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13 *DEWAYNE JOHNSON*

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

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SAN FRANCISCO**

16 DEWAYNE JOHNSON,

17 Plaintiff,

18 v.

19 MONSANTO COMPANY

20 Defendants.

Case No. CGC-16-550128

**DECLARATION OF CURTIS G. HOKE IN
SUPPORT OF PLAINTIFF'S MOTION IN
LIMINE NO. 15 TO EXCLUDE ANY
EVIDENCE, TESTIMONY, AND
ARGUMENT RELATING TO PLAINTIFF'S
EXPOSURE TO HENRY'S WET PATCH
ROOF CEMENT**

Trial Judge: TBD

Hearing Date: TBD

Time: TBD

Department: TBD

Trial Date: June 18, 2018

[Filed concurrently with Declaration of Curtis
Hoke and [Proposed] Order]

DECLARATION IN SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE* NO. 15 TO EXCLUDE EVIDENCE
OF PLAINTIFF'S EXPOSURE TO HENRY'S WET PATCH ROOF CEMENT

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1. I am an attorney at law admitted to practice before all of the courts in the state of California. I am an attorney at The Miller Firm, LLC, attorneys of record for Plaintiff Dewayne Johnson. I am over eighteen years of age and am fully competent to make this Declaration in support of Plaintiff's Motion *in Limine* No. 15. Except as otherwise expressly stated below, I have personal knowledge of the facts stated in this declaration, and if called to testify, I could and would competently testify to the matters stated herein.

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the Deposition of Plaintiff's Expert Dr. Chadi Nabhan taken on January 30, 2018.

5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the Deposition of Monsanto's Expert Dr. Timothy Kuzel taken on February 17, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2018 in Orange, Virginia.


By: 
Curtis G. Hoke

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

PAGES 1 - 458

1 like something that's permanent.

2 Q Which union did you belong to?

3 A I think it's called the Local 302 out of
4 Oakland.

5 Q And what does the union cover, what type of 11:04:09
6 work?

7 A Waterproofers, roofers. What's it called,
8 wall -- so something that's under the walls. You
9 do -- you take the concrete out of the wall and put
10 it back in. I think I want to call it sparing. I 11:04:27
11 don't know what it's called, wall sparing.

12 Q Okay.

13 A Some type construction thing that they do,
14 they fix holes, and you can see them with a camera,
15 and you go back and fix them. 11:04:36

16 Q All right. Are you still a member?

17 A No.

18 Q And in which of these jobs did you have
19 occasion to use Henry's Wet Patch?

20 A Benicia. 11:04:47

21 Q In Benicia?

22 A Yeah.

23 Q This was part of your maintenance duties?

24 A Maintenance duties.

25 Q All right. And what were you using the 11:04:54

1 Henry's product for?

2 A It was always rainy this season. I don't
3 know why. Like when I was out there the last couple
4 of seasons, it was really rainy. And this classroom
5 over the band was getting water --

11:05:09

6 (Reporter clarification.)

7 -- this classroom over the band room -- the
8 band room had a leak in it at the top, so we had to
9 go up there. It was like raining, splashing down.
10 And one other guy went up there before us, the
11 veteran maintenance guys. We didn't know they put
12 the stuff down. So when I went up there with my
13 splooge, I put my right in the splooge, too -- put
14 my knee right in that splooge.

11:05:18

15 Q So you were kneeling in the wet patch?

11:05:32

16 A Laying in it, yeah.

17 Q You were laying in the wet patch?

18 A Mostly on my knee. So I was on my knee,
19 and then I got down deep into the little patch that
20 I was getting into, and then getting up my leg a
21 little, but mostly on my knee.

22 Q Were you wearing protective gear?

23 A Naw, just regular jeans and work shirt.

24 Q All right. And did the wet patch go
25 through your jeans?

11:05:52

1 A Yeah.

2 Q And you had a lesion diagnosed, right?

3 A I did.

4 Q On which knee?

5 A Same knee. 11:05:56

6 Q Okay. And that lesion, that was squamous
7 cell carcinoma; do you recall?

8 A Yes.

9 Q And that's cancer?

10 A That's the real deal. 11:06:06

11 Q Okay. Now, I asked you previously if you'd
12 ever been diagnosed with cancer other than mycosis
13 fungoides. Did you just forget about --

14 A Yeah, I did, because --

15 Q Okay. 11:06:15

16 A -- that came before -- that came all at the
17 same time.

18 Q All right.

19 A That came as part of the -- when they --

20 Q Let me just be sure, because we need to 11:06:20
21 have a complete record --

22 A Yeah.

23 Q -- so that -- that you and I don't have to
24 go back and clarify things like this. So you were
25 diagnosed, besides mycosis fungoides, with cancer in 11:06:30

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

The videotaped deposition of
CHADI NABHAN, M.D.
January 30, 2018
11:00 a.m.
Crowne Plaza O'Hare
5440 North River Road
Rosemont, Illinois

1 this as a possible cause of mycosis fungoides based
2 on this study?

