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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:)	
)	
Pilliod, et al.)	Case No. RG17862702
vs.)	
Monsanto Company, et al.)	Pages 3302 - 3370
_____)	Volume 20

Reporter's Transcript of Proceedings

Monday, April 15, 2019

Reported by: Kelly L. Shainline, CSR No. 13476, RPR, CRR
Stenographic Court Reporter



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23
24
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1 Monday, April 15, 2019

8:38 a.m.

2

P R O C E E D I N G S

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

6

7

MR. WISNER: Okay. First things first. We're
going to be finishing up Reeves today.

8

THE COURT: Right.

9

MR. WISNER: Today is all video.

10

THE COURT: Okay.

11

MR. WISNER: And most of tomorrow as well.

12

THE COURT: Right.

13

14

MR. WISNER: So the issues we need to address
are, first, the rulings on Dr. Reeves' additional
designations that we gave you on Thursday.

15

THE COURT: Okay.

16

17

MR. WISNER: Do we have a ruling on that
because we need to play it this morning?

18

THE COURT: Okay. Yes, but let me go get it.

19

20

MR. WISNER: Okay. That's issue number one.

21

22

Issue number two, with Heydens, he will be
played today as well. Those were things submitted to
you on Thursday as well or maybe Friday morning related
to specific objections. Do you know what I'm talking
about?

23

24

25

1 **THE COURT:** I don't know if I know what you're
2 talking about there. I'd have to go check.

3 **MR. WISNER:** Well, I think that we need to
4 know where we stand.

5 **THE COURT:** There's a lot of paper flying
6 around so I may have misplaced it. But let me go look
7 and see.

8 **MR. ISMAIL:** How much more of Reeves?

9 **TECH PERSONNEL:** About an hour and 20.

10 **MR. ISMAIL:** About two and a half hours of
11 Reeves.

12 (Discussion off the record.)

13 **TECH PERSONNEL:** Just under 30 without the
14 objections and just under an hour with.

15 Just under 50.

16 **MR. WISNER:** And then Heydens I believe we
17 have about an hour and a half before we get to the
18 portions that need rulings on.

19 **THE COURT:** Okay. I'll go back and
20 double-check. I'm sorry, I redirected my attention to
21 the other depositions that you wanted, and so I may have
22 just overlooked the Heydens thing, the Heydens
23 objections so I'll will come back to those.

24 **MR. WISNER:** We're working you hard, Judge.
25 So anything you can do.

1 And I'd like to discuss maybe at the end of
2 court today briefly two rulings on the Raj deposition,
3 very specific, and I just want to show you them and see
4 if you'll reconsider them. It shouldn't take more than
5 five minutes. It's not complicated.

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

7 **MR. WISNER:** And then, of course, we need to
8 know about Dr. Pease.

9 **THE COURT:** I do have some tentative thoughts
10 on Dr. Pease. I could throw them out quickly which is:
11 No Dr. Pease testimony, but the information regarding
12 the listing of Prop 65, which I think is appropriate,
13 but not OEHHA and no safe levels because that's a
14 completely different standard than is being applied
15 scientifically here. I think that would be prejudicial,
16 but I think it would also distract the jury because
17 we're in a whole process of analyzing what went into a
18 scientific standard that's just not applicable to the
19 jurors.

20 So that's my -- I went over that. That was
21 the other thing I went over. That nice young lady who
22 delivers all of the massive binders showed up Friday
23 morning.

24 **MR. WISNER:** I just want to make sure I heard
25 you right. You're saying yes but not the NSRL?

1 **THE COURT:** Yes, the information. No
2 Dr. Pease. Because he doesn't have an expertise to
3 offer about anything except what OEHHA actually did
4 which is not relevant. So, yes, information about
5 Prop 65, the listing. And actually there are a couple
6 of paragraphs in his summary or one or two that would
7 probably suffice, which is that it's automatically
8 listed so the results of the IARC analysis and so it is
9 considered, whatever it is in the Prop 65 speak. But
10 that's, I think, the limitations of Prop 65.

11 **MR. WISNER:** Sure, and we're not here to sort
12 of relitigate Prop 65.

13 **THE COURT:** No, no, I know. And I'm just
14 telling you I agree and I ruled that Prop 65 could come
15 in, but that's the limited basis. Because I went
16 through his deposition, I went through the motion and
17 much of what he offered about the independent analysis
18 had to go -- related to the no safe limit and that's
19 just not coming in.

20 **MR. WISNER:** So what we'd like to have
21 Dr. Pease do is bring him in and just have him explain
22 what the initial listing process is and how it works.
23 It shouldn't be very long direct at all.

24 **THE COURT:** But the initial listing is
25 automatic. It's --

1 **MR. WISNER:** He's going to explain that. He's
2 going to explain the history of that regulation, how it
3 came to be. That's it.

4 I think that would be helpful for the jury
5 because right now we've had, for example, Dr. Portier
6 explain foreign regulatory matters. Dr. Benbrook is
7 going to help explain the EPA process later this week.
8 I think Dr. Pease helps explain what that process is.
9 He's not going to say anything beyond that and he won't
10 talk about the NSRL whatsoever. It's just going to be
11 how that listing works. It will be 15 minutes.

12 **THE COURT:** Okay. So what I read in his
13 summary is to save Californians from toxic whatever,
14 this is what -- and what I really want and what I think
15 I'm admitting is, yes, you can explain what Prop 65 is,
16 but there was a lot of nonexpert, more adversarial than
17 scientific testimony --

18 **MR. WISNER:** Sure.

19 **THE COURT:** -- that made me think I don't
20 think that there's a role for him to testify, but the
21 information I think is admissible. So let me just say
22 that was my concern.

23 **MR. WISNER:** And we were hoping to get in that
24 information about the process with Dr. Pease since he
25 is --

1 **THE COURT:** I'll tell you what. Why don't you
2 go through his deposition and sort of mark portions of
3 it, not for admissibility, but just that's what he might
4 say.

5 **MR. WISNER:** Okay.

6 **THE COURT:** So if you get the gist of what my
7 concerns are about him testifying at all.

8 **MR. WISNER:** Sure.

9 **THE COURT:** But we can revisit that but on a
10 very limited basis is what I'm saying.

11 **MR. WISNER:** The reason I ask is because he's
12 supposed to testify tomorrow.

13 **THE COURT:** Yes, I know. I understand.
14 That's why I went over it over the weekend.

15 **MR. WISNER:** Sure. Sure.

16 **THE COURT:** Because I knew you wanted to
17 consider his testimony for Tuesday.

18 So that's tentatively what I'm thinking. And
19 so if you can direct me to pretty much what he's going
20 to say, then I can tell you yea or no.

21 **MR. BROWN:** And, Your Honor, that's really no
22 different than what the Court has previously ruled on in
23 the *Sargon* motions, to the letter. So, and again, it's
24 no more relevant now than it was then, and it's really
25 he has nothing to say. It's just an automatic process,

1 it goes on, and that's it. That's what the law says.

2 **MR. MILLER:** Your Honor --

3 **THE COURT:** I'll give the plaintiffs an
4 opportunity to identify what it is that he might say so
5 I can rule more specifically.

6 **MR. MILLER:** We'll have it by lunch.

7 **THE COURT:** And just understanding my
8 concerns.

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

10 **MR. WISNER:** Sure.

11 **THE COURT:** We'll leave it at that.

12 **MR. WISNER:** Okay. So those are the issues
13 that we had to deal with this morning. And if you have
14 any more rulings of other depositions.

15 **THE COURT:** I'll have the next two.

16 **MR. WISNER:** Oh, that would be great.

17 **THE COURT:** I worked on those over the
18 weekend. Gupta.

19 **MR. WISNER:** Sure.

20 **THE COURT:** And one other.

21 **MR. WISNER:** Goldstein?

22 **THE COURT:** No. Goldstein is after Gupta. So
23 there were five. I did the first two. I did the second
24 two. And there were two for Goldstein.

25 **MR. WISNER:** Yeah.

1 **THE COURT:** So I got there.

2 **MR. WISNER:** That's fine.

