

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

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

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**JOINT REPORT OF LEAD COUNSEL**  
**ISSUES TO BE RAISED AT DECEMBER 18, 2008 STATUS CONFERENCE**

COME NOW Lead Counsel for Plaintiffs and Defendants and report as follows:

1. Service on the Foreign Defendants by the Producers who will not be trying their cases in the Eastern District of Missouri.
2. The date by which Lead Counsel are required to select the cases for the initial trials.
3. The date by which individualized expert reports regarding damages should be due.
4. Rolling production of completed PFS forms and the four categories of documents between December 15, 2008 and February 12, 2009.
5. The number and origin of Plaintiffs in the Initial Trial Pool.
6. Status of selection of coordinating counsel representing non-Bayer defendants and Non-Producer Plaintiffs.
7. Resolution of BioScience NV Notices of 30(b)6 depositions – agreement attached hereto as Exhibit A.

Respectfully submitted,

/s/ Terry Lueckenhoff

Terry Lueckenhoff, #43843  
Fox Galvin, LLC  
One S. Memorial Drive, 12<sup>th</sup> Floor  
Saint Louis, Missouri 63102

*Lead Counsel for Defendants*

/s/ Don M. Downing (w/consent)

Don M. Downing, #41786  
Gray, Ritter & Graham, P.C.  
701 Market Street, Suite 800  
St. Louis, Missouri 63101

And

/s/ Adam J. Levitt (w/consent)

Adam J. Levitt  
Wolf Haldenstein Adler Freeman & Herz LLC  
55 West Monroe Street, Suite 1111  
Chicago, Illinois 60603

*Lead Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Terry R. Lueckenhoff

**From:** [Olson, Eric](#)  
**To:** ["William Chaney"](#)  
**Cc:** ["Don M. Downing"](#); [Terry R. Lueckenhoff](#); ["Drew York"](#); [john.hughes@bartlit-beck.com](mailto:john.hughes@bartlit-beck.com); [Renee Grimmett](#); [Elizabeth Costner](#)  
**Subject:** RE: In Re: Genetically Modified Rice Litigation, MDL No. 1811, USDC, ED Mo / Agreement Regarding Bayer BioScience NV Rule 30(b)(6) Deposition and Depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels  
**Date:** Saturday, January 01, 4501 12:00:00 AM

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Bill-

Thank you for the productive dialogue on this issue. Your email accurately sets forth our agreement and resolution of this issue.

Eric

Eric R. Olson  
Bartlit Beck Herman Palenchar & Scott LLP  
303-592-3162 (office)

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**From:** William Chaney [mailto:wchaney@lrmlaw.com]  
**Sent:** Thursday, December 11, 2008 3:27 PM  
**To:** eric.olson@bartlit-beck.com  
**Cc:** Don M. Downing; Terry R. Lueckenhoff; Drew York  
**Subject:** In Re: Genetically Modified Rice Litigation, MDL No. 1811, USDC, ED Mo / Agreement Regarding Bayer BioScience NV Rule 30(b)(6) Deposition and Depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels  
**Importance:** High

Eric, this e-mail confirms our agreements regarding the December 3, 2008, Amended Notice of Oral Deposition to Defendant, Bayer Bioscience NV ("BBS NV" and the "BBS NV 30(b)(6) Deposition Notice") and the tentatively scheduled depositions of Messrs. Bernhard Schreiber and Frederic Arboucalot, Dr. Frank Michiels, and Messrs. Dirk Klonus and Henk Joos which were to occur in Amsterdam, The Netherlands, generally during the period from January 26, 2009 through February 4, 2009. By return e-mail, please confirm that we have now agreed as follows:

1. Plaintiffs to the Master Consolidated Class Action Complaint (the "Plaintiffs") and the Foreign Defendants (as identified in Paragraph 3 below) enter into this agreement in a mutual, good faith effort to save their respective costs and reduce their burdens in conducting or responding to discovery against or of the Foreign Defendants and their current or former employees and with the intent that the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels to be taken under the terms of this agreement might minimize the necessity for

or the number, scope and cost of additional depositions, whether individual or organizational. Notwithstanding this mutual intent, however, Plaintiffs and the Foreign Defendants agree that except as expressly provided in this agreement, neither Plaintiffs nor any party to these multi-district litigation proceedings shall be deemed to have waived their right to seek depositions of the Foreign Defendants under Rule 30(b)(6), FED.R.CIV.PROC., or to seek and obtain depositions of individuals currently or formerly employed by the Foreign Defendants. Plaintiffs and the Foreign Defendants agree that this agreement shall be filed of record in these multi-district litigation proceedings so as to notify all parties in interest of our agreements.

