

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**AUG 28 2006**

JAMES W. McCORMACK, CLERK  
By: *[Signature]*  
DEPUTY CLERK

LONNIE AND LINDA PARSON, Individually  
and on Behalf Of All Persons Similarly Situated,

**PLAINTIFFS**

v.

Case No. **4 - 06 - CV - 01078** JLH

BAYER CROPSCIENCE US, BAYER  
CROPSCIENCE LP, and AVENTIS  
CROPSCIENCE USA, INC.

**DEFENDANTS**

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**CLASS ACTION COMPLAINT**

This case assigned to District Judge *[Signature]*  
and to Magistrate Judge *[Signature]*

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Plaintiffs Lonnie and Linda Parson, individually and on behalf of all others similarly situated, upon both personal knowledge and information and belief, allege as follows:

**NATURE OF THE CLAIM**

1. This is a class action complaint brought against Defendants for negligently contaminating the United States' long-grain rice supply with genetically engineered rice that is not approved for human consumption. As a result of Defendant's actions, Plaintiffs and other similarly situated rice farmers have been damaged. Additionally, they will continue to suffer damages as rice prices have fallen and continue to fall due to the contamination of the country's rice supply by Defendant's unapproved genetically engineered rice.

**PARTIES**

2. Plaintiff Lonnie and Linda Parson are residents of Searcy, White County, Arkansas.

3. Plaintiffs lease and are rice growers Lee County, Arkansas.

4. Defendant Bayer CropScience US is a corporation headquartered in Research Triangle Park, North Carolina that operates in Arkansas through its related entities.

5. Bayer CropScience LP is a limited partnership of Bayer CropScience US that operates within the State of Arkansas and this District. Collectively, Bayer CropScience US and Bayer CropScience LP will be referred to as "Bayer CropScience" throughout this complaint.

6. Aventis CropScience USA, Inc. ("Aventis") is a corporation headquartered in New York, New York, and doing substantial business within this county.

#### **JURISDICTION AND VENUE**

7. Jurisdiction and venue are proper in this Court. Diversity of citizenship exists between the parties and the amount in controversy exceeds the jurisdictional amount found in 28 U.S.C. § 1332. All Defendants operate within this District and do substantial business here. Additionally, all Plaintiffs are residents of this District and operate businesses here.

#### **FACTS**

8. The United States produces approximately \$1.88 billion dollars worth of rice annually and some 40% to 50% of that is exported, according to figures from the United States Department of Agriculture ("USDA"). Last year the European Union ("EU") imported 198,000 tons of long-grain rice from the United States ("US"). Current exports to the EU alone are approximately 20,000 tons of rice a month. The United States is one of the EU's main rice suppliers. No genetically engineered rice is currently approved in the EU and none may be legally imported into the EU. Thus, any contamination in the US long grain rice supply is financially devastating to US growers and exporters.

9. Arkansas is the largest producer of rice in the US and any contamination of the

rice supply is devastating to Arkansas rice farmers, including Plaintiffs. In 2005, Arkansas produced 48% of the Nation's rice supply. Of that 48%, 98% of it was long grain varieties of rice.

10. This action concerns the contamination of the commercial rice supply in the United States by an unapproved genetically engineered strain of rice developed by Bayer CropScience in large areas of the nation's southern rice-growing region, and Arkansas in particular.

11. The unfortunate truth of the contamination by the unapproved genetically engineered Bayer CropScience rice in the US rice supply first came to be publically known in mid-August 2006. The United States Department of Agriculture ("USDA") released through its Press Office a Fact Sheet, Release No. 0306.06, which was also posted on the USDA website at [www.usda.gov](http://www.usda.gov). The USDA stated the following in this Fact Sheet:

### **GENETICALLY ENGINEERED RICE**

August 2006

#### **AGRICULTURAL GENETIC ENGINEERING**

Genetic engineering (GE) is a precise and predictable method used to introduce new traits into plants and animals by moving genes and other genetic elements from one or more organisms into another organism.

\* GE crops are being produced that have a wide variety of traits that benefit farmers and consumers. For example, GE crops can tolerate drought conditions and herbicides, resist insects and viruses, and provide enhanced quality and nutrition for consumers. GE crops are being developed by private companies, universities, and other researchers.

\* GE crops that are currently consumed for food, fiber or feed include corn, soybeans, cotton, canola, alfalfa and squash. Over 70 percent of processed foods on grocery store shelves in the U.S. contain ingredients and oils from biotech crops, according to an industry estimate.

