IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

ROBERTSON BROTHERS
FARMS, ET. AL.   **PLAINTIFF**

VS.   **NO. 5:08CV0332 JMM - LEAD CASE**
                                  Consolidated with 5:08CV00333 & 5:08CV00334

FARMERS MUTUAL HAIL
INSURANCE COMPANY   **DEFENDANT**

<u>ORDER</u>

Pending is the motion in limine filed on behalf of Defendant Farmers Mutual Hail

Insurance Company ("Farmers Mutual") to limit the testimony of Larry Earnest and Mike

Foresman. (Docket # 83). Responses, replies and sur-replies have been filed.

Farmers Mutual challenges the testimony of Plaintiffs' experts Larry Earnest and Mike

Foresman that hail caused damage to certain plaintiffs' crops. Farmers Mutual argues that

Earnest and Foresman have no expertise in the examination of mature cotton crops for the

presence of hail damage and their testimony fails to meet the requirements of the Federal Rules

of Civil Procedure and *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993).

The Court finds Mr. Earnest qualified to render expert testimony on issues related to the

cause of damage to the cotton at the Rohwer Research Center as a result of the Rita storms and as

to the cause of damage to the cotton on R & J Farms based upon his review of photographs. The

Court will determine the admissibility of any further opinions of Mr. Earnest at the time of trial.

The Court denies the motion to exclude the testimony of Mr. Foresman. Although

Plaintiffs failed to strictly comply with Fed. R. Civ. P. 26, by providing a written report of Mr.

Foresman in these cases, Farmers Mutual was provided a Rule 26 report in the Day case and Mr.

Foresman's opinions were discussed in detail in a deposition completed on November 17, 2008.

Mr. Foresman's opinions will be limited to those disclosed to the Defendant in the previous

report and discussed in the deposition.

Accordingly, Defendant's motion in limine is granted in part and denied in part as stated

herein.

IT IS SO ORDERED this 26th day of May, 2010.

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James M. Moody
United States District Judge