

Litigator of the Week: Don Downing of Gray, Ritter & Graham and Adam Levitt of Wolf Haldenstein Adler Freeman & Herz

By David Bario

The writing's been on the wall for months in the long-running multidistrict litigation over contamination of U.S. crops by Bayer CropScience's genetically engineered rice. We predicted in March that a hefty settlement was in the works, after Bayer suffered its most recent loss at trial.

Were we ever right. On July 1, as we've reported, Bayer agreed to pay up to \$750 million to resolve allegations by U.S. long-grain rice producers who claimed the contamination cost them access to foreign markets. Under the terms of the agreement, farmers may be able to collect as much as \$310 from Bayer for every acre of rice they planted between 2006 and 2010.

For Don Downing of St. Louis-based Gray, Ritter & Graham and Adam Levitt of Wolf Haldenstein Adler Freeman & Herz, who were jointly appointed lead counsel for the MDL plaintiffs in 2007, the settlement was a long time coming.

"It's been a long, almost five-year journey now," said Downing, who took the lead in settlement negotiations with Bayer. "In the farming community most people live by the principle that if you harm a neighbor, you make it right, and this settlement will make a huge difference to many of the families who make a living from rice farming in this country."

European and Asian demand for U.S. rice exports abruptly shriveled in 2006, after Bayer CropScience disclosed that traces of its experimental, herbicide

resistant Liberty Link rice had turned up in long-grain rice crops in the American south.

The lawsuits against Bayer began piling up immediately, pitting thousands of rice farmers against Bayer and its formidable counsel at Bartlit, Beck, Herman, Palenchar & Scott.

St. Louis federal district court judge Catherine Perry refused to certify the plaintiffs' claims against Bayer as a class action in the MDL in 2008, forcing Downing and Levitt to litigate the cases one by one. That didn't turn out to be much of an obstacle for the plaintiffs lawyers, however: Since 2009 they've won jury verdicts or reached favorable settlements in five bellwether cases selected for trial by Judge Perry under the laws of five southern states. (Downing was lead trial counsel in three MDL cases that went to trial; plaintiffs also won verdicts in four Arkansas state court cases outside the bellwether process.)

Those trials ended in damages awards for individual farmers ranging from a few hundred thousand dollars to \$48 million, as well as a \$136.8 million verdict for farmer cooperative Riceland Foods. As Judge Perry had anticipated, those verdicts helped determine the value of Friday's settlement, Downing said. "After going through the process that we've gone through, it's reaffirmed my and the farmers' belief in our civil justice system," Downing said. "The system worked the way it was supposed to work."

