

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 6
VOLUME 6A - Pages 845 - 870

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

FEBRUARY 3, 2020

=====

Reported by:

Alison M. Garagnani, CCR #475, CSR, RMR, CRR
Official Court Reporter
United States District Court
555 Independence, Room 3100
Cape Girardeau, MO 63703
(573) 331-8832

APPEARANCES:

For Plaintiffs Bader Farms:

Billy R. Randles
Beverly Turina Randles
Angela Marie Splittgerber
RANGLES AND SPLITTGERBER, LLP
5823 N. Cypress Ave.
Kansas City, MO 64119

Tracey F. George
Lawrence Benjamin Mook
DAVIS AND GEORGE LLC
1600 Genessee St.
Suite 328
Kansas City, MO 64102

For Defendant Monsanto Company:

Jan Miller
Christopher Hohn
Sharon Rosenberg
David Dukes
Sara Chamberlain
THOMPSON COBURN, LLP
One US Bank Plaza
505 N. 7th Street
Suite 2700
St. Louis, MO 63101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED:

For Defendant BASF Corporation:

John P. Mandler
Anthony Finnell
Shane Anderson
Tarifa Laddon
FAEGRE AND BAKER LLP
2200 Wells Fargo Center
90 S. Seventh St.
Minneapolis, MN 55402

Troy A. Bozarth
HEPLER BROOM
130 N. Main Street
P.O. Box 510
Edwardsville, IL 62025

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Page

FEBRUARY 3, 2020

Trial Continued:

DENNIS CRAVENS:

DIRECT EXAMINATION BY MR. RANGLES	850
CROSS-EXAMINATION BY MR. MILLER	855
CROSS-EXAMINATION BY MR. ANDERSON	862
REDIRECT EXAMINATION BY MR. RANGLES	865

Playing Excerpts of Videotaped Deposition Of Thomas Orr Resumed	866
--	-----

—

T R I A L

1
2
3 The trial resumed on Monday, the 3rd day of
4 February, 2020, before the Honorable Stephen N. Limbaugh,
5 United States District Judge, of the Eastern District of
6 Missouri, Southeastern Division, before a jury and two
7 alternate jurors, who were impaneled, selected and sworn.

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

10 THE COURT: Good morning.

11 MR. RANGLES: Good morning, Your Honor.

12 THE COURT: I know most of you were rooting for the
13 Chiefs as was I, but very exciting.

14 MR. RANGLES: Yes, sir.

15 THE COURT: Any preliminary matters for Plaintiff?

16 MS. GEORGE: We'll just need about 10 minutes at
17 the end of the day.

18 THE COURT: I'm sorry?

19 MS. GEORGE: We'll need about 10 minutes at the end
20 of the day to resolve a dispute.

21 THE COURT: Okay. For the Defendants?

22 MS. MILLER: Nothing, Your Honor. Thank you.

23 MR. MANDLER: Same 10 minutes.

24 THE COURT: Does that make it 20 or --

25 MR. RANGLES: Your Honor, with the Court's

1 permission we have a very brief fact witness we'd like to
2 insert and get over this morning.

3 THE COURT: That's what I understand. That's why
4 I'm here and not there.

5 MR. RANGLES: Thank you, sir.

6 THE COURT: Please be seated then.

7 (Jury in.)

8 THE COURT: Good morning, ladies and gentlemen. I
9 hope you got rested up over the weekend. And I intended to
10 instruct you at the close of the session to root for the
11 Chiefs, but it wasn't necessary.

12 So, in any event, there's a short fact witness, and
13 so that's why I'm here and not down there. And after the
14 short live fact witness, then we'll proceed where we left off
15 with the deposition last Friday.

