

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

GEERIDGE FARM, INC. AND GEORGE G. WATSON,

**Individually and on behalf of all other individuals
and entities similarly situated,**

Plaintiffs,

Case No. _____

Vs.

BAYER CROPSCIENCE L.P.,

Defendant.

COMPLAINT – CLASS ACTION

Plaintiffs, by their undersigned counsel, on their own behalf and on behalf of all others similarly situated, upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, allege in support of this Plaintiffs' Class Action Complaint ("Complaint") as follows:

NATURE OF THIS ACTION

1. "LLRICE 601" (also referred to as "Liberty Link Rice") is a type of genetically engineered ("GE") rice seed developed, manufactured, and test-marketed by defendant Bayer CropScience ("Bayer"). LLRICE 601 is a variety of long grain rice that has been genetically altered with a bacterial gene that causes the crop to produce a protein that makes it resistant to Liberty® Herbicide (also known as glufosinate) produced by Bayer. LLRICE 601 has not been approved for human consumption.

2. LLRICE 601 was grown in field tests from 1998 to 2001. Bayer never sought to market the rice commercially largely because of warnings from millers and processors as well as domestic and foreign producers that they would reject it.

3. Under a coordinated regulatory framework, the United States Department of Agriculture's ("USDA") 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 products developed in the U.S. pose no risk to human health or the environment. As a bio-engineered product, LLRICE 601 could not be commercialized without this approval. Bayer has not obtained regulatory approval for LLRICE 601 and it is not presently deemed fit for human consumption.

4. At that time it was testing this rice and through the present-day, Bayer knew that non-GE rice could become contaminated with LLRICE 601 through a wide variety of means including cross-pollination and commingling during harvest, storage, transport, and disposal.

5. Bayer failed to take the steps to prevent cross-pollination with non-GE rice. Additionally or alternatively, Bayer knew, or should have known, before it grew or otherwise disseminated LLRICE 601 rice seed, that such cross-pollination could not be prevented.

6. Bayer also failed to take the steps to prevent commingling of LLRICE 601 rice with non-GE rice during test planting, harvest, handling, storage, transport and disposal. Additionally or alternatively, Bayer knew, or should have known, before it grew or otherwise disseminated LLRICE 601 rice seed, that the U.S. rice production and marketing chain is a commodity-based system that gathers, commingles, and ships rice from hundreds of thousands of farms through local, regional, and terminal elevators, that widespread commingling of LLRICE

601 rice with non-GE rice could not be prevented, and that segregation of rice that has been grown or pollinated by GE rice lines is not commercially feasible.

7. Plaintiffs are rice farmers who have commercially cultivated and/or harvested non-GE rice. Plaintiffs seek relief on their own behalf and on behalf of all others similarly situated for compensatory and consequential damages, punitive or exemplary damages, and injunctive relief arising from, *inter alia*:

(a) Bayer's failure, either by itself or through its agents, to adequately warn LLRICE 601 test growers of the necessary precautions and limitations to prevent LLRICE 601 from entering the food chain;

(b) Bayer's growing and/or other dissemination of LLRICE 601 with the knowledge that LLRICE 601 was not approved for human consumption yet was likely to contaminate non-GE rice through cross-pollination or other means;

(c) Bayer's growing and/or other dissemination of LLRICE 601 with the knowledge that LLRICE 601 was likely to contaminate through commingling with non-GE rice in cultivation, harvesting, handling, storage, transport and disposal; and

(d) the harm to Plaintiffs and the Class resulting from the LLRICE 601 contamination of the general U.S. rice supply and its entry into human food channels, in the form of, *inter alia*, (i) diminished prices for U.S. rice resulting from loss of export and domestic markets for that rice; (ii) diminished prices for U.S. rice and/or increased grower costs resulting from the need to, *inter alia*, maintain the integrity of the U.S. rice supply and/or to keep LLRICE 601 rice from further entering the general U.S. rice supply and export channels; and (iii) through the contamination of the entire rice farming and production chain, including, but not necessarily limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1332. In the aggregate, the claims of Plaintiffs and the members of the Class exceed the jurisdictional minimum amount in controversy of \$5,000,000.00, exclusive of costs and interests, 28 U.S.C. § 1332(d)(2)(A) and § 1332(6).

