

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VINCE CHHABRIA, JUDGE

IN RE ROUNDUP PRODUCTS)
LIABILITY LITIGATION) Case No. 16-md-02741
_____)

San Francisco, California
Thursday, November 9, 2017

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued on next page)

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1 Thursday, November 9, 2017

2:33 p.m.

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

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4 **THE COURT:** Calling case number 16-md-2741, In re
5 Roundup Products Liability Litigation.

6 Counsel, please step forward and state your appearances
7 for the record.

8 **MS. GREENWALD:** Robin Greenwald for the plaintiffs.

9 **MR. MILLER:** Good afternoon, Your Honor.
10 Michael Miller for plaintiffs.

11 **THE COURT:** Good afternoon.

12 **MR. LASKER:** Good afternoon. Eric Lasker for
13 Monsanto.

14 **THE COURT:** Good afternoon.

15 So you've come all this way. I don't know how much there
16 really is going to be to discuss.

17 **MR. LASKER:** If I may, Your Honor, there's actually
18 been a pretty significant development, somewhat surprisingly,
19 this morning.

20 If I could just hand up to Your Honor, there was a major
21 new development in the science of glyphosate and nonHodgkin
22 lymphoma.

23 And, as you'll see, this data was published this morning
24 by the National Cancer Institute. And the conclusion, just
25 sort of in short form -- it's also highlighted for you in the

1 abstract -- which is that in this large prospective cohort
2 study, no association was apparent between glyphosate and any
3 solid tumors or lymphoid malignancies overall, including
4 Non-Hodgkin lymphoma, its subtypes.

5 **THE COURT:** Okay.

6 **MR. LASKER:** If I may, I would like to sort of put
7 this into context for Your Honor, to explain how this impacts
8 where we are and where we're heading in this case for the
9 *Daubert* hearing.

10 If you'll recall back to science day, just to put this in
11 context, this is a cohort study. And a cohort study, which
12 began in the 1990s, enrolled about 57,000 pesticide
13 applicators, obtained information about their exposure history,
14 including exposure to glyphosate.

15 And then the way cohort studies work, they follow them
16 over time. And as time goes by, more and more individuals in
17 the cohort develop certain cancers. And the ability to look at
18 this issue of whether or not there's an association between an
19 exposure and an outcome becomes more and more powerful.
20 There's more and more numbers. There's more and more analyses
21 that can be conducted.

22 So this is the Agricultural Health Study. And I don't
23 know if you'll recall, from some of our other briefing, the
24 discussions of this study. It is -- and we are almost through
25 the *Daubert* briefing. Plaintiffs spent eight pages in their

1 opposition brief, specifically on this cohort study.

2 It was the lead study in our discussion of the
3 epidemiology. Both sides have stated in their *Daubert* briefs
4 to this point that epidemiology is the key to the causation
5 analysis.

6 **THE COURT:** Did you say this just came out?

7 **MR. LASKER:** Yes. It's highlighted on the top. As
8 you look on the top, it was published November 9th.

9 **THE COURT:** This may be a minor, unimportant question,
10 but you said that they spent eight pages talking about it in
11 their opposition brief before it came out?

12 **MR. LASKER:** That's what I want to explain to Your
13 Honor.

14 **THE COURT:** Okay.

15 **MR. LASKER:** That's why I'm trying to put this in
16 context.

17 So the cohort study, which is the Agricultural Health
18 Study, as I said, they followed them over time. And at certain
19 breaks or certain times they then look at the data to see what
20 is showing up to that point.

21 So there's a publication in 2005, which is an earlier look
22 at this data. At that point, they had 92 individuals who had
23 developed nonHodgkin lymphoma. To put that into context in
24 this analysis, they now have over 520 individuals with
25 nonHodgkin lymphoma.

1 So as time goes by --

2 **THE COURT:** "They have" you mean --

3 **MR. LASKER:** I'm sorry, the cohort. This study. It's
4 an ongoing study that goes forward in time.

5 **THE COURT:** Okay.

6 **MR. LASKER:** So in 2005, there's a publication that
7 shows no association of nonHodgkin lymphoma, but with only 92
8 individuals who had nonHodgkin lymphoma. That still made it
9 the largest study, but nowhere near as powerful as the study is
10 now.

11 That study, of course, was addressed by both sides'
12 experts. And the plaintiffs' experts raised certain concerns
13 about that study, including the fact that they thought 92 cases
14 of nonHodgkin lymphoma were not enough to do an analysis and
15 that they needed more followup time to allow more cases to
16 develop to be able to reach any conclusion.

17 There was then, in the course of discovery in this
18 litigation, third-party discovery of Dr. Aaron Blair, who, as
19 you might recall, was the chair of the IARC working group and
20 also had been involved in these -- in the AHS, the Agricultural
21 Health Study.

22 Through discovery of his files, we obtained a draft
23 publication analysis from 2013, that was of a variety of
24 different pesticides with updated information that included
25 some analysis of nonHodgkin lymphoma and glyphosate.

