

Genetic rice lawsuit in St. Louis settled for \$750 million

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ST. LOUIS • Bayer CropScience agreed here late Friday to pay up to \$750 million to farmers in Missouri and four other states to settle lawsuits over contamination of the U.S. rice supply by LibertyLink genetically modified rice in 2006.

"It was a devastating blow to a lot of rice farmers, and I'm tickled to death that we've finally reached a settlement where Bayer for the first time has offered to make it right to these farmers," said St. Louis lawyer Don Downing, who was co-lead counsel for the plaintiffs.

"I think it sends a signal to those who develop genetically modified seeds that they need to keep those seeds very carefully contained until they're approved for human consumption," Downing said.

But, he added, "We were very careful all along ... not to say that these lawsuits are anti-GMO (genetically-modified organisms) because many of our farmers use GM crops."

Bayer, based in Germany, released a statement that read, in part, "Although Bayer CropScience believes it acted responsibly in the handling of its biotech rice, the company considers it important to resolve the litigation so that it can move forward focused on its fundamental mission of providing innovative solutions to modern agriculture."

When it was discovered in the rice supply, LibertyLink had not yet been approved for sale for human consumption. Rice futures plunged, and Japan and European countries banned the import of U.S. rice.

The first of what would eventually grow to more than 400 lawsuits representing 11,000 plaintiffs were filed within weeks. Many were eventually consolidated in federal court here.

LibertyLink rice has since been approved but has not been commercially marketed.

LibertyLink corn, soybeans and canola are on the market, Bayer spokesman Greg Coffey said.

All farmers in Missouri, Arkansas, Texas, Louisiana and Mississippi who planted long grain rice in 2006-10 — not just those who sued in state or federal court — can participate in the settlement, said Downing and co-lead counsel Adam J. Levitt. It also includes landowners who allow others to farm their land, but does not include importers, exporters, rice mills and others.

Under terms of the settlement, farmers who planted at least 85 percent of the roughly 2.2 million acres of rice during those years must sign up or Bayer can walk away from the deal.

Bayer said it has already "established appropriate provisions" for the settlement.

The settlement is broken down into three "pots" of money. The first, and the easiest to get, offers \$310 an acre to compensate farmers for market losses and is available to those who had long grain rice planted in 2006-10, with lesser amounts for farmers who only planted in some of those years.

The second pot is for farmers who planted either of two rice varieties in 2006, Clearfield 131 or Cheniere, that were most affected by the contamination. Many of those farmers had to leave fields fallow, plant lower-value crops or spend money cleaning equipment of contaminated rice, plaintiffs' lawyers said. Farmers will have to show receipts documenting their planting of those varieties.

The third pot is for those who feel that they lost more, and requires more documentation, lawyers said.

Friday's settlement comes after a series of so-called "bellwether" trials set up to allow representative cases to proceed to trial and to give all sides a signal of what could come in pending cases.

Asked about compensation, Levitt said that lawyers had private fee agreements with the clients who sued. A "leadership team" of lawyers like Levitt and Downing and others who took on additional duties and expenses will receive additional money, he said.

In December 2009, a federal jury in St. Louis awarded \$2 million to farmers. A different jury awarded \$1.5 million in February 2010. Neither of those juries awarded punitive damages.

Last July, a federal jury in St. Louis awarded a Louisiana farmer, Denny Deshotels, \$500,000 in one suit. Jurors were not given the option of punitive damages because of Louisiana law.

Two other bellwether cases settled, one a week into the trial and one the week before, Downing said.

In three state trials in Arkansas, jurors also found in favor of farmers, awarding \$1 million in one trial, roughly \$1 million or less in another and \$6 million in actual damages and \$42 million in punitive damages in the third, Downing said..

At trial, company lawyers argued that farmers who waited out the brief price hit suffered no losses and that Bayer was not negligent.

Friday's settlement had not yet been filed in federal court in St. Louis, but plaintiffs' lawyers announced the deal at 4:35 p.m. and Bayer released its own statement a short time later.

Asked to explain the timing of the settlement, Levitt declined to comment.

Coffey said, "We did release (the announcement) as soon as we could," noting it was shortly after the agreement was signed.

Downing would only say: "I can't tell you why it ended up late in the afternoon on a holiday weekend. You can perhaps speculate about that yourself."