3 MR. LITZENBURG: Object to the form.

4 THE WITNESS: I would have to look at --
5 again, when -- I always talk to patients about
6 smoking and drinking and family history, and I don't
7 recall if he told me that he was a drinker or that
8 he is drinking, but alcohol in general has not
9 been -- is not actually considered as a high risk of
10 non-Hodgkin lymphoma or mycosis fungoides to my
11 knowledge. This is -- I'll have to read this paper
12 at more length and understand what the design of it
13 and how they found this out.

14 BY MR. GRIFFIS:

15 Q. Did you do a literature search to find
16 out if alcohol is a cause of mycosis fungoides
17 before doing your expert report in this case?

18 A. I did not look at alcohol specifically in
19 mycosis fungoides because I'm fully aware that to my
20 knowledge alcohol does not have -- does not cause
21 increased risk of non-Hodgkin lymphoma.

22 Q. Did you do a literature search for the
23 causes of mycosis fungoides as demonstrated by the
24 epidemiology literature in general?

25 A. I looked at the literature on causes of

1 mycosis fungoides, and as we talked earlier, there's
2 very little that looks specifically at causation in
3 mycosis fungoides, just given the rarity of disease.
4 And, again, I'm not aware of this particular paper
5 that you are citing. It is a 18-year old paper, so
6 I will have to look critically at it and try to
7 understand the methodology and so forth, but this
8 paper did not come across my desk to look at.

9 Q. Exhibit 18 is entitled "Occupational Sun
10 Exposure in Mycosis Fungoides, a European
11 Multicenter Case Control Study."

12 A. Yes.

13 Q. Again, the lead author is
14 Morales Suárez-Varela.

15 Is this a paper you reviewed, sir?

16 A. I did not review, but sun exposure is a
17 well-known risk factor for all types of skin
18 cancers, including mycosis fungoides.

19 Q. Did you take sun exposure into account as
20 a possible cause of Mr. Johnson's mycosis fungoides?

21 MR. LITZENBURG: Object to form.

22 THE WITNESS: Yeah. I mean, sun exposure
23 is always a risk of, as I said, any type of skin
24 malignancy, including mycosis fungoides. That's a
25 well-known risk factor, and even when you take that

1 into consideration, I thought the chronic exposure
2 to glyphosate and the exposure for this -- to this
3 compound for in excess of two years trumps the sun
4 exposure as a possible cause.

5 BY MR. GRIFFIS:

6 Q. In addition to spraying glyphosate
7 starting in 2012, Mr. Johnson was working outside
8 from 2012 and getting much more sun exposure than
9 previously, right?

10 MR. LITZENBURG: Object to form.

11 THE WITNESS: By virtue of his
12 occupation, if you have to spray, you're probably
13 going to get more sun exposure, of course.

14 BY MR. GRIFFIS:

15 Q. And so the same temporal correlation that
16 applies to glyphosate applies to sun exposure for
17 Mr. Johnson, correct?

18 A. It's hard to quantify sun exposure. It's
19 much easier to quantify the exposure to glyphosate
20 and so forth. It's not really clear to me how you
21 would quantify sun exposure. We all are exposed to
22 the sun by virtue of occupation or not occupation,
23 so it's very difficult to link that. I'm not really
24 sure he was necessarily exposed more to the sun than
25 somebody who would be living in California or not.

1 It's a sunny state after all, but it's not clear to
2 me that his exposure is in excess of somebody else
3 who lives in -- I don't know. I can't comment on
4 that because I just don't know how much sun he was
5 exposed to.

6 Q. The chronicity element would be the same,
7 correct?

8 A. Well, the sun exposure starts way before.
9 I mean, your 20s, your teens, the chronicity is even
10 longer. I mean, everybody gets exposed to the sun.

11 So it is just -- he was not somebody
12 who was -- who told me that he lays on the beach or
13 he uses sun tanning beds or anything like that. And
14 so I -- again, I'm not aware that his sun exposure
15 was out of proportion to other people who live in
16 that area.

