

September 19, 2019

The Honorable Gloria Clark Reno  
Presiding Judge of St. Louis County Circuit Court  
Division 19, Courtroom 482  
105 S. Central Avenue  
St. Louis, MO 63105

Re: *Walter Winston et al v. Monsanto Company*, transferred from the  
Circuit Court of The City of St. Louis, Cause No. 19SL-CC04115  
(previously City Case No. 1822-CC00515)

Dear Judge Reno:

On behalf of Monsanto Company (“Monsanto”), we are submitting this letter with respect to the above-referenced case, which consists of the claims of thirteen plaintiffs asserting injuries from alleged exposure to Monsanto’s Roundup® branded products. The claims of these thirteen plaintiffs were transferred this week from the Circuit Court of the City of St. Louis by the Honorable Michael K. Mullen. This Court has assigned the case to Division 8 for hearing and determination.

Plaintiffs’ counsel have informed Monsanto’s counsel that Plaintiffs intend to ask this Court to temporarily assign Judge Mullen to preside over a single trial of all claims in this case in St. Louis County, with that trial to commence on or about October 15, 2019. We are submitting this letter to advise this Court of Monsanto’s strenuous objection to this proposal and to request an opportunity to brief the merits of any such proposal and be heard with respect thereto.

Before the claims were transferred, Plaintiffs filed a motion with Judge Mullen requesting that upon transfer of the claims, Judge Mullen also assign himself to temporarily preside over trial of these claims in St. Louis County. Monsanto objected to the request at the time, stating its position that the transferred claims could and should be handled by St. Louis County judges according to their own schedule. For several reasons, that continues to be Monsanto’s position.

First, Plaintiffs have not identified any reason for this extraordinary proposal, other than their desire to keep the trial setting they had in the City of St. Louis. But Plaintiffs have only themselves to blame for the position they are now in. At the time they filed their claims, venue in the City of St. Louis was not proper based upon the plain language of Rule 51.01. The Missouri Supreme Court’s decision in *State ex rel. Johnson & Johnson v. Burlison*, 567 S.W.3d

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168 (Mo. banc 2019) (“*J & J*”) flatly confirmed that conclusion. Yet Plaintiffs fought venue at every opportunity instead of agreeing long ago to transfer their claims to St. Louis County and seeking a trial setting in this Court according to this Court’s usual procedures. Plaintiffs urged Judge Mullen to ignore clear precedent, apparently to keep their cases in front of City juries and in a venue where the Court would require that Monsanto defend multiple claims, under multiple state laws, in single trials.

Now, having finally conceded that they cannot proceed in the City of St. Louis (but only after the Missouri Supreme Court granted a preliminary writ to review the issue), Plaintiffs are trying to bring their forum with them. This maneuver should be swiftly and definitively rejected. The answer to *J & J* is to try cases in the forum and with the judges where they belong, not to import City judges and the City’s pretrial rulings into the County. Granting this request now would reward the judge-shopping and gamesmanship demonstrated by these Plaintiffs throughout this litigation. And it would encourage other litigants to engage in similar misuse of the courts by filing their claims in the wrong venue and then requesting “reassignment” of their preferred judge when their claims are ultimately transferred.

This case should be assigned and handled in this Circuit in the same manner as any other Roundup<sup>®</sup> case filed in or transferred to this Court. The judges of this Circuit are more than capable of handling trials of proceedings in this Court. In fact, the judges assigned to preside over the Roundup<sup>®</sup> cases in this Circuit have established their own procedures for administration and trial of these cases. Plaintiffs have provided no valid ground for this Court to allow them to leapfrog over the cases properly filed in this venue years ago in order to obtain an immediate trial setting less than a month after transfer of their claims.

In addition, a thirteen-person trial also directly contravenes this Court’s administration of its pending Roundup<sup>®</sup> cases. Despite the requests of similar Roundup<sup>®</sup> plaintiffs to this Court, the judges of this Circuit have refused to set the claims of more than two plaintiffs for a single trial. This Court has imposed these limitations for good reason. A joint trial of the disparate claims of thirteen plaintiffs – claims arising under the law of three different states – would inevitably and impermissibly confuse the jury and deprive Monsanto of a fair trial. Such a trial would never survive appellate review.

Finally, practical concerns militate against Plaintiffs’ request. In addition to all the work that would need to be completed by the parties to prepare for trial of this magnitude in such a short time, Court personnel would have to produce the considerable jury pool necessary to seat a jury for a 5-7 week trial. In order to commence that trial in October and complete it before the holidays, those potential jurors would need to be summoned in just a few short weeks.

For all of these reasons, Monsanto objects to the proposed transfer of Judge Mullen and for trial of this case requests that it have the opportunity to fully brief and be heard on any such proposal. We appreciate your consideration of this matter.

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Respectfully submitted,

By:   
Edward L. Dowd, Jr., #28785  
DOWD BENNETT LLP  
7733 Forsyth Blvd., Suite 1900  
St. Louis, MO 63105  
Telephone: (314) 889-7300  
Facsimile: (314) 863-2111  
edowd@dowdbennett.com

Erik L. Hansell, #51288  
Gregory J. Minana, #38004  
Christine F. Miller, #34430  
HUSCH BLACKWELL LLP  
The Plaza in Clayton  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Telephone: (314) 480-1500  
Facsimile: (314) 480-1505  
erik.hansell@huschblackwell.com  
greg.minana@huschblackwell.com  
chris.miller@huschblackwell.com

Booker T. Shaw, #25548  
THOMPSON COBURN LLP  
One US Bank Plaza  
St. Louis, MO 63101  
Telephone: (314) 552-6000  
Facsimile: (314) 552-7000  
bshaw@thompsoncoburn.com

Gregory S. Chernack  
(admitted *pro hac vice*)  
HOLLINGSWORTH LLP  
1350 I Street, N.W.  
Washington, DC 20005  
Telephone: (202) 898-5800  
Facsimile: (202) 682-1639  
gchernack@hollingsworthllp.com

*Attorneys for Defendant Monsanto Company*

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cc: Betsy AuBuchon, Clerk of Missouri Supreme Court  
The Honorable Dean P. Waldemer  
The Honorable Michael K. Mullen  
All Counsel of Record (via court's electronic filing system)