3 **THE COURT:** To answer your question, I have
4 not done Goldstein but I have done the next two. One is
5 Gupta and I can't recall the other.

6 **MR. WISNER:** Whatever you've got, we'll take,
7 because we need to fill up today and tomorrow with
8 videos.

9 **THE COURT:** Fair enough.

10 We'll try to work out -- there was a problem
11 in the bathroom in the jury room. So we may need to
12 take a minute to work that out. We may have to move the
13 jurors over to Judge Herbert's jury room. There's some
14 concerns. Just hold that thought.

15 (Recess taken at 8:45 a.m.)

16 (Proceedings resumed in open court out of the
17 presence of the jury at 8:54 a.m.)

18 **THE COURT:** I sustained the discussion about
19 the AHS study when Monsanto objected, and I didn't say
20 the word objection. You'll have to check carefully, but
21 I wrote sustain objection.

22 **MR. WISNER:** So basically it's all overruled
23 except the very last one, just to make it easy.

24 **THE COURT:** Except the very last one.

25 **MR. WISNER:** Very good.

1 **THE COURT:** And I'll do the Heydens
2 designations that I haven't ruled on.

3 **MR. WISNER:** Thank you, Your Honor.

4 (Recess taken at 8:54 a.m.)

5 (Proceedings resumed in open court out of the
6 presence of the jury at 9:01 a.m.)

7 **THE COURT:** On Friday, Mr. Griffis asked me if
8 I wanted the Heydens -- he gave me a document which was
9 superseded by something else. I guess they had
10 considered those designations and rulings and then he
11 had some additional ones and said "Do you want them
12 orally or do you want them in writing?"

13 I said in writing. So I don't remember
14 receiving the writing that he said he was going to
15 submit. So maybe I'm missing --

16 **MR. WISNER:** Well, let me just walk them
17 through. We did the designations. You sustained our
18 objections. And you said during argument, listen, if
19 there's certain sentences that you think can come in,
20 let me know and I'll rule on them. And my understanding
21 is on Thursday -- or Friday, I'm sorry, they submitted
22 to your chambers those portions --

23 **THE COURT:** So that's what I don't have. And
24 I don't know whether I just never got it or I got it and
25 I misplaced it. That's why I'm saying I don't recall

1 after saying I'd like it in writing getting any writing.
2 But like I said, there's a lot of paper.

3 **MR. MILLER:** I mean, we could get a copy to
4 the Court.

5 **MR. WISNER:** We can track it down right now.

6 **MR. ISMAIL:** Your Honor, on the sustained
7 objection on Dr. Reeves, the testimony from the
8 plaintiffs that's designated in that same cell is still
9 part of their play list.

10 **THE COURT:** Okay. I thought it was -- I just
11 went back and I looked, I don't know if I -- maybe I
12 changed my ruling, but I thought when I went back to my
13 rulings, I had -- but if it is, then that should come
14 in. Just if the plaintiffs were allowed to ask about
15 it, the defendants should be able to ask that. So
16 figure that out.

17 **MR. ESFANDIARY:** Yeah, so our portion is
18 actually after we asked these questions. So if these
19 are out, then our portion will be out as well. Ours on
20 the redirect.

21 **MR. WISNER:** So if this is sustained, we're
22 taking out our portions.

23 **THE COURT:** Okay. Just whatever, it's all in
24 or all out, however you guys --

25 **MR. ISMAIL:** So on Thursday they played

1 designations of Monsanto people commenting back in the
2 '90s criticizing about the methodology of AHS. So that
3 already came in.

4 **THE COURT:** Okay. So then maybe I got
5 confused. But then if that came in, and you're talking
6 about AHS, then all of the AHS conversations. So we'll
7 just leave it at that.

8 **MR. ISMAIL:** Okay.

9 **MR. WISNER:** Let's decide what you want to do.

10 **MR. ISMAIL:** You already played --

11 **MR. WISNER:** We can talk it out, Your Honor.

12 **THE COURT:** So if there's a dispute, let me
13 know. If you can't, fine.

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

15 **THE COURT:** No problem.

16 (Recess taken at 9:04 a.m.)

17 (Proceedings resumed in open court in the
18 presence of the jury at 9:12 a.m.)

19 **THE COURT:** Good morning, ladies and
20 gentlemen. We are back. It's Monday. Ready to roll.

21 Mr. Miller or Wisner will present -- we're
22 going to continue with Dr. Reeves' testimony. And as
23 you recall, I think we ended with that on Thursday. So
24 this is a continuation.

25 And as you know, deposition testimony is the

1 same evidence as live testimony. So you treat it the
2 same way in terms of your consideration that I discussed
3 at the very beginning.

4 So we'll continue with Dr. Reeves' testimony.

5 **MR. WISNER:** One just clarification,
6 Your Honor. This deposition took place over two days.
7 And on the second day, my law partner, Michael Baum,
8 actually did the second follow-up questions, so I will
9 suddenly disappear from it. And I just wanted you to
10 know.

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

12 (Video excerpts from the deposition testimony
13 of William Reeves resumed playing in open court; not
14 reported herein.)

15 **MR. EVANS:** Your Honor, we need to stop this.

16 **MR. WISNER:** Can we pause it for a minute.

17 **MR. EVANS:** Can we approach?

18 (Sidebar held but not reported.)

19 **THE COURT:** Ladies and gentlemen of the jury,
20 we're going to take a quick break while I chat with the
21 lawyers. Don't go anywhere. It won't be more than
22 10 minutes max.

23 (Jury excused from the courtroom.)

24 (Proceedings continued out of the presence of
25 the jury:)

1 **THE COURT:** What page of the deposition
2 testimony is it? Can someone just direct me to the
3 location in the testimony where it appears. 622?

4 **MR. WISNER:** Yes, Your Honor. So if you have
5 Reeves --

6 **THE COURT:** I do. Let me just take a peek.
7 Hold on a second.

8 Okay. So this was the area that I had a lot
9 of quotation marks and then said, oh, we'll go back over
10 it. I do recall. But I did not rule.

11 What I did is I have a single ruling on
12 page 51 that said: In view of 3/27 order defendant may
13 reformulate Prop 65 objections. Because at that point
14 I'd said yes, Prop 65 information can come in. You're
15 going to have to work out the details.

16 So I did not rule specifically on page 622
17 or -- I didn't rule again until 630.

18 **MR. ESFANDIARY:** And Your Honor --

19 **MR. WISNER:** I got it.

20 **MR. ESFANDIARY:** I just want to clarify after
21 that when you told defendants to reformulate the Prop 65
22 objections, I had an hour and a half meet-and-confer
23 with them going over this very section, hashing out the
24 details of what could be shown and what could not be
25 shone. They agreed that all of this testimony that's

1 being played is acceptable. We just couldn't show the
2 documents. Mr. Griffis is not here today --

3 **MR. EVANS:** When was that?

4 **MR. ESFANDIARY:** That was after we entered
5 into the stipulation.

6 **MR. EVANS:** When? When was the meeting?

7 **MR. ESFANDIARY:** I can pull up the e-mail.

8 **MR. EVANS:** Okay, please do. Because I read
9 the stipulation on the record last --

10 **THE COURT:** I remember.

11 **MR. EVANS:** But this was Wednesday before
12 Dr. Sawyer came Thursday. Because we were going to
13 cross-examine Dr. Sawyer on this, and the stipulation
14 was specifically: The parties stipulate that neither
15 party will reference, argue, or offer testimony about
16 reference doses derived from or used by domestic or
17 foreign regulatory agencies. That's paragraph 1.

18 Paragraph 2: And neither party will
19 reference, argue, or offer testimony that the Pilliod --
20 Mr. or Mrs. Pilliod's dose or exposure is below or above
21 any threshold reference dose as determined by any
22 domestic or foreign regulatory agencies.