17 But as I told you, I'm not really
18 sure how you quantify sun exposure for these
19 patients or these individuals. There's no clear
20 methodology. There's obviously a more accurate
21 methodology for glyphosate as we talked about.

22 BY MR. GRIFFIS:

23 Q. Do you know if there's a methodology for
24 quantifying sun exposure?

25 A. I'm sure you can ask patients how many

1 hours were you exposed to the sun and did you use
2 SPF and not. I mean, my understanding from reading
3 his deposition, as well as some of the medical
4 records, that he was using the protective gear to
5 the extent possible, again, wearing the PPEs which
6 should protect him from the sun. I don't recall if
7 he was putting any SPF on his skin or not.

8 And, you know, sun exposures
9 causes -- is more risky for melanoma and
10 non-melanoma skin cancer as opposed to mycosis
11 fungoides, although there's increased risk of
12 mycosis fungoides with sun exposure as well.

13 Q. In your expert report, sir, the section
14 that originally was an email to counsel describing
15 your meeting with Mr. Johnson --

16 A. Okay.

17 Q. -- on the second page of that, the first
18 full paragraph starting "His cancer history."

19 Are you there?

20 A. Okay.

21 Q. "His cancer history dates back to the day
22 when he was getting his license. He suffered from a
23 vehicle crash where he was taken to an emergency
24 room and was told that several right-sided near
25 clavicular lymph nodes are enlarged. His wife later

1 on noted the same. A few months later he saw a
2 nodule in his right knee that became painful and
3 left him seeking medical help. He saw a local
4 dermatologist who biopsied the nodule and sent the
5 tissue to Stanford University. The results came
6 back with consistent with CTCL and squamous cell
7 carcinoma."

8 A. This is what he told me, yeah.

9 Q. I understand.

10 A. This is --

11 Q. Yes, sir, I understand.

12 A. -- description of what he said, yes.

13 Q. And you have since read the medical
14 records. And what is your understanding of how he
15 came to be diagnosed with CTCL and squamous cell
16 carcinoma?

17 A. Now, let me look at -- I wrote a couple
18 of notes here just to make sure I reflect that
19 accurately.

20 He does -- he did have -- looking at
21 the records, he presented in February '013 to
22 LaClinica Urgent Care and he had a broken finger.

23 Then in September '013 stepped on a
24 nest wasps and had some problems and saw an
25 occupational therapist and so forth.

1 The motor vehicle accident was in
2 September '013, and he did tell me about the lymph
3 nodes. I was able to find in the records that there
4 were a few lymph nodes that were enlarged. It is
5 not clear obviously if these are reactive,
6 inflammatory and if they are related to anything
7 else, and the -- I was able to find in the records
8 that may be towards the end of 2013, there was a
9 suggestion that he had some dry skin and the
10 beginning of a rash, but not until April of 2014
11 there was more confirmation that he started to have
12 the rash.

13 And in June '013 when he came to the
14 LaClinica and the rash was significant and
15 extensive, and that's where they gave him steroids,
16 Keflex, and he was having entire body scaling and
17 itching and he was referred to Salerno Dermatology,
18 and the order was faxed to Salerno Dermatology in
19 July 2014.

20 So, you know, looking at the record,
21 it seems to me that some records would say
22 towards the end of '013 he started to have maybe
23 some rash, maybe some dry skin, but the most
24 confirmatory that you could actually see is April to
25 June 2014 when he definitely developed a rash that

1 required the referral to dermatology.

2 Q. It could have been in the fall of 2013
3 when he had the enlarged lymph nodes that he was
4 first showing signs of cancer?

5 A. Doubtful. There wasn't really anything
6 mentioned about a rash in September '013 when he
7 went to the emergency room with the motor vehicle
8 accident, and looking at the records, I didn't see
9 anybody describing rash in September. It's possible
10 that towards the end of '013 and the beginning of
11 '014 more likely.

12 But, you know, to be more accurate
13 and concise, the first time I was able to confirm
14 with certainty that he developed a rash was in April
15 '014 and then in June of '014 when his rash was
16 significantly worse and he went to the clinic and he
17 was referred.

18 I wasn't able to confirm precisely
19 that he had any of this before April of 2014. Just
20 some suggestions of dry skin, but I don't know. I
21 mean, it is -- could it be possibly the beginning?
22 Absolutely.

23 Q. So, the possible beginning, it could
24 absolutely be the possible beginning at the end of
25 2013, and it is to a certainty by April 2014; is

1 that right?

