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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

BADER FARMS, INC.,  
Plaintiffs,

vs.

Cause No. 1:16CV299 SNLJ

MONSANTO CO., AND BASF CORPORATION,  
Defendants.

=====

TRIAL DAY 3  
VOLUME 3A PAGES 401 - 521

BEFORE THE HONORABLE STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE

JANUARY 29, 2020

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Reported by:

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JANUARY 29, 2020

Trial :

DR. BOYD CAREY:

DIRECT EXAMINATION CONTINUED BY  
MR. RANGLES

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1  
2 TRIAL  
3

4 The trial resumed on Wednesday, the 29th day of  
5 January, 2020, before the Honorable Stephen N. Limbaugh, Jr.,  
6 United States District Judge, of the Eastern District of  
7 Missouri, Southeastern Division, before a jury and two  
8 alternate jurors, who were impaneled, selected and sworn.

9 (Proceedings resumed in open court outside the  
10 presence of the jury.)

11 THE COURT: Good morning.

12 MR. MILLER: Good morning, Your Honor.

13 THE COURT: We have just a couple of preliminary  
14 matters I see.

15 MR. MILLER: Yes, Your Honor, if I may.

16 Your Honor, we have submitted -- as we've done with  
17 Mr. Smith, we submitted a list of -- or a proposed order for  
18 Your Honor to sign regarding the exhibits that we understand  
19 will be presented to Dr. Carey in his direct.

20 But there are a few on here that I would like to  
21 make brief arguments on, Your Honor.

22 THE COURT: Okay.

23 MR. MILLER: The ones that I'm going to make  
24 arguments on the -- actually, the ruling column we have left  
25 blank for now.

1 I do want to note that we have scratched out the  
2 last exhibit, 1108, because Mr. Randles informed us this  
3 morning that they're not going to use that with this witness.  
4 As it turns out, they're planning on using it with a  
5 different witness.

6 THE COURT: Okay. I'll just put withdrawn on that.

7 MR. MILLER: Yes.

8 So the first one I'd like to talk about, Your  
9 Honor, actually the first two are Exhibits 198 and 199, and  
10 they go together.

11 THE COURT: Okay.

12 MR. MILLER: They're on the third page, Your Honor.  
13 If you could bring those up, please. 198 and 199. It is  
14 a -- an e-mail, internal e-mail, I believe it was internal,  
15 from within Monsanto with an attachment.

16 And the reason we're bringing this up, Your Honor,  
17 is this -- these two documents -- well, Mr. Carey -- Dr.  
18 Carey is not on them, but more importantly these two  
19 documents were brought up -- this is 198. If you could bring  
20 up 199 as well which is the attachment, I believe.

21 These two documents -- yes -- were part of our  
22 motion in limine either No. 32 or 33. I believe it was 33.

23 THE COURT: Okay.

24 MR. MILLER: And although that motion in limine was  
25 addressed on Dr. Baldwin in particular, in discussing these

1 particular documents we stated in our motion in limine that  
2 they should not come in through Dr. Baldwin nor through any  
3 other witness.

4 THE COURT: I thought that we said that the  
5 Illinois report should not come in.

6 MR. MILLER: That's exactly --

7 THE COURT: So --

8 MR. MILLER: And -- and my understanding is it  
9 was -- well, in their reply the Plaintiffs said that the  
10 motion is moot, because they're not using it with Dr.  
11 Baldwin. They didn't say it was coming in through anybody  
12 else, but we would submit it should not come in.

13 MR. RANGLES: We talked about it twice. We talked  
14 about it the first time with Dr. Baldwin, and we said it  
15 wasn't going to be used with Dr. Baldwin, but then we talked  
16 about it later when we were discussing documents for notice.

17 This is a notice document. It's a survey of the  
18 farmers in Illinois by the Illinois IFCA, which was  
19 discussed in the -- the organization was discussed in the  
20 Magin deposition yesterday, and it is essentially responsive  
21 evidence to their claim that farmers wanted it, liked it,  
22 needed it.

23 This is a survey where they say, well, they're  
24 actually having all kinds of problems with it. I'm offering  
25 the survey for notice. And the cover e-mail actually



1 comments on the survey, so I'm offering it for substantive  
2 evidence.

3 THE COURT: Well, what about, though, for Dr.  
4 Baldwin?

5 MR. RANGLES: I don't plan to use this survey with  
6 Dr. Baldwin. I plan to use it with this witness because  
7 Monsanto received it, and I'm going to talk about its notice.  
8 It's not substantive evidence.

9 THE COURT: Well, it's nothing that Dr. Baldwin  
10 relied on then or anything like that?

11 MR. RANGLES: I think he looked at it. He looked  
12 at a ton of stuff. But I don't think -- I don't intend -- I  
13 don't -- I don't think it's formal reliance material.

14 THE COURT: So it's not foundational for anything?

15 MR. RANGLES: Yeah, background.

16 THE COURT: Why isn't this notice then?

17 MR. MILLER: Your Honor, again, I think notice is  
18 if we talk about some particulars in the e-mail, perhaps, but  
19 allowing the survey in we don't know what the basis of the  
20 survey is. We have no idea if it was accurate or not.

21 If you expand notice to that concept, then anything  
22 that is sent from any source to the company would qualify as  
23 notice.

24 THE COURT: I thought we would have been over this  
25 repeatedly throughout the six pretrial conferences about

1 surveys.

2 MR. MILLER: Well, the reason I would bring this  
3 up, Your Honor, is because it was our understanding that they  
4 weren't going to use this one because they said our motion  
5 was moot as to that. That's why I'm bringing it up now.

6 THE COURT: So how is it different from all the  
7 other surveys that we've already ruled on?

8 MR. MILLER: The other surveys I don't think are  
9 any different, Your Honor.

10 THE COURT: Okay. So I'll overrule the objection  
11 then.

12 MR. MILLER: Very good, Your Honor.

13 MR. MANDLER: Just so it's clear, Your Honor, we  
14 had joined in the objection for 198 and 199, particularly for  
15 199 although we only listed 198 --

16 THE COURT: That's fine.

17 MR. MANDLER: -- for all the same reasons. I think  
18 the notice you can get in through 198. The survey has all  
19 kinds of additional hearsay and foundational issues that  
20 we've briefed in ECF 393 on surveys. So we'll join for that  
21 purpose as well.

22 THE COURT: Yeah, I understand, but it's still  
23 notice.

24 MR. MANDLER: Right, but the notice can be  
25 accomplished. It's cumulative and has all these other --

1 THE COURT: Cumulative is overruled.

2 MR. MANDLER: Okay.

3 MR. MILLER: Your Honor, the next one I'd like to  
4 discuss is Exhibit 311, which is on the last page of the  
5 document, Your Honor. And this is this one-page document  
6 academic surveys.

7 The problem with this document, Your Honor, is this  
8 was a one-page piece of paper that came out of Dr. Witten's  
9 office. He was asked about it at his deposition. He  
10 doesn't know where it came from. He doesn't know if it was  
11 from a predecessor in his office. There's no metadata from  
12 this, so we have no idea who wrote it, when it was written,  
13 if it was used, how it was used, who saw it, if anybody saw  
14 it.

15 It's simply a document -- an authorless document,  
16 undated document. And --

17 THE COURT: Well I assume they're going to try to  
18 lay some foundation for it.

19 MR. MILLER: I don't know how they can. Dr. Carey  
20 has never seen this document.

21 THE COURT: Is he going to testify about it?

22 MR. RANGLES: Yeah, I'm going to ask about notice.  
23 If you look at the top, it says, "Academic Surveys." And  
24 then it summarizes the findings of academic surveys. We  
25 have -- we have the academic survey that we believe underlies

1 this that Monsanto conducted. And this summarizes the  
2 finding of that.

3 But, again, it's in the witness's office. It has a  
4 Bates Number on it.

5 MR. MILLER: It's not from Dr. Carey's office.

6 MR. RANGLES: No. No. It's in one of -- it's in  
7 Dr. Witten's office, his successor in the same duties. It's  
8 in his office. It has their number. They produced it. I'm  
9 offering it for notice that the academics said this to you,  
10 and you know they were saying this. Again, it's a document  
11 in his file. It's notice.

12 MR. MILLER: Your Honor, again, there is a limit at  
13 some point. And when you have a document that nobody can  
14 say I ever remember seeing this document, we don't know who  
15 wrote this document, we have no idea what the purpose was for  
16 this document, it gets to the point to where --

17 THE COURT: Well, then if all that's -- if that's  
18 the testimony, then it would be excluded. If he's never  
19 seen this document, then --

20 MR. MILLER: Right.

21 THE COURT: -- that's the end of it.

22 MR. MILLER: Dr. Carey has never seen this  
23 document.

24 MR. RANGLES: Well, now, he doesn't have to see it.  
25 Notice goes to the company. A newspaper article --

1 THE COURT: We're talking about this witness only.

2 MR. RANGLES: Yeah, but I just want to talk --

3 THE COURT: Aren't we?

4 MR. MILLER: Yes.

5 MR. RANGLES: But, again, the --

6 THE COURT: Why hasn't this been resolved a long  
7 time ago? I mean, we spent six pretrial days on this kind of  
8 thing.

9 MR. MILLER: Your Honor, my understanding is this  
10 was brought up previously, but we wanted to bring it back to  
11 your attention now that we have the context.

12 When they have the documents there, we don't  
13 know -- originally when it was pretrial, we have no idea  
14 which witness they're trying to bring this in through.

15 THE COURT: Nor do I.

16 MR. MILLER: Correct. And so now we know they're  
17 trying to bring it in through a witness that's never seen it  
18 before. That's why I'm bringing it up now, Your Honor.

19 MR. RANGLES: Your Honor, that doesn't matter.  
20 This is a notice document found in a Monsanto file. I could  
21 stand up and read it, with the Court's permission, to the  
22 jury.

23 I don't need a sponsoring witness for a notice  
24 document with their Bates Number found in the office of the  
25 man who's the head of claims.

1           THE COURT: I understand, but if he's never seen  
2 it, he's never seen it. Maybe somebody else has seen it  
3 or --

4           MR. RANGLES: Well, I can ask this witness if he's  
5 seen it.

6           THE COURT: That's right.

7           MR. RANGLES: But I don't think that's the  
8 standard. It's included in their files. They're held to  
9 the standards --

10          THE COURT: I agree. I agree with that.

11          MR. RANGLES: They're held to the standard --

12          THE COURT: If they produced it to you, it comes  
13 in.

14          MR. RANGLES: They did.

15          THE COURT: But what does this witness have to do  
16 with it?

17          MR. RANGLES: All right. Your Honor, then I just  
18 move to admit this document now, and I won't ask this witness  
19 about it.

20          THE COURT: Well, I mean --

21          MR. RANGLES: I just want it in. And so I'll move  
22 to admit it now. You've heard the argument about this  
23 document.

24          THE COURT: You've got to lay some kind of  
25 foundation for it.

1 MR. RANGLES: Well, Your Honor, they produced it to  
2 us.

3 THE COURT: Okay.

4 MR. RANGLES: It's got their Bates Number on it.

5 THE COURT: Right.

6 MR. RANGLES: As he admits, it was found in the  
7 office of the man who was his successor of head of claims. I  
8 believe that's a sufficient foundation for notice.

9 THE COURT: Well, why don't you ask him about that  
10 then.

11 MR. RANGLES: Well, he's over there. I mean, he --

12 MR. MILLER: He's going to testify.

13 THE COURT: Yeah. Well, why don't you put it in  
14 when he's there? If he's the one that found it, that makes  
15 sense.

16 MR. RANGLES: If they represent that he's going to  
17 testify, but, again, Your Honor --

18 THE COURT: You can call him.

19 MR. RANGLES: Do you want to call him right now?

20 MR. MILLER: Well, it's your case.

21 MR. RANGLES: I mean, I just want the document  
22 admitted. And, as I said, I don't have to have a sponsoring  
23 witness for documents found in their files.

24 MR. MILLER: Well, I disagree with that, Your  
25 Honor.

1 MR. RANGLES: I've never -- look, I've tried tons  
2 of tobacco --

3 THE COURT: I don't care about tobacco. The  
4 objection is overruled. We're going to proceed with this  
5 witness.

6 This is ridiculous. Six pretrial conferences, and  
7 this is not yet resolved? Okay.

8 Everybody sit down and bring the jury in.

9 (A discussion was held off the record at the  
10 bench.)

11 (Proceedings resumed in open court.)

12 THE COURT: Please be seated.

13 Good morning, ladies and gentlemen. The weather  
14 turned out okay after all. Sorry for the delay.

15 Mr. Randles, call your next witness.

16 MR. RANGLES: Thank you, Your Honor.

17 We call Dr. Boyd Carey from Monsanto back to the  
18 stand.

19 THE CLERK: Do you need him re-sworn, Judge?

20 THE COURT: Dr. Carey, you're still under oath.

21 You may proceed.

22 MR. RANGLES: Thank you, Your Honor.

23 Good morning.

24 DR. BOYD CAREY,  
25 being previously sworn, testified as follows:



## 1 DIRECT EXAMINATION CONTINUED

2 BY MR. RANGLES:

3 Q. Good morning, Dr. Carey.

4 A. Good morning.

5 Q. I want to start by talking to you about the notion of  
6 dicamba tolerant seeds; all right?

7 A. Okay.

8 Q. Now, when we say dicamba tolerant, in short it means you  
9 can use dicamba over the seeds as a herbicide: Is that fair?

10 A. That's fair enough. That's correct.

11 Q. You cannot use dicamba over the top of seeds that are  
12 not either naturally tolerant or that have been engineered to  
13 be tolerant: Is that also correct?

14 A. That's correct, yes.

15 Q. So before 2015 with the release of the dicamba tolerant  
16 cotton seeds, farmers couldn't spray dicamba over the top of  
17 their cotton without killing it; correct?

18 A. Not over the top, that's correct.

19 Q. And, likewise, before the release of the dicamba  
20 tolerant soybean seeds in 2016, farmers couldn't spray  
21 dicamba over the top of their soybeans without running the  
22 risk of killing soybeans; correct?

23 A. Same situation, yes.

24 Q. So the marketing of the seeds made it possible to spray  
25 dicamba over the top of cotton and soybeans?

1 A. Despite the fact that it would have been illegal, but,  
2 yes, technically they could do that.

3 Q. It made it possible for spraying to occur without  
4 killing those crops; correct?

5 A. That's correct, yes.

6 Q. And it would have killed the crops previously; fair  
7 enough?

8 A. Correct.

9 Q. I would like to show you, Doctor, Plaintiff's  
10 Exhibit 282. Can you see that there?

11 A. I can see it. I can see that.

12 Q. Okay. Do you see this is a -- this is a Corn State  
13 presentation on Roundup Ready 2 Xtend Crop System Built the  
14 Road Ahead 2016. Do you see that?

15 A. I do.

16 Q. Are you familiar with these types of presentations that  
17 Monsanto makes to various groups?

18 A. This one is not familiar, but, yes, I'm familiar with  
19 these types of presentations, yes.

20 (Plaintiff's Exhibit No. 282, Presentation, was  
21 identified.)

22 BY MR. RANGLES:

23 Q. And I would like to -- let's turn to the one that we  
24 intend to ask you about.

25 And I'll just ask you while they're finding it

1 electronically. These types of presentations are usually  
2 made by the folks at Monsanto and various groups; correct?

3 A. Yes. This one -- this one is through our seed partners  
4 who license and utilize the trades, yes.

5 Q. And that's a regular practice of Monsanto to produce  
6 these type of presentations and then to show them to your  
7 seed partners and other groups?

8 A. Yes. It's part of our education and training.

9 MR. RANGLES: Your Honor, I'd like to offer  
10 Plaintiff's 282 into evidence.

11 MR. MILLER: Objection as previously stated, Your  
12 Honor.

13 THE COURT: Overruled. I thought we were --

14 MR. MILLER: Yeah.

15 THE COURT: It's overruled and admitted.

16 (Plaintiff's Exhibit No. 282, Presentation, was  
17 received.)