1 So that took us up to about 250 cases. And there were a
2 number of analyses that were conducted in there, again showing
3 no association between nonHodgkin lymphoma and glyphosate. And
4 that was then addressed by the experts, our experts, both on
5 our side and on their side.

6 And the plaintiffs' experts -- and they have two experts
7 in epidemiology, Your Honor, Dr. Neugut and Dr. Ritz -- had
8 different issues with that -- that study.

9 Dr. Neugut basically said that it's unpublished; and,
10 therefore, I'm not going to look at it. And he didn't read it
11 and would offer no opinions about it whatsoever.

12 Dr. Ritz initially didn't read it, but then she did. She
13 submitted a supplemental expert report that was largely focused
14 specifically on the 2013 analysis.

15 And she raised a number of concerns she had with the
16 analysis up to that date. And they're pretty technical issues
17 she had. But they're methodological questions she had, that
18 she didn't think were answered in the 2013 paper.

19 That is where things stood as of this morning. Both
20 sides' experts have addressed this study and addressed the
21 analyses that they had as of that date.

22 As I said, this new study has just come out this morning.
23 We are obviously reviewing it pretty furiously. We have had a
24 chance to talk with our experts sort of preliminarily this
25 morning.

1 One thing that our experts believe is that the issues that
2 Dr. Ritz raised with the 2013 study, some of the questions she
3 had, have now been resolved with this publication. And very
4 specific criticisms she had are addressed in this publication.

5 And our experts will be submitting supplemental expert
6 reports. This study will obviously be a key focus in the
7 *Daubert* hearing. It has to be. It's a major scientific
8 development on what both sides agree is the keystone area of
9 epidemiology.

10 We need, I think, for the record, for plaintiffs' experts
11 to offer any opinion on the study -- and there's case law
12 dealing with this -- you have need to have a supplemental
13 expert report before the *Daubert* hearing so that they can offer
14 any opinions.

15 And I don't know what their opinions will be. I'm sure
16 they'll have some. But we are now in a situation where this is
17 going to be a focus of the hearing. And we need to have some
18 way -- and we've been trying to think about it, and we have met
19 and conferred with plaintiffs, and they will provide --
20 actually, in the cafeteria about an hour ago. But we've been
21 trying to think about how we can handle this.

22 As Your Honor will recall, we had a somewhat similar
23 issue -- although it was much more speculative -- dealing with
24 slides of mouse study. And that ultimately turned out to be
25 nothing. But here we actually have a study. There is no way

1 there is going to be nothing.

2 And we are also in the process of the briefing. We're
3 filing our reply brief tomorrow. We'll have the time to
4 discuss this. Plaintiffs really don't because their briefing
5 is done except for a reply on their *Daubert* challenge of our
6 experts, which wouldn't really get to these issues.

7 So we've been trying to think about, on our side, how we
8 can deal with this and do it in sort of as narrow a focused way
9 as we can. The scheduling is such it's hard for us to see how
10 this can be done within a month.

11 We would propose trying to come up with an accelerated
12 schedule and meet and confer with plaintiffs to maybe get this
13 study in two or three months so we don't push the hearing that
14 far into the future from where it's currently scheduled.

15 We would limit the additional proceedings to supplemental
16 reports specifically on this study.

17 **THE COURT:** When you said "limit additional
18 proceedings," you mean additional submissions?

19 **MR. LASKER:** Yeah, before the *Daubert* hearing. I'm
20 sorry, Your Honor. To this study. We are not going to reopen
21 everything. There's one thing that has happened, and we would
22 focus on that.

23 So we would have supplemental expert reports. We'd have
24 depositions that would be limited in time. We certainly don't
25 need full-day depositions. It would be focused on this study.

1 And supplemental briefing with some page limitations, that
2 would be appropriate for the narrow focus we have here.

3 And then we would be able to proceed with the hearing, you
4 know, maybe by late February or early March, if we could. I
5 think that time frame is doable.

6 Obviously, both sides are going to have to talk with their
7 experts about scheduling issues.

8 So that's kind of an interesting wake-up this morning.
9 We've been doing a lot of work, as you might imagine.

10 **THE COURT:** I'll say.

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

12 **MR. MILLER:** Yes, Your Honor. We oppose a
13 continuance. And I'd like to explain.

14 We've been dealing with this issue and this study in all
15 of our discovery and all of our experts. The Agricultural
16 Health Study supplemental report that was published this
17 morning is the unpublished report that we dealt with; that the
18 defendants dealt with in their brief and we dealt with in our
19 brief; that they talked to all our experts about and we talked
20 to all of their experts about. The only difference is now it's
21 published instead of unpublished.

22 So the defendants have already gotten one continuance --

23 **THE COURT:** Let me just ask you, you said the only
24 difference is that it is published instead of unpublished. So
25 are you saying the experts had this very document in front of

1 them?

