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

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

LEAD COUNSEL'S FILING OF AMENDED LIST OF CASES SELECTED FOR REMAND

In accordance with the Court's direction in Case Management Order No. 22, Lead Counsel for Plaintiffs and Defendants hereby file an amended list of cases selected to be included in the first and second group of remand cases.

The Court also requested an explanation of the reason the previously filed list did not contain any Arkansas cases in the first group of cases to be remanded. At the April 16, 2009 status conference hearing, it was brought to the Court's attention that there were insufficient cases filed in the Eastern District of Arkansas for inclusion at that time in the first cases to be remanded. Lead Counsel understood that the Court agreed that selection of cases for remand from the Eastern District of Arkansas would wait until the second round of selection for remand. See attached excerpt from the April 16, 2009 status conference, attached as Ex. A.

In addition, at the May 21, 2009 status conference hearing, it was agreed that two additional cases would be added to the first group of remanded cases from the Southern District of Texas and those cases were inadvertently left off this list. See attached Ex. B and D.I. 1355. They are included in the list below. The list consists of both the first and second groups of cases

selected by plaintiffs' and defendants' counsel and identifies them by the case number assigned in the Eastern District of Missouri.

Cases Selected for the First Remand

From the Western District of Louisiana:

Aswell Farms, Inc.	07cv0499
Deville	07cv0503
Courville	07cv0637
Fontenot	07cv0692
Hensgens	07cv0792
Fontenot	07cv1765
Stutes	07cv1806
LeBlanc	07cv1808
Mouton	07cv1809
Simon	07cv1838
Benoit	07cv0759
Black River Rice Co.	07cv1370
Marceaux	07cv0482
Sarver	07cv1768
Attales	07cv1030
Fruge	07cv0711
Lonesome Dove Plantation, LLC, c/o Troy Fruge	07cv0647
Miller Brothers Farm c/o Shelton Miller	07cv0782
Fontenot	07cv0651
Soileau	07cv0696

From the Southern District of Texas:

Wleczyck	08cv1254
Anderson	08cv1257
Hlavinka	08cv1265
Hoffman	08cv1267
Korenek	08cv1269
Pavlock	08cv1272
Pederson	08cv1273
Smaistrla	08cv1276
Polak	08cv1281
Polak	08cv1283
Dutcher	08cv0889
Engstrom	08cv1262
Guthman	08cv1263
Terrance Hlavinka Cattle Company	08cv1541
Hoffman	08cv1267
Kramr	08cv1268
Pederson	08cv1273
Smaistrla	08cv1276
Wied	08cv0887
Wiese	08cv0877
Woodsland Farms, et al.	08cv1543
Raymond Franz Interest, Inc., et al.	08cv1544

Cases Selected for the Second Remand

From the Eastern District of Arkansas:

Greg Kerksieck, et al.	09cv1550
Clinton McGraw, et al.	09cv1526
Darrell Brady, et al.	09cv1587
Kenneth Maier, Sr., et al. (tenant) Robert Dilday, et al. (landlord)	09cv1533 09cv1558
Ronney E. Dean, Sr., et al.	09cv1542
Lane Oliver, et al.	09cv1569
Brooks Davis, et al.	09cv1552
Rick Siems, et al.	09cv1580
Stephen S. Hoskyn, et al.	09cv1583
Fred Wilkes, et al.	09cv1527
Geisler Farms, et al.	07cv0972
Dwight Holloway	07cv1289
LKZ Inc., et al.	07cv1210
John H. Stephens, et al.	07cv1287
Zachary Northcutt Farms	08cv1211
Jason Holloway	07cv1286
Garry Heigle	07cv0526
Ephron Lewis, et al.	07cv0050**

Western District of Louisiana:

Five T. Farms Partnership	09cv1246
Mike & Thomas Lalande Farms	07cv1807
Marceaux Farms Corp.	09cv1246
Neal Landry Farms	09cv1246
Dale & Dorothy Hughes	09cv1243
Thomas Arceneaux	09cv1242
Arceneaux Farms Corporation	09cv1242
Nicole Primeaux	09cv1242
Excalibur Land Company	07cv1841
Powell Farm Partners	07cv1841
Bruce and Judy Brown, et al.	07cv0645
Elm Tree Planting Partnership, et al.	07cv1775
Hebert Brothers Partnership, et al.	07cv0758
Ellagene R. Bertrand, et al.	09cv1246
Basile Canal Co.	07cv0716
Lauran Attales (Bain Farms partnership, et al.)	09cv1134
Aaron Amos (Harold Clark)	07cv1779
Paul Berzas	07cv0689
Jeffry Drounette, et al.	09cv1241
Jonathan Girouard	07cv1842

**Ephron Lewis, et al., W.D. Louisiana case no. 07cv0824, may eventually be the case remanded.

From the Southern District of Texas:

