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**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT  
GALLATIN COUNTY**

\* \* \* \* \*

<p>ROBERT CAZIER and JANE CAZIER,  Plaintiffs,  vs.  MONSANTO COMPANY, a corporation, and ROCKY MOUNTAIN SUPPLY, INC. a corporation  Defendants.</p>	<p>Cause No. DV-17-883C Hon. John C. Brown  <b>MOTION FOR EXPEDITED TRIAL SETTING and STATUS CONFERENCE</b></p>
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## **MOTION**

Plaintiffs Robert Cazier and Jane Cazier (“Caziers”) hereby move for an expedited trial setting because, without it, Robert may die before trial or be too ill to participate. Specifically, Plaintiffs seek a trial setting any time in 2019, no later than the fall of 2019. The Plaintiffs anticipate they will be ready for trial as early as spring 2019. Plaintiffs also request a status conference be set as soon as is convenient for the Court for the purpose of setting the trial date. Counsel for Defendants has been contacted, but has not responded on whether or not they will oppose this motion.

### **BRIEF IN SUPPORT**

#### **INTRODUCTION**

Robert Cazier is dying. He is dying as a result of exposure to glyphosate in products designed, manufactured, marketed and distributed by Defendant Monsanto Company and sold in Montana by Defendant Rocky Mountain Supply Inc. To allow Robert an opportunity to participate at the trial, and – hopefully – to expedite recovery which will not only improve Robert’s enjoyment of life but also meaningfully extend Robert’s life, an expedited trial setting is necessary.

Plaintiffs’ counsel has appeared many times before this Court, and we are very familiar with the Court’s typical procedures and time frames. This Court

knows that Plaintiffs' counsel does not frequently make requests to alter the Court's typical procedure. Counsel does not make this request lightly.

## **BACKGROUND**

### **A. Glyphosate's Association With an Increased Risk of Non-Hodgkin Lymphoma ("NHL").**

Defendant Monsanto Company designed, researched, manufactured, tested, advertised, promoted, marketed, sold, and distributed the commercial herbicide Roundup. Defendant Rocky Mountain Supply Inc. sold Roundup in Gallatin and Broadwater Counties to Plaintiff Robert Cazier and others.

An active ingredient in Roundup is glyphosate, a broad-spectrum herbicide used around the globe to kill weeds and grasses to prevent them from competing with commercial crops. Sprayed as a liquid, plants absorb glyphosate directly through their leaves, stems, and roots.

Glyphosate was developed by Monsanto in the 1970s and has been on the market since 1974. Monsanto represented to farmers, ranchers and consumers that its spray-on glyphosate-based herbicides, including Roundup: were biodegradable; would not build up in the soil or leach into the water table; were "safer than table salt" and "practically non-toxic" to mammals, birds, and fish; and could be used safely where kids and pets play. Based on those assurances, Roundup became one of the world's most widely used herbicides.

In fact, glyphosate causes various forms of cancer, including Non-Hodgkin Lymphoma. In all this time, farmers, ranchers and consumers, including Plaintiff Robert Cazier, have used Roundup unaware it is a carcinogen.

In November of 1996, Monsanto entered into an Assurance of Discontinuance with the New York Attorney General, in which Monsanto agreed to cease and desist asserting in New York that glyphosate-containing-pesticides or any component thereof were: safe, non-toxic, harmless or free from risk; biodegradable; “good” for the environment or “known for their environmental characteristics;” safer or less toxic than common consumer products other than herbicides; classified as “practically non-toxic”; or would stay where applied and not move through the environment. Monsanto did not alter its advertising except in New York.

In 1997, Chris Clements published a study entitled “Genotoxicity of select herbicides in *Rana catesbeiana* tadpoles using the alkaline single-cell gel DNA electrophoresis (comet) assay.” The study found that tadpoles exposed to Roundup showed significant DNA damage when compared with unexposed control animals.

