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Bayer Loses Biggest Genetically Modified Rice Verdict Yet: \$136.8 Million in Arkansas State Court Trial Against Riceland Cooperative

By David Bario
 March 22, 2011

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It's been almost six years since the U.S. Department of Agriculture first reported that genetically modified rice developed by Bayer CropScience had contaminated U.S. rice supplies, cutting off American rice farmers and millers from European markets. Bayer and its lawyers at Bartlit, Beck, Herman, Palenchar & Scott have struggled mightily ever since to limit Bayer's liability—but they haven't had a whole lot of success.

On Monday, Bayer took its biggest hit yet in the rice litigation, losing a \$136.8 million Arkansas state court jury verdict to Riceland Foods, an Arkansas rice farmer cooperative that offers marketing, packaging, and bulk sales services. Following four weeks of trial, the jury socked Bayer with \$125 million in punitive damages for acting "with malice or in reckless disregard" in failing to prevent its genetically-modified Liberty Link rice from contaminating U.S. supplies. Jurors also found Bayer 70 percent responsible for \$16.9 million in damages Riceland suffered after countries in Europe and elsewhere banned imports of suspect U.S. rice. (Here's the verdict form.)

The verdict resolves dueling claims by Riceland and Bayer in a three-year-old case in which the companies were co-defendants against claims by rice farmers. It was a Riceland customer in France that first detected modified genes in rice exported from the U.S. The customer contacted Riceland in January 2006. Riceland eventually alerted Bayer that its Liberty Link rice might have been the source of the genetic contamination, and Bayer, in turn, notified the USDA. As cross-claimants in the Arkansas case, Riceland and Bayer accused one other of negligence and unwarranted delay in discovering, confirming, and reporting the contamination.

The jury's award is major setback for Bayer, which is now 0-for-7 in state and federal trials involving its genetically modified rice. Until now, the biggest verdict it lost was another Arkansas state court award for \$48 million, including \$42 million in punitive damages.

Riceland lawyer Barry Deacon of Barrett & Deacon told us Riceland has defeated claims that it shared liability for the loss of market share in two previous state-court trials over the Bayer rice, though it remains a co-defendant in about 200 cases. "Riceland hasn't been found liable in any case, and now we've got an affirmative claim that we've recovered on against Bayer, and a jury finding that Riceland wasn't responsible for farmer damages. So I think it's a very good result for Riceland going forward," Deacon said.

At the trial, Deacon faced off against Bayer lawyer Philip Beck of Bartlit Beck. "They lost all these other cases, and I think Bayer AG in Germany said, 'We want the top dog being brought in,'" Deacon told us. "[Beck]'s a very fine lawyer and did very fine job, and I feel very fortunate about the outcome." (Beck didn't respond to a message seeking comment.)

The next rice trial against Bayer is scheduled for May in St. Louis, where federal district court judge Catherine Perry is presiding over an 8,000-case multidistrict litigation. Bayer has so far reached settlements in two cases in the MDL.

Back in August 2008, Bartlit Beck scored at least one clear win when Judge Perry refused to certify rice growers' claims as a class action. But with every trial victory the plaintiffs score, the prospect of Bayer opting for a hefty global settlement looks more and more likely.

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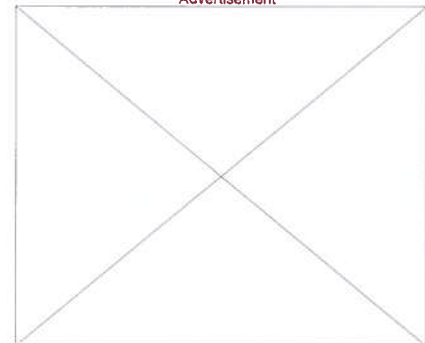
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