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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

vs.

Case No. CGC-16-550128

MONSANTO COMPANY, et al.,

Defendants.

-----/

Proceedings held on Tuesday, August 7, 2018,
Volume 25, Afternoon Session, before the Honorable
Suzanne R. Bolanos, at 1:44 p.m.

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Job No. 2983883B

Pages 5130 - 5249

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INDEX OF PROCEEDINGS

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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(None.)

EXHIBITS

(None.)

1 Tuesday, August 7, 2018

2 1:44 p.m.

3 Volume 25

4 Afternoon Session

5 San Francisco, California

6 Department 604

7 Judge Suzanne Ramos Bolanos

8
9 PROCEEDINGS

10
11 (In chambers.)

12 MR. GRIFFIS: Your Honor, Monsanto is moving for
13 a mistrial based on the conduct of plaintiff's opening
14 statement, and there are four grounds for this. The
15 first, and perhaps the gravest, is Mr. Wisner's
16 fabrication intended to inflame the jury in which he
17 pointed to Ms. Buck and claimed that she had a boardroom
18 in St. Louis on speed dial where they were waiting with a
19 bucket of champagne on ice.

13:44:58
20 And I -- that was intended to inflame the jury,
21 and, of course, it is not based on any record evidence
22 whatsoever. It's a pure product of Mr. Wisner's fantasy,
23 and Mr. Wisner continued with that fantasy intended to
24 inflame the jury after an objection was sustained and got
13:45:13
25 his whole thought out and finished it over two
13:45:29

1 consecutive objections. And so that is -- that prejudice
2 is out there and with the jury very much.

13:45:47 3 The second is that he misrepresented your
4 Honor's evidentiary rulings with regard to the EPA. He
5 said the EPA doesn't want to admit that they got it
6 wrong, that's why the SAP documents and the OPP 2017 and
7 other EPA documents are not in evidence. That's on
8 page 62 of the rough transcript record. I assume that
9 pagination will change, but we have a copy here.

13:46:06 10 That is a misrepresentation to the jury about
11 the reasons for the Court's rulings on the evidence. It
12 is improper to argue the importance of excluded evidence
13 and to invite the jury to draw inferences from that
14 exclusion. That's Hansen versus Warco Steel, 237 Cal. 2d
13:46:27 15 870 at 877. The -- making up a fabrication intended to
16 inflame the jury is improper under Brokopp versus Ford,
17 71 California 3rd 841 at 862 and Cassim versus Allstate,
18 33 Cal. 4th 780 at 796.

13:46:54 19 Thirdly, he made a personal attacks on
20 Dr. Kuzel, both attacked him as despicable and some other
21 adjectives as well and interjected his own personal
22 reactions to the evidence, talking about he was
23 astonished, his face got red, he swelled up with anger,
24 the various things that he said on the record at page 98.

13:47:19 25 It is improper to express personal belief in the

1 and credibility of a witness, People v. Roberts 65 Cal.
2 2d 514 at 520. And he made an appeal to the conscience
3 of the community telling the jury they can be part of the
4 history and send a message, and that is a violation of
13:47:35 5 our due process rights. It is not tied to the plaintiffs
6 or plaintiff's damages. Precisely such appeals have been
7 found to be improper on multiple occasions.

8 I'm anticipating the argument that we did not
9 object to, several of those at the time. I note that
13:47:49 10 closings are still open, both sides are still going to be
11 speaking to the jury, and Courts have ruled that failure
12 to object to something like this doesn't waive the
13 objection and doesn't obviate the need for the Court to
14 address it.

13:48:07 15 And secondly, when we did object, it was totally
16 futile. Mr. Wisner completed -- just kept going without
17 slowing down and continued talking about popping
18 champagne corks until he was done with the idea.

19 We ask for a mistrial on those grounds.

13:48:23 20 MR. WISNER: Your Honor, I'll take up each one
21 at a time. The first one is this idea that I fabricated
22 evidence. The case law to which Mr. Griffis is referring
23 refers to creating material facts relevant to the case.
24 The actual case that governs this is People v. Hill.
13:48:39 25 It's actually the case that Ms. Edwards cited to this

1 morning. It specifically states that in summations --
2 and that this was in a criminal case -- you're allowed to
3 illustrate ideas that are drawn from common experience.
4 Popping champagne corks when you're celebrating is drawn
5 from a common experience.

13:48:58

6 Now, the idea that it's inflammatory is -- I'm
7 not entirely sure why. Why a company wouldn't be
8 celebrating winning a case and not having to pay very
9 much damages is common sense. It's not inflammatory.

13:49:15

10 Notwithstanding, when you sustained the objection, I
11 moved on. I did mention the popping champagne corks a
12 second time in a different context. I understand the
13 objection was sustained that there was no board room or
14 whatever, and I was using that as an illustration of a
15 success, which is a commonly used way of saying I'm
16 excited and happy.

13:49:30

17 If I had said people are going to be jumping
18 with excitement, that would be an illustration drawn from
19 common experience and that's specifically allowed in
20 summations. Notwithstanding, they objected. You
21 sustained and I moved on. I believe you admonished me
22 this front of the jury, telling me not to speculate. I
23 believe the jury heard that. I think any potential
24 prejudice has been easily rectified by the Court's, on
25 the record, public admonishment of myself on that.

13:50:00

1 The second stuff, misrepresenting the
2 evidentiary rulings about the SAP documents. It is
3 clear. I put up the exact language that you used, that
4 you instructed the jury on, I read it, and I discussed
13:50:16 5 what it means, and it means they cannot consider the
6 document for the truth asserted.

7 That is clear as day what the Court ruled,
8 because it is hearsay. And me complaining and accusing
9 Monsanto of not bringing a live witness that could have
13:50:29 10 gotten those documents in evidence is completely fair
11 game. There is, in fact, testimony by Jess Rowland that
12 they could have played and they could have presented to
13 the jury, but they didn't because it's damaging
14 testimony.

13:50:41 15 And so by me calling them out for not
16 counter-acting or not presenting competent testimony to
17 support a piece of evidence which Mr. Lombardi intends to
18 use in the summation is not only fair game, it's an
19 appropriate thing to do in summation. It's argument. I
13:50:57 20 can argue that the evidence is weak and that it's not as
21 strong as the IARC which is in evidence for the truth of
22 the matter.

23 Third, the personal attack on Dr. Kuzel, I'm not
24 familiar with any case law that prohibits me from saying
13:51:14 25 you shouldn't believe a witness who testified. That is

1 exactly the point of argument to say he's unbelievable and
2 here's why. I made it very clear why Dr. Kuzel was
3 unbelievable, because he suggested to the jury that
4 Mr. Johnson is in complete remission when he's not.

13:51:32

5 Mr. Johnson testified on the stand that he's
6 starting chemo in a few weeks. There's testimony from
7 Dr. Nabhan about the PET scan. And even Dr. Kuzel
8 flippantly accepted the fact that it looked like it was
9 coming back, on cross-examination. The fact that he

13:51:46

10 would say that and misrepresent such an important fact to
11 the jury, I do think is despicable and I think it's an
12 entirely appropriate inference to be drawn from his
13 conduct.

14 Finally, the violation of due process -- because

13:52:02

15 I was asking the jury to do something that will change
16 the world and cause Monsanto to change its conduct is
17 literally the purpose behind punitive damages if they
18 are, in fact, awarded, it specifically says evidence that
19 would -- an award that would deter future wrongful

13:52:22

20 conduct. That's literally what I argued to the jury. I
21 argued it within the four walls of punitive damages law.

22 Notwithstanding all of these arguments, none of
23 these things by themselves or even in culmination, if
24 there's any merit to any of them rises, to the level of a
25 mistrial.

13:52:39

1 THE COURT: So I'm going to take this under
2 submission. I did think, Mr. Wisner, as I already told
3 you at sidebar, that your comments about the champagne in
4 the board room were very inflammatory and prejudicial,
13:52:52 5 and I told you that you shouldn't make those comments
6 because, among other things, it might lead to something
7 like this, a mistrial. It could be the very undoing of
8 the verdict that you hope to achieve.

9 With regard to several of the other points made
13:53:08 10 by Mr. Griffis, some of them are very good points. For
11 example, on the punitive damages, the purpose of punitive
12 damages is to punish the defendant for the harm for the
13 conduct vis-à-vis your client, Mr. Johnson, not to punish
14 Monsanto on behalf of any other, you know, future
13:53:29 15 claimants out there or any plaintiffs in the country.

16 MR. WISNER: Sure.

17 THE COURT: So --

18 MR. WISNER: I don't think I said that, though.

19 THE COURT: -- that was a misrepresentation of
13:53:40 20 the purpose of punitive damages, but I'll take all of
21 this under submission. For now, I want to be able to
22 get -- finish closing arguments today, and then we'll
23 discuss this further tomorrow.

24 MR. GRIFFIS: Yes, your Honor.

25 (Open court.)

1 THE COURT: Welcome back, Ladies and Gentlemen.
2 We'll now continue.

3 MR. LOMBARDI: Thank you, your Honor.

4 One last time, I'm George Lombardi on behalf of
13:55:24 5 Monsanto, my last opportunity to talk to you. And I'm
6 going to thank you more later, but thank you for your
7 attention this morning and thank you for your attention
8 throughout. I know this has been a long haul.

9 But when we started -- if you can remember all
13:55:39 10 the way back to when we started, I told you that we were
11 going to try to be efficient with your time. We were
12 going to try to focus our evidence in this case on the
13 key question. And the key question in this case is
14 whether Mr. Johnson's cancer, mycosis fungoides, was
13:55:58 15 caused by Monsanto's product Ranger Pro and, in some
16 instances, Roundup.

17 And we've learned -- you've heard the
18 instruction now -- that that is the issue in this case,
19 whether Ranger Pro caused Mr. Johnson's cancer. You
13:56:15 20 heard about a lot of other things this morning, a whole
21 lot of other things, but the instructions tell you what
22 this case is about. It's about whether Mr. Johnson's
23 cancer was caused by Ranger Pro, and there is and has
24 been a wealth of scientific evidence on that point.

13:56:33 25 Forty years of this product on the market.

1 Forty years of this product being regulated. Forty years
2 of scientific studies ranging from human to animal to
3 cell. The evidence is clear. The message from that
4 evidence is clear, and it's that this cancer was not
13:57:00 5 caused by Ranger Pro.

6 I say that's what the evidence is. It's not my
7 burden to show you that. It's plaintiff's burden. They
8 have to show you that actually it's the case that
9 throughout that entire time, Ranger Pro caused cancer.
13:57:13 10 They have to show you -- for some of their claims that
11 the whole world thought, the whole scientific community
12 thought Ranger Pro caused cancer, and there's absolutely
13 no proof of that.

14 I'm going to jump right into the evidence, but
13:57:30 15 before I start, I want to show you a couple of
16 instructions just to give you a little bit of perspective
17 here. This is 15. This is the one about substantial
18 factor. You saw on plaintiff's slides that it's very
19 important plaintiffs establish that Monsanto's conduct
13:57:44 20 was a substantial factor in Mr. Johnson's disease.

21 I want to really point out to you the last line
22 here, what is a substantial factor and what is not.
23 "Conduct is not a substantial factor in causing harm if
24 the same harm would have occurred without that conduct."
13:58:03 25 If Mr. Johnson would have gotten sick whether he used

1 Roundup and Ranger Pro or not, it's not a substantial
2 factor. If Mr. Johnson's cancer would have gotten worse
3 whether he used Ranger Pro or not, it's not a substantial
4 factor and there's no liability. So keep that in mind as
13:58:27 5 we go through the evidence because that is a important
6 instruction.

7 One other thing just for you to keep in mind
8 from the start, Counsel talked about the burden of proof.
9 And remember that burden of proof, he had feathers and he
13:58:40 10 had statements about well, I don't know, but maybe and
11 51percent and things like that. There's nothing like
12 that in this instruction, nothing like that.

13 What the instruction says is, "A party must
14 persuade you, by the evidence presented in court, that
13:58:58 15 what he or she is required to prove is more likely to be
16 true than not true." You have to be persuaded, and you
17 shouldn't let a plaintiff's lawyer tell you what it means
18 to you to be persuaded. That's the standard. You have
19 to be persuaded, and so that's the standard you should
13:59:20 20 bring as we go through the evidence here.

21 So let's get to the evidence. We're talking
22 about Mr. Johnson, we're talking about a cancer in a
23 person, what is the best evidence for whether Ranger Pro
24 causes disease? It's got to be human studies, and there
13:59:36 25 are two types of human evidence that we're going to talk

1 about right here at the beginning that help to show you
2 what the right answer is to the question asked of you.

3 The first is epidemiology and the second is the
4 doctors, the treating doctors, the medical doctors in
13:59:52 5 this case. And so let's go to the epidemiology. You all
6 know what epidemiology is now. And if you didn't before,
7 you've heard a lot about epidemiology.

8 Armando, if we could go to the slides, please.

9 We brought you -- epidemiology, basically the
14:00:10 10 study of disease in populations. And why is the
11 epidemiology so important in this case? Why is it such a
12 good test of what Ranger Pro's qualities are, whether it
13 causes cancer or not, because it's conducted -- it's
14 conducted in the real world. It's of humans. A lot of
14:00:33 15 the epidemiology was of humans exactly like Mr. Johnson,
16 people who were licensed pesticide applicators. People
17 who are out in the field working with pesticides all the
18 time, and so it studies them.

19 The second reason it's important is it studies
14:00:52 20 the product, it studies Ranger Pro, and it studies Ranger
21 Pro as it's actually sold and used in the real world.
22 Now, why is that important? We had a lot of discussion
23 in this case as we went along about surfactants and a lot
24 of speculation. Well, surfactants could make glyphosate
14:01:12 25 more dangerous, it could make glyphosate more likely to

1 cause cancer.

2 A lot of speculation about that, but the
3 epidemiology actually studies that. The epidemiology
4 actually looks at that, because you're considering Ranger
14:01:30 5 Pro in the real world. So epidemiology is the best test
6 of whether Mr. Johnson's cancer was caused by Ranger Pro.

7 We brought you Dr. Mucci, the Harvard professor,
8 who came in here -- and I think it's worth you thinking
9 about, you have to evaluate experts. What expert came

14:01:51 10 here with the idea of teaching you about epidemiology?
11 What expert came here with the idea of actually
12 explaining it to you? I think only Dr. Mucci.

13 Remember Dr. Neugut? Dr. Neugut, the New
14 Yorker, who was here? Did he explain the epidemiology to
14:02:07 15 you in any way that was understandable? Dr. Mucci did,
16 and she wanted you to understand the epidemiology because
17 it's a pretty clear story, and it's a important story in
18 this case. This is a slide that you saw during her
19 testimony, and it's about all the epidemiology studies
14:02:23 20 that are relevant in this case. And we started by
21 talking about exploratory pesticide studies, then went to
22 glyphosate pooled studies and glyphosate cohort studies,
23 and she described to you how this all came about.

24 And it came about because in the '50s, '60s and
14:02:41 25 '70s, it was observed that farmers were getting

1 non-Hodgkin's lymphoma more than others. They were
2 associated -- something about farming was associated with
3 non-Hodgkin's lymphoma, and what's important about the
4 timing is it wasn't glyphosate because glyphosate came
14:03:00 5 out in the 1970s. And so something was causing these
6 farmers to get non-Hodgkin's lymphoma, and it wasn't
7 glyphosate. So what is it that the epidemiologists did?
8 Well, they said we're going to study pesticides. We're
9 going to study pesticides, generally.

14:03:19 10 And so that was the starting point. They were
11 exploratory studies because they tended to be small, and
12 they were going to study pesticides generally. They
13 weren't focused on a specific pesticide. And what's
14 significant about the fact you have other pesticides in
14:03:36 15 there, is that some of them are harmful, some of them do
16 cause cancer in those studies.

17 Glyphosate is a different kind of pesticide.
18 You heard the evidence about that. Do you remember
19 Dr. Al-Khatib? He was the weed-science doctor. Before
14:03:52 20 this case, I didn't know there was such a thing, but
21 there's a weed-science doctor who came and talked to you.
22 He spent his whole career studying weeds. He told you
23 the way glyphosate works is truly unique because it acts
24 on plant cells.

14:04:05 25 It acts on an enzyme in plant cells, and that

1 enzyme doesn't exist in human cells. So it affects
2 plants. It affects plants. You can expect it -- you can
3 expect it to be different than other pesticides. So
4 lumping glyphosate in with a bunch of other pesticides in
14:04:25 5 there is not going to answer your questions, but we'll
6 get into that in just a second.

7 We went from the exploratory studies, which are
8 about all kinds of studies, to the glyphosate pooled
9 studies. These are studies that are were targeted on
14:04:39 10 glyphosate, were targeted on other whether glyphosate
11 causes cancer. These are the ones that the IARC didn't
12 consider for various reasons. They didn't consider
13 these. Those are the ones that plaintiffs don't want you
14 to consider, because those offer overwhelming evidence
14:05:00 15 that glyphosate doesn't cause cancer in people.

16 So Dr. Mucci, she did what's called a
17 meta-analysis. She took into account all of the studies.
18 She's the only one that did that in this case, took into
19 account all of the studies. She did it the exact same
14:05:19 20 way IARC did it. IARC had done meta-analysis. She did
21 it the same way IARC did it except she included the JNCI
22 study and the NAPP study, and she came to the conclusion
23 that Blue Diamond shows that glyphosate is not associated
24 with non-Hodgkin's lymphoma in people.

14:05:40 25 That was the conclusion that Dr. Mucci came to.

