

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

BADER FARMS, INC., ET AL,,)
)
 Plaintiffs,)
)
 v.) No. 1:16-CV-00299 SNLJ
)
 MONSANTO COMPANY AND BASF)
 CORPORATION,)
)
 Defendants.)

=====

JURY TRIAL - VOLUME 7B

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

FEBRUARY 4, 2020

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FEBRUARY 4, 2020

(The afternoon proceedings commenced at 1:15 p.m.)

(The following proceedings were held in the courtroom out of the presence of the jury:)

THE COURT: Any preliminary matters?

MR. RANGLES: No, Your Honor.

MR. MANDLER: No, Your Honor.

MR. MILLER: No, Your Honor.

THE COURT: The jurors have been asking; so at the end of the day, I'm going to tell them they need to make arrangements for the entire week next week.

(The following proceedings were held in the courtroom in the presence of the jury:)

THE COURT: Ladies and gentlemen, I have talked with the lawyers and it's pretty clear at this point we are going to need all of next week; so you will need to make arrangements with family and employers and so forth. Sorry. It's just a long and complicated case, as you know.

With that, you may proceed.

MS. GEORGE: We will continue with Mr. Birk's testimony.

(Excerpts of the videotaped deposition of Jeffrey Birk taken on June 20, 2019 resumed playing for the jury.)

MS. GEORGE: Your Honor, that concludes that deposition. We next have a deposition of Ron Repage that

1 lasts right at an hour.

2 **THE COURT:** In that case let's take just a quick
3 ten-minute recess. And remember the admonition I have given
4 you not to discuss the case. We will call you back in
5 shortly.

6 (At this time, the Court declares a recess.)

7 (The following proceedings were held in the
8 courtroom out of the presence of the jury:)

9 **THE COURT:** Do you have any preliminary matters?

10 **MR. MANDLER:** Yes, Your Honor. As we have in the
11 past, we have the proposed order for the testimony and
12 exhibits for our next witness.

13 **THE COURT:** That's fine. Same rulings.

14 **MR. MANDLER:** Thank you, Your Honor.

15 **THE COURT:** Okay.

16 (The following proceedings were held in the
17 courtroom in the presence of the jury:)

18 **THE COURT:** Call your next witness.

19 **MS. GEORGE:** Your Honor, Plaintiffs offer the video
20 testimony of Mr. Ron Repage.

21 (Excerpts of the videotaped deposition of Ronald
22 Repage taken on June 18, 2019 were played for the jury.)

23 **MS. GEORGE:** Your Honor, that concludes Mr. Repage's
24 deposition. We are ready to move on to live witnesses today.

25 **THE COURT:** All right. Who is your next witness

1 then?

2 We will take a quick ten-minute recess and then we
3 will call you back.

4 **MS. GEORGE:** It's Mr. Bill Bader.

5 **THE COURT:** All right. Ten-minute recess. Remember
6 the admonition. We will call you back in then.

7 (At this time, the Court declares a recess.)

8 (The following proceedings were held in the
9 courtroom out of the presence of the jury:)

10 **THE COURT:** Do you want to go to 5:00 then?

11 **MS. RANGLES:** Yes, sir, Your Honor.

12 **THE COURT:** Okay.

13 So I will let you determine your stopping point.
14 You know, plus or minus ten minutes at 5:00.

15 **MS. RANGLES:** Yes, sir, I'll do that. Thank you.

16 (The following proceedings were held in the
17 courtroom in the presence of the jury:)

18 **THE COURT:** Call your next witness.

19 **MS. RANGLES:** Your Honor, Plaintiffs call Bill Bader
20 to the stand.

21 **BILL BADER,**

22 having been first duly sworn in by the clerk, testified:

23 **DIRECT EXAMINATION**

24 **BY MS. RANGLES:**

25 Q. Would you please state your name.

1 A. William Gerard Bader.

2 Q. Where do you live, Mr. Bader?

3 A. In Campbell, Missouri.

4 Q. What is your occupation?

5 A. I am a farmer.

6 Q. Are you the owner of Bader Farms?

7 A. Yes, me and my wife, Denise.

8 Q. And is she in the courtroom today?

9 A. Yes, ma'am.

10 Q. And Mr. Bader, is part of your job, any part of your job
11 public speaking?

12 A. No, ma'am.

13 Q. Do you ever do any public speaking?

14 A. No, ma'am.

15 Q. Okay. So is this the first time you've testified in
16 court?

17 A. Yes, ma'am.

18 Q. Are you nervous at all?

19 A. Very nervous.

20 Q. Okay. I will try to make it as painless as possible,
21 okay?

22 A. Thank you.

23 Q. Now, you've already said that you were married. And how
24 long have you been married?

25 (Laughter)

1 Q. I am not trying to get you in trouble.

2 A. We've been married for 42 years.

3 Q. What year did you get married?

4 A. In '77.

5 Q. And do you have any children?

6 A. Yes.

7 Q. How many children do you have?

8 A. We have two boys and one girl and seven grandkids.

9 Q. Okay. What are your kids' names?

10 A. Two boys, Levi and Cody, and my daughter Breana.

11 Q. All right. So where did you grow up, Mr. Bader?

12 A. We grew up -- I grew up in a little community, a
13 little Catholic community north of Campbell, about 7 miles
14 north of Campbell.