18 MR. MILLER: It's on the list, Your Honor.

19 MR. RANGLES: Thank you, Your Honor.

20 BY MR. RANGLES:

21 Q. I want to show a you a portion of this.

22 MR. RANGLES: May we publish, Your Honor?

23 THE COURT: Yes.

24 BY MR. RANGLES:

25 Q. Do you see at the top -- at the very top it says Roundup

1 Ready Xtend crop system? Do you see that?

2 A. I do.

3 Q. And then it talks about providing tools to growers.

4 And then there's a graphic in the middle. Do you see that?

5 A. Yes.

6 Q. It's called Roundup Ready PLUS?

7 A. Yes.

8 Q. And it says, "Roundup Ready Xtend Crop System equals  
9 Roundup Xtend VaporGrip and XtendiMax VaporGrip." Do you see  
10 that?

11 A. I do.

12 Q. "Plus Roundup Ready 2 Xtend soybeans" or beneath it  
13 "Bollgard XtendFlex cotton." Did I read that correctly?

14 A. You did.

15 Q. And is it your understanding that the Roundup Ready 2  
16 Xtend Crop System includes the seeds and herbicides?

17 A. Yes. When we refer to the Roundup Ready Xtend Crop  
18 System, we're referring to those two products, yes.

19 Q. Thank you, Doctor.

20 I would like to now show an Exhibit Number 608,  
21 Plaintiff's Exhibit Number 608. Roundup. And I want to --  
22 I will tell you this file came from your office. Do you  
23 recognize this file?

24 A. Yes. This looks like slides from Dr. Stanley  
25 Culpepper. That's what I can see here.

1 Q. Okay. And you received those?

2 A. At different times, that's correct.

3 (Plaintiff's Exhibit No. 608, slides, was  
4 identified.)

5 MR. RANGLES: Your Honor, I would like to offer  
6 this document for notice.

7 MR. MILLER: No further objection, Your Honor.

8 THE COURT: It's admitted.

9 (Plaintiff's Exhibit No. 608, slides, was  
10 received.)

11 BY MR. RANGLES:

12 Q. And I will start -- it says, "Using diamba wisely,  
13 Stanley Culpepper, University of Georgia Extension, Tifton,  
14 GA." And you know Dr. Culpepper; right?

15 A. I do.

16 Q. And one of Dr. Culpepper's roles at the university --  
17 well, related to the University of Georgia is he does, if not  
18 all, a great deal of your training of applicators in the  
19 State of Georgia; isn't that correct?

20 A. He does applicator training definitely.

21 Q. And do you know whether he trains all the majority of  
22 them or just a lot of them?

23 A. A lot of the --

24 Q. The applicators.

25 A. -- applicators?

1 Q. Correct.

2 A. I can't say for sure. I know he does very extensive  
3 training.

4 Q. I'm going to show you one slide from this presentation.  
5 And it says, "How much Clarity per acre does one need to ruin  
6 a snap bean field?" Do you see that?

7 A. I do.

8 Q. And then it shows an amount of Clarity roughly the  
9 size -- maybe a little bigger -- of an M&M. Do you see that?

10 A. Yes.

11 Q. Have you heard that comparison before?

12 A. I don't recall this specific one.

13 Q. Have you heard similar comparisons?

14 A. I've made similar comparisons myself, yes.

15 Q. And in your judgment, based on your experience, is this  
16 a fair comparison?

17 A. With the proper context it would be, yes. It makes a  
18 good point.

19 Q. Okay. Thank you. You can take that down now.

20 The next exhibit I want to show you is 151. And,  
21 Dr. Carey, I asked you about the substance of this document  
22 yesterday. So we're going to do it briefly. Do you see at  
23 the top this draft for review?

24 A. I do.

25 Q. And I don't want to read too much of the content before

1 the Court formally rules, but these are minutes of a meeting  
2 that you participated in; correct?

3 A. That's correct.

4 (Plaintiff's Exhibit No. 151, Minutes, was  
5 identified.)

6 MR. RANGLES: Okay. Your Honor, I'll offer  
7 Plaintiff's Exhibit 151.

8 MR. MILLER: No further objection, Your Honor.

9 THE COURT: Admitted.

10 (Plaintiff's2 Exhibit No. 151, Minutes, was  
11 received.)

12 MR. RANGLES: Thank you, Your Honor.

13 BY MR. RANGLES:

14 Q. All right. And, again, we talked about this yesterday.  
15 And so I'm going to deal with it briefly. This is the  
16 meeting we talked about where you discussed the protocols for  
17 determining whether research met regulatory's requirements  
18 regarding off-target movement; correct?

19 A. Yes. This is the outline of the direction we wanted to  
20 follow to ensure that we were following regulatory needs and  
21 policies.

22 Q. And it says -- and I only want to deal briefly with this  
23 since we dealt with most of the subjects. Under B here, the  
24 process for proposals, it says, "All field work must be  
25 conducted to protocol. Regulatory Bahkta and Cabbage will

1 enable" -- TDM is?

2 A. TDM is technology development managers. And those would  
3 be a technical product manager who would be directing a lot  
4 of the protocol research that we would do in the field.

5 Q. And it says, "They're to review all TD protocols with  
6 guidance to key objectives or elements." And this, of  
7 course, is underscored. "Key objectives or elements with  
8 potential to compromise regulatory strategy." Did I read  
9 that correctly?

10 A. You did.

11 Q. And that was your understanding at the time of the  
12 policy, wasn't it?

13 A. Yes, that's correct.

14 Q. And under one it says, "Protocol determined to have no  
15 potential to compromise regulatory strategy. TD may proceed  
16 with implementation." Correct? I read that correctly,  
17 didn't I?

18 A. You did.

19 Q. And then it goes on to say, "Protocol determined to have  
20 potential to compromise regulatory strategy. TD to take one  
21 of the following two actions." Number one "terminate  
22 protocol" or number two "recommend the protocol for review  
23 and approval by regulatory." I read that correctly, didn't  
24 I?

25 A. You did.



1 Q. And that's what the policy was, wasn't it?

2 A. It was.

3 Q. And it goes on to identify key protocols, objectives or  
4 elements requiring additional review included. Do you see  
5 that heading? We're going to blow it up a little bit so it's  
6 easy to read. Do you see that?

7 A. Yes.

8 Q. And the first one listed is volatility, and the second  
9 one listed is herbicide impacts to sensitive areas. Did I  
10 read that correctly?

11 A. You read it correctly the first two, yes.

12 Q. Yes. And, likewise, at the very bottom there's  
13 additional guidance. We talked about things like planting  
14 buffers, bare ground trials, and smaller trials. You recall  
15 we discussed those yesterday?

16 A. I do.

17 Q. Okay. Thank you. And this was your understanding of  
18 the policy at that time regarding testing?

19 A. It is.

20 Q. So if the testing concerned volatility for potential  
21 damage to a sensitive plant -- I don't know anything about  
22 technology. Let me start again.

23 So if a study -- if a study involved potential  
24 volatility or damage to sensitive plants, it was either  
25 terminated or regulatory had to specifically approve it to

1 make sure it didn't compromise regulatory strategy; correct?

2 A. That's correct.

3 Q. Have you heard the phrase at Monsanto "generating data  
4 for regulatory approval"?

5 A. I don't know.

6 Q. You don't know if you've heard that or not?

7 A. I don't recall that.

8 Q. Fair enough. I would like to show you next Plaintiff's  
9 Exhibit 523.

10 MR. MILLER: I'm sorry, which number?

11 MR. RANGLES: 523.

12 MR. MILLER: 523?

13 MR. RANGLES: Yes.

14 MR. MILLER: Thank you.

15 BY MR. RANGLES:

16 Q. You'll see on the cover page this is referred to as  
17 meeting notes from an academic summit on September 27th,  
18 2017. Do you see that?

19 A. Yes, I do.

20 (Plaintiff's Exhibit No. 523, Meeting Notes, was  
21 identified.)

22 BY MR. RANGLES:

23 Q. And do you recall Monsanto having that summit meeting on  
24 those dates?

25 A. Yes, I do.

1 MR. RANGLES: All right. Your Honor, I would like  
2 to move this document into evidence.

3 MR. MILLER: No further objection, Your Honor.

4 THE COURT: Admitted.

5 (Plaintiff's Exhibit No. 523, Meeting Notes, was  
6 received.)

7 MR. MANDLER: Your Honor, we'll reserve our  
8 objection notwithstanding your ruling.

9 BY MR. RANGLES:

10 Q. And a number of folks from Monsanto were there and a  
11 number of outside academics; correct?

12 A. Yes.

13 Q. And the date on this document is 2017; correct? Do you  
14 see that at the top?

15 A. I see it.

16 Q. Okay. Now, for a little context before we get here.  
17 In 2017 the product was already out, the seed and the  
18 herbicide; correct?

19 A. That's correct. That's the first year that both  
20 products were approved and commercialized.

21 Q. And that was the first year academics could conduct any  
22 research they wanted to by just basically going and getting  
23 it, the herbicide, if Monsanto wouldn't have provided it;  
24 correct?

25 A. It would have been the first year anyone could access

1 that herbicide formulation on the shelf basically.

2 Q. Right. Without Monsanto providing it --

3 A. Correct.

4 Q. -- ahead of time?

5 A. That's correct.

6 Q. And we're going to get to a discussion in a minute, but  
7 is it fair to say did you personally attend this conference?

8 A. I remember being at at least part of the conference,  
9 yes.

10 Q. Was it fair to say that one of the subjects being  
11 discussed at that conference was the irritation of academics  
12 that they weren't allowed to test volatility and off-target  
13 movement before the product was released?

14 A. I don't remember the specific agenda, but I would -- I  
15 would be confident that that's one of the things we wanted to  
16 open up and have a discussion on with the academic community.

17 Q. And not just at this conference, but you had been  
18 hearing that discontent, hadn't you?

19 A. That's correct.

20 Q. So let's -- I want to show you another portion of this.  
21 Now, can you tell our jury, while we pull this up, who  
22 Mr. Chambers is at Monsanto?

23 A. John Chambers is the lead for our at this point in time  
24 technology development organization, and that would include  
25 our technology development representatives in the field that

1 do the field research, the technology development managers  
2 primarily in St. Louis who direct that type of research as  
3 well as our -- our agronomists who are associated with our  
4 different seed brands.

5 Q. And for definitional purposes when you say technology  
6 development people, are those essentially the people at  
7 Monsanto that do the inhouse scientific research?

8 A. Those people do very late stage field research.  
9 Obviously, a lot of people and a lot of different groups  
10 would be involved in the development and all the research  
11 that goes into the development of a product. Technology  
12 development is typically involved in the latter stages of  
13 that.

14 Q. And Mr. Chambers is a responsible person with a number  
15 of people who answer to him?

16 A. That's correct.

17 Q. Let's see -- and here, you know, this is in note format,  
18 this document -- do you see that -- and so sort of recording  
19 a summary of what people say. Do you see it says, "John  
20 Chambers:"?

21 A. Yes.

22 Q. And then it says, "The timing of regulatory reviews was  
23 so delayed that it prevented the ability to offer extension  
24 specialists the opportunity to conduct tests. In retrospect  
25 it was not the right call not to allow extension specialists

1 to test the product prior to commercial launch."

2 Now, first of all, you need this definition.

3 "Extension specialist" is referring to academics at  
4 universities in their weed science programs; correct?

5 A. That's -- that's correct.

6 Q. Okay. So we're talking about folks at the University of  
7 Missouri, folks at the University of Arkansas, those kind of  
8 folks?

9 A. Yes.

10 Q. So with that definition in mind he says in -- at first  
11 he says, "The timing of regulatory reviews was so delayed  
12 that it prevented the ability." But we saw in that prior  
13 document that was a policy decision not to allow that kind of  
14 research, wasn't it?

15 A. It was a policy decision that was associated with the  
16 regulatory situation, yes.

17 Q. But the document we just walked through did not mention  
18 the lag as the issue, it was talking about the volatility, if  
19 it's damaged sensitive crops, we don't do that, but other  
20 kinds can proceed like dicamba seed; right?

21 A. That's essentially the content of that previous  
22 document, which that was the focus of the document, not the  
23 reasons.

24 Q. Well, you agree that prior document was Monsanto policy;  
25 right?

1 A. Yes.

2 Q. And it was the policy as you understood it then?

3 A. That's correct.

4 Q. As we covered yesterday, you actually disagreed with  
5 that policy, didn't you?

6 A. Yes, I did.

7 Q. Well, here in 2017 Mr. Chambers says -- is he Mr. or  
8 Doctor?

9 A. I think it's Mr. Chambers.

10 Q. In retro -- so he supervises some scientists, but he's  
11 not a Ph.D. himself?

12 A. That's correct.

13 Q. In retrospect it was not the right call not to allow the  
14 extension specialists to test the product prior to commercial  
15 launch. I mean, that's what he said; right?

16 A. Yeah. I didn't write this, but that's what it says in  
17 this document, yes.

18 Q. Do you understand that's the message Monsanto was  
19 conveying at this conference that, you know, we should have  
20 let you test; right?

21 A. That would be my understanding.

22 Q. In this statement of Mr. Chambers that the testing  
23 should have been allowed, is that Monsanto's current  
24 position?

25 A. Current position with respect to a new technology or --

1 Q. Fair question. Is it Monsanto's current position that  
2 the refusal to allow the academics to test this new herbicide  
3 for volatility, off-target movement and potential damage to  
4 sensitive plants before it was released was a mistake? Is  
5 that Monsanto's position today?

6 A. That's what Mr. Chambers evidently said here. With  
7 respect to our policy today, our typical policy is to enable  
8 and work with the university scientists on our new  
9 technologies. This one was quite unique. And then so my  
10 understanding would be that our current policy would be that  
11 we would want to work with the university scientists again,  
12 yes.

13 Q. So if someone were coming to this courtroom from  
14 Monsanto and say, well, we were justified for one reason or  
15 another in not allowing the academics to test, that would not  
16 be consistent -- that would not be consistent with Monsanto's  
17 current position, would it?

18 A. I'm sorry. Could I ask you to say that again?

19 Q. Sure. Yes. If someone were to come into this  
20 courtroom and say not allowing the academics to test was  
21 justified for one reason or another, that would be  
22 inconsistent with Monsanto's current position that it was a  
23 mistake?

24 A. It would be -- it's not typical of our normal approach  
25 and our normal policy.



1 Q. And I believe you said yesterday you could only think of  
2 one time in the past that Monsanto had refused to allow  
3 academics to test a technology prior to release; correct?

4 A. I don't know that we refused or we prohibited, but the  
5 situation was that we didn't engage the university extension  
6 and research people in that situation I was referring to.

7 Q. So you don't know if it was an actual policy decision  
8 not to allow them, you just know somehow it didn't happen in  
9 the past?

10 A. That's correct.

11 Q. And I believe you indicated before that that's the only  
12 instance you could think of that might involve in all your  
13 knowledge of the industry in the years you've been in it of  
14 anyone in the industry restricting academic ability to test a  
15 product before it was released?

16 A. Well, and just so that I'm clear, the university  
17 scientists did test the technology. They didn't -- we didn't  
18 enable them to test volatility in a certain number of years.

19 So specific to that that would be in that unique  
20 situation and the other one I referred to are the only times  
21 I'm aware of --

22 Q. And you --

23 A. -- in my personal experience.

24 Q. In your personal experience and knowledge of the entire  
25 industry; correct?

1 A. My personal experience, yes.

2 Q. And just to be clear, when you refer to -- refer to some  
3 testing was allowed, as you referred to yesterday, you  
4 allowed them to test at how good it was at killing weeds;  
5 correct?

6 A. Yes. We did enable them to test weed control, weed  
7 resistance programs, those types of things, yes.

8 Q. But not the things we've already discussed like  
9 off-target movement and damage to sensitive plants?

10 A. That's correct.

11 Q. Okay. I'm going to show you Document 510. This is  
12 apparently the cover page of a presentation that we have  
13 slides following; right? Okay. Just making sure.

