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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE VINCE CHHABRIA

IN RE: ROUNDUP PRODUCTS)
LIABILITY LITIGATION,) NO. C 16-2741 VC
) SAN FRANCISCO, CALIFORNIA
)

WEDNESDAY, AUGUST 9, 2017

**TRANSCRIPT OF TELEPHONIC PROCEEDINGS OF THE OFFICIAL ELECTRONIC
SOUND RECORDING 2:36 P.M. - 2:49 P.M.**

APPEARANCES:

FOR PLAINTIFFS WEITZ AND LUXENBERG, P.C.
700 BROADWAY
NEW YORK, NEW YORK 10003
BY: ROBIN L. GREENWALD, ESQUIRE

ANDRUS WAGSTAFF, PC
7171 W. ALASKA DRIVE
LAKEWOOD, COLORADO 80226
BY: AIMEE WAGSTAFF, ESQUIRE

(FURTHER APPEARANCES ON FOLLOWING PAGE)

**TRANSCRIBED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR
RETIRED OFFICIAL COURT REPORTER, USDC**

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(APPEARANCES CONTINUED) :

FOR PLAINTIFFS

BAUM HEDLUND ARISTEI AND GOLDMAN PC
12100 WILSHIRE BOULEVARD SUITE 950
LOS ANGELES, CALIFORNIA 90025-7106

**BY: ROBERT BRENT WISNER, ESQUIRE
MICHAEL LIN BAUM, ESQUIRE**

**FOR DEFENDANT MONSANTO
COMPANY :**

HOLLINGSWORTH LLP
1350 I STREET NW
WASHINGTON, D.C. 20005

**BY: GARY I. RUBIN, ESQUIRE
JOE HOLLINGSWORTH, ESQUIRE**

1 WEDNESDAY, AUGUST 9, 2017

2:36 P.M.

2 (TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSELS' FAILURE TO
3 IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER
4 ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

5 ---000---

6 PROCEEDINGS

7 **THE CLERK:** CALLING CASE NUMBER 16-MD-2741, IN RE:
8 ROUNDUP PRODUCTS LIABILITY LITIGATION.

9 COUNSEL, FOR PLAINTIFFS PLEASE STATE YOUR APPEARANCE
10 FOR THE RECORD.

11 **MS. WAGSTAFF:** GOOD MORNING -- OR GOOD AFTERNOON,
12 YOUR HONOR. THIS IS AIMEE WAGSTAFF ON BEHALF OF THE
13 PLAINTIFFS.

14 **MS. GREENWALD:** GOOD AFTERNOON, YOUR HONOR. ROBIN
15 GREENWALD FOR THE PLAINTIFFS.

16 **MR. WISNER:** GOOD AFTERNOON, YOUR HONOR. BRENT
17 WISNER AND MICHAEL BAUM ON BEHALF OF THE PLAINTIFFS.

18 **MR. RUBIN:** YOUR HONOR, GOOD AFTERNOON. THIS IS GARY
19 RUBIN ON BEHALF OF MONSANTO.

20 **THE COURT:** OKAY. GOOD AFTERNOON. I -- HOLD ON.

21 **THE CLERK:** HOLD ON. IS THERE ANYBODY ELSE ON THE
22 LINE FOR DEFENDANTS?

23 **MR. RUBIN:** YOUR HONOR, PARDON ME. THIS IS GARY
24 RUBIN. MR. HOLLINGSWORTH IS ATTEMPTING TO DIAL IN. THERE WAS
25 A PROBLEM WITH THE LINE HE WAS ON. COULD WE JUST TAKE A

1 MOMENT? WE APOLOGIZE.

2 **THE COURT:** YOU CAN GO AHEAD AND CALL THE CASE. OH,
3 THE CASE HAS BEEN CALLED? ALL RIGHT. WE'LL GO AHEAD AND
4 BEGIN. SO LET ME TELL YOU HOW I WANT TO PROCEED TODAY. I DO
5 NOT WISH TO HEAR ARGUMENT ON THIS QUESTION.