2 **MR. MILLER:** No, Your Honor. That document came out
3 this morning.

4 The unpublished data that is the basis for that document
5 has been debated by all the experts and is in our briefs.

6 **THE COURT:** Okay. But Mr. Lasker said that the data
7 that was debated in the briefs was based on -- I don't remember
8 the numbers, but 50-some subjects from 2005, and then
9 200-and-some subjects from 2013, from the records of the head
10 of the IARC working group.

11 Did I get that right?

12 **MR. LASKER:** Yes. Yes, Your Honor.

13 **THE COURT:** And then -- and now there are how many
14 subjects?

15 **MR. LASKER:** About 530, Your Honor.

16 And I'm not sure if Mr. Miller has had the opportunity to
17 review the study thoroughly. It's not at all the same data.
18 It's much more data, and there's much different analyses.

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

20 **MR. LASKER:** The 2013 paper was a study that looked at
21 a number of different pesticides. And it had some analyses of
22 glyphosate in that.

23 But this study is much broader. It focused specifically
24 on glyphosate. It has more updated information, has more
25 information, has different analyses, none of which we've

1 addressed with their experts.

2 **THE COURT:** Okay.

3 **MR. MILLER:** 2013 data is what that's based on. We've
4 been debating with our experts --

5 **THE COURT:** Have you read this yet?

6 **MR. MILLER:** I briefly read it a half an hour ago.
7 And I looked at an abstract this morning when it came out.

8 And there will always be new studies coming out. Science
9 is evolving. If the defendants are going to get a continuance
10 every time a new piece of science comes out, we will never have
11 a *Daubert* hearing.

12 So we object to and can easily -- we've already cleared
13 the time. The Court has cleared the time. Experts have
14 cleared their time. We've already dealt with the 2013
15 Agricultural Health Study data upon which that publication
16 is -- that's the core data upon which that publication is
17 based.

18 We have our own sound scientific reasons why that study is
19 not to be relied upon. We can go over them now, but I don't
20 think it's proper to go over the merits of them.

21 But it's been discussed by every expert. It's been
22 briefed. It's in our brief. That data, the 2013 data, the
23 first time we got that data was when we deposed Aaron Blair.
24 Aaron Blair produced that data as part of his deposition.

25 That's been almost a year now. So our experts have looked

1 at it. Their experts have looked at it.

2 In fairness to the defendants -- and I will agree with
3 them on this point -- the one expert that would not discuss
4 that data was Dr. Neugut, because he only wants to discuss
5 published data.

6 So as I explained to Mr. Lasker half an hour ago, we'll
7 get a supplemental report from Dr. Neugut. We can have it in a
8 week. If they want to narrowly depose Dr. Neugut again on that
9 issue, that's fine. The Court would allow an hour or two for
10 that, we can get it done before December 11th.

11 So there's no surprise here. And they can deal with it in
12 their reply brief. That's fine with us. It's data we have
13 dealt with, we're prepared to deal with at the *Daubert* hearing.
14 It's not a reason for continuance. It's just another piece of
15 a puzzle and, we think, an unreliable piece, as we've
16 articulated in our brief and will at the *Daubert* hearing.

17 **THE COURT:** Okay. Where do you discuss -- where do
18 you discuss this -- where is it discussed in the briefs?

19 **MR. MILLER:** I think Mr. Lasker's representation was
20 it's over eight pages. And that's probably inaccurate --

21 **THE COURT:** Where? Give me the page numbers.

22 **MR. LASKER:** Yes, Your Honor.

23 So the plaintiffs, in their opposition brief, address --

24 **THE COURT:** "Opposition" --

25 **MR. LASKER:** I'm sorry, opposition to our *Daubert*

1 brief. I can start with our *Daubert* brief.

2 **THE COURT:** All right.

3 **MR. LASKER:** Well, the plaintiffs' opposition brief
4 deals with it, I think, at pages 29 through 38. And that is
5 broken up into one section of the overall Agricultural Health
6 Study, which is an ongoing study. Then they have a section on
7 the 2005 study, then have a section on the 2013 draft.

8 We deal with that, at least as a section header --
9 although we deal with it in other places -- in our brief. And
10 it's our lead discussion of the epidemiology starting on page
11 12 through page 15.

12 **THE COURT:** It's in your *Daubert* opening --

13 **MR. LASKER:** In our opening brief, Your Honor.

14 **THE COURT:** *Daubert* brief.

15 **MR. LASKER:** Yes. And we will, of course, be dealing
16 with it in our reply brief tomorrow.

17 **THE COURT:** Give me the pages again.

18 **MR. LASKER:** Sorry. Yes.

19 In our brief, it is -- sorry, I took out theirs. It is
20 pages 12 to 15 is the section that covers that. Although
21 there's discussion of it elsewhere.

22 And in plaintiffs' it is pages 29 through 38.

23 And, Your Honor, we appreciate the fact --

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

25 **MR. LASKER:** Yeah.