14 So the cover page here at 510 is -- it's a message  
15 from Jordan Iverson. Now, he's a Monsanto employee; right?

16 A. Yes, he is.

17 Q. Scott Bollman is also a Monsanto employee; right?

18 A. Yes.

19 Q. Regarding the XtendFlex contingency they call it;  
20 correct?

21 A. That's the subject.

22 (Plaintiff's Exhibit No. 510, Message Regarding  
23 XtendFlex Contingency, was identified.)

24 BY MR. RANGLES:

25 Q. And the date -- and the date on this is particularly

1 important. It's November 14 of 2014. Do you see that?

2 A. I do.

3 MR. RANGLES: Your Honor, I would like to introduce  
4 510.

5 MR. MILLER: No further objections, Your Honor.

6 THE COURT: It's admitted.

7 (Plaintiff's Exhibit No. 510, Message Regarding  
8 XtendFlex Contingency, was received.)

9 MR. RANGLES: Thank you, Your Honor.

10 BY MR. RANGLES:

11 Q. So in mid November 2014 there's this presentation made,  
12 and I want to show you one of the slides. Can we make that a  
13 little bigger? All right. I think we've got it where it  
14 can be seen.

15 It says, "Reconfirm Support to Launch Without Dicamba  
16 Label." Do you see that?

17 A. I see that.

18 Q. Now, in November of 2014 Monsanto was deciding whether  
19 or not to launch the dicamba tolerant cotton even though  
20 there wasn't a legal herbicide to spray over it; correct?

21 A. Well, just to be clear, I'm not familiar with this  
22 document, and at the time I was in our vegetables  
23 organization and not engaged.

24 Q. I understand, but you understand what this document is  
25 talking about. XtendFlex contingency was the gray line. And

1 now it says, "Reconfirm Support to Launch Without Dicamba  
2 Label."

3 A. That's what it says.

4 Q. And date-wise it was late '14 --

5 A. November 14th, if I recall.

6 Q. -- the decision was being made. And we can look here.  
7 It says, "A benefit." It talks about XtendFlex. Growers  
8 will have a choice and flexibility. It's talking about your  
9 cotton seed in 2015 when it launches; right?

10 A. That's what it says.

11 Q. And it's essentially listing the benefits and risks to  
12 doing it; right?

13 A. That's what it looks like, yes.

14 Q. Well, let me show you under "risks." "Growers push  
15 back on increased tech fee with no dicamba." And ultimately  
16 you actually cut the price as Kim Magin testified to  
17 yesterday; is that correct?

18 A. That's correct.

19 Q. Okay. "Growers make off label applications of dicamba."  
20 That's listed as a risk of launching it without a herbicide  
21 that's legal to spray over it; correct?

22 A. That's what it says.

23 Q. This issue was being discussed in Monsanto as Monsanto  
24 was making this decision, wasn't it?

25 A. Well, again, I wasn't involved at this point, but, yes,

1 we understood and had been -- it had been indicated that that  
2 was a possibility.

3 Q. Okay. Thank you. I'm going to show you Document 157,  
4 which we covered yesterday, so I just briefly want to  
5 familiarize the jury with where that information is located;  
6 all right?

7 So we'll show this to you.

8 Okay. If we look up at the top, these are -- are  
9 these your notes from the San Juan, Puerto Rico meeting  
10 February 11th of 2016?

11 A. They are.

12 (Plaintiff's Exhibit No. 157, Notes of San Juan,  
13 Puerto Rico meeting, was identified.)

14 BY MR. RANGLES:

15 Q. You're very familiar with this document, aren't you?

16 A. I'm pretty familiar, yes.

17 Q. We've talked about it before?

18 A. We have.

19 Q. All right.

20 MR. RANGLES: Your Honor --

21 THE CLERK: I hate to interrupt, but is this  
22 something different than 510?

23 THE COURT: I think we're on 157.

24 MR. RANGLES: We're at 157 now, yeah, sorry. If I  
25 wasn't clear, I apologize. Yeah, 157.

1           Your Honor, I move the introduction of 157.

2           MR. MILLER: No further objections, Your Honor.

3           MR. MANDLER: No further objections.

4           THE COURT: Admitted.

5           (Plaintiff's Exhibit No. 157, Notes of San Juan,  
6 Puerto Rico meeting, was received.)

7 BY MR. RANGLES:

8 Q. I would just like to show you the language we talked  
9 about yesterday in this document from Dr. Westberg just so  
10 the jury sees physically where that language is. All right.  
11 And, again, these are your notes, aren't they?

12 A. They are.

13 Q. And among the things Dr. Westberg talked about at this  
14 conference was at the third little dash, "Stated that  
15 off-label use of dicamba was widespread in cotton last year  
16 and that it will be rampant in 2016." Do you see that?

17 A. I see that.

18 Q. Now, the date of this document was February 11th of  
19 2016. So just date-wise, again, the cotton seed went  
20 through the '15 growing season; right?

21 A. The cotton seed was sold in the 2015 growing season,  
22 yes.

23 Q. So here in February 11th of 2016 you're talking about  
24 the release of soybean seeds as well again without a legal  
25 accompanying herbicide; correct?

1 A. That's correct.

2 Q. And so Dr. Westberg stated that the off-label use in  
3 cotton was widespread last year. You don't disagree with  
4 his assessment that it was widespread in 2015, do you?

5 A. That was his statement.

6 Q. Did you disagree with it at the time?

7 A. No. I heard -- I didn't make a judgment on his  
8 statement. As I mentioned in the -- as you showed in the  
9 heading there, these were the paraphrased statements and  
10 things expressed by the parties of the -- of a meeting.

11 Q. Well, at the time you heard it did you say to yourself,  
12 that doesn't sound right to me, or did you say, that does  
13 sound right to me?

14 A. I didn't think that would be the case, no.

15 Q. Well, no, he's stating an historical factor in the first  
16 part of the sentence, that it was widespread in '15. Do you  
17 see that?

18 A. I do.

19 Q. Did you agree with him that it was widespread in '15?

20 A. Well, I didn't -- I didn't check at this point in time  
21 whether it was -- whether you could validate that statement  
22 or not. I took it from his experience that was his opinion,  
23 and I focused on what we were going to do in 2016.

24 Q. So you said you took it from his experience. So I  
25 still -- I'm still trying to get at then did you assume he

1 was correct in his statement, or did you disagree with his  
2 statement about what happened in '15?

3 A. I can't say that I agreed or disagreed.

4 Q. Now, you knew at this time that you had been appointed  
5 head of claims for '16 for Monsanto, didn't you? You were  
6 appointed in late '15 to that role?

7 A. Well, and, again, only to be clear is that we -- we  
8 didn't plan for any claims in '16, because we didn't have a  
9 herbicide registered to spray, but I was involved in the  
10 planning for when we ultimately got the registration.

11 Q. So you were involved with Plaintiff's planning at the  
12 time of this meeting; correct?

13 A. That's correct.

14 Q. That was your job?

15 A. It was part of my responsibilities, yes.

16 Q. Did you ever look back at the end of '15 or at any point  
17 in time -- you were appointed at the end of '15, you were  
18 going to be in charge of claims, did you ever look back and  
19 satisfy yourself as to what happened in '15?

20 A. I didn't do a retrospective. I took over the role in  
21 basically December of 2015, and I trusted that our  
22 organization had evaluated what had happened in 2015. So me  
23 personally, no, I did not do that.

24 Q. So you -- there was never a point in time that you  
25 brought yourself up to speed about what happened in '15?



1 A. I don't recall specifically doing that, no.

2 Q. Dr. Westberg goes on to say "It will be rampant in  
3 2016." At the time you heard that statement, did you agree  
4 or disagree with it?

5 A. I had no basis to agree or disagree, but I recognized  
6 and took alert to that statement and as part of the  
7 considerations we took into account when we aggressively  
8 communicated in 2016 that that could not be done.

9 Q. But you were aggressively communicating in 2015, weren't  
10 you?

11 A. I'm not familiar with the program in '15.

12 Q. So, wait a minute, when you took over for '16, you  
13 didn't even bother to look and see what the company did in  
14 '15 and evaluate what worked and what didn't?

15 A. We had multiple teams, communication teams, stewardship  
16 organization who were involved in 2015 and were involved in  
17 2016. Our focus was on being very clear and very aggressive  
18 in 2016 to ensure that everyone understood that the product  
19 was not registered, it cannot be applied legally.

20 Q. I understand your answer, but I don't think you  
21 understood my question. My question was, since you were  
22 taking over this responsibility, you didn't look back at all  
23 to see what happened in '15 and '16 so you could evaluate  
24 what worked and what didn't?

25 A. I personally did not do that.

1 Q. Did you charge someone who answered to you to do that  
2 for you?

3 A. Not someone who answered to me, no, I did not charge  
4 someone who answered me to do that. There were multiple  
5 teams and groups that were involved.

6 Q. But, as a man who was planning for claims going forward,  
7 you could have done that, couldn't you?

8 A. Yes, I could have done that.

9 Q. And if you were too busy, you could have had one of the  
10 people who answered to you do that, couldn't you?

11 A. I could have charged someone to do that, that's correct.

12 Q. Let's introduce 167. I mean, show us 167.

13 Do you see up at the top this is an e-mail you sent  
14 on February 18th of 2016?

15 A. Yes.

16 (Plaintiff's Exhibit No. 167, E-mail of February  
17 18th, 2016, was identified.)

18 BY MR. RANGLES:

19 Q. Now, this is seven days after the Puerto Rico conference  
20 we just discussed; right? That was February 11th, 2016?

21 A. That would be correct.

22 Q. Seven days. Okay. And you sent this e-mail to a  
23 number of people at Monsanto; correct?

24 A. Yes. That's a group that at the time reported to me.

25 Q. Okay.

1 MR. RANGLES: Your Honor, I move to introduce 167.

2 MR. MILLER: No objection, Your Honor.

3 MR. MANDLER: No objection.

4 THE COURT: Admitted.

5 (Plaintiff's Exhibit No. 167, E-mail of February  
6 18th, 2016, was received.)

7 BY MR. RANGLES:

8 Q. I'm going to show you a portion of this e-mail. We  
9 want to start with -- now, what you did here is you said,  
10 "See attached OTR report." Do you see that?

11 A. Yes.

12 Q. And it says, "There's a lot on Xtend soy RR 2. I pasted  
13 a couple of excerpts on dicamba below." Do you see that?

14 A. I see it.

15 Q. Why don't you tell the jury what "OTR" means.

16 A. I don't know the actual acronym, but "OTR" is an  
17 independent third-party report.

18 Q. It's like an industry newsletter or report, isn't it?

19 A. I think that's accurate, yeah.

20 Q. So you looked at the OTR report, again, seven days after  
21 the Puerto Rico conference, and you say to your team -- folks  
22 at Monsanto who are answering to you -- I want to call your  
23 attention to these specific parts; right?

24 A. Yes.

25 Q. Okay. Let's deal with that. It says, "Dicamba uses

1 limitations potentially challenging."

2           And then let's go to the bottom paragraph here. This  
3 is discussing dicamba. And it says, "Several sources said  
4 release of RR 2 Xtend without approval for over-the-top  
5 dicamba use opens up Monsanto and dealers to the risk of  
6 off-label use." Did I read that correctly?

7 A. Yes.

8 Q. So seven days after you received the warning from Dr.  
9 Westberg about off-label use, you pull this portion of this  
10 article and send it to your team concerning off-label use;  
11 correct?

12 A. Among other things, yes.

13 Q. Okay. It says, quote, "Let's face reality. If a  
14 farmer is buying the RR 2 Xtend trait, what is he going to  
15 put on it? Regardless of whether it's legal or not there  
16 will probably be guys who spray dicamba. I really hope  
17 Monsanto gets the chemistry approved." Did I read that  
18 correctly?

19 A. Yes.

20 Q. So you sent to your group before the 2016 release of  
21 soybean seeds this information saying there's a real risk of  
22 off-label use and quoting this article, Let's face reality.  
23 If he buys it, what's he going to put on it? If he buys the  
24 dicamba tolerant seed, what's he going to put on it? You  
25 sent this information to your group; correct?

1 A. I did send this, yes.

2 Q. So this was in your mind in February of 2016, wasn't it?

3 A. Yes.

4 Q. What did you do other than sending this to your group  
5 about the warnings of Dr. Westberg and about the warnings in  
6 this article?

7 A. Well, we -- we prepared a very aggressive communications  
8 plan to warn people that they could not do that, that it was  
9 illegal, et cetera.

10 Q. Perhaps -- perhaps my use of the word "you" was vague.  
11 Regarding these warnings what did you, Dr. Boyd Carey, head  
12 of claims, do?

13 A. Well, I served on other teams involved with the launch,  
14 and I talked about the potential for this. And that's one of  
15 the reasons why we made these types of comments available to  
16 our organization to understand this was a potential and that  
17 we needed to do everything we could to make sure that people  
18 did not do it.

19 Q. You've already said you never looked back to see what  
20 the company did in '15 to evaluate its effect; correct?

21 A. Myself personally, no.

22 Q. So, as you sit here today, you have no idea if Monsanto  
23 did anything different in 2016 to prevent the off-label spray  
24 than what they did in '15 that clearly didn't work, do you?

25 MR. MILLER: Objection, assumes facts not in

1 evidence.

2 THE COURT: Overruled.

3 BY MR. RANGLES:

4 A. I didn't do a comparison of 2015 to 2016. I worked  
5 with experts in communications, supply, marketing, crop  
6 management as well as my organization to evaluate what we  
7 could do and what we did do for 2018 -- or, excuse me, 2016.

8 Q. But, again, you said lots of people were involved, lots  
9 of people worked on this. To your knowledge, did anyone at  
10 Monsanto look at what they did in '15 where there was clearly  
11 substantial off-label spraying, at least according to Dr.  
12 Westberg, and say those things didn't work, here the are the  
13 things we need to do different in '16 to prevent it? Do you  
14 know if anyone did that?

15 A. I believe our stewardship organization and others did  
16 that.

17 Q. Did you ever see a report outlining the differences  
18 between the claims of '15 and '16?

19 A. I don't remember seeing one myself, no.

20 Q. Have you ever seen a document briefly summarizing the  
21 differences in approach between 2015 and 2016?

22 A. I don't remember that, no.

23 Q. Well, the jury saw yesterday two pink stickers, one for  
24 '15 and one for '16. Do you know those pink stickers?

25 A. I'm aware of those pink stickers, yes.

1 Q. And those pink stickers essentially say the same thing  
2 in '15 and '16. You're aware of that; right?

3 A. Essentially.

4 Q. So we know the stickers were content-wise the same. As  
5 we sit here today, can you tell our jury with personal  
6 knowledge anything Monsanto did that was different between  
7 those two years?

8 A. I've already said I don't remember doing a comparison.  
9 I'm confident the comparison was done, and those things were  
10 taken into consideration as we developed our plan for 2016,  
11 but me personally I don't remember that. I can't tell you.

12 Q. You say you're confident. You assume somebody did it,  
13 but you don't know who did it, and you never saw any evidence  
14 that it was done personally; is that fair?

15 A. I'm confident that it was done.

16 Q. And the source of your confidence is you just think  
17 someone would have done it or you saw any actual evidence  
18 that it was done?

19 A. I can't show you evidence.

20 Q. Let's go to 159. I'm going to show you two related  
21 documents, one is a transmittal e-mail. If we look up at  
22 the top, it's an e-mail from Ryan Rubischko at Monsanto to  
23 you. Do you see that?

24 A. I do.

25 (Plaintiff's Exhibit No. 159, E-mail from Ryan

1 Rubischko to Dr. Carey, was identified.)

2 BY MR. RANGLES:

3 Q. In 2016. It's May of 2016. Do you see that?

4 A. Yes.

5 Q. So we're early in the growing season, relatively early;  
6 right?

7 A. That's correct.

8 Q. 2016 claims proposal for program. And then it lists a  
9 little code, which is an indication there's something  
10 attached to the document; right?

11 A. Yes.

12 MR. RANGLES: Your Honor, I would like to introduce  
13 Plaintiff's Exhibit 159 -- 158 and 159, which is the cover  
14 e-mail and the attachment.

15 MR. MILLER: The attachment is 158?

16 MR. RANGLES: I believe, yes. And I don't know  
17 why they're backwards.

18 (Plaintiff's Exhibit No. 158, Attachment to Exhibit  
19 159, was identified.)

