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LIBERTY LINK 601 RICE CLASS ACTIONS

This informational document was prepared at the request of the USA Rice Federation to provide general information on class action lawsuits. **It does not give legal advice.** Please direct your specific questions or concerns to your own attorney.

Background

Recent news reports indicate that genetically modified rice has been found in samples taken from commercial long grain rice. As a result, three lawsuits (including two class actions) have been filed in state and federal courts in Arkansas. The lawsuits have been filed on behalf of rice farmers across the country. Each lawsuit names Bayer CropScience and others as defendants. The lawsuits allege that the genetically modified rice has prompted foreign countries to place limits on U.S. imports, resulting in a decline in the price for U.S. rice. The lawsuits seek compensatory and punitive damages on behalf of the rice farmers. This document answers some basic questions on class action lawsuits.

Class Actions

What is a class action?

A class action allows plaintiffs who are similarly situated to consolidate their claims into one lawsuit. Typically, class actions are connected to some standard action on the part of a business or to some particular product defect or policy that was applied to all potential class members in a uniform manner. In a class action, a few named plaintiffs stand in for a group of similarly situated persons during the course of the litigation. These named plaintiffs are referred to as “class representatives.” Generally speaking, the premise of a class action is that litigation by representative parties decides the rights of all class members. If the class representatives prevail on their claim, all of the class members are entitled to the benefit of that determination. Likewise, if the class representatives do not prevail on their claim, all of the class members are bound by that adverse judgment.

Who are the class members?

The class representatives generally bring the lawsuit in their individual capacity and “on behalf of all others similarly situated.” Thus, the precise identity of all class members is often not known. Instead, the class representatives will propose a class definition, which describes the

members of the class. For example, in the *Geeridge Farm, Inc. v. Bayer CropScience* case, the proposed class definition is:

All persons and entities (excluding Bayer and its officers, directors, and employees and governmental entities) who cultivated and/or harvested rice in Arkansas, Missouri, Louisiana, Mississippi, Texas and California in the relevant time period.

If the class is certified (see below), the parties and the Court will develop a notification plan designed to alert class members of the lawsuit. Usually, potential class members have the option of excluding themselves (or “opting out”) from a class or class settlement, and pursuing a case on their own. A deadline is imposed for opting out. If the class members do not opt-out by the given deadline, they are deemed to be in the class and bound by any judgment rendered. In certain circumstances, class members have to affirmatively “opt-in” to be included in the class.

Must a rice farmer join one of the class action lawsuits now or file its own lawsuit now to protect its rights against Bayer and other potentially responsible parties?

As noted above, the two existing class action lawsuits are filed on behalf of all similarly situated rice farmers. At a later time, if either of these lawsuits is ‘certified’ as a class action (see below), rice farmers will have the opportunity to “opt out” or “opt in.” ***Nothing needs to be done now to preserve your rights in these lawsuits.*** The statute of limitations (or deadline) for filing your own lawsuit based on negligence varies from state to state, but the deadline should be no earlier than July of 2007. Thus, if you wish either to file your own individual lawsuit, or to serve as a plaintiff in a new class action lawsuit, there is no rush to do so. Of course, if you have specific questions or concerns, you should consult your lawyer now to review your options.

What is a class representative?

A class representative is a class member who agrees to act on behalf of the rest of the class. The class representative works with the lawyers to ensure the interests of the class are fairly represented. Class representatives are generally required to attend certain legal proceedings and give depositions. If a class action is successful in winning relief for the class, some courts provide class representatives with “incentive awards.” Judges are typically given broad discretion in deciding whether these awards are appropriate and in setting the amounts of the awards.

What does “class certification” mean?

In order for a lawsuit to proceed as a class action, the court must determine whether it is appropriate for the case to be treated as a class action. This process is known as “class certification.” Typically, a class action must meet four threshold requirements before it can be certified as a class action: (1) **Numerosity** (so many potential class members are involved that it is not practical to name them all in the complaint and have them all actively participate in the litigation); (2) **Commonality** (some material fact or question of law be common to all potential class members); (3) **Typicality** (the class representatives’ claims are “typical” (but not necessarily identical) to those of the absent class members); and (4) **Adequacy of Representation** (the plaintiff must adequately protect and represent the interest of the class and

class members must receive proper legal representation by class counsel). There are also other important requirements the lawsuit must satisfy for class certification.

How is a class action handled by the court?

The class representatives file a complaint, which must be answered by the defendants. The parties engage in discovery, a process by which each side requests the documents and information in the possession of the other side. At times, the lawyers will file motions with the court to seek to dismiss some or all of the claims, narrow the issues, or in general to resolve procedural disputes. Often the defendants will seek to have the complaint dismissed prior to trial, on the grounds that the facts could not possibly support a finding against them. Class actions tend to involve more complicated issues than most other civil cases.

How long do class actions take to settle or resolve?

Class actions typically take longer to resolve than most other cases. The class certification process adds additional time to the process of resolving a lawsuit. Likewise, if the class representatives are successful on their claims, additional time is necessary to allow absent class members to come forward to collect any benefit due to them. A typical class action case takes about three to five years from the time the initial complaint is filed until a case concludes.

What is the difference between state and federal court?

A plaintiff can seek the same types of relief in both state and federal court. The main differences between federal and state courts are jurisdictional. Jurisdiction refers to the kinds of cases a court is authorized to hear. State courts have broad jurisdiction. Federal court jurisdiction, by contrast, is limited to the types of cases listed in the Constitution and specifically provided for by Congress.

Why are there three lawsuits?

One lawsuit has been filed in state court on behalf of 20 specific plaintiffs. These plaintiffs did not file a class action suit, so that lawsuit does not impact other rice farmers. Because anybody is free to file a class action complaint, occasionally several lawsuits covering the same matter are filed at about the same time containing overlapping class definitions. Lawsuits that are in the same court system (for example the federal court system) are often consolidated into one action. A state court judge, however, cannot transfer a case to federal court or to the courts of another state. Situations do arise, therefore, where there are “dueling class actions.” Because a plaintiff cannot recover twice for the same injury, class members who are covered by more than one lawsuit are generally bound by the result reached in the first case to come to a conclusion.

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