16 You may proceed.

17 MR. RANGLES: Thank you, Your Honor.

18 Plaintiff calls Mr. Dennis Cravens.

19 THE COURT: Be sworn in by the Court Clerk.

20 DENNIS CRAVENS,

21 being produced and sworn, testified as follows:

22 THE COURT: You may proceed.

23 MR. RANGLES: Okay. Good morning.

24 DIRECT EXAMINATION

25 BY MR. RANGLES:

1 Q. Good morning, Mr. Cravens.

2 A. Good morning.

3 Q. We met a few minutes ago, didn't we?

4 A. Yes.

5 Q. And I'm Billy Randles. I'm one of the lawyers
6 representing the Plaintiff in this case.

7 And have you ever testified in court before?

8 A. No.

9 Q. Okay. Well, we're just going to march through this, and
10 it shouldn't take long at all.

11 Where do you live?

12 A. Parma, Missouri.

13 Q. Is Parma a town in what's commonly known as the
14 Bootheel?

15 A. Yes.

16 Q. And do you know where Bader Farms is?

17 A. Yes.

18 Q. And Crowley's Ridge?

19 A. Yes.

20 Q. What kind of work have you done over the last several
21 years?

22 A. I've been nothing but a farmhand, which means I drove
23 tractors and semi-trucks, and stuff like that.

24 Q. Now, in 2016 did you work for Murphy Farms?

25 A. Yes.

1 Q. Now, are you familiar with the title for a business G &
2 G Farms?

3 A. Yes.

4 Q. Can you tell the jury what that is?

5 A. It's a farm out there located in kind of east of Bernie,
6 Missouri.

7 Q. And who are the folks who are involved in the ownership
8 of --

9 A. When I worked out there, Gary Murphy, Junior, and Gary
10 Murphy, the Second, as he goes by.

11 Q. And about how many acres does that farming operation
12 farm?

13 A. I think that year I think it was like around 15 or
14 16,000.

15 Q. During 2016 when you worked there, what were your
16 responsibilities?

17 A. I drove semi-trucks, tractors, done shop work, you know,
18 help out in the cotton fields whenever they needed it.

19 Q. And did you -- did you drive a truck during the time
20 that there were dicamba applications in 2016?

21 A. Yes.

22 Q. Okay. Can you tell the jury what -- what you saw?

23 A. Well, they asked me whenever like they got full shuttles
24 of the dicamba to drain it out and put it in empty Roundup
25 shuttles and then mark it with gray tape to keep it separate

1 from the regular Roundup.

2 Q. So they changed the packaging so it wouldn't say
3 dicamba?

4 A. Yes.

5 Q. Okay. To your knowledge, was there any part of the
6 farm where they were growing cotton and soybeans that they
7 didn't spray dicamba?

8 A. Not that I'm aware of.

9 Q. And did you see them apply it over the top of the cotton
10 and soybeans --

11 A. Yes.

12 Q. -- during the growing season?

13 A. Yes.

14 Q. Did you actually see Mr. Murphy mix the dicamba into the
15 spray trucks?

16 A. No, sir. It was the sprayer operators that was doing
17 it.

18 Q. But you watched them mix it?

19 A. Yes.

20 Q. Okay. And how close would you estimate the nearest
21 applications were to Bader Farms?

22 A. Some of them was within a mile, mile or two of them.

23 Q. Now, were you also working on farms down there in 2017?

24 A. Yes.

25 Q. Who did you work for in 2017?

1 A. Chad Fullerton.

2 Q. And did you drive a truck for him as well?

3 A. Yes.

4 Q. Now, where are those farms generally located?

5 A. Some of it was out in the country kind of like around
6 his shops south and north of them. Some of the ground that
7 he farmed is some of them -- a lot of it was that Gary Murphy
8 and them farmed too, so I'm familiar with all of it.

9 Q. So were they close together?

10 A. Yes.

11 Q. Okay. And about how many acres did Mr. Fullerton farm
12 back in '17?

13 A. I think he told me once around 6,000 acres.

14 Q. What's the closest -- about how far away is the closest
15 point of his farms from Bader Farms?

16 A. They're around his shop out on J Highway. They're west
17 of Malden. It's about two and a half miles or so to Bader
18 Farms.