\* USDA's National Agricultural Statistics Service estimates that in 2006, 61 percent of the corn, 83 percent of the cotton and 89 percent of the soybeans planted in the United States were biotech varieties.

#### BIOTECHNOLOGY REGULATORY AUTHORITY

Under a coordinated regulatory framework, USDA's Animal and Plant Health Inspection Service (APHIS), the Food and Drug Administration (FDA), and the U.S. Environmental Protection Agency (EPA) share responsibility for regulating biotechnology products to ensure that approved biotechnology products developed in the U.S. pose no risk to human health or the environment.

\* APHIS through its Biotechnology Regulatory Services (BRS) arm is responsible for overseeing the introduction of GE agricultural products in the United States. Since 1987, APHIS has safely deregulated or approved more than 70 GE products.

\* Deregulation of GE crops is necessary before they can be produced commercially. The process includes several steps including an initial risk assessment and thorough environmental review.

#### INVESTIGATION OF REGULATED RICE IN COMMERCIAL RICE SAMPLES

\* USDA and FDA have been notified by Bayer CropScience that the company has detected trace amounts of regulated genetically engineered (GE) rice in samples taken from commercial long grain rice.

\* Both USDA and FDA have reviewed the available scientific data and concluded that there is no human health, food safety, or environmental concerns associated with this GE rice.

\* Bayer CropScience has developed many GE herbicide-tolerant products with the protein called Liberty Link, three of which are rice. The regulated line is LLRICE 601 and Bayer CropScience reports finding only trace amounts of it during testing. Bayer conducted field tests of LLRICE 601 between 1998 and 2001. Bayer has indicated it had no plans to market LLRICE 601 and therefore had not petitioned for deregulation.

\* Two deregulated rice lines, LLRICE 62 and LLRICE 06, have been through thorough safety evaluations and have been deemed safe for use in food and safe in the environment, although these lines have not been commercialized.

\* Based on the available data and information, the FDA has concluded that the presence of LLRICE 601 in the food and feed supply poses no safety

concerns and APHIS, through a risk assessment based on the same data and information, concluded that LLRICE 601 is safe in the environment.

\* Based on reports that LLRICE 601 is in the marketplace and a petition from Bayer, APHIS will conduct a deregulation process, including an opportunity for public comment.

\* Because the line of GE rice in question was regulated, APHIS is conducting an investigation to determine the circumstances surrounding the release and whether any violations of USDA regulations occurred.

\* The protein found in LLRICE 601 is approved for use in other products. It has been repeatedly and thoroughly scientifically reviewed and used safely in food and feed, cultivation, import and breeding in the United States, as well as nearly a dozen other countries around the world.

\* USDA is in the process of validating a test to provide the marketplace with a tool to detect the presence of the Liberty Link protein in rice. Bayer has made arrangements with several private laboratories to run the tests and will post that information on their website.

#### U.S. RICE STATISTICS

More than 100 varieties of rice are commercially produced primarily in six states (Arkansas, Texas, Louisiana, Mississippi, Missouri, and California) in the U.S.

\* According to estimates for the 2006 crop year, rice production in the U.S. is valued at \$1.88 billion, approximately half of which is expected to be exported.

\* The U.S. provides about 12 % of world rice trade.

\* In 2005, 80% of rice exports were long grain varieties.

\* The majority of domestic utilization of U.S. rice is direct food use (58%), while 16 percent is used in processed foods and beer respectively. The remaining 10 percent is found in pet food.

#### GLOSSARY OF TERMINOLOGY

**Agricultural Biotechnology:** A range of tools, including traditional breeding techniques, that alter living organisms, or parts of organisms, to make or modify products; improve plants or animals; or develop microorganisms for specific agricultural uses. Modern biotechnology today includes the tools of genetic engineering.

**Deregulated:** If a GE crop has gone through the regulatory process for USDA to determine that it can be safely commercialized, it is commonly referred to as being a deregulated crop. This is necessary before it is sold and produced commercially. It allows the product to be moved and planted freely without the need for notification or permits. A developer may file a petition for deregulation only after a GE crop has been tested extensively and the developer can show that the product does not pose a plant pest risk.

**Gene:** The fundamental physical and functional unit of heredity. A gene is typically a specific segment of a chromosome and encodes a specific functional product (such as a protein or RNA molecule).

**Genetic engineering:** Manipulation of an organism's genes by introducing, eliminating or rearranging specific genes using the methods of modern molecular biology, particularly those techniques referred to as recombinant DNA techniques.

**Herbicide-tolerant crops:** Crops that have been developed to survive application(s) of particular herbicides by the incorporation of certain gene(s) either through genetic engineering or traditional breeding methods. The genes allow the herbicides to be applied to the crop to provide effective weed control without damaging the crop itself.