6 MAINLY, YOU KNOW, I DON'T THINK THERE'S ANY
7 PARTICULAR EMERGENCY TO BE DEALT WITH RIGHT NOW. I THINK
8 THERE'S A PROBLEM. I THINK WE HAVE A PROBLEM, BUT IT DOESN'T
9 STRIKE ME THAT IT'S AN EMERGENCY BECAUSE THE BELL CAN'T BE
10 UNRUNG, AS LAWYERS LIKE TO SAY. BUT LET ME GIVE YOU MY
11 TENTATIVE THINKING.

12 I WOULD LIKE TO HAVE AN IN-PERSON HEARING ON THIS --
13 I'M GOING TO ISSUE AN ORDER TO SHOW CAUSE, AND I WOULD LIKE TO
14 HAVE AN IN-PERSON HEARING, AND LET ME TELL YOU WHAT MY THINKING
15 IS, MY TENTATIVE THINKING.

16 MY TENTATIVE THINKING IS MR. WISNER ACTED IN BAD
17 FAITH -- HELLO?

18 **UNIDENTIFIED SPEAKER:** MY LINE JUST WENT DEAD. THANK
19 YOU.

20 **THE COURT:** OKAY. AS I WAS SAYING, MY TENTATIVE
21 THINKING IS THAT MR. WISNER ACTED IN BAD FAITH. THERE WAS A
22 DISPUTE BETWEEN MONSANTO AND THE PLAINTIFFS ABOUT THE PROPRIETY
23 OF LIFTING THE CONFIDENTIALITY LABEL OR LIFTING THE
24 CONFIDENTIALITY DESIGNATION ON THESE DOCUMENTS. MR. WISNER WAS
25 AWARE OF THIS DISPUTE THAT WAS PENDING AND MADE THE DECISION --

1 AND WAS AWARE THAT MONSANTO TOOK THE POSITION THAT THE
2 DOCUMENTS COULD NOT BE DEDESIGNATED, OR, THAT IS TO SAY, THE
3 DOCUMENTS COULD NOT BE RELEASED WITHOUT INVOLVEMENT OF THE
4 COURT.

5 NOTWITHSTANDING HIS AWARENESS OF MONSANTO'S POSITION
6 IN THAT REGARD AND NOTWITHSTANDING THAT HE LEFT THE IMPRESSION
7 THAT THE DOCUMENTS WEREN'T GOING TO BE RELEASED, HE PUT THEM UP
8 ON HIS WEBSITE.

9 AND I THINK THAT YOU COULD MAKE ARGUMENTS BOTH WAYS
10 ABOUT WHETHER, IN FACT, YOU KNOW, THE PROTECTIVE ORDER -- YOU
11 KNOW, THE PROTECTIVE ORDER IN COMBINATION WITH MY SUBSEQUENT
12 PRETRIAL ORDERS PERMITTED THE RELEASE OF THOSE DOCUMENTS UNDER
13 THE CIRCUMSTANCES.

14 WHAT'S CLEAR IS THAT THERE WAS A LIVE DISPUTE OVER
15 WHETHER THOSE DOCUMENTS COULD BE RELEASED AND WHETHER THEY
16 COULD BE RELEASED WITHOUT FIRST SUBMITTING A JOINT LETTER TO
17 THE COURT ABOUT THE RELEASE OF THOSE DOCUMENTS. AND
18 MR. WISNER, IT APPEARS TO ME, OPERATED IN BAD FAITH IN
19 RELEASING THE DOCUMENTS WITHOUT COMING TO COURT FIRST.