23 That was Wednesday which supersedes
24 whatever -- I don't know what --

25 **THE COURT:** Yeah, but the problem is if you

1 did not have a conversation about the stipulation as it
2 related to whatever conversations we're having
3 specifically about page and line designations, then --

4 **MR. EVANS:** But, Your Honor, this was -- there
5 was a lot of back-and-forth between plaintiffs and us
6 regarding who's going to talk about NSRL, when is it
7 going to come in, et cetera, et cetera, and then we
8 agreed that none of it was coming in. That was the
9 point of the stipulation and that's why we read it.

10 **THE COURT:** I got it. I understand that.

11 What I'm saying to you is if other people are
12 having conversations about the page and line and
13 notwithstanding the stipulation are agreeing to certain
14 things, what are they supposed to be doing?

15 Because if the representation is this is all
16 fine but you have a stipulation that actually says
17 something a little different than what your people may
18 be agreeing to, if that's in fact what happened, then
19 you can see how the confusion if your people said, oh,
20 and you have a stipulation, that's all out, then that's
21 a different conversation than if you had a conversation,
22 A, about the page and line and everybody says, okay,
23 this is what's finally going to be played, and then
24 there's a stipulation that certainly may contradict
25 that, but it's not reconciled.

1 **MR. EVANS:** Okay. But I'm saying that's why
2 we raise the issue now. It needs to be reconciled.

3 **THE COURT:** Let's look at this right now.

4 **MR. WISNER:** Can I just point out one other
5 thing? Because this is why I'm getting a little
6 frustrated here. Just before he read the stipulation, I
7 literally put this page and line in front of Mr. Evans
8 and said: Dr. Reeves talks about the NSRL. It's very
9 general, but provided this is okay, the stipulation is
10 fine. He said not a problem. So --

11 **THE COURT:** Let me just go back -- just go
12 back a little bit and let me hear what's being said.

13 (Video was played but not reported.)

14 **THE COURT:** Stop it. This is a lot of
15 testimony. How did that all get -- why is there
16 confusion about that? We're not in minute two or three
17 we're talking about the NSRL. How did that happen?

18 **MR. EVANS:** There isn't any confusion,
19 Your Honor. This all predated when there was an
20 understanding that this was going to be fair game. We
21 then reached an agreement that this was not coming in,
22 and they haven't taken this out. We didn't go back
23 and -- and if my team didn't go back and say, okay, now
24 we have a stipulation, we've got to go back and revisit
25 the designations, then we'll take responsibility for our

1 part of that. But this is clearly -- goes beyond the
2 stipulation that was read into the record.

3 **THE COURT:** It does go beyond the stipulation.
4 It goes beyond everything I've ruled on. But what I'm
5 saying to you is it's there and I'm not assigning any
6 motive on plaintiffs' part. I got the impression that
7 what happened is there was no follow-up to say, okay,
8 let's go back to Dr. Reeves' testimony, which had to
9 happen at this point I think going forward for sure
10 because I think that if you're going to come on an
11 agreement about no NSRL, and I've already ruled no NSRL,
12 then you need to reconcile that before we're playing
13 this for the jury.

14 **MR. WISNER:** Your Honor, just to be clear.

15 **THE COURT:** No, I understand your point,
16 Mr. Wisner. I'm not suggesting that you didn't do what
17 you were supposed to do --

18 **MR. WISNER:** We did go back is my point. We
19 actually went back --

20 (Simultaneous colloquy.)

21 **THE COURT:** You know what, let me just say
22 that --

23 **MR. WISNER:** We gave it to them.

24 **THE COURT:** Okay, if you did go -- well, if
25 you did go back, it wasn't read or acknowledged. I'm

1 not saying you didn't do or your team didn't do what
2 they're supposed to do. I'm simply saying there was a
3 miscommunication here that should not have occurred. It
4 just shouldn't have occurred. I'm not assigning blame.
5 It doesn't matter. We're here. The jury is there.

6 So I think the NSRL stuff has to come out
7 because it's not relevant. And I've said no NSRL other
8 than passing reference like as it relates to OEHHA, you
9 know, if there is such a thing. And we're not going to
10 explain NSRL. We're not going to talk about no
11 significant risk because I don't really want a question
12 from the jurors: Hey, what's NSRL? Because that's the
13 first thing that's going to happen if it's totally
14 dropped. You know that and I know that. And that's a
15 question that will not be able to be answered.

16 **MR. WISNER:** Sure, Your Honor, listen. I
17 mean, this is now the third or fourth time in the
18 process of this trial where they've made agreements and
19 trial counsel was unaware of them and are now trying to
20 change them.

21 This happened very clearly with Reeves and the
22 admissibility of those documents and the fact that that
23 PMK was involved. I have been heavily involved in all
24 aspects of this trial from the very beginning including
25 these discussions.

1 And so we'll take it out, that's fine. But at
2 some point, they've waived their objection. Because
3 they agreed to it. And for what it's worth, we sent
4 this to them on Friday.

5 (Simultaneous colloquy.)

6 **THE COURT:** Mr. Wisner, that may all be true,
7 but with the Court having made certain rulings about
8 what I think the jury can and can't hear, it's not even
9 a question of whether defendants waived that and they
10 hear it anyway. They don't hear it because I think
11 ultimately it's confusing and prejudicial because
12 they're not going to understand what it is. It's not
13 going to apply to any evidence that's coming in and the
14 standards that they have to consider when determining
15 whether or not there's liability.

16 And I think that, as the Judge, I've got to
17 correct this because otherwise there's a problem that I
18 would have known existed but didn't correct --
19 acknowledge and correct.

20 So I'm going to deal with this now. Which
21 is --

22 **MR. WISNER:** Sure. Let me just make sure it
23 doesn't come back. Let me see the spot, Your Honor.

24 The only time the NSRL is mentioned again, and
25 I was going to start at page 630, line 13.

1 **THE COURT:** Hold on one second. Let me go
2 there.

3 **MR. WISNER:** I'm sorry.

4 **THE COURT:** 630.

5 **MR. WISNER:** Sorry, 627, line 8.

6 **THE COURT:** Okay. Hold on.

7 **MR. WISNER:** So it's about Sam Cohen, has
8 nothing to do directly with the NSRL.

9 **THE COURT:** 628. There's no designation on
10 628.

11 **MR. WISNER:** 627:8. 627:8.

12 **THE COURT:** Okay.

13 **MR. WISNER:** And then the next time the NSRL
14 comes up at all would be on page -- yeah, would be on
15 page 659, line 9, and it's briefly mentioned. And I
16 think that's the last of the NSRL after that.

17 **THE COURT:** 659, line 9, is no -- that's not
18 designated.

19 **MR. WISNER:** 656, line 9.

20 **THE COURT:** 656, line 9.

21 **MR. WISNER:** Yeah, I'm sorry. I misspoke.

22 **THE COURT:** Okay. So that's -- I think if we
23 take the rest of it out, that's fine.

24 **MR. WISNER:** Okay.

25 **THE COURT:** And then we'll go from there,

1 but --

2 **MR. WISNER:** I'll let him know where to start.

3 **THE COURT:** So going forward, I understand
4 that if there are any -- whatever the agreements are,
5 you know, everybody's got to be really clear on the
6 terms of whatever the agreements are going forward.

7 **MR. WISNER:** And, Your Honor, I just want to
8 point out something.

9 Monsanto demands that every chart we send you,
10 every transcript we give you, and everything that we do
11 is reviewed very carefully, we get multiple
12 middle-of-the-night e-mails, often criticizing my staff
13 for the work and misstating errors and stuff.

14 And in addition to that, we send the final run
15 report as well as the video clip itself. So it all has
16 to be done well before we ever get to playing it. And
17 they say, yes, this is fine and they sign off on every
18 single thing that we do.

19 So, you know, we are bending over backwards to
20 accommodate their requests. And then when they make
21 errors, it seems very unfair that we're sort of put in
22 the position where we're relying on this testimony
23 coming in. That was part of my trial strategy. But I
24 guess we won't put it in, that's fine. I understand the
25 Court's ruling.

1 It's just they make agreements, they've got to
2 stick with them. Otherwise this is chaos. And they
3 made this agreement. And I don't know what more we can
4 do.

