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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE VINCE CHHABRIA

IN RE: ROUNDUP PRODUCTS)
LIABILITY LITIGATION,) NO. C 16-2741 VC
) SAN FRANCISCO, CALIFORNIA
)

MONDAY, SEPTEMBER 24, 2018

**TRANSCRIPT OF TELEPHONIC PROCEEDINGS OF THE OFFICIAL ELECTRONIC
SOUND RECORDING 11:06 A.M. - 11:35 A.M.**

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BY: AIMEE WAGSTAFF, ESQUIRE

(FURTHER APPEARANCES ON FOLLOWING PAGE)

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**BY: JOE HOLLINGSWORTH, ESQUIRE
JESSICA BOYLAN, ESQUIRE
ERIC G. LASKER, ESQUIRE
HEATHER ANN PIGMAN, ESQUIRE**

1 MONDAY, SEPTEMBER 24, 2018

11:06 A.M.

2 (TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSELS' FAILURE TO
3 IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER
4 ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

5 ---000---

6 PROCEEDINGS

7 **THE CLERK:** CALLING CASE NO. 16-MD-2741, IN RE:
8 ROUNDUP PRODUCTS LIABILITY LITIGATION.

9 I HAVE THE LIST OF WHO IS ATTENDING BY PHONE, SO NO
10 APPEARANCES ARE NEEDED.

11 **THE COURT:** OKAY. HI EVERYBODY.

12 SO WE NEED TO TALK ABOUT THE FACT SHEET ONE LAST
13 TIME. WE NEED TO TALK ABOUT THE DRAFT ORDER. WE NEED TO TALK
14 ABOUT THE SCHEDULE FOR THE BELLWETHER GROUP. AND THERE ARE A
15 NUMBER OF SMALL ISSUES WITHIN THOSE THREE CATEGORIES THAT WE'LL
16 NEED TO GET INTO, BUT ARE THERE ANY OTHER ISSUES WE NEED
17 DISCUSS OTHER THAN THOSE THREE?

18 PLAINTIFFS, ANY ADDITIONS TO THAT LIST? YOU ALL
19 TEXTING EACH OTHER RIGHT NOW? IS THE SYSTEM WORKING? ALL
20 RIGHT.

21 **MR. LASKER:** THIS IS ERIC LASKER FOR DEFENDANTS. I
22 CAN HEAR YOU.

23 **THE COURT:** OKAY. SO, MR. LASKER, ANY ADDITION TO
24 THAT LIST FROM YOUR END?

25 **MR. LASKER:** NOT FROM OUR END, NO, YOUR HONOR.

1 **MS. WAGSTAFF:** ERIC LASKER, CAN YOU HEAR ME?

2 **MR. LASKER:** I CAN NOW, BUT THERE'S ALSO SOMEBODY
3 WHO -- THERE'S A LOT OF BACKGROUND NOISE (INDISCERNIBLE) SO
4 THAT PERSON SHOULD PROBABLY GO ON MUTE.

5 **MS. WAGSTAFF:** OKAY. JUDGE CHHABRIA, CAN YOU HEAR
6 ME? THIS IS AIMEE WAGSTAFF.

7 **THE COURT:** YES.

8 **MS. WAGSTAFF:** OKAY. FROM THE PLAINTIFFS' POINT OF
9 VIEW, WE WOULD WANT TO INCLUDE DISCUSSION ON THE DEFENSE FACT
10 SHEET (INDISCERNIBLE).

11 **THE COURT:** RIGHT. OKAY. ANYTHING ELSE?

12 **MS. WAGSTAFF:** OTHER THAN THAT --

13 **THE COURT:** OKAY. ALL RIGHT. I GOT THAT ON OUR --
14 ON THE LIST.

15 SO ONE COMMENT -- ONE WAY IN WHICH I WANT TO CHANGE
16 THE ORDER, THE DRAFT ORDER THAT I SENT OUT THIS MORNING, IS I
17 THINK WE SHOULD LABEL THESE PLAINTIFFS IN GROUPS LIKE -- AND
18 FOR PURPOSES OF DISCUSSION TODAY, I THINK THAT WILL MAKE IT
19 EASIER.

20 SO GROUP 1 WILL BE THE FOUR PLAINTIFFS WHO FILED
21 THEIR CASES IN THE NORTHERN DISTRICT OF CALIFORNIA. GROUP 2
22 WILL BE THE PEOPLE WHO RESIDE IN CALIFORNIA. AND YOU'LL SEE
23 THAT I -- YOU SAW, PROBABLY, THAT I PROPOSED TWEAKING THAT
24 GROUP A LITTLE BIT SO THAT IT INCLUDES BOTH PEOPLE WHO RESIDE
25 IN CALIFORNIA AND PEOPLE WHO FILED THEIR CASES IN CALIFORNIA

1 WHETHER OR NOT THEY CURRENTLY RESIDE IN CALIFORNIA.

2 DOES THAT -- DOES THAT TWEAK OF THAT GROUP MAKE SENSE
3 TO YOU ALL? MS. WAGSTAFF?

4 **MS. GREENWALD:** THIS IS ROBIN GREENWALD. YES, YOUR
5 HONOR, IT DOES MAKE SENSE.

6 **THE COURT:** AND MR. LASKER?

7 **MR. LASKER:** THAT'S FINE WITH US, YOUR HONOR.