1 And you know what, it ends up that there's not a whole
2 lot of debate about that ultimate conclusion. IARC
3 agrees, IARC says you can't eliminate chance, bias or
4 confounding with reasonable confidence. It's not enough.
14:05:58 5 The epi is not enough to establish that glyphosate causes
6 cancer.

7 Dr. Neugut, he says, "The epidemiology alone is
8 not sufficient to show a causal relationship between
9 glyphosate and non-Hodgkin's lymphoma; correct?"

14:06:12 10 Dr. Portier: "You can't make a firm statement
11 about glyphosate from the epidemiology data alone."

12 The very best evidence we have in this case
13 tells you, everybody agrees, it doesn't show that
14 glyphosate causes cancer.

14:06:34 15 We're going to look at an animal study, a rat
16 study, rats that are overdosed with glyphosate, over
17 something like this, to determine whether Mr. Johnson got
18 this disease? Are we going to look at a study of cells
19 in a petri dish to make that decision? This is the best
14:06:50 20 evidence.

21 So what Dr. Mucci explained to you was there are
22 three big principles in epidemiology: Bias, chance and
23 confounding. And you want to avoid all three of those.
24 You want to avoid those, if you can.

14:07:05 25 And you can't -- and she actually -- these are

1 all those exploratory studies. And she went through each
2 of them. And she explained them to you. She explained
3 exactly what her analysis was. She pointed out that
4 these are all small studies. She pointed out that they
14:07:23 5 all involved proxy respondents.

6 Counsel got it wrong on what happens with proxy
7 respondents. She said that's something you have to
8 consider. You have to consider, because it goes to the
9 accuracy of the information you have. And she said
14:07:39 10 adjustment for other pesticides is very important to look
11 at.

12 Adjustment for other pesticides. What does that
13 mean? That means when you have that big group of
14 pesticides, pesticides not just including glyphosate, but
14:07:52 15 including those other pesticides that are more dangerous
16 than glyphosate, you're not going to get an answer as to
17 glyphosate. You're not going to get an answer as to
18 glyphosate.

19 And she said you absolutely have to consider
14:08:07 20 that. Because Counsel keeps talking about red dots being
21 to the right of the line. None of these red dots means
22 anything if these results are confounded. If they're
23 confounded.

24 And what we learned from Dr. Mucci is anytime
14:08:23 25 you had a study and you adjusted for other pesticides so

14:08:44 1 that you could tease out the results related to
2 glyphosate, the red dots went that way showing less risk,
3 showing that there was confounding from these other
4 pesticides, these more dangers pesticides, that were part
5 of the calculation.

6 She also considered the confidence interval.
7 You've heard a lot about that. No statistically
8 significant results. And she told you that based on this
9 evidence, you could not come to any real conclusions
14:09:00 10 about glyphosate, because they really weren't studying
11 glyphosate. And that actually is what the scientists who
12 were doing this work said, too.

13 De Roos 2003, that's the scientist right here
14 (indicating), did one of the pesticide studies. De Roos
14:09:17 15 2003 said, "What we need is a chemical-specific approach
16 to evaluating pesticides as risk factors. For NHL, it
17 should facilitate interpretation of epidemiological
18 studies for regulatory purposes."

19 She said, "We've got to get this down to
14:09:33 20 studying glyphosate and other pesticides individually.
21 That's what we have to do." And what happened when they
22 got it down to studying glyphosate and other pesticides
23 specifically?

24 Very next study, a glyphosate study, a study
14:09:47 25 focused on glyphosate, and what did it say? No

1 association was observed between NHL and glyphosate
2 exposure in any analysis. In any analysis. Including an
3 analysis comparing the highest exposure with the lowest
4 exposure.

14:10:05

5 That's the first study that looked specifically
6 at glyphosate to see what the effect of glyphosate was.

7 What happened next? This is the NAPP study, the North
8 American Pooled Project, where they pooled together a
9 bunch of projects. And Dr. Mucci looked at this, and

14:10:23

10 Dr. Mucci said -- if you look at the adjusted results,
11 which are in that column, that far right column, it again
12 shows no effect -- no effect -- for glyphosate. No
13 statistically significant effect associating glyphosate
14 with NHL. So --

14:10:55

15 We heard some talk from Counsel about it's just
16 crazy. He can't get -- I think he said he can't get his
17 head around why we would be talking about the NAPP study.
18 Why would we be talking about the NAPP study? Because
19 there's a manuscript out there about the NAPP study.

20 Well, let me just show you a few things here.
21 Because the NAPP study involved a guy named Dr. Blair.
22 Do you remember Dr. Blair? Dr. Blair was the head of the
23 Working Group that studied -- at IARC studied glyphosate.
24 He was the head of it. We brought him to you. We're the
14:11:28 25 ones who brought the deposition of Dr. Blair to you and

1 put it up there on the screen so that you could see it.

2 And Dr. Blair is the fellow who was very
3 concerned about protecting IARC.

4 Can you put up Slide 425, please?

14:11:46

5 This is his emails going back and forth with one
6 of the people that was working on this NAPP study. This
7 NAPP study. And he said, "I think the question is going
8 to be: Do these data indicate the IARC evaluation was
9 wrong?" So he's worried. She says she's going to be

14:12:08

10 presenting it at a conference. He's worried they might
11 show that the IARC results are wrong. And he thought
12 that IARC should be alerted also.

13 But then he's also worried about another thing.
14 He's worried about Monsanto finding out about this study.

14:12:25

15 "I just suspect Monsanto has someone scanning programs of
16 meetings like ISEE and want to get press, if they can."

17 So Dr. Blair has a vested interest in all of
18 this. And so when you get to the study itself, remember
19 the manuscript, Counsel said, "How in the world could

14:12:46

20 Lombardi want to show the world this study, because it's
21 supportive of IARC?" It says it's supportive of IARC.

22 Well, if we could go to the Elmo. This is
23 Exhibit 652, Plaintiff's.

24 That manuscript was written by Dr. Blair. The

14:13:08

25 same guy. Same guy that's worried about Monsanto finding

1 out. Same guy that did the Monograph, wrote this
2 manuscript.

3 But Counsel didn't show you everything in this
4 manuscript. They kind of bury it. But in the
14:13:31 5 manuscript, it says, "Further adjusting odds ratio for
6 the pesticides," and it lists a few pesticides, "resulted
7 in attenuated or reduced risk of NHL overall in the
8 NAPP." Reduced risk for glyphosate. That's what this
9 article says.

14:13:48 10 One more place. "A fairly consistent decrease
11 in NHL risk was found when odds ratios were further
12 adjusted for the pesticides 2,4-D, dicamba, and
13 malathion. This observation suggested that elevated
14 risks of NHL may be attributed in part to pesticides
14:14:10 15 other than glyphosate."

16 That's what the manuscript says when you look at
17 the whole thing. And why hasn't the manuscript been
18 published? Why hasn't the manuscript been published?

19 You heard Dr. Mucci say there's something called
14:14:28 20 publication bias. It's hard to publish something that
21 doesn't find an effect. It would be much more exciting
22 in the scientific world to say, "I've found a study" --
23 "I've done a study that shows that glyphosate causes
24 cancer." Much less exciting to say, "I've found yet
14:14:41 25 another study that shows that glyphosate doesn't cause

1 cancer." That's why it wasn't published.

2 So the NAPP study plaintiffs don't want you to
3 consider, again, shows that glyphosate doesn't cause
4 cancer.

14:14:53

5 And then you're very familiar with the Journal
6 of the National Cancer Institute 2018 study. We talked
7 about it a lot. It is -- obviously just came out this
8 year. This year. The most recent study we have. And
9 it's a study that studies pesticide applicators --

14:15:13

10 licensed pesticide applicators like Mr. Johnson. Studies
11 them and determines whether there's any association
12 between them and glyphosate.

13 And, again, you can see by the title this is a
14 study that's specifically about glyphosate. Specifically
15 about glyphosate. Not about a bunch of other pesticides.
16 It's specifically about glyphosate and shows no
17 association.

14:15:29

18 Now, I'm sure you remember this, but none of
19 this epidemiology is Monsanto funded. It's all
20 independent scientists. It's all scientists with the
21 government or universities. It's all people that don't
22 have any -- any stake in this litigation, any stake in
23 any of that. It's the study that shows that glyphosate
24 doesn't cause cancer. That is the most recent word.

14:15:43

14:16:04

25 And this is another study that plaintiffs really

1 would prefer that you not look at. And so they've said a
2 variety of things about it through the course of this
3 case to try to say that it's not a good study, this, that
4 and the other thing.

14:16:19

5 This morning you heard Counsel talk about an
6 article by Acquavella -- not an article, I should say --
7 a memo by a guy named Acquavella who was at Monsanto and
8 said it was critical of the American Health Study -- the
9 Agriculture Health Study -- I'm sorry, AHS -- and it was
10 written back in 1997. He said, "Hey, look at this.

14:16:37

11 Monsanto itself believes that this study is flawed."

12 But remember, remember, that was 1997 when that
13 memo was written. This article is 2018. A lot happens
14 in 20 years.

14:16:56

15 And what Dr. Mucci said was that over that
16 20-year period of time, the scientists that did this
17 study, that did this study, the most important study, the
18 most recent study, learned to do all kinds of sensitivity
19 analyses, all kinds of lag analyses, all kinds of
20 analyses of all kinds of exposures, to make sure that the
21 Acquavella-type problems weren't in the study. And
22 that's what they found.

14:17:15

23 Counsel also said that there's this big problem
24 with misclassification bias in this study. Well,
25 Dr. Mucci addressed that, too.

14:17:33

1 Slide 357, please.

2 Dr. Mucci said -- now, you understand this is on
3 cross-examination by plaintiff's counsel. "You
4 understand because you've read our expert's reports that
14:17:51 5 our position is that the AHS had a lot of exposure
6 mischaracterization; right?"

7 She said, "That's your position, yes. However,
8 actually, I think one of the strengths of the AHS cohort
9 was they actually, in multiple different studies,
14:18:05 10 assessed whether exposure misclassification was there."

11 They did sensitivity analyses. They made sure
12 that the JNCI was a good study. And then Mr. Wisner said
13 something that I was, frankly, a little bit amazed by.
14 He said that in a cohort study -- that in this cohort
14:18:25 15 study, they started the study without anybody who had
16 cancer. They made sure that anybody at the start of the
17 study didn't have cancer. And I think he said that runs
18 wild over the actual rules of cohort study.

19 Absolutely no evidence of that in this case. No
14:18:41 20 evidence. And, in fact, that's the way all cohort
21 studies are done. You're supposed to start a cohort
22 study without people who are sick.

23 So you have to look at what the actual facts
24 are. There's facts and there's argument. And the facts
14:18:57 25 are what should lead you in this case.

1 So the JNCI study, you'll hear from time to time
2 from plaintiffs various things about trying to pick
3 various parts of the JNCI study out and saying, "Well,
4 that shows some kind of association or this or that," but
14:19:19 5 the conclusion that the authors of the JNCI study came
6 to --

7 Slide 561, please.

8 This is their conclusion, the authors of the
9 JNCI study. "In conclusion, we found no evidence" -- no
14:19:33 10 evidence -- "of an association between glyphosate use and
11 the risk of any solid tumors or lymphoid malignancies,
12 including NHL and its subtypes." And its subtypes.

13 They concluded not just that NHL is not
14 caused -- not associated with glyphosate, but that
14:19:53 15 Mr. Johnson's type of cancer is not associated with
16 glyphosate.

17 So that's the epidemiology. That's the evidence
18 that involves real people in the real world using the
19 real product. No speculation. No translation from
14:20:12 20 animals to humans. No translation from cells to humans.
21 This is real people. And this is what independent
22 scientists have concluded. And that's what the
23 epidemiology tells you.

24 And so when you go back and think about this
14:20:29 25 case, here's the lineup, here's the lineup, on

1 epidemiology. All of these people say that epidemiology
2 does not establish that glyphosate causes NHL.

14:20:48 3 Dr. Neugut, Dr. Mucci, Dr. Portier, IARC, the
4 EPA. There's nobody on the other side. There's nobody
5 on the other side. That's the first bit of evidence.
6 That's the first bit of human evidence we're going to
7 talk about.

8 The second human evidence that we're going to
9 talk about is related to treating physicians, doctors,
14:21:03 10 that actually work with mycosis fungoides patients.
11 Including Mr. Johnson's doctors.

12 You heard from Dr. Kuzel, our doctor, our
13 treating Doctor. Dr. Kuzel is one of the world's experts
14 on mycosis fungoides. He came in, and he told you about
14:21:24 15 mycosis fungoides.

16 It was first observed in the 1850s in Paris.
17 Obviously way before glyphosate was around. He said it
18 had probably been around for eons before that, but that's
19 when they first observed it.

14:21:37 20 People have been trying to figure out the cause
21 of mycosis fungoides ever since. And the truth is that
22 nobody knows the cause of mycosis fungoides.
23 Unfortunately, that's the case with a lot of cancers.
24 That's the case with a lot of cancers. And while it
14:21:53 25 would be nice, it would be nice to know, it would be nice

1 to give cancer patients some idea of why they were the
2 unlucky ones, the truth is you frequently just can't do
3 that.

14:22:10 4 And that's what Dr. Kuzel told you. Dr. Kuzel
5 said every case of mycosis fungoides is of unknown
6 etiology. Etiology means unknown origins, unknown cause.

7 Asked about what was the conclusion about the
8 most likely cause of Mr. Johnson's mycosis fungoides,
9 same conclusion he has for everybody else with mycosis
14:22:29 10 fungoides. "We don't know why they get mycosis
11 fungoides." It would be nice to be able to tell people
12 it's something, but you just can't do it. And that's
13 what Dr. Kuzel told you.

14 Dr. Kuzel, remember, he is a guy who said he was
14:22:45 15 at a tertiary care facility. That means that people come
16 from all over -- they're referred to him -- about mycosis
17 fungoides. He's written numerous articles. I think 75
18 articles just on mycosis fungoides alone. He's written
19 book chapters on mycosis fungoides. He's sought out for
14:23:03 20 that.

21 We also talked about Mr. Johnson's treating
22 doctors. And this isn't all of them. You heard about a
23 lot of them from the medical records. There's a lot of
24 discussion in the medical records. And all of these
14:23:18 25 folks were mentioned in the medical records. And

1 Mr. Johnson had an outstanding group of doctors -- has an
2 outstanding group of doctors who work with him.

3 You had the opportunity to meet Dr. Ofodile, who
4 was nice enough to come here to testify before you,
14:23:33 5 Dr. Pincus is at UCSF, Dr. Tsai, I believe is Kaiser
6 Permanente. Dr. Kim and Dr. Hoppe are at Stanford. And
7 one thing about those two, they, like Dr. Kuzel, are
8 luminaries in the world of mycosis fungoides. They are
9 the world's experts. They've written about mycosis
14:23:54 10 fungoides. They know what it's all about.

11 These are the people who know Mr. Johnson the
12 best. They know his disease the best. They're the ones
13 that have actually treated him. These are the people who
14 also know the actual disease, mycosis fungoides, better
14:24:11 15 than anybody.

16 And not one of these people, not one of these
17 people, told Mr. Johnson that his cancer was caused by
18 mycosis fungoides. Now, I think Counsel said it would be
19 a lie if I said that.

14:24:27 20 Let's go to Slide 567 -- excuse me. Slide 686.
21 I'm sorry.

22 This is Dr. Nabhan. He'd reviewed all of the
23 depositions of all of the treating doctors. "As you went
24 through the records and you went through the depositions,
14:24:41 25 you noted that each of them came to the conclusion that

1 they didn't know what caused mycosis fungoides; is that
2 right?" And he agreed with that.

3 It's not a lie. It's a fact. There's fact and
4 there's argument.

14:24:55 5 So if we could go back to 567, please.

6 So who is the -- who's the dissenter that you've
7 heard from in this group? There's only one medical
8 doctor you heard from that purported to know the cause of
9 mycosis fungoides. And that was Dr. Nabhan.

14:25:19 10 And Dr. Nabhan is a retired practicing doctor.
11 He used to practice medicine. About two years ago he
12 stopped practicing medicine, and he moved to a Fortune 15
13 healthcare company called Cardinal Health. And he's now
14 a business executive there.

14:25:41 15 And Dr. Nabhan's role in this case was to meet
16 with Mr. Johnson. So Mr. Johnson actually, while sick,
17 flew from here out to Chicago to meet with Dr. Nabhan in
18 his corporate office for one hour. One hour.

19 And in that meeting in that corporate office,
14:26:04 20 they talked. There was no blood work. There was no
21 trying to figure out anything about his cells or anything
22 like that. It was just talk.

23 And then Dr. Nabhan decided that he'd read
24 some -- he'd read some materials. And he came to the
14:26:25 25 conclusion that Mr. Johnson's mycosis fungoides was

1 actually caused by glyphosate.

2 So Dr. Nabhan said that he treated mycosis
3 fungoides patients. He treated far fewer than Dr. Kuzel,
4 but he said he treated some. And he said that he didn't
14:26:45 5 come to the conclusion that anybody's mycosis fungoides
6 was caused by glyphosate until after he was retained in
7 this litigation, which was after he stopped practicing
8 medicine.

9 So he never ever told anybody that mycosis
14:27:00 10 fungoides was caused by glyphosate while he was actually
11 dealing with patients. It's only after he got involved
12 in this case that he came to that conclusion.

13 And how did he come to that conclusion? This is
14 how: We've put up -- we've actually tried to recreate
14:27:20 15 his board. He actually did this in his own handwriting,
16 and so we took the transcript of the trial and, kind of,
17 wrote it out.