**Protein:** A molecule composed of one or more chains of amino acids in a specific order. Proteins are required for the structure, function, and regulation of the body's cells, tissues, and organs, and each protein has a unique function.

**Regulated:** If a GE crop has not gone through the regulatory process for USDA to determine if it can be safely commercialized, it is commonly referred to as being in regulated status or a regulated crop.

**Variety:** A subdivision of a species for taxonomic classification also referred to as a 'cultivar.' A variety is a group of individual plants that is uniform, stable, and distinct genetically from other groups of individuals in the same species.

More information on biotechnology and the USDA regulation of biotechnology can be found at:

<http://www.aphis.usda.gov/publications/biotechnology/index.shtml>

12. The contamination caused by Bayer CropScience was so significant to food advocates, rice farmers in Arkansas and throughout the United States, commodities brokers, and

foreign markets/trading partners and further, the fear of disruption to the US rice market was so great that on August 18, 2006, the Secretary of Agriculture and head of the USDA, Secretary Mike Johanns, issued the following statement:

“The U.S. Department of Agriculture and U.S. Food and Drug Administration have been notified by Bayer CropScience that the company has detected trace amounts of regulated genetically engineered (GE) rice in samples taken from commercial long grain rice. Both have reviewed the available scientific data and concluded that there are no human health, food safety, or environmental concerns associated with this GE rice.

Bayer has developed many GE herbicide-tolerant products with the protein called Liberty Link, three of which are rice. The regulated line is LLRICE 601 and Bayer reports finding only trace amounts of it during testing. LLRICE 601 was field tested between 1998 and 2001. Two deregulated lines, LLRICE 62 and LLRICE 06, have been through thorough safety evaluations and have been deemed safe for use in food and safe in the environment, although these lines have not been commercialized.

Based on the available data and information, the U.S. Food and Drug Administration has concluded that the presence of LLRICE 601 in the food and feed supply poses no safety concerns. USDA's Animal and Plant Health Inspection Service also conducted a risk assessment, which indicates LLRICE 601 is safe in the environment.

Bayer indicated it had no plans to market LLRICE 601 and therefore had not requested deregulation. Based on reports that LLRICE 601 is in the marketplace and a petition from Bayer, APHIS will conduct a deregulation process, including an opportunity for public comment.

Because the line of GE rice in question was regulated, APHIS is conducting an investigation to determine the circumstances surrounding the release and whether any violations of USDA regulations occurred.

The protein found in LLRICE 601 is approved for use in other products. It has been repeatedly and thoroughly scientifically reviewed and used safely in food and feed, cultivation, import and breeding in the United States, as well as nearly a dozen other countries around the world.

Since 1987, APHIS has deregulated more than 70 GE crop lines and in the

last decade farmers have increasingly planted biotech varieties engineered mainly for herbicide tolerance, insect resistance, and enhanced quality traits. USDA's National Agricultural Statistics Service estimates that in 2006, 61 percent of the corn, 83 percent of the cotton and 89 percent of the soybeans planted in the United States were biotech varieties."

13. Also, the USDA, through its Center for Food Safety and Applied Nutrition (CFSAN), Office of Food Additive Safety, issued the following statement on August 18, 2006:

**U.S. Food and Drug Administration's**

**Statement on Report of Bioengineered Rice in the Food Supply**

Bayer CropScience recently notified the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) that trace amounts of a bioengineered variety of rice were detected in samples of commercial rice seed, and may have entered the food and feed supply in the United States. The bioengineered variety of rice, called LLRICE601, expresses the phosphinothricin-N-acetyltransferase (PAT) protein which provides tolerance to glufosinate-ammonium herbicide. This rice variety, not intended for commercialization, was not submitted to FDA for evaluation under the Agency's voluntary biotechnology consultation process. However, crops containing the PAT protein have previously been evaluated for safety by FDA on a number of occasions through the Agency's voluntary biotechnology consultation process. Bayer has informed the Agency that LLRICE601 is present in some samples of commercial rice seed at low levels. In addition, Bayer has provided information about the safety of the PAT protein, molecular characterization, and nutritional composition of grain from LLRICE601. Based on the available data and information, FDA has concluded that the presence of this bioengineered rice variety in the food and feed supply poses no food or feed safety concerns.

14. On August 19, 2006, the New York Times published an article entitled "In Error, Rice Crop Is Mixed With an Unapproved Strain", reporting that:

Small amounts of an unapproved type of genetically engineered rice have been found in samples of supplies destined for human consumption, a development that



could potentially disrupt rice exports, federal officials said yesterday.