15 Q. What is the name of the town there?

16 A. Glennonville.

17 Q. Have you lived in -- is that in Dunklin County?

18 A. Yes, ma'am.

19 Q. Have you lived in Dunklin County your entire life?

20 A. Yes, ma'am.

21 Q. And what is your education background?

22 A. Twelve years.

23 Q. Okay. So where did you graduate from high school?

24 A. I graduated from high school in Campbell.

25 Q. And when did you graduate?

1 A. In 1976.

2 Q. All right. Did you pursue any school of any sort after
3 that?

4 A. No, ma'am.

5 Q. Tell me a little bit or tell the jury a little bit about
6 your introduction into agriculture. How were you introduced
7 into agriculture?

8 A. We were -- I was born and raised on a family farm. You
9 know, we'd -- we come from a relatively big family. I got
10 five brothers and four sisters. We were raised when we were
11 three or four years old, you had job -- chores to do on the
12 family farm. It was -- when you were young, you went to
13 gathering eggs. We had a big garden you'd hoe. You would
14 tamp in the garden. And you -- our crops we raised, we raised
15 cotton, buckwheat, corn and beans and cows and pigs.

16 Our -- cotton was a cash crop; so I started picking
17 cotton when I was five years old.

18 Q. Okay. Mr. Bader, how big was your family farm?

19 A. We had 160 acres.

20 Q. And so you picked cotton beginning at the age of five?

21 A. Yes.

22 Q. And what other row crops did you work with?

23 A. Corn, beans and wheat.

24 Q. Okay. And so when did you start working in peaches?

25 A. I started peaches in 1970.

1 Q. Okay. How did that come about?

2 A. We -- like I said, we were from a big family. We helped
3 support the family; so we got jobs, you know, in the summer to
4 buy our high school -- to buy our clothes for high school and
5 clothes to wear and get our spending money.

6 Q. So when you started working in peaches, you said it was
7 1970, so were you a teenager at that point?

8 A. Yes, I was 13.

9 Q. Okay. So what was your first job -- if you remember,
10 tell the jury your first job in peaches.

11 A. The first job was picking peaches.

12 Q. Who did you do that for?

13 A. Mr. Roy Risley.

14 Q. Okay. Was that in Campbell or the Dunklin County area?

15 A. Yes, it was just north of Campbell.

16 Q. And was there any other farmers you worked for, with
17 respect to peaches?

18 A. We -- you know, he was a small orchard grower and if
19 there were other orchard growers in the area that need help
20 or -- but he was our main source of income. But like I said,
21 there was other little small growers that if they needed help,
22 we went and helped them.

23 Q. Do you know how many growers of peaches there were in
24 that area back then?

25 A. There was 34 growers.

1 Q. And so how long did you continue working in peaches, I
2 guess just -- I assume that was in the summer?

3 A. Yes.

4 Q. So how long did you continue to do that?

5 A. I worked pretty well every summer. In '74, I done almost
6 spent about five or six weeks with a row crop farmer, helped
7 him. He was an older gentleman that needed some help. We got
8 done around the Fourth of July and then I went to work in
9 peaches.

10 Q. Okay. And so let's fast-forward a little bit and so I
11 would like to know when you started working -- or at what
12 point did you start spending more time working in peaches?

13 A. In 1975, I was a senior in high school. There was a
14 program where I had enough credits to graduate and I could
15 just go to school -- I just had to go to school half a day my
16 senior year. But there was a program if you had a job, you
17 could go work at it; so I pretty well went to work my senior
18 year at Risley's Orchard. I would go to school till dinner
19 and then work the rest of the day there.

20 Q. So about how many hours a day at that point were you
21 working with Mr. Risley?

22 A. A day or a week?

23 Q. A week is fine.

24 A. A lot of times it was anywhere from 25 to 40 hours a
25 week.

1 Q. Did you continue to do that through your senior year of
2 high school?

3 A. Yes. When I graduated from high school in 1976, I went
4 to work full time for him.

5 Q. And about how many orchards did Mr. Risley have at that
6 point?

7 A. He had roughly just about a hundred acres of peaches.

8 Q. So at that point then since you were working full time,
9 what were your responsibilities with Mr. Risley?

10 A. I pretty well took care of all the spraying, the biggest
11 part of all pruning, and then in the summertime I'd take care
12 of the pickers and run the packing house.

13 Q. Were there any other full-time employees with Mr. Risley?

14 A. Not back in 1976, no.

15 Q. Did you have a job title with him at that time?

16 A. I was pretty well -- we had part-time help, but I pretty
17 well -- I was his full-time helper.

18 Q. Okay. Now, I'd like to turn your attention to like a
19 little bit further past that as you are building Bader Farms.
20 Was there a point in time when you decided to own your own
21 orchard?