20 MR. MILLER: I got it.

21 MR. RANGLES: Okay. Yes.

22 MR. MILLER: No objection other than the previous  
23 objections.

24 THE COURT: Overruled and admitted.

25 (Plaintiff's Exhibit No. 158, Attachment to Exhibit



1 159, was received.)

2 (Plaintiff's Exhibit No. 159, E-mail from Ryan  
3 Rubischko to Dr. Carey, was received.)

4 MR. RANGLES: With The Court's permission I would  
5 now like to publish 158 to the jury.

6 BY MR. RANGLES:

7 Q. Do you see this heading "claims proposals"?

8 A. Yes.

9 Q. Now, this was prepared for you and at your direction,  
10 wasn't it?

11 A. Well, this was not prepared at my direction. This  
12 would have been prepared before I took the role. It was  
13 prepared in order to be presented here in October of 2015  
14 slightly before I took my role.

15 Q. Okay. And let's -- I want to actually show you --  
16 well, it says 2016 proposal -- no, let's go to the -- okay.  
17 This is one of the pages of this document. Can we blow up  
18 like the first half of the left column? Let's just blow up  
19 the whole thing.

20 All right. Now, you're familiar with this document.  
21 You've seen it before, haven't you?

22 A. Yes.

23 Q. Now, this says "assumptions to the USLT." That's U.S.  
24 Leadership Team; right?

25 A. That's correct.

1 Q. Now, these are the assumptions the group you now headed  
2 was providing them about what kind of claims could be  
3 expected in the future; correct?

4 A. That's correct.

5 Q. These were your projections of how many claims would  
6 occur; right?

7 A. Correct.

8 Q. Okay. Start at the top here, and it says -- it lists  
9 Xtend trait acres, and those are your projections in  
10 millions; correct?

11 A. Yes. Those numbers would be millions.

12 Q. For soy? The top is just soybeans?

13 A. For soybean at the top, that's correct.

14 Q. 5 million in 2016, 18.3 in 2017, 40.5 in 2018, 59.2 in  
15 2019 and 67.4 in 2020.

16 The fact of the matter is your estimates were pretty  
17 good, but a little low, weren't they?

18 A. Well, in terms of the acres, of course, we didn't launch  
19 in 2016.

20 Q. Uh-huh.

21 A. And that resulted in the ability to launch on more acres  
22 because of the more soybean supply in '17 as it turned out.

23 Q. I understand. But really my question was your numbers  
24 were actually a little low as we moved forward as to the  
25 number of acres covered?

1 A. I'd have to compare exactly, but they're not too far off  
2 in terms of the acreage planted, and that's what these are,  
3 yes.

4 Q. No. They're pretty close, aren't they?

5 A. They're pretty close, yes.

6 Q. And just for context, the bottom part -- starting in the  
7 middle of the page -- would you look in the middle. It says,  
8 "Xtend trait acres cotton." Do you see that in the very  
9 middle?

10 A. Yes. Yes.

11 Q. Okay. And you were projecting 260,000 in '16,  
12 3.2 million in '17 and then on up growth. Do you see that?

13 A. I do.

14 Q. And, again, your numbers were pretty good, weren't they?

15 A. Honestly on Xtend cotton I can't -- I don't follow the  
16 Xtend cotton numbers.

17 Q. Okay. Okay. Now I'm going to go back up to the top  
18 here where it says, "Number of growers that will be using  
19 Monsanto brand, and, you know, 2020 50,000." And then I want  
20 to go to that next line, number of potential claims. For 16  
21 you list 13,005. Do you see that? 1,305. I'm sorry.

22 A. Yeah, 1,305.

23 Q. And a little over 2,700 for 2017; correct?

24 A. Yes.

25 Q. A bit over 3,200 for 2018?

1 A. Correct.

2 Q. And then they start coming down. 2,300 for 2019. And  
3 in 2020, 2,400. Now, one of the reasons, as we talked about  
4 before, the numbers of projected claims start going down  
5 eventually is as more and more neighbors had planted the  
6 dicamba tolerant system they're then immune from dicamba  
7 damage; right?

8 A. Yes. If a neighboring grower plants the technology,  
9 it's going to withstand an application.

10 Q. To bring it down, if you have dicamba tolerant  
11 technology one year, and I don't, and I'm hindered by  
12 dicamba, and I plant it the next year, I'm a claim that goes  
13 off the board for off-target movement anyway?

14 A. The potential for claim is obviously much less on that  
15 field of soybeans, yes.

16 Q. Right. Right. So let's look at these numbers. Now,  
17 in 2016 the technology wasn't out yet. And so I'm going --  
18 and you previously indicated those numbers were based on  
19 assumptions that the new allegedly lower dicamba formula  
20 would be out for '16; correct?

21 A. We believe at this point in time, yes, that it would be  
22 registered.

23 Q. So let's just move forward to '17. In '17 with -- and  
24 then from '17 forward all of these claims projections are  
25 claims based on what you would expect with the new supposedly

1 lower volatility dicamba; correct?

2 A. Correct.

3 Q. Okay. So this is talking about the new XtendiMax with  
4 VaporGrip, what you expect claims from that to be?

5 A. Without having been involved in this, I'm not sure, but  
6 I assume that's the case at this point in time.

7 Q. And your team worked with these numbers, and we will  
8 walk forward. They didn't materially change, did they?

9 A. Some numbers changed dramatically, yes.

10 Q. Okay. We'll look at the documents as you go forward.  
11 So, as of this point in time, Monsanto is predicting 2,700  
12 claims the first year of these new products on the market;  
13 right?

14 A. This projects 1,305 assuming the first year on the  
15 market would have been 2016.

16 Q. But actually the first year it was on market was 2017,  
17 and have you checked to see how accurate that 2,700 number  
18 was?

19 A. Well, again, to be clear, there's a whole different set  
20 of circumstances and contents behind what actually happened  
21 as compared to the assumptions made in this projection.

22 Q. I understand in terms of when the technology was  
23 released. My questions are narrower. Regardless of when  
24 the document was written in 2017, the 2,700 claim number for  
25 off-target movement was just about exactly on point, wasn't

1 it?

2 A. It was 3,101.

3 Q. A little higher?

4 A. Yeah.

5 Q. Let's look at -- and, yes, it was 3,101. Let's go to --  
6 we'll pause on that. So let's just pause for a minute.

7 Then you were predicting for '17 and for the out  
8 years that farmers in the thousands were going to be hit by  
9 off-target movement from this new system. You were  
10 predicting that, weren't you?

11 A. We expected there would be off-target movement claims  
12 made as well as weed control claims and potentially even crop  
13 injury claims as you would have with any new herbicide  
14 introduction.

15 Q. And there are other kinds of claims. And actually  
16 20 percent of your claims were for something else related to  
17 the product, and 80 percent were off-target movement, and  
18 that's what you predicted; right?

19 A. I'd have to look there to be sure. I don't remember  
20 that offhand.

21 Q. Okay. But, as you said, for off-target movement there  
22 were a little over 3,000 in the first year, and you predicted  
23 in the thousands for the out years; right?

24 A. Yes.

25 Q. Okay. And just to remind ourselves, when we talk about

1 off-target movement, we're talking about it moving from where  
2 it's intended onto a sensitive crop; right?

3 A. Well off-target movement could be movement to a  
4 sensitive crop or other places. Any kind of off-target  
5 movement from the place it was applied.

6 Q. Well, nobody is going to call you if it moves off target  
7 to wheat, are they, because it doesn't hurt wheat?

8 A. Well, perhaps not wheat.

9 Q. It moves off target and injures something that it's not  
10 supposed to injure. That's what you were predicting. And  
11 then you were figuring out how to handle that when people  
12 called and complained. That's the process; right?

13 A. That's part of what we were trying to anticipate what  
14 might happen, yes.

15 Q. So at the time this came out, Monsanto knew that it was  
16 going to move off target and affect thousands of people every  
17 single year; right?

18 A. We anticipated that might happen, and, as I believe we  
19 should have, because any herbicide can move off target.

20 Q. But not every herbicide is equally dangerous for  
21 sensitive crops, are they?

22 A. That's correct.

23 Q. And the weed-killing efficiency of dicamba is the very  
24 reason you were offering it; right?

25 A. It's a very effective herbicide. And it was -- that's

1 why we -- one of the reasons we chose it, yes.

2 Q. In the presentation maybe you saw dicamba is deadly and  
3 quick. Do you agree with that characterization?

4 A. Relative to other herbicides I think that's a little  
5 extreme, but it's a very effective herbicide, yes.

6 Q. So dicamba -- as Kim already testified yesterday,  
7 dicamba was being put out to kill stuff the other herbicides  
8 couldn't kill anymore; right?

9 A. It is correct. There was weed resistance from multiple  
10 different herbicides, and growers were having trouble  
11 controlling them, and dicamba we felt was a very effective  
12 option and tool to help them do that.

13 Q. Go back to the numbers. So you knew that each one of  
14 these numbers on this chart -- 1,300, 2,700, 3,200, 2,300,  
15 2400 -- represented a potential individual whose crops would  
16 be damaged or destroyed by this product? You knew that  
17 that's who you were talking with; right?

18 A. Well, one thing that would have to be clarified is are  
19 these representing additional claims such as weed -- lack of  
20 weed control and things like that, but, regardless, we  
21 understood that there would be claims for off-target  
22 movement, and we wanted to prepare to address those  
23 effectively.

24 Q. Well, you projected -- let's look at what you projected  
25 in effect what this was going to be: 2,700 in 2017, 3,200 in



1 2018, 2,300 in 2019, 2,400 in 2020; right?

2 A. Under the scenario and circumstances at this point in  
3 time that was the projection.

4 Q. And your numbers have been pretty good, a little low,  
5 but pretty good; right?

6 A. I think it's inappropriate to compare this, because this  
7 isn't the scenario that played out with respect to the  
8 acreage that it was launched on and other factors, but --

9 Q. At the moment I'm not quibbling about whether you're  
10 going to harm 2,700 people in 2017, 3,000 people in 2017 or  
11 10,000. I am simply saying you projected that thousands of  
12 people's property was going to be damaged before you ever put  
13 the product out, didn't you?

14 A. These are the projections that were made.

15 Q. And you projected they would continue -- it would  
16 continue to damage thousands of people each year, didn't you?

17 A. These are the projections that were made.

18 Q. Are you aware that the USDA has said that in the five  
19 years prior to the introduction of dicamba tolerant system  
20 there were never more than 40 off-target movement claims for  
21 dicamba in the entire country?

22 A. I'm not familiar with that.

23 Q. Were you aware that EPA reported -- that the USDA  
24 reported in three years prior to the issuance of this system  
25 there were three total off-target movement claims in the

1 State of Missouri? Were you aware of that?

2 A. I am not aware of that.

3 Q. I'm not good enough at math to do the percentage  
4 increase we're talking about here, but we're talking -- if  
5 those numbers are valid, we're talking about a vast  
6 percentage increase in dicamba damage, aren't we?

7 A. What's your question?

8 Q. My question was if those numbers are correct, these  
9 numbers represent a tremendous order of magnitude, multiple  
10 over those numbers?

11 A. If those numbers are correct -- I don't know that they  
12 are -- I'd say that's correct.

13 Q. Now, let's talk about what happened in 2016. As you  
14 sit here today, do you know the number of off-target movement  
15 complaints that were received in '16?

16 A. We didn't have a tracking mechanism where we tracked the  
17 number of claims for concerns or inquiries that came in. I  
18 know inquiries did come in. We were made aware of them, but  
19 I don't know the number.

20 Q. And Monsanto chose not to track them, didn't they?

21 A. That's correct.

22 Q. And we already talked about this yesterday, and I won't  
23 go back into it. Monsanto chose not to investigate or keep  
24 track of any off-target movement claims in 2015 and 2016;  
25 correct?

1 A. I believe that's correct.

2 Q. But you had to by law keep track -- have a complaint  
3 handling procedure once you sold your new herbicide in 2017,  
4 didn't you?

5 A. Well, one of the registration requirements or conditions  
6 of registration by the EPA was that we had to investigate any  
7 case of weed control or lack of weed control performance.  
8 So if a customer used the product and it didn't kill the weed  
9 as you would have expected, we asked that they call us, and  
10 we had a responsibility to follow up and investigate and  
11 document that and other conditions related to that.

12 Q. Put simply, beginning in '17 you had to have a claim  
13 process and to report them to the EPA; correct?

14 A. That's -- that would have been a requirement of the  
15 registration, that's correct.

16 Q. But in '15 and '16 when you weren't made to have a  
17 claims process, you didn't have one; right?

18 A. Well, we didn't have a product. We didn't have a  
19 herbicide product in the marketplace, and we -- we don't have  
20 claims processes for products we don't sell.

21 Q. No. You had seeds with pink stickers. That's what you  
22 had in '15 and '16, didn't you?

23 A. We sold seed as we have for many, many years, correct.

24 Q. And you didn't keep track at all of the problems that  
25 were seen from spraying over the top of those seeds, did you?

1 A. We didn't track it in the same way, that's correct.

2 Q. And you wouldn't investigate it. We already covered  
3 that yesterday; right?

4 A. We chose not to investigate those situations.

5 Q. Well, the company decided -- chose not to. You  
6 disagreed; right?

7 A. The company policy was that we wouldn't investigate  
8 claims of off-target movement in 2016. I wanted to  
9 investigate some of those just from a learning standpoint,  
10 that's correct.

11 Q. The fact is that the company didn't investigate the  
12 claims in '15 and '16 because it wanted to be able to say  
13 when asked, We just don't know the merits of those claims.  
14 We don't know what's going on. That's why the company didn't  
15 do it, right?

16 A. I don't know that.

17 Q. No one ever told you that?

18 A. I don't know that.

19 Q. But the response I've just indicated is what the company  
20 said repeatedly publicly when it was asked in '15 and '16,  
21 didn't it?

22 A. I don't know that.

23 Q. You don't know? You don't recall these things being  
24 discussed in your presence?

25 A. These things were discussed. I don't know the way that

1 you characterized it is accurate.

2 Q. Let's look at -- start with 604 and 605. Let's start  
3 with the cover e-mail and then the go to the attachment.

4 THE COURT: Which?

5 MR. RANGLES: 604 and 605 are the ones we're at,  
6 Your Honor. One is the cover e-mail and one is the  
7 attachment.

8 BY MR. RANGLES:

9 Q. We're going to blow this up a little bit. This is an  
10 e-mail. And I want the date first, July of 2016. Now,  
11 that's the -- basically the middle of the growing season here  
12 in Southeast Missouri. The first year that the soybean  
13 seeds were out and the second year the cotton seeds were out;  
14 right?

15 A. That's correct.

16 Q. Okay. This is from Kim Magin -- the jury heard from  
17 her yesterday -- to a number of folks at Monsanto, including  
18 Boyd Carey. Do you see that?

19 A. Yes.

20 (Plaintiff's Exhibit No. 604, July 2016 e-mail from  
21 Kim Magin, was identified.)

22 BY MR. RANGLES:

23 Q. And it's attaching an article from the Standard  
24 Democrat, and that's a Sikeston paper. I guess you know  
25 that, or you'll see that in a minute. All right?

1 A. I'm not familiar with it, but, obviously, I received  
2 this e-mail.

3 (Plaintiff's Exhibit No. 605, Article from Standard  
4 Democrat, was identified.)

5 BY MR. RANGLES:

6 Q. Okay. Then it shows attachment 1 JK, and that's how you  
7 do it. Okay.

8 MR. RANGLES: Your Honor, I would like to introduce  
9 Exhibit 604, which is the cover e-mail. And I would like to  
10 introduce the attachment 605, which is the newspaper article  
11 for notice.

12 MR. MILLER: With the previous objection, Your  
13 Honor.

14 THE COURT: Overruled. Admitted.

15 (Plaintiff's Exhibit No. 604, July 2016 e-mail from  
16 Kim Maglin, was received.)

17 (Plaintiff's Exhibit No. 605, Article from Standard  
18 Democrat, was received.)