The rice poses no threat to human health or the environment, the officials said, and food found to contain the rice will not have to be recalled or destroyed.

Still, the discovery could mean that additional testing will be required of rice being bought by food companies or being shipped to other countries, some of which could reject shipments containing unapproved genetically modified crops.

About half the \$1.9 billion American rice crop is exported. The concern of a disruption was such that the secretary of agriculture, Mike Johanns, announced the discovery yesterday and said that he had contacted his counterparts in other countries.

“The best way to deal with trade issues is to deal very, very directly with your trading partners, and we are doing that,” Mr. Johanns said. “There is not an environmental risk; there’s not a food safety risk.”

Robert E. Brackett, director of the Center for Food Safety and Applied Nutrition at the Food and Drug Administration, said the agency knew of no safety issues with the rice.

The rice, developed by Bayer CropScience, a unit of Bayer, contains a bacterial gene that causes the crop to produce a protein that makes it resistant to the herbicide Liberty, also known as glufosinate.

While Bayer did not seek approval for this particular line of genetically engineered rice, two other similar lines of rice were approved several years ago by the Agriculture Department and the F.D.A. They have never been commercialized, however, mainly, many people say, because of opposition from rice exporters.

There are other crops, like canola and cotton, containing the same genetically engineered protein that have been approved in the United States and in other countries, including Japan and Europe, Bayer said in a statement, in which it said it was cooperating with federal authorities.

Agriculture Department officials said “trace amounts” of the unauthorized rice were detected by Bayer in long-grain rice from the 2005 harvest in Arkansas and Missouri.

Bayer reported this to the government on July 31. Since then, Mr. Johanns said, the government has been investigating and helping to validate tests that food processors and traders might use to detect the presence of the altered rice. He said the government would investigate further and would consider approving the rice.

Federal officials and Bayer would not say more about how much of the rice had been found and how widely it had spread. It was also not clear how the rice, which was grown in field tests from 1998 to 2001, got into the 2005 rice crop. It is possible that some rice was mixed in with seed used by Bayer in its breeding program or shipped to farmers.

The biotechnology industry has argued that it is virtually impossible to prevent trace amounts of “adventitious presence” of genetically modified crops or seeds where they are not supposed to be. Pollen flows from one field to another, and seeds can become intermixed in processing. A genetically modified seed looks no different from a conventional seed.

Last year, Syngenta said that a variety of genetically engineered corn that had not been approved — but which was similar to an approved variety — had mistakenly been distributed and planted for four years.

Bayer CropScience is the company that developed StarLink corn, involved in the most disruptive incident. The corn, approved only for animal feed, was found in the human food supply, prompting food recalls and disrupting exports. At that time the company was called Aventis CropScience but was later acquired by Bayer.

Gregory Jaffe, biotechnology director for the Center for Science in the Public Interest, a consumer group in Washington, said the latest incident was “another example of how this biotechnology industry continues to act irresponsibly.”

15. In a follow-up report on the contamination which referenced Riceland Foods, Inc. the New York Times reported on August 22, 2006 in an article entitled “Unapproved Rice Strain Found in Wide Area.” This report stated:

An unapproved genetically engineered strain of rice has been found in trace amounts in commercial supplies over a wide area in the nation’s southern rice-growing region, the country’s largest marketer of rice said yesterday.

The marketer, Riceland Foods, a farmer-owned cooperative, said samples from its five-state growing region — Arkansas, Missouri, Mississippi, Louisiana and Texas — had tested positive for the genetically engineered trait.

“The positive results were geographically dispersed and random throughout the rice-growing area,” Riceland said.

Agriculture Secretary Mike Johanns announced late Friday that unapproved rice had been found in supplies destined for human consumption. He and other federal officials said the rice posed no risk to health or the environment.

Because some countries will not accept genetically modified crops they have not approved themselves, the finding could hurt American exports or require them to undergo extra testing. About half the nation's \$1.9 billion rice crop is exported.

In a telephone news conference on Friday, Mr. Johanns declined to discuss how far the unapproved rice had spread. Agriculture Department officials later said it had been found in bins in Arkansas and Missouri that held rice from the 2005 crop, though the rice in those bins might have come from other states.

Bill J. Reed, a spokesman for Riceland, said in an interview yesterday that the rice was "not limited to Arkansas and Missouri" but had been found "throughout the southern rice-growing area."

The unapproved rice, a long-grain variety developed by Bayer CropScience, part of the Bayer Group, contains a gene that makes it resistant to the herbicide Liberty, also known as glufosinate. While this type of rice never received approval, two very similar types did — though they have not been marketed.

