

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. 12

This order applies to all cases, including all producer and Non-Producer Cases, and results from the discussion held at the telephone conference on November 20, 2008. This Order modifies previous Case Management Orders 9, 10 and 11 in some respects, but except to the extent changed, all previous orders remain in effect.

IT IS HEREBY ORDERED:

1. **Lexecon waived cases need NOT be dismissed and refiled:** I have reconsidered the portion of Case Management Orders 9 and 10 regarding dismissal and refileing of cases in which parties consent to trial in this district, and it is NOT necessary for any plaintiffs to dismiss and refile such cases. Plaintiffs' counsel and defendants' counsel are expected to agree on language for waiving objections to venue under *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) and consenting to venue here.

2. **Deadlines for filing Lexecon waivers:** The deadlines previously established in CMOs 9 and 10 for filing waivers of objection to venue remain the same for cases transferred to this district before October 1, 2008. Any cases (regardless whether plaintiffs are producers or non-producers) transferred to this district *after* October 1, 2008 shall have sixty days from the time the case is actually opened in this District to waive the requirements of *Lexecon* and consent to venue to permit trial in this district. If a plaintiff in a newly transferred case files a *Lexecon* waiver, any other party to that same case who objects to the trial taking place here must file a statement of objection **within ten days** of the filing of the *Lexecon* waiver.

3. **Initial Trial Pool Cases Selected on December 16, 2008:** Lead Counsel shall, on December 17, 2008, file a list of the plaintiffs selected the previous day for the initial trial pool.

4. **Amendment of Pleadings for Newly Transferred Non-Producer Cases:** The deadlines previously established for amendment of pleadings for Non-Producer Cases continues to apply to any such cases filed in this district before October 1, 2008. Any non-producer cases transferred to this district *after* October 1, 2008 shall have sixty days from the time the case is actually opened in this District to amend pleadings. Motions to amend are not required so long as amendments are filed by the dates specified in this paragraph.

5. **Service Deadlines on Foreign Defendants in Non-Producer Cases:** The deadlines previously set for service of process on unserved defendants is vacated for ***foreign defendants only***. Plaintiffs who need to serve foreign defendants must, for cases already opened in this District, file the documentation needed by the Clerk of Court (for information on the documentation needed see www.moed.uscourts.gov/cmecf/ServiceAbroadCheck.pdf) no later than **January 30, 2009**. Any non-producer cases transferred to this district *after* today shall have sixty days from the time the case is actually opened in this District to provide the needed documents. Any non-producers who achieved service on the foreign defendants before a case was transferred to this district should file a notice to that effect by **January 30, 2009**.

6. **Briefing Schedule for Dispute over Location of Depositions:** A dispute has arisen over the location for taking certain depositions of foreign defendants under Rule 30(b)(6). As discussed in the conference, no later than **Wednesday, December 3, 2008** the noticing parties shall provide defense counsel with the final list of topics to be covered by these disputed depositions. Defense counsel shall file any motion for protective order by **Monday, December 8, 2008** and the plaintiffs who noticed the depositions shall their brief in opposition no later than **Friday, December 11, 2008**. No further briefing shall be allowed. The motion and briefs shall be filed in the main case (4:06MD1811CDP) only, even though the dispute relates to non-producer cases. This briefing schedule relates only to the specific dispute discussed in the telephone conference regarding the specific Rule 30(b)(6) depositions that have already been noticed and were discussed at the scheduling conference.

7. **Briefing Schedule and Telephone Hearing on Recently Filed Motion for Protective Order regarding Domestic Depositions in Non-Producer Cases:**

On Friday, November 21, 2008, the Bayer defendants filed a motion for protective order regarding depositions noticed in certain Non-Producer cases. Those depositions are noticed to begin today, November 24. The protective order is GRANTED to the extent that the depositions scheduled before December 2, 2008 will not go forward (unless the parties agree to do so). Plaintiffs seeking to take these depositions must file a brief in response to the motion for protective order no later than **Wednesday, November 26, 2008**, and I will hold a telephone hearing to resolve the dispute on **Monday, December 1, 2008 at 3:00 p.m.** Defense counsel is responsible for placing the call and having all interested plaintiffs' counsel on the line. I will resolve the dispute during the telephone hearing.

8. **General Order Regarding Discovery Disputes:** No further discovery motions may be filed unless they have been discussed first in the monthly telephone conference. No disputes may be raised in a telephone conference unless counsel raising the issue has first discussed it with opposing counsel. If I can, I will resolve disputes in the conference, and if I cannot do so, I will set a briefing schedule and/or further telephone hearing. If emergencies arise requiring immediate rulings, counsel must contact one another and then, if absolutely necessary, contact my chambers by telephone and explain to my staff that an emergency issue requires immediate resolution.

9. **Issues for December Telephone Scheduling Conference:** In addition to any other issues the parties wish to raise, counsel shall address them in their next statistics report and shall be prepared to discuss them at the next telephone scheduling conference whether the date set by CMO 11 for selection of cases for trials should be changes and whether the dates set in CMO 11 for expert discovery should be modified.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 24th day of November, 2008.