22 A. We were working -- like I said, I worked full time. He
23 was an older gentleman, had a lot of experience in peaches.
24 And in 1981, he made me a partner and it was -- we formed
25 Risley Incorporated.

1 Q. Would you tell the jury how long you and Mr. Risley
2 continued as Risley Incorporated?

3 A. We worked together until 1986. And he retired. And I
4 bought him out.

5 Q. So at that time when you bought him out, how many acres
6 of orchards was Risley Incorporated?

7 A. Risley Incorporated was around roughly about 250 acres
8 and I was running about 220.

9 Q. And were there any other full-time employees working with
10 you-all at that point?

11 A. Yes, by this time I had -- we had my brother Steve and my
12 cousin Danny.

13 Q. Can you tell the jury what type of business Bader Farms
14 is? And by that I mean is it a limited liability corporation?
15 Is it incorporated? What is it?

16 A. In 1976 -- I mean 1988 we formed what was called -- we
17 run under Risley's Orchard in '87 and '88 we switched over to
18 Bader Farms Incorporated.

19 Q. Okay. Just so I'm clear, and the jury is clear,
20 Mr. Risley wasn't working with you at that point anymore; is
21 that right?

22 A. Yes, ma'am.

23 Q. And so then Bader Farms incorporated. And once you
24 decided to do that, did you have any particular plan in mind
25 of growth or did you -- did you just intend to run your own

1 orchard?

2 A. No. The plan was growth, but by this time we were
3 picking up a real good abundance of clients that wanted
4 peaches. And we were at the milestone where we really needed
5 to double our crop acres to meet the demand.

6 Q. Now, what year was that?

7 A. In 1988.

8 Q. Okay. So in 1988 you decided that you needed to expand?

9 A. Yes.

10 Q. Where was the demand for peaches coming from?

11 A. Pretty well the demand was coming from pretty well the
12 whole midwest.

13 Q. Did you have a particular central location, like in an
14 office or anything like that?

15 A. The office was really our packing shed since, you know,
16 peaches are seasonal. But like our client cartel just -- you
17 know, we were -- like I said, when I started in 1970, there
18 was 34 growers. By 1988 we were down to four growers.

19 Q. And do you remember about how many orchards that was then
20 in Dunklin County?

21 A. There was -- roughly the four growers were older
22 gentlemen was -- consists probably about 260-70 acres.

23 Q. So what was your next acquisition of orchards for Bader
24 Farms?

25 A. We just started planting -- we just started planting more

1 trees, obtained more ground. We planted -- and then in 1990,
2 I took over another 160 acres of peaches from a local grower.

3 Q. And did you purchase those or was that a lease?

4 A. We -- we just leased it and farmed it and more or less I
5 took care of his orchard and he was an older -- it was a
6 lessee and then I bought him out in 2018.

7 Q. So during what period would you say that Bader Farms
8 experienced the most growth of its orchards?

9 A. The most growth of the orchard came from a time period
10 from about '95 up through '06.

11 Q. And so what was the largest number of acres that the
12 orchards have ever consisted of?

13 A. Probably -- in '06, probably close to 1100 acres.

14 Q. And in 2015, about how many acres of orchards did you
15 have?

16 A. We were about 970 acres.

17 Q. And what about now?

18 A. About 750 with about 100 -- about 200 acres in
19 nonproduction.

20 Q. Okay. We will explain to the jury -- I want you to
21 explain to the jury a little bit later about production and
22 nonproduction. But it's fair to say at your highest amount,
23 you were somewhere over a thousand orchards. Is that your
24 testimony?

25 A. Yes, ma'am.

1 Q. Okay. Now, you mentioned a moment ago about leasing some
2 land from an owner. Does Bader Farms own all of its orchards
3 or do you lease some?

4 A. We lease -- still lease some today.

5 Q. About how much of that -- and again, I mean in acres --
6 is leased?

7 A. There's roughly just about -- on the orchard part,
8 they're just roughly rented or leased probably about 117 or
9 18 acres now.

10 Q. Now, you said on the orchard part. So does Bader Farms
11 own and operate land for other agriculture purposes?

12 A. Yes.

13 Q. Okay. And what other crops do you grow?

14 A. We raise corn, wheat, soybeans.

15 Q. And how many acres of these other crops do you also grow?

16 A. We got roughly 4700 acres of row crop.

17 Q. Does Bader Farms also grow other -- any other crops, any
18 trees or fruit or anything like that?

19 A. Well, peaches. We got roughly the peaches. Got a few
20 pecans and peach trees.

21 Q. Any other kind of fruit trees?

22 A. We have a few apple trees, pear trees, nectarine trees.

23 Q. Now, just to give the jury a frame of reference. I know
24 you said you were in Dunklin County. Are all the orchards
25 located in Dunklin County?