19 BY MR. RANGLES:

20 Q. Let's start with the newspaper article and put it in  
21 context, and then I'm going to come back to the commentary on  
22 it in this e-mail. So we're going to show Exhibit 605 first  
23 if possible.

24 Do you see a big heading here "Standard Democrat"?

25 A. Yes.

1 Q. And if you look at the really little print under it, it  
2 says "Sikeston, Missouri." Do you see that?

3 A. Yes.

4 Q. "115 herbicide complaints being investigated." Do you  
5 see that?

6 A. I do.

7 Q. And this is the paper reporting the 115 herbicide  
8 complaints in Southeast Missouri so far that were being  
9 investigated. You recall this, don't you?

10 A. This?

11 Q. This reporting? Not the article specifically, just the  
12 reporting in general.

13 A. I recall the reporting of herbicide complaints or  
14 concerns about illegal applications, yes.

15 Q. Okay. And this article goes on to talk about how  
16 they're going to have a meeting in Sikeston to talk about  
17 this. Now we're going to go back to the e-mail where you-all  
18 discuss the potential meeting. So 604, please.

19 So this again is Kim Magin to you and a number of  
20 folks. "All: I had a call from Darren Brown who has raised  
21 RR 2 Xtend soybeans and Bollgard 2 XtendFlex." Again, let's  
22 just call it, those are dicamba tolerant?

23 A. Those are both -- the soybean and the cotton would be  
24 the tolerant versions, yes.

25 Q. And sprayed in M1691 for us for over four years. And

1 M1691 is what?

2 A. It was a formulation of dicamba that was never  
3 commercialized for these soybeans, but it was essentially the  
4 Clarity formulation.

5 Q. So he was growing seeds for Monsanto; correct?

6 A. Yes, that's my understanding.

7 Q. Because he couldn't spray Clarity over them legally?

8 A. That's correct.

9 Q. So he was one of your seed producers who grew the seeds  
10 from Monsanto and then to sell?

11 A. That's correct.

12 Q. "He is a tremendous advocate for our technology. He was  
13 planning to avoid" -- and, again, referencing back to this  
14 meeting -- "due to the controversy, but after a couple of  
15 conversations has agreed to attend and where appropriate talk  
16 about his experience."

17 "He has had a positive experience overall except for  
18 a spray tank contamination that he acknowledges is his  
19 fault."

20 "He wanted for us to be aware of a level of local  
21 controversy and ensure we are prepared. The local paper ran  
22 this story I attached."

23 "Also, according to Darren, there are roughly four  
24 growers who are responsible for the majority of the damage."

25 Did I read that correctly?



1 A. That's what it says.

2 Q. Now, so Monsanto knew about this meeting. And Monsanto  
3 was getting this fellow, Mr. Brown, to go attend and speak  
4 for them; correct?

5 A. That's what -- that's what this indicates.

6 Q. Now, no one from Monsanto was planning to go and speak  
7 for yourself, were they?

8 A. I need to make sure that I understand what meeting this  
9 is.

10 Q. It was a meeting in Sikeston this paper was just talking  
11 about.

12 A. Well, there might have been multiple meetings. I just  
13 want to be sure I know which meeting you're talking about.

14 Q. Well, we'll leave this highlighted, and let's go back to  
15 the newspaper article.

16 605, Your Honor. Let's see if we can make this a  
17 little bit bigger, because I can't quite read print that  
18 small.

19 Okay. The little box -- the little blue box on the  
20 side of the article says, "Want to learn more? A free public  
21 fact-finding forum on dicamba and southeastern Missouri  
22 crops. When? 8:00 to 11:00 on Friday. Rone Hall. Fisher  
23 Delta Research Center."

24 It says it's sponsored by the University of Missouri  
25 Fisher Delta Research Center. And the topic was "The science

1 behind off-target movement of dicamba and facts and  
2 experiences with off-site dicamba movement in cotton, rice,  
3 melons, fruit trees and gardens, the general process of  
4 making a claim, and 2016 Southeast Missouri challenge and  
5 question and answer session." Do you see that?

6 A. I do.

7 Q. And so if you take this down, this was going to be  
8 following Friday, and the date on the article is July 28th,  
9 2016, Thursday, so we're talking -- okay. If I get that math  
10 right, this is in September -- 29. No. This is August I  
11 believe it says. Thursday, July 28th. So it's going to be  
12 Friday. So that would be July 29th.

13 So does that refresh your recollection of when the  
14 meeting was and where?

15 A. Well, I think it obviously clarifies when and where.

16 Q. So according to the -- the e-mail suggests that Mr.  
17 Brown is going to speak for Monsanto. Did Monsanto  
18 reconsider and decide to send someone else?

19 A. There was a meeting at the Portageville Delta Center  
20 that I and at least one or two other Monsanto people  
21 attended. I don't -- honestly don't remember if it was this  
22 specific one.

23 Q. Well, this is a Sikeston meeting. That was a Sikeston  
24 location.

25 A. At Portageville.

1 Q. Portageville is a separate town. Let's go back to the  
2 blue box. Blow it up.

3 A. The reason I want to be sure I went to the University of  
4 Missouri, and it's been a few years.

5 Q. Is this a Portageville meeting? So you went to the  
6 Portageville meeting?

7 A. Are we talking about Portageville?

8 Q. Apparently. Let's see.

9 A. Okay.

10 Q. Research Center in Portageville. There you go.

11 A. So I think this would have been a meeting that I  
12 attended.

13 Q. Okay. Were the subjects described in this box the  
14 subjects discussed?

15 A. I think so, yes. There were a lot of different  
16 speakers and a lot of different discussions so --

17 Q. Did you speak?

18 A. I did not.

19 Q. But you're a Ph.D. weed scientist, and they were  
20 discussing dicamba. Wouldn't your advice have been helpful?

21 A. Our intent was listen to what -- what the growers and  
22 the other people in the area were experiencing.

23 Q. It's a little more than that. The policy was that you  
24 weren't supposed to talk; right?

25 A. Well, Miriam Paris, who was with us, spoke at this

1 meeting if it is, in fact, the meeting I'm remembering.

2 Q. Yes. And where did she get her degree in weed science?

3 A. She's a plant breeder by training, I believe.

4 Q. Where did she get her Ph.D. in weed science?

5 A. Again, I can't answer that.

6 Q. She doesn't have one, does she?

7 A. I think that's the answer.

8 Q. That is the answer. So she spoke, and you, a Ph.D. in  
9 weed science and the head of claims for Monsanto, just sat in  
10 the back?

11 A. We listened, yes, and talked to people on the side, yes.

12 Q. Well, there was a lot of listening to be done. Wouldn't  
13 some guidance have been helpful since these people were  
14 talking about the damage going on down there at the time?

15 A. Our objective was to gather information, understand what  
16 people were experiencing. There was a lot of media and a lot  
17 of excitement, and we just wanted to understand what was  
18 happening.

19 Q. Well, you understood that there were complaints galore  
20 down there about off-target movement that resulted in damage,  
21 didn't you?

22 A. About illegal misuse of the herbicide, yes.

23 Q. That's a yes. So would it have at least been helpful  
24 for you to stand up as the head of claims and say, Let me be  
25 clear, we're listening, but we're not going to do anything

1 about it, because we don't think we're responsible? Would  
2 that have been at least helpful for them to know?

3 A. I'm not sure that would have been helpful.

4 Q. It might have been uncomfortable for you, mightn't it?

5 A. Uncomfortable is not what I'm concerned about.

6 Q. Would it have been helpful for you to tell them you can  
7 have all the meetings you want, but we're not coming out to  
8 investigate any of this? Might that have been helpful to  
9 know?

10 A. That's a judgment.

11 Q. You were the head of claims. What do you think? Do you  
12 think it would have been helpful enough?

13 A. I think we did what we intended to do. We understood  
14 that there were a lot of excitement, a lot of claims about  
15 illegal use of dicamba products, which we didn't sell. We  
16 felt it was responsible to come down and listen and  
17 understand what was going on, and that was our objective.

18 Q. I'm certain you did what you intended to do from the  
19 public relations perspective. That was not my question. My  
20 question was don't you think it would have been helpful as  
21 the head of claims for you to tell the folks, You can have  
22 all the meetings you want to, but we're not going to come out  
23 and look at one acre of your fields? Would that have been  
24 helpful?

25 MR. MILLER: Objection, argumentative, Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: I think that would have potentially  
3 inflamed the mood at the meeting.

4 BY MR. RANGLES:

5 Q. Let's look at the e-mail here. Let's look at that  
6 second paragraph in the e-mail. "He wanted for us to be  
7 aware of a level of local controversy and ensure we are  
8 prepared." Did I read that correctly? The second paragraph  
9 here. Do you see where I'm reading there? Let me do it  
10 again.

11 "He wanted for us to be aware of a level of local  
12 controversy and ensure we are prepared." Did I read that  
13 correctly?

14 A. You read it correctly.

15 Q. That was from Kim Magin to you and others; correct?

16 A. That's correct.

17 Q. And so the mood was already pretty much inflamed, wasn't  
18 it?

19 A. I think it was a heightened mood, yes.

20 Q. And so you didn't tell any of the people that Monsanto  
21 had no intention to investigate, did you?

22 A. We did not do that, no.

23 Q. Okay. Let's go now to the next paragraph. It starts  
24 with also. "Also, according to Darren" -- and, again, this  
25 is Darren Brown, your guy down there that you sent to the

1 meeting; right?

2 A. Yeah. Darren Brown is a farmer who produces seed for  
3 Monsanto and/or certainly did at this time.

4 Q. Right. And you sent him to the meeting to talk for you,  
5 the first paragraph?

6 A. We asked him to go, yes.

7 Q. Okay. "Also, according to Darren, there are roughly  
8 four growers who are responsible for the majority of the  
9 damage." Did I read that correctly?

10 A. That's what this said here, yes.

11 Q. And it was well known and being widely reported there  
12 were about four growers who were causing most of the damage  
13 in the Bootheel, wasn't it?

14 A. I can't confirm that, but it's clear that this is said  
15 here, yes.

16 Q. And you didn't try to confirm it, did you?

17 A. I didn't make a specific effort to confirm that.

18 Q. Because those four growers are huge purchasers of  
19 Monsanto seed, aren't they?

20 A. I don't know.

21 Q. You don't know? You could have known, couldn't you?

22 A. Well, this is hearsay, and it's an allegation, and so I  
23 don't know that I could have known that or not.

24 Q. Well, wait a minute, this is hearsay and an allegation?  
25 The guy saying it is your guy, Darren Brown, who's raised

1 seeds for years, who you were sending to be your public  
2 spokesman proxy to the meeting. Look at that paragraph  
3 under "All:" Do you remember?

4 A. I see it, and I remember, yes.

5 Q. He doesn't say it's alleged. He says there are four  
6 growers that are doing all this. That's what he says, your  
7 guy?

8 A. That's what he says. He's a farmer, and he grows -- he  
9 was growing our seed for us, yes.

10 Q. He's a farmer that lives down here; right?

11 A. I assume so, yes.

12 Q. So when your guy tells you there are four of our  
13 purchasers who are causing widespread damage, you could have  
14 looked into it to see if that was true, couldn't you?

15 A. Well, first, I just want to clarify I'm not sure  
16 Mr. Brown would appreciate being called "our guy," and I  
17 would not call him that. But --

18 Q. Are we really going to quibble on his role for Monsanto,  
19 because he was growing your seeds, you were paying him for  
20 years, and you were sending him to be your proxy to this  
21 meeting?

22 A. I don't want to quibble. I just want to be clear.

23 Q. Okay. Well, this isn't somebody you don't like like  
24 Steve Smith saying it. This is a guy that has been working  
25 for you for years, and you think is a good spokesman for you;



1 right?

2 A. He said he's had a positive experience with the  
3 technologies, yes.

4 Q. Well, Kim Magin was asking him to go talk in your favor  
5 at the meetings; right?

6 A. Yes.

7 Q. Okay. So this is -- that's the guy who's saying you  
8 got four people down here causing the majority of this  
9 damage. You could have looked into it, couldn't you?

10 A. I don't know that.

11 Q. You have a team that works for you, don't you?

12 A. Yes.

13 Q. You have resources, don't you?

14 A. We have people that work for us, yes.

15 Q. Well, you had a whole team working for you regarding  
16 claims, didn't you?

17 A. The same team that worked for me worked for me during  
18 that period of that year, yes.

19 Q. So you were in charge of claims. You had a whole team.  
20 You had your guy telling you, we got four bad actors down  
21 here that are causing most of the damage. You could have  
22 asked one of your people to look into it, at least call this  
23 guy and say, What do you base that on Darren Brown, couldn't  
24 you?

25 A. Well, I think it was mentioned before that we chose not

1 to investigate the illegal use that was going on in the  
2 Bootheel in that area in 2016. We made that choice.

3 Q. Are you aware of how close the biggest violators were to  
4 Bader Farms?

5 MR. MILLER: Objection, assumes facts not in  
6 evidence.

7 MR. RANGLES: I'm asking.

8 THE COURT: Overruled.

9 BY MR. RANGLES:

10 Q. Are you aware of how close these biggest violators were  
11 to Bader Farms?

12 A. I'm not aware.

13 Q. And you never looked?

14 A. I never looked.

15 Q. And you never bothered to check even after Bill Bader  
16 called you in 2016 and talked to you twice, didn't you?

17 A. I did not.

18 THE COURT: Why don't we take a morning recess for  
19 about 10 minutes -- 10 to 12 minutes.

20 Remember the admonition I've given you not to  
21 discuss the case among yourselves or permit anyone to discuss  
22 it in your presence. Do not form or express any opinion  
23 about the case until it's given to you to decide. Go to the  
24 jury room, and we'll call you back in shortly then. You can  
25 step down.

1           (Proceedings resumed in open court outside the  
2 presence of the jury.)

3           THE COURT: I'll sustain your argumentative  
4 objections when he starts yelling like I did.

5           MR. RANGLES: It's your prerogative.

6           THE COURT: Anything else then?

7           MR. RANGLES: No, sir.

8           THE COURT: Okay. We'll be in recess for about 10  
9 or 12 minutes then.

10          (Proceedings stood in temporary recess.)

11          (Proceedings resumed in open court outside the  
12 presence of the jury.)

13          THE COURT: Any preliminary matters?

14          MR. RANGLES: No, sir.

15          MR. MANDLER: No, Your Honor.

16          THE COURT: Okay. Bring the jury back in.

17                 On the objections I think the easiest way for  
18 you-all to do it is just to say, no further objections or no  
19 objections unless you really have --

20          MR. MILLER: Your Honor, my understanding from  
21 someone smarter than me in appellate work is that I have to  
22 say I renew my objection for --

23          THE COURT: I gave you a continuing objection.

24          MR. MILLER: I understand that, Your Honor. I have  
25 been told by other folks -- folks more knowledgeable about

1 what the Eighth Circuit will and won't accept -- that I  
2 should say I renew my objection. That's what I've been told,  
3 Your Honor.

4 I apologize that it's upsetting the Court, but I  
5 have been told that those are the words I need to use to make  
6 sure I'm preserving --

7 THE COURT: Who told you that?

8 MR. MILLER: Judge Shaw.

9 THE COURT: He's not on the Eighth Circuit.

10 MR. MILLER: I know, but when a judge tells me to  
11 do something I do it.

12 MR. RANGLES: And, Your Honor, if it's any help, I  
13 consent to the proceedings as the Court has described in  
14 preserving their objection, and I waive any ability in an  
15 appeal to say they didn't.

16 MR. MANDLER: We just can't say "no objection,"  
17 Your Honor. We can shorten it as much as possible. We can  
18 say "no further objections."

19 THE COURT: That is what I'm saying.

20 MR. MANDLER: Okay.

21 THE COURT: It may be that you have no objection.

22 MR. MANDLER: Well, I'm -- I will say I have no  
23 objection when I have no objection.

24 MR. MILLER: Well, I have been advised that if we  
25 say "no further objection," the Eighth Circuit could

1 interpret that as meaning, oh, you say you don't have any  
2 objection to that.

