

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE WINIFRED Y. SMITH, JUDGE PRESIDING

DEPARTMENT NUMBER 21

---oOo---

COORDINATION PROCEEDING)	
SPECIAL TITLE (RULE 3.550))	
)	
ROUNDUP PRODUCTS CASE)	JCCP No. 4953
)	
_____)	
THIS TRANSCRIPT RELATES TO:)	
)	
Pilliiod, et al.)	Case No. RG17862702
vs.)	
Monsanto Company, et al.)	Pages 3655 - 3814
_____)	Volume 23

Reporter's Transcript of Proceedings

Thursday, April 18, 2019

Reported by: Kelly L. Shainline, CSR No. 13476, RPR, CRR
Lori Stokes, CSR No. 12732, RPR
Stenographic Court Reporters



BAY AREA REPORTING
SOLUTIONS

888.526.8243
www.BayAreaReportingSolutions.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES OF COUNSEL:

For Plaintiffs:

THE MILLER FIRM, LLC
108 Railroad Avenue
Orange, Virginia 22960
(540)672-4224
BY: MICHAEL J. MILLER, ATTORNEY AT LAW
mmiller@millerfirmllc.com

BAUM HEDLUND ARISTEI & GOLDMAN PC
10940 Wilshire Boulevard, 17th Floor
Los Angeles, California 90024
(310) 207-3233
BY: R. BRENT WISNER, ATTORNEY AT LAW
rbwisner@baumhedlundlaw.com
PEDRAM ESFANDIARY, ATTORNEY AT LAW
pesfandiary@baumhedlundlaw.com

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

1 **APPEARANCES:** (CONTINUED)

2 For Defendants:

3 EVANS FEARS & SCHUTTERT LLP
4 2300 W. Sahara Ave, Suite 950
5 Las Vegas, Nevada 89102
6 (702) 805-0290

7 **BY: KELLY A. EVANS, ATTORNEY AT LAW**
8 kevens@efstriallaw.com

9 HINSHAW
10 One California Street, 18th Floor
11 San Francisco, California 94111
12 (415) 362-6000

13 **BY: EUGENE BROWN JR., ATTORNEY AT LAW**
14 ebrown@hinshawlaw.com

15 GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP
16 564 West Randolph Street, Suite 400
17 Chicago, Illinois 60661
18 (312) 681-6000

19 **BY: TAREK ISMAIL, ATTORNEY AT LAW**
20 tismail@goldmanismail.com

21 (Multiple other counsel present as reflected in the
22 minutes.)

23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Thursday, April 18, 2019

PLAINTIFFS' WITNESSES PAGE VOL.

RAJ, KAVITHA

By Video Deposition Resumed (not reported) 3679 23

PILLIOD, ALBERTA

Direct Examination by Mr. Miller 3681 23
Cross-Examination by Mr. Brown 3751 23

PILLIOD, ALVA

Direct Examination by Mr. Wisner 3760 23

PILLIOD, MICHAEL

Direct Examination by Mr. Miller 3807 23

RUBENSTEIN, JAMES

By Video Deposition (not reported) 3812 23

E X H I B I T S

TRIAL EXHIBITS DESCRIPTION IDEN EVID VOL.

Exhibit 2421 Pilliod, Alva 3784 23
Deposition Exhibit
3-A - Photograph, 6
Total

Exhibit 2442 Pilliod, Alva 3785 23
Deposition Exhibit
3-B - Photographs, 5
Total

Exhibit 2764 Photographs 3790 23

Exhibit 2768 Satellite Image 6789 3786 23
Stabulis Road

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>DESCRIPTION</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
Exhibit 2769	Satellite Image Gabor Property		3786	23
Exhibit 2770	Satellite Image Hartvickson Property		3786	23
Exhibit 2771	Pilliod, Alberta Deposition Exhibit 2: Itinerary to Chicago and Notes Produced at the Deposition		3786	23
Exhibit 2772	Pilliod, Alberta Deposition Exhibit 4: Copies of Photographs, 24 Pages		3787	23
Exhibit 2775	Pilliod, Alberta Deposition Exhibit 7: Copies of Photographs, 29 Pages		3788	23
Exhibit 2788	Pilliod, Alberta Deposition Exhibit 21: Hartvickson Property Photographs		3788	23
Exhibit 2789	Pilliod, Alberta Deposition Exhibit 22: Stabulis Property Photographs		3789	23
Exhibit 3026	Photographs		3790	23

1 Thursday, April 18, 2019

8:45 a.m.

2 P R O C E E D I N G S

3 ---oOo---

4 (Proceedings commenced in open court out of
5 the presence of the jury:)

6 **MR. BRADY:** Good morning, Your Honor.

7 **THE COURT:** Good morning.

8 **MR. BRADY:** I'm going to argue this on behalf
9 of the plaintiffs if it's okay with the Court.

10 **THE COURT:** That's fine.

11 **MR. BRADY:** You and I have a unique
12 perspective on *Howell* and *Corenbaum* since we've been
13 hearing the defense howling since 2011 so --

14 **THE COURT:** Well, I actually thought a lot
15 about this. I sent a memo out last night. I'm glad you
16 raised it when you did because it gave me a chance to
17 think about it. And I thought about it some more. And
18 then I came to this conclusion which I think is the
19 right answer.

20 With respect to I think the defense is asking
21 me, and you can look at the particularly history, Mr.
22 Ismail, to make a preliminary evidentiary ruling
23 regarding the expert opinion of Mr. Mills. And I've
24 ruled that he can testify about the Revlimid. I don't
25 know whether, implied in that, the plaintiffs was that I

1 agreed that his number \$20,000 or the Internet number
2 was okay or not okay.

3 But I thought about it. That's not my job
4 because experts base their opinion on hearsay all the
5 time. And it's up to the jury to make a decision as to
6 how much weight they want to give that opinion. And the
7 defense can cross about the basis for his opinion,
8 whether it's a sound opinion, whether they should rely
9 on it or not rely on it.

10 With respect to the plaintiffs, whatever
11 evidence -- I mean, I sent out a -- I mean, I had a lot
12 of questions. I thought to myself, well, what, is this
13 foundation related to the drug company, is it a -- well,
14 that's up to them to establish or not establish as a
15 basis for the reasonableness for the jury to consider
16 whatever number the economist comes up with.

17 This is not *Corenbaum* because there was a
18 basis to determine what the futures were. It was just
19 that they could in the full amount. So there's never
20 been a bill for this. I suspect there may never be a
21 bill for this. But there's never a bill. So there's no
22 floor -- there's no -- there's no floor for this. And
23 that's, I think, how it is different from *Corenbaum*.
24 There's never going to be a basis on which to say
25 there's a full amount or a reduced amount because she's

1 never had to pay that.

2 So I think that this is just one of those
3 issues where a jury will have to make a determination
4 and the lawyers will have to argue whether or not the
5 opinion is sound and should be relied upon and whether
6 or not there's enough evidence to base the reasonable
7 need for the -- the need, I think, is established. The
8 reasonableness is probably what they're going to have
9 to -- depending on which the plaintiffs offer by way of
10 evidence.

11 **MR. ISMAIL:** Thank you, Your Honor.

12 I do have some reaction to the Court's
13 perspective on it.

14 So when we addressed this issue pretrial, the
15 discussion was -- and I have the Court's comments on --
16 at the March 18th hearing. And what the Court indicated
17 is what -- with respect to motion in limine:

18 "I ruled that it needs to be consistent with
19 *Howell*, and I think the plaintiffs would agree it" has
20 to be consistent with *Howell*. So I denied the MIL as
21 moot only because we are all on the same page. It has
22 to be consistent with *Howell* and obviously *Corenbaum* as
23 it applies to futures.

24 What we have here actually, Your Honor, I
25 believe is worse in the perspective of the plaintiffs

1 are even further afield than they were in *Corenbaum*. In
2 that case, there was an expert opinion about the number
3 for future medical expenses based on what had been paid
4 historically by what the charge was historically. And
5 what the Court ruled there is the same principles under
6 *Howell* apply going forward.

7 Here there has been -- there's not one piece
8 of paper, one piece of evidence to indicate what has
9 actually been paid on Mrs. Pilliod's behalf for this
10 medicine, let alone what the hospital or the drug
11 companies charge for her medicine.

12 So it's even further afield than *Corenbaum*
13 insofar as what they've done is literally gone on the
14 Internet and printed out --

15 **THE COURT:** Let me stop you there. Because my
16 understanding is that they've never paid for this
17 because of a combination of charity and some sort of
18 drug program. So there is no paper trail for it because
19 she's never paid. So there's not going to be a paper
20 trail for the medication of what her expenses are.

21 **MR. ISMAIL:** And that very well may be the
22 case. Right. So they've never -- they've never
23 admitted that there's -- that the cost has been zero
24 thus far. So that's never been an admission from the
25 plaintiffs. I suspect Your Honor is correct, the

1 historical cost is zero. That's why they didn't even
2 argue it goes to the past medical expenses, which it's
3 not in the stipulation, there's no Revlimid cost looking
4 backwards because the number is zero. I mean, we
5 suspect that's the case.

6 So then the question is what do you put before
7 the jury to allow this expert to give an opinion as to
8 what the reasonable cost of future medical care is. And
9 what he's done is --

10 **THE COURT:** Went on the Internet.

11 **MR. ISMAIL:** -- they went on the Internet and
12 went to -- and I can pull it up, Your Honor, to show you
13 the sole basis for their number.

14 Yeah, if you can pull it up, it's
15 Exhibit 63 -- sorry -- 6582.

16 (Exhibit displayed.)

17 **MR. ISMAIL:** And so this is the sole
18 evidentiary basis for Mr. Mills' number.

19 If you look at the paragraph under Revlimid
20 prices where it says price -- so it says right on the
21 face of it "prices are for cash-paying customers only
22 and are not valid with insurance plans" on its face.

23 So we know this cash price that informs
24 Mr. Mills' calculation is indeed not an accurate price
25 in Mrs. Pilliod's case. Regardless of the patient

1 assistance program that the manufacturer has in place
2 for her cost to be zero, if the suggestion is that may
3 go away at some point, which again is speculative -- and
4 Your Honor does have a gatekeeping role with respect to
5 speculative expert testimony, that here, even if that
6 patient assistance program goes away, we are squarely
7 within the four corners of the concern in *Howell* and its
8 progeny about putting before this jury a number which,
9 on its face, is not the reasonable cost of her future
10 medical care.

11 **THE COURT:** But the problem I have and the
12 reason I came to the conclusion I came, this is unique.
13 There is no floor. There can't be because she's never
14 paid.

15 Now, if they didn't provide you with the
16 documentation of -- or paper trail, whatever that is, I
17 don't know whether you have medical bills for her and
18 they just don't appear or you think there are other
19 medical bills, that was, I think, a discovery issue that
20 should have been addressed.

21 But if you're saying that they can't -- first
22 of all, we're talking about a basic expert opinion. He
23 can base it on anything. And he can base it on hearsay.
24 And it can be argued that he has no basis -- reasonable
25 basis for this opinion.

1 If we all know there's no number because she's
2 never paid, anything is going to be speculative because
3 you don't -- what are the circumstances under which she
4 may incur some costs? Well, the drug program she's
5 enrolled in and the charity that she's receiving may go
6 away. So she may not -- circumstances may change and
7 she may not receive that.

8 But I think to say that she cannot present any
9 evidence on her future need for Revlimid because there's
10 no track record is wrong. And I don't think that falls
11 within *Corenbaum*.

12 I think I have to figure out, you know, if I
13 have a role, what the role is. And I really realized
14 last night, I said, well, what would I be ruling? Would
15 I be ruling he has to come up with a price that if she
16 were to be charged, this is the price she would be --
17 and when would that be.

18 **MR. ISMAIL:** So the case law says a jury may
19 not -- from an evidentiary perspective, wholly apart
20 from the question about does he have a reasonable basis
21 as an expert, the jury cannot predicate an award for
22 future medical expenses that is not reasonably tied to
23 what was actually paid by her on her behalf.

24 **THE COURT:** Okay. So let me stop you right
25 there. What do you do with that since she's never paid

1 a dime because of the two things, the charity and the
2 drug program?

3 **MR. ISMAIL:** Then in that scenario --

4 **THE COURT:** But she needs the Revlimid and it
5 does cost something.

6 **MR. ISMAIL:** Well, I mean, if going forward,
7 her expense is zero, then there isn't an award that
8 would be permissible under the case law.

9 **THE COURT:** But we don't know that. That's
10 forward.

11 **MR. ISMAIL:** Then in that scenario, then if
12 they wanted to develop expert testimony that says in the
13 event this patient assistance program is discontinued or
14 is no longer eligible, this would be the net price that
15 would be paid for -- on Mrs. Pilliod's behalf.

16 So she has two forms of insurance, AARP and
17 Medicare. It is information that they could have
18 developed to say in the event the cost is not zero going
19 forward, here is the *Howell*-permissible number that
20 would be in its place.

21 **THE COURT:** But the *Howell*-permissible number
22 is no less speculative than anything else. I mean,
23 you're in the land of speculation in this case no matter
24 what, just because of these particular circumstances.

25 **MR. ISMAIL:** But we know this number not only

1 is factually not going to be applied to her --

2 **THE COURT:** You don't know that and I don't
3 know that.

4 **MR. ISMAIL:** Well, it says it on the face of
5 the document.

6 **THE COURT:** What if she doesn't have
7 insurance? I mean, that's the problem, that there are
8 so many unknowns, potential unknowns, not valid with
9 insurance plans. Well, what if she doesn't have
10 insurance? It's as speculative as her -- everybody
11 being certain that she's not only going to have
12 insurance but she's never going to have to pay a dime
13 because that's what drug companies do, they -- you know,
14 maybe it's one big tax thing where they say they're
15 going to charge this but they ultimately charge that
16 amount. Or all contingencies that you assume might be
17 in her favor, none of those happens. She loses her
18 insurance, she loses the drug company program, and she
19 loses the charity, whatever that charity is.

20 **MR. ISMAIL:** She can't lose Medicare. So that
21 is one of her payers. That is abundantly clear.

22 The number that they're wanting to put in
23 front of the jury is an impermissible evidentiary full
24 stop. You cannot put before the jury, under *Howell* and
25 *Corenbaum*, the rack rate, cash-paying rate in the event

1 that that's not going to be -- that that's not tied to
2 what the cost is to the plaintiff.

3 And so our point isn't that they could never
4 come up with a number because historically it's been
5 zero. Our point is it can't be this number under the
6 case law.

7 And if you look -- and I know Your Honor
8 looked at the cases yesterday. The policy that
9 underlies it in part is because of the collateral source
10 rule.

11 **THE COURT:** Right.

12 **MR. ISMAIL:** Which you can on the one hand
13 have a rule that says insurance is not part of the case
14 and at the same time allow the plaintiff to put in and
15 pretending insurance hasn't negotiated a lower price for
16 the plaintiff.

17 And so the defendant can't challenge the
18 number under the collateral source rule, and therefore
19 the policy that underlie *Howell* and *Corenbaum* is -- the
20 solution for that is the plaintiffs have to put forth
21 the net number.

22 And my point isn't that because it's zero
23 historically, there isn't a scenario in which they
24 couldn't come up with a reasonable estimate. My point
25 is the one page they printed off the Internet on its

1 terms isn't it. And it's on its face.

2 And so to put this number before the jury and
3 allow them to then spin it forward beginning -- I mean,
4 Mr. Mills' calculation begins July 1st -- or June 1st,
5 2019, and then it just accumulates month after month
6 after month and he comes up with a large number, which
7 we know on the face of the predicate upon which he's
8 relying is not and cannot be the number that
9 Mrs. Pilliod -- the cost of which that she will have to
10 pay if it's nonzero ever going forward.

11 And so our point isn't that forever foreclosed
12 because it's zero, our point is this can't be the
13 predicate.

14 **THE COURT:** So what about that?

15 **MR. BRADY:** Your Honor, I think counsel,
16 because they're not from California, don't understand.
17 We try cases in this building every week of every month
18 of every year that involve injury claims. And in all of
19 those cases, the plaintiffs' doctors give expert
20 testimony about what they believe the future cost of the
21 plaintiffs' medical care will be and the future -- and
22 the plaintiffs' economists give -- you know, they take
23 those numbers and give the jury the total cost over
24 their projected lifetime.

25 And in every case, the defense, if they choose

1 to do so, brings in their own expert who comes in and
2 brings forth some of these theories that Mr. Ismail has
3 given to the Court about how these may be obtainable at
4 lower costs or there may be other, you know, types of
5 insurance or Medicare or drug programs available. And
6 that's always the job then of the jury to take the
7 information that both sides present. It's not the job
8 of the Court, as you've properly said, to foreclose one
9 side or the other.

10 There was nothing preventing Monsanto here
11 from bringing in their own cost control expert. We see
12 those in almost every single case.

13 **THE COURT:** I think what Mr. Ismail's point is
14 simply that if the drugs.com number -- is there no
15 number on the -- is there not a -- I am curious. Was
16 there some sort of cost estimate or pricing on the
17 Revlimid website? I'm curious. I mean drugs.com? I'm
18 just curious. I'm just asking.

19 **MR. BRADY:** No. Revlimid does -- they have a
20 website where they describe the benefits of the drug and
21 what its uses and purposes are and its history. But
22 they don't retail the drug directly from the company.
23 So, no, that's --

24 **THE COURT:** I was curious.

25 **MR. BRADY:** Your Honor, in a case like this,

1 Your Honor properly noted that even though there are
2 collateral sources now that are available to
3 Mrs. Pilliod for this drug, we don't know what those
4 will be in the future.

5 We have attorneys coming into this building
6 every month, defense lawyers, arguing that all the
7 juries should give the jurors is the Obamacare premiums,
8 while at the same time Congress and now the president
9 have spent the last six years, you know, doing
10 everything they can to dismantle this program. And the
11 bench -- the Court here has routinely allowed other
12 evidence saying that the prior price of this drug is
13 zero or that the plaintiffs --

14 (Telephone interruption.)

15 **MR. BRADY:** -- it's zero, it's not true.

16 **THE COURT:** I think what he's saying is
17 that --

18 (Telephone interruption.)

19 **THE COURT:** -- not valid with insurance plans
20 and Mrs. Pilliod has Medicare, and Medicare is forever
21 because it is what it is.

22 (Telephone interruption.)

23 **MR. WISNER:** Your Honor, one point about the
24 Medicare issue is actually there is something called the
25 Medicare Secondary Payer Act. And what that holds, and

1 it's a regulation that's been in effect since 2006,
2 essentially is if someone else is responsible for the
3 cost of the drugs, prescription drugs, meaning if we win
4 this case, Medicare would be fully within its right
5 saying, "I don't have to pay it. Monsanto has to foot
6 the bill," which is exactly the situation that we're
7 dealing with here.

8 The number that's presented on the drug
9 pricing list contemplates the worst-case scenario where
10 she loses, Medicare says we're not paying for your
11 Revlimid anymore. Or maybe they take it off the
12 formulary completely. That happens all the time.
13 Right? And so she's no longer able to get payments for
14 her drug and she'll die because of it. Right?

15 So there's that. And there's the charity
16 issue. So we're assuming the worst-case scenario, no
17 insurance, no charity. And that number is exactly the
18 number. That's the cash out of hand that you have to
19 pay, to pay for the drug.

20 So the very number that Mr. Ismail is saying
21 we haven't presented, we have. And they want to argue,
22 hey, ladies and gentlemen, that's not likely going to
23 happen so you should discount it. That's argument.
24 That's not the province of the Court.

25 **MR. BRADY:** There's no other number here

1 except for the retail number, Your Honor. That's the
2 number that we've given them.