1 A. Yes, ma'am.

2 Q. And where specifically in Dunklin County are they
3 located?

4 A. We are located in northern Dunklin County, which is --
5 Dunklin County is fairly flat except for northern -- probably
6 the last 8 miles of Dunklin County has got a ridge, what we
7 call Crowley's Ridge. Crowley's Ridge sets anywhere from 150
8 to 200 feet higher than the surrounding grounds on the east
9 side or west side or south side, which makes it prime for
10 peach ground because it's higher, dryer ground.

11 Q. Does Crowley's Ridge present any challenges for Bader
12 Farms?

13 A. No -- at the present time, yes.

14 Q. So Mr. Bader, I've -- what -- I would like for you to
15 explain for the jury a little bit about peaches so they get a
16 better understanding of it.

17 Are there different varieties of peaches?

18 A. Yes. We raise about 38 different variety of peaches,
19 five different varieties of nectarines, five different
20 varieties of white peaches. But our main crop of peaches
21 consists of probably about 28 varieties.

22 What we do, we'll plant -- it takes a lot of
23 planning in planting an orchard with very much expensive
24 trees. So when we plant, we usually plant a small setting.
25 You know, what I'm saying, one variety, 50 to 100 trees. We

1 want, you know, a peach with high quality, with good taste and
2 shipping ability, how it adapts to the environment. So when
3 we plant it, it takes, you know, the fourth year before that
4 tree is producing, so we like to experiment with it and make
5 sure it's a variety that will be a -- that we've got to have
6 taste and appearance where customers buy it.

7 After it passed that test for about eight years,
8 then we will go -- if we're going to plant a thousand, 1500,
9 2,000 trees of that variety, we will plant it because of the
10 expensive trees. But it's a proven ground. We have to prove
11 it before we plant it.

12 Q. And Mr. Bader, have you always done that? Have you
13 always gone through that process with testing varieties?

14 A. Yes. Well, the first block I planted was in '87. I
15 called a nursery, told them I needed 14 varieties, 50 trees of
16 each variety. Because of the orchards that we were dealing
17 with, we were dealing with some older varieties that we need
18 to do some improvement on. You know, they'd been around,
19 seemed like, for 50 years.

20 There was some new varieties out there that was more
21 commercialized where they had a shelf life. They had the
22 sweetness, they had the color, they had to appeal to the
23 customer. Because we had the number one -- you know, in any
24 business, the number one is satisfying the customer because
25 the customer is always right.

1 Q. Have you ever had any varieties just fail?

2 A. Yes.

3 Q. I assume -- is it fair to say you get rid of those pretty
4 quickly?

5 A. Yes.

6 Q. Well, Mr. Bader, how long does a peach tree tend to last,
7 the normal life of a peach tree?

8 A. We -- some of the older standard rootstocks last 25,
9 30 years. We went to a little bit smaller of a tree. Right
10 now I got some we are still picking. They were planted in
11 1995; so, you know, they are approaching 25 years old.

12 Q. Okay. So I want to unpack that a little bit. So you
13 said that some of the older trees that you planted,
14 rootstocks, lasted longer. Is that what you said?

15 A. They were old standard rootstock that was -- you know,
16 they had been around since the turn of the century, I guess.

17 Q. What was the reason for the switch?

18 A. We needed newer improved -- you know, a peach with a
19 higher quality and taste.

20 Q. Does a -- does a tree with a longer life have a better
21 taste or worse or is it inconsequential?

22 A. It's pretty well in -- you know, when you say how we
23 judge the taste -- the age of a tree, it seems about when the
24 age gets up there, the quality goes. When the quality starts
25 falling, that's when one of the main things we start pushing

1 them or remove them.

2 Q. Okay. So you -- you will remove a tree at a certain
3 point, as you just testified; right?

4 A. Yes.

5 Q. What are the specific reasons that you decide to push a
6 tree out?

7 A. Sometimes it's just -- there's weather-related events.

8 Q. Okay. Are there other reasons you push a tree out? I
9 know you said age a moment ago. But are there other reasons?

10 A. Yes. Like I said, some varieties just don't prove out.
11 They just don't -- they just do not have the taste or the
12 quality that we want or they get -- they just don't get the
13 size.

14 Q. So when you decide that you are going to push out trees,
15 are you planning to then push out the entire orchards or just
16 a certain number of trees?

17 A. Some -- a lot of times just certain number of trees.

18 Q. How do you make that determination? What is it based on?

19 A. The determination is made on variety because -- I guess I
20 should have explained it a little deeper. When we plant
21 trees, we start picking peaches steady the first July, we need
22 a constant flow of peaches. So when we are planning out these
23 orchards, it's planned out by maturity dates. You come out of
24 one variety and you are going into the next for a constant,
25 for about eight weeks.

1 When you start supplying the grocery store and your
2 vendors, you know, it takes a lot of planning to plan out and
3 keep the varieties because when you are planting, they're
4 coming in, they want a supply all summer. They don't want you
5 to have peaches this week and then miss two weeks and have
6 peaches again. We work with them on, you know, telling them,
7 you know, yes, we have this supply and we supply them, you
8 know, you figure the first of July until the end of August.