2 A. Yes.

3 MR. LITZENBURG: Object to form.

4 THE WITNESS: June 23rd, 2014 where you
5 are 100 percent sure because that's when he had the
6 extensive rash, but in those notes, he does mention
7 that he probably had the rash a couple of months
8 before in April '014. So I'm fairly comfortable
9 between April and June 2014 when he definitely had
10 the disease, which was diagnosed a couple of months
11 after.

12 BY MR. GRIFFIS:

13 Q. Okay.

14 A. But there are some notes that you read in
15 the thousands of pages of records which suggests he
16 may have had dry skin towards the end of '013. It
17 is just -- there is no clarity because I couldn't
18 find notes that described skin exam to show that.

19 Q. That's the same kind of lack of clarity
20 you were talking about earlier, that it is often
21 fuzzy in particular patients when their disease
22 started?

23 A. The start is usually fuzzy. I mean,
24 oftentimes patients will recall that they may have
25 had something a couple of months before, dry skin,

1 some itching, and things like before the diagnosis
2 takes place.

3 Q. Do you agree with Dr. Kim and Dr. Tsai
4 that they can't tell whether the squamous cell
5 carcinoma came before or after mycosis fungoides?

6 MR. LITZENBURG: Object to form.

7 THE WITNESS: Yeah, I couldn't tell the
8 squamous cell carcinoma, and even talking to the
9 patient he wasn't sure. It is possible it was there
10 at the time of diagnosis and then by the time it was
11 biopsied, it took some time. It's not clear to me
12 the temporal relationship between both.

13 BY MR. GRIFFIS:

14 Q. And they are two separate cancers,
15 correct?

16 A. Yes, they are.

17 Q. They are entirely distinct cancers?

18 A. In my opinion, they are. They are
19 treated differently, the prognosis is different, and
20 they're treated differently, so they're separate
21 cancers.

22 Q. And do you know how long Mr. Johnson
23 would have had malignant squamous cells before a
24 nodule became apparent on his knee that would lead
25 to someone biopsying and figuring out that he had a

1 squamous cell carcinoma?

2 MR. LITZENBURG: Object to form.

3 THE WITNESS: I don't know.

4 BY MR. GRIFFIS:

5 Q. Do you have an opinion as to the cause of
6 Mr. Johnson's squamous cell carcinoma?

7 A. I don't.

8 Q. Did you read the opinion of Dr. Shear
9 that his squamous cell carcinoma was caused by the
10 kneeling in Henry's Wet Patch Roof Cement?

11 MR. LITZENBURG: Object to form.

12 THE WITNESS: I don't remember reading
13 Dr. Shear's opinion on that, and it's -- I don't
14 remember that particular opinion.

15 BY MR. GRIFFIS:

16 Q. Okay. Well, I'll explain. Henry's Wet
17 Patch Roof Cement is an asphalt containing things
18 you use to fix roofs.

19 A. Right.

20 Q. Mr. Johnson testified that he kneeled in
21 some for a few hours while he was repairing a roof.
22 And a workers' comp doctor, Dr. Shear, gave as an
23 opinion that that was the cause of his squamous cell
24 carcinoma.

25 Do you have an opinion that being in

1 physical contact with asphalt can lead to squamous
2 cell carcinoma?

3 MR. LITZENBURG: Object to form.

4 THE WITNESS: I have no opinion on that.

5 BY MR. GRIFFIS:

6 Q. And if asphalt is a known carcinogen,
7 would that affect your opinion or lack of opinion?

8 MR. LITZENBURG: Object to form.

9 THE WITNESS: I have no opinion on the
10 relationship between asphalt and his squamous cell
11 carcinoma.

12 BY MR. GRIFFIS:

13 Q. Is there a way for you to rule out what
14 caused his squamous cell carcinoma as also being the
15 cause of his mycosis fungoides?

16 A. I don't think you can. I think they are
17 two different cancers. They're completely two
18 different entities, so it's -- it would be complete
19 speculation, so I'm not sure that you can tell
20 that's what has caused one is what's caused the
21 other.

22 Q. Is it your opinion that glyphosate can
23 cause squamous cell carcinoma?

24 A. I have not researched that topic.

25 Q. You have no opinion that it does; is that

EXHIBIT C

January 22, 2018

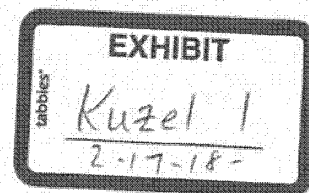
Disclosure:

I am currently the Samuel G. Taylor III Chair of Oncology, and Chief, Division of Hematology/Oncology and Cell Therapy at Rush University Medical College in Chicago IL. I am board certified in hematology/oncology and internal medicine. I am an expert in experimental therapeutics and specialize in cutaneous malignancies/cutaneous lymphomas (including mycosis fungoides, which Mr. Johnson has) and genito-urinary malignancies.