3 THE COURT: I'll go to bat for you with the Eighth  
4 Circuit.

5 MR. RANGLES: What about same objection?

6 MR. MILLER: Same objection is fine. I'm fine with  
7 that.

8 MR. DUKE: No additional objection.

9 THE COURT: That's fine.

10 MR. MANDLER: No additional objection?

11 MR. MILLER: Which one do you want, Judge? Same  
12 objection?

13 THE COURT: That's fine.

14 MR. MILLER: Okay.

15 MR. DUKE: We'll put our heads together and try to  
16 get it shortened.

17 THE COURT: I also was on the appellate bench also  
18 for 16 years, and I know that the Missouri Supreme Court  
19 would not have a problem with this, but, in any event, go  
20 ahead.

21 MR. MILLER: I follow people who are smarter than  
22 me, Judge. If that's what he tells me to do, that's what I  
23 do.

24 (Proceedings resumed in open court.)

25 THE COURT: Be seated.

1                   You may proceed.

2                   MR. RANGLES: Thank you, Your Honor.

3 BY MR. RANGLES:

4 Q. Dr. Carey, we -- we were talking about this July 2016  
5 meeting that you attended.

6 A. Yes.

7 Q. I want to go back to that meeting. Do you recall seeing  
8 Dr. Ford Baldwin there?

9 A. I do remember that, yes.

10 Q. Do you recall seeing Bill Bader there?

11 A. I do.

12 Q. And do you recall seeing Dr. Kevin Bradley from the  
13 University of Missouri there?

14 A. Yes, he spoke.

15 Q. Yes, he did. Do you recall him showing slides of Bill  
16 Bader's peach trees at that meeting?

17 A. I don't remember the specifics of Dr. Bradley's  
18 presentation, but I trust that was the case.

19 Q. Do you remember the slides of the peach trees?

20 A. I don't.

21 Q. Did it come back to your mind when a little bit later  
22 you and Bill Bader talked a couple of times that summer?

23 A. Can you say that again, please.

24 Q. Did that come back to your mind of Dr. Bradley's  
25 presentation where he showed the peach trees when you and

1 Bill Bader later talked twice in that summer?

2 A. I believe I talked to Mr. Bader before this meeting that  
3 we're referring to by phone, and I think I spoke to him again  
4 later in the summer. I can't remember if it was before or  
5 after this meeting.

6 Q. Fair enough. We'll take your memory. So you spoke to  
7 him before about the damages to the orchard and after Dr  
8 Kevin Bradley's slides showing the orchard? Do you remember  
9 Dr. Bradley's slides?

10 A. I -- it's been three years. I don't remember  
11 specifically what he showed.

12 Q. Do you remember Dr. Bradley's last slide, which showed a  
13 photo of a train wreck, and said that this has been a train  
14 wreck and sat down? Do you remember that?

15 A. I do remember that one.

16 Q. Did you do anything in response to Dr. Bradley's  
17 conclusion, you, Dr. Carey, at this moment I'm asking? Did  
18 you do anything in response to the information Dr. Bradley  
19 provided at that meeting?

20 A. The specific thing I -- the specific thing I remember  
21 doing is just reporting back that I thought Dr. Bradley's  
22 presentation was as objective as anyone could have expected.

23 Q. So you didn't have a problem with Dr. Bradley's  
24 presentation about dicamba?

25 A. I respected his -- what he delivered, and I respected

1 his position in delivering it, yes.

2 Q. Who did you report back to?

3 A. I don't recall specifically.

4 Q. Do you know if Monsanto took any action in regard to Dr.  
5 Bradley's presentation at that meeting, which included that  
6 this had been a train wreck?

7 A. I don't remember.

8 Q. And just to be clear, Dr. Bradley is a weed scientist  
9 from the University of Missouri; is that correct?

10 A. Yes.

11 Q. And a respected weed scientist?

12 A. Yes, I think that's fair.

13 Q. Respected by you?

14 A. I respect Dr. Bradley, yes.

15 Q. Do you recall a presentation from the fellow of the  
16 Missouri Department of Agriculture where he said almost all  
17 the damage in 2016 was in the Missouri Bootheel in four  
18 counties, including Dunklin?

19 MR. MILLER: Objection, hearsay.

20 MR. RANGLES: Notice.

21 THE COURT: What's the question again?

22 MR. RANGLES: I'll rephrase the question, Your  
23 Honor.

24 BY MR. RANGLES:

25 Q. Do you recall a presentation at that meeting you



1 attended from the fellow from the Missouri Department of  
2 Agriculture who said almost all the damage in Missouri was in  
3 the Bootheel in four counties, including Dunklin?

4 MR. MILLER: Objection, hearsay.

5 THE COURT: Is it offered for the truth of the  
6 matter asserted?

7 MR. RANGLES: Notice.

8 THE COURT: Do you want a limiting instruction?

9 MR. MILLER: On this one, yes, Your Honor, please.

10 THE COURT: All right. Do you have a proposal?

11 MR. MILLER: I don't have a written proposal, Your  
12 Honor. No, Your Honor.

13 THE COURT: This evidence about the -- what is it  
14 again?

15 MR. RANGLES: The gentleman from the Missouri  
16 Department of Agriculture's presentation, Dr. Bradley.

17 THE COURT: His testimony is not offered for the  
18 truth of what he said, but instead simply that this witness  
19 had notice of what he said. You may proceed.

20 BY MR. RANGLES:

21 Q. Do you recall his presentation saying that?

22 A. I don't remember the specifics of his presentation.

23 Q. Do you recall anything about him discussing the  
24 Bootheel?

25 A. Not specifics.

1 Q. I'm not asking -- the question was, do you recall  
2 anything about him discussing the Bootheel?

3 A. I remember multiple individuals speaking. I don't  
4 remember the specifics of those presentations. At this point  
5 in time we're years later.

6 Q. Okay. Well, let's step back away from specifics.  
7 Among the people you heard talking did you hear discussion  
8 of damage in the Bootheel?

9 A. Yes.

10 Q. And did you hear discussion of damage in Dunklin County?

11 A. I don't know the counties in the Bootheel well enough to  
12 remember.

13 Q. Well, I'll represent to you it's one of the counties in  
14 the Bootheel where Bader Farms is located. Will you assume  
15 I'm correct on that?

16 A. I'll assume that, yes.

17 Q. And the Bootheel is basically made up of four counties?  
18 Would you take my word for that?

19 A. Yes.

20 Q. Did you hear a discussion of any of those counties at  
21 this meeting in Portageville?

22 A. Well, since this is a discussion about the Bootheel and  
23 what was happening there, I would say yes.

24 Q. Did you seek more information from any of the people who  
25 spoke at that meeting about the basis of what they were

1 saying about the Bootheel?

2 A. I believe I asked for some of the information that Dr.  
3 Bradley and I believe one of his graduate students may have  
4 presented. That's what I can recall.

5 Q. Did you get a copy of the slides?

6 A. I think so, but I don't remember specifically.

7 Q. All right. Do you recall if you took a copy of his  
8 slides to your office?

9 A. I wouldn't have taken a copy of his slides from that  
10 day, no.

11 Q. Okay. And so, as you sit here today, do you know if you  
12 ever looked back at those slides?

13 A. I can't remember specifically if I did.

14 Q. Did you ever pass those slides onto anyone else at  
15 Monsanto?

16 A. I can't say for sure. I just don't remember.

17 Q. Did you ask any member of your claims team to  
18 investigate the information contained in those slides?

19 A. I can't remember.

20 Q. You can't remember whether you did or didn't?

21 A. That's correct.

22 Q. Did you ask any member of your claims team to  
23 investigate any of the information you received at the  
24 Portageville meeting?

25 A. I can't remember.

1 Q. Do you have any idea if anyone at Monsanto conducted any  
2 investigation into what was heard at the Portageville  
3 meeting?

4 A. I cannot remember honestly.

5 Q. Let's show the witness and the Court 161. I'm showing  
6 you a copy of the August 2016 EPA Compliance advisory. Do  
7 you see that?

8 A. Yes.

9 (Plaintiff's Exhibit No. 169, August 2016 EPA  
10 Compliance Advisory, was identified.)

11 BY MR. RANGLES:

12 Q. You're familiar with this document?

13 A. I have seen this document, yes.

14 Q. And Monsanto certainly received this document I expect  
15 in multiple formats, but at the bottom you see Monsanto Bates  
16 Numbers that it came from Monsanto files in this litigation.  
17 Do you see that?

18 A. I see that.

19 MR. RANGLES: Your Honor, I offer 169 into  
20 evidence.

21 MR. MILLER: Same objection, Your Honor.

22 THE COURT: Overruled. It's admitted.

23 (Plaintiff's Exhibit No. 169, August 2016 EPA  
24 Compliance Advisory, was received.)

25 BY MR. RANGLES:

1 Q. I want to turn your attention -- well, first of all,  
2 let's go up to the top. It says, "compliance advisory."  
3 "Compliance advisory August 2016. High number of complaints  
4 related to alleged misuse of dicamba raises concerns." Do you  
5 see that?

6 A. Yes.

7 Q. And you and I have spoken about this before. And to  
8 your recollection you don't recall the EPA prior to this  
9 issuing an in-season compliance advisory about a herbicide  
10 before, do you?

11 A. I don't have any knowledge of that.

12 Q. To your knowledge, this is the first time?

13 A. Yes.

14 Q. Okay. It says, "High number of complaints related to  
15 alleged misuse of dicamba raises concerns." Did I read that  
16 correctly?

17 A. Yes.

18 Q. Let's go to the second column, "Agricultural Concerns."  
19 And, again, this is August. This says to date the Missouri  
20 Department of Agriculture has received approximately 117  
21 complaints alleging misuse of pesticide products containing  
22 dicamba. Did I read that correctly?

23 A. Yes.

24 Q. Now, the Portageville meeting which you responded to,  
25 this exact issue had been talked about at the end of July;

1 correct?

2 A. Yes.

3 Q. And you heard someone from the Missouri Department of  
4 Agriculture come to that Portageville meeting, didn't you?

5 A. Yes.

6 Q. Either after the Portageville meeting or after this  
7 compliance advisory did Dr. Boyd Carey or anyone in his  
8 claims department to your knowledge try to confirm whether  
9 this number was correct?

10 A. We took -- we took it as it was correct.

11 Q. You assumed it was correct?

12 A. We assumed that.

13 Q. It goes on to say, "Missouri growers estimate that more  
14 than 42,000 acres of crops have been adversely affected."  
15 Did I read that correctly?

16 A. Yes.

17 Q. Now, you knew from the Portageville meeting that this  
18 estimate was largely confined to the Bootheel; right?

19 A. That's accurate.

20 Q. Okay. A little bit elsewhere, but the vast majority  
21 according to these allegations it was the Bootheel?

22 A. That's correct.

23 Q. Did Dr. Boyd Carey or anyone in his claims department  
24 make any effort to determine whether this estimate of  
25 42,000 acres damaged was accurate?

1 A. Not to my knowledge. I didn't do that, and I don't  
2 believe I asked my team to do that.

3 Q. Okay. It goes on to say, "These growers have reported  
4 damage on a number of crops, including peaches." And then  
5 there's a whole bunch of others, but I'm going to stop at  
6 peaches for the obvious reason. Do you see that?

7 A. Yes.

8 Q. Did you or your department make any effort to determine  
9 whether the claims of damage to peaches and other crops were  
10 accurate?

11 A. No.

12 Q. And then it goes on to talk about alleged such  
13 complaints alleging misuse of dicamba in several other  
14 states, and the one I'm going to mention is Arkansas. Do you  
15 see that there?

16 A. Yes.

17 Q. And you know from your basic geography that the Bootheel  
18 is surrounded by Arkansas on three sides; right?

19 A. I do.

20 Q. Okay. All right. Or two and a half sides. Whatever.  
21 You know it goes way down into Arkansas.

22 All right. Okay. Now, I'm going to ask you a more  
23 general question now. In response to this August 2016  
24 compliance advisory did anyone at Monsanto to your knowledge  
25 take any steps?

1 A. I don't have knowledge of any steps.

2 Q. And the most likely people to take steps would have been  
3 your department, because you were in charge of claims; right?

4 A. Well, the first organization that would have responded  
5 to this or primarily would be the regulatory organization.

6 Q. Well, public relations regulatory; right? I mean,  
7 public relations statements were issued about this. You  
8 know about that, right?

9 A. I assume that's probably correct.

10 Q. But did anyone take a substantive step to change  
11 anything about this product system, or how it was being  
12 marketed?

13 A. I don't remember if that happened or not.

14 Q. And you've already said you took no effort to determine  
15 who the offending growers were or to take any actions against  
16 them; correct?

17 A. That's correct.

18 Q. Let's show 161. I'll show you the top of this document  
19 first. It's called -- this is just hard to read. At least  
20 it is for me.

21 "Communication Planning Harvest 2016." Do you see  
22 that?

23 A. I do.

24 Q. Do you see the little Monsanto Bates Number on the very  
25 bottom right-hand corner?



1 A. I do.

2 (Plaintiff's Exhibit No. 161, Communication  
3 Planning Harvest 2016, was identified.)

4 BY MR. RANGLES:

5 Q. And then there are headings, which we'll get to in a  
6 minute, that say "high level messages, bridge holding  
7 statement and question and answer" and that sort of thing.  
8 Do you see that?

9 A. Yes.

10 Q. Okay. We'll get to it in a minute.

11 MR. RANGLES: Your Honor, I'll move 161 into  
12 evidence.

13 MR. MILLER: Same objection, Your Honor.

14 THE COURT: Overruled and admitted.

15 (Plaintiff's Exhibit No. 161, Communication  
16 Planning Harvest 2016, was received.)

17 BY MR. RANGLES:

18 Q. Okay. This one says "Harvest 2016." So we don't have  
19 an exact date, because harvest rolls a little bit, doesn't  
20 it?

21 A. That's correct.

22 Q. But we're probably talking at least mid to late summer,  
23 right, depending on what we're harvesting?

24 A. Correct.

25 Q. Okay. All right. So let's go to number -- under the

1 Q and A we're going to go to the second page. Let's turn to  
2 the second page. And we're going to go to number three, the  
3 middle of the page. Do you see that?

4 A. I see that.

5 Q. And this is -- this is a Q and A format; right? This is  
6 a script essentially for how Monsanto folks answer questions?

7 A. It's prepared for our organization to -- who may not be  
8 familiar with the situation to know what's going on and how  
9 to potentially respond.

10 Q. Exactly. So, number 3, "Will Monsanto provide  
11 compensation to those farmers whose insurance won't cover the  
12 damage?" Do you see that?

13 A. I see it.

14 Q. Now, first of all, I just want to stop you and say, this  
15 question demonstrates that Monsanto knew that there were  
16 farmers whose insurance wasn't going to cover the damage who  
17 might go without compensation, doesn't it?

18 A. I don't know that documents that for sure.

19 Q. It's certainly anticipating that scenario, isn't it?

20 A. It's anticipating the potential.

21 Q. Let's go to the first bullet point. "It is our hope  
22 that farmers who have experienced an impact will be able to  
23 work through some of these solutions with the insurance  
24 providers." Did I read that correctly?

25 A. Yes.

1 Q. So Monsanto hoped that some of these farmers could get  
2 relief from insurance, didn't it?

3 A. Yes.

4 Q. And it doesn't say that it's a bad thing to do for the  
5 farmers to seek help through their insurance, does it?

6 A. It does not.

7 Q. And you don't think that's a bad thing for farmers to  
8 do, do you?

9 A. I do not. Anytime a farmer has a problem that the  
10 insurance can help with I would hope that they're successful  
11 in getting that.

12 Q. That's what they paid for; right?

13 A. Correct.

14 Q. Let's go to the second bullet point. We know this is a  
15 difficult time, and we feel for those farmers impacted. Do  
16 you see that?

17 A. Yes.

18 Q. Let's go to number 5 in this same document. This is,  
19 "We've heard word of other drift complaints. That's the  
20 question, how big this problem has become." Do you see  
21 that?

22 A. Yes.

23 Q. And I want to go to the last bullet point. "We  
24 continue to sympathize with farmers who are seeing yield  
25 impacts this year." Did I read that correctly?