5 And just for the record, all of that exchange,
6 the final cut, the final run report was all long after
7 that stipulation. So I just want to --

8 **THE COURT:** So I appreciate your comments, but
9 let me just say this.

10 I think that, Mr. Evans, I'm talking to you.
11 I mean, if you guys have an agreement and -- you can't
12 make assumptions about how plaintiffs are going to
13 respond to the agreement, which is to go back and edit
14 something that if your people were in fact --

15 **MR. EVANS:** I understand, Your Honor.

16 **THE COURT:** Then you have to follow up.
17 That's why I have my --

18 **MR. EVANS:** I understand.

19 **THE COURT:** But also, knowing that I said no
20 NSRL, somebody maybe should have brought this to the
21 table in general. Because you guys can't bargain away
22 my rulings which is, okay, it's okay to do that or not
23 do that. I said no NSRL for a good reason, not because
24 it's some fight between plaintiff and defendant, but
25 because it's just not information in evidence that the

1 jury should not hear because of all the reasons that we
2 talk about it now ad nauseam.

3 So going forward just be aware of that.
4 Because I don't want to hear something or see something,
5 I don't care who negotiated. I want: What is this and
6 why is it here?

7 So. All right. Enough said, I think, at this
8 point. We'll just go forward from here.

9 **MR. WISNER:** That one question and answer that
10 comes out that mentions about NSRL briefly, that's fine.

11 **THE COURT:** 659, that's fine.

12 Let's just skip ahead and get going.

13 **MR. WISNER:** Will do, Your Honor.

14 **MR. EVANS:** So are you going to make a
15 curative instruction just to tell the jury they should
16 not consider NSRL?

17 **THE COURT:** Well, you know, my concern is if
18 you -- they don't know what NSRL is. And if I sit here
19 and say, well, don't consider NSRL, and oh, by the
20 way -- they're going to say, well, what's the NSRL?

21 Do you really want me to do that?

22 **MR. EVANS:** Well, again, Your Honor, I think
23 there was a reference to it already, what was played
24 before we stopped it. I would just --

25 **THE COURT:** You know what, I'm going to go

1 forward. I'm not going to give an instruction because I
2 don't know how that information has been received. And
3 the other issue is that the more I talk about it, the
4 more they're going to want to know about it.

5 **MR. EVANS:** Understood.

6 **THE COURT:** So I think we're better off
7 letting that go and then moving on. And if we get a
8 question, then we'll deal with it. If we don't get a
9 question, then I think we just move on.

10 **MR. EVANS:** Thank you.

11 **THE COURT:** All right.

12 Onesha, would you mind bringing the jury back
13 in, please.

14 Actually, you know what, if everybody wants to
15 take a quick break.

16 **MR. WISNER:** Yeah.

17 **THE COURT:** Let me tell Onesha to wait a
18 minute.

19 (Recess taken at 10:01 a.m.)

20 (Proceedings resumed in open court in the
21 presence of the jury at 10:07 a.m.)

22 **THE COURT:** Okay. We're going to continue,
23 ladies and gentlemen.

24 (Video excerpts from the deposition testimony
25 of William Reeves resumes playing in open court; not

1 reported herein.)

2 **MR. WISNER:** Now it's Monsanto's section.

3 **THE COURT:** Okay. This is cross-examination
4 for Monsanto.

5 There's nothing on the screen.

6 **TECH PERSONNEL:** It's coming.

7 (Video excerpts from the deposition testimony
8 of William Reeves resumes playing in open court; not
9 reported herein.)

10 **MR. WISNER:** Your Honor, can we pause it?

11 Take it off the screen.

12 Quick sidebar.

13 (Sidebar held but not reported.)

14 **MR. WISNER:** This might be a quick time to
15 take a break.

16 **THE COURT:** Okay. We're going to take another
17 quick 10-minute break.

18 (Proceedings continued out of the presence of
19 the jury:)

20 **THE COURT:** How much longer -- do you know how
21 much longer?

22 **MR. EVANS:** Your Honor, I think this is the
23 Heydens thing.

24 **THE COURT:** Thank you.

25 **MR. EVANS:** Give you something to do to stay

1 awake.

2 **THE COURT:** So I think that probably the
3 videos do need a few more breaks --

4 **MR. MILLER:** Sure.

5 **THE COURT:** -- with the testimony. So I think
6 it's okay every hour and 10 minutes, it's okay to take a
7 break.

8 **MR. WISNER:** Do you want us to pick times?

9 **THE COURT:** That might not be a bad idea to
10 pick times.

11 **MR. EVANS:** Today you're going to go till when
12 for lunch?

13 **THE COURT:** Well, I think now we're going to
14 take a few minutes. We'll probably break a little --
15 about an hour from now. And we'll probably take about
16 an hour and 15 minutes.

17 It's a little harder on the eyes, for one
18 thing, to keep watching. So we're just going to gauge
19 for the rest of the day.

20 My question was how much longer is this video
21 on Dr. Reeves, including any redirect? I can't recall
22 now if there was.

23 (Discussion off the record.)

24 **MR. ISMAIL:** About 30 minutes total.

25 **THE COURT:** You know what, we might just go

1 till the end of that and then take an hour, maybe an
2 hour 15 minutes for break.

3 **MR. WISNER:** And actually that will be helpful
4 because I think we need these ruled on before the next
5 video.

6 Thank you, Your Honor.

7 (Recess taken at 11:14 a.m.)

8 (Proceedings resumed in open court in the
9 presence of the jury at 11:24 a.m.)

10 **THE COURT:** So, ladies and gentlemen, we're
11 going to finish up the testimony, cross-examination of
12 Dr. Reeves, and then we're going to take a break for
13 lunch. We're going to come back and we're going to
14 watch for about an hour and 10 minutes and then take
15 short breaks just to give you a break.

16 All right.

17 (Video excerpts from the deposition testimony
18 of William Reeves resumes playing in open court; not
19 reported herein.)

20 **MR. ISMAIL:** That concludes Monsanto's
21 questioning of the witness. I believe there's a short
22 redirect that's coming.

23 **MR. WISNER:** And then we'll be done and ready
24 for lunch.

25 (Video excerpts from the deposition testimony

1 of William Reeves resumes playing in open court; not
2 reported herein.)

3 **THE COURT:** All right. Ladies and gentlemen,
4 that is the end of Dr. Reeves' testimony. We're going
5 to resume at 1:00 o'clock with the next witness who will
6 also be via video.

7 Thank you. See you at 1:00 o'clock.

8 (Luncheon recess was taken at 11:51 a.m.)

9 AFTERNOON SESSION

1:04 p.m.

10 (Proceedings resumed in open court out of the
11 presence of the jury)

12 **THE COURT:** Just by way of explanation so
13 we're clear on the Heydens. I overruled a lot of the
14 objections because it goes to their intent. I sustained
15 a couple. Some of the documents had been ruled on in
16 the request for judicial notice. Maybe one wasn't, but
17 it was a similar -- so I indicated the pages which I
18 thought were admissible, not the entire document, which
19 were the summaries, the official --

20 So I just want to clarify what that is. And
21 I'm not going to entertain any more argument. I just
22 need to figure it all out. All right. Thanks.

23 (Recess taken at 1:05 p.m.)

24 (Proceedings resumed in open court in the
25 presence of the jury at 1:08 p.m.)

1 **THE COURT:** All right. Ladies and gentlemen,
2 we are going to move on.

3 Mr. Wisner.

4 **MR. WISNER:** At this time, Your Honor, the
5 plaintiffs call Dr. William Heydens by video deposition.
6 The deposition is 2 hours 15 minutes total of which an
7 hour 15 is the plaintiffs', an hour is Monsanto's. It
8 was taken January 24th, 2017, in St. Louis, Missouri.

9 (Video excerpts from the deposition testimony
10 of William Heydens played in open court; not reported
11 herein.)

12 **MR. WISNER:** Your Honor, that concludes the
13 plaintiffs' portion. Probably a good time for a break.

14 **THE COURT:** It is a good time to take a break.
15 We're going take a 15-minute break. 2:30.