9. This Court has jurisdiction over the Defendant because it is a corporation actively doing business and does sufficient business in Arkansas, has sufficient minimum contacts in Arkansas, or otherwise intentionally avails itself of the markets within Arkansas, through manufacturing, production, promotion, sale, marketing and distribution of its products in Arkansas, to render the exercise of jurisdiction by this Court proper and necessary.

10. Venue is proper in this District of Arkansas pursuant to 28 U.S.C. § 1391 because Defendant provides services to Class members located in this District, conducts substantial business in this District resides in this District, or otherwise has sufficient contacts with this District to justify it being fairly brought into court in this District.

PARTIES

Plaintiffs

11. Geeridge Farm, Inc. is incorporated in and has a principal place of business in Humnoke, Arkansas. Plaintiff Geeridge Farm, Inc. grew long grain rice in Lonoke County during the relevant time period. Plaintiff Geeridge Farm, Inc. has never knowingly grown LLRICE 601 rice.

12. George G. Watson is a citizen and resident of Earle, Arkansas. Plaintiff Watson grew approximately 950 acres of long grain rice in Crittenden and Cross counties during the relevant time period. Plaintiffs Watson has never knowingly grown LLRICE 601 rice.

Defendants

13. Bayer CropScience L.P. (“Bayer” – a term which, when used herein, includes Bayer CropScience L.P., its parent company – Bayer AG, predecessor companies, and all of its subsidiaries and affiliates) is a Delaware corporation headquartered at 2 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Bayer, which was formed when Bayer AG

bought Aventis CropScience USA Holding, Inc., in October, 2001, is a corporation that, by itself and through its parent, subsidiary and predecessor corporations, produces and has produced, *inter alia*, genetically modified and bio-engineered rice seeds, including, but not limited to, LLRICE 601. Bayer conducts business throughout the United States, including the states in which the named Plaintiffs herein cultivate and/or harvest rice.

FACTUAL ALLEGATIONS

Rice Cultivation in the United States

14. Rice is the staple in the diet for much of the world. It runs a close second to wheat in its importance as a food cereal in the human diet.

15. According to the USDA, the United States provides about 12% of the world rice trade. Estimates for the 2006 crop year value rice production in the U.S. at approximately \$1.9 billion. About half of the American rice crop is exported to other countries. In 2005, about 80% of American rice exports were long-grain varieties.

16. Rice production in the United States started in the Carolinas and Georgia and by the early 1700s, the American colonies were exporting rice. After the Civil War, rice acreage moved west around the Mississippi River and eventually mechanized farming allowed the industry to flourish in that area. By 1912, rice was being grown in California.

17. Rice in the United States is generally grown in flooded fields. Only certain types of soils are able to hold water and hold the weight of machinery. An abundant and cheap supply of water is needed. The Mississippi delta has proven to be an ideal location for rice and most rice in the U.S. is grown in that area. Arkansas is the largest producer of rice in the U.S. today. Other rice producing states include Missouri, Louisiana, Mississippi, Texas and California.

18. There are predominately three types of rice grown in the United States: Indica type long grain rice typically known as “Southern Long Grain” rice; Indica type medium grain rice typically known as “Southern Medium Grain” rice; and Japonica type medium grain rice typically known as “California Medium” or “Calrose” rice.

19. The most common rice in the U.S. is Southern Long Grain rice. This type of rice is also the most common rice consumed in the world.

20. Cross-pollination does occur in rice. In natural conditions when a weedy rice strain occurs within a cultivated rice crop, the flowering time, plant height and other features of the weedy rice will tend to shift to a point that is similar to the cultivated rice varieties growing in the same field, because of their cross-pollination and genetic recombination. According to published studies, as in many other crop species, transgene escape from cultivated rice varieties to their weedy and wild relatives through gene flow has become an indisputable fact.

21. The U.S. rice marketing system is commodity-based and gathers, commingles, and ships rice from hundreds of thousands of farms through local, regional, and terminal distribution centers. Rice storage and transportation facilities are generally not equipped to test and segregate rice varieties, and to undertake testing and segregation at these facilities causes disruption and expense.

LLRICE 601 Rice

22. LLRICE 601 rice was developed by Bayer through biotechnology by genetically engineering long grain rice to be resistant to the Liberty® herbicide.

