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Date: 03-19-2011

Case Style: Riceland Foods, Inc. v. Bayer CropScience

Case Number:

Judge: David Henry

Court: Circuit Court, Arkansas County, Arkansas

Plaintiff's Attorney: Barry Deacon, Barrett & Deacon, Jonesboro, Arkansas

Defendant's Attorney:

Description: Riceland Foods, Inc. sued Bayer CropScience on a negligence theory claiming that Defendant's failure to exercise due care in the handling of its Liberty Link rice and as a direct result rice handled by Plaintiff became genetically modified and as not marketable in Europe.

Riceland alleged that Bayer CropScience's negligence had cost the Stuttgart company \$380 million in projected and future losses since August 2006, when the U.S. Department of Agriculture announced that Bayer's experimental Liberty Link rice had been found in the U.S. supply of long-grain rice.

The European Union, a major customer for Arkansas rice, refused to import any rice showing traces of genetically modified organisms.

According to an article in the [Stuttgard Dailey Leader](#):

"Closing arguments were heard from both Bayer and Riceland in the case of Riceland Foods vs. Bayer Crop Science Thursday as the trial neared its end after a full day of arguments following final jury instructions from Arkansas County Circuit Judge David Henry at 9:30 a.m.

The case began its 18th day today at 8 a.m. with Judge Henry officially closing the case and allowing the jury to retire for deliberation. If a verdict is reached look to www.stuttgarddailyleader.com this weekend for the article or pick up a print edition Monday.

Riceland is claiming the negligence of Bayer Crop Science in the handling of genetically-modified (GM) rice cost them \$379,930,000 in projected future losses and losses since 2006.

Bayer contends that Riceland knew the European Union (EU) had a zero tolerance policy for genetically-modified rice. Bayer claims Riceland continued to ship barges after knowing that a trace amount of genetically-modified organism (GMO) was detected, resulting in the loss of the market.

On Aug. 18, 2006, the United States Department of Agriculture (USDA) announced that genetically-modified rice was found in the U.S. long grain rice supply. It was Bayer's Liberty Link rice, which consists of several varieties, that was found.

Riceland Closing Argument

Barry Deacon, of Barrett and Deacon in Jonesboro, who is counsel for Riceland, stood before the jury and explained the case was not about Riceland testing its shipments before sending barges of rice to Europe. The case, according to Deacon, was to find who was responsible for the contamination of the U.S. rice supply.

"Nothing that Riceland did or didn't do caused the contamination," Deacon said. "That is why the those markets shut down, because the supply was contaminated. Now Bayer wants Riceland to clean up their mess."

Deacon told the jury that Bayer controlled and maintained the Liberty Link rice and made commitments to Riceland, along with the U.S. government that they would not let the unapproved rice persist in the environment.

"What happened? It contaminated two of the most popular varieties — Cheniere and Clearfield 131," he explained.

Deacon reiterated that Bayer not only had one variety escape but multiple after finding LL64, LL601 and LL604 in the rice supply.

[Long Grain Rice Producer](#)

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"I think that says a lot of Bayer's containment practices," Deacon said. "Bayer knew even small amounts would cause enormous consequences."

Deacon explained that Bayer rushed the trial phase of the rice, because they wanted to beat Monsanto to the market with GM rice.

"They put GM rice right in the middle of conventional rice breeding at LSU," Deacon said. "That is not reasonable."

Deacon told the jury that stewardship practices were not even put into place at the company until after the field trials for LL601 and LL604 were completed. In 2006, Bayer received word from an experimental rice breeder that he had rice plants that were resistant to the Liberty herbicide. It was the hope that these plants were GM free, but eventually were tested and found positive.

Deacon explained that further tests were never performed on this seed — commercially bought — because the company would then have an obligation to contact the United States Department of Agriculture (USDA).

Also in 2006, according to Deacon, 9,000 pounds of LL601 seed was found at a rice breeder's farm. It was buried and destroyed, according to testimony, but was later questioned in a USDA audit. The rice breeder then told Bayer that he didn't realize he had any of the seed.

"Looks like a cover-up to me," Deacon said.

The jury also heard testimony from Randy Ouzts, of Horizon Ag, who asked Bayer to help him test seed that was presenting positives for LL rice.

"They wouldn't help him test," Deacon said.

In an update to the rice industry in 2002 and 2003, Bayer stated that they did not feel random tests on the part of the mills were a priority at the time, according to documents released by Bayer.

Deacon explained that Riceland received a complaint from a French customer in January 2006. He told the jury the company did their "due diligence" and hired an expert testing lab to research the incident.