20 AND SO WHAT I PROPOSE TO DO IS TO ISSUE AN ORDER TO
21 SHOW CAUSE WHY MR. WISNER AND PLAINTIFFS' COUNSEL GENERALLY
22 SHOULD NOT BE SANCTIONED AND AN ORDER TO SHOW CAUSE WHY
23 MR. WISNER SHOULD NOT BE REMOVED FROM THE EXECUTIVE COMMITTEE
24 AND HIS LAW FIRM BE REMOVED FROM THE EXECUTIVE COMMITTEE, AND
25 AN ORDER TO SHOW CAUSE WHY WE SHOULDN'T START ALL OVER IN

1 DECIDING WHO THE LEAD PLAINTIFFS' COUNSEL SHOULD BE IN THIS
2 CASE, AND AN ORDER TO SHOW CAUSE WHY THE PROTECTIVE ORDER
3 SHOULD NOT BE CHANGED TO REQUIRE THE PLAINTIFFS TO SEEK
4 PERMISSION BEFORE THE DEDESIGNATION OF ANY DOCUMENT THAT'S BEEN
5 MARKED CONFIDENTIAL.

6 I WILL ISSUE THAT IN WRITING SO THAT YOU CAN --
7 YOU'RE ON NOTICE OF WHAT YOU'RE DEALING WITH, BUT I WANT TO
8 HAVE A HEARING ON ALL OF THIS.

9 I ALSO THINK THAT WHAT I WILL DO IS I WILL ORDER THE
10 PLAINTIFFS SORT OF -- ALMOST LIKE A TEMPORARY RESTRAINING
11 ORDER, I WILL ORDER THE PLAINTIFFS NOT TO RELEASE ANY MORE
12 DOCUMENTS THAT HAVE BEEN DESIGNATED CONFIDENTIAL WITHOUT FIRST
13 SEEKING PERMISSION FROM THE COURT UNTIL THE HEARING, BETWEEN
14 NOW AND THE TIME OF THE HEARING. SO THAT IS SORT OF WHAT MY
15 THINKING IS RIGHT NOW.

16 I ALSO WANT TO SAY, YOU KNOW, THERE'S A LOT OF
17 COMPLAINING BY MONSANTO ABOUT THE PLAINTIFFS SORT OF LITIGATING
18 THEIR CASE IN THE PRESS, AND MONSANTO HAS SAID IN ITS BRIEFS A
19 COUPLE OF TIMES THAT I'VE ORDERED THE PLAINTIFFS NOT LITIGATE
20 THEIR CASE IN THE PRESS. THAT'S ACTUALLY NOT TRUE.

21 I DO NOT CARE WHETHER THE PLAINTIFFS LITIGATE THEIR
22 CASE IN THE PRESS. PLAINTIFFS CAN DO AS MUCH PR AS THEY WOULD
23 LIKE, AND I DON'T HAVE ANY -- I'VE NOT IMPOSED ANY SORT OF GAG
24 ORDER WHATSOEVER ON THE PLAINTIFFS.

25 THE ONLY THING THAT I HAVE DONE IS I HAVE SAID THAT

1 DOCUMENTS PRODUCED IN DISCOVERY THAT HAVE BEEN DESIGNATED
2 CONFIDENTIAL CANNOT BE USED -- THEY CANNOT BE USED FOR A PR
3 CAMPAIGN IF THEY ARE NOT RELEVANT TO THE GENERAL CAUSATION
4 PHASE IN THIS LITIGATION.

5 IN OTHER WORDS, WE'RE IN -- TO ACCOMMODATE THE
6 PLAINTIFFS' EXTREMELY BROAD DISCOVERY REQUESTS, WE'VE ALLOWED
7 THE PLAINTIFFS TO RECEIVE FAR MORE DOCUMENTS THAN ARE RELEVANT
8 TO THE GENERAL CAUSATION PHASE OF THIS LITIGATION AND THAT I
9 WOULD NOT ALLOW THE PLAINTIFFS TO MANIPULATE THIS LITIGATION
10 PROCESS BY USING THOSE DOCUMENTS THAT THEY PROBABLY SHOULD
11 NEVER HAVE GOTTEN IN THE FIRST PLACE IN FURTHERANCE OF A PR
12 CAMPAIGN.