1 **THE COURT:** Give me a second.

2 **MR. MILLER:** Your Honor, may I add one other document?

3 **THE COURT:** Sure.

4 **MR. MILLER:** We also dealt with it in a rebuttal
5 report from Dr. Ritz, epidemiologist from UCLA. She provided a
6 supplemental rebuttal report on the 2013 data.

7 **THE COURT:** Dr. who?

8 **MR. MILLER:** Ritz.

9 **THE COURT:** How do you spell that?

10 **MR. MILLER:** R-i-t-z.

11 **THE COURT:** Okay.

12 **MR. LASKER:** And, Your Honor, if I might, because I'm
13 just not sure I'm clear on one of the things that Mr. Miller
14 stated. He mentioned that Dr. Neugut will be preparing a
15 supplemental report.

16 Dr. Ritz, in her discussion of the 2013 study, raised two,
17 sort of, substantive critiques, both of which are actually
18 expressly addressed in the new study where they do certain
19 analyses that address and respond -- I don't think they were
20 responding directly to her criticism; that would be kind of
21 odd -- but respond exactly to the issues that she raised in her
22 rebuttal report.

23 So those arguments, at least from our experts'
24 perspective, no longer apply to this 2017 paper. To the extent
25 they ever were valid criticisms, they have now been addressed.

1 Dr. Ritz will most certainly have something to say about
2 that. We would need to know what her going opinions are going
3 to be. We have no idea. And I frankly admit I don't know
4 where she's going on this. I often can get a sense, but I have
5 no idea where she's going to go on this.

6 **THE COURT:** Okay. Hold on. Give me one second.

7 **MR. LASKER:** Sure.

8 (Pause)

9 **THE COURT:** Okay. Well, I kind of flipped through the
10 plaintiffs' opposition brief and what they say about this
11 study. Obviously, I couldn't read it carefully.

12 And, you know, based on what I've heard today, I mean, I'm
13 not really equipped -- based on what I've been given so far,
14 I'm not really equipped to judge whether this is a -- you know,
15 such a significant development that it requires, you know,
16 continuing the hearings and doing a new round of expert
17 reports, and all that, or whether it's just one more in the
18 inevitable, you know, series of developments that will continue
19 to occur.

20 So, you know, I don't know what to say. I don't know what
21 to say right now.

22 **MR. LASKER:** I appreciate this, Your Honor. It's sort
23 of a -- a interesting situation we find ourselves in.

24 And I think the only thing that I can state on this,
25 again -- well, two things. One is that the significance of the

1 development -- and we think this is a major development. The
2 science wasn't there before, but this is by far the largest
3 study, is the best design study. And it is conclusive,
4 frankly, in our view, on the issue.

5 But beyond just taking our word for it is the fact that
6 plaintiffs spent so much time in their brief trying to address
7 this issue. And we will be --

8 **THE COURT:** If you put it front and center, of course,
9 they have to spend time addressing the issue. I don't think
10 that proves anything.

11 **MR. LASKER:** Well, Your Honor, to the extent we're
12 going to be having a *Daubert* hearing to challenge their
13 experts' causation opinions and the reliability of the
14 methodology that they use in reaching a causation opinion --
15 and, obviously, Your Honor will determine that issue.

16 But if you recall, the last time we had a situation
17 somewhat similar to this, we were talking about tissue slide
18 from the 1983 mouse study and one, you know, tumor, in which
19 plaintiffs' experts -- plaintiffs believe was something that
20 they needed to have information on and need to have experts
21 analyze to be able to provide Your Honor with information.

22 This is an epidemiology study which both sides have
23 recognized is the focus of the inquiry. It is the only cohort
24 study that has been conducted of this question with, as I said,
25 60,000 pesticides applicators.

1 **THE COURT:** What's a pesticide applicator?

2 **MR. LASKER:** It is somebody who has to actually
3 register -- it's people who use pesticides a significant amount
4 in their work. And they have to register in various states;
5 make sure they have the proper training and what have you.

6 So these are individuals with the highest exposures.
7 This -- this new paper, for example, has analyses not only of
8 whether or not there's an association, but it has a whole
9 series of analyses at different exposure levels to determine
10 whether or not at higher exposures there is a higher risk, and
11 finding that there's not.

12 Has analyses of individual subtypes of nonHodgkin lymphoma
13 again at various dose levels. This would be -- and we'll be
14 making this argument. It would be -- for plaintiffs' experts
15 not to be able to address a cohort study like this, from the
16 National Cancer Institute, published in the Journal of the
17 National Cancer Institute, which is one of the highest profile
18 journals in the country on cancer, that in itself will be
19 disqualifying for any expert.

20 This is not an issue of one rat tumor or one mouse tumor
21 40, 50 years ago. And the issue we have, Your Honor, again,
22 is --

23 **THE COURT:** But why could it not just simply be
24 addressed in the testimony? I mean, why do we have to press
25 the pause button and do more reports and more depositions? Why

1 couldn't -- why couldn't we just address this new study that
2 came out?