2. Plaintiffs agree to postpone the January 13, 2009, deposition of BBS NV as scheduled under the BBS NV 30(b)(6) Deposition Notice until a later, agreed date to occur after the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels to be taken under the terms of this agreement. The deposition of BBS NV, and any depositions under Rule 30(b)(6), FED.R.CIV.PROC., of Defendants, Bayer AG and Bayer CropScience AG (together with BBS NV, sometimes collectively referred to as the "Foreign Defendants"), except as provided below in connection with the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels, shall, if requested, be taken on agreed dates and times to occur after the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels, and shall be taken in Amsterdam, The Netherlands, or such other location in Europe as the parties may agree. The Foreign Defendants agree to work in good faith to schedule any such depositions reasonably requested after the deposition of Messrs. Schreiber and Arboucalot and Dr. Michiels prior the close of discovery in these multi-district litigation proceedings.

3. The Bayer Defendants, both Foreign and Domestic, as those terms have generally been used in papers filed in these proceedings, shall provide written responses to topics 1 through 5 of the BBS NV 30(b)(6) Deposition Notice by providing in writing, either via a written stipulation to be negotiated between Plaintiffs and the Bayer Defendants or in the form of responses to written discovery (which shall not reduce the number of interrogatories or other forms of written discovery available to Plaintiffs under the applicable Case Management Orders entered by this Court), whichever form may be deemed by the parties as most appropriate, by describing the organizational and ownership relationships, both current and historical, among the Bayer Defendants and their owners from 1994 to the present date, and with or among their predecessors in interest or name and any other entities listed in topics 1 through 5 of the BBS NV 30(b)(6) Deposition Notice. These written descriptions of the organizational and ownership relationships shall be provided no later than the seven (7) days prior to the first of the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels to be scheduled under the terms of this agreement. Further, these written descriptions of the organizational and ownership relationships shall not restrict Plaintiffs' right to seek clarification of those relationships, or to discover additional facts regarding those relationships, in any depositions, whether individual or organizational, to be conducted in these multi-district litigation proceedings. Moreover, nothing herein shall otherwise restrict Plaintiffs' right to seek discovery of the relevant, contractual relationships which might otherwise exist between the entities made the subject of this specification of organizational relationships and which may otherwise have been within the scope of topics 1 through 5 of the BBS NV 30(b)(6) Deposition Notice. However, any such further inquiries into the relationships, including any contractual relationships, to the extent Plaintiffs intend them to be the subject of any depositions under Rule 30(b)(6), FED.R.CIV.PROC., shall only be made upon or under an amended deposition notice to BBS NV or an appropriate deposition notice to any of the remaining Bayer Defendants, to which the Bayer Defendants, including

BBS NV, reserve all rights to object as may otherwise be appropriate.

4. The Plaintiffs further agree to review in good faith the remaining topics for examination in the BBS NV 30(b)(6) Deposition Notice to determine which topics, if any, might be made the subject of further written stipulations or written discovery responses, and, to amend the BBS NV 30(b)(6) Deposition Notice accordingly prior to any such deposition being taken under the terms of paragraph 2, above.

5. Prior to the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels, Plaintiffs and the Foreign Defendants agree to explore in good faith the possibility that the depositions of one or more of them shall include testimony from those witnesses as representatives designated by one or more of the Foreign Defendants under Rule 30(b)(6), FED.R.CIV.PROC., on topics to be specified by Plaintiffs and accepted by the Foreign Defendants, including any topics in the BBS NV 30(b)(6) Deposition Notice not made the subject of written submissions provided under paragraphs 3 and 4, above. Except as expressly provided in paragraphs 2, 3 and 4, above, however, nothing herein shall require such designations or otherwise impair Plaintiffs' right to take Rule 30(b)(6), FED.R.CIV.PROC., depositions of the Foreign Defendants. In the event, however, Plaintiffs and the Foreign Defendants do agree that the testimony of one or more of Messrs. Schreiber and Arboucalot or Dr. Michiels shall be designated under Rule 30(b)(6), FED.R.CIV.PROC., the topics on which those witnesses will testify shall be specified in writing prior to the depositions, with such specifications and designations to be noticed in the proceedings for the benefit of those parties entitled to participate at least seven (7) days prior to deposition of that witness, and that the testimony given on those topics shall be segregated and provided separately from their testimony given individually. Plaintiffs and the Foreign Defendants further agree that among the issues to be resolved in their discussions of these issues shall be whether the witness(es)' appearance as a corporate representative shall require the allocation of additional time in which to conduct of the depositions.