Dorotik Farms	4:10cv00054
James A. Garrett Farm	4:10cv00054
William B. Garrett Farm	4:10cv00054
P&C Farm & Ranch	4:10cv00054
Mark Waligura	4:10cv00054
JRS Farms	4:10cv00054
John W. Garrett Farm	4:10cv00054
L. G. Raun, and by amendment, his affiliated entity, Lowell Farms JV	4:10cv00054
Wolf Run Farms, Inc.	4:10cv00054
Turkey Creek Rice Inc.	4:10cv00054
Dos Arroz Farms,Inc	4:10cv00054
James Brent Schiurring	4:10cv00054
James Schiurring	4:10cv00054
Turkey Creek Organic Rice	4:10cv00054
Cody Todd, et al.	08cv1284
Gayle Gertson, et al.	08cv1280
Rudy Till, III, et al.	08cv1279
Mark Boenisch, et al.	08cv0879
Carolyn S. Pope, et al.	08cv1274
Frank Stasney, et al.	08cv0878
Raymond Dollins, III, et al.	08cv1291
W. S. Edwards, F.L.P. (K & C McKissick)	08cv1540
Bob Thornton, et al.	08cv1278

DATED: March 19, 2010

Respectfully submitted,

/s/ Don M. Downing
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And

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Lead Counsel for Defendants

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 19th day of March, 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

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF MISSOURI

3

4 In Re: Genetically Modified Rice
5 Litigation
No. 4:06-MD-1811 CDP

6

7

8 -

PRESENT: The Honorable Catherine D. Perry, Presiding

9

ATTORNEY FOR PLAINTIFFS: Don M. Downing, Gretchen Garrison,
10 William B. Chaney (appearing by telephone), John K. Baker, Ann Georgehead, John P. Perkins, Richard Lusby (appearing by
11 telephone), Martin J. Phipps

12 ATTORNEYS FOR DEFENDANT: Eric R. Olson, John M. Hughes

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17 Hearing on Motion for Partial Summary Judgment
and Status Conference

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April 16, 2009

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23

TERI HANOLD HOPWOOD
24 Registered Merit Reporter
Thomas F. Eagleton Courthouse
25 111 South Tenth Street
St. Louis, Missouri 63102

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1 inevitable. You're going to have this kind of problems.
2 Frankly, the 30(b)(6) issue has been a very difficult one in
3 this case.
4 Here is the deal. Bayer will either bring this guy to
5 St. Louis the week of May 11th, or make him available somewhere
6 the following week, and maybe if you offer a Sunday or a
7 Saturday, that's okay, but that's it, so, whatever you have to
8 do, either the week of May 11th in St. Louis, and I have no
9 doubt that Ms. Garrison can be brought up to speed to take this
10 deposition, especially seeing what a good job she did on the
11 arguments today, and you too, Mr. Olson. Listening to this
12 argument, so you all know, I know I'm tough on you all, but
13 it's so nice to have lawyers who are as good as the two of you
14 are in arguing these motions. Still it's hard to decide.
15 Week of May 11th in St. Louis, or the next week, the
16 week of May 18th somewhere. So, that it's a very short
17 extension, if at all. That way your expert can get what he
18 needs.
19 Now I want to jump to the selection of the Eastern
20 District of Arkansas cases for inclusion in the first group of
21 cases to be remanded. Item 8. What's up with that?
22 MR. DOWNING: I think we both plead guilty to not
23 fully understanding the number of Eastern District of Arkansas
24 cases that there actually were when we proposed to Your Honor
25 the order that you signed requiring us to select 20 cases from

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that jurisdiction. There aren't that many. I think there are a total of nine. I'm understanding that three of those are going to be voluntarily dismissed, counsel has told me that, so I think we're down to six. That may or may not square with your numbers. Some of the cases are not producer cases. I'm not counting those because your order pertained to producer cases. So Mr. Olson and I have discussed that rather -- we have exchanged our selections for the other two jurisdictions as the Court ordered. We wanted to talk with Your Honor before we did any selections for that district.

My thought would be to treat that district like we treated the other districts and make that only in a next wave of selections. I think our thought when we proposed the order to Your Honor, let's deal with the jurisdictions that have the vast majority of cases first and get those in the first wave, and I don't think the Eastern District of Arkansas really falls into that category, and I'm sorry, and I'm sure Mr. Olson feels the same way for proposing that to you.

THE COURT: So Mr. Olson, is that what you think you should do, wait and do it in the next wave?

MR. OLSON: Yes.

THE COURT: Okay. That's easy. Done. Is Mr. Phipps on the line or here?

MR. PHIPPS: I'm here.