18 But what he said was, "I'm just going to go
19 through every risk factor I can think of for mycosis
14:27:36 20 fungoides. And I eliminated everything," he said. "I
21 eliminated all of these except for Roundup." Well,
22 Ranger Pro. "And because I eliminated everything but
23 Roundup or Ranger Pro, then Ranger Pro must have been the
24 cause." Then Ranger Pro must have been the cause.

14:27:52 25 Now, let's just take a step back for a second.

1 If it was that easy to figure out the cause of mycosis
2 fungoides, why do all the doctors that are actually
3 treating doctors saying, "We don't know the cause"?

14:28:08 4 If it were that easy, why didn't we figure it
5 out a long time ago? If it were that easy, if Mr. -- if
6 Dr. Nabhan is actually the guy -- remember, this would
7 be -- this would be a huge medical accomplishment,
8 discovering the cause of mycosis fungoides, the first
9 person in the world to do that.

14:28:25 10 If Dr. Nabhan had actually done that, wouldn't
11 he have been in here showing you an article telling the
12 scientific community about it? Wouldn't he be collecting
13 awards for having done it?

14 So you should be questioning how it is that
14:28:44 15 somebody who leaves the practice of medicine all of the
16 sudden comes to the conclusion, based on reading some
17 documents and meeting with Mr. Johnson for an hour, that
18 glyphosate causes cancer. You should think about that.

19 But Dr. Kuzel said the problem with this -- the
14:29:05 20 problem with this whole analysis is he left one important
21 thing off the list. Remember? Everything says that
22 mycosis fungoides is of unknown cause. He didn't
23 consider the possibility that Mr. Johnson's was due to an
24 unknown cause. Totally left it off his list. Totally
14:29:23 25 left it off his list.

1 And so this idea that Dr. Nabhan, in his head,
2 figured out that mycosis fungoides causes cancer -- or
3 excuse me -- that Roundup causes mycosis fungoides, that
4 he's the first person in the world, is a product of this
14:29:42 5 litigation and nothing else.

6 And you're right to ask: If Dr. Nabhan really
7 did this, if he really did this, why isn't he telling the
8 scientific community? And why isn't he being applauded
9 for it?

14:30:00 10 Now, there's one other thing about Dr. Nabhan
11 and the treating physician I want to talk to you about.
12 And that's Dr. Kim, the doctor at Stanford.
13 Dr. Nabhan reviewed her deposition in this case.

14 Now, Dr. Kim is one of the doctors who is a true
14:30:18 15 expert in mycosis fungoides. And here's what we asked
16 Dr. Nabhan on cross-examination, as we went through this:
17 "And the other doctor he saw at Stanford was Dr. Kim, a
18 dermatologist. She's an expert in mycosis fungoides?

19 "Correct.

14:30:32 20 "She's a published author on mycosis fungoides?

21 "Absolutely." Dr. Nabhan is not.

22 "And she is known not just in California. She's
23 known nationally for her work on mycosis fungoides?

24 "She is.

14:30:45 25 "Internationally?

1 "Yes, she is.

2 "So this is a true expert?

3 "She is an expert, yes.

4 "And so is Dr. Hoppe, the other doctor at
5 Stanford."

6 And we showed Dr. Nabhan what Dr. Kim said in
7 her deposition in this case about mycosis fungoides. So
8 this is a true expert on mycosis fungoides.

9 "If we knew there was a cause, I would know.

14:31:10 10 But right now, the scientific fact -- not my opinion, the
11 scientific fact is that so far there is no established
12 cause for this particular rare disease. Now, anything
13 else would be, like, guess, implication. But there is no
14 link to cause and effect. And a lot them are questioned
14:31:30 15 routinely. And a lot of causes. But scientifically it
16 has not been established."

17 This is a woman who works with mycosis fungoides
18 every day, is respected, knows Mr. Johnson, knows his
19 condition, knows his disease. And she's telling you that
14:31:55 20 nobody knows a cause.

21 Who's more credible? The retained expert or the
22 expert in the field?

23 Now, here's one more thing that Dr. Nabhan said.
24 And this was kind of at the end of his time on the stand.
14:32:14 25 He had answered a question at his deposition and then

1 gave a different answer in front of you.

2 But that is very important in light of that jury
3 instruction I told you about on conduct and substantial
4 factor.

14:32:26

5 So I said to him, because he gave a different
6 answer when he was on the witness stand, I said, "Did you
7 give this answer to the very same question I just asked
8 you under oath at the deposition? Quote, 'Mr. Johnson
9 could well be someone who would have developed mycosis

14:32:41

10 fungoides when he did, whether he was exposed to
11 glyphosate or not for all you know; correct?' And your
12 answer under oath was, 'He could have. He could have.'"

13 So Dr. Nabhan, in the end, finally said that
14 Mr. Johnson's cancer could well have developed whether
15 he's exposed to glyphosate or not.

14:33:03

16 What does that jury instruction tell you?
17 Conduct is not a substantial factor in causing harm if
18 the same harm would have occurred without that conduct.

19 Dr. Nabhan is admitting that Monsanto's conduct
20 in selling Ranger Pro is not a substantial factor. Is
21 not a substantial factor. That's what Dr. Nabhan
22 ultimately admitted. Conduct is not a substantial factor
23 in causing harm if the same harm would have occurred
24 without that conduct.

14:33:24

14:33:41

25 Now, there's been a lot of talk in this case

1 about did his cancer -- did Mr. Johnson's cancer, his
2 mycosis fungoides, get worse with more exposure to
3 glyphosate. And you heard from the experts on that as
4 well. And, actually, there was pretty much unanimity of
14:34:03 5 opinion on this.

6 Dr. Kuzel was asked, "Maybe Mr. Johnson's cancer
7 progressed because he continued spraying Roundup and
8 Ranger Pro. Do you have an opinion as to whether
9 exposure to glyphosate-based herbicides could worsen a
14:34:16 10 case of mycosis fungoides?" And he said, "I've never
11 seen any evidence like that." Never seen any evidence.

12 Dr. Nabhan couldn't even support it. "What
13 significance does spraying after his cancer diagnosis
14 have, if anything, to the progression of the course of
14:34:30 15 his disease?" He said, "I don't think we know." I don't
16 think we know.

17 That's what the doctors are saying. They don't
18 know of any evidence to establish that being associated
19 or for -- continued exposure to glyphosate is going to
14:34:46 20 make your cancer worse. No evidence.

21 Now, Dr. Ofodile came, and then she told us that
22 at Mr. Johnson's request, she wrote a letter asking that
23 he not have to be exposed to toxic -- I think the word
24 was -- airborne environmental allergens, but let's play
14:35:12 25 out all the facts here, because all the facts are

1 important.

2 She got an email from Mr. Johnson where he said,
3 "Doctor, I'm getting to the point where I feel a little
4 foolish spraying and applying chemicals. Do you feel
14:35:26 5 it's safe to do the kind of work I'm doing with the skin
6 condition I have?" And then asked if she -- the
7 conversation prompted her to do anything, she said, "When
8 he said that, that he was worried, I did write a letter
9 for him."

14:35:37 10 That was a -- that was a nice thing to do.
11 That's a good thing for a doctor to do. She has an
12 anxious patient, so she did what she could to calm him
13 down, to put him in a better spot, but she never
14 testified that she thought his mycosis fungoides was
14:35:53 15 caused by glyphosate. She never testified that she
16 thought it got worse because of glyphosate. That wasn't
17 her testimony. She did a nice thing, but not for that
18 reason.

19 Now, there was another letter written by
14:36:12 20 treating doctors, so these treating doctors have been
21 with Mr. Johnson since 2014 or so, and they all know what
22 Mr. Johnson does for a living. They all know what his
23 work is. They know he sprays pesticides. They all let
24 him continue to spray pesticides. What's that tell you?
14:36:33 25 None of those doctors believed that his cancer was

1 getting worse because he was spraying pesticides.

2 And, in fact, the doctors at Stanford,
3 Dr. Hoppe, one of the real experts on mycosis fungoides,
4 we were talking to Dr. Nabhan, and we read to him from
14:36:49 5 the medical records a letter that Dr. Hoppe wrote, and
6 what did Dr. Hoppe say? He said, "To whom it may
7 concern, I assumed care for Mr. Johnson on November 2,
8 2015. His care continues with us until November 19th,
9 2015. Mr. Johnson may return to work on a full-time
14:37:09 10 basis with no restrictions." No restrictions. So the
11 doctors don't believe that the mycosis fungoides is being
12 made worse by glyphosate.

13 So who does? What's the only testimony you have
14 in the case that says that there's some chance that
14:37:30 15 tumor -- glyphosate makes tumors worse, makes cancer
16 worse? It's Dr. Portier. Dr. Portier, who is a
17 biostatistician. He's not a doctor. He's not a
18 genotoxicologist. He's a biostatistician.

19 And what did he do? He looked at this George
14:37:49 20 article, Jasmine George, which Counsel read to you this
21 morning, but what do we know about the George study? We
22 know that IARC, IARC, thought the study was poor. IARC
23 says the design of the study was poor. The Working Group
24 concluded that this was an inadequate study for the
14:38:09 25 evaluation of glyphosate.

1 The EPA. The EPA says, "A number of studies
2 were judged to be inadequate in protocol, conduct or
3 reporting." George was one of them. George was one of
4 them.

14:38:25

5 And what did Dr. Foster say? Dr. Foster was our
6 rodent testing expert or toxicologist, and he was here on
7 the witness stand, and he said, "I found this to be a
8 particularly weak study."

14:38:41

9 Only Dr. Portier believes in the George study,
10 and the George study, by the way, was in rats, in rat
11 skin. Does that show -- does that really prove that
12 glyphosate makes mycosis fungoides worse? Not according
13 to these folks.

14:39:02

14 So what's the sum-up of the evidence from the
15 other people that deal with human beings, the other
16 doctors who deal with human beings? All of them believe
17 that mycosis fungoides did not cause -- glyphosate did
18 not cause mycosis fungoides except Dr. Nabhan, who
19 ironically is the only former doctor on that list.

14:39:29

20 That's the human evidence. That's the human evidence in
21 this case. You can't establish that glyphosate caused
22 Mr. Johnson's cancer if you don't have any human evidence
23 to support it, and they don't have human evidence to
24 support it.

14:39:48

25 So let me change gears now and talk about the

1 next kind of evidence, the next kind of animal study that
2 we talked about, and that's the next type of testing,
3 which is the animal studies. And the animal studies, as
4 you heard, were rodents, mice and rats, and rodents are
14:40:11 5 used as a screening test. You remember the chart that
6 Dr. Foster and Mr. Wisner put up that said rodents are
7 not tiny people. They're not tiny people. They are used
8 for testing purposes.

9 And, actually, Dr. Foster said, "These studies
14:40:30 10 are not designed to study pathogenesis. They're only
11 screened to study whether or not a tumor appears
12 somewhere in a mouse. They're a poor study -- poor model
13 for studying cause. They're better for drug treatment."

14 "Are there known rodent carcinogens that are not
14:40:48 15 human carcinogens?"

16 He said, "Absolutely."

17 Absolutely. So you have to look at these
18 studies and put them in the right context, and when you
19 look at those studies and put them in the right context,
14:40:59 20 what they tell you is that they provide you with some
21 information, but is a rodent study going to tell you that
22 Mr. Johnson's cancer was caused by glyphosate? It's not.
23 It's not.

24 And then when you get into the studies, you
14:41:11 25 remember we had -- Dr. Portier was their expert on rodent

1 studies. Dr. Portier, remember, he's a biostatistician.
2 He's a biostatistician, but he claimed to be an expert on
3 epidemiology, on toxicology and on the rodent studies,
4 but Dr. Foster told you that a biostatistician really
14:41:32 5 isn't down there in the lab at all. He comes back and
6 runs statistical studies at the end.

7 And what Dr. Portier did was after all these
8 studies were done and had been done for years and years,
9 Dr. Portier went back and redid statistics, and
14:41:50 10 Dr. Foster told you that's not the way science is done.
11 You set your statistical method at the start of the
12 study, because if you don't do that, if you have people
13 redoing statistical methods, you have people that are
14 going through and trying to find -- find things that
14:42:03 15 aren't there, trying to make the results different,
16 trying to cherry-pick.

17 But anyhow, there's a huge number of cancer
18 sites when you do these studies. Dr. Foster told you
19 about that. If you go through 12 studies, 16,000 cancer
14:42:18 20 sites that you look at, there're almost 200,000 different
21 sites that you study, so when you look at Dr. Portier's
22 chart, now that might have looked like a lot when you
23 first looked at it, but consider that this is out of
24 200,000 sites that you're looking at.

14:42:33 25 And Dr. Foster explained that. Dr. Foster went

1 through -- remember, Dr. Foster actually does the
2 studies. He actually does the studies. He's not a
3 biostatistician. He does the studies. Dr. Portier
4 limited the rat studies to these four. It took
14:42:53 5 Dr. Foster to come in and tell you, well, those are
6 benign. Those are benign tumors. And then with the
7 animal studies, Dr. Portier started off with this group,
8 and Dr. Foster marched through and told you what the
9 problems were with all of them. He told you what the
14:43:08 10 problems were with all of them.

11 Now, I just want to point out a couple of them.
12 This Kumar study confounded by illness. Counsel has said
13 there's this mystery virus. It's not documented. Well,
14 on cross-examination when Counsel asked him about it,
14:43:21 15 Dr. Foster said, "Yeah, it is documented. Look at the
16 Weber article." So there was an illness with Kumar that
17 made these mice sick, affected.

18 How about this Knezevich & Hogan? Plaintiff
19 talks about this -- Counsel talked about this. That's
14:43:36 20 that 1980s mouse studies with kidneys. Dr. Foster said,
21 "Well, that might have been ambiguous back at the time.
22 The results might have been ambiguous back at the time,
23 but 20 years later, 30 years later, it's not ambiguous."

24 All the studies have come in and showed that
14:43:54 25 there is no carcinogenicity in these animal tests.

1 There's no link between glyphosate and the actual tumors
2 in these mice. And that's what they're working on.

3 So Dr. Foster went through all of this for you,
4 and then Dr. Foster told you that what he did, he came to
14:44:14 5 his own conclusion, he wrote it out, and then he looked
6 at the 2016 EPA conclusions on animals, which you have,
7 and you can look at, and you should look and see how
8 thorough that document is. You can look at the table of
9 contents and it will tell you where the rodent studies
14:44:32 10 are. It will tell you where the epidemiological studies
11 are. It will tell you where the genotoxicity studies
12 are.

13 EPA also concluded that there was no
14 carcinogenicity. The cross-examination on Dr. Foster,
14:44:46 15 you might remember this, because it was fairly recent.
16 There was a scientific advisory panel that critiqued the
17 first EPA conclusion, and so Counsel read from that panel
18 report, read from that critique and said, "Didn't they
19 say this? Didn't they say that?" And Dr. Foster said,
14:45:05 20 "So having a scientific advisory panel is a way of
21 strengthening your results, is a way of making them
22 better."

23 But what Counsel didn't show him and what you
24 didn't learn until Mr. Griffis got up and asked questions
14:45:17 25 was: After the SAP, the 2017 EPA came to the same

1 conclusion. No carcinogenicity. And so Dr. Foster's
2 independent analysis lines up with that of the EPA, that
3 there's no carcinogenicity in the animal testing.

4 That's what everybody other than Dr. Portier has
14:45:45 5 concluded. Dr. Foster, the EPA, the European regulators,
6 the EFSA, the ECHA, the BfR. You've heard about all of
7 those. They all disagree with Dr. Portier, so when
8 you're considering animal studies, this is the array of
9 evidence. This is the array of evidence. It strongly
14:46:04 10 shows that the animal studies do not establish
11 carcinogenicity.

12 What's the next kind of study? It's cell
13 studies, and cell studies are studies that are done in
14 the laboratory, in petri dishes or test tubes, and they
14:46:24 15 are considered the least important of the studies,
16 because they're the farthest from studying an actual
17 human.

18 And the only cell studies that I understood
19 plaintiff's counsel to talk about this morning -- or the
14:46:38 20 only mechanistic studies that I understood plaintiff's
21 counsel to talk about this morning was the George study,
22 the one about tumor promotion, which we've already talked
23 about. That's the only one he talked about, and so I'm
24 not going to go into this in great detail.

14:46:52 25 But I do want to point out one thing to you,

1 because plaintiffs have said that the cause -- the way
2 you know -- the way these cell studies contribute to the
3 science of mycosis fungoides is these cell studies show
4 you that the mechanism could be oxidative stress --
14:47:09 5 you've heard that a lot -- or DNA damage. That could be
6 the mechanism that is causing Mr. Johnson's -- or caused
7 Mr. Johnson's mycosis fungoides.

8 But you heard from Dr. Kuzel on that. It
9 actually happens to be an area that Dr. Kuzel has
14:47:26 10 actually researched. He's actually researched.

11 If we could go to Slide 592, please. There we
12 go. 591. Sorry.

13 So this is Dr. Kuzel, and he's asked
14 specifically is there a theory that oxidative stress or
14:47:50 15 DNA damage causes DNA damage leading to mutations,
16 leading to non-Hodgkin's lymphoma? What's the word?
17 What does the science show? Is that a likely cause of
18 mycosis fungoides?

19 And he said, "No." And he explained to you --
14:48:04 20 he explained to you that they've looked, and he's looked,
21 and they've looked for gene mutations that might cause
22 disease, and he's said, "We don't have any single gene
23 mutation or disturbance," and so they think that it might
24 be that DNA mutations or alterations are not involved in
14:48:23 25 the process.

1 So the whole idea that oxidative stress and DNA
2 damage is at the root of causation for mycosis fungoides
3 is not supported by the evidence. Dr. Kuzel is a mycosis
4 fungoides doctor. He works on it every day. Came in and
14:48:42 5 talked to you about it. It doesn't line up. So the cell
6 testing, there's no evidence on the cell testing either.