13 SO THE PLAINTIFFS ARE NOT PRECLUDED FROM DOING ANY PR
14 THEY WISH TO DO. THEY'RE ONLY PRECLUDED FROM USING DOCUMENTS
15 THAT HAVE BEEN DESIGNATED AS CONFIDENTIAL AND ARE NOT PERMITTED
16 TO BE RELEASED.

17 BUT WITH THAT SAID, IT APPEARS THAT MR. WISNER HAS
18 ACTED IN BAD FAITH HERE. PERHAPS THE ENTIRE GROUP OF
19 PLAINTIFF'S COUNSEL HAS ACTED IN BAD FAITH HERE. AND I WANT TO
20 HAVE A HEARING ON THAT TOPIC. AND SO WHEN SHOULD -- AND I WANT
21 IT TO BE IN PERSON.

22 AND I AM STRONGLY INCLINED TO SANCTION THE PLAINTIFFS
23 AS I HAVE JUST INDICATED, AT A MINIMUM BY REMOVING MR. WISNER
24 AND HIS FIRM FROM THE EXECUTIVE COMMITTEE AND PERHAPS FURTHER
25 SANCTIONING THE PLAINTIFFS' COUNSEL OVER ALL.

1 SO WHEN SHALL WE HAVE THAT HEARING? ONE PROPOSAL I
2 HAVE IS PERHAPS AUGUST 24TH. THURSDAY, AUGUST 24TH?

3 **MR. HOLLINGSWORTH:** THIS IS JOE HOLLINGSWORTH, YOUR
4 HONOR. THAT'S A GOOD DATE FOR US ON BEHALF OF MONSANTO.

5 **MS. GREENWALD:** YOUR HONOR, ROBIN GREENWALD. IF I
6 HAVE TO DO IT, I CAN DO IT. I'M TAKING MY DAUGHTER BACK TO
7 COLLEGE THAT DAY. SO IT'S NOT IDEAL, BUT IF I HAVE TO, I WILL
8 HAVE SOMEONE ELSE DO IT. IT'S NO PROBLEM. SHE'S A BIG GIRL.

9 **THE COURT:** NO, IT'S NOT -- I MEAN, YOU HAVE A BIG
10 GROUP OF LAWYERS, PERHAPS TOO BIG. BUT ARE YOU SAYING THAT YOU
11 NEED TO BE THE ONE ARGUING THIS MATTER? IF SO, WE CAN FIND A
12 DIFFERENT DAY.

13 **MS. GREENWALD:** WELL, I MEAN, I THINK GIVEN SOME OF
14 THE STATEMENTS YOUR HONOR MADE, I WOULD THINK I WOULD NEED TO
15 BE THERE SO I CAN TELL YOU, YOU KNOW, HOW THE WHOLE THING PLAYS
16 OUT FOR EVERYBODY. BUT IF IT WORKS FOR EVERYBODY ELSE, I'LL
17 JUST MAKE IT HAPPEN. IF NOT, I'LL JUST DO IT.

18 **THE COURT:** I DON'T WANT TO SCHEDULE --

19 **MS. GREENWALD:** IT'S OKAY.

20 **THE COURT:** I DON'T WANT TO SCHEDULE THIS ON THE DAY
21 YOU'RE SUPPOSED TO BRING YOUR DAUGHTER TO COLLEGE. WHERE'S SHE
22 GOING TO COLLEGE?

23 **MS. GREENWALD:** OH, NO. SHE'S GOING INTO HER FOURTH
24 YEAR. SHE'S JUST MOVING INTO A HOUSE. SO I TOLD HER I'D HELP
25 HER. SHE IS IN CALIFORNIA, BUT SHE'S SOUTHERN. SO I CAN POP

1 UP AND GO BACK. IT'S NOT REALLY THE END OF THE WORLD. IT'S
2 REALLY OKAY.

3 **THE COURT:** WE COULD DO -- I MEAN, WE COULD DO -- I
4 THINK WE COULD DO -- LET ME TAKE A QUICK GLANCE AT MY CALENDAR.
5 I THINK WE COULD DO THE FOLLOWING WEEK, THE 31ST.