23. As a bio-engineered product, LLRICE 601 was subject to regulatory approval prior to commercialization. Bayer never obtained this approval for LLRICE 601.

24. In testing, growing, transporting, storing and disposing of LLRICE 601, Bayer failed to comply with responsible growing practices. Bayer knew that it was impossible to completely isolate LLRICE 601 rice from other varieties of rice and that LLRICE 601 would inevitably cross-pollinate with other rice plants. Furthermore, Bayer was aware, or should have been aware, that unless strict precautionary measures could be implemented at all levels – from the farm level from planting through the distribution, transportation, storage and disposal chain – given the nature of the U.S. grain handling system, LLRICE 601 would contaminate the entire U.S. rice crop and infiltrate the general U.S. rice supply.

Problems Begin To Emerge

25. In late 1998 and early 1999, concerned with the health and safety aspects of genetically modified crops, the general public in many European Union (“EU”) countries rejected food products containing genetic modifications of any type. These European-based concerns slowed European registrations for various biotech products. In some cases, registrations were denied.

26. Bayer was aware of these concerns regarding the health and safety of biotech aspects of products such as LLRICE 601 and the potential detrimental market effects arising therefrom.

27. Bayer’s predecessor, Aventis CropScience, conducted field tests of LLRICE 601 between 1998 and 2001. They ultimately decided not to commercially develop this product.

28. A May 22, 2001 *Houston Chronicle* article reported:

“One by one Monday, 18-wheel trucks began hauling away nearly 5 million pounds of genetically modified rice from a Brazoria County farm to a landfill for burial.

The rice, the first to be genetically enhanced, was approved by the U.S. Food and Drug Administration and the United States Department of Agriculture,

but approval by the Environmental Protection Agency is pending.

Without EPA approval, the rice cannot be served as food, say officials with Aventis CropScience, which developed the biotech rice.

The rice could have been marketed for human consumption had it remained in storage bins until the EPA granted approval, but Aventis wanted to be sure it could properly manage the experimental crop and track its location, said Peg Cherny, a company spokeswoman.

Aventis has been criticized for losing track of some of its genetically modified StarLink corn, which reached consumers before it had received government approval.

Aventis 'didn't want to create an issue' with its biotech rice, Cherny said.

The rice has been dubbed 'LibertyLink' because it is resistant to Liberty herbicide, a weedkiller commonly used on corn and canola.

...

Harvested last August, about 250,000 pounds will be retained for Aventis to use for testing. The rest, about 4.75 million pounds, will be buried."

29. On August 19, 2006, Agriculture Secretary Mike Johanns announced that unapproved rice had been found in supplies destined for human consumption.

30. In an August 22, 2006 article in the *New York Times*, Riceland Foods, a farmer-owned cooperative, said samples from its five-state growing region — Arkansas, Mississippi, Louisiana and Texas — had tested positive for the genetically engineered rice. 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.

31. Riceland, which is based in Stuttgart, Ark., said the existence of a genetically engineered product in its rice was discovered in January, 2006, 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 did not report these findings to the U.S. government until July 31, 2006.

32. This widespread LLRICE 601 cross-pollination and contamination has had a broad and adverse impact on Plaintiffs and all rice farmers. Bayer's wrongful conduct has rendered hundreds of millions of bushels of U.S. rice, grown on tens of millions of acres of U.S. farmland, unfit for human consumption or otherwise suspect in the global rice markets, which has resulted in worldwide market value loss for U.S. rice.

33. An August 22 *Wall Street Journal* article reported:

“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.

...
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.”

34. On August 22, 2006, rice futures fell by the daily trading limit of 50 cents per hundredweight, or more than 5 percent, the sharpest one-day decline in several years. Since news of the commingling was first released, the market price of rice at the Chicago Board of Trade has fallen approximately 8-10%.

35. On August 23, 2006, the European Union issued the following statement banning imports of U.S rice until it was certified as GE-free:

“The European Commission has today adopted a decision requiring imports of long grain rice from the USA to be certified as free from the unauthorised GMO LL Rice 601. The decision has been taken in light of the recent announcement by the US authorities that this unauthorised GMO had been found in samples of commercial rice on the US market (see MEX/06/0821). The

emergency measures adopted by the Commission today mean that, with immediate effect, only consignments of US long grain rice that have been tested by an accredited laboratory using a validated testing method and accompanied by a certificate assuring the absence of LL Rice 601, can enter the EU.