7 Now, I want to talk a little bit about the
8 experts just generally.

9 Your Honor, what's the -- how far in -- I've
14:48:59 10 forgotten what time we started.

11 THE COURT: You started at 155.

12 MR. LOMBARDI: Okay. Thank you.

13 I want to talk for a minute about the experts
14 generally, because Counsel made a statement that all of
14:49:10 15 his experts considered every type of science. Do you
16 remember they said they considered the cell testing?
17 They all considered the mouse testing. They all
18 considered the epidemiology testing, as if that somehow
19 made his experts more credible. But I'd ask you to think
14:49:30 20 about it this way: What does it tell you when an
21 epidemiologist like Dr. Neugut says in a line or two,
22 yeah, "I read the rat studies"? He's not an expert on
23 rat studies. What does he have to offer on rat studies?

24 What does it mean when Dr. Portier says he's an
14:49:48 25 expert on everything? Everything. He's a

1 biostatistician, but he says he's an expert on
2 everything.

3 What's it mean when Dr. Nabhan, who's now a
4 businessman but was a medical doctor, says he's an expert
14:50:01 5 on epidemiology? He can tell you about the epidemiology.
6 He can tell you about the mouse tests.

7 We brought you experts, real experts, Dr. Mucci,
8 Dr. Foster. We brought you real experts, Dr. Kuzel, in
9 their field to talk to you about these areas. And you
14:50:18 10 might have noticed the difference in the way they acted
11 on the witness stand. When they were asked questions by
12 us, they answered the questions, and when they were asked
13 questions by the other side, they answered the questions.
14 There wasn't a lot of spinning. There wasn't a lot of
14:50:34 15 arguing. They answered the questions. They were here to
16 provide you with their expertise, and what did that
17 expertise show? It showed that glyphosate doesn't cause
18 cancer.

19 But let's talk for a second about Dr. Portier,
14:50:48 20 because Dr. Portier, I think, is a special case.
21 Dr. Portier not only disagreed with everybody, but
22 thought that everybody was astonishingly wrong, amazingly
23 wrong, completely wrong, totally illogical. Everybody in
24 the world except Dr. Portier is astonishing, illogical,
14:51:13 25 completely wrong, amazingly wrong. ECHA, EFSA, BfR, EPA.

1 Now, does that sound like a guy who is an
2 objective expert? Is that the way an objective expert
3 would talk about people? And it ends up that Dr. Portier
4 actually has skin in the game. Dr. Portier is not
14:51:35 5 objective at all. He's part of the story of this case.
6 He was at IARC as an invited observer, not a participant.
7 Very shortly thereafter, he was hired by plaintiff's
8 lawyers, and since then, he's been going around pushing
9 his theory of glyphosate unsuccessfully. Unsuccessfully.

14:51:57 10 And so when Dr. Portier talks about his theory
11 of glyphosate, understand that Dr. Portier, his view has
12 been rejected by the EPA, the EFSA, the ECHA and the BfR,
13 all of those entities you heard about. All of those
14 entities you heard about. He's not an objective source.

14:52:18 15 And when plaintiffs say -- I've lost my side.

16 When plaintiffs say that Dr. Portier has support
17 in the entire scientific community, remember what you
18 heard in the evidence. Dr. Portier sent out emails. He
19 tried to generate support from people. He sent out an
14:52:39 20 email to 500 scientists asking them for their signatures.
21 Now, he got something like 70 or 90 signatures, but the
22 vast majority of the scientists he reached out to
23 wouldn't sign on to what he did.

24 So Dr. Portier is a partisan in the process.
14:52:55 25 Dr. Portier is part of the story of this case. He's not

1 an objective outside observer. And I ask that you
2 consider that when you evaluate his credibility.

3 Let's talk about IARC, because IARC really is
4 plaintiff's case. Without IARC, they have nothing. They
14:53:17 5 rely completely on IARC to try to make you believe that
6 Mr. Johnson's cancer was caused by glyphosate, and
7 they've been very critical of Monsanto for being
8 concerned in advance of the IARC decision about what the
9 result might be, but this is what -- and this is
14:53:36 10 undisputed in the evidence. This is what Monsanto knew.
11 This is what Monsanto knew. These are the various
12 categories that you can get when you are evaluated, when
13 an agent is evaluated by IARC. It goes from carcinogenic
14 all the way down to probably not carcinogenic, so here's
14:53:51 15 what Monsanto knew.

16 You have literally, if IARC decides to consider
17 a chemical, a 1 in 1,000 chance that you're going to be
18 in Group 4. Literally a 1 in 1,000 chance that it's
19 going to be considered probably not carcinogenic.

14:54:08 20 How about Group 3? This is not classifiable
21 because there's not enough information. Now, how in the
22 world would anybody conclude that there's not enough
23 information about glyphosate? It's been around for
24 40 years, so, yeah, Monsanto was concerned when
14:54:23 25 glyphosate was taken up by IARC and with good reason.

1 And with good reason.

2 And so how does IARC work, because it's
3 important to understand -- it's important to understand
4 the general structure of IARC, and what they're actually
14:54:41 5 doing so that you can understand where to place it in the
6 context of the case.

7 So IARC, Working Group 112 in this case, the 17
8 scientists, this is Dr. Blair. We asked him about this
9 procedure, so we're the ones that brought you Dr. Blair's
14:54:56 10 deposition. Not plaintiffs. We brought it to you, and
11 remember, plaintiffs tried to portray this as they
12 studied this for a whole year. They were working hard on
13 trying to get this all done.

14 Well, that's not what
14:55:08 15 Dr. Blair said. He said -- he said the participants were
16 notified about a year in advance of a one-week meeting in
17 France, in Léon, France, and he said during a three-month
18 period before the meeting, we gathered up data and we put
19 them in tables. We put them into tables. But they
14:55:27 20 didn't come up with any evaluation in that three-month
21 period.

22 What happened was the evaluation process didn't
23 begin until the one-week period that they were in France.
24 That's what Dr. Blair said. And then remember they
14:55:43 25 weren't just working on glyphosate when they were there

1 for that one-week period. They were working on other
2 chemicals, so Dr. Blair said maybe a day or two of
3 analysis and evaluation went into the IARC Working
4 Group's classification of glyphosate.

14:55:58

5 Now, that's fine. IARC can do the procedures
6 that it wants to do. I'm not saying that IARC doesn't
7 make a contribution. But you have to understand exactly
8 what they're doing in evaluating whether this is evidence
9 that shows that Mr. Johnson's cancer was caused by

14:56:17

10 glyphosate. This is a day or two of analysis by a group
11 of scientists that are brought together to talk about it
12 in Léon, France.

13 How about the evidence they consider? They
14 don't consider all of the evidence. They're very

14:56:32

15 specific about that. They only consider published
16 studies. The EPA, the European regulators have vastly
17 more evidence about glyphosate than IARC does.

18 In this case, IARC -- the epidemiology we've
19 already heard. They didn't have the Journal of the
20 National Cancer Institute 2018. They didn't have all of
21 the animal studies. They had nowhere near all of the
22 genotoxicity studies. They had a very limited universe
23 to look at.

14:56:49

24 And what is it that IARC is actually doing?

14:57:11

25 What is it that they're actually doing? They're not

1 trying to figure out whether somebody like Mr. Johnson
2 can get cancer from glyphosate. That's not their role.
3 There's nothing in here that says somebody like
4 Mr. Johnson, if he gets a certain exposure level, he's
14:57:27 5 going to get cancer. That's not there. That's not in
6 IARC.

7 What they're doing is what's called a hazard
8 assessment, and you heard about this a lot during the
9 trial, but let me point it out again. Here's what they
14:57:39 10 say. This is what IARC says it is doing. "A hazard --
11 cancer hazard is an agent that is capable of causing
12 cancer under some circumstances." Some circumstances.

13 It's extremely broad. It's not under the
14 circumstances of this case. It's not telling you about
14:57:58 15 Mr. Johnson.

16 And then they go on and they expand on that.
17 "The Monographs identify cancer hazards, even when risks
18 are very low at current exposure levels." Even when
19 risks are very low at current exposure levels.

14:58:14 20 This is what IARC is doing. It's not saying
21 that Mr. Johnson's level of exposure causes cancer. It's
22 not saying that at all. That's not what they're about.

23 The reason they look at very low current
24 exposure levels is because maybe there'll be new uses or
14:58:32 25 maybe there'll be unforeseen exposure sometime in the

1 future. That's what they're worried about. That's what
2 they're worried about.

3 And so what does IARC see as its overall role?
4 What IARC says -- this is in the same document. You'll
14:58:48 5 have this, too, Exhibit 166, page 3. "The Monographs are
6 used by that national and international authorities to
7 make risk assessments, formulate decisions concerning
8 preventative measures, provide effective cancer control
9 programs and decide among alternative options for public
14:59:06 10 health decisions." They provide this information to the
11 regulators and say, "Go to it, regulators. You determine
12 what you want to do."

13 "These evaluations by IARC represent only one
14 part of the body of information on which public health
14:59:21 15 decisions may be based. Therefore, no recommendation is
16 given with regard to regulation or legislation."

17 IARC's not making a recommendation about whether
18 there should be a warning. IARC's not making any kind of
19 recommendation about a level that Mr. Johnson should or
14:59:39 20 shouldn't have been exposed to. IARC doesn't answer the
21 question that you have before you today. IARC does not
22 answer that question.

23 Your Honor, I'm going to jump to another
24 section. Would this be a good time to break?

14:59:59 25 THE COURT: Yes. All right. Ladies and

1 Gentlemen, we're going to take the afternoon recess now.
2 Remember: Do not discuss the case. Do not do any
3 research. And we'll resume again at 3:15. Thank you.

4 (Recess.)

15:17:58

5 THE COURT: Welcome back, Ladies and Gentlemen,
6 Counsel.

7 Mr. Lombardi, you may proceed.

8 MR. LOMBARDI: Thank you, your Honor.

15:18:13

9 I'm going to switch gears here and talk about
10 another aspect that plaintiffs have to prove with the
11 respect to the duty-to-warn counts that you'll be looking
12 at. This is Instruction 18, which is one of the
13 duty-to-warn counts, and one of the things that
14 plaintiffs have to prove -- remember, the burden of proof
15 is always on the plaintiff -- is that Monsanto knew or
16 reasonably should have known that Roundup Pro or Ranger
17 Pro was dangerous or likely to be dangerous.

15:18:30

18 And there's a similar one in Instruction 17.
19 Scientific and medical knowledge -- I'll start so it
20 makes more sense. "Roundup Pro or Ranger Pro had
21 potential risks that were know or knowable in light of
22 the scientific and medical knowledge that was generally
23 accepted in the scientific community at the time of the
24 manufacture, distribution and sale of the product." So
25 what you're going to be looking at here, in part, is what

15:19:07

1 was the state of knowledge in the scientific community,
2 and plaintiffs have to show you that it was accepted in
3 the scientific community that glyphosate caused cancer
4 during the times of Mr. Johnson's use.

15:19:27

5 So let's take a look at what the evidence is on
6 that. This is a timeline. To get everything on it, we
7 had to kind of break it up here. But what this shows is
8 the period of time from 2012 to 2017. 2016 is actually
9 when Mr. Johnson stopped using the product, I believe,
10 and so it shows you the period -- the relevant period of
11 time. And it's also intended to show you -- we're going
12 to fill this in a little bit more -- what was known about
13 the product in the scientific community over this period
14 of time.

15:19:52

15:20:05

15 And what you have heard a lot of is that
16 Monsanto's product, Ranger Pro, has been regulated over
17 the course of the whole period of time going back to the
18 1970s.

19 (Interruption in proceedings.)

15:23:06

20 MR. LOMBARDI: So the basic idea here is that
21 from the 1970s forward, the EPA has been regulating
22 Monsanto. And it's not a situation where they just
23 register the product one time and then that's it and it's
24 out there. There's re-registrations that go on. And so
25 the first re-registration was in 1993. The second

15:23:38

1 re-registration was in 2009 and actually has been ongoing
2 the entire time of Mr. Johnson's use of Ranger Pro. So
3 the EPA is constantly looking at the product and has
4 constantly concluded- that it's not carcinogenic. And
15:24:01 5 you heard the same thing about European regulators.

6 Now, let's look at what plaintiff's expert told
7 you about the EPA. Plaintiff's expert told you that the
8 EPA has lots of people involved in this. Lots of
9 scientists involved in this. He said -- this is Dr.
15:24:17 10 Benbrook. You remember Dr. Benbrook was -- I think he
11 was actually the last witness in plaintiff's case. And
12 he said the EPA has on-staff toxicologists, people that
13 look at the animal studies, experts on science that we've
14 heard described here as mechanism. They have
15:24:33 15 epidemiologists. They have pathologists. They have all
16 sorts of scientific experts on staff. These are the
17 people that are making decisions for the EPA on the
18 science.

19 What else did Dr. Benbrook say? He said the
15:24:47 20 latest re-review started in 2009. We just saw that. And
21 he said there was a re-review process going on and there
22 was a report issued by the Office of Pesticide Programs
23 in 2016. That's one that you've heard about that is
24 going to be in evidence and that you're going to be able
15:25:04 25 to look at. And it's going to tell you -- if you want to

1 know what's in Monsanto's head during this time period,
2 look at that, look at this document. It's got something
3 on everything. It's got something on animal studies.
4 It's got something on mechanistic or cell studies. It's
15:25:22 5 got something on epidemiology. It's in there.

6 And what else did Dr. Benbrook, plaintiff's
7 expert, say about this re-review process? Said, "The EPA
8 review was an assessment of the state of the science as
9 EPA views what counts as science, of course, from the
15:25:34 10 period 2009 to 2016 and also looking backwards; right?"

11 "Correct, when they did this most recent
12 review."

13 So what that's telling you is that throughout
14 the period of time that's relevant here, Mr. Johnson's
15:25:47 15 use of glyphosate in the form of Ranger Pro, the EPA has
16 been assessing, has been assessing. And the evidence of
17 that assessment is that 2016 document that you're going
18 to have to look at. And so ongoing re-registration
19 throughout this period of time showing again that the EPA
15:26:07 20 has concluded that glyphosate is not carcinogenic.

21 Now, I want to take a minute here to talk about
22 the phone calls with Mr. Johnson, Mr. Johnson and
23 Monsanto. And you've heard a lot about those in this
24 case and probably know the facts of them pretty well.
15:26:27 25 But the first phone call was made in November of 2014 and

1 Mr. Johnson had already been diagnosed with his disease
2 by then. And he called Monsanto and he talked to
3 somebody. He actually talked to somebody. He talked to
4 somebody he described as a very nice lady. She asked him
15:26:46 5 a lot of questions. This lady had a whole spiel, like
6 she understood what she needed to do. She knows her
7 product very well. So she spoke to him during this call
8 and she asked what his symptoms were. He told her what
9 was going on. She said, "We don't really have those
15:27:08 10 symptoms along with this product." That's what Monsanto
11 has always believed. She was getting the word on what
12 Monsanto's belief is at that time. "We don't have those
13 symptoms along with this product." Then she said, "But
14 if you want, I can have somebody call you back and they
15:27:23 15 can talk to you about it later."

16 So that's the first part of the call. Mr.
17 Johnson actually talks to somebody at Monsanto. Monsanto
18 had a system in place for people to talk to them.

19 And then you've seen this email a number of
15:27:37 20 times. So this is the email -- this is the lady,
21 Patricia Biehl, and she describes in the bottom email
22 what the conversation was like with Mr. Johnson. Very
23 consistent with what Mr. Johnson said in his testimony.

24 And she sends it on to Dr. Goldstein. And Dr.
15:27:55 25 Goldstein you know is a medical doctor at Monsanto, and

1 one of his jobs is to answer calls from people. To
2 answer calls from customers or whomever calling in and
3 have concerns. And so there's two sentences in what Mr.
4 Goldstein said. I want to talk about both of them. The
15:28:13 5 first one, he says, "The story is not making sense to me
6 at all." So this is Dr. Goldstein saying the idea that
7 Mr. Johnson got cancer from glyphosate doesn't make any
8 sense to me.

9 Now, this is not some kind of spin or what --
15:28:28 10 this is an internal document. This is Mr. Goldstein
11 talking to somebody else at Monsanto. That incidentally
12 is essentially what Ms. Biehl told Mr. Johnson when he
13 called, that we don't have those symptoms associated with
14 our product.

15:28:44 15 Next thing he says was, "I will call him." So
16 he's telling Ms. Biehl -- she said, "He wants a call."
17 He said, "I will call him." And Mr. Johnson says he
18 never received a call. Dr. Goldstein says he has no
19 record of making a call. I believe Mr. Johnson. Dr.
15:29:04 20 Goldstein I don't think made the call. And he should
21 have made the call.

22 But when you're evaluating Dr. Goldstein and who
23 he is and how he did his job -- and I can't remember the
24 exact words that plaintiff used, but high rhetoric about
15:29:20 25 how bad a person Dr. Goldstein is. He said, "I will call

1 him," and it was his intention to call him. His job is
2 to call people and in this case he didn't return the
3 call. And all that tells you about Dr. Goldstein is he
4 didn't return a call that he should have made. That
15:29:39 5 happens. But it doesn't tell you that he's a bad person.
6 His intention was to call.

7 And how did it affect Mr. Johnson overall? It
8 didn't affect his medical case. Mr. Johnson was already
9 in the care of doctors. He was in the care of people who
15:29:53 10 knew about mycosis fungoides. They were the people who
11 knew and agreed actually with Monsanto's assessment.
12 None of them thought his mycosis fungoides was caused by
13 glyphosate. None of them thought that he was going to
14 get sicker by further exposure. It didn't change the
15:30:14 15 trajectory of his medical care.