1 A. Yes.

2 Q. So in this document you say you're sympathizing with  
3 farmers because you're seeing yield impacts; correct?

4 A. That's what it says.

5 Q. What does yield impact mean?

6 A. Yield impact would mean that if there's a potential  
7 for -- if it were an actual off-target movement through that  
8 illegal use, if that grower that is impacted by it sees a  
9 yield impact, they could have reduced yields.

10 Q. Which costs them money; right?

11 A. Yes.

12 Q. Okay. Now, and this document may have been part of the  
13 response to this, but there were -- but you agree that there  
14 was a perception out there that Monsanto was more focused on  
15 its investors than on the farmers, don't you?

16 A. That's a perception that may exist with or without this  
17 issue.

18 Q. But you agree that perception is out there, don't you?

19 A. I agree some people have that perception, yes.

20 MR. RANGLES: Your Honor, I wish to -- I offer -- I  
21 want to show -- let's show Exhibit 171 to the Court and  
22 counsel.

23 BY MR. RANGLES:

24 Q. Do you see the heading here "Arkansas Considerations and  
25 Recommendations"?

1 A. Yes.

2 (Plaintiff's Exhibit No. 171, Arkansas  
3 Considerations and Recommendations, was identified.)

4 BY MR. RANGLES:

5 Q. And it's -- if we go -- it's got a Monsanto Bates Number  
6 on the bottom right-hand side of the page. Do you see that?

7 A. Yes.

8 Q. And you attended this meeting, didn't you? Would it be  
9 helpful to flip to the back?

10 A. To be sure, yes, it would be helpful.

11 Q. Flip to the last page. I believe that shows the  
12 attendees. I may be wrong.

13 A. It doesn't have a date either.

14 Q. Well, actually --

15 A. Or does it?

16 Q. Let's go back to the front and see the date issued.

17 It's actually at the top, Arkansas considerations -- and I'll  
18 tell you there's not one listed here, but in the metadata I  
19 have received it lists August 18th of 2016.

20 A. Okay.

21 Q. Do you have any basis to disagree with that?

22 A. No.

23 Q. I believe that once we get to the content it's going to  
24 be pretty evident; okay?

25 A. Okay.

1 MR. RANGLES: Your Honor, I offer this exhibit into  
2 evidence.

3 MR. MILLER: Same objection, Your Honor.

4 THE COURT: Overruled and admitted.

5 (Plaintiff's Exhibit No. 171, Arkansas  
6 Considerations and Recommendations, was received.)

7 BY MR. RANGLES:

8 Q. I want to go first to where it says it talks about the  
9 Ag Council. Well, I'll give you a clue about when it was.  
10 The first sentence under "big picture" says "If Hillary  
11 wins." So pretty sure we're in '16 here; right?

12 A. I would say the year is right.

13 Q. Okay. Now, let's go to Ag Council. "We have lost  
14 support from the Ag Council and need to work to regain that.  
15 After comments with the President, Chairman and Executive  
16 Director, following is a list of items that they would like  
17 to see addressed."

18 Now, were you aware that Monsanto was concerned in  
19 the summer of '16 that they had lost support from the Ag  
20 Council?

21 A. So I'm not sure -- I don't know who wrote this for sure.  
22 But, yes, I think there was -- I think that's fair to say.

23 Q. And you heard such discussions yourself?

24 A. I have, yes.

25 Q. So the following is a list of items they would like to

1 see addressed, the Ag Council. "Acknowledge that the  
2 product has been abused by growers utilizing Xtend seed."

3 Next bullet point, "Express frustration regarding  
4 this abuse. Explain why misuse is bad for farmers, company,  
5 and ag industry at large. EG, such abuse disrupts the  
6 efficacy of the system and technology. Explain the misuse is  
7 unacceptable."

8 Now, to be fair, in a general way at least Monsanto  
9 did some of these things in its public statements, didn't it?  
10 I mean, there were statements expressing frustration publicly  
11 about misuse; right?

12 A. I believe it was more specific than general. We  
13 absolutely did.

14 Q. Okay. Well, we don't have to agree on that, but I'm  
15 willing -- we are both willing to agree that there was some  
16 public discussion of this; right?

17 A. Correct.

18 Q. Okay. And the more general discussion of the industry  
19 at large, do you know whether that occurred in public or not?

20 A. I'm confident that occurred.

21 Q. And you have a pink sticker about, you know, it's  
22 illegal, right, for the third bullet point?

23 A. That's one of many steps that were taken, yes.

24 Q. But number four, "Outline reactive and proactive steps  
25 that have been and will be taken to address what has

1 occurred." Do you see that?

2 A. I do.

3 Q. Now, Monsanto consistently rejected requests that it  
4 take some sort of a remedial action against farmers who were  
5 in Monsanto's words spraying illegally; right?

6 A. We're not at a -- we determined we're not an enforcement  
7 agency with the authority to take an action against someone  
8 for illegal use of a pesticide.

9 Q. Well, we'll get to the details in a minute, but is it  
10 your current testimony to this jury there's nothing we could  
11 do?

12 A. We supported the states. We wanted to cooperate with  
13 the states to the degree that we could.

14 Q. I'm sorry. That really wasn't my question. My  
15 question is, is it your testimony to this jury -- and we're  
16 going to get into specifics -- there was nothing Monsanto  
17 could do, nothing at all?

18 A. That's not -- that's not what I said.

19 Q. Okay. Then I want to focus on what Monsanto could do,  
20 and we'll walk through it. We'll go through this in a  
21 minute. Let's go on down.

22 Let's go to the second bullet point. The one right  
23 above that first. Let's do that one first. You said you  
24 support several regulatory bodies; right? You actually just  
25 said that?



1 A. Yes.

2 Q. "They may need to enhance penalties for illegal  
3 activities and abuse of technology through increased fines,  
4 license revocation, et cetera."

5 And I'm going to get to the note in a minute. Is it  
6 your testimony that Monsanto consistently supported state  
7 regulatory agencies' attempts to deal with this problem?

8 A. I'm sorry, could you repeat that?

9 Q. Is it your testimony that Monsanto consistently  
10 supported state regulatory agencies' attempts to deal with  
11 the problem of off-target movement of dicamba?

12 A. I believe we supported the states in every possible way  
13 we could.

14 MR. RANGLES: I actually have to approach, Your  
15 Honor, because of a motion in limine.

16 THE COURT: Okay.

17 (Proceedings were held at side bar, outside the  
18 hearing of the jury.)

19 MR. RANGLES: Yes, Your Honor. Billy Randles.  
20 Your Honor, we have motions in limine about state regulatory  
21 agencies, their actions, those sorts of things. I have  
22 steered cleared of it. I did not expect him to volunteer  
23 what he did, that they consistently supported state  
24 regulatory agencies.

25 The truth is they opposed virtually every spraying

1 restriction that has been proposed in every state, and  
2 they've repeatedly sued certain state regulatory agencies  
3 over their authority to impose limitations.

4 I don't really want to go deep into this, but I  
5 don't know just how to leave this on the record the way that  
6 it is.

7 THE COURT: Well, yeah, but you asked the question.

8 MR. RANGLES: I asked did you do anything to  
9 voluntarily support the state regulatory agencies? I wasn't  
10 going to go into this paragraph. I was going to skip it.

11 THE COURT: Is that what's on the screen?

12 MR. RANGLES: That's the document -- I wasn't going  
13 to read that part. I was going to skip it.

14 THE COURT: But you have read it.

15 MR. RANGLES: I have read it, yeah, because it's a  
16 fair answer.

17 THE COURT: I think we shouldn't go any further  
18 than that.

19 MR. RANGLES: Therefore I'll just leave it alone.  
20 Fair enough.

21 MR. MILLER: Thank you, Your Honor.

22 (Proceedings resumed in open court.)

23 MR. RANGLES: Okay.

24 BY MR. RANGLES:

25 Q. Okay. I'm going to show you the next sentence in that

1 paragraph. The same paragraph, final sentence. Rachel's  
2 notes. Do you know who Rachel was who was taking these  
3 notes for Monsanto?

4 A. I don't know if she took these notes, but I know who  
5 Rachel is.

6 Q. And who is Rachel?

7 A. Rachel Hurley.

8 Q. And did she work with you?

9 A. No.

10 Q. So you just received what -- okay. But she was there  
11 for some purpose --

12 A. I believe so.

13 Q. -- on Monsanto's behalf presumably since she was taking  
14 these notes?

15 "Rachel's Notes: Where could the increased fine  
16 dollars go? Could they be directed to an indemnification  
17 pool for damaged farmers?"

18 Do you see that?

19 A. I do.

20 Q. So Monsanto was not opposed on principle to farmers who  
21 had been impacted by illegal spraying getting compensation,  
22 was it?

23 A. I think the answer to that is no.

24 Q. Monsanto was fine, as the prior document said, with them  
25 getting insurance payouts; correct?

1 A. Correct.

2 Q. And Monsanto was fine if the states wanted to collect  
3 fines, and the states pay the injured farmers; right?

4 A. That was a suggestion made by Rachel.

5 Q. Is it a suggestion you would agree with?

6 A. I'd have to consider that. I've not considered it  
7 previous to this.

8 Q. You're not opposed to it on principle, are you, as an  
9 initial reaction?

10 A. Again, I'd have to -- I'd have to consider this, whether  
11 it's possible, whether it it's appropriate, et cetera, but I  
12 don't have a strong aversion to this at this point in time.

13 Q. So Monsanto was not opposed to farmers who were injured  
14 by illegal spraying in 2015 and 2016 getting paid for their  
15 damages, Monsanto was just opposed to Monsanto paying for the  
16 damages; correct?

17 A. I don't think that's a good characterization of the  
18 situation.

19 Q. Well, we're going to get some specific policies that you  
20 wrote later. Monsanto's policy is it did not and would not  
21 pay for off-target movement claims; correct?

22 A. That's correct.

23 Q. That has always been its policy?

24 A. That is.

25 Q. So to return to my question, Monsanto is not opposed on

1 principles to someone else paying these farmers for their  
2 damage. Monsanto is just opposed to Monsanto paying these  
3 farmers for damages; correct?

4 A. For someone who's actually been damaged or injured we're  
5 not opposed to them being able to collect.

6 Q. From somewhere else?

7 A. We're not opposed to them being able to collect.

8 Q. But not from you?

9 A. We do not have a policy to do that.

10 Q. All right. Let's go to the next sentence.

11 Again, we're still talking about suggestions by the  
12 Ag Council. Do you see the heading? We're still in that  
13 portion if we -- well, we just move on top of it. "Ag  
14 Council Suggested Bullet Points." Do you see that?

15 A. Yes.

16 Q. Okay. Next suggestion. Take corrective action against  
17 Monsanto related seed growers and other known individuals and  
18 companies who abuse the system, and where possible set an  
19 example. Did I read that correctly?

20 A. You read that correctly. That's a suggestion from the  
21 council.

22 Q. And Monsanto chose not only to not take action against  
23 the seed purchasers of Monsanto that were causing damage by  
24 spraying dicamba, Monsanto chose not to even look into who  
25 they were; correct?

1 A. So we chose not to investigate illegal uses in 2016.  
2 We didn't -- we weren't a legal enforcement agency. We  
3 understood, and we heard from entities like the plant board,  
4 the Ag Council as it's related to here, that they would like  
5 for us to make quote, unquote, an example out of people.  
6 But there may not even be a way for us to do that.

7 Q. Well, we'll get into the means in a little bit, but this  
8 is the Ag Council again. This is a friend to Monsanto;  
9 right?

10 A. We considered the Ag Council a stakeholder.

11 Q. Well, I mean, they were in favor of your technology  
12 coming out, weren't they?

13 A. I believe this is the plant board of Arkansas, or are  
14 we talking about --

15 Q. We're talking about the Ag Council. We'll get to the  
16 plant board.

17 A. I've been mistaken in my understanding.

18 Q. Okay. I'm talking about the Ag Council. Now, the Ag  
19 Council is made up of farmers who -- and the Ag Council was  
20 supportive of your technology, wasn't it?

21 A. Can we go back and make sure I know where we're at in  
22 this document?

23 Q. Absolutely. Let's take this big thing off. And then  
24 let's go to the heading here. Do you see Ag Council? Can  
25 you go to Ag Council.

1           And it said they were meeting with the president. We  
2 lost support from the Ag Council. You had it, but you lost  
3 it. You need to regain it. And the comments are from the  
4 President, Chairman and Executive Director. Do you see that?

5 A. I do.

6 Q. And there's a list of items that need to be addressed.  
7 So we're still on that list. Do you see that?

8 A. Yes.

9 Q. Okay. So one of the things they said is you need to  
10 make them examples, but you didn't; right?

11 A. We didn't.

12 Q. Let's go to -- let's go to damage control. And I  
13 believe there's a heading called damage control on the next  
14 page. There it is.

15           "Damage control and relationship building." Did I  
16 read that correctly?

17 A. Yes.

18 Q. Let's blow up that paragraph or that section. "We need  
19 to focus a sufficient amount of time mending fences. The  
20 perception is that we've -- first bullet point -- snubbed U  
21 of A and therefore the seed growers who rely on the owners to  
22 make recommendations in the best interest for our farmers."  
23 Did I read that correctly?

24 A. You read that correctly.

25 Q. And -- and you understood there was still fallout

1 coming -- still fallout from the academic community for not  
2 allowing volatility testing; right?

3 A. We understood that there was a significant disagreement,  
4 yes.

5 Q. The next bullet point, "Recklessly releasing a system  
6 that wasn't complete." Did I read that correctly?

7 A. You read that correctly.

8 Q. And you were hearing that in the industry and from  
9 academics and others, weren't you?

10 A. Some people believed that, yes.

11 Q. Go to the fourth bullet point, "Made decisions to  
12 satisfy our investors instead of focussing on the best  
13 interests of the farmers, industry, global, grains and  
14 system." Did I read that correctly?

15 A. You did.

16 Q. And you certainly heard that criticism at the time,  
17 didn't you?

18 A. Yes.

19 Q. Okay. Go to the next bullet point. "Chosen to take  
20 no responsibility for a problem we created," end quotes.  
21 "By selling seed that didn't have the appropriate technology  
22 to make the system safer and more sustainable." Did I read  
23 that correctly?

24 A. You did.

25 Q. And you heard that criticism in the academic



1 agricultural community at the time, didn't you?

2 A. Some people believed that and expressed that, yes.

3 Q. And none of these criticisms caused Monsanto to change  
4 its course of action in 2016, did it?

5 A. Again, I can't universally say that. We were listening  
6 to people, and we were trying to react in a way that would be  
7 sensitive to people's inputs, but --

8 Q. Well, let's check the reactions. Let's go to bullet  
9 point two here. "Recklessly released a system that wasn't  
10 complete." You didn't pull the system off the market, did  
11 you, in response to those criticisms?

12 A. Well we didn't have a system on the market until 2017.

13 Q. You didn't have a complete system on the market, did  
14 you?

15 A. I'm sorry, can you say that again?

16 Q. You didn't have a complete system on the market, did  
17 you?

18 A. We did not.

19 Q. And I didn't write this word "system" here, Rachel wrote  
20 it from Monsanto; right?

21 A. I don't know that Rachel wrote it.

22 Q. Someone wrote these notes?

23 A. Someone wrote these notes expressing perceptions that  
24 others had expressed to us.

25 Q. Expressed to Monsanto.

1 A. That's correct.

2 Q. Next bullet point, "Chose not to take responsibility for  
3 a problem you created." Well let's see, Monsanto, again,  
4 conducted no investigations; right?

5 A. We did not conduct an investigations in 2016, that's  
6 correct.

7 Q. And Monsanto did not -- Monsanto did not -- was not  
8 willing to pay for off-target movement; right?

9 A. Correct. Consistent with our history and industry  
10 standard that companies don't pay for off-target movement.

11 Q. Well, let's go to that last bullet point at the bottom  
12 of the page. "Withdraw our university-backed research  
13 because we have something to hide." You've also heard that  
14 criticism, haven't you?