In 2003, Lennart Hardell and Mikael Eriksson published the results of two case controlled studies on pesticides as a risk factor for Non-Hodgkin Lymphoma (“NHL”) and hairy cell leukemia. They found glyphosate had the most significant relationship to NHL among all herbicide studied, with increased odds of 3:11.

In 2003, AJ De Roos published a study examining pesticides and herbicides as risk factors for NHL, using the pooled data of mid-western farmers. The study, which controlled for potential confounders, found a relationship between exposure to glyphosate and increased incidence of NHL.

In 2006, César Paz-y-Miño published a study examining DNA damage in human subjects exposed to glyphosate. The study found significantly greater chromosomal damage in blood cells in the same individuals after exposure to glyphosate, compared with before, suggesting glyphosate used for aerial spraying has a genotoxic effect on exposed individuals.

In 2008, Mikael Eriksson published a population based case-control study of exposure to various pesticides as a risk factor for NHL. This strengthened previous associations between glyphosate and NHL.

On March 24, 2015, after reviewing numerous studies, many of which had been in Monsanto's possession since as early as 1985, the International Agency for Research on Cancer ("IARC")<sup>1</sup> published its conclusion that glyphosate causes DNA and chromosomal damage in human cells, is a Class 2A "probable carcinogen" based on mechanistic evidence (genotoxicity and oxidative stress) of

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<sup>1</sup> The IARC is a specialized intergovernmental agency tasked with conducting and coordinating research into the causes of cancer by the World Health Organization ("WHO") of the United Nations.

carcinogenicity in humans and sufficient evidence of carcinogenicity in animals, and is associated with an increased risk of NHL.

**B. Plaintiff's Health Conditions Resulting From Exposure to Glyphosate.**

Although Monsanto had possessed ample evidence of glyphosate's genotoxic<sup>2</sup> properties for decades, Monsanto continued to issue broad and sweeping assurances about its safety, all with the intent of inducing Plaintiff, the agricultural community, and public at large to purchase and use Roundup and other glyphosate-based herbicides.

These statements had the desired effect on Plaintiff Robert Cazier, who used Roundup extensively in his work over many years. He developed a particularly aggressive Non-Hodgkin Lymphoma.

Robert underwent significant treatment. That treatment, which included radiation and chemotherapy, caused extensive damage to Robert's cardiorespiratory system which continue to plague Robert and which will likely kill him. Due to Robert's declining condition, Dr. Jack Hensold, Robert's treating oncologist, does not believe that Robert will be well enough to attend a trial if it were postponed until 2020. Exh. 1, Aff. J. Hensold, M.D. In fact, Dr. Hensold

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<sup>2</sup> Genotoxicity refers to chemical agents capable of damaging the DNA within a cell through genetic mutations, which is a process believed to lead to cancer.

believes that the longer the trial is put off, the less likely it will be that Robert can participate. *Id.* In other words, the sooner we have a trial, the better.

## DISCUSSION

Montana district courts have inherent power to control trial administration. *Henricksen v. State*, 2004 MT 20, ¶35 (quoting *Anderson v. Werner Enterprises Inc.*, 1998 MT 33, ¶ 13.). A number of states have recognized the potential injustices posed by protracted court schedules for the terminally ill and provide expedited scheduling and trials for parties suffering from terminal illnesses. See *Doe v. Hospital for Special Care*, 1997 WL 803854 (Conn. Super. 1997) (ALS patient’s “right to expedited trial clearly outweighs burdens placed on defendant” and that “the question posed ... is not even close”); see also Conn. Gen. Stat. Ann. § 52-191c (West, current through 2012); N.Y. C.P.L.R. 3407 (McKinney, current through 2012); N.Y. C.P.L.R. 3403 (McKinney, current through 2012); Cal Civ. Proc. Code Ann. § 36 (West, current through 2012).

Here, the interests of justice strongly support granting this motion. Robert Cazier has a right to be present and participate in the trial of his claims. If this motion is not granted, that right may be lost as he may not live long enough or remain well enough to participate. As Plaintiffs bear the burden of proof, their case will be compromised by Robert Cazier’s absence, particularly in light of the fact

that he is the main source of evidence about his exposure both to glyphosate and to Monsanto's advertising.