16 The second call was to something called Missouri
17 Poison Control. And you heard in the evidence that
18 Missouri Poison Control is a contractor with Monsanto
19 that Monsanto sets up so that customers can call. And
15:30:32 20 they are taught about the products and they're there to
21 make sure that consumers get the responses that they
22 should get. And so Mr. Johnson called to Missouri Poison
23 Control. And I've shortened it here. It's a longer
24 paragraph, but it's the story you're familiar with. Mr.
15:30:51 25 Johnson told them the story that you're familiar with.

1 And Mr. Johnson said he has concerns about continuing to
2 use Roundup as part of his job. The same thing that
3 you've heard Mr. Johnson say to his doctors. Same thing
4 that Mr. Johnson said to other.

15:31:06

5 By the way, Dr. Kuzel said, totally
6 understandable and totally normal. People want to know
7 about their cancer. And so that's what Mr. Johnson was
8 doing.

15:31:17

9 And she also said, "The symptoms are not an
10 expected response from the product." That, again, is
11 consistent with what Mr. Johnson's doctors thought. It's
12 consistent with what science thought. It's consistent
13 with what the EPA thought. It's consistent with what the
14 European regulators thought. It's consistent with what
15 Monsanto thought.

15:31:34

16 And she said, "Advised that the MRPC" -- that's
17 the poison control center -- "is available if the
18 treating doctor has any questions."

15:31:47

19 So this call ended a little bit differently than
20 the last call. She said, after going through all the
21 questions with him and advising him that this is not an
22 expected response consistent with the scientific
23 consensus, she advised him, "You can have the treating
24 doctors call us if you want to. Call us." And there's

15:32:07

25 no record that Mr. Johnson had his treating doctors call

1 Monsanto. They didn't have to. It's not required. But
2 there's no record that they did, probably because either
3 Mr. Johnson didn't tell them to because he was getting
4 the same answer from his treating doctors as he got from
15:32:21 5 Monsanto or because the treating doctors were too busy.
6 Whatever. Whatever the case may be. It doesn't really
7 matter. But this one ended differently. It was not
8 Monsanto saying they'd call him back. It was Monsanto
9 urging him to have the doctors call if he needed to. So
15:32:38 10 those are the phone calls.

11 And the important thing is that it didn't affect
12 his cancer. There's no evidence -- we talked about this
13 before. There's no evidence that glyphosate causes
14 mycosis fungoides to get worse. No evidence. We went
15:32:53 15 through that. We talked about the doctors. We talked
16 about the science. And so this did not change the course
17 of Mr. Johnson's treatment.

18 And you remember -- just to emphasize that --
19 the doctors at Stanford, Dr. Hoppe at Stanford, this is
15:33:11 20 the letter that Dr. Hoppe sent in November of 2015 saying
21 that he's releasing Mr. Johnson to work, to continue to
22 work spraying glyphosate. He's returning to work on a
23 full-time basis with no restrictions. No restrictions
24 for spraying. The doctors knew what Mr. Johnson did for
15:33:32 25 a living and they didn't think that it was going to

1 affect his illness. So that's what happened with the
2 phone messages.

3 What happened with IARC? So on this timeline,
4 in the middle of this timeline, with the EPA always
15:33:50 5 saying that it's not carcinogenic, glyphosate is not
6 carcinogenic, the EPA in the middle of a re-registration
7 that concludes that it's not carcinogenic, what happens
8 with IARC? IARC comes out in March of 2015 -- you've
9 heard that. So before IARC comes out, it's pretty clear
15:34:09 10 there's no scientific consensus that glyphosate causes
11 cancer. There's just none. None at the time Mr. Johnson
12 began using Ranger Pro. None at the time Mr. Johnson was
13 first diagnosed with mycosis fungoides, which is before
14 IARC.

15 IARC -- if you accept what plaintiffs say about
16 IARC, that it establishes that glyphosate causes mycosis
17 fungoides -- it doesn't, but if you did, it certainly
18 didn't do it in this time frame. There was no duty to
19 warn in that time frame. So what does IARC do when it
15:34:42 20 comes out? Does that change the calculus? Well, no.
21 Because, remember, IARC's not making any recommendation
22 about a duty to warn. IARC's doing something different,
23 as we talked about before. IARC is not looking at
24 somebody like Mr. Johnson and saying your cancer is going
15:35:01 25 to get worse or saying you're even going to get cancer

1 from your level of exposure. That's not what IARC does.
2 IARC does not make a recommendation. No recommendation
3 is given with regard to regulation or legislation.

4 So IARC didn't change whether there was a duty
15:35:22 5 to warn there, which is further -- further supported by
6 what happened with all the regulators. So IARC comes
7 out -- and, of course, IARC is something that people know
8 about. IARC is something that people know about. And so
9 IARC comes out and the European regulators say we're
15:35:39 10 going to take another look at glyphosate and whether we
11 should do something with glyphosate.

12 And so in November of 2015, EFSA, one of those
13 European regulators, says it's not carcinogenic,
14 glyphosate is not carcinogenic. After IARC, they're
15:35:56 15 reviewing it after IARC. Just shows you that IARC was
16 doing something different. IARC was doing something
17 different.

18 JMPR, another world health group, also looked at
19 it in May of 2016, after IARC. Not carcinogenic, not
15:36:13 20 carcinogenic.

21 In March of 2017, ECHA, ECHA -- you heard all
22 about ECHA -- registration. Again, they looked at it
23 after IARC, because of IARC, specifically considered what
24 IARC said and concluded it's not carcinogenic.

15:36:31 25 What is the scientific community saying about

1 glyphosate during this period of time? They're saying
2 it's not carcinogenic. That's what they're saying. And
3 it's an unbroken line going back, covering certainly the
4 entire period of time that Mr. Johnson was using
5 glyphosate.

15:36:49

6 That's why I showed you the jury instructions.
7 This -- plaintiffs have to show that actually it's just
8 the opposite. They have to show that it was
9 scientifically accepted that glyphosate causes cancer.

15:37:03

10 MR. WISNER: Objection. Misstates the law.

11 THE COURT: Overruled.

12 MR. LOMBARDI: That glyphosate causes cancer
13 during this period of time. They're not close. They're
14 not even in the same ballpark. Everything is the
15 opposite, everything's the opposite.

15:37:18

16 And what happens when you see that EPA paper
17 from 2016? So the EPA paper from 2016 -- could I have a
18 copy of that. It's Exhibit 2481. This is it. You'll
19 have it back there. And this document is the EPA's
20 treatment, September 12, 2016, EPA's treatment of the
21 carcinogenicity issue. And if you look at the table of
22 contents, epidemiological studies, animal studies,
23 genotoxicity studies, they're all considered here.

15:37:46

24 They're all considered here. So when you're thinking
25 about Monsanto's state of mind, think about they know

15:38:13

1 what the EPA thinks of all of those lines of evidence.

2 What the EPA thinks is glyphosate doesn't cause cancer.

3 And so I'm not going to read through this entire

4 document for you right here, but I want to show you some

15:38:36

5 of the conclusions. This is from page 131 of the

6 document: "Overall there is remarkable consistency in the

7 database for glyphosate across multiple lines of

8 evidence." It's going to be familiar, the lines of

9 evidence they are going to talk about. "For

15:38:52

10 non-Hodgkin's lymphoma" -- this is epidemiology --

11 "observed associations and epidemiological studies were

12 nonstatistically significant and were of relatively small

13 magnitude. Chance and/or bias cannot be excluded as an

14 explanation for the observations." That's the epi. Epi

15:39:10

15 doesn't establish causation.

16 How about rodent studies? "A cross-species

17 strain in laboratory tumor incidence was not increased at

18 doses less than 500 mgs per kg per day, except the

19 testicular tumors, which were only seen in one study, so

15:39:28

20 they weren't replicable. Observed tumors were not

21 reproduced in other studies, including those conducted

22 under the same strain at similar or higher doses."

23 That's the rodent studies. Precisely the ones

24 that the biostatistician, Dr. Portier, told you

15:39:42

25 established carcinogenicity.

1 How about genotoxicity? They considered the
2 genotoxicity studies as well. Genotoxicity studies
3 demonstrate that glyphosate is not directly mutagenic or
4 genotoxic *in vivo*. They considered all of those studies.
15:40:02 5 They considered all of those studies. And their
6 conclusion was that glyphosate doesn't cause cancer.

7 Plaintiffs can't possibly prove that there was
8 scientific agreement of the opposite. The only thing
9 they do is they point to IARC, and IARC was doing
15:40:19 10 something different. IARC was doing something different.

11 Now, plaintiff I think said something along the
12 lines of, "Well, EPA made a mistake. Or I don't know
13 what was going on at EPA." He kind of questioned EPA's
14 genuineness in this process. There's no evidence for
15:40:43 15 that. Zero evidence for that. He made some reference to
16 a guy named Jess Rowland and an organization called
17 ATSDR. It doesn't establish that there's any problem at
18 EPA.

19 But if you want to know about EPA, again, pay
15:40:59 20 attention to plaintiff's expert, Dr. Benbrook. This is
21 Dr. Benbrook. And do you remember Counsel said to you,
22 "The problem with the EPA is they have a dog in this
23 fight, because they've been out there for 40 years saying
24 glyphosate is okay, that glyphosate is not carcinogenic.
15:41:15 25 You're never going to get them to change their mind."

1 That's what he told you earlier. He tried that out on
2 his own expert, Dr. Benbrook, and he said -- and this was
3 his question, "And if they were to come out tomorrow and
4 say, hey, actually it does cause cancer, they've have to
15:41:31 5 admit that they'd been wrong for 30 years." And he
6 wanted Dr. Benbrook to say, "Yeah, they'd never do that."
7 But what did Dr. Benbrook say? He said, "I think they
8 would. They would communicate to the public that science
9 has moved on. There are more effective studies." And,
15:41:45 10 you know, since the EPA is -- they're not just concerned
11 about evaluating studies. They're responsible for
12 dealing with the risks to the American public. And so
13 they would clearly take into account the huge change in
14 exposure that had occurred and that they would change
15:42:02 15 their mind. Sure, they would change their mind if the
16 science justified it. That's their expert. That's Dr.
17 Benbrook.

18 So when counsel gets up here and questions the
19 EPA and questions the bona fides of the EPA and questions
15:42:17 20 whether they do a good job and questions whether their
21 heart is in the right place, remember Dr. Benbrook. Not
22 my witness. Their witness. He gave that answer when Mr.
23 Wisner asked the question.

24 So on the duty to warn -- on the duty to warn,
15:42:37 25 the evidence again is overwhelming. And you should look

1 at that EPA document if you want to see how thorough the
2 considerations are. When you summarize -- when you
3 summarize what's going on with the duty to warn here, the
4 EPA doesn't require any warnings. IARC doesn't take any
15:42:58 5 position on the warnings. The only people you've heard
6 from or heard about in this courtroom that say there need
7 to be warnings are plaintiff's counsel. That's it.

8 Now, let me talk about another topic here.
9 You've heard a lot about emails, studies that allegedly
15:43:25 10 should have been done, hints at scandal, allegations in
11 search of proof. Plaintiff got -- you know, there was a
12 lot of high rhetoric here about just how terrible things
13 are at Monsanto. So let me just step back for a moment
14 with you and let's just say first what's this case
15:43:45 15 actually about. It's about whether Mr. Johnson's cancer
16 was caused by glyphosate. Unless he can tie something
17 Monsanto did to Mr. Johnson's cancer and it's been caused
18 by glyphosate, none of this means anything. Let's just
19 say that. You've got to ask yourself the question, does
15:44:06 20 this allegation mean anything? But this is a place,
21 Ladies and Gentlemen, where I ask you to really demand
22 the facts. Because it's one thing to come here and make
23 high-flung arguments about all kinds of things and it's
24 another thing to prove it. And it's an easy thing.
15:44:26 25 Think of this. They have access to 40 years of Monsanto

1 documents. Emails, I guess not 40 years. But however
2 long emails go back. Got access to all those emails and
3 they're going through them and they're trying to pick out
4 things that they can pick out and show you to try to show
15:44:44 5 that there's something wrong at Monsanto. And remember
6 that snippets of documents don't tell the whole story.
7 And so, I don't know, I actually was really surprised at
8 some of the things that counsel continues to argue.

9 The Parry situation, remember the Parry -- Dr.
15:45:07 10 Parry, P-A-R-R-Y. This is the fellow that Monsanto
11 brought in to consult on genotoxicity testing. And you
12 remember this actually goes back to the -- to opening
13 statements. See if I can find the right page here.
14 Slide 619. This is actually what counsel said in opening
15:45:33 15 statement to you, that he was going to prove to you about
16 Dr. Parry. Because remember what he said is Dr. Parry
17 came in and he wanted Monsanto to do this particular kind
18 of study. He really wanted to do a study where he -- he
19 said Monsanto did some studies, but they looked
15:45:50 20 specifically at the genotoxicity of surfactants alone and
21 then they separately looked at the genotoxicity of
22 glyphosate alone. He looked at them separately and said,
23 "But they didn't do the study we cared about, that Dr.
24 Parry cared about, seeing if there's a synergistic
15:46:10 25 effect." He's saying they didn't do the study together.

1 It's not true. It's not true.

2 This is an article by Dr. Heydens at Monsanto.

3 Look at the title of the article. It's after Dr. Parry.

4 It's in direct response to Dr. Parry. It says genotoxic

15:46:30 5 potential of what? Glyphosate formulations. That's what

6 counsel told you Monsanto never did. Never did. And if

7 you look down here, you see, "A broad array of *in vitro*

8 and *in vivo* assays has consistently demonstrated that

9 glyphosate and glyphosate-containing herbicide

15:46:54 10 formulations are not genotoxic." They did the testing.

11 So when counsel gets up -- if he does this on

12 rebuttal, if he gets up and he makes allegations about

13 things, go and look in those notebooks. And these have

14 got to be impressive notebooks. You guys are constantly

15:47:12 15 taking notes. But see if you can substantiate what he

16 says in your notebooks. Because to come up and say in

17 closing that this study wasn't there when it was put

18 before you in evidence is just wrong. This is just more

19 from the same article.

15:47:27 20 They said they didn't answer all of Dr. Parry's

21 questions. Well, Dr. Martens, he was one of the very

22 first depositions that you heard. He's a guy over in

23 Europe. He used to work for Monsanto. What did he say?

24 He said that Dr. Parry asked for one supplementary study

15:47:44 25 and one additional study. And what happened? They did

1 it. They did the study. There was no difference.
2 That's the actual evidence. That's the difference
3 between evidence and argument.

15:47:56 4 I'm going to move a little faster here on the
5 rest of these. Ghostwriting, he said that they make up
6 the science in ghostwriting. Let's talk about
7 ghostwriting for just a second. Ghostwriting, there were
8 discussions about ghostwriting. There's discussions
9 about how all kinds of articles were put together. The
15:48:11 10 articles that were supposedly ghostwritten was not
11 original science. It was review articles. It was
12 articles that pulled together already existing science.
13 So when counsel says it made up the science, he didn't
14 present you any witness that said that. You've got to
15:48:27 15 check him on what he says. He didn't present any witness
16 that said they made up science.

17 And what did you find out about ghostwriting?
18 You found out -- page 628, please -- you found out that
19 actually everybody knew that Monsanto was involved in the
15:48:47 20 documents. This was one of them, the Greim article. You
21 got all kinds of argument about nobody knew that Monsanto
22 was involved. And actually David Saltmiras is a Monsanto
23 employee. He's a Monsanto employee. It's a difference
24 between taking an email snippet and getting the truth.
15:49:05 25 It was fully disclosed. Ghostwriting -- if he came in

1 here and proved to you that there was some kind of fraud
2 with science or scientific articles were made up to
3 protect glyphosate, whatever it might be, that would be
4 one thing. But he didn't. He didn't. He took snippets
15:49:23 5 from documents and ignored what the truth is.

6 And, actually, you know what, the EPA document,
7 look at page 22. Because you know what's in there,
8 there's a footnote in there talking about these Monsanto
9 studies. And it says, "All review articles were funded
15:49:41 10 and/or linked to Monsanto company." Big secret, big
11 secret about Monsanto's involvement.

12 You got a lot of talk about Donna Farmer and how
13 Monsanto didn't do testing of animals with the whole
14 product. Do you remember that, this whole thing? You
15:50:02 15 should have tested rodents with the whole product. And
16 what actually you learned was that no regulator requires
17 testing of the whole product with animals. Nobody.
18 Nobody in the world requires it. And so Monsanto doesn't
19 do that kind of testing. Instead Monsanto tests
15:50:23 20 glyphosate separately and it tests surfactants and other
21 ingredients separately. And Donna Farmer, the Monsanto
22 toxicologist, told you that based on that and the
23 epidemiology, we can tell you that glyphosate isn't
24 carcinogenic. But why is it that counsel can't point you
15:50:42 25 to a single regulator that wants animal testing done on

1 the whole product? Because there are scientific reasons
2 not to do it that way. That's not the purpose of the
3 product.

15:50:56 4 And Dr. Foster told you that you can't study
5 something like that if you're getting the animal sick.
6 And that's what you'd be doing. So that's another --
7 that's another thing that they take out of context and
8 manipulate.

15:51:12 9 And the last one I wanted to show you, Slide
10 631, please. Remember this? Remember this? Counsel
11 wanted to read to you this language. It says, "We are
12 being overrun by liberals and morons, sort of like a
13 zombie movie." What does that have to do with Mr.
14 Johnson? What's that have to do with whether Mr. Johnson
15:51:33 15 got cancer from Ranger Pro? Why do you suppose counsel
16 put that up in front of you?

