

OCT 10 2018

CLERK OF THE COURT

BY: 
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

vs.

MONSANTO COMPANY, et al

Defendant.

Case No. CGC-16-550128

TENTATIVE RULING on Defendant's
Motion for Judgment Notwithstanding the
Verdict and Defendant's Motion for New
Trial

Defendant's Motion for JNOV with regard to punitive damages is GRANTED; in the alternative, Defendant's Motion for New Trial on punitive damages is GRANTED. The Court will hear argument on Defendant's Motion for JNOV and New Trial with regard to liability.

I. Plaintiff Presented No Clear And Convincing Evidence Of Malice Or Oppression To Support An Award Of Punitive Damages

Civil Code, §3294 (a) provides that punitive damages may be awarded against a defendant who has been guilty of "oppression, fraud or malice." Malice means "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." Oppression means "despicable conduct that subjects a person to cruel and unjust hardship in

1 conscious disregard of that person’s rights.” The evidence to support the finding of malice or
2 oppression must be clear and convincing.

3 Plaintiff failed to meet his burden of producing clear and convincing evidence of malice
4 or oppression by Monsanto. Both Plaintiff’s and Defendant’s experts testified that glyphosate
5 has developed one of the largest bodies of scientific data of any substance in the world. Apart
6 from the IARC evaluation, all of the worldwide regulators continue to find that glyphosate-based
7 herbicides (hereinafter “GBH products”) are safe and not carcinogenic, including US EPA,
8 EFSA, ECHA, Australia, New Zealand, and the German BfR authority. Plaintiff presented no
9 evidence that any Monsanto employee believed at any time that exposure to Monsanto’s GBH
10 products cause NHL. Dr. Farmer and Dr. Goldstein both testified that they believed there was no
11 causal link between Monsanto’s GBH products and Plaintiff’s cancer. Moreover, the IARC
12 monograph upon which Plaintiff relied was not published until after Plaintiff was diagnosed with
13 MF, and therefore could not have influenced Monsanto’s state of mind at any relevant time.
14 Monsanto’s efforts to investigate and test its’ GBH products is not consistent with a finding of
15 conscious disregard. Given the state of medical and scientific knowledge there is no clear and
16 convincing evidence that Monsanto acted with malice or oppression in manufacturing and selling
17 its GBH products.
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20 Plaintiff also failed to present any evidence that Monsanto acted despicably. Plaintiff
21 claims that Monsanto refused to conduct the studies recommended by Dr. Parry in the 1990s.
22 The records shows Monsanto ultimately conducted all but one of those tests and publicly
23 released the results. Plaintiff also suggested that Monsanto tried to “pollute” the scientific
24 literature by “ghostwriting” articles in support of GBH products. Plaintiff primarily cites to
25 Williams (2000) and Kier & Kirkland (2013). But Monsanto’s employees are listed as
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1 contributors to those articles and there is no evidence those articles contain material scientific
2 misstatements. In addition, Plaintiff asserts Dr. Goldstein intentionally failed to return Plaintiff's
3 phone call made after Plaintiff had been diagnosed with MF. Even if that assertion were true,
4 not returning a phone call does not rise to the level of despicable conduct. In any event, Dr.
5 Goldstein testified that he did not believe the GBH products were the cause of Plaintiff's illness
6 and would have told the Plaintiff the same over the phone.

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8 Finally, there is no evidence Monsanto's scientists were managing agents. Civil Code §
9 3294 expressly provides that with regard to a corporate employer, the malice or oppression
10 required for an award of punitive damages must be on the part of an officer, director or managing
11 agent of the corporation. Plaintiff failed to present any evidence that Dr. Farmer, Dr. Goldstein
12 or any other Monsanto employee allegedly involved in the evaluation of the GBH products was a
13 managing agent of Monsanto.

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15 Even if the Court were to deny Defendant's Motion for JNOV with regard to the punitive
16 damages award, the Court would grant a new trial on the grounds of insufficiency of the
17 evidence to justify the award for punitive damages for the reasons stated above.

18 **II. Issues To Be Addressed In Oral Argument**

19 The Court requests that the parties address the following issues in oral argument:


- 20 1. Can the Court exclude Dr. Nabhan's testimony on the basis that his differential diagnosis is
21 legally insufficient to establish causation? *See Cooper v. Takeda*, 239 Cal. App. 4th 555, 562
22 (2015).
- 23 2. Both parties agree that the epidemiological evidence is insufficient to sustain a finding of
24 liability. Can the Court grant a new trial based on the lack of epidemiological evidence to
25 support the verdict? *See Wendell v. GlaxoSmithKline*, 858 F3d 1227 (2017).
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1 3. Is the exclusion of the EPA reports sufficiently prejudicial to warrant a new trial? If so, how?

2 4. Were Mr. Wisner's comments during closing argument regarding "changing the world,"
3 comparisons to the tobacco industry, and champagne in the boardroom at Monsanto, sufficiently
4 prejudicial to warrant a new trial?

5 5. Is the \$33 million award for future non-economic damages based on Plaintiff's argument to
6 award \$1 million for each year of lost life expectancy? If so, is this award improper as a matter
7 of law?
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10 Dated: 10/10/18

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14 SUZANNE R. BOLANOS
15 JUDGE OF THE SUPERIOR COURT
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **County of San Francisco**

10 DEWAYNE JOHNSON,

11 Plaintiff,

12 vs.

13 MONSANTO COMPANY, et al.,

14 Defendants.
15

Case No.: CGC-16-550128

**CERTIFICATE OF ELECTRONIC
SERVICE (CCP 1010.6 & CRC 2.251)**

16 I, Linda Fong, a Deputy Clerk of the Superior Court of the County of San Francisco,
17 certify that I am not a party to the within action.

18 On October 10, 2018, I electronically served **TENTATIVE RULING ON**
19 **DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT**
20 **AND DEFENDANT'S MOTION FOR NEW TRIAL** via File & ServeXpress on the recipients
21 designated on the Transaction Receipt located on the File & ServeXpress website.

22 Dated: October 10, 2018

23 T. MICHAEL YUEN, Clerk

24 By: 

25 Linda Fong, Deputy Clerk

CERTIFICATE OF ELECTRONIC SERVICE