"Riceland was more and more concerned and called Bayer," Deacon said. "Riceland didn't know what they were dealing with, but Bayer did."

After the announcement, the EU market was lost.

"Riceland and other mills were not able to take full advantage of the best market of their careers," Deacon explained.

In fact due to the LL rice, Deacon said, Riceland had fewer places to sell, all U.S. mills had to compete in a smaller market, their inventories grew and sales declined while prices rose.

Riceland asks that the jury find negligence, fraud and deceptive practices against Bayer and, besides the \$379,930,000, also award Riceland punitive damages.

Bayer Crop Science Closing Argument

Phillip Beck, of Bartlit, Beck, Herman, Palenchar and Scott, LLP Chicago office, who is counsel for Bayer Crop Science, began by telling the jury Bayer tried to be reasonable and settle this claim out of court.

Beck told the jury Bayer inherited LL rice from a company it purchased.

"This product became our product," Beck said.

"Some people got hurt by that — not sick — but financially. Thousands and thousands of farmers and we have resolved some of the claims," he said. "We worked things out with Producers (Rice Mill) and settled with four farmers in this case."

Beck explained that Bayer has set aside a lot of money for farmers with a lot of acres — not Riceland.

"Riceland played a role in this," he said. "When their own tests came back positive, they kept shipping."

Beck said there were two reasons Bayer would not settle this claim and decided to defend themselves in court.

"One, Riceland refuses to acknowledge their role," he said. "Two, the damages claim does not square with reality. They are trying to take advantage."

Beck said Bayer was wondering if they could get justice in Stuttgart.

"I told them they could," he said.

Beck explained Riceland paid for an expert witness, an economist, and then came up with a model that projected the losses for Riceland.

"Even the Riceland guys couldn't make heads or tails of (his) model," he said. "Truth is there is no margin squeeze. They paid farmers less and charged more. They took advantage of the situation."

According to Riceland documents, their anticipated budget was \$9.9 million and came out with \$12.1 million.



"I don't think you should give them anything," Beck said.

Beck said two things went wrong —GM rice got out into the commercial supply and Riceland shipped to Europe when it had GM material in its rice.

According to Bayer and the USDA, after an investigation, it was found that the contamination most likely occurred in 2001 at Louisiana State University from pollen drift.

Ronnie Helms testified that LSU's breeder was the most experienced in the field and proven to be careful and responsible with field trials, but accidental contamination can take place, Beck said.

The USDA's best conclusion was also pollen drift, he said.

"Instead they hire a tomato doctor to come," Beck said of Riceland not taking the USDA or Helms' word, "who had to admit he lied under oath. But said he knew better (than USDA or Helms) because had more documents."

Beck said Danny Kennedy, president and CEO of Riceland, believed that contamination can occur by pollen and birds.

"There is a big gaping hole in Riceland's case, and they tried to cover this hole with e-mails that have nothing to do with 2000-2001," Beck said.

Beck explained the USDA report doesn't have a negative word about Bayer in the contamination investigation, and all the evidence shows that the field trials were conducted in a careful way.

"They (Riceland) did their tests, got positives, and continued to ship certifying it was GMO free — when they knew it wasn't," he said. "They shouldn't have shipped with out testing. The EU was lost because, it's mainly their failure for not testing the rice. It's no answer to say that Producers (Rice Mill) wasn't testing. Nouvelle was."

Beck explained the jury could give Riceland a pass for not testing the harvest, but not for not testing the shipments.

"They can't blame this stuff on cotton, soybeans or corn," he said. "Then you got this conversation made up by (Leo) Gingras," he said.

Beck then turned to the Arkansas State Plant Board director Darryl Little, whose testimony according to Beck, proves Riceland's negligence.

"Little said Riceland should not have shipped after the positive test," Beck said.

Riceland's Rebuttal Argument

"I would never try to out slick a Chicago lawyer," Deacon started off saying. "He said everybody that Riceland brought in here are liars. That makes me upset."

Deacon explained that Riceland would not "be here" if Bayer would step up and do what is right in the case. Deacon explained that Bayer has not settled with any other farmer in Arkansas besides the four in this case. Bayer has settled with two other farmers in the U.S., Deacon said.

"That is one of the craziest things I have heard that Riceland would pay the farmers," Deacon said about Bayer's cross claim that Riceland should share in the responsibility to pay the farmers in this settlement.

"What caused the loss of the market? The contamination," Deacon said. "He (Beck) basically said that everybody was to blame except Bayer...even a duck. I don't know if it was the same duck, but he sure was busy." "

Outcome: Plaintiff's verdict for \$17 million in compensatory damages and \$125 million in punitive damages.

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