

Bayer Agrees to 'Watershed' Settlement in 7,000-Case Rice Crop Contamination Litigation

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Last Friday, Bayer Crop Science finished the fourth day of a projected five-week bellwether trial in the 7,000-case mass tort over its alleged contamination of the U.S. long-grain rice crop with an experimental strain of genetically modified rice. The case, involving a trio of Texas farmers, was the last of four bellwether trials ordered by St. Louis federal district court Judge Catherine Perry, who is overseeing the rice contamination multidistrict litigation. Each of the three preceding federal court bellwether trials, involving farmers from Missouri, Arkansas, Mississippi and Louisiana, resulted in damages verdicts against Bayer of between \$500,000 and \$2 million.

The Texas trial, however, was the first in which Perry ruled that the plaintiffs could present their case for punitive damages along with their case in chief. (Two previous federal court juries declined to award punies in bifurcated proceedings; in the federal trial involving Louisiana claims, plaintiffs weren't permitted under Louisiana law to request punitives.)

Perry's ruling apparently made a difference to Bayer, which was previously socked with a \$42 million punitive damages verdict in an Arkansas state court trial of rice crop contamination claims. On Monday, Bayer and the three Texas plaintiffs announced a \$290,000 settlement -- Bayer's first in the rice contamination litigation.

It's not a huge amount of money (although the plaintiffs could get more if there's a global settlement with a higher per-acre payout). Nevertheless, plaintiffs counsel Adam Levitt of Wolf Haldenstein Adler Freeman & Herz, who was part of the farmers' trial team and is co-lead counsel in the rice contamination MDL, told us the settlement is "a watershed event."

"This is the first time Bayer has elected to settle and pay farmers," Levitt said. "Bayer is seemingly taking responsibility for the contamination." Levitt told us he couldn't comment on whether he's engaged in wider-ranging settlement talks with Bayer, but said the plaintiffs steering committee "views this as a very favorable development."

In addition to Levitt, the Texas farmers were represented at trial by Don Downing of Gray, Ritter & Graham; **Richard Arsenault of Neblett Beard & Arsenault**; and William Chaney of Looper, Reed & McGraw. Downing is Levitt's co-lead plaintiffs counsel in the MDL.

Bayer Crop Science has been represented in all of the federal court trials by Bartlit Beck Herman Palechar & Scott. Lead trial counsel Mark Ferguson of Bartlit Beck referred our call to a Bayer Crop Sciences spokesperson, who sent us this e-mail statement: "Bayer CropScience has always been willing to settle such biotech rice litigation cases on reasonable terms and is pleased to be able to do so in this instance. The company also continues its participation in ongoing mediation discussions concerning the claims of remaining plaintiffs in the biotech rice litigation."