6. The depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels shall be taken on agreed dates during the weeks of January 26 and February 4, 2009, at a location within the United States as the parties may agree. Plaintiffs, together with such other parties to these multi-district litigation proceedings who may agree, shall reimburse the Foreign Defendants, or Messrs. Schreiber and Arboucalot and Dr. Michiels as may otherwise be appropriate, for the witnesses' reasonable, coach class, round trip airfare from Amsterdam, The Netherlands, to New York, New York, in order to attend these depositions (regardless of where the witness actually flies from, to or back to or the class of service purchased by the witness). The Foreign Defendants agree that two days each shall be allocated for the depositions Mr. Schreiber and Dr. Michiels and three days shall be allocated for the deposition of Mr. Arboucalot. Stand-by German translators shall be available to assist with the depositions of Mr. Schreiber and Dr. Michiels and a full-time French translator shall be used in the deposition of Mr. Arboucalot. The costs of such stand-by and full-time translators shall be allocated and borne by the parties as they may agree, or, absent such agreement, as the Court may otherwise order.

7. The depositions of Dirk Klonus and Henk Joos tentatively scheduled to occur in Amsterdam, The Netherlands, during the weeks of either January 26 or February 4, 2009, shall be postponed and, if ultimately taken, shall occur on dates after the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels as Plaintiffs and the Foreign Defendants may agree and unless otherwise agreed, shall occur in Amsterdam, The Netherlands.

8. Depositions by Plaintiffs of any additional current employees of the Foreign Defendants or any former employees over which the Foreign Defendants have control or the ability to produce for deposition shall be taken on dates after the depositions of Messrs. Schreiber and Arboucalot and Dr. Michiels as Plaintiffs and the Foreign Defendants may agree and unless otherwise agreed, shall occur in Amsterdam, The Netherlands. The Foreign Defendants agree to work in good faith with Plaintiffs in the scheduling of any such additional depositions and the presentation of such witnesses.

9. Notwithstanding the discovery deadlines otherwise imposed under the Court's Case Management Orders, or the other terms of this agreement, in the event the Bayer Defendants determine that any current or former employee of the Foreign Defendants not otherwise deposed under the terms of this agreement will testify live at any trial or evidentiary hearing in these proceedings, Plaintiffs or the other parties to such trial or hearing as may be appropriate, shall have the right to take a deposition of such witness(es) at a reasonable time prior to the trial or hearing at a location as the parties may agree, or if no agreement can be reached, at such location as the Court may order.

10. In an effort to reduce the need for and length of depositions, the Foreign Defendants agree to confer in good faith regarding the authenticity and admissibility of documents produced by the Foreign Defendants and, in the event that such discussions do not resolve all issues of authenticity and admissibility, agree that notwithstanding the discovery deadlines otherwise imposed under applicable Case Management Orders, Plaintiffs may conduct reasonable additional discovery, including but not limited to deposition discovery, to establish authenticity and admissibility. Any additional written discovery that addresses authenticity or admissibility shall not be counted against or within the limits of the written discovery which Plaintiffs are entitled to conduct against or of the Defendants. Any depositions taken under this paragraph will take place after the three depositions discussed above and, to the extent the deponent is located in Europe, in Amsterdam or in such other location as the parties may agree.

I have attached a word document evidencing this agreement for ease of reference to incorporate into the Joint Status Report. Thanks.

**William Chaney**



1601 Elm Street  
Suite 4100  
Dallas, TX 75201  
DD: 214-237-6403  
Fax: 214-953-1332  
Website: [www.lrmlaw.com](http://www.lrmlaw.com)

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