9 Q. And is that the period that you are getting the shipment
10 of peaches to your vendors?

11 A. Yes, we were.

12 Q. Okay. We will talk about that a little bit more later.

13 So, Mr. Bader, you alluded to something a few
14 minutes ago about the difference between the number of acres
15 that you have and total acres versus something else. Can you
16 explain to the jury the difference between production acres
17 and total acres?

18 A. Yes. We constantly -- we try to constantly, you know,
19 plant new acres. We like to plant -- the goal was to plant
20 60 acres -- 50 to 60 acres almost every year.

21 Q. When did you establish that as the goal for the company?

22 A. Back in 1988.

23 Q. Okay.

24 A. Where -- when you start doing the math, you know, we want
25 to maintain a thousand acres, so we are constantly -- you

1 know, we want 50 acres to come in. If we take 50 acres out,
2 we have 50 acres coming in. Or we need a gap filled in on
3 some varieties, we start planting that particular variety, you
4 know, to keep our supply constant.

5 Q. Mr. Bader, about how many trees are on one acre?

6 A. On the 20 by 20 planting, it's 109.

7 Q. And is the 20 by 20 planting the standard?

8 A. It's pretty standard.

9 Q. Is that what Bader Farms uses?

10 A. Yes.

11 Q. Do you use that on every orchard?

12 A. We got a few acres we done some experimenting with.

13 Q. Okay. So, Mr. Bader, does the term "FSA" mean anything
14 to you?

15 A. Yes. That's the Farm Service Agency.

16 Q. Okay. Tell the jury what the Farm Service Agency is.

17 A. Farm Service Agency is a division of the Department of
18 Agriculture. You certify your crops, you know, when you plant
19 trees. It more or less governs the farm, you know, and you
20 operate underneath their rules.

21 Q. Is there information that Bader Farms has to provide to
22 Farm Service Agency?

23 A. Yes. You know, when we plant trees, we give them the
24 date when we planted them. Or if we push them out, we will go
25 down there and submit a plan that since we are on highly

1 erodable ground and we have a conservation plan to cover it
2 when we push them out, we gotta get -- tell them our plan,
3 whether it's a three- or four-year plan, what we are going to
4 do and keep it in a cover crop or no till it, but we have to
5 stay in compliance.

6 Q. And you just used the phrase "highly erodable ground."
7 Would you tell the jury what that means?

8 A. Highly erodable ground is what they consider anything
9 with probably a two -- we will start at a 3-degree slope and
10 higher. Some of our ground is probably more like 6- to
11 8-degree slope.

12 Q. Now, you also said that this information has to be
13 provided to FSA, the information about the acres and the
14 trees. What happens if you don't provide that information?

15 A. When we don't provide them information, we are out of
16 compliance.

17 Q. So why is it necessary, though, to provide FSA with that
18 information?

19 A. For one thing is the law.

20 Q. Do they -- does FSA provide something called a
21 certification?

22 A. Yes.

23 Q. What does -- would you tell the jury what that means.

24 A. Certification is you plant what you got planted -- excuse
25 me. Certification is what you plant, you know, in the row

1 crops, you know, when we plant wheat or corn, beans, whatever
2 row crop, we certify it. It's just like peaches; when we
3 plant them, we certify them.

4 They want the date we planted them and the farms we
5 planted them on. Just like when we push them out, we have
6 to -- you know, we tell them and they'll write us up a
7 conservation plan on it.

8 Q. Now, you've talked a little bit about your different
9 folks that you sell to. Could you tell the jury who Bader
10 Farms sells its peaches to?

11 A. We have sold pretty well everybody I guess in a 5-,
12 600-mile radius. Peaches -- we have changed customers over
13 years. When we first started, we were servicing Weatherall,
14 at Scott City and then one at Hazelwood. Weatherall was
15 servicing what we called -- it used to be the IGA stores.

16 We were servicing Schnucks and then Malone & Hyde
17 come in. For quite a few years, Malone & Hyde was always
18 buying peaches. But I guess in the late '80s, early '90s,
19 they became a pretty big buyer of a lot of peaches --

20 Q. Peaches from Bader Farms specifically?

21 A. They were buying from Bader Farms. That's when they were
22 located in Sikeston. And they were -- Walmart was building
23 what they call a superstore where they were selling groceries
24 and Malone & Hyde was supplying them with the peaches.

25 Q. So, Mr. Bader, do you all sell retail?

1 A. Yes, we sell retail.

2 Q. Okay. And so if someone were to want to go buy peaches
3 from Bader Farms, where would they do that?

4 A. It's at our packing shed right on Highway WW just north
5 of Campbell.

6 Q. How much business do you do just from that packing shed?

7 A. We probably -- between the retail and the local vendors
8 that pick up, we probably -- 35 to 40 percent.

9 Q. And with the grocery stores that you were talking about,
10 do you know about how many states that you sell to with the
11 different grocery stores?

12 A. Probably right at eight different states.

13 Q. And how long have you had those contracts?

14 A. From some of them since the day I started, but, you know,
15 with corporate buyouts and whatever, you know, a lot of
16 changes made, but it's still -- it goes back to the original.