19 Q. Now, in '17 did you see folks spraying dicamba over the
20 top of soybeans?

21 A. Yes.

22 Q. Did you ever observe spraying of the dicamba over the
23 top of soybeans in '17 when the wind was high?

24 A. Yes.

25 Q. And was this sprayed during the growing season?

1 A. Yes, sir.

2 Q. Did you ever see any packaging with the brand name
3 Xtendi Max?

4 A. Yeah. It's Roundup.

5 Q. Did you ever see packaging with the brand name of
6 Engenia --

7 A. Yes.

8 Q. -- during the '17 growing season?

9 A. Yes.

10 Q. Okay. That's what I'm talking about.

11 Now, do you personally know Bill Bader?

12 A. No.

13 MR. RANGLES: Your Honor, that's all the questions
14 I have at this moment.

15 THE COURT: Mr. Miller.

16 MR. MILLER: Thank you, Your Honor.

17 May it please the Court.

18 Good morning, ladies and gentlemen.

19 CROSS-EXAMINATION

20 BY MR. MILLER:

21 Q. Good morning, Mr. Cravens. I know we have not met.

22 Excuse me.

23 My name is Jan Miller, and I'm one of the attorneys
24 for Monsanto.

25 A. Yes.

1 Q. And I got about the same number of questions that
2 Mr. Randles got, so just a little bit more of your time.

3 I just want to get the timetable straight as to what
4 you testified about. You were working for Mr. Murphy in
5 2016 you said?

6 A. Yes.

7 Q. And then back in 2015 you were working for some other
8 folks around that area; correct?

9 A. Yes.

10 Q. And when you worked in 2015, you're not aware of anyone
11 that you worked with that sprayed dicamba over the top of
12 soybeans or cotton; right?

13 A. Not that I'm aware of.

14 Q. Okay. So the things that you've been talking about are
15 strictly in 2016 and 2017?

16 A. Yes.

17 Q. Now, when the dicamba was used at the Murphy Farm in
18 2016, they sprayed it -- I think you already testified they
19 sprayed it over the top of soybeans; correct?

20 A. Yes.

21 Q. And over the top of cotton; is that right?

22 A. Yes.

23 Q. They also sprayed it over some corn?

24 A. Yes.

25 Q. And they also used it as a pre-plant, they sprayed it

1 pre-plant?

2 A. Yes.

3 Q. So that would not be over the top?

4 A. No.

5 Q. That would be before anything was coming up?

6 A. Yes.

7 Q. And they sprayed at as a burndown?

8 A. Yes.

9 Q. And I want to ask you a little bit more about what you
10 testified about about how they handled the dicamba there at
11 the Murphy Farm in 2016; okay?

12 A. Okay.

13 Q. So, if I understand you correctly, what happened was
14 they brought in the dicamba, and it was in a dicamba shuttle
15 I think you said?

16 A. Yes.

17 Q. Could you tell the ladies and gentlemen of the jury,
18 what is a shuttle? What do you mean by that?

19 A. It's a square tote. It's a -- I guess it's a hard
20 plastic rubber stuff that it sets down in, you know, the
21 dicamba and the Roundup stuff kind of.

22 Q. It's basically a big container for it?

23 A. Yes.

24 Q. Okay. And they put the dicamba from that first
25 container into another container that said Roundup on it?

1 A. Yes.

2 Q. Was that container empty when they put it in, do you
3 know?

4 A. Yes, sir.

5 Q. Okay. So they transferred it over to a container with a
6 different label on it, a different herbicide?

7 A. Yes, sir. It had dicamba written on it.

8 Q. Okay. I'm sorry?

9 A. It had dicamba written on the full shuttle, the first
10 shuttle.

11 Q. The first one?

12 A. Yes.

13 Q. So they took it out of the first shuttle that said
14 dicamba and put it into a shuttle that said Roundup?

15 A. Yes.

16 Q. And they put gray tape on it; right?

17 A. Yes.

18 Q. On the Roundup one to make sure they knew what one they
19 had there?

20 A. Yes.

21 Q. And then the shuttle with the dicamba, they burned that;
22 right?

23 A. Yes. They burned it in the fire piles after the crop.
24 And they also had piles that they took the container out of
25 the metal casing that it was in, and they burned that there

1 in the -- in some fields where they had the brush piles piled
2 up.