The European Commission said yesterday that it would ask Washington for more information and then decide what action to take on the unapproved rice. A Japanese newspaper, Asahi Shimbun, reported that Japan had suspended imports of long-grain rice from the United States, The Associated Press said.

American rice industry executives said Japan's imports consisted mainly of short- and medium-grain rice from California, and hardly any long-grain rice. The California Rice Commission said yesterday that it did not expect that the state's rice would be affected.

Riceland, which is based in Stuttgart, Ark., said the existence of a genetically engineered product in its rice was discovered in January by one of its export customers.

Riceland said that because genetically engineered rice was not grown commercially in the United States, it initially thought that a small amount of genetically engineered corn or another crop had been mixed in with rice, perhaps through the use of a common means of transportation.

But in May, Riceland said, the company collected rice samples from several grain storage sites and found positive results for the Bayer trait. Riceland said it then told Bayer, which confirmed the findings and said the modified rice was present

at levels equivalent to 6 of every 10,000 grains. Bayer reported this to the government on July 31. Since then, Mr. Johanns said, the government has been working on the situation.

It is still unclear how the rice, which was last field-tested in 2001, entered the 2005 crop.

Rice growers said yesterday that the finding could be damaging as it came just as the harvest was beginning, and as prices for rice seemed set to rise because of demand. They called for more information.

“We need to know where it got started, how it got started, is it an isolated incident, how widespread it is,” said Dwight Roberts, president of the United States Rice Producers Association. He said the Agriculture Department “has to move clearly and quickly and announce some policy on certification and testing.”

16. The effects of the contamination of the US rice supply by Bayer CropScience was immediate following the announcement by USDA and the news reports referenced in this complaint. On August 23, 2006 the European Union ordered special certifications for imports of rice from the United States to keep out genetically contaminated long-grain rice. Under the new rules, which are expected to be in place for at least six months, the United States will have to specifically certify that US rice shipments are free from the contamination of Bayer CropScience’s genetically engineered rice. Further, Japan suspended imports of US rice after the USDA announcement of the contamination. Japan is one of the top five importers of US rice.

17. Markos Kyprianou, EU Commissioner for Consumer Protection, was quoted as saying that the EU had no choice but to clamp down on US rice imports. He said: “We have strict legislation in place in the EU to ensure that any GM product put on the European market has undergone a thorough authorization procedure based on scientific assessment. There is no flexibility for unauthorised GMOs – these cannot enter the EU food and feed chain under any

circumstances." No genetically modified rice is currently approved in the EU, though one type that is similar to the traces of LL Rice 601 found last week is under review by the European Food Safety Authority.

18. On August 22, 2006 the San Diego Tribune reported on the Japanese rice ban and the concern of California farmers in a report entitled "Japan Rice Ban Worries Some California Farmers." This report stated:

SACRAMENTO – A recent Japanese ban of long-grain rice from the United States has set off alarm among California farmers and added fuel to a debate over genetically modified rice.

On one side, some farmers and industry groups say the ban does not pose a direct threat to California's crop, which is almost entirely short- and medium-grain rice. They add that the state's tightly regulated system for the introduction of any new rice variety has protected its products from the sort of contamination that prompted Japan's decision.

But others worry that restrictions on the biotech industry are insufficient, and that contamination is a near certainty in a state where hundreds of crops are grown in close proximity.

"Biotech does not recognize a fence line where one farmer's property ends and another begins," said Bryce Lundberg, a rice grower with Lundberg Family Farms.

The farm, based near Chico in the northern Sacramento Valley, supports keeping California free of genetically modified organisms, or GMOs. Lundberg said the situation surrounding the Japanese rice ban "points at the heart of the reason the farm opposes them."

Japan on Saturday suspended U.S. long-grain rice imports after supplies were found to contain trace amounts of a genetically engineered variety that is not approved for sale.

The U.S. Department of Agriculture said Friday that the contamination had been found in samples from storage bins in Arkansas and Missouri, but that the exact source had not been identified because the bins held rice from several Southern states.

Japan is the biggest foreign market for California rice – a \$500 million industry that relies on exports for 50 percent of annual sales.

Japanese consumers have a long-standing aversion to biotechnology and any changes to their food supply. A ban on U.S. beef over fears of mad cow disease was lifted just a few weeks ago.

“Three of our top markets – Japan, Taiwan and North Korea – are very clear on their position on genetically engineered crops,” said Renata Brillinger of Californians for GE-Free Agriculture, a coalition of environmental groups and family and organic farms. “And Japan is very influential over decisions that Taiwan and North Korean markets make.”