17 Q. Now, how do you determine how much to sell your peaches
18 for?

19 A. Most of the time, you know, we contact -- like I said, we
20 have a working relationship with our -- in every store our
21 business got a product, produce manager. They -- we contact
22 them and see what the peach market is, what they expect and
23 they -- you know, they say, well, we can buy it for this or we
24 can buy it for that.

25 We do have a price advantage on them because we are

1 close. And another thing, they are not shipped halfway across
2 the country; so we can pick them a little riper so the
3 peach -- our peach we pick today will be in the grocery store
4 tomorrow morning.

5 Q. And will a vendor pay more then for that?

6 A. You know, we really push quality and we guarantee them.

7 Q. Have your prices remained fairly consistent over the
8 years?

9 A. Yes. They have been pretty consistent the last four or
10 five years.

11 Q. Okay. So from about 2016 or --

12 A. 2016, yes.

13 Q. Mr. Bader, when you are talking about a peach tree, how
14 many trees do you -- I mean, how many peaches do you get from
15 a good peach tree?

16 A. From a -- it depends on how a tree grows. You know, like
17 I say, if it's a four-year-old tree, we will thin it down a
18 little thinner. If we think it's had -- you know, we will
19 probably shoot for 3- to 400 peaches on that tree.

20 Q. You said you thin it down a little bit. What does that
21 mean?

22 A. When -- first we prune them. We prune a tree -- you
23 know, in the winter we keep them pruned down. But when we
24 thin it down, it depends on what the frost -- you know, frost
25 or freeze or how your bud set is. And when they bloom and the

1 peaches get about the size of a cherry, we will go in there
2 and we will thin them down.

3 And we will thin, like I said, down approximately
4 400 per tree. You take a mature tree, we kind of shoot for
5 six -- anywhere from 5- to 600. It really depends on the
6 maturity.

7 Q. Well, let's break that down for the jury. You said on a
8 four-year-old tree, you are looking at maybe 300?

9 A. Yes.

10 Q. Is that correct?

11 Okay. Now, do you pick peaches from trees that are
12 younger than that, though, say a two- or three-year-old tree?

13 A. We can pick peaches from a younger tree than that, but,
14 you know, our theory is to grow roots before we grow tree.

15 Q. So then let's skip to, say, a six- to seven-year-old
16 tree. How many peaches are you trying to get from that tree?

17 A. The production is we try to get -- we still kind of stay
18 with the 600. Can I explain our theory on that?

19 Q. Sure.

20 A. You know, we say 600. It's because what is in the peach
21 industry, what they call the top-dollar peach is a 2 1/2-inch
22 peach and up. By thinning these trees down to 600, we try to
23 obtain the biggest, best size. And because there -- that's
24 where the most income is. And it makes the pickers happy, the
25 people, you know -- it's just like -- if you get them too

1 thick, it's just like you go out there, it's like what are you
2 going to pick golf balls up, you want to pick up baseballs or
3 do you want to pick softballs? But you are going to get paid
4 a quarter for the golf balls, 50 cents for the baseballs but
5 you're going to get paid 75 percent for the softballs.

6 You know, once you attain that size, whether -- if
7 you got -- on that tree you go three -- two bushel of 2-inch
8 peaches, you know, you have 600, you may have -- you are going
9 to have approximately two bushel. But when you have them the
10 size of a baseball and you have a baseball to a softball, you
11 have 600 peaches on the tree, but you are going to have six to
12 seven, maybe eight bushel on that tree.

13 Q. Okay. And, Mr. Bader, has Bader Farms historically grown
14 golf balls, softballs or baseballs?

15 A. Most of the time it's baseballs and softballs.

16 Q. What about in more recent years?

17 A. Recent years it's been -- size has been tough.

18 Q. Now, Mr. Bader, I would like for you to -- if you would
19 explain to the jury what a typical day is for your peach
20 orchard. Say at this time of year, February/March, what are
21 you all doing?

22 A. Right now we are pruning, you know, we -- peach tree we
23 prune -- we have to prune every year because peaches are a
24 little different because on peaches, it just one-year wood to
25 make budwood. Where an apple or a pear, it takes two-year

1 wood to make budwood. So pruning one thing to build up the
2 frame on the tree and make it accessible, we need sunlight in
3 it and we prune them to keep the tree shape and keep it into a
4 workable height.

5 Q. So is that all you are doing at this time of year, most
6 of the time?

7 A. If the weather is permitting, yes.

8 Q. When does your planting occur?

9 A. The planting will probably -- between now and the 15th of
10 March, catching the ground, drying up to get the trees
11 planted.

12 Q. And what's the reason for planting a tree in the winter?

13 A. To -- you know, the earlier you get it planted and you
14 get your ground worked up, the earlier you get it in the
15 ground, you know, you get the rain and it helps settle the
16 tree and the tree will, as soon as it starts forming up, will
17 start growing and get its fruit system established.

18 Q. Okay. Now, about what the growing season, say May
19 forward through the end of summer, what's a typical day like
20 for you then?

