

Bayer ordered to pay farmer

\$1 million is tab for modified rice

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A jury in Woodruff County Circuit Court decided Monday evening that Bayer CropScience LP must pay more than \$1 million in compensatory and punitive damages to Lenny Joe Kyle, a rice farmer, for losses he sustained when Bayer's experimental variety of genetically modified rice infiltrated the rice supply.

The jury awarded Kyle \$532,643 in compensatory damages, and \$500,000 in punitive damages. This is the third verdict against Bayer CropScience in rice lawsuits, but the first to award punitive damages.

"Obviously, we're satisfied that [the] jury paid careful attention and understood the facts and decided that exemplary, or punitive, damages were warranted over and above the compensation, and we think that's significant. Punitive damages in Arkansas are not easy to obtain," said Chuck Banks, an attorney for Kyle.

Riceland Foods, the Stuttgart-based cooperative, was also named as a defendant in the case and accused of withholding information about the contamination, but was not found to have caused any damage.

The Woodruff trial was the first Bayer rice lawsuit to be resolved in a state court. Last month, a federal jury in St. Louis awarded about \$1.5 million to rice farmers in Arkansas and Mississippi, and farmers in Missouri were awarded \$2 million in December. Three additional federal "bellwether cases," meant as test cases, are scheduled for later this year, involving farmers from Louisiana and Texas, as well as a rice exporter.

There are about 7,000 cases in multidistrict litigation in federal court in St. Louis, said Scott Perry,

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a Little Rock attorney and co-chairman of the plaintiffs executive committee, which was appointed by Judge Catherine Perry of the U.S. District Court for the Eastern District of Missouri to lead the plaintiffs' legal efforts.

Bayer CropScience, a German corporation, had been testing rice that had been genetically modified to tolerate the company's Liberty Link herbicide when traces of it were found in the U.S. rice supply in 2006. Though the USDA said at the time of the crop contamination that the rice variety posed no health or environmental risk, the rice had not yet been approved for consumption. Japan and the European Union immediate-

mitigate disruptions in the marketplace. Kyle's complaint, filed in August 2008, alleged that Bayer did not use tarps or safe zones to prevent contamination, did not take precautions with equipment, and allowed genetically modified rice to "commingle" with nongenetically modified rice in drying facilities.

The complaint also alleged that Bayer was aware or should have been aware of the contamination before the company reported it to the U.S. government on July 31, 2006.

"Bayer simply sat back, did nothing, and hoped the [genetically modified organism] contamination would not surface," the complaint said.

The jury found that Bayer should have known that its actions would result in damage and that it "continued

of it, you know? We're finally going to stand up and do what we think is right," Kyle said Tuesday.

In a statement, Bayer said that it "disagrees" with the decision to award punitive and compensatory damages and will consider its legal options.

"Bayer CropScience maintains that it acted responsibly and appropriately at all times in the handling of its biotech rice," the statement said.

Bayer has filed a motion for a new trial in the first federal verdict, in which \$2 million in damages were awarded to Missouri farmers, but is still considering its options in the second and third cases, said company spokesman Greg Coffey.

While most of the trial was focused on Bayer, Martin Phipps, a San Antonio at-

tion regarding the LibertyLink Rice 601 contamination," he said.

It is because Riceland Foods was included as a plaintiff that the case could be tried in Arkansas state court. Having a suit heard locally, by a jury selected from their communities, is beneficial for farmers, Phipps said.

"I think it should be in state court over federal court because the farmers have people on the jury that understand farming. They know what's happening, they know what it's like to be a farmer, they live in these communities and they know the impact of what happened," he said.

Banks said that his firm represents more than 300 farmers or farm entities in Arkansas. His next case against Bayer will begin in July in DeSha County.