16 (Proceedings continued out of the presence of
17 the jury:)

18 **THE COURT:** So after Dr. Heydens, it's --

19 **MR. WISNER:** Koch. We won't get through it
20 all today but --

21 **THE COURT:** No, but we will get started.

22 **MR. WISNER:** Your Honor, did you get a chance
23 to look at what we sent back, the report for Pease?

24 **THE COURT:** Oh, I did. Actually I did. Hold
25 on a second.

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(Pause in the proceedings.)

THE COURT: You guys can take a look at this.

MR. WISNER: I guess we've got to let him know if he's coming tomorrow.

THE COURT: I'm telling you, why don't you look at that. That's what I'm willing to agree to.

MR. WISNER: Oh, okay.

(Recess taken at 2:16 p.m.)

(Proceedings resumed in open court in the presence of the jury at 2:34 p.m.)

THE COURT: All right.

MR. ISMAIL: Proceed with Monsanto's questioning, Your Honor?

THE COURT: Yes.

MR. ISMAIL: Thank you.

(Video excerpts from the deposition testimony of William Heydens resumes playing in open court; not reported herein.)

MR. WISNER: Your Honor, we have 10 minutes remaining for our portion.

(Video excerpts from the deposition testimony of William Heydens resumes playing in open court; not reported herein.)

MR. WISNER: Do you want us to call the next witness or take a break, Your Honor?

1 **THE COURT:** Well, we're going to have to end
2 at 4:30. You indicated that you wanted to end between
3 4:15 and 4:30. So I think we should end today.

4 **MR. WISNER:** We can end right now if you'd
5 like.

6 **THE COURT:** Are we on schedule?

7 **MR. WISNER:** Well, yeah. So what I proposed
8 was we dismiss the jury so we could talk about a few
9 things before 4:30.

10 **THE COURT:** I misunderstood. I thought you
11 said you wanted to end at 4:15. I'm sorry, I
12 misunderstood.

13 So why don't we go ahead and get started.

14 **MR. WISNER:** Sorry.

15 **THE COURT:** We're going to go for another
16 30 minutes.

17 **MR. WISNER:** All right. At this time, the
18 plaintiffs call Dr. Michael Koch by video deposition.
19 Employed by Monsanto. The overall length is one hour
20 56 minutes, of which the plaintiffs' version is one hour
21 40 minutes, and the defendant's version is 50 minutes.
22 It was taken on January 11th, 2019, in St. Louis,
23 Missouri.

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1 (Video excerpts from the deposition testimony
2 of Michael Koch played in open court; not reported
3 herein.)

4 **MR. WISNER:** We can stop there, Your Honor,
5 it's a good stopping point.

6 **THE COURT:** Okay. That's fine.

7 So, ladies and gentlemen, we're done for the
8 afternoon. I will see you tomorrow morning at
9 9:00 o'clock and we'll resume.

10 Thank you for your time and attention today.
11 Please don't discuss anything you've heard in the
12 courtroom, please don't discuss any of the evidence
13 you've heard so far. No research, no nothing.

14 Have a good evening. See you tomorrow.

15 (Jury excused for the evening recess.)

16 (Proceedings continued in open court out of
17 the presence of the jury at 4:12 p.m.:)

18 **THE COURT:** Okay. So?

19 **MR. WISNER:** So, Your Honor, I'd like to
20 discuss two quick rulings on the Raj deposition. Do you
21 have the --

22 **THE COURT:** Hold on. Let me go get it. I'll
23 be right back.

24 (Pause in the proceedings.)

25 **THE COURT:** All right. So where are we?

1 **MR. WISNER:** All right. It's going to be
2 page 121.

3 Your Honor, may I approach? I have a short
4 transcript from the opening statements that I want to
5 show you.

6 **THE COURT:** Sure.

7 **MR. WISNER:** So before we read the Raj
8 deposition portion, during the opening statement, this
9 is a portion from Mr. Ismail's deposition -- I'm
10 sorry -- opening statement.

11 On page 1464, starting at line 5, he's talking
12 specifically about Dr. Raj. Well, it starts at the
13 beginning part:

14 "I think you know by now that Dr. Raj
15 was -- is an oncologist who treated both
16 Mr. and Mrs. Pilliod. The other three
17 treated Mr. -- sorry, Mrs. Pilliod alone.

18 "All four witnesses were deposed in
19 the case, meaning both sides had a chance
20 to ask them questions under oath. All
21 four were asked and all four agree that at
22 no time did they ever determine that
23 Roundup had anything to do with either
24 Mr. Pilliod or Mrs. Pilliod's developing
25 non-Hodgkin's lymphoma."

1 And elsewhere in his opening statement, he
2 made repeated references to Roundup not being in the
3 medical records, there being no discussion of Roundup by
4 any treating physician, and made a big sort of defense,
5 saying, well, the treating physicians don't think it
6 causes cancer or had anything to do with their cancer
7 and clearly plaintiffs are crazy, was sort of their
8 argument.

9 Now if we go to page 121 in the deposition,
10 starting at line 21, this was during Monsanto's
11 questioning of Dr. Raj. So this wasn't my questions,
12 this was theirs.

13 **THE COURT:** Okay.

14 **MR. WISNER:** And it goes -- and earlier during
15 my portion of the examination, I asked if there had ever
16 been any discussions with Roundup, and she said, oh,
17 there was one discussion about environmental exposures
18 when they came in and they both had cancers.

19 So then starting at line 21 is when they were
20 asking. They followed up. They go:

21 Okay. And in terms of your
22 conversation with Mrs. Pilliod, can you
23 tell me a little bit about what that
24 conversation and when it occurred.

25 I don't know the exact time and date. I

1 remember seeing both of them, and they asked about what
2 could have caused their cancer. Typically I get that
3 question as the first question when I see somebody.
4 But, you know, we talked about it a little later. We
5 talked about possible environmental exposure, given both
6 of them live in the same household and both of them
7 being diagnosed with a similar type of cancer back to
8 back. They were concerned.

9 And I did tell them that there is a
10 possibility that chemical exposure could
11 cause lymphoma and that they brought
12 this -- and they brought this exposure to
13 some pesticides and they asked me do you
14 think that could have caused their cancer.
15 I said it's possible, but I can't tell
16 that for 100 percent sure. That was my
17 response to them. But I did tell them
18 that it's possible.

19 So this is really their own questioning of the
20 treating doctor saying it's possible. And we're not
21 offering it as an expert opinion. We're offering it to
22 combat the false statement to the jury that none of
23 these treating physicians considered environmental
24 exposures or anything like pesticides as being a
25 potential cause, and she says it's possible.

1 And so I think that, you know, this particular
2 piece of testimony is particularly salient considering
3 the defense that the Monsanto has presented to this jury
4 as being a sort of essential feature is that treating
5 doctors didn't think Roundup had anything to do with it,
6 when Dr. Raj, who treated both of them, thought it
7 probably -- possibly was.

8 **THE COURT:** But then she goes on to say
9 basically she has had no basis for saying that because
10 she's not an expert, she -- and the reason I ruled as I
11 did -- of course I wasn't referencing it the opening
12 statements -- is that they're just very general
13 statements about, oh, it could cause cancer. No basis,
14 no scientific basis, just it could cause cancer. And
15 then the next part of it says:

16 Well, do you consider yourself an
17 expert in whether any chemicals are
18 related; have you looked into any of that?

19 No, I'm not an expert in that.

20 **MR. WISNER:** Well, then keep reading. This is
21 the part where she explains starting at line 6.

22 **THE COURT:** Well, I did read it.

23 **MR. WISNER:** Oh, okay.

24 Because there are studies that show
25 that exposure to chemicals can cause

1 cancer.

2 **THE COURT:** Right. Exposures to chemicals can
3 cause cancer. Nothing related to Roundup or glyphosate,
4 just chemical can cause cancer, very generally. She
5 doesn't say anything other than they exist. Everybody
6 knows they exist. But the issue is that she's their
7 treating physician. And this is just very general
8 conversation where she's sort of throwing something out.