3 I mean, nobody is blamed for not addressing it beyond the
4 way they addressed it in their reports, because it wasn't
5 published yet.

6 But why not -- why can't the study simply be addressed in
7 the testimony?

8 **MR. LASKER:** Well, two points. First, nobody, again,
9 has been able to address this study in their reports because
10 the analyses are different and the data is different.

11 So we have a situation --

12 **THE COURT:** Right.

13 **MR. LASKER:** -- where we would question those
14 witnesses and so they could.

15 If they have any opinions to offer on those, though, on
16 the study, they would need to have some kind of supplemental
17 report explaining what those opinions are, for us to know what
18 those opinions are --

19 **THE COURT:** I mean, under these circumstances, do
20 their depositions have to be taken before the *Daubert* hearings?

21 **MR. LASKER:** If they're going to have new opinions --
22 if they have no opinion on this study, and they concede that
23 it's a study that says what it says, and they have nothing else
24 to say about it, then I guess not.

25 But if they're offering opinions in support of their

1 causation opinion, that incorporate this study -- which I think
2 they have to -- I don't think; they would have to; there's no
3 way not to -- then they have a supplemental report and they
4 have opinions that we need to know what they are and discover.

5 **THE COURT:** Are you entitled to that? Like, legally
6 entitled to?

7 **MR. LASKER:** There is case law that deals --

8 **THE COURT:** I think that under some circumstances it's
9 appropriate, in a civil case, to have witnesses testify without
10 their depositions having been taken.

11 **MR. LASKER:** Yes, Your Honor, I think that would be
12 right.

13 There is case law -- and maybe plaintiffs will stipulate
14 to this. There is case law and there's appellate case law in
15 which an expert who is precluded from testifying at a *Daubert*
16 hearing about opinions that they did provide in their expert
17 reports.

18 We don't want to be in a situation here, on appeal, where
19 the plaintiffs are arguing that they didn't have an opportunity
20 to submit supplemental reports.

21 And, on the flip side, if the plaintiffs are coming in
22 with -- at the hearing with opinions that we've never heard
23 before, it's the same situation. Our record now is getting
24 very confused for the appeal.

25 And, you know, again, this is -- this is something we've

1 been trying to figure out. We've been researching the case
2 law. And I actually have it on my phone to try and pull up
3 some of those cases for you when I sit down, I guess. Or if
4 you'll let me, I'll try to find it right now, what those cases
5 are.

6 But we are concerned that we have the proper record before
7 the Court with supplemental expert opinions so that the *Daubert*
8 hearing is an appropriate hearing to test those opinions and
9 challenge those opinions.

10 **THE COURT:** I mean, there are two questions, I think;
11 right?

12 One question is, under what circumstances can a Court just
13 say, no, sorry, we're going forward, and this is something that
14 you can deal with when they take a stand? And it's a
15 development that occurred after the expert reports were
16 submitted.

17 And so, you know, every time something new comes out, you
18 don't have the right to press the pause button and take more
19 depositions and exchange more reports. At some point you just
20 have to deal with new information on -- when the witness takes
21 the stand; right?

22 I'm quite sure that under some circumstances it is
23 appropriate for a Court to say that. And so one question is,
24 what are the rules about that?

25 And then the next question, and probably related question,

1 is, just how important is this study? And just how significant
2 is this development in the grand scheme of things?

3 And I think the answer to those two questions is the
4 answer to whether the hearings should go forward in December or
5 whether they should, you know, be postponed -- be pushed back.

6 I'm very reluctant to ask you to file briefs about whether
7 more briefs should be filed. It seems a little ridiculous.

8 So I think that what I will do is ponder this, do a little
9 study on my own, and get back to you next week about how I want
10 to proceed. And if I have questions, I'll ask you to file
11 letter briefs or something addressing my questions. And you
12 should be ready on short notice next week to do that.

13 In terms of, you know, making your lives slightly less
14 miserable than they already are, when is the ideal time for you
15 all to get a decision from me about whether we are going
16 forward in December or pushing it back?

17 **MR. LASKER:** Well, I don't know what the date is.
18 Obviously, we have lots of issues with our experts. If we can
19 get something toward the end of next week, that would be
20 doable.

21 **THE COURT:** Get what?

22 **MR. LASKER:** Your viewpoint, the end of next week.

23 If it would be helpful to Your Honor, we can also submit
24 to you the sort of (unintelligible). It's in the docket
25 somewhere, but way buried, the 2005 Agricultural Health Study

1 and the 2013 draft study so you can at least -- I don't suppose
2 you would be able to read them in any detail, but you'll see
3 the distinctions and the differences between those studies to
4 get a sense of the issues -- of the issues, if that will be
5 useful.

6 **THE COURT:** I'll let you know if I need that.

7 **MR. LASKER:** Okay.