15 A. Yes.

16 Q. It goes on to say "Concerns." Let's go to the section  
17 called "Concerns and Cautions." Under this it says -- I'm  
18 going to go to the portion -- "Public perception is being  
19 tainted with numerous articles portraying Monsanto as  
20 behaving like it has historically been rumored to behave."  
21 Did I read that correctly?

22 A. Yes.

23 Q. Have you ever heard that criticism of Monsanto?

24 A. This is not specific about what aspect that they're  
25 critical of, but, yes, Monsanto has had fans and people who

1 are not fans over the years, that's correct.

2 Q. Well, this -- I'm wondering if this is a term of art  
3 within Monsanto since this was -- these notes were taken by a  
4 Monsanto employee that "Monsanto is behaving as it's  
5 historically been rumored to behave." Is that a phrase you  
6 have heard before?

7 A. No.

8 Q. Now, what are technology use agreements?

9 A. Technology use agreements are a document that we issue  
10 every year that gives people who have a license to use our  
11 technologies and instructions and describes the terms and  
12 limitations associated with those technologies.

13 Q. And they have to comply with the requirements of the  
14 technology agreement or TUG or that's considered a violation  
15 of their license; correct?

16 A. I'm not completely sure on that honestly.

17 Q. You have heard the phrase "pulling TUGs" before, haven't  
18 you?

19 A. I've heard it from you.

20 Q. Well, you heard it from me because it's in one of these  
21 documents; right?

22 A. I don't know about that.

23 Q. Well --

24 A. We put -- the terminology that would typically be used  
25 would be pulling a license if you want to use that

1 terminology.

2 Q. Again, I didn't write the document, but you can call it  
3 pulling a license.

4 Monsanto sets the conditions for the license; right?

5 A. Conditions for the license. The TUG also includes  
6 stewardship requirements that are invoked by USDA, EPA and  
7 others.

8 Q. Right. But what I'm getting at, Monsanto doesn't sit  
9 down with each grower and say, Hey, let's negotiate the terms  
10 of your license and technology use agreement. Monsanto  
11 writes them. They're forms; right?

12 A. That's correct.

13 Q. Okay. And if a grower wants to use your technology,  
14 the grower must have a license and agree to the terms of the  
15 TUG; right?

16 A. That's correct.

17 Q. So Monsanto decides what will be limited by the TUG and  
18 the license and what will not other than what the EPA  
19 requires by law, but any additional requirements Monsanto  
20 writes them and puts them in there; right?

21 A. That's accurate.

22 Q. And there's no reason Monsanto could not have written  
23 into the license of the people buying the seed if you spray  
24 dicamba off label, you will be prohibited from buying any  
25 more of our seeds. Monsanto could have done that, couldn't

1 they?

2 A. I don't know that for sure.

3 Q. Monsanto offers it. Monsanto can decide who it does  
4 business with, can't it?

5 A. The technology licenses, the TUG, involve a lot of  
6 different companies who license our trades. So in any  
7 consideration -- any consideration of essentially revoking a  
8 license or pulling the TUG, if you will, takes into account a  
9 lot of factors so that that customer may never ever -- may  
10 not be able to use not just Monsanto products but other  
11 company's products that contain our technologies. So it's a  
12 very significant consideration for that person's livelihood.

13 Q. It is indeed. And don't you think it is a significant  
14 consideration for innocent driftees, to use your term of art,  
15 people who have been impacted by off-target movement, to have  
16 their farms damaged and destroyed?

17 A. It could be significant if someone makes an application  
18 of our herbicides or any other herbicides, and it impacts a  
19 neighbor, that's correct.

20 Q. But Monsanto would lose money if it stopped selling  
21 seeds to certain farmers just because they happen to be  
22 damaging other farmers with dicamba. You would lose money on  
23 that proposition, wouldn't you?

24 A. Doing the right thing for the business and doing the  
25 right thing long term will be good for our business, so I

1 don't think it's an accurate representation that you're  
2 making.

3 Q. Will it be good for the businesses that are destroyed by  
4 off-target movement? Will it be good for them?

5 A. Will what be good for them?

6 Q. Monsanto's refusal to take any steps to prevent its  
7 licensees from spraying dicamba legally, illegally, off  
8 label, on label to our people?

9 A. I'm a little confused by --

10 Q. I'll rephrase.

11 A. -- your examples.

12 Q. I'll rephrase. Monsanto makes money by selling  
13 products, including seed, doesn't it?

14 A. That's correct.

15 Q. Every customer you mark off that list that you won't  
16 sell seed to is lost revenue, isn't it?

17 A. In the short term that would be correct.

18 Q. And some of these customers who were causing massive  
19 damage in the Bootheel are huge purchasers of your product,  
20 aren't they?

21 MR. MILLER: Objection, assumes facts not in  
22 evidence.

23 THE COURT: Well, he can answer it if he knows.

24 THE WITNESS: I don't know that. Anyone using  
25 herbicide illegally regardless of what size or how big their

1 business is is not acceptable.

2 BY MR. RANGLES:

3 Q. Well, it's kind of acceptable. You're not going to do  
4 anything about it, are you; right?

5 A. We educate. We train. We steward our products. And  
6 that's what we do to ensure our products are -- people are  
7 able to use our products effectively. If they choose to use  
8 our product or someone else's product against the law  
9 illegally, we don't have recourse to go -- to go put them in  
10 jail or fine them or anything else.

11 Q. No. But you can refuse to sell them your product. And  
12 you've done that in the past under other circumstances when  
13 people have violated TUGs or license agreements, haven't you?

14 A. For certain things, yes, and related to stewardship.

15 Q. Well, and related to other things, too. I don't want  
16 to get into the details, but just I just want to be clear,  
17 and I'm asking a narrow question. In the past when certain  
18 conduct has been undertaken that costs Monsanto money,  
19 Monsanto has revoked licenses for farmers to buy their  
20 technologies, hasn't it?

21 A. I think I need to clarify something you've been saying  
22 before we go there. The illegal use of a pesticide that we  
23 don't produce, we don't sell, we don't market is not included  
24 in our TUG just for clarity. So it's not a violation of our  
25 license agreement to illegally use a herbicide. That's a

1 violation of a federal law.

2 Q. Well, again, that really wasn't my question. We'll come  
3 back to my question.

4 A. Okay.

5 Q. One more remind to the jury, who writes your TUG?  
6 Where -- in what office building is the TUG generated?

7 A. The TUG is produced by Monsanto.

8 Q. In St. Louis?

9 A. In St. Louis, yes.

10 Q. Yes. And you don't come down and separate rights, you  
11 write the conditions; right?

12 A. That's correct.

13 Q. Do you see why it may seem a little absurd to say, Well,  
14 it doesn't say it, so we can't do it when you're the one  
15 writing it?

16 A. Frankly, I'm confused.

17 Q. Fair enough. I'll just clear it up. So let's go back.  
18 And, again, I'm going to ask a very narrow question, because  
19 I don't want to get into a critical area.

20 But has Monsanto in the past revoked licenses of  
21 growers to use their product when those growers undertook  
22 courses of action that cost Monsanto money?

23 A. I believe it's accurate that in some cases Monsanto has  
24 revoked a license.

25 Q. So it can be done if Monsanto wants it to be done;



1 correct?

2 A. I'm not sure in this case. I don't know.

3 Q. You're telling our jury somebody in St. Louis couldn't  
4 sit down at a word processor and go, Here's the amended terms  
5 of the TUG and send them to your licensees and say, You got  
6 to comply with this, and it includes not spraying dicamba off  
7 label? Are you saying that's an impossibility?

8 A. I can confidently say it's not that direct.

9 Q. Are you telling the jury that's an impossibility if  
10 Monsanto were motivated?

11 A. The way you characterized it it's impossible.

12 Q. Okay. So the TUG is now set in stone, and Monsanto  
13 can't change it to protect innocent farmers from dicamba  
14 abuse? Is that your testimony?

15 A. I didn't say that.

16 Q. Well, is that the fact?

17 A. That's not my testimony. It's not -- I didn't say that.

18 Q. And it's not that way, is it? That's not the fact, is  
19 it?

20 A. Can you rephrase the question, be more specific, please?

21 Q. Is this TUG set in stone in such a fact that it will be  
22 impossible for Monsanto to modify it to protect farmers --  
23 innocent third-party farmers from off-label spraying by  
24 utilizing licenses? Is that impossible to do?

25 A. I don't know that that's impossible. Thanks for the

1 rephrase.

2 Q. But Monsanto has never tried to do that, has it?

3 A. No.

4 Q. As a matter of fact, Monsanto has never sat down -- you  
5 know your licensees. Let me back up.

6 You know who your licensees are, don't you?

7 A. We know -- yes. We know -- we know who those people  
8 are.

9 Q. They're your customers?

10 A. Right.

11 Q. And you have information from them?

12 A. That's correct.

13 Q. Including their contact information; right?

14 A. That's correct.

15 Q. Monsanto has never even sat down and typed out an e-mail  
16 to them saying, you know, we want to warn you, you shouldn't  
17 spray dicamba off label, and if you do, we're going to  
18 evaluate some consequences. Monsanto never did that, did  
19 they?

20 A. Well, we did contact licensees and with direct mail and  
21 direct communications and informed them that they could not  
22 make illegal applications.

23 Q. I'm not talking about variations of the pink sticker.

24 What I'm talking about is a direct e-mail saying, If you do  
25 this, there will be consequences. You never did that, did

1 you?

2 A. We never threatened a customer, no.

3 Q. No. And you never even -- well, we'll leave it at that.

4 And your personal view is that pulling TUGs would be  
5 a bad idea in this circumstance, isn't it?

6 A. Well, my personal view is that if a wrong has been  
7 committed, that the party responsible for that should be  
8 responsible.

9 Q. We both agree on that. Let's move on.

10 Exhibit 172. Now, this one has your name at the  
11 top?

12 A. Yes.

13 Q. Okay. Plaintiff's Exhibit 172. And it's from you;  
14 right?

15 A. It is.

16 (Plaintiff's Exhibit No. 172, E-mail from Boyd  
17 Carey to Ty Witten, was identified.)

18 MR. RANGLES: Your Honor, I move for the admission  
19 of 172.

20 MR. MILLER: Same objection, Your Honor.

21 THE COURT: Overruled and admitted.

22 (Plaintiff's Exhibit No. 172, E-mail from Boyd  
23 Carey to Ty Witten, was received.)

24 BY MR. RANGLES:

25 Q. Okay. Now, we're still in August of '16, August 28th of

1 '16, so we're near the end if not at the end of the 2016  
2 growing season; correct?

3 A. Near the end, yes.

4 Q. This is an e-mail to you -- from you to Ty Witten, who  
5 has been here some of the time; right?

6 A. He's included, yes.

7 Q. And Ty Witten, was he your superior at the time?

8 A. We were colleagues.

9 Q. Actually, he was about to rotate in as your replacement  
10 as head of claims, wasn't he?

11 A. That happened later, yes.

12 Q. Was this part of that transition process, or were you  
13 just informing him?

14 A. I think at this point in time Ty was just helping with  
15 the project. It wasn't a formal transition.

16 Q. Fair enough. It says "Subject: Re: Incremental  
17 resource request to support Xtend launch." Do you see that?

18 A. I do.

19 Q. So this is a forward looking document for the next year;  
20 right?

21 A. Yes. This is -- this is a request or a proposal so we  
22 could be prepared for the 2017 season, so we need to do that  
23 early.

24 Q. Thank you for that. And the request for the 2017  
25 season -- the 2017 season would be the season where you not

1 only sell the seed, but you were going to sell the supposedly  
2 new lower volatile dicamba; right?

3 A. Everything is set for the supposedly low volatility  
4 dicamba I would agree with.

5 Q. You don't expect me to take the supposedly out, do you?

6 A. That's your prerogative.

7 Q. Okay. Whatever you want to call it. You were about  
8 to sell your dicamba herbicide, the new dicamba herbicide?

9 A. 2017 would have been the first year in soybean -- well,  
10 in either of the two crops that we would have had any product  
11 approved by the EPA and available for use.

12 Q. And so this is the budget request for the year in which  
13 the newer what you say lower volatility herbicide is going to  
14 come out. It's not part of the old herbicide. This is  
15 forward looking to use the new one; correct?

16 A. Any use of any dicamba prior to this or even at this  
17 time was illegal, and it wasn't our dicamba. It wasn't any  
18 of our products. But this was for the year that we would  
19 sell anticipating a registration at this point in time, and  
20 we still hadn't achieved it, that we would actually have the  
21 product for -- designed for this technology, yes.

22 Q. Okay. So it says, "Please check my assumptions for the  
23 key drivers of our projected increase from 2.4 million to  
24 6.5 million." You're asking for more money?

25 A. That's correct.

1 Q. "I want to be sure I'm correct and in alignment with  
2 you." And it goes on to say, "While I understand we're  
3 looking into a puzzle, now I want to be clear" --

4 This 6.5 million that you're asking for is for the  
5 claims process for 2017; correct?

6 A. To be specific, the 6.5 million request -- I want to  
7 make sure that's at this point where we were. Yes, 6.5 as  
8 our increased proposal was to support what we called our  
9 field engagement specialists. Those were a group of  
10 contracted people that we wanted to contract with to ensure  
11 that we could quickly respond to potential claims.

12 Q. Well, yes, but you hadn't responded to any claims in '15  
13 and '16; right? We established that.

14 A. Because we didn't sell a product in '15 and '16.

15 Q. But you were required to respond and to build claims by  
16 the EPA once you sold the herbicide; right?

17 A. A condition of our registration included that, correct,  
18 so we would have been the same way.

19 Q. You would have?

20 A. To make sure that we could respond.

21 Q. Even though you didn't respond in the prior two years  
22 you would have voluntarily done it in '17 if you weren't made  
23 to do it by the EPA? Is that your testimony?

24 A. Well, my testimony would be that this would have been  
25 the first year that we actually sold a dicamba product in the

1 marketplace, and we would have wanted to have a service to  
2 support that.

3 Q. Second bullet point, Based on 2016 experience and  
4 learning and expected heightened tension on the part of the  
5 customers stakeholders and regulators, we felt it imperative  
6 to reevaluate projections.

7 So after you learned what happened in '16, it caused  
8 you to raise your numbers above your original request; right?

9 A. That was one of the other considerations.

10 Q. It says, Key drivers, increased production requests  
11 projection -- I'm sorry, "Key drivers of increased  
12 projection/requests, number of potential inquiries increases  
13 10 to 20 percent by far the primary driver:" Do you see  
14 that?

15 A. I do.

16 Q. In other words, you had originally thought that 10  
17 percent of the purchasers would have a profit?

18 A. Well, these numbers -- when we talk about 10 percent or  
19 20 percent or even a projected number are inquiries, people  
20 who have a question of any sort, and that certainly could  
21 include they might have a concern about off-target movement.

22 Q. Well, you projected 80 percent of the inquiries would be  
23 off-target movement, and you were right; right?

24 A. I'd have to look at that.

25 Q. We're going to get to that.

1 A. Okay.

2 Q. So you projected -- you said originally we thought 10  
3 percent of the customers are going to have a problem, but now  
4 we think it's going to be 20 percent, one in five; right?

5 A. That's the projection, and there were multiple reasons  
6 for that.

7 MR. RANGLES: Okay. Thank you.

8 Your Honor.

9 THE COURT: Okay. So we can take a lunch break  
10 now. Again, you'll be on your own for lunch. And remember  
11 the admonition I've given you repeatedly not to discuss the  
12 case.

13 We'll reconvene at 1:15. And you can go with the  
14 clerk to the jury room and return then to the jury room, if  
15 you will. Thanks again for your patience.

16 (Proceedings resumed in open court outside the  
17 presence of the jury.)

18 THE COURT: Mr. Downing and Mr. Mandler, who else  
19 wants to meet in the conference room?

20 We'll be in recess until 1:15.

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C E R T I F I C A T E .

I, Alison M. Garagnani, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains all pages transcribed by this reporter and takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated Cape Girardeau, Missouri, this 30th day of January, 2020.

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/s/Alison M. Garagnani  
Alison M. Garagnani, CCR, CSR, RMR, CRR  
Official Court Reporter