6 **MS. WAGSTAFF:** YOUR HONOR. THIS IS AIMEE WAGSTAFF.
7 WOULD WE BE ABLE TO DO IT NEXT WEEK?

8 **THE COURT:** PROBABLY NOT, NO. YEAH, WE COULD DO
9 THE -- I SEE -- ON AUGUST 31ST I SEE A MOTION TO DISMISS IN
10 SMITH VERSUS MONSANTO COMPANY. WHAT'S THAT? IS THAT ONE OF
11 THESE CASES, OR IS THAT SOME DIFFERENT MONSANTO CASE?

12 **MS. WAGSTAFF:** I DON'T BELIEVE IT'S AN MDL CASE, YOUR
13 HONOR, BUT I'M NOT SURE. MR. HOLLINGSWORTH WOULD BE ABLE TO
14 TELL YOU THAT FOR SURE.

15 **MR. HOLLINGSWORTH:** YOUR HONOR, THIS IS JOE
16 HOLLINGSWORTH. I'M NOT SURE ABOUT THAT EITHER.

17 **THE COURT:** OKAY.

18 **MR. HOLLINGSWORTH:** WE'LL CHECK AND LET MS. MILLER
19 KNOW.

20 **MR. WISNER:** YOUR HONOR, THIS IS BRENT WISNER, AND I
21 DEFINITELY WANT TO BE AT THE HEARING CONSIDERING THERE'S A
22 CLAIM THAT I ACTED IN BAD FAITH. I'D LIKE TO TALK TO YOUR FACE
23 AND TELL YOU WHAT HAPPENED.

24 UNFORTUNATELY, ON THE 31ST I'M GOING TO BE OUT OF THE
25 COUNTRY, BUT BETWEEN NOW AND THEN I'M FREE ANY DAY.

1 **THE COURT:** ALL RIGHT. LET'S DO THE 31ST. I MEAN --
2 SORRY -- THE 24TH. SORRY. I DIDN'T MEAN TO SCARE YOU.

3 **MR. WISNER:** OKAY.

4 **THE COURT:** WE CAN JUST DO IT -- MS. GREENWALD, WHAT
5 WAS YOUR -- DO YOU HAVE A PREFERENCE BETWEEN MORNING AND
6 AFTERNOON?

7 **MS. GREENWALD:** NO, IT'S FINE. I'M JUST GOING TO POP
8 UP ON A SHUTTLE. SO WHATEVER WORKS FOR THE COURT IS FINE FOR
9 ME. THANK YOU FOR ASKING, THOUGH. THAT WAS VERY NICE OF YOU.

10 **THE COURT:** DOESN'T PARTICULARLY MATTER TO ME EITHER.
11 LOOKS LIKE.

12 **MS. GREENWALD:** MORNING WILL BE GREAT. I'LL GET UP
13 EARLY AND POP UP AND GO BACK.

14 **THE COURT:** I'M SORRY. WHAT DID YOU SAY?

15 **MS. GREENWALD:** YOU KNOW, COLLEGE KIDS SLEEP LATE.

16 **THE COURT:** MORNING? OKAY. LET'S DO 10:00 A.M.

17 **MS. GREENWALD:** THAT WOULD BE GREAT.

18 **THE COURT:** OKAY. 10:00 A.M. ON THURSDAY THE 24TH.

19 **MS. GREENWALD:** THANK YOU SO MUCH.

20 **THE COURT:** OKAY. YEAH, I WILL -- ON THE RESPONSE TO
21 THE ORDER TO SHOW CAUSE -- I'LL PUT THE DEADLINE IN THE ORDER
22 TO SHOW CAUSE THAT I ISSUE TODAY.

23 ALL RIGHT. THANK YOU.

24 (PROCEEDINGS ADJOURNED AT 2:49 P.M.)

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CERTIFICATE OF TRANSCRIBER

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF
THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE
U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE
PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE
ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR,
RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN
WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT
FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE
ACTION.



JOAN MARIE COLUMBINI

AUGUST 11, 2017