Brillinger and others say that although it is business as usual right now for the California rice industry, any future contamination of the crop by GMOs could have an immediate and severe economic impact.

The state's farmers produce nearly 2 million tons of rice annually, making California the second largest rice-growing state in the nation behind Arkansas. Rice is produced on about 500,000 acres, primarily in the Sacramento Valley.

The crop is primarily self-pollinated, so the likelihood of cross-pollination is small, Brillinger said. But every stage from harvesting to stocking supermarket shelves is highly consolidated, she said, and therefore risky.

“Contamination is inevitable,” she said. “It’s just a matter of when and how.”

Kent McKenzie, director of the Rice Experiment Station, sees much less cause for alarm.

“This material has never been grown in the fields of California,” he said of the aberrant rice found in the South.

The experiment station, in a small town south of Chico, is a nonprofit research foundation owned by the state's rice growers. On Monday, it sent material from its seed stocks to be tested for contamination at independent testing labs after a request from the U.S. Department of Agriculture. McKenzie said he expected results within a week.

McKenzie and Tim Johnson, president of the California Rice Commission, credited a landmark state law with maintaining a separation between normal rice and genetically modified rice in recent years.

The California Rice Certification Act of 2000 helped establish rice industry regulations to avoid mixing different varieties. It also formed an advisory board

that approves and creates protocols for any new rice introduced into California. It is the only such regulation for any crop in any state.

As a result, “we know of no commercially grown genetically modified rice produced in California today,” said Johnson, whose commission operates under the supervision of the state agriculture secretary.

Opponents of genetically modified organisms say that could change quickly and that certain stringent conditions must be put in place.

Interest groups such as the Rice Producers of California and California Certified Organic Farmers have established a set of standards they say must be met in order for GMOs to enter the rice market safely. Those include labeling standards to identify products containing GMOs; legal recourse for farmers if their crops are contaminated; and rigorous precautions throughout the harvesting, processing and distribution phases to maintain total isolation of genetically engineered materials.

Both sides in the debate over bio-engineered rice acknowledge that it is not a black-and-white issue. Ultimately, they share the same overall goal: to ensure that whatever the future of California rice looks like, farmers are protected.

“We recognize the potential future benefits of biotech for both consumers and rice farmers,” said Greg Massa, a rice grower in Glenn and Colusa counties and the co-chairman of the Rice Producers of California. “What we want is to make sure farmers’ interests are taken care of first.”

Massa said incidents such as the contamination found in the southern rice show there still is a long way to go before farmers can feel secure.

“We just want to make sure biotech is done right,” he said. “Stuff like this, this is not doing it right.”

19. The price impact of the contamination of the US rice supply by the unapproved Bayer CropScience rice strain, even though the genetically engineered strain is thought to be safe and may ultimately be proven to be safe, was immediate. In trading at the Chicago Board of Trade, the prices of rough rice contracts have dropped significantly due to the news of the contamination and resulting bans and/or new testing protocols by the EU and Japan. In fact, on Monday, August 21, 2006, the market rate for rice was \$9.55 per hundred weight (or \$4.30 per

bushel). By Friday, August 25, 2006, the price had fallen to \$8.99 per hundred weight (or \$4.04 per bushel). As a direct consequence, rice farmers have been significantly damaged economically as they are receiving a lower price for their crops at a time when this years harvest is coming in.

20. The timing could not be any worse for rice farmers. Indeed, on August 22, 2006 the news of the contamination caused by Bayer CropScience and its effect on rice prices was published by the Wall Street Journal in its report entitled "US Rice Prices Are Stunted By Concerns of Biotech Controls." That report stated:

Trading partners abroad began tightening their controls on American-grown rice after the discovery of an accidental release of a genetically modified variety unapproved for sale by U.S. regulators.

Prices of rice futures contracts sank yesterday as countries such as Japan and South Korea moved to prevent the genetically modified rice from coming into their markets from the U.S., which counts on foreign customers to buy roughly half of its annual production.

European Union officials said they are requesting more information from the U.S. and Bayer AG of Germany, the maker of the accidentally released long-grain variety, before deciding whether to ban imports of U.S. long-grain rice. The European environmental group Friends of the Earth is already calling on Brussels to restrict U.S. rice.

In trading at the Chicago Board of Trade yesterday, the price of the rough rice contract for November delivery dropped 26 cents a hundredweight to settle at \$9.84 a hundredweight.