Markos Kyprianou, Commissioner for Health and Consumer Protection, 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 authorisation procedure based on scientific assessment. There is no flexibility for unauthorised GMOs - these cannot enter the EU food and feed chain under any circumstances. The measures we have taken today will ensure that unauthorised GM rice is not inadvertently imported. EU consumers can rely on the high level of protection that our GM rules afford them.'

Under EU food safety legislation, only GMOs which have undergone a thorough scientific assessment and authorisation procedure may be put on the EU market. The decision adopted today therefore aims to prevent the unauthorised LL Rice 601 from reaching EU consumers, by ensuring that only rice certified as free from this GMO enters the EU. The measures will enter into effect immediately, and are expected to be reviewed after 6 months.

Member States authorities are responsible for controlling the imports at their borders and for preventing any contaminated consignments from being placed on the market. In addition, they should carry out controls on products already on the market, to ensure that they are free from LL Rice 601. Business operators importing rice from the USA also have responsibility for ensuring that LL Rice 601 does not enter the EU food chain and that imports are certified as free from this unauthorised GMO, in accordance with the EU food law principle that operators are responsible for the safety of the food or feed that they place on the market." [sic]

36. Bayer knew, or should have known, that once LLRICE 601 became commingled with the general U.S. rice supply, identity determination and segregation of the entire U.S. rice supply would be required in order to prevent LLRICE 601 rice from entering the domestic and international food supply channels and that such a situation would involve huge disruptions in the rice trade, impose significant added costs on, *inter alia*, U.S. rice farmers, and detrimentally impact worldwide prices for U.S. rice causing severe financial damage to U.S. rice farmers.

37. Despite these facts, Bayer tested LLRICE 601 product without adequate safeguards to prevent its release into the general rice market.

38. On information and belief, Bayer failed to adequately instruct, oversee or control test growers to ensure that LLRICE 601 crops were adequately segregated or contained adequate buffer zones, at least, in part, because Bayer was confident that LLRICE 601 would eventually be approved for human use and deregulated. Such wrongful and deliberate conduct by Bayer led directly to the cross-pollination, contamination, and market deterioration problems that damaged Plaintiffs and all rice farmers. Bayer never obtained this approval and never sought to commercially develop and market the product because it knew that domestic and foreign buyers would reject it.

39. Bayer's wrongful conduct also led to the direct introduction of contaminated rice into the United States consumer market.

40. As a result of LLRICE 601's unapproved presence in a wide range rice crops in the United States, and further, as a result of the fact that LLRICE 601 has been found in rice destined for export markets, confidence in the integrity and safety of America's rice crop has evaporated in those markets, particularly in Japan and the EU -- large markets for U.S. rice exports.

41. Due to Bayer's wrongful conduct, U.S. rice destined for export markets for use in food products has been determined to have been contaminated with LLRICE 601 rice, and has been rejected for the purpose(s) for which it was intended and/or substantially discounted in price -- thereby detrimentally impacting the domestic and global rice markets and damaging Plaintiffs and all other rice farmers.

42. As a result of Bayer's wrongful conduct, Japan, the largest foreign market for U.S. rice, has already prohibited all imports of U.S. rice.

43. Similarly, as a result of Bayer's wrongful conduct, the European Union has prohibited all U.S. rice imports unless they have been scientifically tested and found not to contain the GE crop. In 2005, the U.S. exported 224,000 metric tons of rice to the 25-nation EU worth \$81.7 million, of which 198,000 tons was long-grain rice.

44. Moreover, many U.S. food producers have or will likely reject U.S. rice out of concern that the U.S. rice supply has been contaminated by LLRICE 601.

45. Further, as a result of Bayer's wrongful conduct, other rice processors and food manufacturers have or likely will become concerned about the presence of LLRICE 601 in raw products coming into their food manufacturing facilities – thereby further softening the market for U.S. grown rice and further damaging Plaintiffs and all other non-GE rice farmers.