Plaintiffs will suffer extreme and irreparable harm and prejudice if this motion is denied and Robert Cazier dies or becomes too compromised to participate before his case proceeds to trial.

Defendants, on the other hand, will not suffer undue burden if the motion is granted. Monsanto is a sophisticated litigator with substantial resources and extensive experience defending these types of claims. Since the only claim against the Montana defendant sounds in strict product liability, its defenses will not be significantly different than those presented by Monsanto. Indeed the defendants are jointly represented by the same attorneys.

Though Monsanto has not sent any discovery requests to Plaintiffs, to minimize any potential prejudice of an expedited trial setting, Plaintiffs provided Monsanto with 1,177 pages of medical records on July 5, 2018. These records date back to October 25, 2004, and include all records in the Plaintiffs' possession related to the care provided to Robert. Defendants have not requested any further records or served any discovery requests on the Plaintiffs.

## **CONCLUSION**

This claim has been pending since October 16, 2017. A stipulated scheduling order was entered February 20, 2018. The stipulated scheduling order



set the briefing deadline for May 10, 2019. Plaintiffs will be ready for a trial shortly thereafter. We ask that the Court set this case for trial as close to that date as possible, but no later than the fall of 2019.

While terminal illness is a recognized basis to expedite the trial setting, there are no legitimate reasons to deny it in this case. For the foregoing reasons, Plaintiffs' motion for an expedited trial setting should be granted.

DATED this 13<sup>th</sup> day of August, 2018.

BECK, AMSDEN & STALPES, PLLC



JUSTIN P. STALPES, ESQ.

*Attorneys for Plaintiffs*

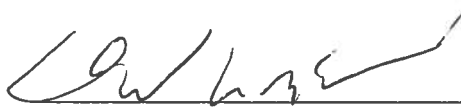
## CERTIFICATE OF SERVICE

I hereby certify that, on the 13<sup>th</sup> day of August 2018, a true and accurate copy of the foregoing was served upon the parties listed below by U.S. Mail and Electronic Mail:

Randy J. Cox  
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*Attorneys for Defendants Monsanto Company  
and Rocky Mountain Supply, Inc.*



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DAVID W. MCGOLDRICK  
Registered Paralegal


**AFFIDAVIT OF JACK HENSOLD, M.D.**

STATE OF MONTANA        )  
  :SS.  
COUNTY OF GALLATIN    )

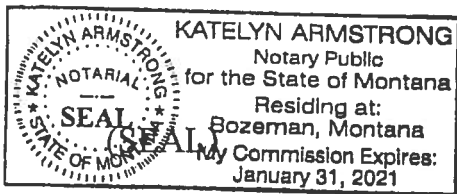
JACK HENSOLD, M.D., being of lawful age and first duly sworn upon oath, deposes and says as follows:

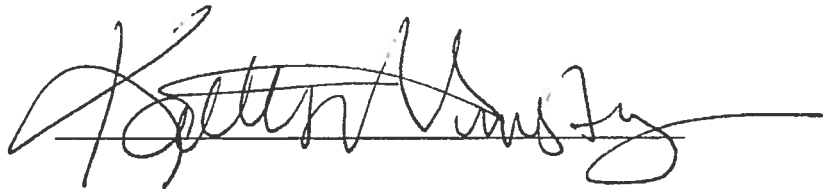
1. My name is Dr. Jack Hensold. I am Robert Cazier's treating oncologist, and have been for 14 years.
2. Robert currently faces several severe health issues that result from treatment of an aggressive lymphoma.
3. Robert's condition continues to decline. As time goes on, the likelihood that Robert will be well enough to attend a trial will continue to decrease. I am not confident that Robert would be well enough to attend a lengthy trial if one were set as far out as 2020, whether because of significantly diminished health or even death.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
JACK HENSOLD, M.D.

This instrument was signed and sworn to before me, a Notary Public in and for the State of Montana, on Aug 2nd 2018 by Jack Hensold.



  
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