

Bayer Reaches 1st Settlement In Rice MDL

By Mike Cherney

Law360, New York (October 19, 2010) -- Bayer CropScience LP has agreed to pay \$290,000 to settle the fourth and final bellwether trial in multidistrict litigation over the company's introduction of genetically modified rice into the U.S. rice supply, marking the first time Bayer has agreed to settle such a case.

The settlement, reached Friday after several days of a jury trial, brought an early end to proceedings in the U.S. District Court for the Eastern District of Missouri that were expected to last about five weeks. The plaintiffs, from three farming operations, were seeking \$430,000 in damages, according to Don Downing, their attorney.

"In the farming community, the sentiment is very strong that when you do something that hurts your neighbor, you make it right," he said Tuesday. "They feel like Bayer has done something wrong that's harmed them, and that Bayer should make it right. And I think that's what this litigation is all about."

Bayer's decision to settle comes after six straight jury defeats, including three bellwether trials in the MDL and three separate state court cases, Downing said. In sum, Bayer has been ordered to pay about \$54 million in those cases, he said. The company has appealed verdicts in two of the bellwether trials.

Bayer's genetically modified rice version was regulated by the U.S. Department of Agriculture and was prohibited from being released into the environment when the rice supplies were contaminated in 2006, according to Wolf Haldenstein Adler Freeman & Herz LLC, which also represented the plaintiffs.

Several export markets, including the European Union, refused to purchase American rice because of the contamination. That led to a dramatic decrease in rice prices and caused severe losses to U.S. rice farmers, the plaintiffs allege. Thousands of farmers have filed suits that were consolidated in the MDL in the Eastern District of Missouri.

Although Friday's \$290,000 settlement only applies to the fourth bellwether trial, the agreement permits the plaintiffs to recover additional money from Bayer if the company agrees to a more

lucrative global settlement by the end of 2011, Downing said.

"There's always uncertainty in litigation," Downing said. "The prospect of getting two-thirds of the money you are seeking now — cash in your pocket, with a good chance of getting more later — I think each of the farmers thought this was a good option for them."

Whether a global settlement will be reached remains to be seen, Downing said. In a statement Monday, Bayer noted that it is continuing to participate in mediation discussions regarding the claims of the remaining plaintiffs in the MDL.

"Bayer CropScience has always been willing to settle such biotech rice litigation cases on reasonable terms and is pleased to be able to do so in this instance," Bayer CropScience President and CEO Bill Buckner said in a statement Monday.

With the bellwether trials over, Downing said, Judge Catherine D. Perry will begin holding trials for the approximately 20 cases that still make up the initial trial pool. Some involving farmers from Mississippi are scheduled to be tried in January.

As for the rest of the cases, groups of 40 to 60 suits will be remanded to the districts where they were originally filed for trial once pretrial issues are resolved in the Eastern District of Missouri, Downing said.

Bayer was represented by Fox Galvin LLC, Bartlit Beck Herman Palenchar & Scott LLP, Watkins & Eager and Chaffe McCall LLP.

The plaintiffs were represented by Gray Ritter & Graham PC, Looper Reed & McGraw, Neblett Beard & Arsenault and Wolf Haldenstein Adler Freeman & Herz LLC.

The case is In Re: Genetically Modified Rice Litigation, case number 06-md-1811, in the U.S. District Court for the Eastern District of Missouri.

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