***The Further Impact of LLRICE 601 on Plaintiffs
and All Other Rice Farmers***

46. The introduction of LLRICE 601 rice, as a result of Bayer's wrongful conduct, into the general human food supply has detrimentally affected the ability of Plaintiffs and all other non-GE rice farmers to get their rice into export channels through the storage, handling, processing, and export companies. Furthermore, many rice exporters will undertake and require expensive and time-consuming testing of all rice crops prior to sale to determine that they are LLRICE 601-free and thus fit for human consumption. The economic burden of rice testing and segregation of LLRICE 601 rice from the U.S. rice supply will be transferred to U.S. rice farmers by, *inter alia*, diminished bids for rice brought to the market.

47. The impact of rice testing will additionally burden rice farmers by, *inter alia*, potentially requiring loads of rice that test positive to be destroyed and deemed unfit for human consumption or barred from export.

48. Moreover, the presence of LLRICE 601 in rice food products and in the general U.S. rice supply has and will result in the loss of certain markets within the United States and certain export markets for American rice and, coupled with the above-described export declines, has and will continue to result in reduced prices for all U.S. rice.

49. Furthermore, the cost of segregating non-GE rice from LLRICE 601 rice will be significant. As a result of Bayer's wrongful conduct, U.S. rice farmers will have to take extra steps to attempt to preserve the integrity and economic value of their rice crops.

50. Rice farmers have also sustained damages to their property as a result of Bayer's wrongful conduct, through the contamination of the entire rice farming and production chain, including, but not necessarily limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment.

51. Bayer's wrongful conduct continues to place all Plaintiffs and all other rice farmers at risk for further damages caused by the cross-pollination and contamination of their rice crops with the bio-engineered LLRICE 601 product and from the continued detrimental market effects of the LLRICE 601 contamination on U.S. rice prices.

INJURIES TO PLAINTIFFS AND ALL RICE FARMERS

52. The detection of LLRICE 601 in rice food products and the U.S. rice supply has already resulted in the loss of certain export markets and domestic markets for U.S. rice and will continue to do so.

53. Market changes resulting from LLRICE 601 contamination have created inefficiencies expressed in, *inter alia*, lower rice prices and higher producer costs.

54. Many rice buyers will likely not accept deliveries without proof that the rice crops being delivered to them are free of LLRICE 601, thus requiring expensive and time-consuming

testing. Furthermore, the costs of storing and moving LLRICE 601-contaminated rice through segregated channels will be significant. Storage and transportation entities must now design and use systems and equipment for testing and segregation; before LLRICE 601 was introduced, all rice could be handled in the same way. Rice Farmers, including Plaintiffs and all other members of the Class, will share the economic burden of these costs.

55. As set forth above, the impact of testing for LLRICE 601 contamination at various points in the rice marketing channel will add extra expense by leaving loads of rice that test positive out of certain markets. Rice Farmers, including Plaintiffs and all other members of the Class, will share the economic burden of these costs.

56. Commodities traders, financial reporters, and agricultural officials have stated that LLRICE 601 contamination has and will continue to detrimentally impact rice prices, rice futures prices, and U.S. rice exports.

57. As a result of Bayer's wrongful conduct, rice farmers have also suffered harm to their property through the contamination of the entire rice farming and production chain, including, but not necessarily limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment.

58. Plaintiffs and all members of the class have been damaged and are at continuing risk of further damages arising out of Bayer's wrongful conduct.

CLASS ACTION ALLEGATIONS

59. Plaintiffs bring these claims against Bayer, pursuant to Fed. R. Civ. P. 23(a), 23(b)(1), 23(b)(2), and 23(b)(3), individually and on behalf of a class consisting of:

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. Excluded from this 6-state Class are the Court and its employees; Bayer; any parent, subsidiary, or affiliate of Bayer; and all employees and directors who are or have been employed by Bayer during the relevant time period.

60. The Class is so numerous and geographically dispersed that joinder of all members is impracticable. The exact number and identity of Class Members is not known. Plaintiffs believe that tens of thousands of persons cultivated and/or harvested rice in the United States during the relevant time period and would be members of the class. Accordingly, Rule 23(a)(1) is thus satisfied.