THE COURT: Let's talk. Come on up, Mr. Phipps, and

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MISSOURI

In Re: Genetically Modified Rice Litigation

No. 4:06-MD-1811 CDP

- -

PRESENT: The Honorable Catherine D. Perry, Presiding

ATTORNEYS FOR PLAINTIFF: Don M. Downing, Adam J. Levitt, Deborah Brown, Clayton J. Smaistria, John Baker, Christopher Hohn (appearing by telephone)

ATTORNEYS FOR DEFENDANT: Terry R. Leuckenhoff, Eric R. Olson (appearing by telephone)

ATTORNEY FOR USA RICE FEDERATION: Roger Rowe (appearing by telephone)

Status Conference

May 21, 2009

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St. Louis, Missouri 63102

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1 plaintiffs' individual experts, so we would like to extend that
2 date by a week to June 19th to complete those individual expert
3 depositions.
4 The final change would be for the date for defendants to
5 disclose their individual expert witnesses. We're extending
6 that to July 2nd.
7 THE COURT: Okay.
8 MR. LUECKENHOFF: That's about a week, Your Honor.
9 THE COURT: The deposition on that remains the same?
10 MR. LUECKENHOFF: Yes, Your Honor.
11 THE COURT: That's fine. I don't know if I'll put
12 that in an order or not. I approve your agreement, so you all
13 made a record of what it is. I don't want to screw it up by
14 putting it in an order, but I may do that, I'm not sure.
15 Item 4 on your list was the possibility of including
16 initial Texas cases in the initial group of remanded cases.
17 Right now we've got -- the CMO says that 30 Southern District
18 of Texas cases will be in the first group, and so what is your
19 proposed change?
20 MR. DOWNING: Clay Smaistrla is on the phone to
21 discuss that on the plaintiff's side.
22 MR. SMAISTRLA: This is Clayton Smaistrla
23 representing individual rice farmers which are Texas
24 plaintiffs, and what we did --
25 THE COURT: Speak up just a little, Mr. Smaistrla.

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1 MR. SMAISTRLA: Absolutely. Can you hear me better?
2 THE COURT: Yes.
3 MR. SMAISTRLA: What happened was that we initially
4 designated ten cases to be submitted to the trial pool, the
5 initial trial pool for Texas cases. The agreement was that
6 Bayer would also submit ten cases. What happened was that
7 there was some overlap, and so I believe we got basically 17
8 out of the 20 cases of the ones that we proposed and Bayer
9 proposed. What we were wanting to do, there was two additional
10 cases we would like to have submitted into the initial trial
11 pool, and Mr. Olson and I were trying to get in touch and talk
12 about this before the status conference today, but we were
13 playing phone tag and couldn't get a hold of each other, so
14 this may not be an issue, I'm not sure what Bayer's position on
15 it is, but there are two cases that we propose be added to that
16 initial trial pool.
17 THE COURT: Are you talking about initial trial pool
18 or initial group of remands?
19 MR. SMAISTRLA: Initial remands.
20 THE COURT: From Bayer?
21 MR. OLSON: Eric Olson again. Our view is we should
22 follow the CMO, each pick ten from the Southern District of
23 Texas. There was some overlap. The CMO does not contemplate
24 going back and adding more to the pile. My concern is I've
25 slept a lot since I picked those ten cases, and the data source

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that I had organized and used in my selection is no longer current. It would be a fair bit of administrative work on my end to go back, and I guess Mr. Smaistrla's proposal is they pick two and we pick one to bring it up to 20, even, but I think it's unnecessary work. There is another phase of remanded cases to be picked, and we should just add those at that time. I don't know that it's worth everyone's time to go back when there is an overlap because this may happen again to fill in more cases to make sure we get 20. We each had ten selections and we exercised those ten selections.

THE COURT: Mr. Smaistrla, are there two specific -- is there any reason besides having the full group that you wish to add these?

MR. SMAISTRLA: Yeah, there's two cases that we feel would be beneficial to have in that initial group of cases that are remanded, and actually, one of the things that I proposed to Mr. Olson was that if it would be more fair to us to both propose two, and if the Court approves that, then just we each pick two and we have 21 of the cases then.

THE COURT: Okay, I'm going to allow that, Mr. Olson, over your objection, so you can each pick two additional cases to go into the pool.

MR. OLSON: Can I get some relief given other expert report deadlines? I would like three weeks.

THE COURT: Okay. So when do you need?

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MR. OLSON: I don't have my calendar open here. June 12th.

THE COURT: Okay, so each side will pick two additional cases by June 12th.

MR. OLSON: If for some reason we come up with less than four, we leave it as is, correct?

THE COURT: Right. That's as far as we're going to go.

MR. SMAISTRLA: Thank you, Judge.

MR. OLSON: Thank you, Your Honor.

THE COURT: I have some issues I want to talk to you about in addition. Then at the end, I'm going to ask you all if there is anything else you want to talk about, but there is pending in the VT case a motion to test the samples from the barges that will destroy some rice, and it says it's not objected to by Producers, I think this is an issue between VT and Producer's Rice Mill, but is there any reason I shouldn't grant that?

MR. OLSON: This is Eric Olson on behalf of Bayer. We're not sure of our position on this. I requested VT for some more information as to whether or not we will oppose or not object here, so I'm waiting for information. Once I get that information, we will be able to make a decision.

MS. BROWN: This is Deborah Brown. I represent VT. I filed that motion, as the Court knows, I think, two or three

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