Some consumers are leery of the safety of the modified-crop technology, despite government assurances. The rice industry, which is heavily dependent on foreign consumers, had been avoiding the use of genetically modified crops until they received consumer acceptance, both domestically and abroad. "Basically, we don't want to produce" modified rice, said David Coia, a spokesman for USA Rice Federation, a rice trade group.

Farmers in the U.S. -- which has been more accepting of genetically modified



crops than those in many other nations -- have been pestered by accidental releases in the past, as some genetically modified products have been inadvertently mixed in distribution or as pollen of modified crops fertilizes crops intended to be sold as nonmodified. The rice variety was one of many modified crops created in the 1990s, when genetically modified crops were sweeping through the Farm Belt. Development of new crops often outpaces both consumer acceptance or regulatory approval.

The Bush administration said Friday that a small amount of Bayer's genetically modified long-grain rice had been released through an unknown method and showed up in very low levels in storage bins in Missouri and Arkansas.

The Food and Drug Administration downplayed any risk to consumers. Even though that specific variety of herbicide-tolerant rice itself hadn't been cleared by regulators for sale in the U.S., the genetically modified protein within the rice had been approved earlier by U.S. regulators for use in other crops and rice varieties. The U.S. Department of Agriculture, which regulates field testing of genetically modified crops, is investigating how the release took place.

Last week, U.S. Agriculture Secretary Mike Johanns announced the contamination, which experts say occurred between 1998 and 2001 during experiments with the rice strain on U.S. test sites. At the time, the strain was owned by chemicals company Aventis and aimed to make crops resistant to one of its own weed killers. Bayer later bought parts of Aventis, including the rice strain.

21. On August 24, 2006 the Wall Street Journal published an article entitled "EU Adopts Tough Rules For U.S. Long-Grain Rice", that discussed the tougher screening procedures for long grain US rice imported to the EU. This article stated:

BRUSSELS -- The European Commission adopted tough screening rules on U.S. long-grain rice following revelations that an unauthorized genetically engineered rice variety had accidentally entered commercial rice stocks.

U.S. rice farmers, European importers and the biotech industry say the screening procedures, which are expected to be in place for at least six months, will add to their costs by requiring all long-grain rice varieties to be certified.

The ruling is also likely to strain trade relations between Brussels and Washington, which says the rice poses no health risk, and to raise questions of how to control the spread of biotech crops that are very unpopular in Europe.

Under the rules, which took effect immediately but will be reviewed tomorrow by

member governments, U.S. shipments of long-grain rice brands must be certified by an accredited laboratory to be free of the strain known as LL Rice 601, which is owned by German biotech company Bayer AG.

It was unclear who would foot the bill for testing, and some experts warned the screening may not discover the renegade strain, anyway.

U.S. exporters warned the measures may squeeze a rice sector already beleaguered by rising energy costs and increasing competition from abroad.

The U.S. exports about half its rice. Europe is one of its main customers, importing 198,000 metric tons of long-grain rice worth about €52 million, or about \$67 million, last year. Japan banned imports of U.S. long-grain rice last week.

Brussels officials have complained Washington took more than two weeks to warn Europe of the contamination after Bayer informed U.S. authorities on July 31 that it had found the genetically altered rice in commercial rice-storage units in Arkansas and Missouri.

The U.S. Department of Agriculture said the amount of altered rice Bayer found was equivalent to six rice grains among 10,000.

Bayer and government officials say they don't know how the rice variety found its way into commercial rice stores five years after it was ditched as a commercial nonstarter.

Bayer, faced with costly tests, has asked U.S. regulators to authorize commercial use of the strain, a process likely to take two months. Critics of the biotech business say the industry uses contamination to push through legalization of its products.

The contamination echoes a similar situation last year, when the EU imposed strict screening requirements on corn imports after U.S.-grown corn-gluten feed and brewers grain containing genetically modified corn made by Swiss biotech giant Syngenta AG was found in European shipments, where the modified strain is illegal.

22. Prices at the Chicago Board of Trade for rough rice remain depressed and farmers in Arkansas and across the United States are receiving lower prices for this years rice crop as a direct result of the contamination of the US rice supply by Bayer CropScience.

23. Bayer CropScience was previously involved in the debacle involving

contamination of corn by its StarLink corn. This corn strain, approved only for animal feed, was found in the human food supply and resulted in a number of food recalls and significant disruptions of corn exports from the US. Further, Bayer AG as a German company headquartered in Germany, a member state of the EU, is well aware of the EU ban on genetically engineered or modified rice and other food products and the fact that European and Japanese consumers and many others strongly resist genetically engineered or modified food products such as rice. These facts alone demonstrate that Bayer CropScience was well aware of the dangers to rice farmers associated with allowing unapproved genetically engineered rice to contaminate the commercial rice supply in the US.