8 **MR. MILLER:** Just to follow up on that, and those two
9 documents have been available for the last year. And our
10 experts have been debating them for the last year. And those
11 documents were debated in their *Daubert* and our response.

12 **THE COURT:** What Mr. Lasker is saying is that they are
13 significantly different from this document.

14 **MR. MILLER:** That's where we don't agree.

15 There's nothing statistically significant in that
16 document. They don't reach one statistically significant
17 finding in that document. The document adds nothing important
18 to the scientific inquiry.

19 **THE COURT:** You haven't really read it yet.

20 **MR. MILLER:** Well, I did, Your Honor. I read the
21 statistical confidence intervals. And that's a quick read.
22 It's an easy read.

23 But we're at Your Honor's disposal. If you want a letter
24 brief or a phone call, we're available. And I agree with
25 Mr. Lasker that sometime next week the Court's decision is

1 reasonable and agreeable.

2 **THE COURT:** Okay. On how the proceedings will go, one
3 idea I wanted to float by you -- I mean, I know Monsanto has a
4 lot of objections to their -- we're going to sort all that out
5 after the testimony, okay.

6 **MR. LASKER:** Right.

7 **THE COURT:** But here's what I was -- as I was reading
8 your list of witnesses and how much time you wanted to allocate
9 to each one, and the like, for a minute I was thinking, well,
10 why don't I just read their expert reports before the hearings
11 and start with cross-examination on each witness.

12 Then I was thinking, you know, I'm not sure how good of an
13 idea that is because, you know, this is complicated stuff, and
14 there are a lot of experts. And it may be difficult for me,
15 particularly before the testimony comes in, to keep track of
16 who is who.

17 I mean, I will tell you, I will read every word of every
18 expert report --

19 **MR. LASKER:** Right.

20 **THE COURT:** -- before the hearings start, okay.

21 So what I -- what I -- what I was wondering is if the most
22 efficient way to proceed with the witnesses would be to impose
23 a half-an-hour limit on the direct of each witness.

24 And the purpose of the half hour is to really summarize
25 and hit the high points of the testimony, to remind me about

1 the most important things in their reports that I read but
2 might not have focused on enough. Right?

3 And the -- I think the qualification -- the stuff about
4 qualifications, I don't think we need to do that live. I think
5 that can all be done on paper.

6 So qualifying the witnesses as experts, and talking about
7 their background and all the fancy degrees they have or not
8 fancy degrees they have, or whatever, how fancy is the
9 degree -- I'm quite sure there's nobody from UC Santa Cruz on
10 the list -- but that all gets done on the papers.

11 Half an hour for the witness on direct in as narrative a
12 form as you want, as narrative a form as you want the witness
13 to do it, gives a summary of the highlights of their opinion
14 and the most important points of their opinion.

15 On direct, lawyer can jump in and ask a question if the
16 witness forgot to say something important or whatever. But if
17 it's half an hour of narrative testimony, I think that's fine.
18 And then cross-examination and then redirect.

19 It strikes me that that would be a more efficient way to
20 do it, so I wanted to see what you all thought about that.

21 **MR. LASKER:** Yeah. The parties actually met about
22 this over lunch, also, and want to think about what Your Honor
23 just said as well.

24 We had come up with an alternative solution that we had
25 reached agreement on as well. And let me lay out my

1 understanding of it. And, obviously, Ms. Greenwald can correct
2 me if I'm wrong.

3 But the issues in this case deal with three areas of
4 science: epidemiology, animal toxicology, and geno tox with
5 some mechanistic data. And the plaintiffs' experts'
6 methodologies are somewhat similar.

7 And what we were discussing at lunch is whether we would
8 submit some of the experts on the paper and have other experts
9 provide live testimony so that there would be fewer experts in
10 the hearing.

11 And, at least from my perspective, I think that what that
12 would offer for Your Honor -- because, as you recognize, this
13 is very complicated stuff. It would -- the direct examinations
14 will allow Your Honor to sort of get an understanding of the --
15 sort of what the opinions are and the bases for the opinions
16 and how the science has been analyzed.

17 I'm a little bit concerned that very short direct
18 examinations may not provides Your Honor with as much
19 information as would be useful.

20 So what we had been discussing, and we would need to meet
21 and confer to just sort of nail down some of the particulars,
22 is that we would be able to do this within the time period
23 allotted, bringing fewer than all of the experts for live
24 testimony, but experts that would cover all of the scientific
25 areas that are addressed in the *Daubert* challenge and

1 methodologies that are addressed in the *Daubert* challenge. And
2 then the rest of them would be submitted on the papers.

3 **THE COURT:** Presumably, each side would be picking
4 their best, the people they think are the most effective or
5 best experts.

