

VERSUS : 27TH JUDICIAL DISTRICT COURT
G & H SEED CO. ET AL : ST. LANDRY PARISH, LOUISIANA

- Consolidated with -

PATRICK E. PHILLIPS, JR. ET AL : CIVIL DOCKET NO. 00-C-2220-D

VERSUS : 27TH JUDICIAL DISTRICT COURT

G & H SEED CO. ET AL : ST. LANDRY PARISH, LOUISIANA

WRITTEN REASONS FOR JUDGMENT

The matter before the court is a class certification hearing held April 9, 10, 11, 2001, continued and completed June 26, 2001. The court has received and reviewed all briefs of counsel presented to the court.

This case involves a claim by the plaintiffs that the chemical fipronil (brand name "ICON") kills crawfish and that certain classes exist among an alleged multitude of persons and entities affected thereby.

Counsel for the plaintiffs seek class certification in accordance with L.C.C.P. Art. 591 et seq. for the following classes:

Subclass 1 -- all persons or entities, who from January of 1999 purchased ICON-treated seed for planting in rice fields in the State of Louisiana and who farmed crawfish or participated in a sharecropping arrangement for the farming of crawfish on fields in the State of Louisiana which received or were treated with ICON-treated rice seed.

Subclass 2 -- all persons or entities who from January of 1999 farmed crawfish or participated in a sharecropping arrangement for the farming of crawfish on fields in the State of Louisiana which received or were treated with ICON-treated rice seed.

Subclass 3 -- all persons or entities who from January of 1999 farmed crawfish or participated in a sharecropping arrangement for the farming of crawfish on fields in the State of Louisiana and used surface water to flood their crawfish fields:

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Defendant Class -- all rice seed distributors/sellers in the State of Louisiana who since January 1, 1999, treated rice seed with ICON and sold the treated seed for use in the rice fields or rice/crawfish fields.

A class action is merely a procedural device to assist the court in handling a multitude of claims by and/or against a multitude of parties. The only issue to be considered by the trial court in ruling on class certification is whether or not a class action is an appropriate procedural device.

Generally, class actions are appropriate whenever interested parties appear to be so numerous that separate suits would unduly burden courts, and a class action would clearly be more useful and judicially expedient than other available procedures. Class actions are restricted to cases in which it would achieve economies of time, effort and expense, and promote uniformity of decisions as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.

The class action is a non-traditional litigation procedure permitting a representative with typical claims to sue or defend on behalf of, and stand in judgment for, a class of similarly situated persons when the question is one of common or general interest to persons so numerous as to make it impracticable to bring them all before the court. Ford v. Murphy Oil U.S.A., Inc., (La. 1997) 703 So. 2d 542, 544. The requirements for a class action, as set forth in LSA-C.C.P. Arts. 591 and 592, are: (1) a class so numerous as to make it impractical for all of the persons to join or be joined as parties, i.e., numerosity; (2) the joinder of parties who are members of the class and able to provide adequate representation for absent members, i.e., adequacy of class representatives; and (3) a "common character" between the rights of the representatives of the class and the absent members, i.e., common character. Banks v. New York Life Ins. Co., (La. App. 1st Cir. 1997) 705 So. 2d

1168, 1171. McCastle v. Rollins Environmental Services of La., Inc., (La. 1984) 456 So. 2d 612. The defendants to a proposed class certification must be given an opportunity to attack and argue against class certification. This has been done with a vigorous defense having been presented by the defendants, mostly addressing the merits of the case as opposed to the issue of class certification. All three of these elements must be satisfied in order to certify a class action and the initial burden of proof is on the plaintiff seeking to maintain the class action. Dumas v. Angus Chemical Co., (La. App. 2nd Cir. 1994) 635 So. 2d 446, writ denied 640 So. 2d 1349.

Class actions may be certified only if numerosity, adequacy of representation and the commonality requirements are present. Billieson v. City of New Orleans, (La. App. 4 Cir. 1999) 729 So. 2d 146.

The likelihood that a class will prevail is not a requirement for class certification; nevertheless, sufficient facts must be alleged by the plaintiffs to show that the requirements of the class action are met.

Considering the proof presented by the plaintiffs, the defense to said class certification presented by the defendants, including the facts, testimony and evidence produced at this class certification hearing and briefs of counsel, the court finds that the requirements for class certification have been met by the plaintiffs as to the following sub-classes only:

Subclass 1 -- all persons or legal entities from January of 1999 who purchased ICON-treated seed for the planting of rice or for crawfish operations in the State of Louisiana and who allege financial loss and damages as a result of said crop's exposure to ICON; and


Subclass 2 -- all persons or legal entities from January of 1999 who farm crawfish in the State of Louisiana and who allege financial loss and damages to their respective crawfish crop as a result of said crop's exposure to ICON; and

Subclass 3 -- all persons or local entities from January 1999 who participated in a sharecropping arrangement for the farming of crawfish in the State of Louisiana and who allege financial loss and damages as a result of its crawfish farmers' crop exposure to ICON.

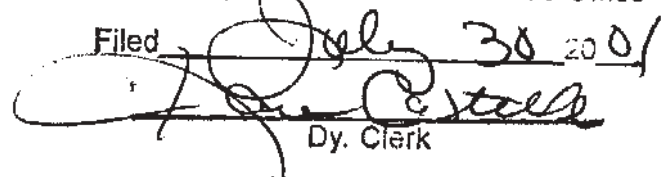
Plaintiffs have failed to meet their burden of proof as to numerosity as to the alleged Defendant Class of rice seed distributors/sellers whose rice seed was coated with ICON. Said Defendant Class is disallowed.

Counsel for plaintiffs shall prepare a judgment in accordance herewith within seven (7) days with a copy to opposing counsel.

These Written Reasons for Judgment were rendered and signed this 30th day of July, 2001, at Opelousas, Louisiana.



JAMES T. GENOVESE, JUDGE
27TH JUDICIAL DISTRICT COURT
DIVISION A

St. Landry Parish Clerk of Court's Office
Filed July 30 2001

Dy. Clerk

Pearl Kelly