

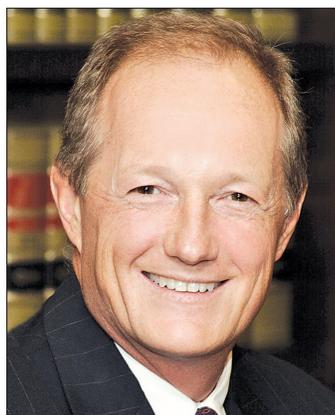
# Missouri Lawyers

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## WEEKLY

### Farmers win \$2M in bellwether rice crops case

*Amount includes no punitive damages against Bayer CropScience*



Don Downing



Gretchen Garrison

**BY HEATHER COLE**  
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The first jury to hear one of more than 1,000 cases against Bayer CropScience decided two farmers deserved an award for past and future economic losses but no punitive damages for the accidental mixing of a modified rice seed with their crops.

The trial began a series of four test cases or “bellwether” lawsuits involving rice farmers in five states. The second trial is scheduled to start today in the same federal court in St. Louis.

The test cases will give both sides a sense of whether jurors will find Bayer CropScience liable and how much in damages they will award if they do, said Don Downing, an attorney with Gray, Ritter & Graham who represented the plaintiffs.

“It was the first time an actual jury had an opportunity to hear the evidence and offer its view as to whether Bayer was responsible for the contamination and the extent of damages,” Downing said.

The jury in U.S. District Court in St. Louis awarded \$1.9 million to Kenneth Bell and \$53,000 to Johnny Hunter, both of southeastern Missouri. Bell got slightly less than the award he had sought for economic losses as well as future losses; Hunter got all he had asked for his losses, Downing said. Hunter stopped farming rice and didn’t have a claim for future losses.

After traces of the biotech rice were found in shipments of commercial long-grain

rice in 2006, all countries in the European Union and some other foreign markets shunned United States long-grain rice imports. That spurred the lawsuits filed by rice farmers over depressed rice prices and the alleged contamination of land, seed and equipment.

The plaintiffs in other cases scheduled soon for trial have different claims and situations, Bruce Mackintosh, general counsel for Bayer CropScience, said in a release issued Dec. 4, the date of the verdict. The United States arm of Bayer CropScience is headquartered in Raleigh, N.C.

Bayer CropScience was disappointed in the compensatory damages award but pleased with the decision that punitive damages aren’t warranted, the company said in the release.

U.S. District Court Judge Catherine Perry submitted the punitive damages to the jury, showing she determined that a reasonable jury could find punitive damages were appropriate, Downing said.

However, there is a high bar to meet to get punitive damages, Downing said. “It’s something we’re shooting for in the next case.”

Six thousand rice producers in Missouri, Arkansas, Texas, Louisiana and Mississippi and 30 to 40 rice industry businesses filed lawsuits after traces of Bayer’s LibertyLink, a genetically modified rice variety, were discovered in long-grain rice supplies. About half of the long-grain rice crop is exported, with much of it going to Europe, Downing said.

However, Bayer CropScience said in the statement that most long-grain rice grown in the United States is consumed outside of Europe and its marketing remains unaffected by the European regulatory system.

The U.S. Department of Agriculture and U.S. Food and Drug Administration have said the biotech rice, developed to tolerate an herbicide, is safe for human consumption although it has not yet been marketed, Bayer CropScience said in the release.

Plaintiffs’ attorneys looked around the country for experts familiar with rice commodities markets. Two of the agriculture economists who testified had never testified in front of a jury before, Downing said.

Jurors told attorneys that it didn’t take them long to find Bayer negligent, but they spent a long time on the verdict form figuring out which of the seven different Bayer entities that had been sued were liable. In the end, all the entities were found to be liable, including German-based Bayer AG, the parent company.

The jury was extraordinarily attentive even during the long hours attorneys played video depositions from far-flung Bayer CropScience witnesses, Downing said.

The farmers gave the jurors an education on rice farming, including taking stalks of rice and turning them into harvested and milled rice. Jurors reached in a bag to feel rice and heard from the farmers about the effect the mixing of the biotech rice had on their businesses.

Harvested rice and two of the most widely sold rice seed varieties were contaminated and were planted by unknowing farmers, Downing said. They then couldn’t plant in those fields in 2007 for fear of contamination. In addition, prices for rice were depressed because of the loss of the European market, he said.

“Any time you have real people who suffered real harm and can tell that story to the jury,” Downing said, “it’s persuasive.” **MO**

### \$2 million verdict

#### TORT NEGLIGENCE

**Court:** U.S. District Court Eastern District of Missouri

**Case Number/Date:** 4:06MD1811/Dec. 4

**Judge:** Catherine Perry

**Plaintiffs’ Experts:** Rene Van Acker, University of Guelph, Guelph, Canada (containment expert); Colin Carter, University of California Davis, Davis, Calif. (agriculture economist); Bruce Babcock, Iowa State University, Ames, Iowa (agriculture economist); Eric Frye, Spectrum Economics, Kansas City (damages); Neil Rutger, Davis, Calif. (rice geneticist)

**Defendants’ Experts:** Alan McHughen, University of California Riverside, Riverside, Calif. (liability), Nicholas Kalaitzandonakes, University of Missouri, Columbia (agricultural economist); Cheryl Shuffield, Little Rock, Ark. (damages expert); Ronnie Helms, Stuttgart, Ark. (liability)

**Caption:** Kenneth Bell and J.H. Hunter Farms, et al., v. Bayer CropScience, et. al.

**Plaintiffs’ Attorneys:** Don Downing and Gretchen Garrison, Gray, Ritter & Graham, St. Louis; Grant Davis, Davis, Bethune & Jones, Kansas City; Bill Chaney, Looper, Reed & McGraw, Dallas

**Defendants’ Attorneys:** Mark Ferguson, Bartlit Beck Herman Palenchar & Scott, Chicago; Eric Olson, Bartlit Beck Herman Palenchar & Scott, Denver

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