8 **THE COURT:** OKAY. AND THEN GROUP 3 WOULD BE ANYBODY
9 WHO HAS ALREADY FILED A CASE BUT WHO DOESN'T MEET THE
10 DEFINITION OF GROUP 2; THAT IS, THEY DON'T LIVE IN CALIFORNIA
11 AND THEY DIDN'T FILE THEIR CASE IN CALIFORNIA. AND THEN
12 GROUP 4 WOULD BE ANYBODY WHO HASN'T YET FILED THEIR CASE, OR AT
13 LEAST WHO HASN'T YET HAD THEIR CASE TRANSFERRED TO US. SO
14 THOSE WOULD BE THE FOUR GROUPS OF PEOPLE, AND I THINK WE SHOULD
15 SPEAK ABOUT IT IN THOSE TERMS.

16 MR. LASKER, LET ME ASK YOU. I THINK THAT YOU SAID AT
17 OUR LAST MEETING THAT YOU WERE GOING TO TRY TO FIGURE OUT
18 WHETHER ANYBODY ELSE WHO WE ARE CURRENTLY DESCRIBING AS IN
19 GROUP 2 COULD BE -- COULD BE CONSIDERED PART OF GROUP 1 BECAUSE
20 THE CASE IS PROPERLY -- COULD BE PROPERLY VENUED HERE.

21 **MR. LASKER:** WELL, I DID NOT LOOK BACK -- NOW THAT
22 GROUP 2 HAVE BEEN REDEFINED, I'M NOT SURE IF I HAVE THE LIST OF
23 THE PEOPLE WHO FILED IN CALIFORNIA OR STATEWIDE.

24 **THE COURT:** OKAY.

25 **MR. LASKER:** SO I'M HAPPY TO GO BACK AND LOOK AT

1 THAT, BUT I ASSUME THAT WOULD BE EASY. THERE ARE LIST OF
2 PEOPLE WHO FIT IN THAT CATEGORY AND (INDISCERNIBLE) GUESS
3 THEY'RE THE SAME.

4 **THE COURT:** BUT --

5 **MR. LASKER:** I'M NOT -- IS THAT YOUR QUESTION?

6 **THE COURT:** OF THE PEOPLE WHO RESIDE IN CALIFORNIA,
7 HAVE YOU LOOKED AT THOSE PEOPLE TO SEE IF THERE'S ANY
8 INDICATION THAT THEY COULD BE PROPERLY VENUED IN THE NORTHERN
9 DISTRICT?

10 **MR. LASKER:** MY UNDERSTANDING IS I DON'T HAVE THAT
11 INFORMATION IN THE COMPLAINT AT ALL. ALL WE HAVE IS THE STATE
12 OF RESIDENCE.

13 **THE COURT:** OKAY. ONE OF THE THINGS I WANT TO DO --
14 I DON'T KNOW IF IT MAKES SENSE TO DISCUSS THIS NOW OR LATER,
15 BUT ONE OF THE THINGS I WANT TO DO IS FIGURE OUT A PROCESS FOR
16 MOVING -- POTENTIALLY MOVING SOME OF THE PEOPLE FROM GROUP 2
17 INTO GROUP 1; THAT IS, YOU KNOW, OF THE PEOPLE WHO, YOU KNOW,
18 FILED THEIR CASES IN CALIFORNIA OR RESIDE IN CALIFORNIA, AND
19 IT'S NOT YET CLEAR TO US WHETHER THEY COULD BE PROPERLY VENUED
20 IN THE NORTHERN DISTRICT OF CALIFORNIA, IF WE CAN DETERMINE
21 EARLY ON THAT THEY ARE PROPERLY VENUED IN THE NORTHERN DISTRICT
22 OF CALIFORNIA, OR COULD BE PROPERLY VENUED IN THE NORTHERN
23 DISTRICT OF CALIFORNIA, I WOULD WANT TO EXPLORE FOLDING THEM
24 INTO GROUP 1; THAT IS, THE GROUP OF PLAINTIFFS WHO COULD
25 POTENTIALLY GO TO TRIAL IN FEBRUARY OR MAY, BECAUSE I'M

1 CONCERNED THAT GROUP 1 RIGHT NOW IS KIND OF TOO SMALL, AND
2 THERE'S AT LEAST SOME RISK THAT, YOU KNOW, ALL THE CASES IN --
3 YOU KNOW, THERE ARE FOUR -- THERE ARE FOUR PLAINTIFFS IN
4 GROUP 1 RIGHT NOW; THAT IS, PLAINTIFFS WHO HAVE THE POTENTIAL
5 TO GO TO TRIAL ON FEBRUARY 25TH OR MAY 5TH. ONE OF THEM, IT
6 SOUNDS LIKE, IS GOING TO DISMISS THEIR CASE. SO THAT LEAVES
7 THREE. AND, YOU KNOW, I'M CONCERNED THAT WITH SUCH A SMALL
8 GROUP 1, WE COULD END UP WITH ZERO PLAINTIFFS BY THE TIME
9 FEBRUARY 25TH ROLLED AROUND.

10 SO I THINK WE SHOULD TRY TO -- I THINK WE SHOULD MAKE
11 AN EFFORT TOWARDS THE FRONT END OF THIS PROCESS TO GET MORE
12 PEOPLE INTO GROUP 1, PEOPLE WHO COULD END UP GOING TO TRIAL ON
13 FEBRUARY 25TH OR MAY 5TH -- EXCUSE ME -- YEAH, FEBRUARY 25TH OR
14 MAY 5TH.

