which cases will be fourth and which will be fifth at some time after completion of the first two bellwether trials, but in time for the parties to prepare for dispositive and *Daubert* motions under the schedules they proposed in their Amended Joint Proposal filed on March 10, 2009 [docket # 1121].

II. OTHER PRODUCER CASES TO BE TRIED IN THIS DISTRICT

1. Other Initial Trial Pool Cases: The schedule set out above and in the previous CMOs means that there will be twenty-four Initial Trial Pool cases remaining for trial. All discovery will have been completed in all of these cases. I expect the trials of these cases to begin in **July 2010**. I will set a schedule for the trials and for the dispositive and *Daubert* motions for these cases after the third bellwether trial has been completed in January of 2010.

2. Other Cases filed here or with *Lexecon* Waivers: Following the completion of the third bellwether trial in January of 2010, I will discuss with counsel the schedule for the remaining cases to be tried in this district.

III. PRODUCER CASES TO BE REMANDED TO TRANSFEROR DISTRICTS

Producer cases in which no *Lexecon* waivers have been filed will be remanded to their transferor districts once pretrial proceedings have been completed. All remaining discovery on individual issues, as well as *Daubert* and

summary judgment motions will be handled in this court, and must be completed before the cases will be remanded. **Parties wishing to make such motions must do so under the schedule set out here, in this court, and may not wait until the cases are returned to the transferor districts.** I will automatically remand the cases when they are ready. Cases will be handled in groups of 60, with lead counsel for each side each choosing 30 cases to make up the group. The first group of cases will be remanded in the summer of 2010, with a new group of cases to be remanded roughly every eight months until all cases have been addressed.

The following schedule will apply:

1. First Group of Cases to be Remanded: No later than **April 10, 2009**, lead counsel from each side will select ten cases from each of the following originating districts: Eastern District of Arkansas, Western District of Louisiana, and Southern District of Texas. Each side will thus select 30 cases for a total of 60 in this first group.

a. For cases in this group, amendments of pleadings shall be due no later than **May 1, 2009**.

b. Case-specific written discovery and notices of deposition related to these plaintiffs' claims may be served on or after **May 2, 2009**. All case-specific fact discovery shall be completed no later than **January 15, 2010**.

c. Plaintiffs shall disclose 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**.

d. Defendants shall disclose 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 these expert witnesses available for depositions, and have depositions completed, no later than **March 19, 2010**.

e. All discovery shall be completed no later than **March 19, 2010**.

f. Any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason must be filed no later than **April 12, 2010**. Briefs in opposition must be filed by **April 30, 2010**, and any reply brief shall be filed no later than **May 14, 2010**.

2. **Second Group of Cases to be Remanded**: No later than **November 2, 2009**, lead counsel from each side will select an additional ten cases from each of the following originating districts: Eastern District of Arkansas, Western District of Louisiana, and Southern District of Texas. Each side will thus select 30 cases for a total of 60 in this second group.

a. For cases in this group, amendments of pleadings shall be due no later than **November 23, 2009**.

b. Case-specific written discovery and notices of deposition related to these plaintiffs' claims may be served on or after **December 18, 2009**. All case-specific fact discovery shall be completed no later than **August 20, 2010**.

c. Plaintiffs shall disclose 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 10, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **September 24, 2010**.

d. Defendants shall disclose 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 8, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **October 22, 2010**.

e. All discovery shall be completed no later than **October 22, 2010**.

f. Any motions for summary judgment or motions to exclude or limit expert testimony under *Daubert* or for any other reason must be filed no later than **November 5, 2010**. Briefs in opposition must be filed by **December 3, 2010**, and any reply brief shall be filed no later than **December 17, 2010**.

3. Remaining cases will be handled in a similar manner using a schedule to be determined at a later date.

IV. DISPUTE REGARDING SCHEDULE IN NON-PRODUCER CASES

Certain parties have requested modifications of the deadlines for non-Producer cases. The parties to *Riviana Foods Inc. v. Bayer AG et al.*, Case No. 4:06MD1811CDP, which has been selected and set for a bellwether trial in this district on **April 19, 2010**, have agreed on changes to the schedule for that case. In the other non-producer cases, modifications have been requested by some parties, but objected to by other parties. I have reviewed the parties' submissions, and believe that the requested extensions are in the interests of justice and will not prejudice the objecting parties. Therefore, the deadlines in *Riviana* are modified, and the deadlines in CMO # 9, which apply to all other non-producer cases, are also modified, as follows:

1. *Riviana*, Case No. 4:08CV375:

a. Expert Discovery: Riviana's expert disclosures under Fed. R. Civ. P. 26(a) shall be made no later than **August 3, 2009**, and the depositions of these witnesses shall be completed no later than **September 1, 2009**. Defendants' expert disclosures under Fed. R. Civ. P. 26(a) shall be made no later than **September 29, 2009**, and the depositions of these witnesses shall be completed no later than **October 26, 2009**.

b. Fact Discovery: All fact discovery directed to any party other than the Bayer defendants shall be completed by **October 26, 2009**. Fact discovery directed to the Bayer defendants (other than requests for admissions as discussed in the following paragraph) shall be completed by **May 15, 2009**.

c. Requests for Admissions: Any party desiring to serve requests for admissions upon any other party to this case shall do so no later than **September 28, 2010**.

d. Dispositive and Daubert Motions: Any motions to dismiss, for summary judgment, motions for judgment on the pleadings, or *Daubert* motions or other motions to exclude or limit expert testimony must be filed no later than **December 10, 2009**. Opposition briefs shall be filed no later than **January 11, 2010** and any reply brief shall be filed no later than **February 2, 2010**.

e. Trial: This case is set for trial on **April 19, 2010**. Pretrial submissions will be due on **April 1, 2010**, and the court will, by later order, provide a specific list of pretrial submissions required.

2. Non-Producer Cases Governed by CMO # 9

a. Expert Discovery: Plaintiffs' expert disclosures under Fed. R. Civ. P. 26(a) shall be made no later than **September 28, 2009**, and the depositions of these witnesses shall be completed no later than **October 26, 2009**. Defendants' expert disclosures under Fed. R. Civ. P. 26(a) shall be made no later than **November 23, 2009**, and the depositions of these witnesses shall be completed no later than **December 21, 2009**. Plaintiffs' rebuttal expert disclosures shall be made no later than **January 11, 2010**, and the depositions of these witnesses shall be completed no later than **January 25, 2010**.

b. Fact Discovery: The parties shall complete fact discovery directed to the Bayer Defendants (other than requests for admissions as discussed in the following paragraph) no later than **May 15, 2009**, and they shall complete all other discovery no later than **January 25, 2009**.

c. Requests for Admissions: All requests for admissions must be served no later than **December 23, 2009**.

d. Any motions to dismiss, for summary judgment, motions for judgment on the pleadings, or *Daubert* motions or other motions to exclude or limit expert testimony must be filed no later than **February 15, 2010**. Opposition briefs shall be filed no later than 30 days thereafter or **March 15, 2010** and any reply brief shall be filed no later than 14 days thereafter or **April 5, 2010**.

e. The Court will automatically remand cases to their transferor districts, and will set for trial any case to be tried here, as the cases are ready.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 12th day of March, 2009.