3 Again, if they wanted to bring in an expert to
4 challenge that or to prevent some other scenario or to
5 try to talk about, you know, what certain carriers pay
6 or Medicare pays or historically is paid, they were free
7 to do that. They chose not to do that. They don't have
8 an expert on that.

9 This is the best evidence we have. And this
10 jury has to compensate Ms. Pilliod for this under 3333
11 under the Civil Code. It's her future damage. In fact,
12 it's one of her most important ones. This is the only
13 chance she has to make sure that she continues to get
14 that medicine for the rest of her life or she will die.

15 **MR. ISMAIL:** The *Corenbaum* award was
16 overturned, reversed because the plaintiffs put an
17 expert forward to estimate future medical expenses based
18 on the --

19 **MR. BRADY:** Past medical expenses.

20 **MR. ISMAIL:** May I finish?

21 **MR. BRADY:** Yes.

22 **MR. ISMAIL:** The total cost, not the net cost
23 for the past. And that award was reversed, not because
24 the defendant put in an expert to say she's going to
25 lose her -- she's not going to lose her insurance or not

1 because the plaintiff failed to mitigate by taking
2 additional expert -- that's not our argument. Our
3 argument is that medical expenses can -- there's not an
4 evidentiary basis to award either past or future medical
5 expenses that does not reasonably relate to the cost
6 that the plaintiff will pay.

7 And our point is this 19, there's not a
8 scenario -- and in *Corenbaum*, the argument -- the Court
9 didn't say, well, gee whiz, she might lose her
10 insurance. Therefore going forward we're going to allow
11 the full amount to be the lodestar for the future
12 calculation.

13 That was not the scenario that was
14 contemplated by the Court there. Just like it isn't
15 here.

16 So --

17 **THE COURT:** But the one thing I keep coming
18 back to is that in *Corenbaum* -- and I read it last night
19 several times. The one thing about *Corenbaum* is that
20 there was documentation for past medical, what they had
21 paid in the past. There isn't in this case.

22 And so you're really in the realm of some form
23 of speculation no matter what. So we're one step beyond
24 *Corenbaum*. And maybe it will be another case and maybe
25 it will be this case, I don't know. But I think in

1 terms of what my role at this point is in making a
2 determination that in fact Mr. Mills cannot put this 19
3 in front of the jury because we're certain -- which I'm
4 not -- that it can't possibly be this 19.

5 There are scenarios for pretty much everything
6 in this case in terms of whether she loses everything or
7 whether she never pays a dime. And I'm not going to
8 step in the middle of it and make an evidentiary ruling
9 that this 19 can't possibly be the 19 because there is a
10 theory under which it can be the 19. There's also a
11 theory under which it can't possibly be the 19. And I
12 think that's the realm of argument for the lawyers.

13 And I thought about this, and I think that's
14 it.

15 So we're going --

16 **MR. BRADY:** Thank you very much, Your Honor.

17 **MR. ISMAIL:** Can I have just one -- not to
18 reargue, Your Honor, with respect to that, but there is
19 a motion in limine on insurance. And for us to
20 challenge the reasonableness of this 19 which they're
21 going to get up and say this is the 19, we have to be
22 able -- respectfully, we have to challenge them that
23 this is indeed not the 19. Because she has insurance
24 and on its face of the document, it says this is not the
25 19 that is -- that applies to individuals who have

1 insurance.

2 And so we have -- to say that it's in the
3 realm of argument presupposes that we're allowed to
4 develop the evidence from which to argue from. And
5 here, in light of the collateral source rule motion in
6 limine ruling, to allow us to challenge this 19 would
7 require us to indeed show the very sentence that I have
8 on the screen right here with the predicate that she has
9 two forms of insurance and that neither Mr. Mills nor
10 Dr. Nabhan have the slightest idea what the actual cost
11 is to this -- for this drug for this individual.

12 And so that would be my request, that if the
13 Court is going to allow this as the factual predicate
14 for future medical expenses.

15 **MR. BRADY:** Your Honor, the reason why they
16 have two instructions, not just one, 105, an
17 introductory instruction, and 5105, the concluding
18 instruction that the jury should not consider insurance,
19 is because it's been determined to be so important and
20 still protective of our collateral source rule even in
21 light of *Howell* and its progeny in *Corenbaum*.

22 Also, the defense hasn't developed any of this
23 information. So all it will be is attorney argument.
24 So for Mr. Ismail to say that he should be able to walk
25 in front of this jury and argue that she may have

1 insurance that will cover this down the road, it flies
2 in the face of our 100-year-old -- 120-year-old
3 collateral source rule and certainly goes way, way, way
4 beyond what is --

5 **THE COURT:** Well, I'm not going to allow that
6 because I think that for sure would be a mistake.

7 However, there's a lot of room for argument
8 with respect to source, the uncertainty. I mean, I
9 think you can do -- you can make a pretty effective
10 argument without mentioning insurance. The charity, I
11 don't know whether or not what kind of evidence is going
12 to come in, but unless there is some fairly detailed
13 evidence about what it is, there's a lot of argument for
14 "She's never going to pay a dime, she's never paid a
15 dime." And that's one reason I don't want to get into
16 this because I don't think it's -- I mean, that's
17 argument.

18 But I also don't think that I can make a
19 ruling that the retail 19 can't possibly be the 19,
20 which is kind of what I'm coming back to, and I can feel
21 like I'm on solid ground. And I don't think *Corenbaum*
22 really does cover this.

23 **MR. BRADY:** Thank you, Your Honor.

24 **THE COURT:** Do we have the jurors?

25 **COURT ATTENDANT:** Everyone is here.

1 **THE COURT:** Are we starting out with a video?

2 **MR. MILLER:** Yes, Your Honor. We have about
3 45 minutes of video, and then we're going to call
4 Alberta Pilliod.

5 **THE COURT:** Do you want to take a short break
6 after the video?

7 **MR. MILLER:** I think that's a good idea.

8 **THE COURT:** Let's get the jurors.

9 (Recess taken at 9:07 a.m.)

10 (Proceedings resumed in open court in the
11 presence of the jury at 9:09 a.m.)

12 **THE COURT:** Good morning, ladies and
13 gentlemen.

14 We're going to continue with the testimony of
15 Dr. Raj --

16 **MR. MILLER:** Yes, Your Honor.

17 **THE COURT:** -- testifying regarding
18 Mr. Pilliod. And we'll begin with, I think, plaintiffs'
19 direct.

20 (Video excerpts from the deposition testimony
21 of Kavitha Raj resumed playing in open court; not
22 reported herein.)

23 **THE COURT:** Okay. That's the end of the
24 deposition.

25 **MR. MILLER:** That is the end of it,

1 Your Honor. We can call our next witness after the
2 break. It will be Alberta Pilliod.

3 **THE COURT:** Okay. We're going to take a
4 10-minute break. Thank you.

5 (Recess taken at 10:03 a.m.)

6 (Proceedings resumed in open court in the
7 presence of the jury at 10:20 a.m.)

8 **THE COURT:** We're going to resume with the
9 plaintiffs' next witness.

10 Mr. Miller.

11 **MR. MILLER:** Thank you, Your Honor.
12 We're going to call Alberta Pilliod right now.
13 Okay, Alberta, come on up.

14 **THE COURT:** If you would stand and be sworn,
15 Mrs. Pilliod.

16 **THE WITNESS:** Pardon me?

17 **THE COURT:** If you would stand and be sworn.

18 **ALBERTA PILLIOD,**
19 called as a witness for the plaintiffs, having been duly
20 sworn, testified as follows:

21 **THE WITNESS:** I do.

22 **THE CLERK:** Thank you. Please be seated.

23 And would you please state and spell your name
24 for the record.

25 **MR. MILLER:** Alberta, they want you to stand

1 and spell your name for the record.

2 **THE CLERK:** State and spell your name.

3 **THE WITNESS:** Alberta Pilliod, A-L-B-E-R-T-A.
4 Pilliod, P-I-L-L-I-O-D.

5 **THE CLERK:** Thank you.

6 **MR. MILLER:** All right, ma'am, have a seat.

7 **THE COURT:** You may proceed.

8 **DIRECT EXAMINATION**

9 **BY MR. MILLER:**

10 **Q.** Say good morning to everybody.

11 **A.** Good morning, everybody.

12 **Q.** What's your name?

13 **A.** Alberta Pilliod.

14 **Q.** Okay. Where are you from?

15 **A.** I'm originally from San Francisco, but I live
16 in Livermore and I have for the last 38 years, I think.

17 **Q.** Okay.

18 **MR. MILLER:** Can everybody hear her?

19 Okay, all right.

20 **Q.** Let's go over your education for a second so
21 folks can get to know you a little bit.

22 **A.** Okay. I went to school in San Francisco. I
23 graduated from Presentation High School in '62. And I
24 went to Gonzaga University in Spokane for my freshman
25 year. And then while I was there, they opened a program

1 in Florence, Italy. So I had the chance to go to Italy
2 for a year.

3 And then after that year, as a junior, I
4 entered the convent.

5 Q. For those of -- some folks aren't Catholic.
6 What's a convent?

7 A. Okay. A convent that I went to, I was
8 learning to become a nun. And meanwhile going to school
9 at the convent in Los Gatos and learned to become a nun.

10 Q. How long did you --

11 A. I was only there for about nine months, and
12 the person in charge said that she didn't really think
13 that I had the right frame of mind, I guess, to be at
14 the convent. So I left. Or they escorted me out.

15 And then as a senior I went to the University
16 of San Francisco to finish up my BA degree. And then I
17 started teaching after that.

18 Q. What year did you start teaching?

19 A. I started teaching in 1966, and I taught until
20 June of 2000 -- I mean 2000 -- 1970.

21 Q. 1970?

22 A. 1970.

23 Q. Okay. So where did you teach?

24 A. I taught in the Haight-Ashbury and the Western
25 Addition and the Mission District.

1 Q. And then what was your next career move after
2 that?

3 A. Well, right after that, I finished in June
4 teaching and I had my first -- my daughter in August of
5 1971. And then I didn't go back to teaching for quite a
6 while after that, partly because I wanted to take care
7 of my daughter and partly because we started moving a
8 lot with my husband's job.

9 So we went to the Sacramento area. And then
10 we went to Tampa, Florida. And then we went to
11 North Carolina. And I had my son -- our son in
12 North Carolina in '72. And then I was there for about a
13 year.

14 And we went to Canada to -- near Toronto,
15 Canada, for two years. And there I didn't teach. I was
16 on a wife visa, so to speak. My husband could work, but
17 I couldn't, I wasn't allowed to work. And I don't know
18 if I would have anyway. I had two little kids at the
19 time. And even though Al's salary was pretty low, we
20 managed to survive that.

21 Then we moved back to California in '74, I
22 think it was. And we lived in Fremont for seven years
23 and then in Union City for about a year and a half. And
24 then we moved to Livermore.

25 Q. Been in Livermore ever since?

1 **A.** Yes.

2 **Q.** Get back into teaching?

3 **A.** I got -- well, I was teaching a little bit
4 when we lived in Fremont. I was working with English as
5 a Second Language, and I did some substituting in
6 Fremont.

7 Then when Al got really sick, I stopped my
8 English as a Second Language class because he took a lot
9 of care for a short period of time. But meanwhile I
10 lost my job because I was out.

11 **Q.** Are you talking about 1978 with the
12 encephalitis?

13 **A.** Uh-huh.

14 **Q.** Okay. So let's follow on with your career,
15 and we're going to come back and talk about Al and you
16 in a minute.

17 **A.** Okay.

18 **Q.** So let's finish up with this career thing. So
19 you're a teacher.

20 **A.** Right.

21 **Q.** You're in Fremont. We know in 1982 you all
22 move out to Livermore.

23 Let's walk through your career there.

24 **A.** In Livermore?

25 **Q.** Yeah.

1 **A.** Okay. In Livermore I started substitute
2 teaching. My kids were in fourth and sixth grades by
3 then. And then I started teaching, well, English as a
4 Second Language, as I said.

5 And then when we moved to Livermore -- I'm
6 sorry.

7 **Q.** After Livermore where did you --

8 **A.** I already did that.

9 When we were in Livermore, I started
10 substituting also. And then I did some home and
11 hospital teaching with kids that are out for illness
12 like mononucleosis or a car accident or something like
13 that. They're still capable of doing their school work,
14 but they can't go to school. So I would get work from
15 their teachers and bring it to their homes and work with
16 them on all their subjects.

17 I kind of transitioned from that into Vineyard
18 High School which was an alternative high school where I
19 taught kids that had had problems in the regular high
20 school. And I really liked that job and teaching
21 those -- the kids in that environment.

22 **Q.** Were you full-time there, Alberta?

23 **A.** No, I was not full-time there.

24 **Q.** All right. How long did you stay there?

25 **A.** Well, I was there until I became an

1 administrator there. Because I was doing a lot of the
2 administrative tasks at that school and decided to
3 transition to administrator.

4 So I went to Cal State Hayward, now Cal State
5 East Bay, and got my administrative credential and then
6 went on to get my master's from Cal State also.

7 And then after I got the job as an
8 administrator in -- at Vineyard and at the adult school,
9 I went back to -- or I went to St. Mary's College in
10 Moraga to get what's called 2-2 which means you're
11 working as an administrator but you need some more
12 education.

13 Q. Okay. So how long did you stay in teaching or
14 administrating as an educator?

15 A. I was there till 2004. And then I retired --
16 the last year I was at Livermore High School as the --
17 as a vice principal of Livermore High School. And then
18 I retired from Livermore High School and went on a
19 really big trip.

20 And then after that, I started subbing as an
21 administrator when the District would need me. So I
22 think that particular year they needed me a lot. Some
23 years, a whole bunch other years, not as much.

24 There was a limit on how much I could work
25 which came to the equivalent of about half a year, and I

1 only surpassed that once. According to the State
2 Teachers Retirement System at that time, if you worked
3 over the amount that they said you could earn, then they
4 just took that amount automatically out of your
5 retirement.

6 So, but the District did ask for an exception
7 because I was really needed for a very long time that
8 particular year.

9 And I continued working until I had cancer.
10 And then I wasn't -- well --

11 **Q.** Are you talking about the brain cancer?

12 **A.** Uh-huh.

13 **Q.** 2015?

14 **A.** 2016. When I had the bladder cancer, I didn't
15 work initially when I was getting treatment, but I
16 worked that school year. It was just -- I'll explain
17 the bladder cancer, I guess, later?

18 **Q.** Yeah.

19 **A.** Okay.

20 **Q.** We'll get a chance to get through all this.

21 But I want to go back to that 2004, you retire
22 from and then work part-time, as you've explained.

23 You said you took a really big trip. Is that
24 you and Al?

25 **A.** Yes.

1 **Q.** What did you do?

2 **A.** Well, we started with a trip to Italy because
3 I had gone to school there, and he said, well, he wanted
4 to go to Germany because he had been in the Army there.

5 And I asked one of the co-administrators at
6 the school at Livermore High, and he said, well, you
7 know, you could really go around the world for the same
8 price as to Europe and back. So he gave me a couple of
9 websites, and I went -- or we went down to
10 San Francisco. And, sure enough, we could go around the
11 world as long as we kept going the same direction.

12 So I kind of plotted out places that we wanted
13 to go. And we went to, I don't know, 10 airplane stops
14 for that time. And we were gone for 88 days.

15 **Q.** Sounds like a movie.

16 **A.** Yeah. Yeah.

17 **Q.** How many years have you been married to this
18 fellow?

19 **A.** 49-plus.

20 **MR. MILLER:** Could we take a look at
21 Exhibit 3026, page 4.

22 Permission to publish?

23 **THE COURT:** 2036?

24 **MR. MILLER:** 3026, Your Honor, page 4.

25 **THE COURT:** Oh, I'm sorry. 3026.

1 **MR. MILLER:** Page 4 of that exhibit.

2 Permission to publish?

3 **MR. BROWN:** Sure.

4 **MR. MILLER:** Okay. Put that up on the screen.

5 (Exhibit published.)

6 **BY MR. MILLER:**

7 **Q.** Who's this?

8 **A.** Oh, that's our wedding picture in front of our
9 parents' house. That's 1970. Al's sister is behind us.

10 **Q.** We're just going to look at one or two more
11 pictures while we're there.

12 **MR. MILLER:** Go to page 1. Permission to
13 publish that as well? Same exhibit.

14 **THE COURT:** It's been published.

15 (Exhibit published.)

16 **BY MR. MILLER:**

17 **Q.** Let's take a look at that. Who's that fellow
18 there on the boat?

19 **A.** That handsome fellow is my husband, Al.

20 **Q.** I'm not prone to showing a picture of somebody
21 in a bathing suit at a trial as a rule, but is that
22 about the weight he held most of his life? Did he get a
23 little heavier? How much?

24 **A.** He's been heavier. I'm not sure when that
25 picture was taken, but I'm guessing he was in a tropical

1 area because of the shorts. He has -- typically sails
2 around San Francisco Bay. And it's hard to tell where
3 that is, but I think it might be Hawaii.

4 Q. Whose boat is that?

5 A. That's our boat.

6 Q. Does he love that boat?

7 A. Do I love the boat?

8 Q. Does he love the boat?

9 A. Oh, does he love the boat? Yes.

10 Q. I know the husbands always love them more than
11 the wives.

12 We're just leading this into one big question:
13 How active and healthy of a guy was Al before he had
14 non-Hodgkin's lymphoma? We heard about his problems.
15 We're going to hear some more about them.

16 But just describe for the jury day in day out,
17 when he wasn't having encephalitis like he did back in
18 the '70s, what kind of guy are we talking about?

19 A. He's had a few medical issues, but as soon as
20 whatever they are, are over, he's back to his normal
21 self. And his normal self is extremely active. He
22 sailed this boat when he was 54, 55 with someone else to
23 Hawaii. And then -- it's a 30-foot sailboat.

24 And then he sailed to Palmyra Atoll which is
25 somewhere out in the Pacific. Stayed there for about

1 30 days. There's one guy is a caretaker and -- the guy
2 that he sailed with. And then he came back to Oahu.
3 And the person that was supposed to sail back with him
4 had a family emergency so he decided to solo across the
5 Pacific in that 30-foot sailboat.

6 He had some adventures along the way, some
7 storms, and he had to stay awake a lot. So he was very
8 skinny when he got home.

9 Aside from that, he did a lot of other really
10 active things. Some I didn't approve of, like
11 parachuting and bungee jumping. He was a pilot at one
12 time.

13 We both learned to scuba dive and went scuba
14 diving both in Monterey and in Hawaii. We went
15 snorkeling.

16 He, at one time, worked for the Forest Service
17 before we were married, and he continued those skills at
18 our house. So we had, I don't know, something like
19 15 trees that were 30 to 40 feet tall, Italian cypress,
20 and he managed to take them all down because they
21 were -- the root system was pulling up cement.

22 Q. All right. Let's look at one last picture in
23 this exhibit, and then we'll move on.

24 MR. MILLER: 3026, page 2, if we can look at
25 that real quick.

1 (Exhibit published.)

2 **BY MR. WISNER:**

3 Q. Now that's you?

4 A. That is me.

5 Q. On the boat?

6 A. Yeah. I wasn't on the boat too often.

7 Q. You didn't go to Hawaii, we're not trying to
8 say that. But about what year is that, as best you can
9 recall?

10 A. I think that's when we were watching the space
11 shuttle take its final trip down to L.A. And that
12 was -- I don't know when that was. Maybe five years
13 ago? I'm really not sure when that one was.

14 Q. Okay. About five years ago?

15 A. Uh-huh.

16 Q. You have two kids?

17 A. I have two kids, Ann Michelle Eastman, who
18 is -- was born in '71. She's, I think, 48 now. And
19 Michael Thomas who is her younger brother, and he was
20 the one born in North Carolina. And he was born in
21 70 -- he was born -- I forget right now. And he is
22 coming to testify today.