I graduated from a combined undergraduate and medical school program at the University of Michigan, and then completed my residency in internal medicine and fellowship in hematology/oncology at Northwestern University's McGaw Medical Center in Chicago, IL. I joined the full time faculty at Northwestern University in 1990, and was ultimately promoted to full professor of medicine (with a secondary appointment in dermatology) in 2006. During that time I was also the chief of the section of Hematology/Oncology at the VA Lakeside Medical Center (an affiliated hospital of Northwestern's McGaw Medical Center). I left Northwestern to become the chief of the Division of Hematology/Oncology and Cell Therapy at Rush University Medical College in 2016.

I have specialized in the diagnosis and treatment of cutaneous lymphomas since my fellowship training in the late 1980's. I was a participant in the cutaneous lymphoma multi-disciplinary clinic at Northwestern until I left the institution in 2016, and am now active in the same at Rush. During my career I have been the recipient of multiple institutional, pharmaceutical company, federal agency and philanthropic grants supporting my research. These include a Career Development Award from the American Cancer Society to study the impact of a retinoic acid derivative in patients with mycosis fungoides, and a grant from the NIH where I was co-investigator on a project studying the role of interleukin-12 in patients with cutaneous T-cell lymphomas.

I have additionally served on many committees locally and nationally. I have been a member of multiple study sections for the NIH reviewing grants for funding. I have been active in organized medicine, having been on the Illinois State Medical Society board of directors for many years, ultimately serving as president-elect, president and immediate-past president. I have also been active in the Eastern Cooperative Oncology Cooperative Group lymphoma committee helping to develop new therapies for lymphoma, and have served as the toxicity monitor for lymphoma trials in ECOG since the mid-1990's.



Therapeutic Options for Mycosis Fungoides

TOPICAL THERAPY

Ultraviolet A with psoralen
Ultraviolet B
External beam radiation therapy
Total-skin electron beam radiation
Topical chemotherapy
Topical retinoids

SYSTEMIC THERAPY

Photophoresis
Interferon- α
Oral retinoids
Targeted therapies
Single-agent chemotherapy-Gemcitabine, liposomal doxorubicin, romidepsin, pralatrexate
Brentuximab Vedotin
Combination chemotherapy-CHOP
Stem cell transplantation-allogeneic
Investigational agents-denileukin-diftitox (investigational form), anti CCR4 antibodies

Medical background:

I have reviewed the available medical records for Mr. Johnson as well as his deposition.

Mr. Johnson is a 45 year old African American male diagnosed with mycosis fungoides in 2014. His care has been managed with the assistance of the physicians at the Stanford multi-disciplinary cutaneous lymphoma program, as well as with care at UCSF and Kaiser Healthcare in Vallejo.

Mr. Johnson's history of skin rashes dates back by history to at least September 2013. Mr. Johnson sought medical attention for his skin condition, and was ultimately diagnosed as having mycosis fungoides. He was also diagnosed with squamous cell carcinoma, an entirely distinct cancer. It is unknown whether he developed squamous cell carcinoma before or after mycosis fungoides. There is an epidemiology study which has shown an increased risk of NHL after a diagnosis of SCC. The authors speculate that UV radiation leading to skin cancer is also associated with immune dysregulation that allows the NHL to form.⁶

EXHIBIT D

1 A. It may be linked to oxidative stress.

2 Q. Do you know who Dr. Perry is?

3 A. I don't know who Dr. Perry is.

4 Q. In this context I'll represent that he
5 is a scientist with an expertise in genotoxicity
6 who did perform some work for Monsanto in the '80s
7 or '90s. Are you familiar with any of that work?

8 A. None of it.

9 Q. When was Mr. Johnson diagnosed with
10 squamous cell carcinoma?

11 A. Sort of once he had been diagnosed with
12 MF on one of his visits, I think it was perhaps six
13 months after the diagnosis.

14 Q. You don't hold the opinion that squamous
15 cell carcinoma caused his mycosis fungoides?

16 A. It's my opinion they're unrelated.

17 Q. Do you hold an opinion that Mr. Johnson
18 does not have large cell transformation?

19 A. No, he's got lesions that have large
20 cell transformation in them on a lesional basis.

21 Q. You seemed critical of his -- of that
22 characterization in your report?

23 A. Critical of the whole concept of large
24 cell transformation in isolation.