

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

IN RE GENETICALLY MODIFIED ) 4:06MD1811 CDP  
RICE LITIGATION ) ALL CASES

**CASE MANAGEMENT ORDER No. 23**

For the reasons stated on the record during the status conference on April  
14, 2010,

**1. Briefing Procedure in Remand Cases:**

a. Summary Judgment Motions - All summary judgment motions raising common issues in the different cases shall be filed in this court and decided by me. Common issues include all issues that are similar for similar cases. All issues that were raised for decision in any of the summary judgment motions filed in any bellwether case are deemed to be common issues.

Each side may file one consolidated summary judgment motion, one consolidated memorandum in support of that motion, and one consolidated statement of facts related to the motion. Each side may file only one consolidated memorandum in opposition, and only one consolidated reply brief. Any common issues not raised will be deemed to be waived.

Memoranda in support and in opposition to the motions shall be no more than 40 pages and any reply shall be no more than 20 pages.

b. Daubert Motions - *Daubert* motions related to all issues other than individual damages shall be filed in this court and decided by me. Each side may file one consolidated *Daubert* motion, and one consolidated memorandum in support of that motion. That single motion must raise any objections to any non-individual damages expert testimony. Each side may file only one consolidated memorandum in opposition, and only one consolidated reply brief. Any issues not raised will be waived, and cannot be raised in the transferor districts.

Memoranda in support and in opposition to the motions shall be no more than 40 pages and any reply shall be no more than 20 pages.

**2. First Group of Cases to be Remanded:**

a. General Liability and Damages Experts - The schedule for disclosure of expert testimony on the subject of liability and general damages for the first remand group will proceed as follows:

i. Plaintiffs shall disclose expert witnesses related to issues of liability and general damages and provide the reports required by Federal Rule of Civil Procedure 26(a)(2) no later than **June 7, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **June 28, 2010**.

ii. Defendants shall disclose expert witnesses related to issues of liability and general damages and provide the reports required by Federal Rule of Civil Procedure 26(a)(2) no later than **July 6, 2010**, and shall make these expert witnesses available for depositions, and have depositions completed, no later than **July 21, 2010**.

iii. Plaintiffs must disclose any rebuttal expert reports required by Federal Rule of Civil Procedure 26(a)(2) no later than **August 11, 2010**, and shall make these expert witnesses available for depositions (if appropriate under Case Management Order 17), and have depositions completed, no later than **September 1, 2010**.

iv. Defendants must disclose any sur-rebuttal expert reports required by Federal Rule of Civil Procedure 26(a)(2) no later than **September 8, 2010**, and shall make these expert witnesses available for depositions (if appropriate under Case Management Order 17), and have depositions completed, no later than **September 29, 2010**.

b. Individual Damages Experts - All prior deadlines regarding individual damages in remand cases are vacated. Discovery deadlines for individual expert witnesses shall be set by the transferor court after remand.

*Daubert* motions related to issues of individual damages shall be handled in the transferor districts.

c. Dispositive Motion Briefing - Any motions to dismiss, for summary judgment, or *Daubert* motions, or other motions to exclude or limit expert testimony must be filed no later than **October 7, 2010**. Opposition briefs shall be filed no later than **October 28, 2010** and any reply brief shall be filed no later than **November 11, 2010**.

d. Suggestions of Remand - Any party may file a suggestion of remand at any time after the Court has ruled on the summary judgment and *Daubert* motions.

**3. Additional Cases to be Tried in this District:**

The remaining initial trial pool cases shall proceed as follows:

a. Mississippi Cases

i. The following Mississippi plaintiffs will be joined for a single trial in this Court:

Brian Byrd, Judy, Byrd, Jarett Byrd, Jeremy Byrd, partners of Byrd Farms Partnership, Peter H. Dulaney and Virginia V. Dulaney, partners of Peter Dulaney Farms, Gary Pongetti, Pongetti Farms, Inc., EBP, Inc., partners of Pongetti Farms Partnership II, Phillip E. Rizzo, Phillip A. Rizzo, Paul R. Rizzo, John Michael Rizzo, Kimball Lake, Inc., Snake Creek, Inc. and Bogue, Inc., partners of Rizzo Farms Joint Venture.

ii. Trial for these plaintiffs is set for **January 10, 2011**.

iii. Any motions to dismiss, for summary judgment, or *Daubert* motions, or other motions to exclude or limit expert testimony must be filed no later than **October 11, 2010**. Opposition briefs shall be filed no later than **November 8, 2010** and any reply brief shall be filed no later than **November 29, 2010**.