23 Q. He lives in Hawaii now?

24 A. He lives in Hawaii. He's lived there for
25 about eight, ten years with his wife. And -- yeah, he

1 loves it over there.

2 Q. Before your brain cancer, did you go visit him
3 over there every year?

4 A. I did.

5 Q. Have you been back since the brain cancer?

6 A. Not exactly.

7 Q. Have you or not?

8 A. Well, I went over -- I didn't feel really
9 well --

10 Q. We're going to talk about that. That's the
11 last trip --

12 A. That was my last trip.

13 Q. All right. Don't jump ahead on me. But,
14 yeah, since you came back from that trip --

15 A. No.

16 Q. -- you haven't been back?

17 A. No.

18 Q. All right. Let me go -- I just want to take a
19 look at a larger picture of the larger family.

20 MR. MILLER: 2764, page 4. Permission to
21 publish?

22 THE COURT: 2764, you said?

23 MR. MILLER: Yes, Your Honor.

24 THE COURT: Any objection, counsel?

25 MR. BROWN: Which page?

1 **MR. MILLER:** Yes, page 4.

2 **MR. BROWN:** No, Your Honor.

3 (Exhibit published.)

4 **BY MR. MILLER:**

5 **Q.** All right. Let's take a look at that real
6 quick. I just want to get an idea. Who's that clan up
7 there?

8 **A.** Okay. Those are my relatives. Some of them.
9 Oh, this is going back a ways. This is we had a family
10 reunion for my dad's side of the family, and everybody
11 who is somewhat related to him was invited. So --

12 **Q.** Is that Al in there?

13 **A.** Al is in here. I don't know where my dad is.
14 Oh, there he is with the crown on. He was 98 at the
15 time. And our daughter is the one sitting in the middle
16 with her son Nathan on her lap.

17 **Q.** Your dad was 98 at the time?

18 **A.** Yeah.

19 **Q.** Oh.

20 **A.** And my sister is next to my son, who's the
21 tall one there.

22 **Q.** That's Mike in the back?

23 **A.** Mike in the background. And my sister --

24 **Q.** He has hair?

25 **A.** He has hair then, yeah.

1 Q. Let's look at the picture on the bottom part
2 there. Now, is that you and Al?

3 A. That is.

4 Q. About how long ago was that picture taken?

5 A. I don't know when that was taken.

6 Q. That's all right.

7 Let's talk about --

8 **MR. MILLER:** We can pull that down.

9 Q. I want to talk about your opportunity to own
10 your own home. Did you and Al get a chance to buy a
11 home?

12 A. Yes, we have.

13 Q. All right. Where and when?

14 A. We bought the home that we live in now, in
15 1982.

16 Q. Okay. So you've been living in Livermore
17 since 1982, same property?

18 A. Same property.

19 Q. And that's on Agate.

20 A. Agate.

21 Q. Agate, I'm sorry. Is it avenue or street?

22 A. Agate Court.

23 Q. Agate Court, okay. So you've been
24 consistently at Agate Court since 1982?

25 A. Yes.

1 Q. All right. So let's look at Exhibit 2767.

2 MR. MILLER: Permission to publish?

3 MR. BROWN: No objection.

4 (Exhibit published.)

5 BY MR. MILLER:

6 Q. And is that an aerial view of the home that
7 you and Al shared for the last 37 years?

8 A. Right. We're the -- well, it's got a little
9 red dot over our house. That's correct.

10 Q. Is that your pool in the backyard?

11 A. Right. That's our pool in the backyard.

12 Q. And that's your shed over there?

13 A. And our shed. And the fence line goes to the
14 very bottom of the picture.

15 Q. When you bought that place, were you proud of
16 it?

17 A. Oh, yeah. I loved it.

18 Q. Still proud?

19 A. When we walked in the front door -- because
20 I'd looked at a lot of houses, and we opened the front
21 door and we said this is it. And our realtor said, no,
22 no, you've got to see the house. And we said, no, this
23 is the house we want. So, you know, we were really
24 convinced that that was it.

25 Q. Well, the reason we've all been here for the

1 last month is you started using Roundup on that
2 property?

3 **A.** Yes.

4 **Q.** What year?

5 **A.** Probably the year we got it.

6 **Q.** Okay. And where did you spray the Roundup?
7 In the driveway?

8 **A.** We sprayed it in the driveway, the entryway.

9 **MR. MILLER:** Okay. Let's turn to
10 Exhibit 2772. Permission to publish?

11 **THE WITNESS:** So do you want me to continue
12 where we sprayed?

13 **MR. MILLER:** We're going to put up a picture
14 with more detail, with the Court's permission.

15 **THE COURT:** Yes, go ahead.

16 **MR. MILLER:** All right. Let's put up that
17 picture, please.

18 (Exhibit published.)

19 **BY MR. MILLER:**

20 **Q.** All right. Now, is this more of a bird's eye
21 view of the driveway there?

22 **A.** Right. That's recent because there used to be
23 lawn on the left side. And with the water shortage, we
24 put in bark and plants that didn't need as much
25 watering.

1 **Q.** Okay. Did you spray when the weeds come up in
2 the mulch?

3 **A.** Yes.

4 **Q.** Did you spray when weeds would come up in the
5 driveway?

6 **A.** Oh, yeah. And over on the right side, when we
7 moved in, now there's a bunch of plants, but at the time
8 it was just all rock. So that had a lot of weeds in it
9 too.

10 **MR. MILLER:** Let's go to page 3 of this
11 exhibit, if we can.

12 (Exhibit published.)

13 **BY MR. MILLER:**

14 **Q.** Did you spray back there around the hot tub?

15 **A.** Yeah.

16 **MR. BROWN:** Excuse me, Your Honor.

17 Can we address the Court for one second?

18 **THE WITNESS:** Well, yeah, except it was a
19 different hot tub.

20 **THE COURT:** Just one second, Mrs. Pilliod.

21 **MR. MILLER:** Hold on. We're going to talk to
22 the Court for one second.

23 (Sidebar held but not reported.)

24 **BY MR. MILLER:**

25 **Q.** Let's walk us through the backyard and tell us

1 where you sprayed.

2 A. Okay. We sprayed -- are there any other
3 pictures of the backyard?

4 Q. Well, sure. We've looked at three. We've
5 talked about where you sprayed there.

6 A. Okay, well, we sprayed all the way around the
7 house.

8 Q. How about let's look at picture 4 so the jury
9 gets an idea.

10 (Exhibit published.)

11 **BY MR. MILLER:**

12 Q. Is that your backyard?

13 A. That's the front again. We sprayed in the --

14 Q. That's the driveway walking --

15 A. The driveway --

16 **THE COURT:** One voice at a time. So just,
17 Mr. Miller, you're going to have to lead this so that
18 you complete your question and then allow Mrs. Pilliod
19 to complete her answer.

20 **BY MR. MILLER:**

21 Q. It's a natural tendency to jump in on each
22 other, and I apologize. We have to stop, and then the
23 other person has to talk.

24 Tell us where this is in reference to the
25 driveway and the van that we just saw.

1 **BY MR. MILLER:**

2 **Q.** Now, what's this area?

3 **A.** Okay. Well, that's the swimming pool, and
4 there used to be Italian cypress trees around it, and
5 that's what Al cut out, the cypress trees.

6 And we would spray around the edge of the
7 pool. I think that's called coping. And then the weeds
8 would grow at all the dividers on the cement and some on
9 the rocks where there weren't plants.

10 **Q.** Let's look at Exhibit 11 -- page 11 of
11 Exhibit 2772.

12 (Exhibit published.)

13 **BY MR. MILLER:**

14 **Q.** Just describe that area.

15 **A.** That's the side of the house with -- the
16 little windows are the bathrooms, and the right side is
17 the shed. And this is an area that we kind of probably
18 don't spray as often just because we wait for the weeds
19 to die.

20 **Q.** Right. Is that the shed that --

21 **A.** That's the shed that -- yeah.

22 **Q.** -- you stored the Roundup in?

23 **A.** We stored our Roundup in that, yes.

24 **Q.** Okay. Let's look at page 13 there.

25 (Exhibit published.)

1 **BY MR. MILLER:**

2 **Q.** Explain to us what we're looking at there.

3 **A.** Well, it looks better now, but there's three
4 raised vegetable gardens. And in between each one, the
5 weeds would grow up at either end of the three raised
6 beds. So we would -- especially I did a lot of spraying
7 there because I don't like weeds with tomatoes and
8 things.

9 So we sprayed in between those and then on the
10 outside edges of each one. So one, two, three, four, I
11 guess five -- four.

12 **Q.** Let's look at page 15.

13 (Exhibit published.)

14 **BY MR. MILLER:**

15 **Q.** Is that a picture taken at your house?

16 **A.** Yes, it is. That was -- Al's slippers are
17 there.

18 **Q.** And what is that a picture of?

19 **A.** Well, when we learned about the dangers of
20 Roundup, Al thought he took all of the Roundup to the
21 hazardous waste dump. But he started digging through
22 the back of the shed where a lot of sailing gear is too,
23 and he found four more containers of Roundup. And
24 that's one of them. And that's the little spray one.

25 (Exhibit published.)

1 a week, but --

2 Q. That's an estimate?

3 A. It's an estimate. I mean, that's really all I
4 could do is estimate.

5 I think if I did anything, it was
6 underestimate the amounts that we used because I wanted
7 to be as honest as I could. And I felt we really used
8 more than I said, but I had nothing to substantiate it.

9 Q. Did Al also spray, or did you do all the
10 spraying?

11 A. No, he did more than I did.

12 Q. Okay.

13 A. I did about 25 percent of the spraying, and he
14 did 75 percent at each of the places.

15 Q. Would you be around when he sprayed, or did
16 you all work in the yard together, I guess is what I'm
17 asking?

18 A. We worked in the yard together. So sometimes
19 I'd be around when he sprayed. Sometimes the reverse
20 would happen. So occasionally I would get some mist
21 maybe from what he would spray or he could get some from
22 me.

23 Q. Did you wear overalls and boots and a mask and
24 gloves when you sprayed?

25 A. That would be a no. I used --

1 Q. What did you normally wear?

2 A. Flip-flops and shorts and either tank top or a
3 T-shirt most of the time.

4 Q. Did you guys spray the premixed Roundup, or
5 did you spray the concentrate where it would be mixed?

6 A. I never mixed the concentrated, but we had
7 both. I preferred the premixed stuff because it was a
8 smaller container and easier to use than the big
9 2-gallon size.

10 Q. Okay. Did you all use the premixed, though,
11 even if you didn't mix it? Did --

12 A. Al?

13 Q. Yeah.

14 A. Yeah. Yeah, he used premixed. We used the
15 premixed probably more than the concentrate. But we did
16 use the concentrate probably maybe 20 percent of the
17 time, I'd say.

18 Q. All right. So you've talked about your best
19 estimate of how often you used it. And you told us what
20 now, in that property, how often?

21 A. I have it written down because that was --
22 there were so many --

23 Q. We're going to go through all of them.

24 A. -- I mean, so many facts that I just --
25 Well, that doesn't help any at all.

1 Q. How often do you all go out and work in the
2 yard and use Roundup?

3 A. Probably about once a week.

4 Q. Okay.

5 A. We worked in the yard. And we worked -- we
6 didn't spray any Roundup on any of the properties
7 usually through the winter. So I figured on the nine
8 months that we sprayed and then three months was just
9 the weather wasn't right for spraying.

10 Q. All right. So from 1982 when you bought the
11 property at Agate until Al got diagnosed with
12 non-Hodgkin's lymphoma in 2011, did you all continue to
13 spray Roundup?

14 A. He didn't because he was too weakened to use
15 it.

16 Q. Well, after he got sick, but prior to getting
17 non-Hodgkin's lymphoma.

18 A. Yeah, prior to it, he did, yeah.

19 (Pause in the proceedings.)

20 **BY MR. MILLER:**

21 Q. All right. I'm looking at my notes here.
22 Doing pretty good. Moving right along.

23 All right. So you gave us your best estimate
24 on how often you use Roundup at Agate property; right?

25 A. Yeah.

1 Q. I'm still not pronouncing that right now.
2 Sorry. All right.

3 So you made a calculation, you assumed
4 one gallon. Is that an estimate?

5 A. Yes.

6 Q. And you assumed one gallon how often?

7 A. Once a week.

8 Q. Okay. Okay.

9 **MR. MILLER:** With the Court's permission, I'm
10 going to grab my board.

11 (Pause in the proceedings.)

12 **BY MR. MILLER:**

13 Q. So you bought the property in 1982?

14 A. Correct.

15 Q. And I'm political science, not math, but I'm
16 going to do the best I can with this.

17 So let's just stop at your 2010 because that's
18 the last year before Al got non-Hodgkin's lymphoma. All
19 right.

20 So you said about a gallon per month or --

21 A. A gallon per month. I think I said per week.
22 But a gallon per month.

23 Q. Well, you tell us which one is best. Is a
24 gallon a month more accurate? Let's go low.

25 A. I would say yeah.

1 Q. All right. 1982 to 2010 --

2 A. I think it's later than that, isn't it?

3 Q. That would be 28 years. I guess 28 years.

4 Let me make sure I have it right.

5 A. I think Al got sick later than that.

6 Q. 2011, yeah. I just want to be fair.

7 28 years, all right.

8 You used a gallon a month, that's 9 gallons a
9 year estimate.

10 202 gallons would be your best estimate in
11 that period? Or am I off? You tell me.

12 A. Well, I think I just have a longer time. So I
13 had 220.

14 Q. Okay. That's because you went right through
15 2011, I think.

16 A. Uh-huh.

17 Q. All right. I just want to have the lowest
18 estimate possible.

19 MR. BROWN: Excuse me, Your Honor.

20 THE COURT: Mr. --

21 MR. MILLER: Yes, Your Honor.

22 Q. Let's go to -- did there come a time when you
23 bought another property?

24 A. Yes.

25 Q. Okay. I know I'm going to mispronounce this.

1 Stabulis Road?

2 A. Uh-huh.

3 Q. Okay. Where is the Stabulis Road property?

4 A. Stabulis Road is in Valley Springs. And we
5 bought it with the intention of building a second home
6 or a vacation home or retirement home. It wasn't really
7 well defined.

8 Our daughter lives in Valley Springs, and she
9 has three children who were at home at the time. So we
10 thought it would be kind of nice to live in the same
11 general area and build on this three acres of property.

12 Q. All right. And what year did you buy it?

13 A. 2002.

14 Q. All right. Let's take a look at it. We have
15 a picture, 2768, page 1.

16 (Exhibit published.)

17 **BY MR. MILLER:**

18 Q. Now, did you all -- you say you bought it, it
19 didn't have a house on it?

20 A. Right.

21 Q. And how big a property was it?

22 A. It's three acres.

23 Q. Three acres.

24 And did you work on the property?

25 A. Oh, yes --

1 Q. What were you doing?

2 A. -- considerably.

3 Well, we were trying to clear off -- just a
4 rough estimate, there was like an acre from the road
5 going up to the top area. And then there was about an
6 acre of flat area, more or less flat. And then there
7 was an acre going downhill on the other side.

8 So our plan was to build a house on that top
9 acre. We first had to get rid of a lot of brush. And
10 Al and a friend of his did most of that. I didn't use
11 the power -- the chain saw. And part of it we burned,
12 and part of it was put in one of those mulchers.

13 So it took a considerable amount of work to
14 get it out. And it was really weedy. I don't know what
15 it was but some kind of a scrub brush.

16 And then that took probably close to a half a
17 year to get that all cleared.

18 But after that, we sprayed the driveway and
19 the whole perimeter of the three acres to put a low
20 fence in. And then --

21 Q. Sprayed it with what, ma'am?

22 A. I'm sorry?

23 Q. Sprayed it with what?

24 A. Oh, Roundup. And then we used --

25 Q. I'm going to show you pictures. I'd like you

1 to look at 2789, page 10. We have a picture of what you
2 just described. And I'd like you to --

3 **THE COURT:** Hold on one second.

4 **MR. MILLER:** I'm sorry. I thought that was
5 okay. Excuse me, I apologize.

6 2789, 10.

7 **MR. BROWN:** These are fine.

8 **THE COURT:** Okay.

9 **MR. MILLER:** Let's put that up if we could.

10 (Exhibit published.)

11 **BY MR. MILLER:**

12 **Q.** What's this a picture of?

13 **A.** That's Al with all the scrub brush before it
14 was cut down.

15 **Q.** So who cut it down?

16 **A.** Al did.

17 **Q.** Okay. Let's look at 2789, page 8.

18 (Exhibit published.)

19 **BY MR. MILLER:**

20 **Q.** What's this a picture of?

21 **A.** That's our daughter putting a fence in the
22 front of the property after we'd sprayed some Roundup on
23 the property and I thought a white picket fence would be
24 very pretty in the front.

25 **Q.** So you sprayed Roundup how in relation to the

1 fence?

2 A. Well, where the fence was going. So probably
3 two to three feet along that path there.

4 Q. And you told us you owned the property for two
5 and a half years but in fairness didn't use Roundup in
6 the first six months you were there?

7 A. Right.

8 Q. And then once you started using Roundup, did
9 you use it that entire last two years?

10 A. Well, except the winter again.

11 Q. Sure.

12 A. What happened was Al would spray it or I would
13 spray it, and it happened to be a really rainy year so a
14 lot of the weeds would grow back up again and we'd have
15 to spray it again.

16 Q. Would you say you sprayed how much there in
17 terms of volume?

18 A. I figured about two gallons a week there.

19 Q. A month? For two years?

20 A. For two years.

21 Q. Only in the nine months?

22 A. Right.

23 Q. So two gallons a month, nine months a year,
24 that's 18 months. It would be 36 gallons total over at
25 Stabulis.

1 **A.** And I came up with 45, but I think I used
2 maybe 24 months, I'm not sure. I don't have the -- how
3 I figured it. I just have that I got 45 gallons.

4 **Q.** Okay. All right. But just so on your
5 testimony here today, and I know this is an estimate,
6 but if you sprayed it nine months a year for two years,
7 that would be 18 months total.

8 **A.** Right. But we had it two and a half years.

9 **Q.** Right, but you didn't spray it the first six
10 months.

11 **A.** Oh, that's right.

12 **Q.** And you didn't spray it in the winter; right?

13 **A.** Right.

14 **Q.** You sprayed it nine months a year.

15 So we're trying to get some fair estimates
16 here; right? I know these --

17 **A.** They're estimates.

18 **Q.** Okay. All right. Sure.

19 Same thing. Did you -- what did you wear when
20 you sprayed over there?

21 **A.** There sometimes I wore shorts, sometimes I
22 wore long pants. Usually wore a T-shirt up there. And
23 more often than not, I probably wore tennis shoes
24 because it was a pretty rough terrain. I'm sure some of
25 the times I wore flip-flops too because I tend to wear

1 flip-flops a lot.

2 Q. And what was your plan again to do -- what
3 were you going to do with that property?

4 A. Well, we were going to build a house on it.
5 And Al kind of had deals of -- or idea of this little
6 very small place and I had kind of an elaborate thing in
7 mind, an eight-sided place with observation on the top
8 for stargazing.

9 But it turned out that we didn't -- we decided
10 not to build there. One reason was the cost of lumber
11 went up really dramatically. And there were a lot of
12 taxes and there were a lot of things we hadn't figured
13 out originally. We just didn't have the money to build
14 it.

15 And then the other reason was we were kind
16 of -- you can't really tell from pictures, but there was
17 kind of a valley and then it went back up by the
18 properties on the other side, and there was some really
19 noisy dogs that just made it not the peaceful place that
20 we wanted.

21 **MR. MILLER:** Let's take a look at, with the
22 Court's permission, 2421, page 2.

23 **MR. BROWN:** I've looked at this entire series,
24 Your Honor. They're fine.