#### **CLASS ACTION ALLEGATIONS**

24. Plaintiffs bring all claims as class claims pursuant to Rule 23 of the Federal Rules of Civil Procedure. The requirements of Rule 23 are met with respect to the Class defined below.

25. Plaintiffs bring their claims on their own behalf, and on behalf of the following Class:

All rice growers who have suffered damages from the depression of rice prices due to the contamination of the US' rice supply with genetically engineered rice that is not approved for human consumption, which was produced by the Defendants. Excluded from the Class are Defendants and any of their subsidiaries, directors, officers, employees, or authorized agents.

26. The Class is so numerous that joinder of the individual members of the proposed Class is impracticable. The Class, upon information and belief, includes thousands of members. For example, Arkansas has more than 10,000 rice growers, but of course thousands upon

thousands more reside in other states. Plaintiffs do not anticipate any difficulties in the management of this action as a class action.

27. Questions of law or fact common to the Class exist as to Plaintiffs and all Class Members, and these common questions predominate over any questions affecting only individual members of the Class. Among the common questions of law or fact are the following:

a. Whether Defendants were negligent in allowing rice supplies in the United States to be contaminated with genetically engineered rice that was not approved for human consumption.

b. Whether Defendants owed a duty to rice growers by ensuring that the nation's rice supplies were not contaminated with unapproved rice.

c. Whether Defendants' conduct amounted to breach of such a duty.

d. Whether Defendants' conduct was a proximate cause of Plaintiffs' and the Class Members' damages.

e. Whether Plaintiffs and the Class Members are entitled to damages, and, if so, the proper amount of such damages.

28. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs and the Class Members. Plaintiffs' and the Class Members' claims all involve common law negligence. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

29. The injuries sustained by Plaintiffs and the Class Members flow, in each instance, from a common nucleus of operative facts – the Defendants' misconduct in contaminating the United States' rice supplies with genetically engineered rice that was not approved for human consumption.

30. Plaintiffs' claims are typical of the claims of the Class Members. Defendants' uniform actions in contaminating America's rice supply with genetically engineered and

unapproved rice applies to all Plaintiffs and the Class Members. Moreover, the defenses, if any, that will be asserted against Plaintiffs' claims are typical of the defenses that will be asserted, if any, against the Class Members' claims.

31. Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs have no interests adverse to the interests of the Class Members. Plaintiffs have retained counsel with significant experience in the prosecution of class actions and complex litigation, including consumer litigation, and who will vigorously prosecute this action.

32. Plaintiffs and the Class Members were all victimized by a common course of conduct – Defendants' negligence. As a result, the common issues affecting Plaintiffs and the Class Members predominate over those affecting any individual Class Member.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, and individual joinder of all members of the Class is impracticable, if not impossible because the Class Members are scattered throughout the southern United States. Moreover, the cost to the court system of such individualized litigation would be substantial. Individualized litigation would likewise present the potential for inconsistent or contradictory judgements and would result in significant delay and expense to all parties and multiple courts hearing virtually identical lawsuits. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and the court, protects the rights of each Class Member and maximizes recovery to them.

## COUNT

### Negligence

34. Plaintiffs incorporate by reference all of the allegations contained above.

35. Defendants owed a duty to Plaintiffs to ensure that the nation's rice supply was

not contaminated with unapproved genetically engineered rice manufactured by them.

36. Defendants breached that duty by contaminating the country's rice supply with genetically engineered and unapproved rice in a period of time prior to August 23, 2006.

37. Defendants' actions proximately caused damage to Plaintiffs and the Class.

38. Plaintiffs and the Class have suffered damages by an enormous drop and loss in value of their rice product due to the contamination of the US' rice supply by the genetically engineered and unapproved rice of Defendants.

**JURY TRIAL DEMANDED**

39. Plaintiffs demand a jury of twelve.

**PRAYER**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, request that they and the other Class Members have judgement entered in their favor and against Defendants, as follows:

- A. An order certifying that this action, involving Plaintiffs' and the Class Members' separate and distinct claims, be maintained as a nationwide class action under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and their undersigned counsel to represent the Class;
  - B. An award, for Plaintiffs' and each Class Members' separate and distinct claims, of compensatory damages and pre- and post-judgement interest thereon;
  - C. Enjoin the Defendants from further contaminating America's rice supply with genetically engineered rice that is not approved for human consumption;
- and,

D. All other appropriate and just relief.

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