17 But let's look at what it really is, what it
18 really is. This is a note from somebody at another
19 company. That's who wrote this. Sent it to somebody at
15:51:50 20 Monsanto. The Monsanto person forwarded it on, sure, but
21 this is the kind of stuff that unfortunately in today's
22 day and age, you know, people say stuff like this. It's
23 not great, but that's what happens. Is this some kind of
24 position of Monsanto, official position of Monsanto?
15:52:08 25 It's written by a third party. Why did he show it to

1 you? Doesn't prove anything about Mr. Johnson. Doesn't
2 prove anything about Mr. Johnson.

3 All right. I'm going to change topics again.

4 Let's talk -- back to Mr. Johnson. Let's talk -- if we
15:52:29 5 could go to Slide 632, please. So there are two things
6 basically the plaintiff has to show here. They have to
7 show that Ranger Pro, glyphosate causes mycosis
8 fungoides. We spent a lot of time talking about that
9 today. And we've shown all the reasons why the
15:52:46 10 epidemiology says no, the treating doctors say no, the
11 animal studies say no, the cell studies say no, the
12 regulators say no. But there's another aspect to this
13 case. If plaintiffs were going to prove to you that Mr.
14 Johnson's cancer was caused by mycosis -- excuse me -- if
15:53:05 15 mycosis fungoides was caused by Ranger Pro, they would
16 come in and they would show you, well, he was exposed to
17 a particular amount of Ranger Pro that causes cancer, and
18 I'm going to show you that particular amount. They
19 didn't do that. They didn't do that.

15:53:23 20 So what's the evidence of Mr. Johnson's exposure
21 here? They already lose because they can't prove this,
22 but this is an additional reason why they can't prove
23 their case.

24 So who is the best witness, the best person to
15:53:41 25 talk to about Mr. Johnson's exposure? It's Mr. Johnson,

1 obviously. And Mr. Johnson, you heard, took enormous
2 care when he sprayed glyphosate products. He wore
3 personal protective equipment. And he didn't just wear
4 some. He wore the whole nine yards. He wore a Tyvek
15:53:59 5 suit. He wore rubber boots. He wore rubber gloves. He
6 wore goggles. He wore a mask. He wore a hat and
7 sometimes a hoodie. So Mr. Johnson was very careful.

8 Mr. Johnson also knew how to spray to avoid
9 drift. You've heard about drift. That's when you spray
15:54:20 10 an aerosol and then it moves. If you spray into the
11 wind, it's going to come back into your face. But Mr.
12 Johnson knew better than that. He was a licensed
13 pesticide applicator. He studied, he passed his exam,
14 and he has common sense. He knows how to spray to avoid
15:54:36 15 the drift. He sprayed at limited times of year. He
16 sprayed during the summer for the most part because
17 that's when the kids weren't around at the school. There
18 were a few occasions when he'd spray during the winter.
19 But it was mostly during the summer. It wasn't every
15:54:51 20 day. It wasn't all day every day. And he said when he
21 did this kind of spraying -- and I'm not talking right
22 now about the two incidents where he got -- had
23 accidents. I'll talk about those in a minute. Only his
24 face got wet. Only his face got wet. I think he said
15:55:09 25 from his cheeks back to his ears, that's what got wet.

1 And he said, "Every time after I finished spraying, I
2 went back to the maintenance building and I washed with
3 soap for ten minutes." Because Mr. Johnson was very
4 careful. So that's the kind of exposure Mr. Johnson had.
15:55:27 5 And that's what you should be thinking about.

6 Now, he also said -- and this is something that
7 you heard in the evidence, when you spray Ranger Pro,
8 you're not spraying 100 percent Ranger Pro, you're
9 spraying a dilution. And so he said that he went by the
15:55:42 10 directions, but he couldn't remember exactly what it was.
11 Well, the directions you saw 1 to 2 percent solution. So
12 say 2 percent of Ranger Pro, 98 percent of water. But he
13 agreed the vast majority was water. So that's what his
14 exposure actually was.

15:55:59 15 So what did we get? What did we get on
16 plaintiff's side? We got an expert toxicologist named
17 Dr. Sawyer. I'm sure you remember. Who has never
18 sprayed a day in his life, but who came in here and he
19 said, "Mr. Johnson is an outlier. He's beyond the worst
15:56:16 20 case I've found in the literature." So Mr. Johnson is
21 the worst. Now, does that make sense to you, given what
22 we just said about how careful Mr. Johnson is? Mr.
23 Johnson's the worst, according to Dr. Sawyer.

24 Now, how did he come to that conclusion? Only
15:56:32 25 by contradicting Mr. Johnson, only by contradicting the

1 person who actually knows the facts. Dr. Sawyer said,
2 "Mr. Johnson experienced drift that, in fact, his entire
3 body -- to his entire body, including his face."

4 Mr. Johnson said, "On my cheeks, ears, and neck
15:56:49 5 I felt it a lot of times."

6 Dr. Sawyer said, "The sprayer, it was an
7 uncontrolled pressure." You have images of Mr. Johnson
8 fighting to keep it under control. It was an
9 uncontrolled pressure.

10 Well, what Mr. Johnson said was, actually, "You
15:57:06 11 changed the nozzle if you want to change the pressure."
12 He said, "If you feel like you're getting too much, you
13 just change the nozzle and it gives you less spray."

14 What did Dr. Sawyer say? He said, "The wind
15:57:20 15 currents, the wind currents were terrible. It caused the
16 drift material to directly impact his entire body."

17 What did Mr. Johnson say? "Well, when it's too
18 windy, you wouldn't even start, because you know it's
19 windy from the yard. So, you know, you don't even go out
20 there."

21 One thing, remember the cross-examination of our
22 weed science expert, Dr. Al-Khatib. One of the big
23 points was, Dr. Al-Khatib, you never went and looked at
24 where Mr. Johnson sprayed. Well, neither did Dr. Sawyer.
15:57:50 25 At least Dr. Al-Khatib was consistent with what Mr.

1 Johnson testified.

2 And then he said -- and this was the best, he
3 said, "If you've ever used one of these sprayers, one
4 trigger would fill this entire courtroom, literally fill
15:58:04 5 this entire courtroom with mist."

6 Mr. Johnson didn't say that. And it makes no
7 sense. Dr. Al-Khatib, who's been spraying for decades,
8 who's been spraying for decades told you that it's
9 absurd. Either they've never sprayed in their life,
15:58:24 10 which is Dr. Sawyer, or they don't know what they're
11 talking about. And why did he say if you've never
12 sprayed in your life? Because think about it. If Mr.
13 Johnson filled this entire courtroom with one squeeze of
14 the trigger, he's killing all the plants. Glyphosate
15:58:39 15 kills weeds, but it kills other plants. If he's out on a
16 football field, he's killing all the grass on the
17 football field if he sprays like that.

18 Dr. Al-Khatib said, "When you're spraying as a
19 pesticide applicator, you're spraying the plant you want
15:58:52 20 to get rid of." Mr. Johnson never said that.

21 But then -- then Dr. Sawyer, just to keep it
22 going, just to keep it going, he says, "That Tyvek 400
23 that Mr. Johnson wore, it's a dust suit. It's not even
24 designed for aerosol." And he said, "I know" -- he
15:59:11 25 didn't tell you how he knew, but he said, "I know that

1 this Tyvek 400 suit can be penetrated by glyphosate."

2 Well, we showed him the Tyvek 400 website. What
3 did the Tyvek 400 website say? It said, well, this is
4 good for biological fluids with potentially infectious
15:59:34 5 diseases. It's good for blood. It's good for blood with
6 potentially infectious diseases. It's good for bodily
7 fluids with potentially infectious diseases. But it's
8 not good enough for glyphosate, for Ranger Pro?

9 And beyond that, remember he said it's a dust
15:59:51 10 suit. Not an aerosol, he said. What's this say? "Tyvek
11 400 provides lightweight and barrier protection against
12 hazardous dry particles and hazardous aerosols."

13 And what else did you hear? What else did you
14 hear? Dr. Al-Khatib, the guy that's been doing this for
16:00:15 15 decades, "Is there a particular brand of Tyvek suit that
16 you have your students wear when you go out and do
17 pesticides?"

18 "We use the Tyvek 400. That's the standard out
19 in the field."

16:00:34 20 Dr. Sawyer had no relationship to this case.

21 Your Honor, what is the timing with the court
22 reporter's delay?

23 THE COURT: That was another five minutes. So
24 you have until 4:20.

16:00:45 25 MR. LOMBARDI: Okay. Thank you, your Honor.

1 So how does Dr. Sawyer try to establish --

2 MR. WISNER: Your Honor, I believe it's 4:10.

3 MR. LOMBARDI: No. That's what it was before.

4 It was -- it's 4:20, I think, your Honor.

16:00:59

5 MR. WISNER: Or it's 4:15.

6 THE COURT: All right. Well, he can go to 4:20

7 and you can go until 4:45.

8 MR. WISNER: Okay. I have 25 minutes? I was --

9 THE COURT: Yes.

16:01:12

10 MR. WISNER: I thought it was 45 was the
11 agreement.

12 THE COURT: Why don't we let Mr. Lombardi
13 finish.

14 MR. WISNER: Okay.

16:01:19

15 MR. LOMBARDI: So how does Dr. Sawyer -- he's
16 their guy. How does he get them from his grandiose
17 exposure to cancer? How does he do that? How does he
18 tie it in? Well, he goes from saying first he's an
19 outlier. "He's beyond the worst case I've ever seen in

16:01:40

20 literature." Then he says, "This exposure puts him
21 approximately in the middle of the human epidemiological
22 studies that show human cancer."

23 He's gone from being an outlier, the worst case
24 found in the literature, and now he's right in the

16:01:55

25 middle. Can't keep his story straight.

1 But what more about this? What more do we know
2 about this? "This exposure puts him approximately in the
3 middle of the human epidemiologic studies that show human
4 cancer." What have we been talking about all day today?
16:02:14 5 There are no human epidemiologic studies that show
6 cancer. That's not just me. That's Mr. Wisner. That's
7 plaintiff's experts. That's IARC. That's EPA. That's
8 Dr. Mucci. Nobody believes that they show human cancer.
9 So his whole idea is to tie into studies that
16:02:40 10 don't show cancer and then he says he's showing exposure.
11 Well -- I'll skip through these. It's not true. It's
12 not true. He likes to tie in -- plaintiffs are going to
13 get up -- I guarantee you -- they're going to get up and
14 point you to one of those exploratory pesticide studies,
16:03:00 15 and they're going to show you results that aren't
16 adjusted for other pesticides. So when they do that,
17 say, okay, show me some results that are adjusted. I'll
18 show you some results that are adjusted. If Dr. Sawyer
19 says Mr. Johnson is in the middle of the epidemiological
16:03:16 20 studies with adjusted results, let's look at the Journal
21 of the National Cancer Institute 2018. You put Mr.
22 Johnson in any of those categories, in any of those
23 quartiles, and what's the result you'd get? No cancer.
24 He is at no greater risk of causing cancer. Dr. Sawyer
16:03:34 25 said to go to the epidemiology, that's what the

1 epidemiology shows.

2 Now, there's another aspect to the exposure,
3 because Mr. Johnson, very careful, limited his exposure.
4 I'm not saying he had no exposure. I'm saying it was
16:03:52 5 limited. But the exposure was actually for a very short
6 period of time before his rash showed up. And so we had
7 a lot of discussion of the rash, Mr. Johnson's rash. And
8 it's important because that tells you something about
9 when he actually got the disease. So Mr. Johnson, we
16:04:12 10 read these medical records to Dr. Nabhan because we
11 wanted to get in the records so you could see it when
12 this rash started.

13 UCSF, he first noticed his skin rash on areas of
14 chest and trunk and face in fall of 2013. The rash
16:04:30 15 continued to wax and wane. Another UCSF record,
16 different doctor, African-American male with
17 approximately one year of rash on trunk and extremities.
18 Kaiser Permanente, one year history of progressive
19 papulosquamous irruption. And Stanford, same thing.

16:04:48 20 We also found out that when Mr. Johnson had a
21 car accident in September of 2013, he went into the
22 emergency room and they noticed his lymph nodes were a
23 little enlarged. That's part of NHL. That's part of
24 NHL.

16:05:04 25 So the record is very clear, very clear that Mr.

1 Johnson had his rash in 2013. Now, plaintiffs, they
2 don't like that, because 2013 is way too close in time to
3 when Mr. Johnson first started. If his first rash was
4 2013, he started to spray in June of 2012. Sprayed for
16:05:28 5 one summer. Had most of the winter off. We don't know
6 exactly how much he sprayed in the winter, but he
7 generally didn't spray in the winter. Then he started to
8 spray in the summer of 2013 and all of the sudden he's
9 got a cancer, he's got a cancer rash in that period of
16:05:45 10 time? It's just too short a period of time. And that's
11 why we got all kinds of excuses from plaintiffs. This is
12 where we got -- this is Dr. Nabhan. Dr. Nabhan says,
13 "These are all cut and pasted. You can't trust them."
14 They're not cut and pasted. Read them. They're all
16:06:02 15 different.

16 The second thing they said was -- they said it
17 again this morning, well, you haven't corroborated this
18 with a medical record from 2013. We don't have to
19 because Mr. Johnson wasn't bothered by the rash in 2013.
16:06:16 20 That's what Dr. Kuzel said was common, very common with
21 mycosis fungoides patients. They get a rash and they
22 just think it's a rash. And they think -- it waxes and
23 wanes over time. Waxes and wanes over time. They
24 think -- this is what Dr. Kuzel said, well, I got exposed
16:06:34 25 to the sun and my rash got better. So maybe it's no big

1 deal. They put a lotion on it and maybe it got better.
2 So maybe it's no big deal. And so typically it's a while
3 later that you worry about your rash. So there's no
4 reason Mr. Johnson would have been going to the hospital
16:06:52 5 about a rash in the fall of 2013. He said -- he said
6 that his rash came and went, it waxed and waned.

7 And what's the third excuse they give about the
8 medical records, saying you should ignore the medical
9 records? They said Mr. Johnson's a poor historian.

16:07:09 10 Well, I don't know how he is on other things, but he's
11 awfully consistent here. He told every doctor he talked
12 to the same thing: "I got my rash in the fall of 2013."

13 Now, something really interesting during
14 plaintiff's argument. I want to go back and show you
16:07:30 15 something. Now, you know the other important thing about
16 this rash is, the big accidents happened after he got the
17 rash, which means that he didn't have any big exposures
18 in that time period. He had mists, he had mists during
19 that time period.

16:07:49 20 What did plaintiff show you this morning? Can I
21 go to the Elmo. This is the timeline they showed you.
22 So they said, on this Elmo, that Mr. Johnson got this
23 massive exposure from Mary Farmar in the summer of 2013.

24 So they're trying to put one of the big
16:08:13 25 exposures before the rash. That's what they're trying to

1 do. But they forgot about something.

2 This is the letter -- this is the email to Dr.
3 Goldstein, do you remember, they've talked so much about.
4 Look at the date here, November of 2014, November of
16:08:33 5 2014. And what do they say? This is Mr. Johnson talking
6 to the Monsanto person, "About nine months ago, had a
7 hose break on a large tank sprayer." That's the Mary
8 Farmar. That's the Mary Farmar. Take nine months from
9 November and you're in early -- you're in spring, early
16:08:56 10 2014. Plaintiffs trying to sell you on the idea that it
11 happened in the summer of 2013.

12 This is what I mean about you have to watch the
13 facts. There are arguments and there are facts.

14 And how about Mr. Johnson? What did he say
16:09:13 15 under oath at trial about when it happened? Mr. Johnson
16 said it happened in early 2014. They're trying to sell
17 you on facts that are non-existent in order to get around
18 the problem they have with the rash.

19 How about what they said about the other
16:09:32 20 exposure, the backpack sprayer. They need this, this is
21 their -- they have to do this to make it work for their
22 timeline. They're trying to make a timeline that Mr.
23 Johnson got sicker, got sicker because of these big
24 exposures. Here's what they said. Mr. Johnson has a
16:10:01 25 second major exposure incident involving a backpack

1 sprayer in February 2014. So that would be before he's
2 diagnosed. That works great with their theory.

3 But they forgot about something. They forgot
4 that they had Dr. Nabhan come in and testify to the
16:10:21 5 contrary. This is Dr. Nabhan, his timeline of Mr.
6 Johnson. Do you remember this? Dewayne Anthony Lee
7 Johnson, and then Plaintiff's Exhibit 1039, look at the
8 highlighted part, "January 29, 2015, another spill, left
9 shoulder, of Ranger Pro from a leaky backpack sprayer."

16:10:51 10 That spill happened way after the rash. Way after the
11 rash. Plaintiff is trying to sell you on a story that
12 doesn't square with what his own witnesses said.

13 If we can go back to the PowerPoint, please.

14 So we've got this right, you'll note. We have
16:11:18 15 our dates right. The big exposures happened after the
16 skin rash. All Mr. Johnson was exposed to in that period
17 of time was the mist. He was all in all his garb. He
18 was spraying carefully. It's minimal, it's minimal
19 exposure.

16:11:37 20 And that's significant, Ladies and Gentlemen,
21 because of this latency period. You've heard about
22 latency period. How much time does it take to actually
23 show the effects of cancer once you've been exposed to
24 something? And this is Dr. Sawyer. In his report, he
16:11:55 25 gathered what he said was some data. I'm going to show

1 you the data that he said was relevant to an
2 environmental exposure, which is what Mr. Johnson had.
3 He said in his report, "In addition, the median followup
4 time in the AHS was 6.7 years." Do you see that?
5 6.7 years. So if you assume that on the very first day
6 that Mr. Johnson sprayed glyphosate caused him to get
7 cancer, the very first day, add 6.7 years, his rash would
8 be showing up in 2019.

16:12:13

9 What else did Dr. Sawyer say? Dr. Sawyer said,
10 well, there's a study that shows a latency period for
11 glyphosate of at least ten years. If it was ten years
12 and it started, he had his very first exposure -- he got
13 sick based on his very first exposure, his rash would
14 have showed up in 2022.

16:12:31

15 Dr. Portier was shown a document by another
16 expert in this litigation. The latency period is 20 or
17 more years from initial exposure. 20 years. If that's
18 true, then from the very first date of his exposure,
19 we're out at 2032. Doesn't make sense that Mr. Johnson
20 got cancer based on an exposure that started in June of
21 2012 with a rash showing up in September or in the fall.
22 Didn't say September. In the fall of 2013. Doesn't make
23 sense.

16:12:53

16:13:14

24 And what plaintiffs have been doing to try to
25 avoid the plain logic of that tells you -- tells you

16:13:35

1 something; right? Why would they put the wrong dates
2 down if this wasn't a big problem for them?

16:13:50 3 Now, Dr. Sawyer said, "Well" -- and plaintiffs
4 said this this morning. He said, "Well, the World Trade
5 Center has a study that said that it could be .4 months."
6 Well, the World Trade Center was dealing with something
7 called ionizing radiation. That's not environmental
8 exposure, exposure to glyphosate. Ionizing radiation.
9 Completely different.

16:14:11 10 At other times, they've said, "Well, people who
11 get organ transplants, they have a shorter latency
12 period." Mr. Johnson didn't get an organ transplant.
13 Those people are on immunosuppressives.
14 Immunosuppressives, completely different situation. Mr.
16:14:29 15 Johnson wasn't exposed to ionizing radiation. This is
16 plaintiff's experts, plaintiff's experts, and it tells
17 you that the timeline just doesn't make sense.

18 So in summary, summary, plaintiffs have not
19 shown that Ranger Pro causes mycosis fungoides,
16:14:51 20 non-Hodgkin's lymphoma. No on the epidemiology. No on
21 the treating doctors. No on the animal studies. No on
22 the cell studies.

23 Do you remember Dr. Kuzel specifically
24 testified -- he's the only guy in this case who
16:15:06 25 specifically talked about how cell studies work with

1 mycosis fungoides. And he said oxidative stress. He
2 said DNA damage. That's not the reason. The regulators,
3 EPA, EFSA, ECHA, they all said no. And how about the
4 exposure? You know they didn't come up with a level of
16:15:25 5 exposure and say Mr. Johnson exceeded it. They didn't
6 ever tell you that. They had Dr. Sawyer come in here and
7 say things completely different from Mr. Johnson. He had
8 minimal exposure. He had a relatively short time span.
9 The medical records show when the rash occurred. It
16:15:43 10 simply happened too fast. And the latency period tells
11 you that plaintiff's story just doesn't make sense.
12 That's the exposure case. That's the exposure case.
13 Now, I have five minutes -- three minutes.
14 Getting closer to two minutes. And I want to take a
16:16:07 15 minute right now to sincerely thank you all. This has
16 got to have been an amazing experience for you. I can't
17 imagine what it's like to walk into jury duty on whatever
18 day that was back in June and end up where you are today.
19 You're in a huge room of people. You had no idea -- you
16:16:26 20 were probably hoping you wouldn't get selected for a
21 while there. But you got selected. And we've all been
22 here with you, Mr. Griffis and Ms. Edwards. We've all
23 been here with you every day. But that's different.
24 That's our job. We plan our lives around that. And I
16:16:41 25 know that you've had to make sacrifices. You've had to

1 make arrangements. You've missed things that you
2 otherwise would have done. It's been a long haul. So
3 sincerely we appreciate the time you've spent. And you
4 have -- I agree with Mr. Wisner on this, you've been
16:16:57 5 remarkably attentive and you've paid very close attention
6 and we very much appreciate that.

7 One other thing about you folks is we view you
8 as a special group, a special group because you walked
9 into the jury room and you saw what it was like, you
16:17:15 10 heard how many people say they couldn't be fair to my
11 client, couldn't be fair to Monsanto. They couldn't put
12 prejudice aside. They couldn't put bias aside. They
13 couldn't put sympathy aside. But you are the ones that
14 all said you could do that. You could put sympathy
16:17:31 15 aside. You could put prejudice against Monsanto, its
16 products, whatever, aside. And you could decide the case
17 fairly and on the facts, applying the law that Her Honor
18 has told you and the facts as you see them in this
19 courtroom and no place else. And we really appreciate
16:17:51 20 your ability to do that and we know you'll continue to do
21 that.

22 So thank you again for all your efforts and all
23 your time. I had thought I was going to show you the
24 verdict form. But I don't think I have a lot of time for
16:18:08 25 that. So I'm just going to say to you in closing, I hope

1 that you'll keep in mind what I've said.

2 This is the worst time in the world for a
3 lawyer. I'm sitting down. I'm done. I'm mute. I can't
4 say anything more. If you know anything from watching
16:18:21 5 the way all of us have behaved, we all want to talk last
6 and we can't. He's got the burden of proof so he gets to
7 talk last.

8 But given everything that we've talked about and
9 the things that have happened with the record, I worry
16:18:36 10 about not having the ability to stand up and talk again.
11 So I'm asking you -- I think we've been together long
12 enough, Mr. Griffis and Ms. Edwards and I have talked to
13 you long enough, I think you have an idea what we might
14 say in response to what plaintiffs are going to say, and
16:18:53 15 I ask you to call them on factual assertions that they
16 make. To look in your notebooks, make sure they're
17 actually right. Make sure it's not what we saw here
18 today before you believe it.

19 But most of all, I ask you to reflect on the
16:19:08 20 entire trial and remember that the human evidence, the
21 human evidence, which is the best evidence, tells you
22 that glyphosate doesn't cause cancer. The human evidence
23 tells you that nobody who medically has cared for Mr.
24 Johnson or who is a doctor in this area believes that
16:19:29 25 mycosis fungoides is causing -- is caused by glyphosate.

1 The animal testing, the cell testing, they're fine to do
2 and you should consider them, because they don't show
3 glyphosate caused cancer either. But consider them all,
4 consider all the evidence. Consider that the regulators,
16:19:44 5 the EPA, the European regulators, all disagree. And
6 remember that IARC is doing something different and they
7 can't rely on IARC to make their case.

8 So thank you very much again. I appreciate your
9 time and appreciate your efforts. Thank you.

16:20:01 10 THE COURT: All right. Mr. Wisner, you may have
11 35 minutes.

12 MR. WISNER: Thank you.

13 Thank you, Mr. Lombardi, for finishing. I
14 appreciate that. We do get the final word because we do
16:20:18 15 have the burden of proof.

16 (Interruption in proceedings.)

17 MR. WISNER: All right. So what we just saw was
18 a fantastic use of the ellipse. You know, the dot, dot,
19 dot, and using quotes from things. A lot of -- almost
16:20:48 20 every one of the quotes used by Mr. Lombardi has had an
21 ellipsis. And the dot, dot, dot tells the whole story.

22 So I'm just going to go through a couple of
23 factual things just right off the bat.

24 Just before we ended, he said Dr. Sawyer said
16:21:05 25 that the risk was -- what did he say? He said it was

1 seven to eight years of something like that.

2 This is actually what he testified to. My notes
3 are on here, so I'm just going to fold it, so you don't
4 see them. It says -- this is at line 377, 9 through 12,
16:21:21 5 "I put in my report, and I quoted the same thing to you
6 that I told the jury, that the latency period following
7 environmental exposures is relatively unknown and has an
8 estimated between 1 and 25 years."

9 So there's minimum latency of six, seven years.

16:21:36 10 And they're trying to put it in Dr. Sawyer's mouth. It's
11 garbage. It's just not true. It's a misstatement of
12 what he testified to and the evidence that you've seen.

13 Another ellipse that was pretty bad, they talked
14 about Dr. Nabhan -- and this is probably one of the worst
16:21:54 15 ones. So before I show it to you, the theory is that
16 Mr. Johnson's treating doctors, right, all told him it
17 was not Roundup that caused his cancer.

18 Ironically, they didn't call any of those
19 treating doctors to the stand, even though they're just
16:22:09 20 down the street. And the reason why they didn't is
21 because the evidence actually shows that they didn't know
22 if it caused cancer, because they'd never researched the
23 issue.

24 And so they go -- even Dr. Nabhan said that they
16:22:24 25 said it wouldn't cause it, and they gave a quote. And

1 then there was a dot, dot, dot. I'm going to read after
2 the dot, dot, dot.

3 So here's what he showed you. He said, "All
4 right. And as you went through the records, and you went
16:22:34 5 through the depositions, you noted that each of them came
6 to the conclusion that they didn't know what caused
7 mycosis fungoides; is that right? They were not aware of
8 what may have contributed to it." And then there was a
9 dot, dot, dot.

16:22:47 10 That's what he showed you. That's what
11 Mr. Lombardi chose to say to you. But what's after the
12 dot? "Again, none of them really reviewed the
13 epidemiological literature. As I told you before, even
14 before I reviewed the literature myself, in the spring of
16:23:04 15 2016, I was not aware of the association. But after
16 reviewing the literature, I became aware. So I don't
17 know if they actually had a chance to review all the
18 literature that we went through today." "Okay," and he
19 got cut off by Mr. Lombardi.

16:23:20 20 That's the dots. That's the story that's not
21 being told to you.

22 You the did hear from one treating doctor,
23 Dr. Ofodile. And she did say that she was concerned. So
24 concerned that she wrote a letter.

16:23:34 25 Now, Mr. Lombardi said, "Well, Dr. Hoppe, he

1 wrote a letter, too." But we -- we also heard why. It
2 was because Mr. Johnson had been out of work, and he had
3 to pay his bills because of his cancer. And Mr. Johnson
4 asked him to write the letter so he could get back to
5 work.

16:23:48

6 There was no assessment by Dr. Hoppe, Dr. Kim,
7 Dr. Tsai, that the evidence doesn't support a causal
8 association. And I -- I couldn't believe this.

9 He had a picture -- I actually don't have all of
10 his slides. He used a lot of things I hadn't seen. But
11 he had a picture where Dr. Nabhan is by himself and all
12 of these doctors on the other side. Now, none of those
13 doctors actually gave that opinion. So that's all
14 misleading.

16:24:04

15 And then they snuck in Dr. Kuzel. Did you
16 notice that? First of all, Dr. Kuzel did not treat
17 Mr. Johnson. He actually never even met him. His entire
18 understanding of Mr. Johnson was based on reading a
19 deposition.

16:24:16

20 Now, what's so weird about that argument is that
21 Dr. Kuzel admitted on the stand that he looked at one
22 study related to Roundup. One study. A study given to
23 him by Mr. Lombardi. And it was the AHS from 2018. That
24 was it.

16:24:28

25 My co-counsel asked him repeatedly, "Did you

16:24:48

1 look at any of the other epidemiological literature?
2 Other epidemiological literature that specifically looked
3 at the subtypes of NHL?" Nope. Nope.

16:25:04 4 There is no cause of mycosis fungoides. But you
5 know what else he said? He says when he has a lung
6 cancer patient in his office, and they go, "I've been
7 smoking my whole life. Could it be the smoking?" He'd
8 say, "I don't think so. We don't know that." That's
9 what he said.

16:25:20 10 They hired a guy to put on the stand somebody
11 who doesn't believe in causation. Okay. It's easy to
12 not find associations when you don't look. So that's
13 what happened there.

16:25:37 14 The actual evidence in front of you, the only
15 person who examined Mr. Johnson, who looked at the
16 literature, who looked at his exposures and did a
17 differential diagnosis, was Dr. Nabhan. And I think he
18 was being attacked because he got promoted to a really
19 fancy job at a fancy company and that somehow makes him
16:25:56 20 no longer able? Well, he says right here he didn't even
21 know about this issue until he looked into it.

22 And that's the point. That's the problem here.
23 It's not on the label. It's not -- a doctor wants to
24 find, "Oh, is this associated with cancer?" They look at
16:26:15 25 the label. They look at the data. And it's not there.

1 Doctors do the same thing with prescriptions.
2 They look at the label. And so every one of these
3 doctors probably looked at the label. "I don't see
4 anything about cancer. Must not cause cancer."

16:26:31

5 That's hardly a scientific analysis. And the
6 fact that Mr. Lombardi relies upon what somebody said to
7 somebody else, to somebody, didn't even call a single
8 person live to talk about it, and then said, "None of
9 them said it causes cancer," is just profoundly

16:26:47

10 misleading. Don't forgot the ellipses.

11 Another thing that was pretty amazing -- and he
12 based a large part of his defense on this idea -- was
13 that to prove a duty to warn, we have to show that the
14 scientific consensus in the world was that it caused
15 cancer. That is complete nonsense. That is not the law.

16:27:04

16 I'm going to show you the law in one second.
17 That is not -- if that was the law, you could never sue
18 for a drug that had been approved by the FDA. You could
19 never sue for a pesticide that had been approved by the
20 EPA. We all know that's not true. Because the law
21 doesn't say that.

16:27:21

22 Here's the law: "That Roundup or Ranger Pro had
23 potential risks that were known or knowable in light of
24 the scientific and medical knowledge that was generally
25 accepted." So it's not saying that it had to be

16:27:36

1 generally accepted that, in fact, it caused cancer or
2 that there was a risk, but merely that the science that
3 was generally available and accepted could lead to
4 knowing of the risk.

16:27:53

5 And that's the epidemiological studies.
6 Eriksson, De Roos, De Roos 2005, De Roos 2003, Hardell.
7 The epi is pretty rampant. But more than the epi,
8 there's actual real data. And he kept calling them cell
9 studies, the mechanic studies. That's just misleading in
10 the extreme.

16:28:14

11 He didn't even mention the numerous studies done
12 on people living in Ecuador, living in Columbia, who in
13 real-world exposures were getting sprayed with Roundup to
14 combat cocoa plants. And what did they do? They went
15 and tested their blood, real people in the real world.
16 Human data. And it shows genetic damage. And people who
17 weren't sprayed, no genetic damage.

16:28:29

18 And the data showed -- and Dr. Portier discussed
19 this. They didn't bring in an expert to discuss this at
20 all. Dr. Portier said, yeah, it showed that the genetic
21 damage lasted for a few weeks. And then after there was
22 no spraying, it was gone.

16:28:45

23 That's exactly what you would expect here.
24 Repeated insults causing repeated genetic damage.

16:29:01

25 Mr. Johnson, over a course of there months of spraying

1 almost every other day for 3 hours, 150 gallons a clip,
2 his body didn't have the chance to rebuild or repair the
3 genetic damage. And that's how he got cancer.

16:29:19 4 This idea of latency came up, and he says, "The
5 911 Commission said this was for ionizing radiation."
6 That's completely incorrect.

7 Yes, they used ionizing radiation studies to
8 come up with latency, but there was no radiation exposure
9 at 911. There was no nuclear bomb that went off. There
16:29:37 10 was chemicals in the air that people breathed in, that
11 they were exposed to.

12 And as they got cancer, specifically
13 non-Hodgkin's lymphoma, within four months, within four
14 months, they were compensated.

16:29:51 15 That was the 911 Commission. That is the
16 definitive minimum latency requirement. Four months.

17 Now, there was this discussion about when did he
18 actually have a sprayer break or whatever. And he says,
19 "Mr. Wisner is trying to make it seem like the exposure
16:30:08 20 happened before the rash, but it's just not supported."
21 And what I couldn't believe, he actually showed you
22 Exhibit 332. This is that email that was regarding what
23 he had said to them; right?

24 And he says right here that this resulted in him
16:30:24 25 becoming soaked to the skin on his face, neck and head

1 with Ranger Pro. He said he was wearing a white exposure
2 suit, and it even went inside that. A few months after
3 this incident, he noticed a rash on his knee, then on his
4 face and later on the side of his head.

16:30:40

5 So based on the very document that they say it
6 happened in February 2014, he's specifically saying it
7 happened before any rash. That's their document. That
8 is their record. This is what they told him after
9 45 minutes of careful probing by this person about

16:30:57

10 specifically information, a level of detail of exposure
11 that nobody else did with Mr. Johnson.

16:31:11

12 Because the conversation in the doctor room
13 was -- it was Dr. Ofodile. The first instance of this
14 happening in 2013 was Dr. Ofodile. It was late in the
15 afternoon. It was 4:15. Do remember she talked about
16 this? They were rushing, and she just wrote down the
17 year exposure. And then when I asked her, "Was that
18 actually really accurate," she goes, "That's probably
19 wrong. If he had it back in 2013, we would have known.
20 He would have said something."

21 And he went to a doctor. Is there supposed to
22 be a rash on his face in 2013? How would a medical
23 record at that time say negative for rash? It's
24 incomprehensible.

16:31:37

25 And on top of that, the only records they show

1 are just repeating of the misstatements of the year
2 prior. They're all, like, a year-and-a-half later.
3 That's not a helpful record.

16:31:52 4 But it doesn't matter. I said this before. It
5 doesn't matter if it happened in the fall of 2013,
6 because there's still time for the tumor to have
7 developed on his face and in his body. The latency
8 period is sufficient. And that's the record before you.

16:32:14 9 I was challenged about the Parry study. He said
10 he can't show you what they were thinking. Yes, we can.
11 And I only have a certain amount of time in this
12 courtroom to go over the evidence with you. There are
13 binders of it. And I've shown you document, after
14 document, after document. In openings, it's been on
16:32:29 15 videos. And I cannot sit here and systematically go
16 through all of the documents showing Monsanto's
17 misconduct for the last 20, 30 years. I can't.