25 (Exhibit displayed.)

1 **BY MR. MILLER:**

2 **Q.** Let's look at page 2 of that exhibit.

3 Now who's that?

4 **A.** That's Al standing around toward the front of
5 the property where the stakes were in for the picket
6 fence in front, and then the beginnings of -- yeah, the
7 beginnings of the fence that he was going to put in.

8 **Q.** Was that area sprayed as well?

9 **A.** Oh, yes.

10 **Q.** Let's look at Exhibit 4 -- page 4 from that
11 Exhibit 2421.

12 (Exhibit published.)

13 **BY MR. MILLER:**

14 **Q.** Where is that on the property?

15 **A.** I think it's on the top of the property. It
16 must have been one of the edges, though. Or it could
17 have been the driveway.

18 **Q.** Okay.

19 **A.** We had to mow down the driveway also. So I'm
20 not really sure.

21 **Q.** Do you have a riding lawn mower you used to
22 carry out there?

23 **A.** Pardon?

24 **Q.** Do you have a riding lawn mower you used to
25 carry out there?

1 A. We bought a driving lawn mower to be out
2 there.

3 Q. Let's look at page 6 of that exhibit.

4 (Exhibit published.)

5 **BY MR. MILLER:**

6 Q. Is that you working with Al?

7 A. Yeah. Or having fun on the ride-on, the lawn
8 mower. I'm not sure which on that one.

9 Q. When you sprayed Roundup, is that the kind of
10 outfit you wore?

11 A. Pardon?

12 Q. Is that the kind of outfit you wore when you
13 sprayed Roundup?

14 A. Yeah.

15 Q. And page 10 of that exhibit.

16 (Exhibit published.)

17 **BY MR. MILLER:**

18 Q. Is that on the property?

19 A. Yeah, that's on the property. That's -- on
20 the left is our dog, Homer. And on the blanket is our
21 granddaughter, our oldest granddaughter, Portia.

22 And I'm sitting on the chair. And we're
23 burning some of the wood that you see behind Homer, and
24 also roasting marshmallows at the same time.

25 Q. All right. Go to Exhibit 2771.

1 (Exhibit published.)

2 **BY MR. MILLER:**

3 Q. Now, did there come a time after you had
4 non-Hodgkin's lymphoma and after Al had non-Hodgkin's
5 lymphoma that you hired our law firm?

6 A. That I what?

7 Q. Hired our law firm?

8 A. Yes.

9 Q. Okay. And did I ask you to fly to Chicago?

10 A. Yes.

11 Q. Did you fly to Chicago?

12 A. I did.

13 Q. Who did you see in Chicago?

14 A. Dr. Nabhan.

15 Q. Dr. Nabhan, I believe Chadi Nabhan?

16 A. Yes.

17 Q. Did Al go with you?

18 A. He did.

19 Q. Okay. And did Dr. Nabhan talk to you about
20 exposure that you had?

21 A. He did.

22 Q. And Dr. Nabhan will be here Monday and we'll
23 get a chance to talk to him as well.

24 And on the way back, did you do a more formal
25 calculation of your exposure than what you told

1 Dr. Nabhan?

2 A. I did.

3 Q. What did you tell Dr. Nabhan?

4 A. I told him -- or we told him that we used lots
5 of Roundup, and I used that term thinking really that we
6 did use lots of Roundup. And --

7 Q. What did he tell you?

8 A. He said that we needed to be more specific as
9 to the amount that we used. And that kind of made sense
10 to me because "lots" is one of those words that just can
11 mean a lot of things to a lot of people.

12 So on the way back from Chicago, I took the
13 back of something and was figuring out how much we used
14 at each property and how much time we had it and --

15 Q. And is Exhibit 2771 those calculations?

16 Let's go to page 4 of that exhibit.

17 (Exhibit published.)

18 **THE WITNESS:** Yes.

19 **BY MR. MILLER:**

20 Q. Okay. Let's read what you calculated on the
21 way back. 6789 on Stabulis, three acres.

22 Did I read that right?

23 A. Correct.

24 Q. And you put down the years you owned it?

25 A. Uh-huh.

1 Q. You put down nine months. What does that
2 mean?

3 A. That we sprayed nine months out of the year.

4 Q. Okay. And you did some calculations and came
5 up with an estimate of how much Roundup you used on that
6 property?

7 A. Right.

8 Q. Let's go to the next property. Gabor?

9 A. Uh-huh.

10 Q. What's Gabor? We haven't talked about Gabor
11 yet.

12 A. So Gabor was the house that we bought right
13 before we sold Stabulis. And it was a very
14 not-well-used house. It was really little. It was
15 under 1,000 square feet. But the woman who lived in it
16 was a bare subsistence life that she lived. So
17 nothing -- there was no hot water heater. There was
18 just a path between where she slept on the couch into
19 the bathroom. There was no hot water. It was just a
20 very primitive place.

21 But we wanted it. And there were two half
22 acres on it, and it was a very flat area. She did quite
23 a bit of -- she liked the outdoors. And she -- there
24 was an island driveway that was really big that you came
25 in through a gate on the side, on Gabor, and drove down

1 the driveway. And you could park in front of the house.
2 And then you could go out on the other side of this
3 island. And then behind the house there were a lot of
4 trees. And there were ducks at the time that we moved
5 there.

6 Q. And you bought that property what year?

7 A. 2004.

8 Q. And you owned the property until what year?

9 A. I think it was 2016.

10 Thank you very much. I thought it was '17.

11 Q. And then you wrote "rented from 2014"?

12 A. Yeah, 2014 to 2016.

13 Q. Did you spray Roundup at that property? And
14 if so, when?

15 A. Well, we sprayed it when we owned it until a
16 tenant moved in. But, again, you know, as I said, it
17 needed a lot of work so we couldn't rent it out for a
18 long time.

19 Q. So it started being rented in 2014?

20 A. Uh-huh.

21 Q. In the 10 years you owned it before it was
22 rented, did you spray Roundup there?

23 A. Yes, I did. Yes, he did.

24 Q. All right. And how often?

25 A. About once a week and about a gallon a month.

1 Q. Okay. And that wasn't 12 months a year,
2 though?

3 A. Huh-uh.

4 Q. How many months a yeah?

5 A. It was the same. Nine months a year.

6 Q. So about -- would you think about a gallon a
7 month?

8 All right. So gallon a month would be 10.
9 That would be 90 months because it was 10 years; right?

10 A. Uh-huh.

11 Q. 90 months, a gallon a month would be
12 approximately 90 gallons?

13 A. Uh-huh.

14 Q. That's math even I can do; right? I know
15 these are just estimates.

16 And that's which property, the Gabor property?

17 A. Gabor.

18 Q. Okay. Gabor.

19 This one is Stabulis, right, the 36 gallons;
20 right?

21 A. Uh-huh.

22 Q. All right. Now we have a picture. We'll go
23 back to this outline in a minute, but if we could go to
24 Exhibit 2769, page 1.

25 **MR. MILLER:** 2769, page 1, I think it's

1 already agreed upon.

2 **MR. BROWN:** What did you say, 2769?

3 **MR. MILLER:** Yes, sir. I'm sorry. 2769,
4 page 1.

5 **THE COURT:** There's only one page, at least in
6 mine.

7 **MR. MILLER:** Yes.

8 (Exhibit published.)

9 **BY MR. MILLER:**

10 **Q.** Page 1. What is this property?

11 **A.** That's the property of Gabor. And on the
12 bottom is that gate I was describing. And there's a lot
13 of trees so it's really hard to see what we could --
14 what we had to spray. But we had to spray that really
15 long -- around the island which was the driveway.

16 **Q.** All right.

17 **A.** And Al bought a bunch of rocks to put in
18 because in the rain it got very muddy in the driveway.

19 And then in front of the house, we had to
20 spray where the parking area was. And that was a
21 considerable size.

22 And then we sprayed around the barn and the
23 chicken coop, which let's see if it shows or not. It's
24 kind of hard to see.

25 **Q.** At each of the properties, is your estimate

1 that you sprayed about 25 percent of the time and Al
2 sprayed about 75 percent?

3 A. Right.

4 Q. Does that vary per property, or is that a
5 reasonable estimate for all of them?

6 A. I used it for all of them.

7 Q. Okay. All right.

8 Let's go back to the Exhibit 2771. There's
9 one other property on there. If we go to the bottom
10 there.

11 (Exhibit published.)

12 **BY MR. MILLER:**

13 Q. And what property is that, ma'am?

14 A. That's the one on Hartvickson.

15 Q. Hartvickson. And what is the story with that
16 property? When did you buy it? And how long did you
17 own it?

18 A. We bought that one in 2008.

19 Q. Okay.

20 A. And sold it in 2010.

21 On the Stabulis property, prices were going
22 up. We just figured they would always go up. Not so
23 much on Gabor and Stabulis. We bought -- or Gabor and
24 Hartvickson. We bought Hartvickson at a -- from a bank.
25 And it didn't have as much damage as the place of Gabor,

1 but it had considerable. It didn't have a heater. It
2 had a fireplace in the front room that was vented in the
3 attic. So we thought maybe the people were trying to
4 kill themselves with this -- you know, it was not a good
5 vent place.

6 It had a lot of problems. So we ended up
7 painting it all, carpeting it all, redoing the kitchen
8 sinks.

9 Q. Okay.

10 A. We had to get a stove.

11 Q. The thing we were most interested in, you
12 owned the property two years, did you and Al spray
13 Roundup there?

14 A. We did. Not as much as the other properties.
15 It didn't have as big -- it was still an acre, but it
16 had less area that needed spraying Roundup.

17 Q. Okay. So can you give us an estimate about a
18 volume, how much you sprayed there?

19 A. Well, when we did, we probably did a gallon,
20 but I only came out with an estimate of 9 gallons.

21 Q. Okay. You sprayed a lot less Roundup there
22 than you did at the other properties?

23 A. Uh-huh.

24 Q. 9 gallons or less -- or no. Or more? I don't
25 know. You tell me.

1 **A.** Yeah.

2 **Q.** Okay, 9 gallons?

3 **A.** Less. I mean, we sprayed less than other
4 places.

5 **Q.** Right. Okay. All right.

6 So those are the four properties where you
7 sprayed Roundup over the years?

8 **A.** Uh-huh.

9 **Q.** All right. So did you read the Roundup label?

10 **A.** Yes.

11 **Q.** Did the Roundup label tell you you couldn't
12 wear shorts?

13 **A.** No.

14 **Q.** Did the Roundup label tell you you couldn't
15 wear flip-flops?

16 **A.** No.

17 **Q.** Did the Roundup label tell you to wear gloves?

18 **A.** No.

19 **Q.** Did it tell you to wear a mask?

20 **A.** No.

21 **Q.** Did it have any warning on it about the risk
22 of cancer?

23 **A.** No.

24 **Q.** Alberta, if Monsanto would have warned that
25 there's a risk of cancer with Roundup, would you have

1 used it?

2 A. No.

3 Q. We've heard for several weeks now about
4 carcinogenicity studies with Roundup. Do you know
5 anything about any of those?

6 A. No.

7 Q. If anybody had told you there was
8 carcinogenicity studies that showed an association with
9 non-Hodgkin's lymphoma and Roundup, would you have used
10 Roundup?

11 A. No. I thought it was really safe to use. I
12 told my husband it was like sugar water.

13 Q. Why did you believe Roundup to be so safe?

14 A. Because of the ads. The ads made me feel that
15 it was very safe.

16 Q. And you saw ads on TV?

17 A. Yes, on TV.

18 MR. MILLER: With the Court's permission, we'd
19 like to show Exhibit 2972.

20 It's a video of the commercial we provided.
21 It's not in the book we provided.

22 MR. BROWN: So it's not in the book?

23 THE COURT: This is a video.

24 MR. MILLER: Yes.

25 MR. WISNER: It's a good time to take a break

1 and show counsel.

2 **THE COURT:** Let's take a 10-minute break.

3 (Jury excused for recess.)

4 (Proceedings continued in open court out of
5 the presence of the jury:)

6 **MR. MILLER:** Do you want to get down?

7 **THE WITNESS:** I can get down.

8 **MR. WISNER:** Can she just stay here?

9 **THE COURT:** She doesn't have to get down. I
10 just, once she stood up, I asked if she wanted to get
11 down. That's fine.

12 **MR. MILLER:** These are commercials that
13 Mrs. Pilliod has seen. And we've provided copies
14 previously to defendants. They've seen them.

15 **THE COURT:** Any issues?

16 **MR. BROWN:** I haven't seen it.

17 **MR. ISMAIL:** Can we just play it?

18 **THE COURT:** Why don't we just play them so we
19 can all see them.

20 **MR. MILLER:** Sure.

21 (Video played in open court out of the
22 presence of the jury.)

23 **MR. ISMAIL:** Is that the only one?

24 **MR. MILLER:** No. There's three.

25 **TECH PERSONNEL:** What's the next 19?

1 **MR. MILLER:** The next 19 is 2977 from 1989.

2 (Video played in open court out of the
3 presence of the jury.)

4 **MR. MILLER:** The last one is Exhibit 2974.

5 (Video played in open court out of the
6 presence of the jury.)

7 **MR. MILLER:** There's one more.

8 **THE COURT:** I'm sorry. That was or wasn't
9 one?

10 **MR. WISNER:** That was an incorrect one, Your
11 Honor. Sorry.

12 **MR. MILLER:** That was an incorrect one. It
13 was a repeat of the one we saw first.

14 This is the last one. Excuse me. 2970, a
15 2012 ad.

16 **THE COURT:** You know, I have to take a break
17 at 12:00 because I have a conference call. So this has
18 kind of messed up my plan here because we're going to
19 have to take another break at 12:00 o'clock. I have a
20 meeting.

21 **MR. MILLER:** Sure.

22 (Video played in open court out of the
23 presence of the jury.)

24 **MR. BRADY:** That's it, Your Honor.

25 **THE COURT:** Well, I'm going to have -- is

1 there any issue that we need to talk about?

2 **MR. ISMAIL:** No, Your Honor.

3 **THE COURT:** Why don't we get everyone back in
4 because we only have another 30 minutes before we take a
5 break for an hour.

6 (Recess taken at 11:27 a.m.)

7 (Proceedings resumed in open court in the
8 presence of the jury at 11:33 a.m.)

9 **THE COURT:** You may continue, Mr. Miller.

10 **MR. MILLER:** Thank you, Your Honor.

11 **Q.** I want to look at that first Roundup
12 commercial that you saw, Exhibit 2972. If we could look
13 at it together.

14 (Video played.)

15 **BY MR. MILLER:**

16 **Q.** Alberta, did you see this ad when it ran?

17 **A.** I did.

18 **Q.** Did it contribute to your belief that Roundup
19 was safe?

20 **A.** Yes.

21 **Q.** Did you continue to use Roundup at least in
22 part because of what you saw in these ads?

23 **A.** Yes.

24 **Q.** Was there any warning about Roundup causing
25 cancer in this ad?

1 (Video played.)

2 **BY MR. MILLER:**

3 Q. All right. I'm going to ask you the same
4 questions, but let's look at the last ad and I'll ask
5 you at one time.

6 Yeah, the last ad should be 2970. We haven't
7 played that one yet. That's a 2012 ad.

8 (Video played.)

9 **BY MR. MILLER:**

10 Q. Same questions. Do you remember seeing these
11 ads?

12 A. Yes.

13 Q. Did they contribute to your belief that
14 Roundup was safe?

15 A. Sure did.

16 Q. Anybody wearing any gloves in those ads?

17 A. No.

18 Q. He's wearing shorts in that ad, isn't he?

19 A. Yes.

20 Q. Let's look at Exhibit 2775.

21 Oh, wait a minute. I've been told my fourth
22 grade math is absolutely tragic.

23 I multiplied 28 years, and your estimate of
24 9 gallons a year at the Agate property, and only I could
25 come up with 202 gallons, and I've been told the real

1 math is 252 gallons. Nine times eight is 72. Two,
2 carry the seven. 18 and 7 is 252 gallons, right. I
3 apologize. My fourth grade math teacher would get on me
4 if she was here. Thank you. And my mom.

5 Let's take a look at Exhibit 2775, and let's
6 go to 1.

7 **MR. MILLER:** Can we put that up on the screen?
8 I think there's no objection.

9 **MR. BROWN:** Nope.

10 **MR. MILLER:** Okay. Put it up.

11 (Exhibit published.)

12 **BY MR. MILLER:**

13 **Q.** What is this picture of?

14 **A.** It's a canister that Roundup could be mixed
15 in. We use it now for vinegar. And that's what that
16 one was for. The one that we had is long gone for
17 Roundup.

18 (Exhibit published.)

19 **BY MR. MILLER:**

20 **Q.** Page 2 of this exhibit, what's that?

21 **A.** It's another Roundup container.

22 **Q.** From where?

23 **A.** From our house. Kept in the shed.

24 (Exhibit published.)

25 ///

1 **BY MR. MILLER:**

2 **Q.** This is Exhibit 3.

3 **A.** That's a smaller container of Roundup. Again,
4 a premixed Roundup that we sprayed on things like cracks
5 and cements.

6 **Q.** Where's it from?

7 **A.** From the shed in the backyard.

8 (Exhibit published.)

9 **BY MR. MILLER:**

10 **Q.** Exhibit 4, what's that?

11 **MR. BROWN:** Excuse me. You keep saying
12 "Exhibit 4."

13 **THE WITNESS:** That looks like --

14 **MR. MILLER:** I'm sorry. Excuse me, counsel.
15 Absolutely right.

16 Exhibit 2275, page 4. Thank you.

17 **THE WITNESS:** That looks like a concentrated
18 Roundup, but I can't really read the thing anymore with
19 my vision.

20 **BY MR. MILLER:**

21 **Q.** Well, all right. Let's -- is that -- whatever
22 that is, is it from your property?

23 **A.** It's from our property, and it's Roundup.

24 **Q.** From your property?

25 **A.** Uh-huh.

1 Q. Let's go to page 5, Exhibit 2775.

2 (Exhibit published.)

3 **BY MR. MILLER:**

4 Q. Is that the back of that?

5 A. Yeah, it was a super concentrated.

6 Q. Okay. And again that's from where?

7 A. It was kept in the shed on our property on
8 Agate Court.

9 (Exhibit published.)

10 **BY MR. MILLER:**

11 Q. Page 7 of that exhibit, that's the back of the
12 larger bottle?

13 A. Yes.

14 Q. Any warning on there about non-Hodgkin's
15 lymphoma?

16 A. No. Just a place to phone if you want.

17 Q. All right. Let's go to previously admitted
18 Exhibit 0026. It's a Monsanto document.

19 Mr. Wisner looked at this with some witnesses
20 here in the last week or so. And it's a 2002 document.
21 And let's go to page 2 of that document. It has some
22 recommendations for the label.

23 **MR. MILLER:** Can you blow up the bottom of
24 that, please?

25 No, the bottom. Yeah. Right.

1 **MR. BROWN:** Excuse me, Your Honor. I'm just
2 going to object to foundation.

3 **MR. MILLER:** It's already in evidence.

4 **THE COURT:** It's already been admitted.

5 **MR. BROWN:** Oh, it is, but in terms of this
6 particular witness.

7 **THE COURT:** Well, let's just see what the
8 question is first.

9 (Exhibit published.)

10 **BY MR. MILLER:**

11 **Q.** Alberta Pilliod, if you had been told to wear
12 protective gloves and face protection, a face shield,
13 when handling or applying the concentrate, would you
14 have done so?

15 **A.** Oh, yes.

16 **Q.** Had you been warned to wear protective
17 clothing, coveralls, suitable protective gloves, rubber
18 boots, or face protection when spraying ultra low-volume
19 application and mist-blowing equipment, would you have
20 done so?

21 **A.** Yes.

