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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 OPPOSITION
TO DEFENDANT'S MOTION IN LIMINE
14 TO EXCLUDE EVIDENCE,
ARGUMENT, REFERENCE OR
COMPARISON TO THE TOBACCO
INDUSTRY**

Trial Judge: TBD

Trial Date: June 18, 2018

Time: 9:30 AM

Department: TBD

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DECLARATION OF CURTIS G. HOKE

I, Curtis Hoke, declare and state:

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 Opposition to Defendant's Motion in Limine No. 14 to Exclude Evidence, Argument, Reference or Comparison to the Tobacco Industry. 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.

1. Attached hereto as **Exhibit 1** is a true and correct copy of portions of Defendant Monsanto Company's Omnibus Motion to Exclude Testimony of Plaintiff's Experts.

2. Attached hereto as **Exhibit 2** is a true and correct copy of portions of the 8/24/2017 Hearing Transcript from In Re: Roundup Product Liability Litigation, MDL No. 16-02741.

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

Executed on June 7, 2018 in Orange, Virginia.

By: 

Curtis G. Hoke,
Declarant

EXHIBIT 1

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

DEWAYNE JOHNSON,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
OMNIBUS MOTION TO EXCLUDE
TESTIMONY OF PLAINTIFF'S
EXPERTS**

Hon. Judge Curtis E.A. Karnow

Hearing Date: May 10, 2018
Time:: 9:00 a.m.
Department: 304

1 Plaintiff has eight retained and two non-retained experts.⁴ Several of Plaintiff's experts offer
2 overlapping "general causation" opinions, i.e., addressing whether glyphosate "can cause" any type
3 of NHL in humans, grounded broadly in disciplines of epidemiology, toxicology, and mechanisms
4 of action. Monsanto will address each of these categories of evidence, distinguishing between
5 particular experts as needed. Two experts also offer "specific causation" opinions, i.e., addressing
6 whether glyphosate in fact caused Plaintiff to develop mycosis fungoides, and two offers "bad
7 company conduct" opinions.⁵ None meet the *Sargon* standards.

8 As to general causation, the vast science on glyphosate and GBHs points in a single
9 direction: that there is no association between human GBH exposure and NHL. Plaintiff's experts
10 can only opine against the scientific consensus by applying unreliable and inconsistent
11 methodologies in a results-driven manner. Plaintiff's experts who offer opinions regarding
12 epidemiology ignore or attack the largest and best study on the subject, relying instead on non-
13 statistically-significant results from smaller studies that are confounded by a failure to control for
14 other pesticides. *Infra* at 6-10. Those who rely on animal studies reach conclusions contrary to
15 those of all of the regulatory agencies that have reviewed the same data, and do so by applying
16 incorrect and ever-changing statistical manipulations. *Infra* at 13-17. And those who rely on
17 mechanistic data commit fatal flaws in their analyses as well, including ignoring the conclusions
18 of the original study authors. *Infra* at 19-20.

19 _____
20 ⁴ Dr. Chadi Nabhan (oncology); Dr. Alfred Neugut (epidemiology); Dr. Beate Ritz
21 (epidemiology); Dr. Dennis Weisenburger (epidemiology); Dr. Christopher Portier (toxicology);
22 Dr. William Sawyer (toxicology); Dr. Benbrook (company conduct); Dr. James Mills (damages);
23 Dr. Aaron Blair (epidemiology; non-retained); Dr. Matthew Ross (toxicology; non-retained). Each
24 of these witnesses were experts for multiple plaintiffs' counsel in the multi-district litigation
25 ("MDL"), except for Dr. Benbrook, Dr. Sawyer, and Dr. Mills. *See* Edwards Decl., ¶ 4, Ex. 3,
26 Plaintiff Dewayne Johnson's Designation of Expert Witnesses on General Causation; Declaration
27 of Timothy Litzenburg in Supp. of Expert Designation; Exhibits Thereto (May 1, 2017); Edwards
28 Decl., ¶ 6, Ex. 5, Designation/Declaration of Expert Witnesses by Plaintiff (Dec. 22, 2017);
Edwards Decl., ¶ 68, Ex. 67, Designation/Declaration of Expert Witnesses by Plaintiff (Dec. 29,
2017).