3 Q. And so is it fair to say that they seemed to be doing
4 something -- they were doing everything they could to -- if
5 somebody came along after they had moved it over to the
6 Roundup thing, they wouldn't know they were spraying dicamba?

7 A. No.

8 Q. They were trying to hide it?

9 A. Right. They was trying to hide it.

10 Q. Everybody knew at that time you weren't supposed to go
11 spraying dicamba in 2016 over the top of soy and cotton;
12 right?

13 A. As far as I know it was.

14 Q. Yeah. And, in fact, you yourself didn't even want to
15 touch the dicamba?

16 A. No, sir.

17 Q. And was that because you knew also you're not supposed
18 to be doing this?

19 A. Well, with what I seen what was going on I felt like I
20 was getting used as a fall guy if they got caught.

21 Q. Got you. And so you wanted to separate yourself?

22 A. Separate it.

23 Q. Completely understandable.

24 Now, moving on to 2017. Now, in 2017 you worked for
25 Mr. Fullerton; right?

1 A. Yes.

2 Q. Chad Fullerton?

3 A. Yes.

4 Q. Now 2017 was a different story you could -- if you used
5 the right dicamba, you could spray over the top of cotton and
6 soy then; right?

7 A. As far as I know.

8 Q. Yeah. And the right dicamba I think you already -- Mr.
9 Randles asked you about a couple of those, there was
10 XtendiMax?

11 A. Yes.

12 Q. And Engenia; correct?

13 A. Yes.

14 Q. And Mr. Fullerton used those when he was spraying over
15 the top?

16 A. Yes.

17 Q. And now, same thing as what you said about before,
18 Mr. Fullerton used the Engenia or XtendiMax over the top of
19 soy and cotton in 2017; right?

20 A. Yes.

21 Q. He also used dicamba over the top of corn; right?

22 A. Yes.

23 Q. And as a burndown; right?

24 A. Yes.

25 Q. Now, you're not aware of -- from what you could tell you

1 were not aware of Mr. Fullerton violating any of the
2 requirements when he was using the dicamba; correct?

3 A. Not up there in Missouri he wouldn't.

4 Q. He was following the state regulations in Missouri when
5 he was doing it?

6 A. Yes.

7 Q. And talking about the regulations, there are -- every
8 herbicide comes with a label on it; right?

9 A. Yes.

10 Q. And it has a whole bunch of instructions about how
11 you're supposed to use it and when you're supposed to use it?

12 A. Yes, sir.

13 Q. And you understand from your years of working in the
14 industry that it's the applicators' and farmers'
15 responsibility to make sure they follow those label
16 directions?

17 A. Yes.

18 Q. Now, you don't know -- as you testified, you don't know
19 Mr. Bader; right?

20 A. No, sir.

21 Q. You were there last year, though, at Bader Farms, and
22 you picked up some peaches?

23 A. Yes.

24 Q. A couple of boxes?

25 A. Yeah, a couple of boxes.

1 Q. Did you give them out to friends of yours and family?

2 A. Yes.

3 Q. The peaches last year were pretty good sized?

4 A. Yeah, the ones I bought was.

5 Q. Pretty good flavor?

6 A. Yeah, they had pretty good flavor.

7 Q. Okay. Mr. Cravens, thanks for your time today. I
8 appreciate you coming in.

9 A. Okay.

10 THE COURT: Mr. Mandler.

11 MR. ANDERSON: Mr. Anderson, Shane Anderson.

12 THE COURT: Okay.

13 MR. ANDERSON: May it please the Court.

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. ANDERSON:

17 Q. Good morning, Mr. Cravens. My name is Shane Anderson.
18 I'm one of the lawyers representing BASF. We had the
19 pleasure of meeting at your deposition.