22 **Q.** Okay. Final question on this document: Had
23 you been told to wear a suitable protective clothing, a
24 waterproof jacket, trousers, gloves, rubber boots when
25 using this low-volume nozzle and a knapsack sprayer or a

1 handheld rotary sprayer like you used, would you have
2 done so? Would you have worn that protective clothing?

3 A. Yes.

4 MR. MILLER: All right. You can pull that
5 down.

6 Q. When you sprayed Roundup, was there a mist in
7 the air?

8 A. Yes.

9 Q. Did you get it on your hands?

10 A. Yes, especially the hand that I was --
11 squirted with.

12 Q. Although you -- did you spray on hot days?

13 A. Yes.

14 Q. Did you spray while Al was near you?

15 A. Yes.

16 Q. Did Al spray while you were near him?

17 A. Yes.

18 Q. Could you smell Roundup when you sprayed it?

19 A. I don't remember any smell.

20 Q. Okay. Okay.

21 When you got it on your skin, did you wash it
22 off right away?

23 A. No.

24 Q. Why not?

25 A. Why? It was safe.

1 **Q.** Exhibit 2905. K?

2 **MR. MILLER:** And I won't publish until we have
3 agreement of counsel, but 2905.

4 **MR. BROWN:** No objection.

5 **MR. MILLER:** We can put that up.

6 (Exhibit published.)

7 **BY MR. MILLER:**

8 **Q.** Now this came out, it says March of 2018. And
9 it says:

10 Should I be concerned about potential
11 exposure to glyphosate? Glyphosate is on
12 the Proposition 65 list because it has
13 been identified as a carcinogen.

14 Do you see that?

15 **A.** Yes.

16 **Q.** That's March of 2018. Had Monsanto told you
17 that glyphosate was a carcinogen, would you have used
18 it?

19 **A.** No, I wouldn't have used it.

20 **Q.** They say in this document, if we could look
21 down --

22 **MR. EVANS:** Your Honor, may we approach?

23 (Sidebar held but not reported.)

24 **BY MR. MILLER:**

25 **Q.** Again, at no time while you used Roundup

1 before you got a tumor in your brain were you ever
2 warned to wear gloves?

3 A. Correct.

4 Q. All right. I want to go then to 2011. Okay.

5 What was a daily life like before Al got his
6 pain in his body that we now know is non-Hodgkin's
7 lymphoma?

8 A. Well, we traveled a lot. And we were able to
9 enjoy each other's company quite a bit because at that
10 time we were both retired. We liked working on the
11 properties up in Valley Springs and maintaining our
12 home. We didn't have any kids at home, so we were
13 pretty much free to go as we wanted.

14 When I substituted as an administrator, then I
15 got money enough to travel to places like the Canadian
16 Maritime Provinces and Turkey because we both really
17 liked traveling.

18 Q. Okay. And we all know that Al got
19 non-Hodgkin's lymphoma in 2011. We all know that he
20 went through chemotherapy. What was that all like?

21 A. Well, going back to when before he was
22 diagnosed --

23 Q. Yeah.

24 A. -- right before he was diagnosed, he was in a
25 tremendous amount of pain for about four months. We

1 went to a chiropractor, we went to an acupuncturist and
2 we really have confidence in both of them actually. We
3 went to a back doctor. We went to a pain management
4 doctor. We went to a surgeon. And the surgeon was the
5 one that finally said to see Dr. Raj because he was
6 concerned that it could be cancer.

7 But we went through the appointment times and
8 waiting and then going to see another doctor and going
9 to see another doctor.

10 And meanwhile his pain kept getting worse.
11 And I bought a really thick sponge-type so he could feel
12 somewhat comfortable laying down on the couch.

13 **Q.** After the chemotherapy, did Al get back to
14 being the same old Al 100 percent?

15 **A.** No, not 100 percent. It took quite a bit of
16 time to recover from that. And he was never completely
17 the same. He kind of has a macho attitude, and so he
18 was able to do a lot of things whether he felt like it
19 or not.

20 **Q.** Now after Al had non-Hodgkin's lymphoma, did
21 you keep spraying Roundup?

22 **A.** I did, but probably not as much.

23 **Q.** Did you --

24 **MR. MILLER:** Your Honor, I know you have to
25 break.

1 **THE COURT:** Ten more minutes.

2 **MR. MILLER:** Great.

3 **Q.** Did -- I mean, did you know about the
4 association between Roundup and non-Hodgkin's lymphoma?

5 **A.** No, I did not.

6 **Q.** Okay. So from 2012 till you got sick, did you
7 spray Roundup?

8 **A.** A little, yeah.

9 **Q.** How often?

10 **A.** Probably -- well, by that time, only -- the
11 one house that we had was rented so we didn't have to go
12 up there at all. And so it was just on Agate Court, and
13 I didn't have as much interest in spraying it as I would
14 have before.

15 **Q.** Sure. You tell us you like to travel. In the
16 spring of 2015, did you go see your son?

17 **A.** I did. My granddaughter and I took a trip to
18 Maui, and my son Michael and his wife, Heather, lived
19 there. Before I left, a couple days before I left, I
20 went to the doctor and I said I have vertigo. I just
21 really having trouble keeping balance.

22 And she said, you know, this seems like it's a
23 little more than vertigo, but I'll make an appointment
24 with the neurologist for you.

25 And I said, well, I'm going to Hawaii in a

1 couple of days. I'll see a neurologist when I get back.
2 It was probably a mistake because flying was really
3 difficult. When I was over in Hawaii, I was -- no fun
4 at all. I just had to be taken.

5 And my granddaughter and daughter-in-law are
6 both nurses so I figured I was in pretty good hands.
7 And my son had been trained in the ambulances so...

8 However, I did not feel well, I did not do
9 well on that trip. And on the way home, I felt worse,
10 if that was possible.

11 The next -- we got back in like at midnight.
12 I went to Stanford emergency the next morning and was
13 admitted to Stanford. They didn't really know what was
14 wrong with me for about a month. But they did a lot of
15 different tests on me to see if they could figure out
16 what was going on. And finally they decided with a
17 brain biopsy that it was non-Hodgkin's lymphoma with
18 lesions in the cerebellum.

19 **Q.** How did you feel when you were told you had
20 cancer in your brain?

21 **A.** It was quite a shock, to say the least. And
22 the doctor told me that I had 18 months to live at the
23 most and that I could take chemotherapy or didn't have
24 to.

25 He almost made it sound like it didn't make

1 too much difference because I was going to die in
2 18 months whether I had the chemo or not. But I said I
3 want to give it a try. So I underwent this very long
4 chemo process.

5 Q. Why did you want to give it a try, Alberta?

6 A. Because I wanted to live. I had grandkids
7 that were grown up at that time. I had -- I think I had
8 a great grandson by then and more to follow. But I just
9 felt I had reasons to live.

10 Q. Good for you.

11 All right. So you go into this chemotherapy.
12 What was that like?

13 A. That was very hard. One of the chemos that I
14 took was methotrexate, and with that you need to stay in
15 the hospital till it cleared out of your system. So it
16 was five days in the hospital. And then the next week I
17 would be off. And then five days more back in the
18 hospital. And that went on for eight times. And then
19 there were other drugs that they would give me
20 intermittently.

21 My kidneys started to go out so they stopped
22 with the methotrexate, but I kept taking the other chemo
23 drugs. And I saw Dr. Raj then because I didn't have to
24 be in the hospital with the other chemo drugs. I just
25 was in the clinic getting them.

1 We will continue, Mr. Miller.

2 **MR. MILLER:** Thank you, Your Honor.

3 We won't be a lot longer, folks. Thanks for
4 your patience, all of you.

5 **BY MR. MILLER:**

6 **Q.** Alberta, how are you?

7 **A.** I'm fine.

8 **Q.** How was lunch?

9 **A.** Good.

10 **Q.** I think I forgot to ask.

11 What did you do yesterday?

12 **A.** Yesterday, I ate all day. It was my birthday.
13 We went for breakfast at Starbucks, and lunch at a
14 Mexican restaurant, and dinner at an Italian restaurant.

15 **Q.** Did you have your son with you?

16 **A.** Not for breakfast. He was sleeping in because
17 of the time change.

18 **Q.** Did you ever think, when you got diagnosed
19 with brain cancer in 2015, you'd be able to celebrate
20 your 75th birthday with your son?

21 **A.** No.

22 **Q.** Did you ever think, when you got brain cancer
23 again in 2016, you would be able to celebrate --

24 **A.** No.

25 **Q.** We're all glad you could.

1 This is a little random, but I'm going to ask
2 anyway.

3 Have you ever had hay fever?

4 **A.** I've been allergic to cats.

5 **Q.** Okay. Allergic to cats.

6 Do you have any food allergies?

7 **A.** No.

8 **Q.** Does Al?

9 **A.** Yes.

10 **Q.** What are his food allergies?

11 **A.** Al has a shellfish allergy and an almond
12 allergy.

13 **Q.** We've all seen Al.

14 Does anyone else in his family have skin
15 cancer?

16 **A.** Yeah. His mother, his father, and his sister.
17 And that's it. His whole family.

18 **Q.** Sounds like the whole family.

19 How many of them got non-Hodgkin's lymphoma?

20 **A.** None of them.

21 **Q.** Anybody in your family or family tree had
22 non-Hodgkin's lymphoma?

23 **A.** No.

24 **Q.** Anybody in your family have any other
25 hematopoietic cancers; that is, any kind of blood

1 cancer?

2 A. No.

3 Q. Last thing I want to look at -- don't get mad
4 at me -- 2773, pages 2 and 3. Let's put up page 2.

5 That's you, right?

6 A. That is.

7 Q. Are you a lady that's proud of her hair?

8 A. Yeah.

9 Q. I know you're going to get mad at me.

10 What's page 3? Who is that?

11 A. That was when I didn't have any hair. After
12 the EA consolidation treatment, after the '16 -- well,
13 eight periods of chemo.

14 Q. So you had the methotrexate in 2015, and you
15 were able to hang on to your hair?

16 A. Uh-huh.

17 Q. And then when it came back in summer of 2016,
18 you had more methotrexate, but then followed up with EA
19 treatment?

20 A. Yeah. And that lasted about a month, and
21 maybe the second or third day into it, I started losing
22 my hair.

23 Q. And as we sit here today, are you on medicine
24 to prevent your cancer from coming back into your brain?

25 A. Yes, I am.

1 **Q.** Revlimid?

2 **A.** Revlimid.

3 **Q.** Who prescribes it?

4 **A.** Dr. Rosenstein [verbatim].

5 **Q.** Okay. Dr. Rosenstein [verbatim].

6 And how many days a month do you take
7 Revlimid?

8 **A.** I take it for 21 days on and then seven days
9 off, and then I start the cycle again. So it's a 28-day
10 cycle.

11 **Q.** And what do you understand will happen if you
12 don't take the Revlimid?

13 **A.** I kind of don't want to think about it.

14 **Q.** Have you had to apply to any charitable
15 organizations to assist you to pay for it?

16 **A.** Well, through the pharmacy, the copay was high
17 last year, and it was higher this year. And they asked
18 for Al's Social Security promise, and mine from the
19 State Teachers Retirement, and that was low enough that
20 I could get a charitable difference that the makers of
21 Revlimid -- I think it's McKesson -- would take up.

22 **Q.** Okay. Now, let's go back to we heard from
23 Dr. Raj, we're going to hear from Dr. Gupta, we're going
24 to hear from Dr. Rubenstein.

25 But I want to ask you, Alberta: When you were

1 treating with Dr. Raj in 2015, did you tell her, oh, by
2 the way, I've used Roundup for the last 30 years?

3 A. No, I did not.

4 Q. Why not?

5 A. Because it never crossed my mind.

6 Q. Did you tell Dr. Gupta, hey, I used Roundup
7 for the last 30 years?

8 A. No.

9 Q. How about Dr. Rubenstein?

10 A. No. But the last time I saw him, I told him
11 we were having this lawsuit happening.

12 Q. Are you following with Dr. Rubenstein for your
13 brain cancer?

14 A. Yes. I contacted him last week and said that
15 I was feeling a little peculiar, so he ordered an MRI
16 that I'm taking tomorrow. And then I see him, I think
17 it's the 1st of May.

18 Q. And have you been regularly -- annually,
19 semi-annual or whatever -- in some periodic form,
20 getting those MRIs to see --

21 A. Yeah. I think it's every six months.

22 Q. Okay. I think everyone in the room wishes you
23 good luck.

24 Well, let's talk a couple more minutes, we're
25 almost done. Thanks for your time.

1 But what has life been like for you after you
2 got the brain cancer this last couple years?

3 Are you the same old Alberta you were before,
4 or not? Tell the jury.

5 **A.** No, I'm not. I'm not able to do much anymore.
6 Around the house, I can't do most of the things anymore.
7 Kind of -- I try, but I really wear out really quickly.

8 I can make the bed in the morning if it's not
9 too hard. And just do very few little things around the
10 house.

11 I haven't been able to work, which I would
12 still be doing if it wasn't for the cancer.

13 I haven't been able to travel for two reasons.
14 One is I didn't have the money anymore because I wasn't
15 working, and the other is just that my health would
16 prevent me from traveling.

17 I ended up seeing a counselor, just because I
18 got very depressed because Al and I both had, you know,
19 non-Hodgkin's lymphoma. It's kind of embarrassing to
20 walk the way I walk now. I don't -- my sense of
21 balance, I guess it's scar tissue, but the doctors say
22 that that sense of balance will never come back. So I
23 really just wobble all the time.

24 **Q.** How is your vision?

25 **A.** I have double vision. I have two corrective

1 lenses, one going one way and one going the other. I've
2 got some prisms. And since the -- actually, almost
3 since the onset of the lymphoma, I had hearing loss.

4 Q. Are you dizzy?

5 A. I'm dizzy all the time.

6 Q. Were you dizzy before you had brain cancer?

7 A. No.

8 Q. Did you have double vision before you had
9 brain cancer?

10 A. Before, no.

11 Q. Were you unsteady on your gait or walking
12 before you had brain cancer?

13 A. No.

14 Q. Do you fall these days?

15 A. Yeah. I fall a lot. I've taken a lot of
16 classes on fall prevention. I've taken physical
17 therapy. I think I've been a hundred times, over the
18 course of the last several years, to physical therapy.
19 I go to tai chi, again, trying to get some balance back.

20 And all these things have helped. I'm not
21 falling as much as I was early on. But I'm still
22 falling quite a bit. I fell about three weeks ago and
23 broke my glasses and got a big dent in my head.

24 My husband especially catches me quite a bit.
25 In the house, I use the walls and furniture. Not as

1 much danger falling there as there is outside.

2 Q. Last question: If you had known that
3 Roundup -- the Roundup you went in and bought down at
4 the hardware store in 1982 -- if that had gotten on the
5 market through the use of studies that were scientific
6 fraud, would you have bought Roundup?

7 A. No.

8 MR. MILLER: I have no further questions.
9 Thank you.

10 THE COURT: Cross-examination?

11 MR. BROWN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BROWN:

14 Q. Good afternoon, Ms. Pilliod.

15 A. Good afternoon.

16 Q. We haven't met before?

17 A. No, we haven't.

18 Q. Glad to meet you.

19 A. Glad to meet you.

20 Q. I have just a few questions for you.

21 You still have your binder there, correct?

22 A. Yes.

23 Q. I'm looking at Exhibit 275, page 2.

24 A. 275?

25 Q. I'm sorry, 2775, page 2.

1 **A.** Okay. Got it.

2 **Q.** Just for the sake of expediting this, would
3 you look through to page 11 -- I'm sorry. Let's go to
4 page 15, if you would. Just look through those.

5 Did you go through all of those?

6 **A.** I've got them both.

7 **Q.** And would you tell the jury when those
8 photographs were taken?

9 **A.** They were taken probably two months ago,
10 maybe.

11 **Q.** Okay. In 2018/2019?

12 **A.** Right.

13 **Q.** And do you recall who took them?

14 **A.** One of the attorneys from Mike Miller's firm
15 took the pictures.

16 **Q.** From Mr. Miller's firm?

17 **A.** Yes.

18 **Q.** And these were some of the bottles that were
19 left over?

20 **A.** Right. My husband had taken quite a few
21 already to the hazardous waste, and he missed these that
22 were in the back of the shed. So there were four left
23 in the shed.

24 **Q.** And you recall having your deposition taken?

25 **A.** Yes.

1 **Q.** Okay. And in your deposition, you talked
2 about when you had read, for instance, the labels on the
3 bottles of Roundup. And I'm specifically looking at
4 2775, page 9.

5 **A.** Right.

6 **Q.** And on Exhibit 2775, page 9 is the back of the
7 Roundup bottle; is that right?

8 **A.** Right.

9 **Q.** And down at the lower corner, it has "EPA
10 Registration Number."

11 Do you see that, down in the bottom left-hand
12 corner?

13 **A.** Yes.

14 **Q.** Okay. And then up on the -- there's a
15 right-hand column, where it says -- the first paragraph
16 is directions for use.

17 **A.** Right.

18 **Q.** Can you see that?

19 And then if we skip down, there's a section
20 that says when to apply.

21 Do you see that?

22 **A.** Right.

23 **Q.** And then it has how to refill.

24 Is that correct?

25 **A.** Right.

1 **Q.** And then there's a subheading: "How It
2 Works."

3 Do you see that?

4 **A.** Uh-huh.

5 **Q.** And then down below, it says:

6 "Precautionary statements. Hazards to humans
7 and domestic animals. Caution."

8 Do you see that?

9 **A.** I do.

10 **Q.** Correct me if I'm wrong. Would you read along
11 with me.

12 **A.** Uh-huh.

13 **Q.** Okay, thank you.

14 "Causes moderate eye irritation," correct?

15 **A.** Correct.

16 **Q.** Okay. "Avoid contact with eyes or clothing."
17 Do you see that?

18 **A.** Right, it says that.

19 **Q.** Okay. And then it says:

20 "Wash thoroughly with soap and water after
21 handling."

22 Correct?

23 **A.** Right.

24 **Q.** Okay. And do you recall reading that when you
25 first read the labels on the bottles?

1 **A.** I don't know if that was on the earlier ones
2 or not.

3 **Q.** All right. But do you recall seeing it on the
4 bottles at all, any time?

5 **A.** To be honest, I don't remember.

6 **Q.** Okay. And how often did you read the labels
7 on the bottles?

8 **A.** Probably -- this was just on the back, so this
9 is an earlier one. Probably just a couple of times.

10 **Q.** Okay. All right.

11 Now, we had some photographs of a couple of
12 your properties, including your home, correct?

13 **A.** Correct.

14 **Q.** And who took the photographs at your home,
15 showing your pool and the yard?

16 **A.** I'm not sure if it was the people from
17 Monsanto or Curtis or who it was. I wasn't at the pool
18 when that one was taken.

19 **Q.** Okay. You said Curtis.

20 Who is Curtis?

21 **A.** Curtis from the Miller firm.

22 **Q.** Okay. We're going to look at Exhibit 2769 in
23 your binder.

24 And that's like a Google Earth photo of -- is
25 it Gabor or Gabor?

1 **A.** Gabor, like Zsa Zsa.

2 **Q.** And in this photograph, we see, beginning on
3 the left -- my left side of the photograph, are those
4 other homes in the area?

5 **A.** Yes.

6 **Q.** Okay. And your property is indicated by the
7 red mark; is that correct?

8 **A.** Correct.

9 **Q.** All right. And is this -- this is up in the
10 Gold Country, right?

11 **A.** Yes, uh-huh.

12 **Q.** And in terms of what we're seeing in the Gold
13 Country -- do you know what year that was taken?

14 It's okay if you don't.

15 **A.** No.

16 **Q.** Being a native Californian, this year is kind
17 of unusual because we had so much rain, right?