9 And I noticed within the other, Gupta, as
10 well, there was, you know, questions thrown out at him
11 about Roundup, and he basically said "I don't" --
12 ultimately his response was something like "I have no
13 idea. I don't know."

14 But what I noticed with both of them, you
15 know, there were questions about their specific
16 treatment, and then sort of very general questions about
17 chemical exposure, where the doctors don't really opine
18 so much as just, "Well, yeah, I know that they're out
19 there, I know that that's said," without any real basis.

20 So I was concerned about the jurors getting
21 the perception that they had actually made some sort of
22 scientific calculation or opinion about whether or not
23 the chemicals in general -- but Roundup is not mentioned
24 but in general could have caused their cancer. So --

25 **MR. WISNER:** But that's a fair concern, but

1 that concern is -- sort of has to be pitted against the
2 opposite. They're saying --

3 **THE COURT:** You can also say at the end of the
4 day, "Mr. Ismail told you that this was what was going
5 to happen. Did you hear any evidence that...?" I mean,
6 you know, the typical whatever you say, you know, they
7 promised but didn't come through on whatever.

8 So I'm not feeling like I have to shore up
9 your case because of what Mr. Ismail said. You have
10 every right to point out what Mr. Ismail will or will
11 not prove by the end of his case in your closing
12 argument.

13 **MR. WISNER:** Sure, but his argument wasn't
14 about what he's going to prove. His argument was it
15 doesn't exist, and it does. And that's the problem.

16 I mean, if they hadn't asked this question --
17 and this is about pesticides. As you read earlier in
18 the answer, this is in the context of a conversation she
19 specifically had with the Pilliods about pesticides.

20 So this is related to Roundup, and that's what
21 this is about. And Mr. and Mrs. Pilliod will confirm
22 that they talked to Dr. Raj about Roundup, and that she
23 told them that in fact it was a possible cause of their
24 cancer.

25 And so this --

1 **THE COURT:** Well, that's not what she says,
2 though. And nobody did ask her that specific question.
3 They didn't ask her -- no one asked her did she think
4 Roundup caused it. It was much more general. It was in
5 general could pesticides cause cancer.

6 **MR. WISNER:** That's true, but she talks
7 about -- she says right here that it is a possible
8 cause, that she told them that it was a possible cause.
9 This is during her treatment of them. And then she says
10 any chemical exposure on a consistent basis, that can
11 cause cell, you know, damage, DNA damage.

12 This coincides exactly with everything that
13 the jury has been hearing about the evidence we've
14 proffered to show that in fact we believe Roundup caused
15 genetic damage in their bones that led to their
16 lymphoma.

17 **THE COURT:** True. And the experts have opined
18 about that as they should because they're experts.

19 **MR. WISNER:** Sure.

20 **THE COURT:** And that's their job.

21 **MR. WISNER:** But the factual statement --

22 **THE COURT:** I understand what you're saying.

23 Let me just hear from Mr. Ismail. I understand that
24 basically he said none of the doctors said that. And
25 you're saying, yeah, the doctors said it, whether or not

1 they're experts.

2 Mr. Ismail.

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

4 So I think Mr. Wisner is not accurately
5 describing the opening. In fact what is described in
6 the opening is what Dr. Raj testifies to which is that
7 if you keep going in the testimony, she's asked on
8 page 124:

9 Did you ever come to a conclusion to
10 a reasonable degree of medical certainty
11 or probability as to what may have
12 contributed to their lymphomas?

13 And she goes on to say:

14 So when it comes to cancer, I think
15 we're always interested in knowing the
16 etiology so we can prevent it but there
17 are certain cancers we know for sure what
18 is the probable cause of that cancer. But
19 most of the cancers we don't know the
20 probable cause. We only know the possible
21 etiology. This falls in that.

22 Right? So she never made a diagnosis or
23 determination that -- I don't think Mr. Wisner is going
24 to suggest that Dr. Raj diagnosed or determined that
25 Roundup was the cause of either plaintiffs' cancer.

1 So to the extent there's some suggestion here
2 that he needs to put this evidence in to rebut the
3 opening statement, the opening statement was quite clear
4 in its description of the treater testimony, nothing
5 he's pointed to is rebuttal to that. And I would say,
6 Your Honor, that in terms of how you ruled on this
7 testimony, it's exactly correct.

8 Dr. Raj quite candidly says she isn't an
9 expert. She's not -- she hasn't formed an opinion that
10 would be admissible as to the -- whether there's any
11 carcinogenic risk with Roundup. And so for having her
12 speculate in the manner in which it's offered here,
13 she's basically saying "I don't know. It's possible."
14 And then she goes on to say anything is possible in
15 medicine.

16 But the specific question and answer that they
17 want read doesn't rise to the evidentiary level that
18 would allow a treating physician to start speculating
19 about potential causes of the disease, which I will
20 point out are not documented anywhere in the medical
21 records. Right? So there's no medical record that
22 they're going to point to that says this is where
23 Dr. Raj is undertaking a differential diagnosis or
24 differential etiology wherein she rules in Roundup or
25 she rules out Roundup as part of the process. She's

1 quite candid in saying she doesn't have any basis to say
2 one way or another.

3 And if Mr. Wisner wants to get up in closing
4 argument to say, you know, Dr. Raj didn't testify that
5 Roundup had nothing to do with it, I fully expect him to
6 say that in closing argument. I fully expect him to say
7 that about all the treating physicians.

8 But to argue that this is Dr. Raj's
9 affirmatively ruling in Roundup as the cause of their
10 cancer is a gross mischaracterization of Dr. Raj's
11 testimony wherein she says "I didn't determine the cause
12 of their cancer. Most cancers you don't know the cause
13 and this falls into one of that." That's what she says.

14 And so on that basis for them to be able to
15 say that this is affirmative proof of a diagnosis of
16 Roundup, I think --

17 **THE COURT:** Well, I don't think that's what
18 he's saying. But I will say this, and I don't think I'm
19 going to change my mind. She talks about chemicals.
20 She's not talking about glyphosate. She's not talking
21 about pesticides. She's just talking about chemicals.

22 **MR. WISNER:** She actually is. Can I show you
23 line 122, starting at line 11, "They," being the
24 Pilliods, "brought this exposure to some pesticides."
25 It's about their conversation.

1 And they asked me do I think that
2 could have caused their cancer. I said
3 it's possible, but I can't tell them for
4 100 percent sure. That was my response to
5 them. But I did tell them that it was
6 possible.

7 **THE COURT:** Right. And it's not based on
8 anything other than: "It's possible. I know there's
9 studies out there."

10 And I think that conveying to the jury that
11 she thinks it's possible based on no scientific
12 evidence, the experts are scientists, that's why they
13 say to a reasonable degree of their certainty that it's
14 possible and they explain the science.

15 But for the treating physicians to simply say,
16 yeah, there's -- everybody knows that there's studies
17 out there. I'm sure that the physicians know there's
18 studies out there, but to opine even informally to say,
19 yeah, it's possible, I'm sure if they said a whole lot
20 of other things that she would say, yeah, it's possible,
21 but I can't confirm that. And then ultimately she
22 does -- basically she says "I don't know."

23 **MR. WISNER:** Fair enough, but I mean look at
24 the situation we're in. Right? I'm not offering it to
25 prove causation.

1 **THE COURT:** No, I understand that. I
2 understand that.

3 **MR. WISNER:** So are they going to be allowed
4 to tell the jury, "They didn't present any evidence that
5 any doctor thought Roundup had anything to do with it
6 like he said in his opening"? Because if he is --

7 **THE COURT:** First of all, she's not talking
8 about Roundup. So if they were to say, you know, that
9 they never said anything about Roundup having -- they
10 would be telling the truth because none of the doctors
11 say "Roundup." They say "chemicals" in a very, very --

12 **MR. WISNER:** She's talking about a
13 conversation with the Pilliods and they talked about --
14 she didn't remember the name of it --

15 **THE COURT:** No, she doesn't reference the
16 name.

17 **MR. WISNER:** She said pesticides and that she
18 was -- that the Pilliods spoke to her about Roundup in
19 that conversation, and she says "possible cause."