20 A. Yes.

21 Q. I will do my best to be short as well. And I'm not
22 referring to my height this time.

23 Mr. Cravens, you have a pesticide applicator's
24 license; correct?

25 A. Yes, sir.

1 Q. And you talked about not wanting to be the fall guy
2 regarding Mr. Murphy's applications?

3 A. Yes, sir.

4 Q. Is that because you understand that there are label
5 requirements, and it is the applicator's responsibility to
6 make a decision both when to apply and not to apply a
7 product?

8 A. Yes.

9 Q. The dicamba used by Mr. Murphy in 2016 was straight
10 dicamba; correct?

11 A. Yes.

12 Q. There was no trade name; right?

13 A. Not that I'm aware of.

14 Q. You're not aware of there being a trade name?

15 A. Yeah. I think the biggest part of it was Monsanto on
16 the sticker. The biggest part of it was Monsanto. It was
17 the plastered on the side of the shuttle. It had Monsanto on
18 it.

19 Q. That was for the Roundup shuttle?

20 A. Yes.

21 Q. Did Murphy tell you why he was burning the dicamba
22 containers in 2016?

23 A. No, sir, he didn't.

24 Q. Have you spoken with agents with the federal
25 Environmental Protection Agency's criminal investigation

1 division regarding other people's illegal spraying of dicamba
2 in 2016?

3 A. Yes. I spoke, I think, with two different people. One
4 was a lady, and the other one was a man.

5 Q. You understood the federal agents were investigating
6 possible violations of federal law and other federal crimes?

7 A. Yes.

8 Q. Do you know whether or not anyone was charged or
9 indicted for violations of federal law or other federal
10 crimes related to illegal spraying of dicamba in 2016?

11 A. Not that I'm aware of.

12 Q. They came to your house?

13 A. Yes.

14 Q. Let's switch over to Mr. Fullerton. Mr. Fullerton
15 applied dicamba over the top of corn in 2017; correct?

16 A. Yes.

17 Q. He also applied dicamba over the top of corn in 2018;
18 correct?

19 A. Yes.

20 Q. Mr. Cravens, as far as you're aware did any of the
21 dicamba that Mr. Fullerton applied over the top of cotton
22 move to Mr. Bader's farms?

23 A. Not that I'm aware of.

24 Q. Mr. Cravens, as far as you're aware, did any of the
25 dicamba that Fullerton applied over the top of soybeans move

1 to Mr. Bader's farms?

2 A. Not that I'm aware of.

3 Q. Mr. Cravens, are you aware of any dicamba application
4 that was made by Mr. Murphy that moved off-target and went to
5 Bader Farms?

6 A. Not that I'm aware of.

7 MR. ANDERSON: Thank you, sir.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Randles, redirect examination?

10 MR RANGLES: Just a couple of things.

11 R E D I R E C T E X A M I N A T I O N

12 BY MR. RANGLES:

13 Q. Mr. Cravens, you're not an expert in how dicamba moves
14 and how far it moves and all that, are you?

15 A. No.

16 Q. Okay. And you mentioned you bought some peaches in 2019
17 at Bader Farms. Oh, do you remember what time of year about
18 that was?

19 A. No, sir, I don't. It was the summer, you know.

20 Q. And you said they were pretty good in 2019?

21 A. Yes.

22 Q. Did you also buy some peaches in 2018?

23 A. Yes. They wasn't as good as the '19 batch was.

24 MR. RANGLES: Okay. Thank you very much.

25 THE COURT: Anything else?

1 MR. MILLER: No, nothing, Your Honor. Thank you.

2 THE COURT: Okay. You may step down.

3 (The witness stepped down from the witness stand.)