18 That photo accurately depicts the surrounding
19 area at the time, correct?

20 **A.** As what?

21 **Q.** At the time. That's how --

22 **A.** At the time, yes.

23 **Q.** In terms of the Stabulis property, which we
24 looked at before, that property, which is Exhibit 2768.
25 That property had no running water.

1 Is that correct?

2 **A.** Correct.

3 **Q.** Okay. And it's pretty rural, right?

4 **A.** There are houses built around there, there
5 just weren't any on that particular acreage.

6 There was a house as you go up the driveway on
7 the left. And on the right was a 7-acre lake and picnic
8 area. And behind us, there were houses.

9 **Q.** Okay. And this, again, is in the Gold
10 Country, correct?

11 **A.** It is.

12 **Q.** All right. And again, generally, we're
13 looking at the landscape, which is how it looks for a
14 majority of the year, right?

15 **A.** Right.

16 **Q.** Okay. And then you had one other property,
17 Hartvickson Lane, correct? That's 2770.

18 **A.** Right.

19 **Q.** And again, that's in the Gold Country, right?

20 **A.** Correct.

21 **Q.** And your property is indicated by the red dot.
22 Is that right?

23 **A.** Right.

24 **Q.** And then we have other homes situated to the
25 left and the right of your property?

1 **A.** Right, correct.

2 **Q.** All right. And that's generally the way that
3 area looked?

4 **A.** Yes.

5 **Q.** Okay.

6 **MR. BROWN:** All right, Ms. Pilliod, thank you.

7 **THE WITNESS:** You're welcome.

8 **MR. MILLER:** Your Honor, I have no follow-up.
9 That concludes the witness' testimony.

10 **THE COURT:** Thank you.

11 You may step down.

12 **MR. WISNER:** Before we call our next witness,
13 we would like to read a few admissions into the record.

14 **THE COURT:** Okay.

15 **MR. MILLER:** Admission Number 32:

16 "Admit that Monsanto has never warned any
17 consumers that glyphosate-containing products
18 can cause non-Hodgkin's lymphoma."

19 Response:

20 "Admitted. Monsanto denies that its
21 glyphosate-containing products can cause
22 non-Hodgkin's lymphoma in any consumer, and
23 denies that there is any basis for such a
24 warning."

25 Admission Number 33:

1 "Admit that Monsanto never warned Alva or
2 Alberta Pilliod that glyphosate-containing
3 products could cause cancer."

4 Response:

5 "Admitted. Monsanto denies that its
6 glyphosate-containing products can cause
7 cancer in any consumer including Mr. or
8 Mrs. Pilliod, and denies that there is any
9 basis for such a warning."

10 Admission Number 40:

11 "Admit that the label for Roundup does not
12 advise users to wear gloves when using
13 glyphosate-based herbicides for
14 nonagricultural purposes."

15 Response:

16 "Monsanto admits this request with respect to
17 labels for the lawn and garden products."

18 And with that, Your Honor, we call Mr. Alva
19 Pilliod to the stand.

20 ALVA PILLIOD,
21 called as a witness for the Plaintiffs, having been duly
22 sworn, testified as follows:

23 **THE CLERK:** Would you please state and spell
24 your name for the record.

25 **THE WITNESS:** My name is Alva Pilliod

1 P-I-L-L-I-O-D.

2 **THE CLERK:** Thank you. You can go ahead and
3 be seated, Mr. Pilliod.

4 **THE WITNESS:** Thank you.

5 **DIRECT EXAMINATION**

6 **BY MR. WISNER:**

7 **Q.** Good afternoon.

8 **A.** Good afternoon.

9 **Q.** How are you doing?

10 **A.** Okay. Good.

11 **Q.** The jury has heard some testimony already from
12 doctors, as well as experts, about some of the
13 neurological problems you have.

14 I guess my first question is: How are you
15 doing today?

16 **A.** I'm doing fine today, except for my voice.

17 **Q.** Could you please explain to the jury what
18 happens when your voice gets quiet like that.

19 **A.** Many years ago, the neurosurgeons implanted a
20 VNA, vagus nerve stimulator, in my chest. It's a
21 pacemaker, but it doesn't go to the heart; it goes to my
22 brain. It fires every five minutes and lasts for
23 30 seconds.

24 My voice will be right back. It goes right by
25 the vocal chords, which changes my voice a bit. Now

1 it's back to normal. It will happen again in five
2 minutes.

3 The advantage of this is anti-seizure device.
4 The disadvantage is it's inconvenient, but it's not as
5 inconvenient as having a seizure.

6 And it's -- sometimes it's difficult eating,
7 but it's still -- I can put up with it. In a couple
8 years, the neurosurgeon said my voice will get more
9 constant as the muscles get used to the vagus nerve
10 stimulator. And they'll improve the model every seven
11 or eight years and implant a new one in me.

12 Q. Thank you for explaining. I'm going to move
13 this mic just a little closer to you.

14 A. Thank you.

15 Q. No problem.

16 All right, sir. Can you please tell the jury
17 where you're from and where you currently live.

18 A. I currently live in Livermore, California,
19 with my wife Alberta.

20 As far as where I'm from, I was born in
21 Calexico, California. But my family moved around a lot,
22 from California to Florida to Ohio to Mississippi to
23 California to Maryland, and back to California again.

24 And we settled the last couple years in
25 Montebello, California, down near Los Angeles.

1 **Q.** What did your parents do for a living?

2 **A.** My father was a Marine Corps drill instructor
3 the first part of my life. And then he was a Detroit
4 policeman, foot patrol. And then he worked for the
5 border patrol in Calexico. And we moved back to
6 Calexico again four or five years later; he was still
7 with the border patrol. And consequently, he would get
8 a lot of transfers, sometimes a very short notice.

9 And it was -- it made life a little difficult
10 moving around that much. But also very educational.

11 **Q.** What was it like growing up with a Marine
12 drill instructor?

13 **A.** Well, it was tough. I had weekly inspections
14 of my room to make sure everything was good. I had to
15 address my dad as sir, my mom as ma'am.

16 When we would change schools -- we would move,
17 and I would change schools, and I would tell them, why
18 do I have a Marine Corps recruit haircut? Because the
19 kids are making fun of me with the shaved head. And he
20 says, well, get used to it, you know.

21 **Q.** Now, sir, what did your mom do?

22 **A.** She was an X-ray technician. She was raised
23 in the Mojave Desert, near Poly. She went to
24 San Bernardino for training and was a lab technician and
25 X-ray technician for quite a few years.

1 And then she retired to take care of my sister
2 and I.

3 **Q.** So since your father was a Marine, I assume
4 you also joined the Marines; is that right?

5 **A.** No. I joined the Army. My father asked me,
6 when you graduate from high school today, are you going
7 to the Marines tomorrow? And I said, no, sir, I'm going
8 into the Army tomorrow. And he said, why are you going
9 into the Army? And I said, because I'm tired of taking
10 orders.

11 **Q.** So Mr. Pilliod, what year did you join the
12 Army?

13 **A.** 1961.

14 **Q.** So that's, what, the height of the Cold War?

15 **A.** Yes, uh-huh.

16 **Q.** Where were you stationed?

17 **A.** Kaiserslautern, Germany. The Cold War was
18 heating up in Berlin, and I was hoping to get an
19 assignment in Berlin. But they put me in
20 Kaiserslautern, Germany, which is halfway between
21 Frankfurt and Saarbrücken.

22 **Q.** What did you do for the Army?

23 **A.** I was a cryptographer. Coding, encoding,
24 decoding transmission of classified materials. I
25 received secret clearance, and eventually a top secret

1 clearance, and then a top secret crypto clearance, which
2 required a complete background investigation.

3 Q. After your time in the Army, what did you do?
4 Did you return home?

5 A. No. I bought a German motorcycle. My voice
6 will be right back.

7 I bought a German motorcycle, and I traveled
8 throughout Europe and North Africa for a year. And
9 under the Army rules, I could come back on an Army and
10 Navy troopship within one year after my discharge. So I
11 took advantage of that program and got to ride back on
12 the Army/Navy troopship to New York.

13 Q. And when you returned back to the States, did
14 you finally start a civilian career?

15 A. Yes. I came to San Francisco. I was trying
16 to save up enough money for college. I had to pay my
17 own way. I got a job as a cable car man in
18 San Francisco. I thoroughly enjoyed it, and I was
19 saving up money for college.

20 And my parents said, well, you don't want to
21 do this all your life; you should go to college. But
22 they weren't paying, so I worked a little longer and
23 saved up more money. I finally resigned my job as a
24 cable car gripman and enrolled at City College of
25 San Francisco.

1 The money soon ran out, so I got a job, night
2 shift at a bakery, and another job -- I worked at a
3 hospital, was a cook and dishwasher. And I was trying
4 to make the hours convenient enough for my studies. So
5 I couldn't do the night jobs too long because I had
6 college to be concerned about, and terms papers and
7 examinations and lectures.

8 So after a year or two, I would change jobs
9 again. I even drove a cab in San Francisco for almost a
10 year. It also added to my education. I became an
11 apartment building manager, which pretty much paid the
12 rent of my small apartment in San Francisco.

13 **Q.** Eventually, did you land in a career in
14 financial planning?

15 **A.** Yes. After receiving three college degrees,
16 all in finance and international business management, I
17 worked for Kelly-Springfield International. It's a
18 subsidiary of Goodyear Tire & Rubber Company. And
19 during my last interview with them -- or first
20 interview, they said they had numerous assignments for
21 me overseas.

22 And at the time, I was fluent in German, I had
23 a sprinkling of Spanish, and they liked my college
24 background and my military background. And so at the
25 last minute, when my wife and daughter and I were moving

1 out to our headquarters of Kelly-Springfield, they
2 notified the moving company that they were sending me to
3 Florida to be trained in retail stores as a salesman
4 before I could go into finance.

5 Didn't have any choice. So I took that
6 assignment, worked in the States for a couple years, and
7 then got an assignment with Kelly-Springfield in Canada.
8 Ontario, Canada. Toronto. And there were great people
9 up there, great economy. I was importing and exporting
10 and doing a lot of finance things for the company;
11 thoroughly enjoyed it.

12 And after a few years, the international
13 division was eliminated and it was taken over by
14 Goodyear Tire & Rubber Company. My visa had expired, my
15 job had gone, so I took an assignment in the
16 San Francisco Bay Area with Goodyear.

17 Again, it was the sales department, but I
18 wanted finance. And they said -- Goodyear of Canada
19 said -- Goodyear USA said they would have an assignment
20 for me in about two years, overseas, and I would go back
21 to international.

22 Well, the two years turned out to be 4 years,
23 6 years, 10 years, 12 years, and I never got the
24 assignment from Goodyear in international finance. But
25 by then, I had a home, a wife, two great kids. I didn't

1 want to move anymore.

2 Q. It seems like -- would it be fair to say that
3 traveling is something you really enjoy, it's been a big
4 part of your life?

5 A. Thoroughly.

6 Q. Did you finish your career at Goodyear working
7 in the office?

8 A. I finished my career working in finance with
9 Goodyear, but it was domestic finance. I had the
10 11 western states that I was responsible for. And it
11 would include finding companies that were Goodyear major
12 customers that were having financial difficulties.

13 And I would do a financial analysis based on
14 their statements, and I would make improvements --
15 suggestions for improvements in how they could save
16 their business and increase their sales. And I
17 thoroughly enjoyed that part of the business.

18 Q. When did you marry your wife?

19 A. January 3rd, 1970.

20 Q. Good. If you didn't know the date, you were
21 going to be in trouble.

22 So you've been married for, gosh, almost
23 50 years; is that right?

24 A. Fifty years this coming January.

25 Q. Congratulations.

1 **A.** Thank you.

2 **Q.** Do you recall when you first started courting
3 your wife?

4 **A.** Yes. It was in 1968.

5 **Q.** We don't have to hear the whole story, it's
6 fine. I just wanted to get a sense of things.

7 And do you have any children?

8 **A.** Yes. I have a son, Mike, who you'll meet
9 earlier -- later today, and a daughter, Ann. My son
10 lives in Hawaii, and my daughter lives in Valley
11 Springs.

12 **Q.** Now, in addition to your job -- well, let's
13 talk about Alberta for a second, okay.

14 What kind of person was she? Was she active
15 before her cancer?

16 **A.** Oh, very active. We would do a lot of long
17 walks together. We would SCUBA dive together. We would
18 travel together. We worked on the garden, our front
19 yard and the backyard, vegetable gardens and flower
20 gardens together. She was just a very active person.

21 **Q.** And what about yourself, sir, were you an
22 active person?

23 **A.** Yes. I enjoyed sailing.

24 **Q.** I want to talk to you a little about that. In
25 a minute, we're going to go through some of these

1 photos, but we're going to go through very quickly.

2 My first question is: With regards to
3 sailing, how long have you owned a boat, sir?

4 A. Oh, 40 years.

5 Q. Now, I'm actually a sailor myself, in college.
6 And the expression is, the two best days of a boat
7 owner's life is the day they buy a boat and the day they
8 sell it.

9 Do you have that personal experience with your
10 boat?

11 A. When I buy it, yes. When I sell it, I felt
12 kind of sad. We started off with a 14-footer, then we
13 went to a 21-footer, and I'm up to a 30-footer.

14 And each one of these boats -- they had a lot
15 of advantages. The 21-footer, we could take up to the
16 Sacramento Delta area, crank up the keel, and camp on it
17 for a week.

18 The 30-footer has a long keel, so it doesn't
19 work out too well in the Delta because of the shallow
20 areas.

21 Q. Mr. Pilliod, people who don't sail might not
22 know what a keel is.

23 A. Oh, I'm sorry. The keel is the weight in the
24 bottom of the boat. In my case, it weighs 4,500 pounds.
25 And it does two things. When the wind blows against it,

1 it makes a sideways motion become a forward motion.

2 And secondly, when the ballast is up 35 to
3 40 feet with the sails on it, it will tilt. And the
4 weight underneath will bring it upright.

5 And the more it tilts, the higher the weight
6 in the bottom gets, which means more pressure on it.
7 The more pressure on the sails, you get more efficient
8 sailing, and you get a safer upright position.

9 Q. I understand -- and Mrs. Pilliod discussed a
10 sailing trip you took to Hawaii.

11 Is that true?

12 A. Yes.

13 Q. In a 30-foot boat?

14 A. Yes. It was great.

15 Q. I mean, let's get some sense here.

16 Thirty feet, is that about where I am from you
17 right now?

18 A. I would say that's about it, yes.

19 Q. So you're on a boat this size across the
20 Pacific Ocean?

21 A. Yes. And back across, too.

22 Q. And you went by yourself; is that right?

23 A. That's correct.

24 Q. Did you run into any trouble on the way back?

25 A. We hit a pretty nasty storm about 30 miles out

1 of Hawaii, enough to roll the boat. I got the boat
2 uprighted reducing all sails. I got the water bailed
3 out of the boat, both inside the cabin and the other
4 parts of the boat.

5 And the water came back in, so I thought I was
6 sinking in the middle of the Pacific, and it turned out
7 there was a broken hatch that was opening up and letting
8 the ocean in. So I got that sealed with coat hangers
9 and paperback books, and continued bailing.

10 And it was everything put back together, a
11 little bit of damage here and there. Some sore ribs.
12 But it was okay. I was well-prepared.

13 Q. So, for example, when you were out there in
14 the middle of the Pacific Ocean, a storm, your boat has
15 tipped over, you're by yourself.

16 I guess you were taking in water, too?

17 A. Yes.

18 Q. In the moment -- do you remember how you felt
19 at that point?

20 A. I was full of adrenaline. I was --

21 Q. We don't need to get into it.

22 Do you remember how you felt?

23 A. I felt just full of energy. I felt a little
24 bit concerned, but I have a life raft on board, and I
25 could always throw that over the side with the line

1 attached to that, cut the line and open the raft.

2 But that would put me in a much smaller boat,
3 and the waves would surely roll that quite a bit.

4 Q. I want to flash-forward a little bit to what
5 this case is about.

6 I understand that you were diagnosed with
7 cancer; is that right?

8 A. Yes.

9 Q. And when was that, sir?

10 A. 2011.

11 Q. And what kind of cancer did you get diagnosed
12 with?

13 A. Non-Hodgkin's lymphoma, large B-cell,
14 Stage IV.

15 Q. Now, sir, in the months leading up to your
16 diagnosis, what were you personally experiencing?

17 A. Lots of pain. Back pain, upper leg pain, hip
18 was really bad, the right hip.

19 Alberta took me to a couple of different
20 doctors, and they said, oh, you're just getting old. A
21 couple of them gave me painkillers, which wasn't solving
22 the problem. I disposed of the painkillers and had
23 other painkillers there that another doctor gave me.

24 I thought I had a rupture, because I was
25 working on a house we owned up in Valley Springs on

1 Gabor Street. A storm had come in and knocked over an
2 oak tree and a couple of pine trees, and blocked a
3 stream that ran down behind the house.

4 And the water went over the highway and my
5 neighbor's driveway, and he wasn't too happy about that.
6 So I went up there with my chainsaw and cut up the trees
7 and dug out the trench for the stream. And I couldn't
8 stand the pain anymore. And my daughter came by and
9 said, dad, you look terrible. You shouldn't be doing
10 that. Let me finish up the job. She said, I'll get my
11 husband to help. So, reluctantly, I went home and made
12 an appointment with the doctor for a rupture.

13 And he poked around, which was pretty painful.
14 And he said, that's not a rupture, it's a bone. You
15 have a hip bone that may be broken. You need to see an
16 oncologist.

17 I wasn't used to that term. I had no idea it
18 was a cancer doctor. I saw a doctor about -- Dr. Raj, I
19 saw her about too much iron in my blood; Celtic Curse,
20 it's called. Because I'm of Scottish, Irish, and Welsh
21 descent.

22 And she did all kinds of exams on me, and then
23 gave me the bad news that I had Stage IV non-Hodgkin's
24 lymphoma. And I said, that's a relief. She said,
25 relief? And I said, yeah, I'm glad it's not a 10.

1 I didn't know 4 was as high as it goes. I was
2 a bit naive about cancer.

3 **Q.** Sir, when you were diagnosed with this
4 Stage IV cancer, did you think you were going to make
5 it?

6 **A.** I was pretty sure I wasn't.

7 **Q.** Why?

8 **A.** It got to the point I could barely move. I
9 went from a single cane to walking sticks to a wheeled
10 walker to a wheelchair to a gurney. And I thought that
11 was it for me.

12 **Q.** How did you feel?

13 **A.** Miserable.

14 **Q.** Yeah.

15 **A.** I couldn't do anything I wanted to do. Bills
16 were piling up. The hospital said, we're going to send
17 you to collections because you owe us 45,000 and your
18 insurance company hasn't paid it yet.

19 I made numerous calls to the insurance
20 company, which was part of the program for Goodyear
21 retirees. Goodyear kind of ignored it.

22 So I had to send certified mail to the
23 insurance company with a copy of the hospital bills.
24 And the hospital said, well, better send some money
25 today. So I emptied my checking account and sent the

1 hospital money and ran up my credit card to the limit,
2 agreed to pay them so much a month for a year. And
3 eventually, they reduced it a couple hundred dollars.

4 Alberta was working, but then when I could
5 barely work, she stayed home to take care of me. So
6 there was no income from there.

7 Q. How did it feel going from being an active
8 person, working, sailing, working with a chainsaw, to
9 being bedridden and having your wife sort of take care
10 of everything?

11 A. World of difference in life. To have somebody
12 else take care of me, do the bedding, get my legs
13 propped up, help me get to the bathroom, doing all the
14 things that I normally would do myself. It was
15 miserable.