61. Common questions of fact and law exist here, satisfying the requirement of Rule 23(a)(2), including but not limited to:

- a) whether Bayer is liable to Plaintiffs and the other members of the Class for damages, and the proper measure of such damages; and
- b) whether Plaintiffs and the other Class Members are entitled to injunctive relief to decontaminate their farming, harvesting, and transportation equipment, and their on-farm storage facilities, to prevent future contamination in the 2006 growing season and beyond.
- c) whether Bayer is responsible for LLRICE 601 contamination of non-GE rice;
- d) whether Bayer tested LLRICE 601 in such a manner that cross-pollination and/or commingling with non-GE rice was reasonably foreseeable;
- e) whether Bayer was negligent or negligent per se in its supervision of farmers who tested LLRICE 601;

- f) whether Bayer was negligent or negligent per se in the testing, growing, storing, transport and disposal of LLRICE 601;
- g) whether Bayer's conduct in contaminating the U.S. rice supply and the entire rice farming and production chain constitutes a public nuisance;
- h) whether Bayer's conduct in contaminating Plaintiffs' and/or Class Members' farmland and equipment constitutes private nuisance;
- i) whether Bayer is strictly liable for damages caused by its testing, growing, storing, transport and disposal of LLRICE 601;
- j) whether damage to Plaintiffs' and/or Class Members' rice supplies caused by Bayer constitutes conversion; and
- k) whether Bayer is liable to Plaintiffs and Class Members for damages and the proper measure of such damages.

62. Plaintiffs' claims are typical of the other Class Members' claims and do not conflict with the interests of any other Class Members, as Plaintiffs and all Class Members were damaged by Bayer's wrongful conduct, and the relief Plaintiffs seek is common to the relief sought on behalf of the Class. Rule 23(a)(3) is thus satisfied.

63. Plaintiffs will fairly and adequately protect the interests of the other Class Members and has no interests that are antagonistic to or which conflict with those of other Class Members. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in litigation of this nature to represent them and the members of the Class. Rule 23(a)(4) is thus satisfied.

64. Absent a representative class action, members of the Class would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions

could be brought by individual farmers, the resulting multiplicity of lawsuits would cause undue hardship and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated farmers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Bayer. The proposed Class thus satisfies the requirements of Fed. R. Civ. P. 23(b)(1).

65. Bayer has acted and/or refused to act on grounds generally applicable to Plaintiffs and the other Class Members, thereby rendering class certification and injunctive and/or declaratory relief with respect to the Class as a whole appropriate as well. Certification under Fed. R. Civ. P. 23(b)(2) would, therefore, be appropriate.

66. As discussed above, numerous common questions of fact and law exist. These questions predominate over the individual questions presented in this action. The predominance requirement of Rule 23(b)(3) is thus satisfied.

67. A class action is the superior method for the fair and efficient adjudication of this controversy, because joinder of all Class Members is impracticable. Because the damages suffered by individual Class Members may be relatively small, the expense and burden of litigation would prevent Class Members from individually redressing the wrongs done to them. Where, as here, the size and nature of individual Class Members' claims would allow few, if any, Class Members to seek legal redress against Bayer for the wrongs complained of herein, a representative class action is both the appropriate vehicle by which to adjudicate these claims and is essential to the interests of justice. Furthermore, a class action regarding the issues in this count creates no significant problems of manageability. The superiority and manageability requirements of Rule 23(b)(3) are thus satisfied.

COUNT I
**(On Behalf of the Class
Against Bayer for Negligence Per Se)**

68. For the purposes of Count I, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

69. Bayer' acts and/or omissions as described above constitute negligence per se.

70. Bayer had a regulatory duty to the Class Members to test, grow, store, transport and dispose of LLRICE 601 in a manner that would not result in contamination of the rice market prior to regulatory approval.

71. Bayer breached this duty by testing, growing, storing, transporting and disposing of LLRICE 601 in violation of regulatory standards that would prevent contamination.

72. Such breaches are the direct and proximate causes of the damages suffered by Plaintiffs and the other Class Members as outlined herein.

73. Plaintiffs and the other Class Members have suffered injury and property damage by the testing, growing, storing, transporting and disposal of LLRICE 601 by Bayer as outlined herein and seek compensatory damages and injunctive relief requiring that Bayer decontaminate their farming, harvesting and transportation equipment, and their on-farm storage facilities, to prevent future contamination for the 2006 growing season and beyond. Plaintiffs further seek, on behalf of themselves and all other members of the Class, punitive damages as a result of Bayer's reckless and willful conduct, and all costs and attorneys' fees as allowed by law.