21 A. Usually in May it's various things from spraying to
22 thinning to applying herbicide, keep the grass -- you know,
23 keep the grass mowed and maintaining -- just anything it takes
24 to maintain the orchard.

25 Q. And speaking of maintaining the orchard, who all works in

1 Bader Farms? I want to start with full-time employees. Who
2 is Bader Farms' full-time employees?

3 A. It's my wife Denise; my two sons, Levi and Cody; my
4 brother Steve; cousin Danny; and Roberto Lopez and his
5 brothers. And usually we have on our part-time help --

6 Q. I want to stick with full-time for now, if you don't
7 mind. That's okay.

8 So you said Denise. What else is Denise? Other
9 than working there, does Denise also own Bader Farms?

10 A. She owns Bader Farms.

11 Q. And so what does Denise do?

12 A. She takes care of all the paperwork, you know, takes care
13 of the peach sales and keep me in line.

14 Q. She might say that's a full-time job, I'm sure.

15 So tell me about the boys, what about Cody and Levi,
16 what do they do?

17 A. They do anything that I -- anything I could do. They've
18 been around it long enough, they know pretty well what to do.
19 But I just got to do some coaching with them and it's
20 something that I took -- it took me 45 years or 50 -- going on
21 50 years to learn and I am still learning.

22 Q. And what about Roberto Lopez, what is his role?

23 A. Roberto, pretty well anything from pruning to running the
24 crew to keep track of the pickers. And he has been with me
25 since '81.

1 And that's the great part about having family and
2 somebody that's been with you. When they see a problem, they
3 know it. And they help you -- you know, help -- really
4 helpful on getting the job done or what needs to be done or --
5 it makes it a lot easier on me sometimes.

6 Q. Well, who helps with the tree planting?

7 A. Usually it's me and Roberto are pretty well in charge of
8 the tree planting and then we pick up three or four or five,
9 six guys that some of them have been planting trees as long as
10 they have been there.

11 Q. All right. Now, you said you also have some part-time
12 employees. How many of those do you have?

13 A. It depends what time of year.

14 Q. Okay. Summertime?

15 A. Summertime with the pickers, depends on the crop and the
16 size of the crop.

17 Q. Okay. Now, are the part-time employees also referred to
18 as seasonal employees or is seasonal something different?

19 A. There can -- we got anywhere from two to four guys that I
20 call part time because they go -- they are going to college.
21 They are taking their interns and they go to the local
22 community college maybe two or three days a week and then they
23 help me the other time.

24 Q. So how many seasonal employees do you typically have?

25 A. The seasonal employees, depends a lot on the crop. You

1 know, in our peak back in -- before this all come about, we
2 would have as high as 110.

3 Q. Okay. How about in the last, say, four or five years?

4 A. Forty-five to 50.

5 Q. And the 45 to 50 is normal for the last few years?

6 A. Well, on the shorter years, it's shorter than that.

7 Q. Now, Mr. Bader, have you ever received any sort of awards
8 or a special recognition for your work in peaches?

9 A. Yes. We have -- in 2014, I got distinguished agriculture
10 from Mr. Governor Jay Nixon. Coming up for -- it was
11 appreciation for outstanding service in agriculture.

12 Q. Have you received any other special recognition for your
13 work in peaches?

14 A. We have been honored by several different -- you know,
15 there have been several others. I don't know, you know, from
16 different company -- I mean, different companies and that.

17 Q. Now, you -- you said you've been doing this for almost
18 50 years; right?

19 A. Yes.

20 Q. During that period, how have you -- or have you continued
21 to educate yourself on peaches and peach production?

22 A. In 1975 was the first -- I was still in high school. We
23 went to what they called Missouri Heart Show. And when we
24 first started in 1975, there was approximately 160, 170
25 growers all over the state of Missouri and there were vendors,

1 there were vendors -- almost every chemical vendor in the
2 United States was there because it was something like a farm
3 expo. Because we had our peach convention. They would have
4 their -- Missouri Soybean Growers Association would have their
5 meeting. Corn growers, improved seed.

6 So it was all stationed -- that would be in
7 Columbia. It's a pretty central location and they would have
8 a real good expo on any new equipment and chemistry on the
9 market.

10 Q. You said that was --

11 A. In Columbia, Missouri.

12 Q. In what year?

13 A. That was '75.

14 Q. Have you continued to educate yourself on peach
15 production?

16 A. We went -- we made it I guess in -- I went to several
17 different meetings. There was a few I missed. Then we would
18 go to Illinois, right across the river here in Cobden, the
19 Illinois Fruit Growers would always have a real good meeting.
20 We attended it. And the one in Columbia, like in Missouri, we
21 went continuously almost every year.

22 Q. Do you ever seek out the advice of any horticulturist?

23 A. Yes. There was several -- I would run into several of
24 some of the old -- older horticulturists that have been
25 around, I think, since the turn of the century. So I was

1 fortunate to come in to a business which had -- there was a
2 lot of older men that would share their knowledge with you
3 of -- Chris Doll, the horticulturist from Illinois, visited me
4 several times. A very highly educated man.