6 **MS. GREENWALD:** Your Honor, the other thought we had,
7 actually, was right in line with what you said. We were
8 thinking only we had 45 minutes of direct and cross. And I had
9 incorporated -- and I haven't even talked to Mr. Lasker about
10 this yet -- with an hour for the Court, if the Court wanted to
11 take an hour. And we figured --

12 **THE COURT:** I will likely -- if past experience in
13 these sorts of things is any indication, I will likely be
14 interrupting throughout.

15 **MS. GREENWALD:** Right.

16 **THE COURT:** When I have a question or need
17 clarification, I will interrupt. So I don't think we need to
18 allot time for me.

19 **MS. GREENWALD:** No, what I meant by that was we did
20 the math, assuming that Your Honor wants everyone to come. We
21 did the math. And we could do it, certainly, with 30 minutes
22 each.

23 I mean, again, we are not opposed to Mr. Lasker's
24 suggestion of picking three people at all. That would be fine.
25 But if Your Honor decides that you would prefer more people to

1 come, we did the math as well, and it would work with even 45
2 minutes. But 30 would also be -- I mean, it's fine with us, 30
3 on each side.

4 **THE COURT:** So the idea would be you would each pick
5 one person from one area?

6 **MS. GREENWALD:** Correct.

7 **THE COURT:** Well, so that might be a good approach
8 too. But I wonder if it would make sense to start with that
9 approach but have your other people on call in case I decide
10 during that week that I want to hear from them.

11 Like, if I say I want to hear another epidemiology person,
12 you know, or I want to hear your other epidemiology people, you
13 know, that's the most important, you know, or something like
14 that -- I mean, I -- I don't know.

15 I mean, again, it's sort of -- for me, it's sort of an
16 abstract discussion. I haven't read the expert reports yet. I
17 haven't, you know, read the briefs yet. So it's difficult for
18 me in the abstract to know if, you know, it's going to hinder
19 me in some way to only hear from three experts on each side.

20 I guess what I would say -- so I guess what I would say
21 about that is that if you both believe that that's the best way
22 to approach it, then I would be inclined to defer to you. But
23 think about whether, you know, you could have your other people
24 on call if I say I want to hear more about this.

25 **MR. LASKER:** I mean, we can certainly talk about that

1 amongst ourselves and see if that -- that would work.

2 **THE COURT:** So the idea then would be each side -- we
3 would hear from six witnesses.

4 **MS. GREENWALD:** Correct.

5 **THE COURT:** And what you're budgeting is, like, two
6 and a half hours of air time for each witness. Is that about
7 right?

8 **MS. GREENWALD:** Maybe even a little more, but that's
9 right. Between two and a half and three and a half would work.

10 **MR. LASKER:** Again, we just discussed this over lunch,
11 so there may be a wrinkle around the edges. But the idea would
12 be that you would have enough time for each witness.

13 We're in a little bit of a -- as the defendants, we don't
14 know which experts they're going to be calling. So I do want
15 to be able to at least have that conversation with plaintiffs'
16 counsel first, just to have more of an understanding of the
17 approach. But, in general, that's the way we would go forward.

18 **MS. GREENWALD:** We talked about it, as we said, at
19 lunch. We could give names by, I would think, Monday, if we
20 went this 3-3, and talk it through to see if that would work.

21 So I think we could report back to you -- maybe I'm wrong,
22 but I think we could report back to you on Tuesday, at the
23 latest; maybe even Monday. Since you're three hours'
24 difference from us on the East Coast, we could probably tell
25 you -- I don't know if you can. I think we can on our side.

1 We don't have the same issues you have. You maybe need a
2 little more time.

3 **MR. LASKER:** Yeah. They -- they thought about this a
4 little bit before I have because it was their proposal. I just
5 would need to confer with my folks. But sometime next week.

6 And, again, this will obviously be -- I think one of the
7 things we also did discuss is that this approach would probably
8 work whenever the hearing is.

9 **THE COURT:** Although, so what I will say is that this
10 is obviously, like, a very important thing. And so, you know,
11 if -- if 18 hours -- I mean, 18 hours of testimony kind of
12 sounds like a lot. But if 18 hours of testimony is not enough
13 for me to develop a very strong understanding of this stuff,
14 then there should be more testimony.

15 Like, this is not -- you know, this is not like some
16 regular civil trial where you impose a ten-hour limit on each
17 side, and even if they can't do a great job of getting their
18 stuff in during those ten hours, kind of too bad because the
19 Court has, you know, 500 other cases. That's not this case.

20 So if we -- you know, if we end up needing more than a
21 week to hear testimony, we'll take more than a week to hear
22 testimony. So that's -- overall, if you, you know, come to a
23 meeting of the minds on that, taking that approach, that's
24 fine.

25 I also think there is more value to having a witness on

1 the stand than just having their testimony in on paper. You
2 know, it is more helpful. It's more likely to sink in when
3 it's -- when a witness -- when you've read the witness's stuff,
4 and they come take the stand, you can ask questions about it.
5 So, you know, keep those principles in mind.