COUNT II
**(On Behalf of the Class
Against Bayer for Negligence)**

74. For the purposes of Count II, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

75. Bayer' acts and/or omissions as described above constitute negligence.

76. Bayer had a duty to the Class Members to test, grown, store, transport and dispose of LLRICE 601 in the manner that would not result in contamination of neighboring crops or the rice market.

77. Bayer breached this duty by testing, growing, storing, transporting and disposing of LLRICE 601 in violation of standards that would prevent contamination.

78. In addition, or in the alternative, Bayer had a duty to refrain from testing, growing, storing, transporting and disposing of LLRICE 601 in a manner that would foreseeably cause harm to Plaintiffs and the other members of the Class.

79. Bayer breached this duty by failing to exercise reasonable care to prevent the foreseeable contamination of the U.S. rice supply through cross-pollination and commingling that would naturally result from the testing, growing, storing, transporting and disposing of LLRICE 601 as outlined herein.

80. Such breaches are the direct and proximate causes of the damages suffered by Plaintiffs and the other Class Members as outlined herein.

81. Plaintiffs and the other Class Members have suffered injury and property damage by the testing, growing, storing and disposing of LLRICE 601 by Bayer as outlined herein and seek compensatory damages and injunctive relief requiring that Bayer decontaminate their farming, harvesting and transportation equipment, and their on-farm storage facilities, to prevent future contamination for the 2006 growing season and beyond. Plaintiffs further seeks, on behalf of themselves and all other members of the Class, punitive damages as a result of Bayer's reckless and willful conduct, and all costs and attorneys' fees as allowed by law.

COUNT III
(On Behalf of the Class
Against Bayer for Public Nuisance)

82. For the purposes of Count III, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

83. Bayer has created a public nuisance by causing widespread contamination of rice in the United States with LLRICE 601 rice, which constitutes an unreasonable and significant interference with public rights, public health, public comfort and public convenience.

84. This substantial interference is imposed on the community at large and on a considerable and diverse number of persons. It arises from: (a) the testing, growing, storing, transporting and disposing of LLRICE 601 by Bayer without adequate limitations to prevent contamination; and/or (b) the testing, growing, storing, transporting and disposing of LLRICE 601 with the knowledge that it would contaminate rice by cross-pollination and commingling; and/or (c) the testing, growing, storing, transporting and disposing of LLRICE 601 with the knowledge that LLRICE 601 would likely contaminate the human food supply prior to regulatory approval.

85. Plaintiffs and the other Class Members have suffered injury from Bayer's public nuisance distinct from that suffered by the general public in that they suffer business losses in the form of rejection of their crops by certain markets, reduced or restricted demand for their crops in certain markets, reduced price for their crops at market, added costs for segregation in order to sell their crops, and contamination of their property.

86. Plaintiffs and the other Class Members seek compensatory damages and injunctive relief requiring abatement of the public nuisance by mandating that Bayer decontaminate their farming, harvesting and transportation equipment, and their on-farm storage

facilities, to prevent future contamination for the 2006 growing season and beyond, and also seek punitive damages as a result of Bayer's reckless and willful conduct, and all costs and attorneys' fees as allowed by law.

COUNT IV
(On Behalf of the Class
Against Bayer for Private Nuisance)

87. For the purposes of Count IV, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

88. Bayer has created a private nuisance through the testing, growing, storing, transporting and disposing of LLRICE 601. Bayer tested this rice seed without regard for the cross-pollination that results when LLRICE 601 drifts to neighboring crops or fields. As a result, the entire U.S. rice farming and production chain, including but not limited to, farmland, equipment, storage facilities, harvesting equipment, transportation facilities and equipment, crops are contaminated with LLRICE 601.

89. Bayer's acts and/or omissions constitute the unreasonable, unusual, or unnatural use of its property in a manner that substantially impaired the right of Plaintiffs and the other members of the Class to the peaceful enjoyment of their property.

90. The interference with the use and enjoyment of the property caused by Bayer is substantial, unreasonable, and ongoing.

91. Plaintiffs and the other Class Members seek compensatory damages and injunctive relief requiring abatement of the private nuisance by mandating that Bayer decontaminate their farming, harvesting and transportation equipment, and their on-farm storage facilities, to prevent future contamination for the 2006 growing season and beyond, and also seek

punitive damages as a result of Bayer's reckless and willful conduct, and all costs and attorneys' fees as allowed by law.

