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WEEKLY

Second contaminated rice trial nets another plaintiff's verdict

Bayer CropScience stresses outside factors affect prices



Don Downing

A half-hour economics lesson may have helped cement the second million-dollar verdict against Bayer CropScience in a string of test trials over a 2006 crop contamination that affected thousands of farmers.

As they did in the first "bellwether" trial in January, the rice farmer plaintiffs called an Iowa State University agriculture economist to educate the jury on the economics of a product tainted by negative public perception.

The farmers claim crop prices and overseas sales sagged in 2006 when traces of a modified rice variety created by Germany-based Bayer CropScience were found in shipments of U.S. rice.

To illustrate that economic fallout, Iowa State professor Bruce Babcock ushered the jury through a hypothetical example, said Don Downing, of St. Louis-based Gray, Ritter & Graham. Downing is the plaintiffs' lead attorney in the first two cases and is co-lead counsel of the multi-district litigation.

Babcock explained how the recent criticism of plastic water bottles as harmful to the environment pulls down product prices and reduces demand.

"He translated that to what happened in the rice market, which is much more complicated

than water bottles," Downing said.

In most aspects, the second test trial, brought by two Arkansas rice farmers and one Mississippi farmer, mirrored the first trial, which netted \$2 million for two Missouri rice farmers. In both trials, the plaintiff farmers came up short in their quest for punitive damages. The juries sided with Bayer in all claims for punitive awards.

Downing said defense attorneys for Bayer spent more energy in the second trial pointing to other factors that may have affected rice prices, apart from the contamination.

Bayer representatives didn't immediately respond to a request for comment. However, when the verdict came down Feb. 5, Reuters quoted a spokesman for the company in Germany as saying the company plans to assess the ruling and consider its options.

"Bayer CropScience is standing by its view that the company has handled its biotech rice responsibly and appropriately at all times," the spokesman said.

Two more test trials are scheduled for June and October in U.S. District Court for the Eastern District of Missouri. Those trials will center on rice farmers from Louisiana and Texas. A third trial, scheduled for mid-April, represents all suits brought by rice exporters, who claim their businesses took a hit over the contamination troubles.

"Two different juries heard the same evidence from the same experts about the negative effect on the market price that U.S. long grain rice farmers received for their rice," Downing said. "That effect continues and will continue into the future."

— Allison Retka

\$1.5 million verdict

TORT NEGLIGENCE

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

■ **Case Number/Date:** 4:06MD1811/Feb. 5

■ **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); Robert Winter, Little Rock, Ark. (damages expert)

■ **Caption:** Joe and Jim Penn, Jerry Catt and Blackdog Planting Co. v. Bayer CropScience

■ **Plaintiffs' Attorneys:** Don Downing and Gretchen Garrison, Gray, Ritter & Graham, St. Louis; Scott Powell, Hare and Wynn, Birmingham, Ala.; Bill Chaney, Looper, Reed & McGraw, Dallas

■ **Defendants' Attorneys:** Mark Ferguson, Bartlit Beck Herman Palenchar & Scott, Chicago; Glenn Summers, Bartlit Beck Herman Palenchar & Scott, Denver, John Hughes, Bartlit Beck Herman Palenchar & Scott, Chicago