b. Arkansas Cases

i. The following Arkansas plaintiffs will be joined for a single trial in this Court:

Frank Binkley, Lynn Gene, Inc., Eifling Investment Co., Sam Don, Inc., Rebecca Lynne, Inc., Clayton Lee, Inc., Don L. Eifling, Inc., and D. Lynn Eifling, Inc. as partners of Don Eifling & Son, Jeffrey Keeter, Robert J. Venable and Robbin V. Tuller, partners of RJR Farms; Keeter Farms, Inc.; and P&K, Inc., Dennis Brown, Sherry Brown and Coty Brown, partners of Legacy Farms Partnership.

ii. Trial is set for these plaintiffs on **May 16, 2011**.

iii. The following Arkansas plaintiffs will also be joined for a separate single trial in this Court:

Ronald Catt, Rudy Hufford and Cheryl Hufford, partners of Hufford Farms, Gary Richey and Jeremy Richey, R & R Farms Joint Venture, Mark Williams and Pamela G. Williams, Guy Brinkley, and Aylene Williams.

iv. Trial is set for these plaintiffs on **July 11, 2011**.

v. For all of the remaining Arkansas initial trial pool plaintiffs, any motions to dismiss, for summary judgment, or *Daubert* motions, or other motions to exclude or limit expert testimony must be filed no later than **December 20, 2010**. Opposition briefs shall be filed no later than **January 17, 2011** and any reply brief shall be filed no later than **February 7, 2011**.

c. Missouri Cases

i. The remaining Missouri initial trial pool plaintiffs are:

David Haggard & Judith Haggard d/b/a Haggard Farms, Russ

Hoggard and Russell D. Hoggard, partners of Hoggard Farms, B. W. & S.W. Farms, L.L.C., B.W. & D.W. Farms, L.L.C. & D.W. & S.W. Farms, L.L.C. (Wheeler entities), Kevin Cunningham, Scott E. Cunningham and Barbara K. Cunningham, William C. Hunter & Laura Collins, partners of Willow & Company, Samuel E. Hunter as trustee of Frances M. Hunter Insurance Trust; Trustee of William P. Hunter Marital Trust; W.P. Hunter Insurance Trust, Toppertown, Inc., Samuel E. Hunter and David B. Dalton, partners of D.P.S. Enterprises, Peter Rost, and Paul Rost d/b/a Peter Rost Farms, Peter Rost, Jr. d/b/a Peter Rost Jr. Farms, Peter Rost and Peter Rost, Jr., partners of Rost & Rost Farms, Johnny (Keith) Scott, Gordon (Lee) Wright, Christopher Lee Wright, and Wright Farms of Butler Co., Inc.

ii. For all of the remaining Missouri initial trial pool plaintiffs, any motions to dismiss, for summary judgment, or *Daubert* motions, or other motions to exclude or limit expert testimony must be filed no later than **August 2, 2011**. Opposition briefs shall be filed no later than **August 30, 2011** and any reply brief shall be filed no later than **September 16, 2011**.

iii. Plaintiffs shall select four cases to be joined in a trial scheduled for **November 7, 2011** no later than **December 20, 2010**.

iv. The remaining Missouri initial trial pool plaintiffs shall be joined for a trial set for **January 9, 2012**.

d. Louisiana Case

The remaining Louisiana initial trial pool case with plaintiffs Leland Dale Vidrine, Sr. and Cynthia Faye Vidrine, d/b/a Vidrine Farm, 4:07CV223 CDP, will be remanded to the Western District of Louisiana with the first group of cases to be remanded.

e. Texas Case

The remaining Texas initial trial pool case with plaintiffs John Gaulding and John M. Donaho, partners of Gaulding Farms will be included in the Texas producer plaintiffs' bellwether trial scheduled for **October 2010**.

**4. Additional Cases to be Tried in this District:**

a. Plaintiffs shall select thirty cases to be tried in this district from the remaining available cases that are not in the initial trial pool by **December 20, 2010**.

b. The parties shall propose a schedule for trying these cases no later than **January 17, 2011** and the first trial shall commence on **March 19, 2012**.

**5. Third Group of Cases to be Remanded:**

Lead counsel from each side shall select twenty cases from the Eastern District of Arkansas, and ten cases from each of the Western District of Louisiana and Southern District of Texas to be included in the third group of cases to be remanded no later than **August 23, 2010**.

**6. Video Deposition of Dr. Kalaitzandonakes:**

A video deposition of Dr. Kalaitzandonakes is scheduled for **9:00 a.m.** on **May 7, 2010** in **Courtroom 14-South**.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 19th day of April, 2010