COUNT V
(On Behalf of the Class
Against Bayer for Strict Liability)

92. For the purposes of Count V, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

93. Bayer tested LLRICE 601 rice seed, a defective and unreasonably dangerous product, which, when used as anticipated, produced rice unapproved rice deemed unfit for human consumption that became commingled with Plaintiffs' and all other members of the Class' rice, and contaminated their rice crops.

94. The testing, growing, storing, transporting and disposal of LLRICE 601 rice has resulted in the contamination of the U.S. grain production and handling system, causing export markets to restrict, or ban altogether, importation of U.S. rice. Export and domestic markets are now and/or will continue to impose stringent testing and authorization requirements on rice sellers. As a result of such market conditions, rice farmers have suffered and are suffering injuries in the form of depressed rice prices and increased producer costs.

95. Exercise of reasonable care could not have eliminated the risk of such contamination and resulting injuries.

96. Bayer's testing, growing, storing, transporting and disposal of agricultural seeds not approved for human consumption has caused unprecedented damage to Plaintiffs and all other members of the Class.

97. Given the structure and operation of the U.S. grain production and handling system, Bayer's testing, growing, storing, transporting, and disposing of LLRICE 601 was improper.

98. Any benefit derived from the test cultivation of LLRICE 601 is greatly outweighed by the harms resulting from LLRICE 601 contamination of the U.S. rice supply.

99. Plaintiffs and the other Class Members seek compensatory damages and injunctive relief mandating that Bayer decontaminate their farming, harvesting and transportation equipment, and their on-farm storage facilities, to prevent future contamination for the 2006 growing season and beyond, and also seek punitive damages as a result of Bayer's reckless and willful conduct, and all costs and attorneys' fees as allowed by law.

COUNT VI
(On Behalf of the Class
Against Bayer for Conversion)

100. For the purposes of Count VI, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

101. Bayer, through its intentional conduct and/or through its extreme recklessness amounting to intentional conduct:

- a) caused the contamination, by cross-pollinating, commingling and/or other means, of the rice crops of Plaintiffs and other members of the Class; and/or
- b) caused the U.S. rice supply to be widely contaminated with LLRICE 601.

102. By virtue of the foregoing, Bayer, through its intentional conduct and/or through its extreme recklessness amounting to intentional conduct, materially altered the physical condition of the rice crops of Plaintiffs and the other members of the Class as to change its

identity and/or character; and/or constructively exercised control and dominion over the rice crop of Plaintiffs and the members of the Class.

103. As a direct and proximate result of the foregoing, the value of the rice crops of Plaintiffs and the other members of the Class was substantially diminished and/or destroyed.

104. As a result of the foregoing, Bayer is liable to Plaintiffs and the other members of the Class for conversion.

105. By virtue of its liability to Plaintiffs and the other members of the Class for conversion, Bayer is liable to Plaintiffs all other members of the Class for compensatory, consequential and/or punitive damages, and all costs and attorneys' fees as allowed by law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment as follows:

1. That the Court certify the Class pursuant to Rules 23(a), 23(b)(2), and 23(b)(3); and designate the named Plaintiffs as the representative of the Class;
2. That the Court adjudge and decree that Bayer is liable to Plaintiffs and the members of the Class for:
 - (1) Negligence *per se*;
 - (2) Negligence;
 - (3) Public Nuisance;
 - (4) Private Nuisance;
 - (5) Strict liability; and
 - (6) Conversion.
3. That the Court order Bayer:
 - (1) To pay compensatory and consequential damages;

- (2) To pay exemplary and punitive damages;
- (3) To undergo injunctive relief requiring the decontamination of Class Members' farmland, farming, harvesting, and transportation equipment, as well as their on-farm storage facilities, to prevent contamination for the future growing seasons;
- (4) To pay the costs of this action, including attorneys' fees and expenses;
- (5) To pay pre- and post- judgment interest; and
- (6) Such other and additional relief as the Court deems equitable, appropriate, and just;

JURY DEMAND

Plaintiffs demand a jury trial on all claims so triable.

DATED: August ____, 2006

Respectfully submitted,

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