

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED)
RICE LITIGATION) 4:06MD1811 CDP

This Filing Applies to the Following Case:

*Westmill Foods, a division
of ABF Grain Products, Ltd.
v. Riviana Foods, Inc., et al.*

4:09CV938 CDP

MEMORANDUM AND ORDER

Defendant Producers Rice Mill, Inc. has filed this motion seeking leave to serve a third-party complaint on the foreign Bayer entities [#1485, 30].

The Bayer defendants oppose the motion on grounds that the foreign Bayer entities are not necessary parties and that Producers Rice Mill's motion is untimely. The foreign Bayer entities were initially named as defendants in this case. However, plaintiffs Westmill Foods dropped its claims against them in its amended complaint on August 14, 2009. The foreign Bayer entities were dismissed on the same day as the deadline to serve foreign parties under CMO #12. Producers Rice Mill filed this motion seventeen days later.


Under Rule 14, a defendant may implead a third-party after the service

deadline with leave of the court. Fed. R. Civ. P. 14(a)(1). The defendant may serve a complaint on a third party who “is or may be liable to it for all or part of the claim against it.” *Id.*; *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 698-99 (8th Cir. 2003). Here, Producers Rice Mill has alleged sufficient facts to support its argument that the foreign Bayer entities “may” be liable to it for Westmill’s claims against it. Westmill is seeking to hold Producers Rice Mill liable for its role in the damages caused by the spread of genetically modified rice. In response, Producers Rice Mill has alleged that the foreign Bayer entities played a role in the creation, development, detection, and reporting of the genetically modified rice at issue in this case and that its liability stems from the foreign Bayer entities actions.

In addition, the foreign Bayer entities will not be unduly prejudiced by service with Producer Rice Mills’ third-party complaint. The foreign Bayer entities were named as defendants until after the deadline for serving foreign parties. Shortly afterwards, Producers Rice Mill filed this motion to re-include the foreign Bayer entities into this case. The foreign Bayer entities have been on notice of their need to defend claims in this case for all but seventeen days and are currently defending against similar claims in other

MDL cases. Accordingly,

IT IS HEREBY ORDERED that defendant Producers Rice Mill's motion for leave to file a third party complaint [#1485, 30] is **GRANTED**, and its third-party complaint is deemed filed as of this date.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 9th day of November, 2009.