

1 Michael J. Miller (appearance *pro hac vice*)
2 Timothy Litzenburg (appearance *pro hac vice*)
3 Curtis G. Hoke (State Bar No. 282465)
4 **THE MILLER FIRM, LLC**
5 108 Railroad Ave.
6 Orange, VA 22960
7 Phone: (540) 672-4224
8 Fax: (540) 672-3055
9 mmiller@millerfirmllc.com
10 tlitzenburg@millerfirmllc.com
11 choke@millerfirmllc.com

12 *Attorneys for Plaintiff*
13 **DEWAYNE JOHNSON**

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

DEWAYNE JOHNSON,

Plaintiff,

v.

MONSANTO COMPANY, STEVEN D.
GOULD, WILBUR-ELLIS COMPANY
LLC, and WILBUR-ELLIS FEED, LLC,

Defendants.

Case No. CGC-16-550128

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION *IN LIMINE* NO. 11 TO EXCLUDE
EVIDENCE OF LIFE INSURANCE POLICY**

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]

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

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, at a date and time set by the trial judge assigned to this matter
3 of the above-entitled Court located at 400 McAllister St. San Francisco, CA 94102-4515, Plaintiff
4 Dewayne Johnson will and hereby does move *in limine* to exclude evidence and testimony regarding his
5 life insurance policy.

6 Plaintiff hereby seeks an *in limine* order instructing Defendants and their counsel not to refer to,
7 interrogate any witness concerning, comment on, or attempt to suggest to the jury in any way the
8 fact/matter of Plaintiff's life insurance policy, and to inform their witnesses of these instructions and
9 direct them not to make any reference to Plaintiff's life insurance policy. This motion will be made upon
10 the ground that the matter of Plaintiff's life insurance policy is an inadmissible collateral source, and is
11 therefore irrelevant, and any attempt to convey this information to the jury would be against public
12 policy, highly improper and prejudicial to Plaintiff, even if the Court were to sustain an objection and
13 instruct the jury not to consider such facts.

14 This motion *in limine* is based on this notice of motion, the motion and accompanying
15 memorandum of points and authorities, the concurrently filed Declaration of Curtis Hoke, the
16 concurrently filed proposed order, all pleadings and papers on file in this matter, and such further oral
17 and documentary evidence and papers as the Court may consider at the time of the hearing.

18 Respectfully Submitted,

19 Dated: May 24, 2018

THE MILLER FIRM, LLC

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21 By: /s/ Curtis G. Hoke

Michael J. Miller (appearance *pro hac vice*)
Timothy Litzenburg (appearance *pro hac vice*)
Curtis G. Hoke (State Bar No. 282465)

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Attorneys for Plaintiff
DEWAYNE JOHNSON

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

3 In August of 2014, Dewayne Johnson was diagnosed with non-Hodgkin lymphoma (“NHL”) at
4 age 43 after spraying glyphosate-based herbicides (GBHs) for over two years. Mr. Johnson's frequency
5 of exposure to GBHs was intense, involving approximately 20-40 days per year at about 2-5 hours per
6 day and starting in June of 2012. Mr. Johnson also suffered acute exposures due to spills which left him
7 soaked to the skin in GBHs. Mr. Johnson’s NHL subtype is t-cell lymphoma mycosis fungoides, an
8 aggressive variant, which involves lymphocytes located in the skin.

9 During the deposition of Mr. Johnson on December 7, 2017, it was disclosed that he has a life
10 insurance policy. See Declaration of Curtis Hoke in Support of Motion *in limine*, Ex. A. (Dewayne
11 Johnson Deposition) at 448:15-18.

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13 **II. ARGUMENT**

14 **A. Evidence Of Mr. Johnson’s Life Insurance Policy Is Barred By The Collateral source**
15 **Rule.**

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17 During the course of discovery, information concerning the fact that Mr. Johnson has a life
18 insurance policy was disclosed. *Id.* Such evidence should be barred.

19 The collateral source rule permits an injured person to recover damages from the wrongdoer
20 undiminished by any payment he may receive for the injury from a source wholly independent of the
21 wrongdoer. *Neumann v. Bishop*, 59 Cal. App. 3d 451, 469, 130 Cal. Rptr. 786 (1st Dist. 1976), (citing *De*
22 *Cruz v. Reid*, 69 Cal. 2d 217, 70 Cal. Rptr. 550, 444 P.2d 342 (1968)). Evidence Code section 1155
23 provides: "Evidence that a person was, at the time a harm was suffered by another, insured wholly or
24 partially against loss arising from liability for that harm is inadmissible to prove negligence or other
25 wrongdoing." Cal. Evid. Code. § 1155. Such evidence is "regarded as both irrelevant and prejudicial."
26 *Neumann v. Bishop*, 130 Cal. Rptr. 786, 799 (Cal. App. 1st Dist. 1976). As such, "any attempt to inject it
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1 by question, suggestion or argument is considered misconduct of counsel, and is often held reversible
2 error." *Id.*

3 Furthermore, under the common law rule, "compensation for injuries received by an injured party
4 from a source independent of the tortfeasor may not be deducted from the damages the plaintiff collects
5 from the tortfeasor." *Garcia v. County of Sacramento*, 126 Cal. Rptr. 2d 465, 466 (Cal. App. 3d Dist.
6 2002). Likewise, the defendant may not "present evidence that the plaintiff's medical expenses have been
7 paid by an independent source." *Id.*

8 As a result, with certain inapplicable exceptions, none of which apply here, evidence of insurance
9 payments should never be introduced to a jury. To allow otherwise would severely prejudice the Plaintiff
10 and prevent him from receiving a fair trial.

11 In short, any statement, reference, inference or suggestion regarding life insurance should be
12 barred.

13 **B. Evidence Or Argument Relating To Plaintiff's Life Insurance Policy Is Irrelevant, Highly
14 Prejudicial, And Should Be Excluded.**

15 Even if the court finds that evidence of Mr. Johnson's life insurance policy is admissible, such
16 evidence would be highly prejudicial and grossly outweighing by any probative value it would bring. Mr.
17 Johnson's wife and children, whom are the beneficiaries of Mr. Johnson's life insurance policy are not
18 even parties to this lawsuit. Pursuant to Evidence Code Section 352, such evidence should be barred.

19 **III. CONCLUSION**

20 Based on the foregoing, Plaintiff Dewayne Johnson respectfully requests that the Court enter an
21 Order granting this motion *in limine* and excluding evidence or testimony regarding his life insurance
22 policy.

23 Respectfully submitted,

24
25 Dated: May 24, 2018

THE MILLER FIRM, LLC

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27 By: /s/ Curtis G. Hoke
28 Michael J. Miller (appearance *pro hac vice*)

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Attorneys for Plaintiff
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