20 **THE COURT:** And they can testify to that. But
21 you're telling me that that's what she's referring to.
22 And she's just saying, well, it's possible. I mean, and
23 that's the thing. I mean, even if she says it's
24 possible and she was referring to them bringing up
25 pesticides, she's basically saying chemical exposure can

1 cause cancer, it's possible.

2 **MR. WISNER:** Okay. Well, then, I mean, take
3 that sentence and that conversation that she testified
4 under oath occurred about a pesticide with the Pilliods
5 where she said it was possibly a cause. Right? Fair
6 enough. But that's what she told them.

7 And he says to the jury: All four were asked
8 and all four agree that at no time did they ever
9 determine that Roundup had anything to do with either
10 Mr. or Mrs. Pilliod developing non-Hodgkin's lymphoma.

11 That dot is easily connected through the
12 evidence, Your Honor. That's not true. We're being
13 held to a standard that we can't show --

14 **THE COURT:** No, well, first of all, opening
15 statement is just that. It's just opening statements.
16 It's what they say they think they will prove. And if
17 they don't, you get to call them on everything they
18 don't prove that they said they were going to prove.
19 And I'm sure you will and I'm sure they will.
20 Everybody's keeping score.

21 So the fact that it was said in opening
22 statement -- when lawyers make opening statements, they
23 step out on a plank and they've got to walk the plank.
24 Hopefully they're going to prove what they said they're
25 going to prove. And if they don't, then they have to

1 account for that in some fashion. Because in closing it
2 will clearly be stated that they didn't do what they
3 said they were going to do, they didn't bring in this
4 evidence.

5 **MR. WISNER:** So this isn't a fact. This is an
6 absence of fact that they're arguing. They're saying
7 because no doctor ever told them it could have been
8 Roundup, that means it doesn't cause the Roundup. That
9 was the argument. That's what they're going to argue in
10 closing. They did it in *Hardeman*. They did it here in
11 the opening. That was literally what he said.

12 And he's saying there is no evidence of this.
13 And I have it right here that that's not true. We have
14 the doctor saying it's possible. And so if we're not
15 allowed to play this, and I understand the Court's
16 concern that it could confuse the jury, I fully
17 understand that, then they can't argue that. I mean,
18 there's got to be --

19 **THE COURT:** Like I said, I guess they're not
20 going to be able to if in fact that's not what is
21 ultimately proven. So we're talking argument versus
22 statement. But I don't need to hammer that on.

23 (Simultaneous colloquy.)

24 **MR. WISNER:** But they're arguing, "There is no
25 evidence of this, therefore we win." That's the

1 argument. They say none of them testify to X, Y, and Z.
2 That's what he's saying. And we do have testimony
3 that's at least X. Right? Maybe not Y and Z, but X.

4 And we should be allowed to show that to the
5 jury to show that when he makes that statement, I can
6 go: "Ladies and gentlemen, you heard from Dr. Raj. And
7 when she spoke to the Pilliods, and you heard the
8 Pilliods" -- this is what I want to say in argument.
9 "When the Pilliods asked her, 'Hey, could it have been
10 this Roundup that we were exposed to?' she testified,
11 'Well, it might have been possible. The pesticides
12 might have been possible.'"

13 Because that's what the testimony says.

14 Now, ladies and gentlemen, she's not
15 an expert. She didn't do a full
16 exhaustive analysis. But this idea that
17 pesticides and their relationship to
18 non-Hodgkin's lymphoma and specifically
19 related to the Pilliods, that's not true.

20 And when Mr. Ismail said that to you
21 in opening, when he says it to you in
22 closing, that's not accurate.

23 And I don't know how I can do that without the
24 evidence coming in in some capacity. So that's my
25 concern, Your Honor, is I'm fighting an accusation of an

1 absence of evidence with the evidence that I can't show.

2 **MR. ISMAIL:** I will point out, Your Honor, the
3 additional problem here is the timing of this
4 conversation. It by definition is not part of the care
5 and treatment because the Pilliods testified Roundup
6 wasn't on their radar until they see the plaintiff
7 lawyer ad. Right? So that's as was represented in
8 opening statements. I'm sure they're going to testify
9 as such.

10 This is not like in 2011 or 2015 they're
11 coming to Dr. Raj and having this conversation. This is
12 clearly in the context of them already having seen the
13 ad, plaintiff lawyer ad, already contemplated suit, and
14 having purportedly this conversation.

15 So this is not Dr. Raj's care and treatment of
16 the Pilliods in terms of diagnosing or treating their
17 cancers. So when we're talking about in California
18 treating physician testimony about diagnosis and
19 causation and that sort of processes, it has to be tied
20 to the care and treatment of the plaintiffs.

21 And so they have two -- two patients come to
22 them, and I'm sure the conversations were on the context
23 "I've seen these ads on TV. You know, could this have
24 been a possible cause?" She has no foundation beyond
25 speculating, and she candidly says as such.

1 And she says, "I never determined the cause of
2 their cancer." That is a true statement that is backed
3 up by the medical records.

4 And so Your Honor's ruling on this is
5 appropriate and should stand.

6 **MR. WISNER:** Well, I mean, that's the problem.
7 Right? They want to play the portion of the testimony
8 where she goes --

9 **THE COURT:** Hold on one second. Let me just
10 stop.

11 (Simultaneous colloquy.)

12 **MR. WISNER:** Sure.

13 **THE COURT:** So that wasn't -- the next part
14 wasn't objected to.

15 **MR. WISNER:** Objected to. We didn't object to
16 any of their causation stuff because we thought ours
17 would come in.

18 **THE COURT:** I understand what you're saying.
19 So it's all in or it's all out.

20 **MR. MILLER:** Yes.

21 **THE COURT:** Okay. It's all in or it's all
22 out. That I will agree to, that either all of this
23 comes in or all of this stays out. You can figure that
24 out.

25 **MR. ISMAIL:** Okay.

1 **THE COURT:** Because I understand your argument
2 in terms of letting that part in.

3 **MR. MILLER:** Maybe we'll work it out this
4 evening, Your Honor.

5 **THE COURT:** I suggest that -- I don't know if
6 it does you any good, but I just think the entire
7 conversation should come in or the entire conversation
8 should be out.

9 So let's move on.

10 **MR. WISNER:** The other one was very short.
11 Page 81. This one is not a very long argument.
12 Page 81, a very short blue part. The question was,
13 referring to Mrs. Pilliod.

14 When she first presented with her CMS
15 lymphoma in 2015, did you think she would
16 be alive today?

17 And she said, "No."

18 And the reason for that question is it goes to
19 the gravity of her condition and the fact that her
20 prognosis was very bad. And that goes straight to her
21 mental anguish and what she believed, that she was going
22 to die, for a couple years until she ultimately went
23 into remission.

24 But that goes straight to damages. And that's
25 the doctor's viewpoint at the time she saw her own

1 patient. And she's an oncologist and that's literally
2 what she does for a living.

3 **THE COURT:** Okay. Well, Mr. Ismail.

4 **MR. ISMAIL:** But, Your Honor, so the objection
5 was -- I'm not sure exactly on which basis the Court
6 sustained the objection. We objected as to 352 and
7 speculation.

8 **THE COURT:** I just thought it didn't really
9 matter what she thought. She was alive, and I don't
10 know if the evidence was that she told her she thought
11 she was going to die or if it was just her opinion that
12 she thought she wasn't going to live.

13 So to me it was in some ways a throwaway. It
14 was more of a relevance issue. It was like, so she
15 thought she was going to die. I'm not sure that I felt
16 it was -- that it really was not proof of anything, but
17 that it really established that her situation was
18 anymore grave than what's already been described.

19 **MR. WISNER:** Later on she goes on to talk
20 about the special treatments and super high doses and
21 monitoring and stuff. So, you know, I thought it goes
22 to the sort of the severity of her diagnosis. That was
23 the only one we felt Your Honor was really within her
24 wheelhouse for sure opinion testimony. But if
25 Your Honor has a problem with it, it's not a big deal.

1 I just wanted to raise it.

2 **THE COURT:** You know, I don't feel strongly
3 about it. It can come in. It's fine.