⁵ Plaintiff also purported to "reserve[] the right to elicit testimony at trial from any of Plaintiff's
treating physicians to the full extent allowable under California law." *See* Edwards Decl., ¶ 6, Ex.
5, at ¶ 5. In the absence of the full disclosure required by California rule, Plaintiff should be
precluded from proffering the treaters as experts. *Kalaba v. Gray*, 95 Cal. App. 4th 1416, 1418
(2002). Monsanto reserves all objections regarding the treaters.

1 support a causation opinion.²⁰ When properly controlled and adjusted (as required by any reliable
2 scientific methodology) to avoid confounding by other pesticides, the case-control studies do not
3 find any association between GBHs and NHL, with non-statistically significant findings and ORs
4 closely surrounding the null value of 1.0. Edwards Decl., ¶ 13, Ex. 12, Neugut Dep. at 158:23-
5 159:6 (agreeing that “[t]here is no odds ratio anywhere in the epidemiological literature that
6 reports for glyphosate and non-Hodgkin’s lymphoma an adjusted odds ratio positive association
7 statistically significant”). Any supposed associations that Plaintiff’s experts point to in particular
8 epidemiology studies vanish when confounding by the presence of other pesticides is taken into
9 account. Controlling for confounders is particularly important regarding NHL, which was on the
10 rise in farmers before glyphosate was even on the market. Edwards Decl., ¶ 30, Ex. 29, Dep. of
11 Aaron Blair at 90:15-20, *In re: Roundup Prod. Liab. Litig.*, 3:16-md-02741-VC (N.D. Cal. Mar.
12 20, 2017) (something is “going on with farmers that appears to be associated with an increased
13 risk of [NHL] that predated glyphosate being on the scene”; Edwards Decl., ¶ 30, Ex. 29, *id.* at
14 91:23-92:4 (to implicate glyphosate exposure in farmers, one should “control for those other
15 possible confounders to be sure that [one is] actually studying glyphosate”); *see also* Edwards

16
17 ²⁰ *See, e.g., In re Bextra*, 524 F. Supp. 2d at 1176 (excluding expert who reached general causation
18 conclusion by “cherry-picking observational studies that support his conclusion,” stating that this
19 “is not ‘good science’”). For example, Dr. Ritz originally relied upon the NAPP findings in her
20 expert report based upon an abstract that only reported confounded odds ratios. Edwards Decl.,
21 ¶ 26, Ex. 25, Expert Report of Beate Ritz at 15-16, *In re: Roundup Prod. Liab. Litig.*, 3:16-md-
22 02741-VC (N.D. Cal. May 1, 2017) (“Ritz Report”). After becoming aware of the data from the
23 same study that was adjusted for other pesticide exposures – and showed no evidence of an
24 association – she sought to distance herself from the study results. *See* Edwards Decl., ¶ 27,
25 Ex. 26, Dep. of Beate Ritz at 305:10-306:17, *In re: Roundup Prod. Liab. Litig.*, 3:16-md-02741-
26 VC (N.D. Cal. Sept. 18, 2017); *see also* Edwards Decl., ¶ 27, Ex. 26, *id.* at 292:11-293:21.
27 Regarding Eriksson 2008, Dr. Weisenburger admits that: (a) the study includes a multivariate
28 analysis that controls for other pesticide exposures and generated an OR that is not statistically
significant; (b) the study reports other ORs that were not adjusted for exposure to other pesticides;
(c) he does not know whether any of the unadjusted ORs would be statistically significant if they
were controlled for other pesticides; (d) like Dr. Neugut, the fact that almost every unadjusted OR
for various substances was above 1.0 suggests some kind of bias in the study; and (e) the study
does not show a statistically significant association between glyphosate and NHL (or any NHL
sub-type) controlled for other pesticides. Edwards Decl., ¶ 28, Ex. 27, Dep. of Dennis
Weisenburger at 181:4-184:2; 184:24-185:20, *In re: Roundup Prod. Liab. Litig.*, 3:16-md-02741-
VC (N.D. Cal. Sept. 11, 2017). Nevertheless, Dr. Weisenburger incredulously claimed that the
study showed a statistically significant response. Edwards Decl., ¶ 28, Ex. 27, *id.* at 181:20-22;
Edwards Decl., ¶ 29, Ex. 28, Expert Report of Dennis Weisenburger at 4-5, *In re: Roundup Prod.*
Liab. Litig., 3:16-md-02741-VC (N.D. Cal. Apr. 21, 2017) (“Weisenburger Report.”).