15 DOES THAT MAKE SENSE FROM THE PLAINTIFF'S STAND?

16 **MS. WAGSTAFF:** YOUR HONOR, THAT DOES MAKE SENSE.
17 THIS IS AIMEE WAGSTAFF. SINCE OUR LAST HEARING I HAD A -- LET
18 ME BACK UP A MINUTE.

19 I'M NOT SURE --

20 **THE COURT:** COULD YOU SPEAK UP A LITTLE BIT?

21 **MS. WAGSTAFF:** SURE. I'M NOT SURE THAT *LEXECON*
22 DOESN'T PREVENT YOUR HONOR FROM TRYING CASES IN OTHER
23 CALIFORNIA DISTRICTS. WE ENCOUNTERED THIS QUESTION IN *VAGINAL*
24 *MESH* OUT IN WEST VIRGINIA WITH JUDGE GOODWIN, AND IT WAS NEVER
25 RESOLVED BECAUSE HE ENDED UP JUST TRYING SOUTHERN DISTRICT OF

1 WEST VIRGINIA CASES.

2 SO THAT IS SOMETHING I'M NOT SURE IS CLEAR CUT. AND
3 I THINK MONSANTO PRIOR TO THE LAST HEARING AGREED THAT'S SORT
4 OF UP IN THE AIR.

5 THAT BEING SAID, AFTER THE LAST HEARING, A COUPLE OF
6 COUNSEL APPROACHED ME AND SAID THAT WHETHER WAIVER OF *LEXECON*
7 IS NEEDED OR NOT, THAT THERE ARE CALIFORNIA CASES IN OTHER
8 DISTRICTS BESIDES THE NORTHERN THAT WOULD CONSENT TO TRIAL IN
9 YOUR COURTHOUSE. AND WHETHER OR NOT MONSANTO WOULD NEED TO
10 WAIVE *LEXECON* ON THOSE, I'M NOT SURE. AND I'M THINKING
11 SPECIFICALLY OF A SOUTHERN DISTRICT OF CALIFORNIA CASE AND A
12 CENTRAL DISTRICT OF CALIFORNIA CASE.

13 ANOTHER THING THAT WE HAVE -- THAT I'VE DONE IN THE
14 PAST (INDISCERNIBLE) IS, YOU KNOW, YOUR HONOR COULD ENTER AN
15 ORDER REQUIRING THAT EVERYONE STATE THE PROPER VENUE, AND THAT
16 THEN COUNSEL FOR DEFENDANTS AND MYSELF AND ROBIN --
17 MS. GREENWALD AND MR. MILLER COULD WORK OUT A VENUE SORT OF
18 GRID OR CHART SO YOUR HONOR WOULD KNOW AND THAT WOULD HELP A
19 REMAND WHEN AND IF IT WAS EVER APPROPRIATE AS WELL.

20 **THE COURT:** IN OTHER WORDS, NOT WAIT FOR THE FACT
21 SHEETS TO BE SUBMITTED, JUST ON A MORE ACCELERATED BASIS
22 REQUIRE SUBMISSION OF SOMETHING SOLELY REGARDING VENUE?

23 **MS. WAGSTAFF:** YES. IF YOUR HONOR WANTS TO INCLUDE
24 THEM IN GROUP 1 WITH A FEBRUARY TRIAL DATE, I THINK THAT COULD
25 HAPPEN.

1 **THE COURT:** YOU'RE FADING OUT. I'M HAVING TROUBLE
2 HEARING YOU.

3 **MS. WAGSTAFF:** I'M SORRY.

4 IF YOUR HONOR WANTS TO MOVE PLAINTIFFS FROM GROUP 2
5 TO GROUP 1 WITH A FEBRUARY TRIAL DATE, WHICH IS IN, OBVIOUSLY,
6 FOUR OR FIVE MONTHS, YOU KNOW, WE CAN'T WAIT UNTIL THE PFS
7 COMES OUT, BUT YOUR HONOR COULD ENTER AN ORDER SAYING, YOU
8 KNOW, WITHIN 14 OR 21 DAYS THAT THEY SUBMIT TO SOMEBODY WHAT
9 THEY BELIEVE TO BE THE PROPER VENUE FOR THEIR CASE, AND THEY
10 COULD SUBMIT WHETHER OR NOT THEY HAVE ANY CONNECTION WITH THE
11 NORTHERN DISTRICT SUCH THAT VENUE WOULD BE PROPER THERE.

12 AND, AGAIN, THIS IS AN EXERCISE WE WOULD EVENTUALLY
13 HAVE TO DO ANYWAY.

14 **THE COURT:** SO WE WOULD MAKE THE GROUP TWO PLAINTIFFS
15 DO THAT, SAY, WITHIN 14 DAYS OF OUR ORDER, MAKE THE GROUP TWO
16 PLAINTIFFS SUBMIT SOMETHING ON VENUE. AND I GUESS -- I GUESS
17 THE MOST -- THE MOST IMPORTANT QUESTION TO ASK IS NOT WHERE
18 THEY THINK VENUE IS PROPER, BUT, YOU KNOW, DO THEY THINK VENUE
19 IS PROPER IN THE -- WOULD BE PROPER IN THE NORTHERN DISTRICT OF
20 CALIFORNIA. AND, IF SO, WHAT ARE THE FACTS THAT WOULD SUPPORT
21 THAT. RIGHT? BECAUSE A CASE CAN BE PROPER -- VENUE CAN BE
22 PROPER IN MORE THAN ONE DISTRICT, POTENTIALLY.