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

5 8:30 in the morning?

6 **THE COURT:** Yes.

7 **MR. BROWN:** Your Honor, I have one point of
8 clarification. And I apologize.

9 **THE COURT:** Sure.

10 **MR. BROWN:** The Court went through the
11 highlighted portions of the report of Mr. Pease this
12 afternoon and made some edits to what would be read.

13 **THE COURT:** I don't know if you want to read
14 it or are you going to have him come --

15 **MR. MILLER:** We're going to have him come.

16 **THE COURT:** Those are the things he can say if
17 he comes.

18 **MR. BROWN:** Okay. And the Court was only
19 focusing on what was highlighted --

20 **THE COURT:** Right.

21 **MR. BROWN:** -- because there are other things
22 in there that --

23 **THE COURT:** No, no, no, no. Only what was
24 highlighted and then edited what was highlighted. So
25 it's only the edited highlighted parts and it's like the

1 first few pages. So if you want to have him come in and
2 testify to those things, that's the scope of his
3 testimony.

4 **MR. BROWN:** All right. Very good. I just
5 wanted to be clear on that.

6 **MR. MILLER:** Thank you.

7 **THE COURT:** So do I need --

8 **MR. MILLER:** Absolutely clear.

9 **MR. WISNER:** I don't even know what
10 Mr. Brown's concern is. It's clear as day to me.

11 (Simultaneous colloquy.)

12 **THE COURT:** It's whatever the parameters of
13 the testimony are --

14 (Simultaneous colloquy.)

15 **THE COURT:** -- because I invited you to
16 highlight what he could testify to, and then I edited
17 what you highlighted, and that's what I ruled he could
18 say. Just as long as we understand all that, we're
19 good.

20 See you tomorrow morning at 8:30.

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

22 **MR. BROWN:** Thank you, Your Honor.

23 **THE COURT:** So Goldstein is next?

24 **MR. WISNER:** Your Honor, what's your question?

25 **THE COURT:** Goldstein, is that what you want

1 next?

2 **MR. WISNER:** Yes, that would be great as soon
3 as possible because we'd like to play it tomorrow.

4 **THE COURT:** You know, I was looking at Guard
5 just trying to figure out how much work it was going to
6 be and guess how much time it might take to go through
7 it. And I noticed that in the very first maybe 20,
8 25 pages there's a -- he's testifying about a fact
9 sheet, a data fact sheet, and it was from 2015.

10 And my first thought was I don't know when
11 these were prepared, but it sort of had a timeline 2015,
12 and I didn't know whether this was outside the timeline
13 that we're talking about or not.

14 You know what I'm talking about?

15 **MR. WISNER:** Yeah, yeah.

16 **THE COURT:** Mr. Ismail looks like he's not
17 entirely sure what I'm talking about.

18 **MR. ISMAIL:** I don't.

19 **THE COURT:** Mr. Griffis might have a handle on
20 it.

21 **MR. ISMAIL:** I'm filing that way, Your Honor.

22 **THE COURT:** And so my first thought was: Is
23 this within the timeline of the plaintiffs' use?

24 **MR. WISNER:** Yes.

25 **THE COURT:** Because that would shape, you

1 know, the objections, that I noticed nobody mentioned
2 that in the objections. And so I thought, well, if it's
3 within the time that the Pilliods used the product,
4 then, okay, then I'm looking at one thing. If I'm not,
5 then I probably need to reconsider all of the
6 objections. But if you're saying it is and that's not
7 part of the objection, then I'll go forward.

8 **MR. WISNER:** Yeah, it's within the time period
9 of use of the issue here. So it's not objected to, my
10 understanding.

11 **THE COURT:** Okay.

12 **MR. WISNER:** Your Honor, actually, I hate to
13 do this. We want to move in some documents into
14 evidence. We've been meaning to do this. This will be
15 very quickly. These are all stipulated to by both sides
16 so it's not an issue.

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

18 **MR. WISNER:** So Plaintiffs' Exhibit 3 --
19 sorry. Just Exhibit 3, 9, 10, 12, 14, 15, 18, 21, 22,
20 23, 35, 37, 38, 39, 41, 71, 72, 73, 74, 75, 77, 78, 79,
21 301, 335, 339, 340, 375, 492 -- sorry -- 429, not 492,
22 429, 431, 432, 433, 437, 441, 442, 444, 447, 471, 516,
23 534, 547, 551, 556, 565, 566, 588, 590, 591, 596, 603,
24 868, 875, 1375, 3071.

25 ///

1 (Trial Exhibits 3, 9, 10, 12, 14, 15, 18, 21,
2 22, 23, 35, 37, 38, 39, 41, 71, 72, 73, 74,
3 75, 77, 78, 79, 301, 335, 339, 340, 375, 429,
4 431, 432, 433, 437, 441, 442, 444, 447, 471,
5 516, 534, 547, 551, 556, 565, 566, 588, 590,
6 591, 596, 603, 868, 875, 1375, and 3071
7 received in evidence.)

8 **THE COURT:** Is that it?

9 **MR. WISNER:** That's it, Your Honor. And that
10 covers all the depositions that have been played.

11 **MR. EVANS:** Your Honor, just to be clear, he
12 said "by stipulation." I think over our objections as
13 you've ruled, those are the exhibits that have been
14 ruled on. It's not per stipulation.

15 **MR. WISNER:** Fair enough. It's in light of
16 the agreement. Sorry. In light of the Court's ruling.
17 Fair enough. The objections are preserved.

18 **MR. EVANS:** And, again, I just want to make
19 sure. If we have a problem with any of that, I have to
20 talk with Mr. Griffis tonight, he's not here today, I
21 saw e-mail traffic yesterday about it, but I certainly
22 didn't have that list printed out.

23 So I think it's correct subject to our
24 objections. But if we have an issue, we'll look at the
25 transcript tonight.

1 **THE COURT:** See you tomorrow.

2 So tomorrow the completion of the Koch
3 deposition. And then what?

4 **MR. WISNER:** We're going to play Dr. Blair
5 actually. And then have Dr. Pease testify.

6 **THE COURT:** So Koch, Blair, Pease; is that the
7 whole day?

8 **MR. WISNER:** I think we'll still have time
9 left over at that point. At that point, we'll play
10 another deposition, probably Raj.

11 **THE COURT:** Okay. I'll try to get Goldstein.

12 **MR. WISNER:** And just to give you the context,
13 the rest -- I'll just say the rest of our case, they
14 already know, I told them outside, but I'll tell
15 Your Honor.

16 So we're going to have Dr. Benbrook up on
17 Wednesday. Thursday we will play whatever is remaining
18 for the treater depositions. We're going to hear
19 testimony from Mr. and Mrs. Pilliod and their son on
20 Thursday.

21 I just let Your Honor know we've had a lot of
22 media requests about when they are testifying and they
23 know it's going to be Thursday. So you might have a bit
24 of a madhouse here that day. I apologize.

25 **THE COURT:** All right.

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MR. WISNER: And then on Monday the following week, Dr. Nabhan will testify, and he will either finish Monday or go into the beginning part of Tuesday. At that point, we will play the remainder of our videos which should be, I believe, Murphey, Goldstein, and I will be getting to you by Thursday this week before we leave, the last depo which is Dr. Farmer. Oh, and Guard.

THE COURT: All right. Thank you.

(Proceedings adjourned at 4:43 p.m.)

1 State of California)
2 County of Alameda)

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I, Kelly L. Shainline, Court Reporter at the Superior Court of California, County of Alameda, do hereby certify:

That I was present at the time of the above proceedings;

That I took down in machine shorthand notes all proceedings had and testimony given;

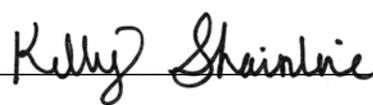
That I thereafter transcribed said shorthand notes with the aid of a computer;

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 I am not a party to the action or related to a party or counsel;

That I have no financial or other interest in the outcome of the action.

Dated: April 15, 2019



Kelly L. Shainline, CSR No. 13476