4 THE COURT: At this time do you want to resume the
5 deposition testimony or --

6 MR. RANGLES: Do we need the television where it
7 was on from?

8 THE COURT: Yes.

9 MR. RANGLES: Can I help you?

10 THE CLERK: No. I got it.

11 Can everyone see?

12 THE COURT: Okay.

13 (Playing of the excerpts of the videotaped
14 deposition of Mr. Thomas Orr was resumed.)

15 THE COURT: Do you want to take a break now?

16 MS. MILLER: Yes.

17 THE COURT: Okay. We'll take a break for 10 or
18 15 minutes.

19 With that remember the admonition I've given you
20 repeatedly. Do not discuss this case among yourselves or
21 with others or permit anyone to discuss it in your presence.
22 Do not form or express any opinion about the case until it's
23 given to you to decide.

24 So we'll take a break. Go to the jury room, and
25 we'll call you back after. Thanks.

1 (Jury out.)

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

4 THE COURT: Do you have anything you want to
5 discuss before the break?

6 MR. RANGLES: No.

7 THE COURT: Okay. We'll be in recess until about
8 11:00 o'clock.

9 (Proceedings stood in temporary recess.)

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

12 THE COURT: So we figured out with this high tech
13 courtroom I did not have to go down there all along. They
14 can just put it up here, and I'll be fine.

15 MS. GEORGE: Hey, Judge, I just wanted to let you
16 know their testimony runs about another hour, and then we
17 will have like rebuttal that's around 25 or 30 minutes after,
18 so that may be a breaking point. I'm just letting you know.
19 I don't know --

20 THE COURT: So about an hour would be just fine.

21 MS. GEORGE: You're okay with that?

22 THE COURT: Don't you think?

23 MR. MILLER: That will be the lunch break.

24 (A discussion was held off the record.)

25 (Jury in.)

1 THE COURT: Be seated.

2 So we figured out that I didn't have to be down
3 there after all. There's the cord -- I just -- high tech
4 stuff I don't need either.

5 So we've got about an hour's more videotape, and
6 then there will be a break for lunch just to let you know.

7 Okay. You can start.

8 (Playing of the excerpts of the videotaped
9 deposition of Mr. Thomas Orr was resumed.)

10 THE COURT: We'll take our lunch break at this
11 time. It's 20 after. Why don't we reconvene at 1:30. That
12 will give you enough time to have lunch.

13 And remember the admonition I've given you
14 repeatedly not to discuss the case.

15 So you can go now to the jury room and report back
16 just shortly before 1:30 then.

17 (Jury out.)

18 (Proceedings resumed in open court outside the
19 presence of the jury.)

20 THE COURT: Any matters you want to take up now?

21 MR. RANGLES: No.

22 THE COURT: I do have just one. It was about a
23 conversation at the end of the day on Friday, and that was
24 about the Beaumont plant.

25 Can you give me a little bit more information,

1 Mr. Mandler, about when that plant was designed and when it
2 went online?

3 MR. MANDLER: The plant has been in existence for a
4 long time, and I can't tell you when it first went online,
5 but the expansion was the discussion that we started, if I
6 remember, in 2014.

7 THE COURT: Right.

8 MR. MANDLER: Details beyond that, you know, when
9 it -- if the expansion even went through or what happened
10 after that I'd have to -- I'd have to check on the record and
11 get back to you, Your Honor.

12 THE COURT: Okay. Why don't we do that before we
13 start with -- after lunch then.

14 MR. MANDLER: I'll do that. Thank you, Your Honor.

15 THE COURT: Okay. Thank you.

16 Anything else?

17 Okay. We'll be in recess until 1:30 then.

18 (Proceedings stood in lunch recess.)
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 pages 845 through 870 inclusive and that this reporter 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 3rd day of February, 2020.

/s/Alison M. Garagnani
Alison M. Garagnani, CCR, CSR, RMR, CRR
Official Court Reporter