23 **MS. WAGSTAFF:** WELL, I'M TRYING TO THINK, YOUR HONOR,
24 IF THAT'S THE BEST WAY TO ACCOMPLISH WHAT I THINK WE'RE TRYING
25 TO ACCOMPLISH.

1 SO IF THERE'S A SOUTHERN DISTRICT OF CALIFORNIA CASE,
2 ENTERING AN ORDER SAYING, WHAT'S YOUR NEXUS TO THE NORTHERN
3 DISTRICT, I THINK THAT THERE WILL BE FOLKS WHO WILL CONSENT TO
4 TRIAL IN YOUR COURT.

5 AND IT MIGHT BE WORTH HAVING THE ATTORNEYS BRIEF
6 WHETHER OR NOT *LEXECON* EVEN APPLIES TO OTHER CALIFORNIA CASES.
7 WE HAD PROPOSED THAT, I BELIEVE, IN OUR SUBMISSION FOR THE LAST
8 HEARING, AND I THINK THAT JUST SORT OF FELL OFF THE RADAR OF
9 BOTH THE COURT AND COUNSEL WHEN WE WERE IN YOUR COURTROOM.

10 **THE COURT:** WELL, I THINK --

11 **MS. WAGSTAFF:** I'M NOT CERTAIN --

12 **THE COURT:** I THINK PART OF THE PROBLEM WAS THAT NONE
13 OF US COULD THINK OF A RATIONALE FOR WHY *LEXECON* WOULD NOT
14 APPLY TO A CASE THAT WAS FILED IN THE SOUTHERN DISTRICT OF
15 CALIFORNIA. I MEAN, I THOUGHT WHERE WE LEFT IT WAS THAT -- YOU
16 KNOW, I WAS WONDERING, YOU KNOW, WHY WOULD IT MATTER FOR
17 *LEXECON* PURPOSES WHETHER A CASE WAS FILED IN THE SOUTHERN
18 DISTRICT OF CALIFORNIA OR THE DISTRICT OF NEVADA?

19 I MEAN, MY RECOLLECTION IS THAT THERE'S NOTHING ABOUT
20 *LEXECON* THAT INVOLVES STATE LINES, RIGHT? IT'S ABOUT -- IT'S
21 ABOUT WHETHER VENUE IS PROPER, WHETHER A CASE COULD PROPERLY BE
22 TRIED IN A PARTICULAR JUDICIAL DISTRICT.

23 SO I DON'T -- I MEAN, MAYBE I'M WRONG. MAYBE I'M
24 MISSING. THAT'S ENTIRELY POSSIBLE. BUT I THOUGHT -- YOU KNOW,
25 AND I ASKED THAT QUESTION LAST TIME, AND MR. LASKER AGREED WITH

1 ME THAT THE *LEXECON* ISSUE IS THE SAME WHETHER IT'S -- WHETHER A
2 CASE WAS FILED IN THE SOUTHERN DISTRICT OF CALIFORNIA OR THE
3 DISTRICT OF NEVADA, AND I DIDN'T -- I THOUGHT WE -- EVERYBODY
4 KIND OF CAME AWAY FROM THE LAST DISCUSSION ASSUMING THAT THAT'S
5 TRUE.

6 BUT IF YOU -- I MEAN, I GUESS WHAT I'LL ASK YOU IS:
7 IF YOU HAVE AUTHORITY FOR THE PROPOSITION THAT THERE IS A
8 DIFFERENCE BETWEEN A CASE -- FOR *LEXECON* PURPOSES BETWEEN A
9 CASE FILED IN THE SOUTHERN DISTRICT OF CALIFORNIA AND A CASE
10 FILED IN THE DISTRICT OF NEVADA, CAN YOU PLEASE TELL ME WHAT
11 THAT IS?

12 **MS. WAGSTAFF:** I CAN'T TELL YOU AS WE SIT RIGHT HERE
13 ON THE CALL, BUT I COULD ASK MY TEAM TO GET THAT TO ME
14 (INDISCERNIBLE). I JUST KNOW THAT IT'S NOT AS CLEAR CUT AS WE
15 MAY THINK IT IS, AND I CAN PROVIDE THAT TO YOU TOMORROW.

16 **THE COURT:** OKAY. WHY DON'T YOU GO AHEAD AND DO
17 THAT? WHY DON'T YOU FILE A LETTER BRIEF BY TOMORROW, WHICH --
18 IF YOU BELIEVE THAT THERE IS A DIFFERENCE BETWEEN CASES FILED
19 IN OTHER DISTRICTS IN CALIFORNIA AND CASES FILED OUTSIDE OF
20 CALIFORNIA FOR *LEXECON* PURPOSES, EXPLAIN -- EXPLAIN WHY THAT IS
21 AND IDENTIFY THE AUTHORITY THAT SUPPORTS THAT.

22 **MS. WAGSTAFF:** OKAY. WE WILL DO THAT.

23 **MR. LASKER:** AND, YOUR HONOR, JUST FOR THE RECORD --
24 THIS IS ERIC LASKER AGAIN.

25 **THE COURT:** CAN YOU PLEASE -- I NEED YOU TO SPEAK UP

1 ALSO.

2 **MR. LASKER:** I'M SORRY. THIS IS ERIC LASKER AGAIN.

3 I DID GET BACK AND LOOK AT *LEXECON*, AND I THINK THERE
4 IS SOME -- THERE WILL BE SOME DIFFICULTIES IN TRYING A CASE IN
5 YOUR COURT THAT WAS NOT FILED IN YOUR COURT UNDER *LEXECON*. BUT
6 PLAINTIFF'S COUNSEL DID MENTION THEY THOUGHT THERE'S SOME CASE
7 LAW OUT THERE BEFORE. WE'VE NOT FOUND IT, BUT WE'RE HAPPY TO
8 LOOK AT IT.

9 **THE COURT:** OKAY. THEN I'LL ASK -- I'LL ASK MONSANTO
10 TO RESPOND, FILE A RESPONSE TO THE LETTER BRIEF THE NEXT DAY.
11 SO WEDNESDAY.

12 **MR. LASKER:** OKAY.

13 **THE COURT:** BUT WHAT I THINK COULD HAPPEN
14 POTENTIALLY, RIGHT, IS THAT LET'S ASSUME FOR THE SAKE OF
15 DISCUSSION, THAT IF A CASE WAS FILED IN THE SOUTHERN DISTRICT
16 OF CALIFORNIA AND COULD HAVE BEEN FILED IN THE NORTHERN
17 DISTRICT OF CALIFORNIA, BUT WASN'T, I THINK THE SOLUTION TO
18 THAT WOULD BE TO TRANSFER -- FOR ME TO REMAND THE CASE BACK TO
19 THE SOUTHERN DISTRICT OF CALIFORNIA, BUT THEN THE JUDGE WHO
20 RECEIVES IT WOULD TRANSFER THE CASE BACK TO THE NORTHERN
21 DISTRICT OF CALIFORNIA UNDER 1404(A) FOR TRIAL.

22 **MR. LASKER:** I THINK THAT WOULD BE RIGHT, YOUR HONOR.
23 THERE WOULD BE, THOUGH, A NEED (INDISCERNIBLE) FOR DISCOVERY ON
24 VENUE ISSUES. I JUST DON'T KNOW HOW QUICKLY THAT COULD TAKE
25 PLACE.

1 **THE COURT:** RIGHT. AND SO PART OF IT DEPENDS ON
2 WHETHER THERE'S GOING TO BE AGREEMENT -- YOU KNOW, WHETHER
3 THERE'S -- YOU KNOW, IT SOUNDS TO ME LIKE THAT PROCESS OF
4 GETTING THOSE KINDS OF CASES TEED UP FOR TRIAL HERE COULD
5 EITHER BE EASY OR DIFFICULT DEPENDING ON HOW THE PARTIES
6 APPROACH IT, AND SO -- BUT IT WOULD JUST BE A QUESTION OF HOW
7 LONG IT TAKES. IT WOULDN'T REALLY BE A QUESTION OF WHETHER
8 THOSE CASES END UP GETTING TRIED HERE, I SUSPECT.

9 SO -- BUT WE DO NEED TO START THAT PROCESS. WE NEED
10 TO START THE PROCESS OF IDENTIFYING CASES THAT COULD HAVE BEEN
11 BROUGHT HERE EVEN IF THEY WEREN'T BROUGHT HERE. AND I'M OPEN
12 TO SUGGESTIONS ABOUT THAT. I MEAN, MAYBE -- MAYBE THOSE
13 CASES -- MAYBE WHAT MAKES THE MOST SENSE IS THOSE CASES ARE
14 CANDIDATES TO GO TO TRIAL ON MAY 5TH, AS OPPOSED TO
15 FEBRUARY 25TH. I MEAN, MAYBE, YOU KNOW, THE THREE CASES THAT
16 ARE IN GROUP 1 RIGHT NOW -- OR THE FOUR CASES THAT ARE IN
17 GROUP 1 -- BY THE WAY, WHAT'S THE UPDATE -- THERE WAS SOME
18 INDICATION THAT ONE OF THE CASES IN GROUP 1 WAS GOING TO BE
19 DISMISSED. DO WE HAVE ANY UPDATE ON THAT?

20 **MR. MILLER:** YOUR HONOR, MICHAEL MILLER HERE. AND NO
21 UPDATE. THE CLIENT HAS STOPPED RESPONDING, AND WE'RE DOING
22 EVERYTHING WE CAN TO (INDISCERNIBLE) WE EXPECT THAT TO OCCUR,
23 BUT IT HAS NOT OCCURRED YET.

24 **THE COURT:** OKAY. SO THAT CASE WILL BE IN GROUP 1
25 UNTIL IT'S DROPPED, BUT, AS A PRACTICAL MATTER, I GATHER THAT

1 WHAT THAT MEANS IS THAT WE HAVE THREE CASES IN GROUP 1 RIGHT
2 NOW. I THINK WE SHOULD JUST PLAN ON ALL OF THOSE TO GO -- YOU
3 KNOW, WE SHOULD PUT ALL THREE OF THOSE ON A SCHEDULE TO GO TO
4 TRIAL IN FEBRUARY -- ON FEBRUARY 23RD -- 25TH, WITH THE
5 UNDERSTANDING THAT, YOU KNOW, ONLY ONE OF THOSE WILL END UP
6 GOING TO TRIAL ON FEBRUARY 25TH AND ONE OTHER ONE WILL GO TO
7 TRIAL ON MAY 5TH. BUT WE SHOULD TRY TO GET MORE PLAINTIFFS
8 INTO GROUP 1, AND THOSE WILL BE ADDITIONAL CANDIDATES TO GO TO
9 TRIAL ON MAY 5TH.

10 AND SO I GATHER THAT WHAT MS. WAGSTAFF IS PROPOSING
11 IS THAT THE CASES THAT ARE CURRENTLY IN WHAT WE ARE CALLING
12 GROUP 2 WOULD FILE SOMETHING WITHIN, SAY, 14 DAYS OF MY ORDER,
13 WHICH WILL PROBABLY GO OUT TOMORROW, OR MAYBE THE NEXT DAY,
14 TAKING A POSITION ON -- I GUESS, WOULD IT JUST BE EXPLAINING
15 WHETHER ANY EXPOSURE OCCURRED IN THE NORTHERN DISTRICT OF
16 CALIFORNIA? IS THAT REALLY WHAT IT WOULD BOIL DOWN TO?

17 **MS. WAGSTAFF:** WELL, YOUR HONOR, SINCE WE'VE BEEN ON
18 THE PHONE WITH YOU --

19 **THE COURT:** AND WHETHER YOU -- AND I GUESS WHETHER
20 YOU WOULD -- A, WAS THERE ANY EXPOSURE IN THE NORTHERN DISTRICT
21 OF CALIFORNIA, AND, B, DO YOU CONSENT TO HAVING YOUR -- IF NOT,
22 DO YOU CONSENT TO HAVING YOUR CASE TRIED IN THE NORTHERN
23 DISTRICT OF CALIFORNIA?

24 **MS. WAGSTAFF:** SO SINCE WE'VE BEEN TALKING WITH
25 YOU -- THIS IS AIMEE WAGSTAFF -- WE (INDISCERNIBLE) TWO QUICK

1 QUESTIONS -- AND THIS IS OBVIOUSLY JUST SINCE WE'VE BEEN ON THE
2 PHONE WITH YOU. BUT THE FIRST ONE IS: DID YOU USE ROUNDUP IN
3 THE NORTHERN DISTRICT OF CALIFORNIA; IF YES, WHAT'S THE DATES?
4 TWO, WERE YOU DIAGNOSED WITH OR TREATED FOR YOUR NHL IN THE
5 NORTHERN DISTRICT OF CALIFORNIA; YES OR NO.

6 I GUESS ANOTHER QUESTION WOULD BE -- AND I MENTIONED
7 THIS EARLIER -- THERE'S BEEN A FEW PLAINTIFFS' COUNSEL WHO HAVE
8 REACHED OUT TO ME AND SAID THAT THEY WOULD CONSENT TO THEIR
9 SOUTHERN DISTRICT AND CENTRAL DISTRICT PLAINTIFFS BEING TRIED
10 IN YOUR COURT. I GUESS THEN WOULD MONSANTO NEED TO CONSENT TO
11 THAT AS WELL? I'M NOT CERTAIN. IT SOUNDS LIKE MR. LASKER
12 PROBABLY HAS AN OPINION ON THAT.

13 **THE COURT:** WELL, IT SOUNDS LIKE MONSANTO MAY, BUT
14 YOU CAN -- THAT'S WHAT YOU WILL ADDRESS. THEY NEED TO CONSENT,
15 BUT THAT'S WHAT YOU'LL ADDRESS IN YOUR BRIEF, RIGHT?

16 **MS. WAGSTAFF:** CORRECT. SO ONE THING WE COULD DO IS
17 I COULD SEND THOSE QUESTIONS IN WRITTEN FORM THAT I JUST READ
18 TO YOU OVER TO MR. LASKER WITHIN A FEW MINUTES AFTER THIS
19 HEARING ENDS, AND WE CAN AGREE ON WHAT QUESTIONS WOULD BE
20 ASKED, AND WE COULD FORWARD THEM TO YOUR HONOR TO PUT IN AN
21 ORDER AND SEND OUT TO THE GROUP TO PLAINTIFFS.

22 **THE COURT:** I HADN'T THOUGHT ABOUT WHETHER DIAGNOSIS
23 OR TREATMENT IN THE NORTHERN DISTRICT -- EVEN IF YOU WEREN'T
24 EXPOSED IN THE NORTHERN DISTRICT, IF DIAGNOSIS OR TREATMENT IN
25 THE NORTHERN DISTRICT WOULD CREATE VENUE IN THE NORTHERN

1 DISTRICT.

2 DO YOU HAVE ANY -- DO YOU HAVE A THOUGHT ABOUT THAT,
3 MR. LASKER?

4 **MR. LASKER:** THERE ACTUALLY WAS A CASE WHERE THIS WAS
5 ADDRESSED, A CASE CALLED *RUBIO*, EARLY ON IN THE LITIGATION
6 WHEREIN I BELIEVE THE CENTRAL DISTRICT OF CALIFORNIA -- WHERE
7 THERE WAS A VENUE ANALYSIS CONDUCTED AND VENUE ANALYSIS DID
8 LOOK AT PLACES OF EXPOSURE AND PLACES OF DIAGNOSIS AS WELL IN
9 MAKING THAT ANALYSIS, BUT I DO THINK THOSE WOULD BE -- WOULD BE
10 RELEVANT AS WELL.

11 **THE COURT:** OKAY.

12 **MR. LASKER:** I GUESS THE OTHER ISSUE THAT WE WOULD
13 HAVE AND HAS NOT YET BEEN DISCUSSED IS, IF WE'RE GOING TO HAVE
14 THESE CASES REMANDED OR POTENTIALLY REMANDED TO HOME VENUES, WE
15 WOULD WANT THOSE REMANDS TO BE WITH PLAINTIFF FACT SHEETS SO
16 THAT MONSANTO HAS THEIR EQUAL INFORMATION OR SOME INFORMATION
17 ABOUT THE CASE WHEN THEY GO OUT OF THE MDL.