6 The other thing is, I wonder -- I'm not sure what I think
7 about this. I'm thinking out loud. But, you know, we talked
8 about -- you mentioned, you know, wanting to make sure there's
9 a enough time for argument, for attorney argument.

10 And, you know, it's not clear to me whether that attorney
11 argument should come at the end of a long week of expert
12 testimony when everybody is tired or, you know, a week later or
13 two weeks later, or something like that.

14 **MS. GREENWALD:** That would be fine.

15 **MR. LASKER:** I think, from our perspective, Your
16 Honor, we want to proceed however is going to be best for you,
17 to make sure that you have a full understanding of the issues.

18 We do recognize there's some -- a lot of science here for
19 you to deal with, and we want you to make sure you have all
20 that information.

21 So, again, why don't we meet and confer with plaintiffs'
22 counsel. I will -- again, I think this does also speak a bit
23 to the earlier issue about the importance of having all the
24 science in the record correctly for the hearing and having, you
25 know, the opinions laid out before the hearing. It's all part

1 of this -- I'll make one last plug and get that point in.

2 But I think the parties can definitely meet and confer on
3 this. And I don't know, also, if -- we can meet and confer and
4 talk about how you want some of the exhibits to be submitted
5 and what's the best format for you. We both looked at your
6 standing order for trials, but that doesn't seem to quite be
7 right.

8 **THE COURT:** Well, I assume -- is there going to be --
9 I assume you all are going to agree on what can be admitted.

10 To the extent -- I would say, for efficiency's sake, to
11 the extent that there are objections to something, let's just
12 do those on the paper too.

13 And anybody who wants to present anything to me can
14 present it to me. And then I'm a judge, so I'm trained to
15 disregard things that I've seen.

16 **MR. LASKER:** Right.

17 **THE COURT:** And you can do objections on the paper.

18 So, you know, you should be able to submit a piece of
19 paper which establishes which exhibits are being admitted and
20 which exhibits are being provisionally admitted subject to
21 objection. And the objection can be specified on paper. And
22 you can kind of do that, I think, probably whenever you want.

23 I mean, we have to check with Kristen to make sure it
24 works mechanically with her, but I want to make it as easy for
25 you all and I don't want us to be taking time during the

1 hearings, you know, asking to -- for exhibits to be admitted or
2 bickering about whether they should be admitted.

3 **MR. LASKER:** Yes, Your Honor.

4 And the hearing is under Rule 104, actually. So the
5 recognition is a hearing before a judge. It's not -- so the
6 rules of objecting are somewhat --

7 **THE COURT:** Right.

8 **MR. LASKER:** -- relaxed.

9 **MS. GREENWALD:** And we have actually spoken to your
10 partner, Ms. Pigman, about this. And we already have a plan of
11 when we're going to exchange and working all this out.

12 I think we're good on this. And I think we will have --
13 well in advance of the hearing, any objections we would be able
14 to post and present to you.

15 **THE COURT:** I feel like somebody asked for an
16 extension on the --

17 **MS. GREENWALD:** Correct.

18 **THE COURT:** -- submission --

19 **MS. GREENWALD:** Right.

20 **MR. LASKER:** We both did.

21 **MS. GREENWALD:** We did that jointly because under the
22 current order, the exhibit list is due before the briefing is
23 finalized.

24 So we asked for an additional, like, ten days to meet and
25 confer, because we thought it was better to have all the

1 briefing done before we met and conferred on exhibits.

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

3 **MS. GREENWALD:** We agree.

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

5 **MS. GREENWALD:** We're working well on this, and I have
6 no concerns about being able to work it out.

7 Your Honor, I have one question. Listening to this was
8 super helpful today. So the three exhibits -- the three
9 witnesses was not necessarily our idea. But I'm hearing it
10 would maybe make more sense to bring everyone. We have to
11 think about it as well --

12 **THE COURT:** I don't --

13 **MS. GREENWALD:** -- in light of your comments.

14 No. I'm just saying if we have the full week of the 11th,
15 should we be budgeting time, assuming that the Friday will be
16 testimony not argument.

17 I mean, I think that makes sense to us.

18 **THE COURT:** Yeah. My gut is that -- whether we are
19 doing it the week of the 11th or a different week, is that we
20 should -- we can just budget for a full week of testimony.

21 And we'll have argument -- I think my -- I think the best
22 thing to do is to have argument not too far from it. Like,
23 maybe even the next week. You know, the next week or the week
24 after.

25 **MR. LASKER:** That --

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MS. GREENWALD: That definitely works.

MR. LASKER: The week of December 11th, that might not work, I think, for somebody because there's a holiday somewhat after that, which is also a consideration for some people.

THE COURT: Okay. Not for me.

MS. GREENWALD: I was going to say we would be okay with that.

THE COURT: Okay. All right.

MR. LASKER: Thank you, Your Honor.

THE COURT: Thank you.

MS. GREENWALD: Thank you, Your Honor.

(At 3:20 p.m. the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Monday, November 13, 2017

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter