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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,
Plaintiff,
v.
MONSANTO COMPANY
Defendants.

Case No. CGC-16-550128

**DECLARATION OF CURTIS G. HOKE IN
SUPPORT OF PLAINTIFF'S MOTION IN
LIMINE NO. 13 TO EXCLUDE EVIDENCE
OF SMOKING AND DRUG USAGE**

Trial Judge: TBD

Hearing Date: TBD

Time: TBD

Department: TBD

Trial Date: June 18, 2018

[Filed Concurrently with Memorandum of Points
and Authorities and *[Proposed]* Order]

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
05/24/2018
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	CGC-16-550128
MONSANTO COMPANY,)	
)	
Defendant.)	
)	

VIDEOTAPED DEPOSITION OF
DEWAYNE ANTHONY LEE JOHNSON
Vallejo, California
Thursday, December 7, 2017
Volume I

Reported by: SUZANNE F. GUDELJ
CSR No. 5111
Job No. 2770165

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1 that every time.

2 Q And what would be a reason that you would
3 look at that?

4 A 'Cause you've done it so many mornings that
5 you know you're supposed to have your PPE on. 10:25:41

6 You're not supposed to be out there smoking a cigar
7 next to your tank, you know. It's not something
8 that you play around with, but it's not something
9 that you have to go check in that circle -- I mean,
10 the square and the product and all that and how much 10:25:52
11 product is in the product. You don't need that, you
12 know, but you do need your safety stuff.

13 Q Did you smoke cigars?

14 A No, no, no.

15 Q But you've smoked them in the past, right? 10:26:01

16 A Yeah, I smoked Black & Milds back in the
17 day.

18 (Reporter clarification.)

19 Black & Milds. Black & Milds.

20 Q Can you spell that for the court reporter? 10:26:13

21 A B-l-a-c-k, M-i-l-d.

22 Q Okay. Now you stopped smoking those cigars
23 in 2006 according to your medical records, right?

24 A Yeah.

25 Q Am I right? 10:26:25

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1 A It was hurting my -- it was hurting me. I
2 shouldn't have been smoking that stuff.

3 Q All right. And in 2006, you would have
4 been basically 30 -- 34 years old; is that about
5 right?

6 A 2000 what?

7 Q 2006. You were 42 when you were diagnosed
8 with --

9 A Yeah.

10 Q -- with non-Hodgkin's lymphoma, so 2006 10:26:43
11 would have been -- basically you were 34, right?

12 A Yep.

13 Q All right. And how many years did you
14 smoke these cigars?

15 A Maybe like two years. 10:26:54

16 Q Only two years?

17 A Yeah.

18 Q You just started --

19 A It was two years straight every day smoking
20 one of those. 10:27:01

21 Q And how many did you smoke a day?

22 A Only one. You can't smoke more than one a
23 day.

24 Q Okay. But you smoked every single day?

25 A Yeah. 10:27:08

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1 Q All right. And tell me again why you
2 stopped?

3 A Just wasn't healthy, you know. You felt
4 sick and you spitting out this green little --
5 little -- I don't know what it was, but it was some 10:27:17
6 green fluid. You just -- you knew it's from the
7 cigars.

8 Q Did you go to a doctor about this --

9 A Nah.

10 Q -- green fluid that was being -- 10:27:23

11 A It was obvious.

12 Q -- in your spittle?

13 A It was obvious. I had to cut those cigars
14 out.

15 Q Did you chew tobacco? 10:27:30

16 A No. These cigars have pipe tobacco inside,
17 you know, so that was the lure was the smell. Smell
18 like a pipe.

19 Q All right. Did you smoke a pipe at any
20 time? 10:27:41

21 A No. I love the way it smells though.

22 Q Okay. And you didn't use snuff?

23 A No.

24 Q All right. And cigarettes, did you use
25 those? 10:27:47

1 A No.

2 Q So you just decided when you were 32 years
3 old that you would start?

4 A I've always wanted to try chew or snuff,
5 whatever the guys put in the side of their mouth and 10:27:55
6 chew it and spit it out, but I just knew it would
7 give me mouth cancer, but basically what this looks
8 like right now.

9 Q Okay. All right. And there's -- there's
10 nothing in this complaint which is -- let me make 10:28:05
11 sure we have the right thing. This complaint runs
12 for 45 pages, and there's nothing in this complaint
13 that talks about you reading the Ranger PRO label,
14 right?

15 A I don't know. 10:28:24

16 Q All right. And other than what you agreed
17 with me is a false statement about the commercial
18 sod farm --

19 A No, there's nothing else.

20 Q -- everything else in this complaint you 10:28:37
21 believe is -- is true and accurate?

22 A I can't say that without reading it.

23 MR. LITZENBURG: He just said he --

24 BY MR. COPLE:

25 Q Okay. And so you can't -- you can't say it 10:28:46

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1 earned the right to do it, you didn't do it?

2 A No. I was -- it was already pretty much
3 done for me over there at the waterproofers.

4 (Reporter clarification.)

5 I moved on from waterproofing. 03:20:29

6 Q You mentioned something earlier about -- I
7 think it was with respect to your knee and
8 arthritis. Is that right?

9 A I don't have arthritis.

10 Q You never were diagnosed with arthritis? 03:20:43

11 A (Shakes head.)

12 Q Anywhere in your body?

13 A No.

14 Q Okay. Mr. Johnson, do you -- do you drink
15 alcohol? 03:20:56

16 A Sometimes.

17 Q All right. And when you say "sometimes,"
18 can you give us an idea of -- of how often that
19 would be?

20 A Right now I can only drink beer, and if I 03:21:07
21 drink hard alcohol, I can only drink one -- one,
22 maybe a pint of hard alcohol per month. And that
23 would be for the whole month. You know what I mean?
24 Because with the stuff that I'm taking right now,
25 they don't want me drinking and all that. They say 03:21:22

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1 beer is okay, but I don't drink beer, so -- so,
2 yeah, I'm not really drinking right now.

3 Q All right. So not ever, not at all?

4 A I used to drink a lot when I was younger.

5 Q All right.

6 A Not too much, but I used to drink like a
7 young person.

8 Q Let's talk about -- I mean, haven't we all,
9 Mr. Johnson, at some point in time.

10 A Yeah, I get that. I get that. 03:21:41

11 Q When -- when you say you were younger you
12 drank more, what does "younger" mean to you?

13 A It means like when you turn 20, 21 and you
14 can go to the store and buy your own drink. You
15 know, it's when you turn 21 or 22, you can go to the 03:21:55
16 club and you could have a few drinks.

17 (Reporter clarification.)

18 You can go to the club and go have drinks,
19 and you can -- you know, you can go to a bar and
20 have a burger and a drink. You know what I mean? 03:22:01
21 So I think people starting to take in more.

22 Q All right. So you're -- you're about 45
23 now; is that right?

24 A I am 45 on the dot.

25 Q All right. 45 on the dot. 03:22:09

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1 At -- at what point did your drinking of
2 alcohol habit change?

3 A I would say about six years ago when I was
4 living up in Napa, and I just -- I knew I was
5 drinking too much. My wife knew I was drinking too 03:22:23
6 much. So we just came to an agreement that I would
7 stop.

8 Q Before you stopped, what -- what is too
9 much to you?

10 A Just having a gallon or something like that 03:22:31
11 around and not really getting intoxicated or
12 whatever, but sorta not remembering things. And
13 just starting to have a little bit of stomach ache,
14 you know, sometimes. It's like that achy alcohol
15 feeling. 03:22:47

16 Q Did you -- did you drink every day?

17 A No.

18 Q Did you drink every week?

19 A For a while it was every week, yeah.

20 Q Every weekend? 03:22:53

21 A It was Friday. A bottle every week.

22 Q Okay. What -- what -- I realize you just
23 told us now you're under a restriction, medical
24 restriction --

25 A Even before the cancer restriction, I 03:23:02

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1 already started to cut back to just maybe a pint a
2 week.

3 Q Okay. But before you cut back, what did
4 you drink? Did you -- you said you don't like beer,
5 so you didn't drink -- 03:23:13

6 A No, I would drink wine. I would drink dark
7 wine. I would drink Chardonnay, Merlot, Menage a
8 Trois which is a mix of three blends. I like that a
9 lot. And if I'm drinking hard, I would drink
10 Jameson, Hennessy or -- that would be it. 03:23:29

11 Q All right. How often did you drink liquor?

12 A That would be not too much per week, but I
13 could drink a pint -- like I said, I can drink a
14 pint probably in about three days.

15 Q Did you ever have medical treatment for 03:23:50
16 drinking?

17 A Never had a problem with drinking; never
18 had a soft liver; never had a soft stomach, any of
19 that.

20 Q Did you ever have occasion to be enrolled 03:23:55
21 voluntarily or otherwise in any program to stop
22 drinking?

23 A Hmm-hmm. When, you know, you telling your
24 body -- your body tells you, you know, you know.

25 Q So that was six years ago? 03:24:10

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1 A Mm-hmm.

2 Q Was there an occasion that you recall that
3 you had liver tests done by Dr. Ofodile -- Ofodile
4 (pronunciation) where your liver enzymes were
5 elevated and she believed the reason was you had had 03:24:30
6 drinks before the test?

7 A There was one time when we first started
8 where she was saying a little something about that
9 where, you know, you have alcohol in your system.
10 But to me, what happened is that even though I knew 03:24:45
11 she was giving me labs, I think they figured out
12 it's cold turkey quit. But to me I was still
13 drinking. I was having a beer here, I was having
14 some wine. I wasn't getting drunk, but I was still
15 drinking. 03:25:00

16 They tested me the next day in the lab, and
17 of course they say, "Oh, man, what you doing here?"
18 You know what I mean? So that's the reason that I
19 stopped, because if I do need a regular surgery or
20 something like that, they won't even give it to you 03:25:09
21 if you got a bunch of juice in your system. And I
22 don't mean Hawaiian punch. I mean, if you have a
23 bunch of alcohol in your system, they're not giving
24 you --

25 (Reporter clarification.)

1 If they're giving you -- if you have too
2 much alcohol in your system, they aren't giving you
3 a kidney or a lung, you know, if you need a kidney.
4 You know what I mean? They'll give it to the
5 healthier person. That's another reason why I cut 03:25:23
6 back and ready to quit.

7 Q All right. So you do remember the --

8 A There was a point to quitting.

9 Q You do remember the occasion with
10 Dr. Ofodile when your liver tests were off because 03:25:31
11 of some drinks?

12 A Yeah, but I haven't had an off one since.

13 Q Okay. Have you ever had your blood alcohol
14 level tested, either by law enforcement or
15 medically? 03:25:53

16 A The night of the rollover crash, yeah, I
17 had my blood -- I had my blood taken by the doctor
18 -- I mean by the -- by the doctor and by the
19 sheriffs gave me the (indicating). They gave me a
20 -- tested out your blood, you know. 03:26:06

21 They thought the only reason I flipped that
22 car was because I was drinking. There was a lot of
23 drinking going on in that car.

24 Q Do you recall what your level was?

25 A Naw. No, not at all. 03:26:18

1 Q Did you receive any citation relating to
2 the blood alcohol level?

3 A No way. I wasn't over the limit. Hadn't
4 been drinking. (Unintelligible.)

5 (Reporter clarification.)

6 You know how you might have a drink the
7 night before at dinner or something else and that
8 whole experience, whipping and twisting and turning,
9 I think I might have (indicating), you know, a
10 little something. He might have smelled that. But 03:26:41
11 this guy comes up and sees some old beer bottles on
12 the side of the car with worms in there.

13 "This is your beer bottles?"

14 "No, that's not mine, sir. There's worms
15 in there." 03:26:52

16 You know, so it's just weird.

17 Q All right. Now, you have been dealing --
18 you have been dealing with mycosis fungoides for a
19 couple of years now, correct?

20 A It's been more than a couple. 03:27:15

21 Q All right. How many years?

22 A About four years coming up.

23 Q All right. Four years.

24 And you're measuring the four years back to
25 the point even before you were actually diagnosed 03:27:26

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EXHIBIT B

PROGRESS NOTE

PATIENT: JOHNSON, Dewayne
DATE: 02-12-13

DOB: 01-20-72
CHART #: 266873

SUBJECTIVE: This is a 41-year-old male who presents for the first time to our clinic in Urgent Care. He is complaining of a possible broken pinkie finger on the left hand x 1 month. He injured his finger on the second of January hitting a table. He did not think anything of it. It hurt for many days but he did not think anything of it. He went to the drugstore to see if he could find some sort of splint to put it in but there was not any. It is now on a right angle crooked, and he works in maintenance and operations and says it is fine the way it is except that every once in a while when he hits it a certain way he gets a shock going up the finger and into his hand. He wonders if perhaps the finger was broken and if there is anything he can do about it now.

PAST MEDICAL HISTORY: No major adult illnesses. No hospitalizations. No surgeries.

MEDICATIONS: No medications.

ALLERGIES: No allergies to medications.

HABITS: He does not smoke. Alcohol use is occasional. Street drugs: No except for a little marijuana.

FAMILY HISTORY: His mother has heart problems. His dad just died last month and he is not sure what the cause was.

OBJECTIVE:

VITAL SIGNS: Temp is 98.1. Pulse is 78. BP is 110/70. Height is 69". Weight is 157.6 pounds. BMI is 23.3.

GENERAL: This is a well groomed, well nourished, 41-year-old male in no apparent distress.

CARDIOVASCULAR: RRR. S1, S2 without murmurs.

PULMONARY: Clear to auscultation. Bilateral breath sounds. No wheezing or rales.

MUSCULOSKELETAL: Pinkie finger on left hand the PIP joint appears swollen. Skin is shiny. It is nontender but it is right angled.

ASSESSMENT: Healed fractured PIP joint on pinkie finger on left.

LA CLINICA VALLEJO
243 Georgia St.
Vallejo, CA 94590

DJ-10-000020

EXHIBIT C

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN FRANCISCO

3

4 DEWAYNE JOHNSON,)
5 Plaintiff,)

6 -vs-) Case No.

7 MONSANTO COMPANY,) CGC-16-550128
8 Defendant.)

9 CONFIDENTIAL

10 The deposition of TIMOTHY KUZEL, M.D., called
11 by the Plaintiff for examination, taken before
12 CORINNE T. MARUT, C.S.R. No. 84-1968, Registered
13 Professional Reporter and a Certified Shorthand
14 Reporter of the State of Illinois, at the Hilton
15 Chicago/Oak Brook Hills Resort & Conference Center,
16 3500 Midwest Road, Oak Brook, Illinois, on
17 Saturday, February 17, 2018, commencing at
18 11:05 a.m.

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24

1 cause of mycosis fungoides a number of years ago.

2 Q. That has no bearing on the question of
3 whether or not glyphosate can cause mycosis
4 fungoides?

5 A. It's an example of epidemiologic
6 literature that turned out not to be the case. It
7 has no relation to glyphosate.

8 MR. LITZENBURG: Why don't we break for a few
9 minutes.

10 THE WITNESS: Break?

11 MR. LITZENBURG: Yes.

12 (WHEREUPON, a recess was had
13 from 1:17 to 1:36 p.m.)

14 BY MR. LITZENBURG:

15 Q. Dr. Kuzel, do you hold the opinion that
16 there are different risk factors for different
17 subtypes of non-Hodgkin lymphoma?

18 A. Some are unknown. Some are known. And
19 I would suspect that there might be overlap in a
20 few cases and there might be disparate causes in
21 some cases.

22 Q. Do you hold an opinion whether or not
23 alcohol is a risk factor for mycosis fungoides?

24 A. There have been some epidemiologic

1 studies that I think have suggested that it might
2 contribute.

3 Q. What's your opinion?

4 A. It was a single epidemiologic study that
5 showed that and it has not been repeated and not
6 been validated, so I would be skeptical.

7 Q. Okay. Do you hold the opinion that
8 alcohol -- do you hold the opinion to a reasonable
9 degree of medical probability that alcohol
10 consumption contributed to Mr. Johnson's disease?

11 A. I would not hold that opinion.

12 Q. And you've said that some studies have
13 suggested that alcohol increases the risk of
14 mycosis fungoides, right?

15 A. Yes, I think there is one epidemiologic
16 study from Europe that showed that.

17 Q. And you're aware that there are multiple
18 studies that show an increased risk of glyphosate
19 and non-Hodgkin lymphoma, right?

20 MR. GRIFFIS: Object to form.

21 BY THE WITNESS:

22 A. That showed increased incidence with
23 mycosis fungoides?

24 BY MR. LITZENBURG:

1 know nothing about the field.

2 Q. I think you said that there are negative
3 studies with respect to mycosis fungoides and
4 chemicals in general. Is that correct?

5 A. I mean, that epidemiology study from
6 1979 included pesticides.

7 Q. My question is: Is there anything
8 else -- we've looked at that 1979 study. We've
9 looked at a -- yeah, I guess that's the only one I
10 see mentioned.

11 Are there others on which you rely?

12 A. I mean, there is a handful of
13 epidemiology studies in MF patients specifically
14 which have tried to ask and answer exposures and
15 life-style habits up through much more recently.
16 There is some in the 20 period, 2000 period, early
17 2010s. None that have identified chemicals or
18 pesticides. They have identified alcohol,
19 sunlight, maybe cigarette smoking, tobacco.

20 Q. As what?

21 A. As possible factors linked to it, to MF.

22 Q. You don't believe that any of those are
23 causative factors?

24 A. I think they are all small and I think a

1 single study, as I told you before, I don't put a
2 lot of faith in that. I would want to see that
3 data repeated and see if we identify a similar
4 result.

5 Q. Well, I mean, you've told me today that
6 you believe there is zero known causes for mycosis
7 fungoides, right?

8 A. That's why I said that.

9 Q. So --

10 A. Because none of that data has been
11 repeated.

12 Q. Right. So, when you list those three
13 factors, that didn't affect your opinion, right?

14 A. You just asked me if there were studies,
15 and I gave you some studies. But it doesn't affect
16 my opinion.

17 Q. Can you name any other studies other
18 than this 1979 study?

19 MR. GRIFFIS: And the one listed in his expert
20 report?

21 BY MR. LITZENBURG:

22 Q. Looking at chemicals and MF.

23 A. I believe a couple of those more recent
24 European studies did ask the question in the

1 statistically significant epidemiological studies
2 on the topic you have answered in the positive?

3 A. No.

4 Q. There is nothing other than glyphosate
5 where somebody said, "Hey" --

6 A. Nobody has ever asked me with
7 glyphosate.

8 Q. Or anything else?

9 A. Maybe someone has asked me about
10 smoking.

11 Q. Do you tell them to keep smoking because
12 it doesn't cause mycosis fungoides?

13 A. No, I tell people to stop smoking
14 because they will be healthier for it in the long
15 term.

16 Q. But it doesn't cause mycosis fungoides?

17 A. But it doesn't cause mycosis fungoides.

18 Q. Or --

19 A. And it doesn't contribute to their
20 progression as far as we can tell.

21 Q. You agree that mycosis fungoides is the
22 most common form of cutaneous T-cell lymphoma?

23 A. Yes, cutaneous T-cell lymphoma.

24 Q. And prior to last year, your engagement