18 **THE COURT:** OKAY. BUT, I MEAN, AT THIS EARLY STAGE,
19 I WOULDN'T BE -- I WANT TO BE VERY CLEAR. I MEAN, YOU KNOW, I
20 DON'T THINK IT IS TIME TO BE REMANDING ANY CASES TO HOME
21 DISTRICT FOR TRIAL. I DON'T THINK IT WOULD BE APPROPRIATE FOR
22 ME TO BE REMANDING CASES AT THIS TIME TO HOME DISTRICTS TO
23 ADJUDICATE, YOU KNOW, SUMMARY JUDGMENT MOTIONS ON SPECIFIC
24 CAUSATION OR ANYTHING LIKE THAT. I VIEW THAT AS BEING MY JOB
25 TO DEAL WITH THOSE PRETRIAL ISSUES.

1 THE ONLY WAY I WOULD REMAND CASES TO HOME DISTRICTS
2 TO BE PERFECTLY, YOU KNOW, STRAIGHTFORWARD ABOUT IT, IS WITH
3 THE IDEA THAT THEY WOULD BE TRANSFERRED BACK HERE FOR
4 CONVENIENCE FOR THE PURPOSE OF CONDUCTING THE TRIAL HERE. SO I
5 WANT TO MAKE THAT VERY CLEAR.

6 BUT IT SOUNDS LIKE THAT MIGHT BE -- WHAT MS. WAGSTAFF
7 IS PROPOSING WOULD BE A PRODUCTIVE APPROACH, WITHIN 14 DAYS
8 REQUIRE ALL THE PLAINTIFFS IN GROUP 2 TO MAKE A FILING -- I
9 DON'T KNOW IF IT WOULD BE A COURT FILING; I THINK IT PROBABLY
10 SHOULD BE A COURT FILING -- SAYING WHETHER -- SAYING WHETHER
11 THEY USED ROUNDUP IN THE NORTHERN DISTRICT OF CALIFORNIA,
12 WHETHER THEY WERE DIAGNOSED OR TREATED WITH NHL IN THE NORTHERN
13 DISTRICT OF CALIFORNIA, AND IF THE ANSWER IS "NO" TO BOTH OF
14 THOSE QUESTIONS, WOULD THEY CONSENT TO THEIR CASES BEING TRIED
15 IN THE NORTHERN DISTRICT OF CALIFORNIA.

16 **MS. WAGSTAFF:** YOUR HONOR?

17 **THE COURT:** YEAH.

18 **MS. WAGSTAFF:** MR. WISNER FROM PLAINTIFFS' COUNSEL
19 WANTS TO ADDRESS SOMETHING WITH RESPECT TO VENUE.

20 **THE COURT:** OKAY.

21 **MR. WISNER:** YOUR HONOR, BRENT WISNER HERE.

22 THERE'S ALSO ANOTHER POTENTIAL ISSUE FOR VENUE, AND
23 THAT IS -- AND THIS RELATES SPECIFICALLY TO THE JCCP PROCEEDING
24 WHERE WE HAVE BEEN FILING OUR CASES IN SAN FRANCISCO SUPERIOR
25 COURT AND THEN HAVING THEM TRANSFERRED TO ALAMEDA COUNTY. AND

1 THE BASIS OF FILING IN SAN FRANCISCO IS THE ALLEGATION THAT THE
2 PRIMARY DISTRIBUTOR FOR ROUNDUP PRODUCTS IN CALIFORNIA IS BASED
3 OUT OF SAN FRANCISCO, AND WE HAVE -- WE HAVE DOCUMENTS AND
4 EVIDENCE TO SUPPORT THAT. AND SO THERE IS A POTENTIAL WAY OF
5 HAVING VENUE IN THE NORTHERN DISTRICT OF CALIFORNIA BECAUSE
6 DISTRIBUTION AND CONDUCT, OR ACTUALLY GETTING THE PRODUCT OUT,
7 STEMS ALL FROM SAN FRANCISCO FOR THE ENTIRE STATE OF
8 CALIFORNIA.

9 **THE COURT:** OKAY. AND I GATHER THAT'S -- SO
10 THAT'S -- FOR A WHILE THERE IT WAS A MYSTERY TO ME WHY ALL OF
11 THOSE CASES WERE IN CALIFORNIA AND HADN'T BEEN REMOVED TO
12 FEDERAL COURT, BUT THE REASON IS IN THE CALIFORNIA CASES, YOU
13 NAMED THAT DISTRIBUTOR AS A DEFENDANT; IS THAT RIGHT?

14 **MR. WISNER:** THAT'S CORRECT, YOUR HONOR.

15 **THE COURT:** AND THAT DEFEATED DIVERSITY. BUT IN
16 THESE FEDERAL CASES, THAT DISTRIBUTOR HASN'T -- HAS NOT BEEN
17 NAMED AS A DEFENDANT IN ANY OF THEM, RIGHT?

18 **MR. WISNER:** THAT'S CORRECT, ALTHOUGH I DON'T BELIEVE
19 THE VENUE STATUTE REQUIRES THEM TO BE A NAMED DEFENDANT FOR
20 THEIR CONDUCT CREATES VENUE.

21 **THE COURT:** I SEE. OKAY. YEAH, THAT IS --

22 **UNIDENTIFIED SPEAKER:** (INDISCERNIBLE) YOUR HONOR --

23 **THE COURT:** MAYBE THAT'S PART OF THE -- PART OF --
24 YOU KNOW, PART OF THE ANSWER IN YOUR LETTER -- YOU KNOW, THAT
25 YOU'LL SET OUT IN YOUR LETTER BRIEF. AND THAT'S INTERESTING.

1 OBVIOUSLY, THAT'S NOT SOMETHING I'VE THOUGHT ABOUT.

2 BUT HOW WOULD THAT AFFECT THE FILING THAT THE
3 PLAINTIFFS -- THAT THESE PLAINTIFFS WOULD MAKE ON -- IN 14
4 DAYS?

5 **MR. WISNER:** WELL, YOUR HONOR, IN THAT FILING IF EACH
6 PLAINTIFF COULD, TO THE EXTENT THAT THEY CAN, MAKE AN
7 ALLEGATION OR AN ASSERTION ABOUT SOME CONNECTION OR NEXUS TO
8 THE NORTHERN DISTRICT OF CALIFORNIA THROUGH THAT ARGUMENT, THEN
9 I THINK THAT COULD CREATE VALID VENUE. AND, YOUR HONOR, THAT
10 ACTUALLY LEADS TO A SECOND PROBLEM THAT WE HAVEN'T REALLY
11 ADDRESSED. AND, OF COURSE, WE CAN THINK ABOUT IT. WE DON'T
12 HAVE TO MAKE A DECISION NOW.

13 BUT AN ALTERNATIVE TO SENDING THE CASE BACK TO THE
14 HOME DISTRICT IN CALIFORNIA AND THEN REMANDING IT BACK AGAIN
15 UNDER 1404(A) WOULD BE TO SIMPLY TOLL THE STATUTE OF
16 LIMITATIONS FOR THOSE PLAINTIFFS THAT ARE IN CALIFORNIA SO THAT
17 THEY CAN JUST REFILE IN THE NORTHERN DISTRICT OF CALIFORNIA,
18 AND IT WOULD ELIMINATE TRANSFER ISSUE ALL TOGETHER.

19 THE ONLY REASON WHY WE WOULDN'T DO THAT, IF WE WERE
20 OTHERWISE TO CONSENT, WOULD SIMPLY BE A STATUTE OF LIMITATIONS
21 ISSUES, BUT THE COURT HAS BROAD TOLLING ABILITY UNDER EQUITABLE
22 TOLLING.

23 SO THERE'S A LOT OF DIFFERENT WAYS WE CAN DO THIS. I
24 JUST WANT TO THROW IT OUT THERE AS ANOTHER POSSIBILITY.

25 **THE COURT:** RIGHT. WELL IF BOTH SIDES --

1 **UNIDENTIFIED SPEAKER:** YOUR HONOR --

2 **THE COURT:** IF BOTH SIDES CONSENT TO THE CASE BEING
3 TRIED IN THE NORTHERN DISTRICT OF CALIFORNIA, THEN NONE OF THIS
4 DISCUSSION MATTERS, RIGHT? YOU CAN WAIVE VENUE. YOU CAN
5 CONSENT TO YOUR CASE BEING TRIED IN THE NORTHERN DISTRICT OF
6 CALIFORNIA. SO ANY PLAINTIFF WHO WANTS THEIR CASE TRIED IN THE
7 NORTHERN DISTRICT OF CALIFORNIA CAN HAVE IT TRIED IN THE
8 NORTHERN DISTRICT OF CALIFORNIA AS LONG AS EITHER MONSANTO ALSO
9 CONSENTS OR THEIR, YOU KNOW, VENUE -- THE CASE COULD HAVE BEEN
10 BROUGHT IN THE NORTHERN DISTRICT OF CALIFORNIA.

11 SO UNLESS I'M MISSING SOMETHING, I'M NOT SURE THERE
12 WOULD EVER BE A REASON TO GO THROUGH THE PROCESS OF HAVING A
13 TOLLING AGREEMENT AND DISMISSING THE CASE AND FILING A NEW CASE
14 IN THE NORTHERN DISTRICT OF CALIFORNIA.

15 AM I -- WHAT AM I MISSING, MR. WISNER?

16 **MR. WISNER:** OH, IT WOULD JUST BE AN ALTERNATIVE TO
17 DOING THE DOUBLE TRANSFER.

18 **THE COURT:** BUT WHY WOULDN'T --

19 (SIMULTANEOUS COLLOQUY.)

20 **THE COURT:** BUT WHY WOULDN'T -- WHY WOULDN'T -- I
21 MEAN, WHY WOULDN'T MONSANTO JUST CONSENT TO THAT? I MEAN, IF
22 IT'S GOING TO CONSENT TO TOLLING THE STATUTE OF LIMITATIONS FOR
23 THE PURPOSE OF THIS SORT OF CONVOLUTED PROCESS, WHY WOULDN'T IT
24 JUST CONSENT TO THE CASE BEING TRIED IN THE NORTHERN DISTRICT
25 IN THE FIRST PLACE?

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(AT WHICH POINT, THE FTR RECORDING SYSTEM FAILED, AND
OFFICIAL REPORTER KATHERINE SULLIVAN WAS BROUGHT IN
TO REPORT THE PROCEEDINGS.)

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CERTIFICATE OF TRANSCRIBER

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF
THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE
U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE
PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE
ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR,
RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN
WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT
FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE
ACTION.



JOAN MARIE COLUMBINI

SEPTEMBER 28, 2018