Decl., ¶ 13, Ex. 12, Neugut Dep. at 68:17-21 (“Q: [A]n epidemiological analysis of glyphosate and non-Hodgkin’s lymphoma should control for exposures to these other pesticides; correct? A: To the degree that it’s possible, yes.”).

Ruling out the possibility of chance and the impact of confounding are two bedrock principles of epidemiology, yet Plaintiff’s experts’ methodology does neither. As a result, their opinions must be excluded. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 145-47 (1997) (affirming *Daubert* exclusion because, *inter alia*, experts relied on epidemiology study that was not statistically significant); *Burst v. Shell Oil Co.*, 650 F. App’x 170, 174-75 (5th Cir. 2016) (same); *Allen v. Pa. Eng’g Corp.*, 102 F.3d 194, 197 (5th Cir. 1996) (same); *see also* Edwards Decl., ¶ 13, Ex. 12, Neugut Dep. at 45:14-18 (requiring statistically significant increased risk before he would conclude that an exposure is associated with an outcome).

Plaintiff’s experts have repeatedly presented their opinions in misleading ways that conceal the severe flaws in their analyses. For example, Dr. Ritz uses the chart below, supposedly to show that, in multiple epidemiology studies, point-estimates of risk > 1.0 were found. *See* Edwards Decl., ¶ 26, Ex. 25, Ritz Report at 14. This ignores two huge flaws: first, that every study on the chart comes from the same study groups incorporated in the chart on p. 5 above (and so there is double- and triple- counting on Dr. Ritz’s chart; for example, the Eriksson study appears eight separate times for various subtype findings in the same study, and the NAPP appears three times, and itself represents an updated or pooled analysis of the McDuffie, Cantor, Lee, Hohenadel, and De Roos (2003) study populations). Second, none of the data points on Dr. Ritz’s chart—except for the AHS cohort (now NCI 2018), which she rejects—are controlled for other pesticides.

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

IN RE: ROUNDUP PRODUCTS)
LIABILITY LITIGATION,) NO. M. 16-02741 VC
_____)

San Francisco, California
Thursday, August 24, 2017

TRANSCRIPT OF PROCEEDINGS

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Reported By: Lydia Zinn, CSR No. 9223, FCRR, Official Reporter

1 **MR. HOLLINGSWORTH:** -- internal e-mails are not --

2 **THE COURT:** But --

3 **MR. HOLLINGSWORTH:** -- reliable scientific data.

4 **THE COURT:** But the internal e-mails reflect that
5 Monsanto has been ghostwriting reports. And those reports have
6 been portrayed as independent. And you -- I mean, your whole
7 presentation thus far has been about how all the independent
8 science supports a conclusion that glyphosate doesn't cause
9 non-Hodgkin's lymphoma.

10 So, you know, I don't understand how you could have taken
11 the position that the issue of Monsanto drafting reports for
12 allegedly independent experts on whether glyphosate causes
13 non-Hodgkin's lymphoma could be irrelevant to the question of
14 whether there's evidence that glyphosate causes non-Hodgkin's
15 lymphoma. I just don't understand how you could take that
16 position.

17 **MR. HOLLINGSWORTH:** It's because that -- the reports
18 that you're referring to, I think, are two reports in the
19 literature, Your Honor. They're not -- they are not scientific
20 studies. They're not reports on scientific studies. They're
21 reports known as "surveys"; literature surveys. That -- that's
22 the technical characterization of those reports.

23 Those aren't original science. They aren't the original
24 reports of the 14 animal studies that are at issue here. They
25 aren't the original reports by the epidemiologists who have