16 Q. Despite everything, did you beat it?

17 A. Yes. Thanks to Dr. Raj.

18 Q. And after you beat it, did you go back to
19 doing what you were doing before?

20 A. Not everything. There wasn't any more
21 long-distance solo sailing. Alberta said I should stop
22 working on old handyman houses because it would do more
23 damage to my back and hip, and possibly my brain. So
24 there was no more working on houses. There was no more
25 long-distance sailing.

1 **Q.** And sir, when they gave you that aggressive
2 chemo treatment -- and they've heard about it already
3 from Dr. Raj.

4 **A.** Yes, uh-huh.

5 **Q.** When they gave you that treatment, how did the
6 neurological issues you had your whole life, how did
7 they go?

8 **A.** Well, when I first started getting the chemo
9 treatment, I was getting what's called mini seizures. I
10 would wake up in the morning, and I couldn't use nouns
11 or numbers. I couldn't read; I couldn't write. Then
12 after a day or two, it would disappear, and I would be
13 fine.

14 Three or four weeks later, it would happen
15 again. I was going to cancer support group meetings,
16 and some days I couldn't go to the meetings because I
17 couldn't drive there. And I would have to get
18 transportation there and transportation home.

19 And when I would get there, I couldn't
20 remember anybody's names or what day it was. And this
21 went on for quite a while. And it got more and more
22 that it started happening to me.

23 I saw the neurologist, Dr. Garcia, and he was
24 quite a bit of help. Changed the medication, changed
25 the pacemaker in my chest. And the doctors at Stanford

1 have studied me, besides UCSF doing all the studies on
2 me.

3 I don't know what the long-term answer is
4 going to be. But with stuff like a pacemaker and
5 medication, it's getting better.

6 Q. Sir, I want to talk a little about some of
7 your usage of Roundup prior to your diagnosis of cancer,
8 okay?

9 A. Yes, uh-huh.

10 Q. You were here this morning when your wife was
11 testifying, right?

12 A. Yeah.

13 Q. She did a great job, huh?

14 A. Yeah, she did.

15 Q. So the first thing I want to talk about is one
16 of these.

17 Are you familiar with one of these here?

18 A. Yes, I've used those.

19 Q. What is it, exactly?

20 A. It's a gallon sprayer. The one I use has a
21 nozzle in the front, and you can do a wide spray, a
22 narrow spray.

23 Put the fluid in there, pump up the handle,
24 turn the handle so it locks in place, squeeze the handle
25 in your right hand, and the spray will come out.

1 **Q.** All right. So -- don't worry, this is
2 completely empty, there's nothing in here.

3 Can you just walk the jury through how you
4 actually --

5 **A.** Sure.

6 **Q.** -- actually how you would fill it and spray
7 it, just so we can get a sense of it.

8 **A.** Okay. The top would come undone here. This
9 whole unit would come out. You would pour the fluid in
10 here.

11 If you're mixing it, you would pour that in,
12 plus water. Or straight Roundup. I use salt and
13 vinegar in these now.

14 **Q.** When you would have to pour it in, would it
15 spill?

16 **A.** No. You only went about this full, maybe a
17 gallon and a half. Because you were pumping air, you
18 want air pressure in there to push the fluid out.

19 If the fluid was up to here, you would have
20 real low pressure in it, and it would be very
21 short-lived. And this only pumps through air.

22 **Q.** And when you were filling it, putting in the
23 concentrate, putting in the water, could it spill on
24 your hands ever?

25 **A.** Oh, yes. Uh-huh.

1 **Q.** Were you ever wearing gloves when you did
2 that?

3 **A.** Not very often, no.

4 **Q.** And when you did wear gloves, did you wear
5 rubber gloves or something else?

6 **A.** Well, they were Stanley, which I thought was a
7 very good brand. And they were cloth gloves with little
8 rubber dots on them for gripping. But I wouldn't use
9 them too often. There was no need to. And it's easier
10 controlling all this stuff without gloves on.

11 **Q.** So then you get it in there, and then what do
12 you do?

13 **A.** You pull this up, you pump up the pressure,
14 put it down, turn it clockwise to lock it.

15 Once this is full, you walk around, and you're
16 a couple feet away, and you just push this handle down
17 here, and you can spray the area you want.

18 **Q.** There's just air in there, right?

19 **A.** Yeah. The one I use now has only vinegar in
20 it. Vinegar and salt. And the nozzle is different so I
21 can spray it a good distance. And I think vinegar is
22 safe so far.

23 **Q.** When you would spray it, would you ever get it
24 on your hand?

25 **A.** Oh, yeah. When I would go around bushes, and

1 I would hold it like that, some would run down on my
2 hands.

3 Q. Were you wearing gloves usually when you were
4 spraying?

5 A. No, I wasn't. And sometimes my foot would be
6 in the way as I'd come back from the weeds.

7 Q. Okay. I'll take this from you.

8 A. If you turn this, you'll release the pressure
9 in there. Because you don't want it laying around full
10 of any kind of liquid when it's pressurized.

11 Q. So I guess all the air that was in the sort of
12 head space here would come out?

13 A. Through that nozzle there, yes.

14 And the lower the level of liquid becomes, the
15 more air in there, which makes it a lot more pumping
16 power and lasting longer.

17 Q. All right. This one, I'm just going to do
18 because I have the gloves. Sir, I'm going to walk up to
19 you, and you can just confirm what it is.

20 But is this a -- is this one of the bottles
21 that you dug out of your shed?

22 A. Yes, it is. Uh-huh.

23 Q. And we had this totally cleaned, so I probably
24 don't even need gloves at this point.

25 But was this the nozzle you would be using

1 when you would use the ready-to-use stuff?

2 A. I wouldn't use that. I would pour it into a
3 2-gallon container. The one in your hand, I used it
4 before with Roundup, but it wasn't satisfactory. A
5 little too sloppy and leaky on my hands.

6 Q. Did your wife use this one, though?

7 A. Yes, uh-huh.

8 Q. Did you occasionally use this one?

9 A. Yes.

10 Q. And this is a little shorter; is that right?

11 A. Yes, it is.

12 Q. And does it also require sort of pumping, as
13 well?

14 A. Yeah, you need the pressure in there.

15 Q. Right here is the pump?

16 A. Yes, uh-huh.

17 Q. And then -- it's just water. We'll stop that.

18 A. That water used to have Roundup in it.

19 Q. No, we totally cleaned it. Fair enough. I
20 won't spray it anymore.

21 When you sprayed it with this device, would it
22 get -- I'm sorry, I didn't know stuff would come out,
23 sorry.

24 When you sprayed it this way, would it ever
25 make contact with your skin?

1 **A.** Yes, uh-huh. Both my hands and my feet.

2 **Q.** When did you start spraying?

3 **A.** Beg your pardon?

4 **Q.** When did you start spraying?

5 **A.** In 1982. I think it was the summer of '82.

6 **Q.** And do you recall why you started spraying in
7 1982?

8 **A.** Yes. We had a little bit of rain in the house
9 we moved into in Livermore. And we had weeds popping up
10 all over the place, and my knees were getting sore from
11 pulling all these weeds. So I bought a bottle of
12 Roundup, and it had a little hand pump on it.

13 The bottle went pretty fast, so I went down
14 and bought a larger container. And initially, I used
15 quite a bit of it.

16 **Q.** And in 1982, when you began using it, did you
17 read the label to see if there were any precautions?

18 **A.** Yes, I did.

19 **Q.** Did it say anything about wearing gloves or
20 protective gear?

21 **A.** Nothing.

22 **Q.** Did it say anything about cancer?

23 **A.** No.

24 **Q.** Back in 1982, did it say anything about
25 whether or not the data on Roundup had been based on

1 fraudulent scientific studies?

2 A. No.

3 Q. I understand that you went and bought a
4 brand-new Roundup bottle; is that right?

5 A. Yeah. I saw it on display at Home Depot.

6 Q. I was at your house the other day, and I
7 picked it up from you; is that right?

8 A. Yes.

9 Q. So this is the new sort of spray wand.
10 Do you see how it works?

11 A. Yeah.

12 Q. You can kind of cup it over a specific weed
13 and spray it?

14 A. I never used that. They didn't have that when
15 I bought it.

16 Q. So the one that you used didn't have all this
17 stuff?

18 A. No.

19 **THE COURT:** Mr. Wisner, you might want to put
20 that away.

21 **MR. WISNER:** Okay.

22 **BY MR. WISNER:**

23 Q. All right, sir.

24 If you have your binder in front of you -- oh,
25 I took your binder away. There you go.

1 I want to go through some of these photos very
2 quickly.

3 A. Okay.

4 Q. Starting on Exhibit 2420, sir. Do you see
5 that? It's the first one.

6 Do you see that, sir?

7 A. Yes.

8 Q. And if you turn to the next exhibit, it's
9 2421, page 2.

10 The jury saw this picture earlier. It's the
11 second -- it's the next exhibit.

12 A. Okay. 2421.

13 Q. That's that picture of you at Stabulis.

14 Is that right?

15 A. Oh, yes, it is. Uh-huh.

16 Q. If you go through here, are all of these
17 pictures that you or your wife took on the Stabulis
18 property?

19 A. Yes, it is.

20 MR. WISNER: At this time, Your Honor, I would
21 actually move into evidence, Exhibit 2421.

22 MR. BROWN: No objection.

23 THE COURT: Admitted.

24 (Trial Exhibit 2421 received in evidence.)

25 ///

1 **BY MR. WISNER:**

2 **Q.** If you turn to the next one, 2422. I believe
3 this was shown earlier, as well.

4 Are these pictures of the Gabor property?

5 **A.** Yes, they are.

6 **Q.** Did you or your wife take these at some point?

7 **A.** We both did, yes.

8 **MR. WISNER:** At this time, I would move
9 Exhibit 2422 into evidence.

10 **MR. BROWN:** No objection.

11 **THE COURT:** So moved.

12 (Trial Exhibit 2442 received in evidence.)

13 **BY MR. WISNER:**

14 **Q.** And then, Mr. Pilliod, Exhibit 2767.

15 Is that a fair and accurate picture of the
16 Agate property?

17 **A.** Yes, it is.

18 **Q.** I'll do a couple of these so we can move them
19 all at the same time.

20 The next exhibit, 2768.

21 Is that a fair and accurate copy of the
22 Stabulis Road property?

23 **A.** Yes. But it was taken during the -- this one
24 was taken during the summer, because all of this dry
25 brush around there. It was much greener and much

1 grassier when I bought it.

2 Q. Okay. If you turn to the next one,
3 Exhibit 2769.

4 Is that an aerial shot of the Gabor property?

5 A. Yes, it is.

6 Q. And then 2770, is that an aerial shot of the
7 Hartvickson Lane property?

8 A. 2770?

9 Q. Yeah, 2770. The next one.

10 Is it not in there?

11 A. Oh, here we go. Got it, thank you.

12 Q. Is that a fair and accurate photo of the
13 Hartvickson Lane property?

14 A. Yes, it is.

15 MR. WISNER: At this time Your Honor, I would
16 move Exhibit 2768, 2769, 2770, and 2771 into evidence.

17 MR. BROWN: No objection.

18 THE COURT: So moved.

19 (Trial Exhibits 2768, 2769, 2770, 2771
20 received in evidence.)

21 BY MR. WISNER:

22 Q. And then Exhibit 2772, sir.

23 Are these a series of photos of the -- the
24 home you have in Livermore?

25 A. Yes, it is. On Agate Court.

1 **Q.** Are these fair and accurate photos of your
2 home?

3 **A.** Yes, they are.

4 **MR. WISNER:** At this time, I would move 2772
5 into evidence.

6 **MR. BROWN:** I assume you want the potholes, as
7 well, or just the home?

8 **MR. WISNER:** The entire exhibit.

9 **MR. BROWN:** No objection.

10 **THE COURT:** So moved.

11 (Trial Exhibit 2772 received in evidence.)

12 **BY MR. WISNER:**

13 **Q.** And then Exhibit 2775, sir.

14 Do you see that?

15 **A.** Yes.

16 **Q.** And you see these are all pictures -- and fair
17 and accurate pictures -- of the various Roundup bottles
18 that you were able to take out of your shed.

19 Is that right?

20 **A.** That's correct.

21 **Q.** And are these fair and accurate photos of
22 those bottles?

23 **A.** Yes, they are.

24 **MR. WISNER:** All right. I move 2775 into
25 evidence.

1 **MR. BROWN:** No objection, Your Honor.

2 **THE COURT:** So moved.

3 (Trial Exhibit 2775 received in evidence.)

4 **BY MR. WISNER:**

5 **Q.** Go to Exhibit 2788, sir.

6 We're almost done.

7 **A.** That's okay.

8 **Q.** Are those fair and accurate photos of the
9 Hartvickson property?

10 **A.** I'm still trying to get to that one.

11 **Q.** 2788.

12 **A.** Got it.

13 **Q.** Okay.

14 **A.** Yes, they are.

15 **MR. WISNER:** Okay. At this time, I would move
16 2788 into evidence.

17 **MR. BROWN:** No objection.

18 **THE COURT:** So moved.

19 (Trial Exhibit 2788 received in evidence.)

20 **MR. WISNER:** Just a couple more. We're almost
21 done.

22 **BY MR. WISNER:**

23 **Q.** 2789.

24 Do you see that, sir?

25 **A.** 2789. Yes.

1 **Q.** Are these photos that you or your wife or your
2 family took of the Stabulis property, back when you
3 owned it?

4 **A.** Yes.

5 **MR. WISNER:** I would move Exhibit 2789 into
6 evidence.

7 **THE COURT:** So moved.

8 (Trial Exhibit 2789 received in evidence.)

9 **BY MR. WISNER:**

10 **Q.** And then Exhibit 3026, sir.

11 **A.** 3026.

12 **Q.** These are various pictures of you and Alberta
13 over the years; is that right?

14 **A.** Yes, uh-huh.

15 **MR. BROWN:** 3026? I'm sorry, Your Honor.

16 **MR. WISNER:** 3026.

17 **THE COURT:** Yes, 3026.

18 **MR. BROWN:** 3026.

19 **BY MR. WISNER:**

20 **Q.** Are these photos that you or somebody in your
21 family took over the years?

22 **A.** Yes, uh-huh.

23 **MR. WISNER:** At this time, I would move
24 Exhibit 3026 into evidence.

25 **MR. BROWN:** No objection.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: So moved.

(Trial Exhibit 3026 received in evidence.)

BY MR. WISNER:

Q. And then finally, sir, if you could turn to Exhibit 2764. So go backwards.

A. 2764?

Q. Yes, 2764. This has also been shown.

Are these various photos that --

A. Let me get to it.

Q. Yeah, I'll let you get there.

A. Got it.

Q. Are these various photographs of you, your wife, and your family in properties that you've owned over the years?

A. Yes, uh-huh.

MR. WISNER: I would move 2764 into evidence.

MR. BROWN: No objection.

THE COURT: So moved.

(Trial Exhibit 2764 received in evidence.)

BY MR. WISNER:

Q. All right, sir. We're almost done here.

One of the things that came up just a minute ago, when your wife was testifying, was her cancer.

Do you recall when that happened?

A. 2015.

1 **Q.** And so this -- to put things in context, this
2 is after you've survived cancer, right?

3 **A.** Yes.

4 **Q.** And what was happening with Alberta leading up
5 to her diagnosis?

6 **A.** She was losing her balance. She thought she
7 had vertigo. She was saving up money to visit our son
8 in Hawaii, and she was all ready to go on this trip.

9 And she went to her general practitioner to
10 find out why she had problems with her balance. And the
11 doctor made a thorough examination of her and said,
12 well, there's something more than just your balance. I
13 recommend you don't go to Hawaii. But she was looking
14 forward to seeing our son for a long time, and to go to
15 Hawaii, so she went anyway.

16 The person she was going with was our
17 granddaughter Portia, who is a nurse. And our son Mike,
18 his wife is a nurse. And Mike had medical training. So
19 she thought she would get over it. But instead, her
20 condition got worse.

21 And when she returned to California a week
22 later, she stayed at Portia's house, the nurse's house,
23 because it was near Stanford. And she went to Stanford
24 Emergency the next morning, and they made a thorough
25 examination of her, and they couldn't pin down what it

1 was.

2 And three or four weeks later, they determined
3 it was cancer. The doctors talked to me out in the
4 hallway, and they said, she has 12 to 18 months, quite a
5 bit less if she doesn't go through extreme chemotherapy.

6 So she went for the extreme chemotherapy. She
7 was shot for a month or six weeks. She got out of the
8 hospital, and we had to put her in a care home for a
9 couple of weeks. She had changed quite a bit. Her
10 outlook on life, her sadness was greatly increased.

11 And she recovered from it. And she wasn't
12 quite back to herself, but by 2016, early 2017, she was
13 almost back to normal. Then the cancer in her brain hit
14 again, but in a different area of the brain.

15 And she went to Stanford, went to UCSF, went
16 to Eden Hospital, saw all these different specialists.
17 And back at the hospital at UCSF, they would see her
18 quite often.

19 Do you want me to go on with the gory details?

20 **Q.** Yeah, why don't you just finish where you were
21 going.

22 **A.** I phoned her room one day, and a rough male
23 voice said, she's not here, she's gone.

24 I said, what do you mean she's gone? Where is
25 she? And he just hung up on me.

1 So I called back, I thought I must have the
2 wrong number. The same male voice answered and said,
3 she's gone.

4 So I called the nurse on the phone, and she
5 said, I'm sorry, we tried to revive her last night, and
6 we couldn't revive her, so we had to move her down
7 below, which I'm thinking is the morgue.

8 Sorry.

9 **MR. BROWN:** Excuse me, Your Honor. I hate to
10 interrupt.

11 **THE COURT:** Pardon me?

12 **MR. BROWN:** Go ahead.

13 **THE WITNESS:** I'll be okay in just a minute.

14 **THE COURT:** Do you need a break, Mr. Pilliod?
15 Are you okay?

16 **THE WITNESS:** I'll be okay in just a second
17 here. It's just that some parts of the cancer were more
18 strong and tragic than others.

19 And I had this person drive me to the
20 hospital. I talked to the head nurse. She said, we
21 shouldn't have told you that. We couldn't revive her,
22 so we moved her downstairs to a separate room where
23 she'll get more treatment.

24 And I saw her through the window. She didn't
25 have a hair on her head. And she was just staring into

1 nothing. She didn't know who I was, who her friends
2 were. No knowledge of her own existence.

3 Well, she recovered from that one, too.

4 **BY MR. WISNER:**

5 **Q.** That's awesome. I'm happy that she's here
6 today with you.

7 **A.** I shouldn't say fully recovered. She gets
8 weaker by the day. She gets an MRI tomorrow, and her
9 birthday was just yesterday.

10 **Q.** Sir, I can only imagine how hard this is, and
11 if you need a break, you let me know, okay?

12 Do you need any water? Are you good?

13 **A.** Water would be helpful, thank you.

14 **Q.** I understand, sir, that cancer is a tough
15 thing to do.

16 Despite it, did you and your wife do
17 everything you could to fight it?

18 **A.** Yes, we did. We went through a lot of
19 hospitalizations, a lot of doctors, a lot of
20 specialists, a lot of medication. And we fought it all
21 the way through.

22 **Q.** And after you got cancer, and even after your
23 wife got cancer, did you actually continue to spray
24 Roundup?

25 **A.** No. Not until -- I stopped using it about

1 2016. I was trying to find a common cause of why two
2 people unrelated by blood get the same type of cancer.

3 And I went to the library. And it said one
4 thing was weed killer, insecticides, diets, heritage. I
5 brought a little Geiger counter and went around the
6 house looking for any radiation, and there wasn't any.

7 The neighbor next door to us, a couple years
8 before -- he was a scientist, a rocket scientist -- he
9 took bits of paint off the ceiling and off the wall and
10 had them tested, looking for lead content or other
11 content. It was clear.