18 I've tried to show you portions of it. I've
19 tried to put it together. But absent me just going on
16:32:44 20 for a few days, which I could do -- I'll spare you. But
21 let me just -- let me take up that challenge. All right?

22 He said that Dr. Parry recommended a bunch of
23 studies and that they did it. Well, you heard testimony
24 about this specifically from Dr. Portier, who reviewed
16:32:59 25 what they did and what Dr. Parry recommended. And he

1 specifically said -- he specifically said that he did one
2 of them. Because his recommendations were pretty --
3 pretty robust. He talked about studying actions
4 recommended. He talked about providing comprehensive
16:33:16 5 cytogenic data from glyphosate formulations. They never
6 did that. That's not what they did.

7 What they redid is they redid one of the studies
8 back from 1997. That's it. And what they did is they
9 confirmed the results. That's actually what Heydens did.
16:33:31 10 But they didn't do all the other ones. And there's a
11 whole bunch here.

12 It goes on. And this is Exhibit 220. So you
13 can look at it. And those of you with a scientific
14 background will actually understand this. It's pretty
16:33:46 15 detailed. He's raising serious concerns. He's saying
16 stuff is genotoxic. The stuff needs to be studied.
17 You've got to look at the formulation. You've got to
18 look for the synergy.

19 This is the contemporaneous response. This is
16:33:57 20 what they said. This is Exhibit 269 -- oh, hold on. Let
21 me show you the other one.

22 This is Exhibit 270. And this is an email
23 exchange. And what does he say? This is them talking
24 about the -- Steve and (inaudible) was talking about the
16:34:19 25 thing, and he goes, "Has he ever worked with industry

1 before on this sort of project"; right?

2 And then at the end of it, these comments --
3 well, I won't spend too much time finding this. He makes
4 a comment, "I hope it didn't cost much." Oh, here it is.
16:34:43 5 He goes, right here, "I see there's little value in the
6 write-up that's written that could be useful. Hope it
7 didn't cost much. Perhaps it's too harsh, but I don't
8 know what your proposal was with him, but I guess I would
9 expect more from this of a professor."

16:34:58 10 And then this is what Dr. Heydens said. This is
11 Exhibit 221. And this lays it all out in black and
12 white. This is Monsanto's thinking. Okay?

13 Dr. Heydens -- this is to a bunch of people,
14 including Dr. Farmer. He's copied himself. "I've read
16:35:15 15 the report and agree with the comments. There are
16 various things that can be done to improve the report.
17 However, let's step back and look at what we're really
18 trying to achieve here. We want to find, develop
19 someone, who is comfortable with the genotox profile of
16:35:29 20 glyphosate Roundup and who can be influential with
21 regulators and scientific outreach operations when
22 genotox issues arise.

23 "My read is that Parry is not such -- currently
24 such a person and that it would take quite some time and
16:35:42 25 money studies to get him there. We simply aren't going

1 to do the studies Perry suggests.

2 "Mark, do you think Parry can become a strong
3 advocate even without doing this work, Parry? If not, we
4 should seriously start looking for one or more other
16:35:54 5 individuals to work with. Even if we think we can
6 eventually bring Parry around closer to where we need
7 him, we should be currently looking for our second backup
8 genotox supporter."

9 That's what they're thinking. We are not doing
16:36:18 10 the studies that Parry suggests. Why? Because we don't
11 want to know what they show us.

12 Remarkably, in 270, we also have this great
13 email from Donna Farmer. This is about the Parry -- the
14 Parry write-up. And she says, "I'm concerned about
16:36:33 15 leaving Parry out there with this as the final project,
16 his final impressions. If you remember his first report,
17 he was looking for work for a graduate student. I wonder
18 if this evaluation was his or someone else's."

19 Dr. Farmer is worried about it being out there.
16:36:50 20 And what happened to it? It never got sent to a living
21 soul. It got buried.

22 All right. I was challenged to show you an
23 epidemiological study that was statistically significant
24 that controlled for confounding. Well, that's De Roos
16:37:15 25 2003. And if you recall, Dr. Mucci and I had a little

1 back and forth about this. And she said, "I'm not sure
2 if the logistical regression controlled for it or not."
3 And I said, "If I can prove it to you definitively, will
4 you change your mind?" And she said, "I'll think about
16:37:27 5 it." Then I proved it to her, and she said, "Well, I
6 don't want to change my mind."

7 But the simple fact is -- is that -- this is
8 Exhibit 710. This was shown to you repeatedly. And in
9 here we have specifically the results for glyphosate.
16:37:39 10 And if you see right here -- oh, sorry. This is the
11 wrong page.

12 All right. So this is Table 3. It has all the
13 pesticides that they're studying, where they included, by
14 the way, there was absolutely no confounding observed.

16:37:59 15 And for glyphosate, they have a risk ratio of
16 2.1. That's statistically significant. This is
17 adjusting -- as it says right here, "Each estimate is
18 adjusted for the use of all other pesticides listed in
19 Table 3."

16:38:14 20 Doubling of the risk, statistically significant,
21 fully adjusted. It's right there in black and white.
22 And he showed you the meta-analysis done by Dr. Mucci.
23 Which one did she pick to show you? The 1.6, this
24 hierarchical regression that nobody thinks is valid.
16:38:32 25 It's just not.

1 The right answer is 2.1, and it's statistically
2 significant and fully adjusted. It's right there, Ladies
3 and Gentlemen.

4 One of the things that was raised was this idea
16:38:46 5 that Dr. Portier is an outlier, that he's out there
6 making hay, and he stands by himself. That all the
7 European regulators and all the scientists think he's
8 crazy. The problem is it's just not true.

9 So this is another document that you've seen.
16:39:03 10 And this was shown quite a bit throughout various parts.
11 And this is actually a letter that Mr. -- Dr. Portier
12 published. And this is the letter that was joined onto
13 by over 100 independent scientists from around the world.
14 And every one of them agreed with the conclusion, which
16:39:27 15 stated that the most likely -- let me get you the exact
16 conclusion.

17 "The most appropriate" -- here we go. "The most
18 appropriate and scientifically-based evaluation of the
19 cancers recorded in humans and laboratory animals, as
16:39:46 20 well as supportive mechanistic data, is that glyphosate
21 is a probable human carcinogen. And the basis of this
22 conclusion in the absence of evidence to the contrary is
23 reasonable to conclude that glyphosate formulations
24 should also be considered likely human carcinogens."

16:40:01 25 He does not stand alone. You also saw testimony

1 and evidence from the scientific advisory panel, the
2 panel that severely criticized the SAP report, severely
3 criticized, said, "You didn't follow your guidelines.
4 You ain't following the rules. You're coming to the
16:40:18 5 wrong conclusions." That was also another group of
6 independent scientists who also disagreed.

7 The simple fact is the independent scientists in
8 the world -- and by the way, on this study right here is
9 De Roos. So one of the authors of the AHS. The simple
16:40:34 10 fact is the -- I don't want to show you now. It's been
11 done before.

12 But the simple fact is the independent
13 scientists agree with Dr. Portier. The only one who
14 disagrees with Dr. Portier is Monsanto, EPA and EFSA, the
16:40:52 15 very people who have a very vested interest in the
16 outcome of whether or not it causes cancer.

17 Everybody else, basically across the board,
18 Dr. Blair, Dr. Ross -- I mean, Dr. Ross -- they played a
19 video of Dr. Ross. And he said the mechanistic data was
16:41:08 20 so strong that even if the animal data was insufficient
21 and even if the human data was insufficient, the
22 mechanistic data was so strong they were going to upgrade
23 it for IARC.

24 They haven't presented a single person to rebut
16:41:23 25 any of that testimony. The only thing they got is EPA,

1 EPA, EPA. And the irony of it is they want you to
2 believe that this goes to their state of mind, that,
3 "Hey, we just believed the EPA, so we didn't do anything
4 wrong." This came out in September 2016.

16:41:39

5 The judge is instructing you you can only use
6 this for Monsanto's state of mind. That's it. That's
7 the only allowance for this.

16:41:54

8 By the time this report ever was punished, by
9 the time they ever saw it, Mr. Johnson was diagnosed and
10 had stopped spraying it already. This is, as it's
11 presented right now, almost irrelevant for the purposes
12 of evidence in this case.

16:42:12

13 That said, this document, it specifically ends
14 with the request -- specifically end with the request --
15 that they study the formulated product. It -- it goes,
16 "As previously mentioned, some believe that glyphosate
17 formulations may be more toxic than glyphosate alone."
18 And it goes on, "They're even less" -- and it talks about
19 a program that it wants to develop with the national
20 toxicology program.

16:42:31

21 It's all on page 141 to 142. And he says the
22 regulators don't require it. But they sure want it. How
23 can we be sitting here almost 50 years after the
24 formulated product has been marketed and Monsanto hasn't
25 even bothered to look at it? How is that possible?

16:42:45

1 Because the state of mind is simple. There is
2 document after document showing that Monsanto knew the
3 formulated product was problematic.

4 Your Honor, can I get a time count?

16:42:57

5 THE COURT: You have ten minutes.

6 MR. WISNER: Oh, okay. Great.

7 One of the documents that I think is
8 particularly helpful on this is an email exchange where
9 they're discussing the POE surfactant -- POEA surfactant.

16:43:33

10 All right. I think this is Exhibit 282. No,
11 it's not 282. Let's talk about one thing. Let's talk
12 about 215 first.

13 This is -- literally, if you just sit down and
14 actually read through this -- these documents, you're
15 going to be blown away.

16:43:53

16 First, let's talk about this. This is actually
17 a PowerPoint presentation that was done by Monsanto,
18 surfactant toxicology. Okay? And the very last slide.
19 This is their own scientists. "Surfactants are
20 biologically not inert. They can be toxic, and this must
21 be addressed."

16:44:17

22 This was from Dr. Martens' testimony. And this
23 was back in 2003. We are 15 years later. And they still
24 haven't studied the formulated product.

16:44:34

25 Let's look at another one. Exhibit 283 -- 383.

1 So this is Exhibit 383. And this is an email exchange.
2 Again, it's confidential. They're discussing -- this in
3 2010. And it literally has handwritten notes from
4 Dr. Heydens that says, "The reasons for defending tallow
16:45:17 5 amines." That's POEAs; right?

6 And then the question proceeding this, it
7 specifically says -- they're talking about doing another
8 possible POEA -- another type of surfactant. And they're
9 saying, "Should we study it? What are the results going
16:45:33 10 to be?" And this guy poses a really good question.

11 "Anyway, there are nonhazardous formulations.
12 So why sell a hazardous one?" And if you turn the page,
13 he gives the reasons for that. He says, "First, there's
14 still strong sentiment in St. Louis that we need to
16:45:54 15 continue to defend tallow amines, even though we intend
16 to switch over because of their impending demise.
17 Reasons to do so: Domino effect on ether amines."
18 That's a better type of surfactant. "Defend other ruled
19 areas to the best of our ability."

16:46:07 20 "Second, I was in Brazil all last week, and they
21 are very worried about this coming across the Atlantic to
22 their part of the American hemisphere."

23 They know they're dangerous. They know they
24 have a problem. They know they're hazardous, but they're
16:46:23 25 still doing it because they're worried about a domino

1 effect.

2 Ladies and Gentleman, the Ranger Pro that's used
3 to this day, the stuff that Mr. Johnson used, the stuff
4 that you buy in the hardware store, it still contains
16:46:38 5 POEA. That was 10 years -- 8 years ago. There's no
6 excuse to be selling this anymore.

7 There was this idea that they didn't know that
8 there was a danger, that it wasn't known in the
9 scientific community. Yes, the scientific community
16:46:50 10 wasn't sure about it yet. We don't have to prove that.
11 But they knew. It's replete. Literally everywhere in
12 his testimony.

13 I think the last -- the last thing I want to
14 show you, and then I'll be ending off, was this idea that
16:47:11 15 Dr. Nabhan wasn't sure that -- you know, this idea of
16 this causation. That maybe he wouldn't have gotten
17 cancer -- you know, that he was on the fence, that he
18 might have gotten cancer anywhere. And then he showed
19 you another quote with an ellipses.

16:47:27 20 Here's the black and white, the full testimony.
21 This is what's really important here. Is it more likely
22 than not that Mr. Johnson will not make it past 2019,
23 based on what you've seen? He said no. And here's the
24 question --

16:47:40 25 MR. LOMBARDI: Your Honor, I object. This is

1 not what I showed him. This is misrepresenting the
2 record. This is actually from -- this is from the direct
3 examination, not from the cross.

16:47:51 4 MR. WISNER: This is the testimony of
5 Dr. Nabhan.

6 THE COURT: Okay. Very well, if it's the
7 testimony of Dr. Nabhan.

8 MR. WISNER: Yeah, testimony Mr. Lombardi didn't
9 show them.

16:47:59 10 "And to a reasonable degree of medical
11 probability, is it true that but/for Mr. Johnson's
12 exposure to Roundup, he would not have developed
13 non-Hodgkin's lymphoma?" "Absolutely."

14 This idea that he would have gotten cancer no
16:48:13 15 matter what and that Dr. Nabhan said that is a complete
16 fabrication. That's the testimony. And that
17 Mr. Lombardi would tell you otherwise is a disservice to
18 the quality of man I like to think he is. I think he's a
19 nice guy. But that was not true, what he said to you.

16:48:31 20 And my client deserves the truth. And if you
21 have any questions as you're deliberating, ask. We'll
22 find the document. We'll find whatever it is that you
23 need to prove up whatever issue you're trying to figure
24 out. Because at the end of the day, the evidence is
16:48:47 25 actually overwhelming.

1 And other than hiding behind the EPA, Monsanto
2 has quite literally no defense. And they're hiding
3 behind the EPA because we've seen in the record they had
4 a relationship with a guy who wrote the EPA document.
16:49:01 5 That's the truth of it. That's what we know.

6 So do the right thing. Go back in that
7 deliberation room, answer those questions, talk it out,
8 figure out the truth. Because the truth is it causes
9 cancer. It caused Mr. Johnson's cancer. And these guys
16:49:22 10 need to be held accountable.

11 Thank you for your time.

12 THE COURT: Thank you.

13 All right, Ladies and Gentlemen. It has been a
14 long day. Thank you very much, all of you, for paying
16:49:36 15 such close attention and taking copious notes. We're
16 going to adjourn for today.

17 Please remember: Do not discuss the case.
18 Please do not do any research on the case, including
19 internet research. Please return tomorrow morning at
16:49:53 20 9:30 to this courtroom. At that time, I will have a few
21 final instructions for you, the ones I did not read today
22 from the package.

23 And after that, you'll go into the deliberation
24 room to conduct your deliberations. So please remember:
16:50:11 25 Do not conduct any research, and we'll see you tomorrow

1 morning at 9:30. All right? Thank you.

2 JUROR: Including the alternates?

3 THE COURT: Yes.

4 (Jury leaves courtroom.)

16:51:35

5 THE COURT: All right. Counsel, now in
6 preparation for deliberations tomorrow, have you jointly
7 reviewed all of the exhibits to make sure that you're in
8 agreement with regard to the exhibits that are going into
9 the deliberation room?

16:51:48

10 MR. WISNER: Yes, your Honor.

11 MR. GRIFFIS: Yes.

12 THE COURT: Okay. Great. Then tomorrow morning
13 when the jury returns, I'll read to them the remaining
14 jury instructions from the jury instruction package.

16:51:59

15 They'll go into the deliberation room with the exhibit
16 binders and the verdict forms.

17 I'm going to provide each of them with their own
18 draft copy of the verdict form, and then one master for
19 the foreperson to fill out.

16:52:14

20 While they're deliberating, I would ask each
21 side to please make sure you have at least one attorney
22 available in the courtroom to answer questions. You
23 don't all need to be here, and I'll leave it up to you
24 who you decide should sit here in the courtroom. But I

16:52:30

25 prefer to have someone from each side available right

1 away in the event that we get questions of requests for
2 read back.

3 And we did get a note from one of the alternates
4 asking to receive notice before the verdict is read. And
16:52:46 5 I'd like to honor that request, since they've sacrificed
6 so much time to be here.

7 So my thinking is that from the time we get
8 notice from the jury that they've arrived at a verdict,
9 that we'll notify the alternates and wait 30 minutes.

16:53:06 10 Do either of you have any thoughts about that?

11 MR. WISNER: We'd be okay with even a longer
12 wait, if you thought that was appropriate. We're fine
13 with that, your Honor.

14 MR. LOMBARDI: Whatever your Honor thinks is
16:53:15 15 appropriate.

16 THE COURT: Okay. Then why don't we say
17 30 minutes. Okay?

18 All right. And then anything else we need to
19 discuss today?

16:53:21 20 MR. LOMBARDI: Not here, your Honor.

21 MR. GRIFFIS: When would you like to take up the
22 motion that I made in chambers, your Honor?

23 THE COURT: Why don't we take that up tomorrow
24 morning.

16:53:31 25 MR. GRIFFIS: Yes, your Honor.

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THE COURT: All right. Thank you.

MR. WISNER: Thank you.

MR. LOMBARDI: Thank you.

(Time noted: 4:53 p.m.)

--oOo--

1 REPORTER'S CERTIFICATE

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I certify that the proceedings in the within-titled cause were taken at the time and place herein named; that the proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said proceedings were thereafter transcribed into typewriting.

I further certify that I am not of counsel or Attorney for either or any of the parties to said Proceedings, not in any way interested in the outcome of the cause named in said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand:
August 7th, 2018.

<%signature%>
Leslie Rockwood Rosas
Certified Shorthand Reporter
State of California
Certificate No. 3462

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