12 So it wasn't the paint. It wasn't the water;
13 we had a different water system in Livermore. And I
14 couldn't find the cause.

15 And I finally read an article about Roundup.
16 And it was saying that different countries have outlawed
17 it because of the cancer things -- it causes cancer.
18 And I read another article about the particular type of
19 cancer that starts with non-Hodgkin's lymphoma.

20 I read plenty of articles about the
21 non-Hodgkin's lymphoma. And I found the common
22 denominator, the weed killer we had been using.

23 And I read more about stuff they were doing in
24 other countries, and why other countries had outlawed
25 the weed killer in their countries.

1 Honestly, I was quite worried about it. So I
2 packed up what Roundup I had in the shed and took it to
3 the hazardous waste material disposal plant. And
4 fortunately or unfortunately for me, I didn't find it
5 all in my shed. It was kind of crowded.

6 And then I saw an ad for law firms. So --

7 **Q.** Sir, can I ask you a question.

8 **A.** Sure thing.

9 **Q.** So when you started saying you were spraying
10 Roundup even after you got cancer, even after Alberta
11 got cancer, up until late 2016; is that right?

12 **A.** 2016, yeah.

13 **Q.** And then when you went and took all the
14 Roundup to that hazardous waste dump, was that in early
15 2017?

16 **A.** Probably early 2017, yeah.

17 **Q.** And all that time you were spraying Roundup,
18 from 1982 until when you finally learned the truth in
19 that research that you did, had you known that Roundup
20 could cause NHL --

21 **MR. BROWN:** The question is argumentative.

22 **MR. WISNER:** I haven't even finished my
23 question, Your Honor.

24 **THE COURT:** Go ahead and finish your question.

25 ///

1 **BY MR. WISNER:**

2 Q. Had you known it caused non-Hodgkin's
3 lymphoma, would you have let Alberta spray it?

4 A. No. I wouldn't have it on my property.

5 Q. Why?

6 A. If it causes non-Hodgkin's lymphoma, I don't
7 want to be anywhere near it. And I don't want my family
8 near it. Or my pets near it. My dog died when we were
9 up there spraying the stuff.

10 **MR. BROWN:** Excuse me -- withdrawn.

11 **THE COURT:** Okay, go ahead.

12 **MR. WISNER:** Thank you so much for your time
13 and your courage, sir. I appreciate your time.

14 **THE WITNESS:** Sure. I'm sorry I got --

15 **THE COURT:** Okay. We were going to take --

16 **THE WITNESS:** -- emotional.

17 **THE COURT:** I'm sorry. I didn't mean to cut
18 you off, Mr. Pilliod.

19 We're going to take a break. At ten of the
20 hour, we will reconvene for cross-examination.

21 (Recess taken at 2:37 p.m.)

22 (Proceedings resumed at 2:51 p.m.)

23 (The following proceedings were heard out of
24 the presence of the jury:)

25 **MR. EVANS:** Your Honor, we have a problem that

1 we want to raise. Mr. Wisner brought up and
2 demonstrated a 2019 product. He did not ask permission
3 to show it; he just pulled it out, put it in front of
4 the jury.

5 It's post-use company conduct, post-use
6 remedial action, I guess. But Your Honor told him to
7 put it away, and that was on sort of the back end of him
8 previously spraying around the prior bottle with water,
9 where Your Honor told him to basically stop doing it.

10 And I don't know if all of that led the jury
11 to believe that your instruction to him to put it away
12 was because you didn't want him spraying them, or
13 because it's the post-use modification issue, which I
14 think is what Your Honor was really talking about.

15 **THE COURT:** Yeah. When I realized it was a
16 new product, I thought this is all bad in terms of it
17 being a post-use product. And really not appropriate, I
18 don't think, to question Mr. Pilliod about.

19 But do you think that they think it's unsafe?
20 Is that what it is?

21 **MR. EVANS:** Well, again, I think with him --
22 we now have a question from the jury with glove usage.
23 That whole thing. And going back to Dr. Sawyer and, it
24 used to be yellow gloves up to the arms. I mean, this
25 is all prejudicial, and we think improper.

1 And when you layer on top of the motion in
2 limine with the post-use issue that we had earlier,
3 yeah, okay, they -- they showed something, and we didn't
4 object at the time. But it's not proper to put up
5 something that violates a motion in limine and require
6 us to object in front of the jury.

7 It was ordered out pursuant to a motion in
8 limine, and it should not be offered if it violates a
9 motion in limine, which that Prop 65 warning did.

10 And so, I mean, there have been multiple
11 issues here that we believe violate the motions in
12 limine on post-use conduct and remedial action.

13 And we think that -- again, at this point,
14 it's hard to know what the curative instruction should
15 be, but we think that at least there should be an
16 instruction that they should disregard the demonstration
17 of the 2019 -- or the recently-purchased bottle of
18 glyphosate.

19 That product, by the way, as advertised, is to
20 prevent the spray from reaching a nearby plant. It's
21 not -- certainly not to my knowledge -- some kind of a
22 shield so that the user doesn't have some sort of more
23 exposure.

24 But, again, this is nothing that anyone has
25 testified about from the company, from experts, anyone

1 else. Mr. Wisner just put it out there, and you heard
2 the question that he asked, which I think is improper
3 and violates the motion in limine regarding post-use
4 company conduct and remedial action.

5 So I just have a problem with all of that.
6 And I think that the request is for the discussion of
7 the recently-purchased bottle to be disregarded and be
8 stricken.

9 **THE COURT:** Let me hear from Mr. Wisner.

10 **MR. WISNER:** A couple of things. First of
11 all, I did not -- there was a couple of statements made,
12 I just want the record to be clear.

13 I did not spray the jury with anything. I
14 sprayed one time, down. I didn't think anything would
15 come out of it. Some water sprayed out. I stopped and
16 moved back to make sure that there was no problem. So
17 this idea that I was spraying the jury is just complete
18 hyperbole.

19 Second, I brought out the bottle and asked
20 him, sir, is this the bottle you recently purchased?

21 Yes.

22 I put it on the table, and I go --

23 **THE COURT:** You shouldn't have brought the
24 bottle out, though, Mr. Wisner.

25 **MR. WISNER:** Fair enough.

1 **THE COURT:** It's post-use conduct, and it has
2 nothing to do with this case, so it really wasn't
3 appropriate to do that.

4 Having said that, I have a solution and then
5 let's move on. I'm just simply going to -- go ahead.

6 **MR. WISNER:** I just want to make my record.

7 **THE COURT:** Okay. I'm sorry.

8 **MR. WISNER:** He went on for, like, five
9 minutes saying stuff.

10 **THE COURT:** I'm sorry I interrupted you.

11 **MR. WISNER:** I just want to make sure this
12 verdict is what it is.

13 **THE COURT:** Make your record.

14 **MR. WISNER:** So the other thing was, I brought
15 it out. I had it out for several seconds. I asked him
16 about it. He confirmed what it was. There was no
17 objection. And, indeed, after I brought it out, there
18 was no objection.

19 So they did not object. And they could have
20 said, objection, Your Honor, sidebar. They did that
21 45 times yesterday, seemingly without inhibition, when I
22 had Dr. Sawyer up. So this idea that he can't object
23 during testimony, untrue.

24 **THE COURT:** Well, Mr. and Mrs. Pilliod are
25 testifying. And you would be very careful yourself --

1 if the plaintiffs were testifying in a case, you would
2 loathe to interrupt that for whatever reason.

3 But go ahead. Finish making your record.

4 **MR. WISNER:** Okay. Fair enough.

5 **THE COURT:** Finish making your record.

6 **MR. WISNER:** I don't believe that was an
7 emotional spot. They could have said, Your Honor, can
8 we have a sidebar about this. We could have addressed
9 it right then. They did not.

10 On the Prop 65 warning that was brought up a
11 second ago, not only did we show it to the counsel
12 before showing it to the jury, they said, quote, no
13 objection.

14 So any objection about that, about having some
15 problem, is waived.

16 **THE COURT:** Did you object about that --

17 **MR. WISNER:** He brought it up.

18 **MR. EVANS:** I layered it on top, as another
19 example of a motion in limine. Which, once a motion in
20 limine is granted, you are not supposed to offer
21 evidence that violates the motion in limine.

22 It's not okay to just ask questions or do
23 something that violates a motion in limine and wait or
24 demand that we object. That's not how it works.

25 **THE COURT:** And part of the problem is, once

1 it's published and you don't object -- I mean, I saw it,
2 but I couldn't say, oh, by the way, you can't do that.

3 I don't want to interject myself into that,
4 because specifically there was no objection. Had you
5 objected, I would have absolutely shut it down, but
6 there was specifically a "no objection."

7 **MR. EVANS:** I understand, Your Honor. And
8 that's why I said this is layering it on top.

9 But the point is, as you said a minute ago,
10 when you're examining the plaintiffs in particular, we
11 are very reticent to object and interrupt. And that's
12 much different -- you're right, yesterday was a
13 different story.

14 But it's a much different thing to interrupt
15 when we're in the middle of examining witnesses. But
16 that's the point of the motion in limine, so it's not
17 offered into evidence. And that's the problem we have.

18 **THE COURT:** Well, this is not the end of the
19 world.

20 **MR. WISNER:** I just want to finish making -- I
21 haven't had a chance to finish what I want to say, and
22 I'll be done, Your Honor.

23 Dr. Sawyer talked about the design and the way
24 the sprayer worked. He specifically talked about how
25 it's designed, and he talked about how there's better

1 and alternative designs. This is an illustration of
2 that.

3 I believe in that context, it shows
4 feasibility. And that actually is a proper use of
5 subsequent remedial measures, so I think legally, we're
6 on firm ground.

7 Finally, Your Honor, I just want the record to
8 be known that Counsel objected twice during his
9 testimony when he was in the middle of talking about how
10 he thought his wife was dead, and they have the nerve to
11 say that they're afraid to object during his direct.

12 Thank you very much, Your Honor.

13 **THE COURT:** I have a solution, and I think the
14 solution -- because one of the jurors did ask whether it
15 was safe, which, you know, my thought is that I would
16 simply say: Disregard the second bottle of Roundup;
17 it's not relevant. And yes, the bottle is perfectly
18 safe, and we'll leave it at that.

19 First off, I don't want the jurors to think
20 they were in any danger at all. When you came out with
21 the gloves and everything, clearly that's a sign you
22 need the gloves. You wouldn't put them on if you didn't
23 think you needed them, or whatever reason you put them
24 on.

25 **MR. WISNER:** The question wasn't is it safe;

1 it actually is a sarcastic question. Why did the lawyer
2 put on gloves if there's only water in the Roundup
3 container?

4 **THE COURT:** Yeah. Why did the lawyer put on
5 gloves if there was no Roundup in it? And then I think
6 implicit in that is that he wondered if it was safe.

7 **MR. WISNER:** Fair enough. I guess my question
8 is, when you instruct the jury, I would be very reticent
9 for you to say, that Roundup is safe. Because that's a
10 weird statement coming out of the Court's mouth.

11 If you can say the Roundup bottle is empty,
12 only contained water, that would be --

13 **THE COURT:** I'll leave it at only contained
14 water.

15 **MR. EVANS:** That's different than the 2019.
16 There are two different issues. The question
17 specifically related to the bottle -- why was he wearing
18 gloves if he had rinsed it and it's only water? That's
19 one issue.

20 The second issue is the 2019 new bottle --

21 **THE COURT:** I'm going to completely disregard
22 the second bottle. I will tell them the second bottle,
23 the 2019 product, should be disregarded. It's not
24 relevant to the case. And then I will say the Roundup
25 bottle only had water in it.

1 I think he's concerned -- I'm worried that
2 he's concerned. And I will just say there's no reason
3 to be concerned; let's just move on, and I think that's
4 the end of it.

5 **MR. WISNER:** Thank you, Your Honor.

6 **THE COURT:** All right.

7 We're going to continue.

8 (The following proceedings were heard in the
9 presence of the jury:)

10 **THE COURT:** I want to say two things to you.

11 First, disregard any references or the
12 demonstration of the second product, the 2019 product.
13 It's not relevant to the case.

14 Also, the canister, the earlier bottle of
15 Roundup that Mr. Wisner was using, only contained water,
16 and there's no reason to be concerned, okay?

17 So we'll move on.

18 Cross-examination?

19 **MR. WISNER:** I passed the witness, I believe.

20 **MR. BROWN:** No questions.

21 **THE COURT:** Thank you, Mr. Pilliod. You're
22 all done. You may step down.

23 (Witness excused.)

24 **MR. MILLER:** Your Honor, very brief witness,
25 Michael Pilliod, and then we're going to play

1 Dr. Rubenstein's video.

2 **MICHAEL PILLIOD,**

3 called as a witness for the Plaintiff, having been duly
4 sworn, testified as follows:

5 **THE CLERK:** Please be seated. And would you
6 please state and spell your name for the record.

7 **THE WITNESS:** Michael Thomas Pilliod.

8 P-I-L-L-I-O-D.

9 **DIRECT EXAMINATION**

10 **BY MR. MILLER:**

11 **Q.** First question everyone in this room wants to
12 know: How tall are you?

13 **A.** 6'7". I'm the big kid in the family.

14 **Q.** And what's your name?

15 **A.** Michael Pilliod.

16 **Q.** Who's your mom and dad?

17 **A.** Al and Alberta Pilliod.

18 **Q.** Were you proud to be raised by them?

19 **A.** Yes.

20 **Q.** And you were raised here in California?

21 **A.** Yes.

22 **Q.** We aren't going to go through everything. We
23 did that with Mom and Dad.

24 Two things that I think you can add to.

25 How active was Pop? We've heard about Pop's

1 illnesses back in the '70s, we heard about his skin
2 cancer, we heard a possible diagnosis of ulcerative
3 colitis, all those things. You're not an expert.

4 But what was Dad like before 2011, when he got
5 struck with non-Hodgkin's lymphoma?

6 A. He was a very active person. He loved to
7 sail. He has a 30-footer around here, and he went out a
8 lot on it. Did a crazy trip to Hawaii all by himself
9 with a friend, and came back. Did the Bay to Breakers,
10 liked to jog. Did a lot of work on houses, on his
11 house, my sister's house; they had a couple rentals for
12 a long time. Plenty of yard work, lots of maintenance.
13 But he was very active with that.

14 Q. Tell the jury how you learned about Pop having
15 Stage IV non-Hodgkin's lymphoma.

16 A. He was in pain for quite a while. And as far
17 as I know, went to his general practitioner, and they
18 said, you're getting older, probably pulled a muscle,
19 things like that.

20 Since I lived out of state, I had a friend who
21 lives close, who is a family friend of theirs, go and
22 check on them. He said he was in pretty bad shape.

23 Q. You were living where?

24 A. Hawaii.

25 Q. So you get a call?

1 **A.** My friend called me and said they're in pretty
2 bad shape. You need to come out. So I called them and
3 suggested they go to the ER right then to get it checked
4 out. Then I flew out, I believe, one or two days later
5 to see them.

6 **Q.** So Dad went through the chemotherapy.
7 What was Pop like after that? Same guy?

8 **A.** No. He hasn't been the same guy in quite a
9 while.

10 **Q.** All right. We're going to keep moving.

11 **A.** Okay.

12 **Q.** Mom.

13 **A.** Yeah.

14 **Q.** Mom came to see you in the spring of 2015?

15 **A.** She did.

16 **Q.** Who did she come with?

17 **A.** My niece Portia. And they were out there for
18 about a week, I think.

19 **Q.** What happened?

20 **A.** Her balance was off, and she thought she had
21 vertigo. My wife Heather is a nurse, and we encouraged
22 her to go see a doctor there. But it being Maui, the
23 hospitals aren't as good as Stanford, so we understood
24 she would want to wait.

25 When she got back, she went to Stanford and

1 had a lot of tests. Her balance was off, her vision was
2 off. She kind of was getting wobbly, where she couldn't
3 quite stand on her own. She wasn't using a cane then,
4 but she probably should have. She just kind of wasn't
5 right.

6 And then she came home and went to start to
7 get checked out.

8 Q. Prior to that trip to Maui in spring of 2015,
9 what was Mom like?

10 A. One of the nicest people you'll meet. She was
11 very active in different ways. She wasn't huge into
12 boats like my dad. But she was very social, she was a
13 teacher, an administrator and principal or vice
14 principal, and just very social. Did lots of social
15 things. They used to go to the gym and walk a lot.
16 Snorkel and ski, back in the long ago time. Just a very
17 social, happy person.

18 Q. We heard about your mom's brain cancer in
19 2013, and we heard about it coming back in the summer of
20 2016 and her battle then.

21 Has she been the same after all that?

22 A. No.

23 Q. What's the difference?

24 A. Her balance, her vision, her hearing, her
25 memory, to some level. Just -- just not there, you

1 know. There was a lot of hope that she would get back
2 to where she was, but I don't know if that's going to
3 happen or not.

4 Q. Last question: Are you going to be here for
5 your mom tomorrow when she gets her MRI?

6 A. Yeah.

7 Q. Good.

8 MR. WISNER: No more questions.

9 THE COURT: Cross-examination?

10 MR. BROWN: No questions, Your Honor.

11 MR. WISNER: At this time, Your Honor, we're
12 going to call, by video deposition, Dr. Rubenstein.

13 THE COURT: What's the run time?

14 MR. MILLER: It's about an hour.

15 MR. WISNER: Sorry, the deposition was taken
16 on January 7th, 2019, just down the street. And it's
17 44 minutes long.

18 MR. MILLER: If I could apologize to the Court
19 and the jury on this, there's a little bit of a camera
20 issue. It's a small room, and sometimes the doctor
21 disappears behind the screen and comes back out.
22 There's just a little bit of awkwardness in the camera.

23 THE COURT: That's fine.

24 ///

25 ///

1 (Video excerpts from the deposition testimony
2 of James Rubenstein played in open court; not reported
3 herein.)

4 **MR. WISNER:** That's the completion of our
5 portion, and it's going to be cross.

6 **THE COURT:** Okay.

7 **MR. WISNER:** There's 20 minutes left.

8 (Video excerpts from the deposition testimony
9 of James Rubenstein resumes playing in open court; not
10 reported herein.)

11 **MR. WISNER:** There's a short redirect.

12 **THE COURT:** Okay.

13 (Video excerpts from the deposition testimony
14 of James Rubenstein resumes playing in open court; not
15 reported herein.)

16 **MR. MILLER:** That concludes, Your Honor.

17 **MR. WISNER:** I think that's all for today.
18 We're going to call it early. It's been a long week.

19 **THE COURT:** So, ladies and gentlemen, we are
20 done for the week. It's Thursday, and we will not be in
21 session tomorrow. We will resume Monday at 9:00.

22 Have a good weekend. Don't think about this
23 case, talk about this case, ruminate about this case.
24 Enjoy your weekend, and I'll see you Monday morning at
25 9:00 a.m. Thank you.

(Proceedings adjourned at 3:35 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 State of California)
2 County of Alameda)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Kelly L. Shainline and Lori Stokes, Court Reporters at the Superior Court of California, County of Alameda, do hereby certify:

That we were present at the time of the above proceedings;

That we took down in machine shorthand notes all proceedings had and testimony given;

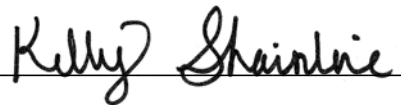
That we thereafter transcribed said shorthand notes with the aid of a computer;

That the above and foregoing is a full, true, and correct transcription of said shorthand notes, and a full, true and correct transcript of all proceedings had and testimony taken;

That we are not a party to the action or related to a party or counsel;

That we have no financial or other interest in the outcome of the action.

Dated: April 18, 2019



Kelly L. Shainline
CSR No. 13476, CRR



Lori Stokes
CSR No. 12732, RPR