5 Missouri horticulture specialist was the same. They
6 would come by and share their ideals. And when -- you know,
7 when you have somebody that has 50, 60 years of experience,
8 that can really, you know, give you some great ideals.

9 Q. Mr. Bader, now, you are one of the people that has about
10 50 years of experience. So let me ask you: Has anyone ever
11 come to seek your advice on peaches and how to grow peaches?

12 A. Yes, we wrote up back in 2000, it was -- it was a program
13 on peach production in Missouri and they took our advice --
14 they based it down to really four regions in Missouri. You
15 had southeast Missouri. You had north -- southwest Missouri
16 and you had north central Missouri. And they kind of put a
17 guideline together on peaches, peach varieties, what the --
18 you know, what can you expect, how to thin. We done a
19 guideline on chemicals and, you know, worked on, you know,
20 micronutrients. Well, back then we done a program later that
21 was in micronutrients and that's where -- and set up on tree
22 health.

23 Q. And did they take that information and compile it or --

24 A. Yes.

25 Q. Okay. Was it a book or web --

1 A. It was a small booklet.

2 Q. Do you remember the name of it?

3 A. It's peach production in Missouri.

4 Q. "Crop profile in Missouri peaches," does that sound
5 familiar?

6 A. Yes.

7 Q. And, Mr. Bader, do you ever interact with and speak with
8 other peach growers?

9 A. Yes. We had -- I got several friends that's in the peach
10 business. We talk, probably several of the growers from
11 Illinois. Some of the growers in Missouri, Arkansas. We used
12 to communicate with the growers in Georgia and South Carolina.

13 Q. And when you are communicating with them, what are you
14 all doing?

15 A. We are talking about variety.

16 Q. Do you share ideas?

17 A. We are sharing ideals on anything from variety to
18 chemicals to market standards and practices, you know.

19 Q. All right. Mr. Bader, the one thing that I think all the
20 parties in this litigation will agree to is that farming is
21 tough work. Do you agree with that?

22 A. It's very -- it's very tough work.

23 Q. And I know that there have to be years that are tougher
24 and some that are better. Do you agree with that?

25 A. Yes.

1 Q. So I'd like to talk a little bit about your orchard
2 management practices. With a thousand-acre orchard, can you
3 tell the jury how wide that is? How expansive it is I guess
4 is a better way to ask it?

5 A. We cover approximately about 4 1/2 miles. That's -- I'm
6 saying the central location from the packing shed to our
7 forest orchard is about 4 1/2 miles.

8 Q. So in that 4 1/2 miles, are there different elevations as
9 well?

10 A. There's different elevations, but pretty well everything
11 is on the ridge and it varies within probably 50 to 75 feet.

12 Q. What about soil types, do the soil types vary at all?

13 A. Yes, there's probably three or four different kinds of
14 soil.

15 Q. So, Mr. Bader, I want to talk to you a little bit about
16 your various practices on your orchard to keep the orchard
17 healthy and trees growing.

18 Do you have a weed control program?

19 A. Yes, we do.

20 Q. Okay. Would you explain to the jury what your weed
21 control program is.

22 A. The weed control program is what we call our script. We
23 mainly -- being in the conservation plan, once an orchard gets
24 old enough, usually after the first or second year, we sow it
25 down in what we call sod. We keep it mowed. Underneath the

1 tree what we call, we spray a band or we got -- where we kill
2 the vegetation that -- you know, to keep it what we call,
3 sometimes they call it bare soil, but it's just the band we
4 spray underneath the tree that the bush hogs will not mow.

5 Q. What age are the trees where you are doing that?

6 A. We are -- under our conservation plan, usually we have to
7 go in after the first year.

8 Q. So does your conservation plan have specific requirements
9 per orchard or the whole thing?

10 A. Yes. Yes, you know, being on some -- on some ground that
11 got a steeper slope, we have trouble establishing -- we
12 usually plant orchardgrass, fescue. It works the best for --
13 because once it gets hot, it goes into dormant. It does not
14 pull the moisture from the ground which you are -- on trees
15 you know, you're reserving the moisture. But then we got
16 trouble areas that got shear washing that --

17 Q. What is shear washing?

18 A. Shear washing is where the ground is a little light and
19 the water coming at a high speed and it usually washes
20 trenches in the ground.

21 Q. Okay. So just to paint a picture for the jury, if this
22 row is trees and this row over here is trees, you've got grass
23 in the center. Is that what you are saying?

24 A. Yes.

25 Q. And do you ever plant other grass around your trees?

1 A. We try not to plant no other grasses around the tree.

2 Q. Now, what about what's called weed-free strips, do you
3 use weed-free strips at Bader Farms?

4 A. That's what -- underneath the tree, that's what we are
5 shooting for.

6 Q. Okay. So that's the weed-free strip that you just
7 explained?

8 A. Yeah.

9 Q. Okay. And how much of your orchards, percentage wise, do
10 you think you use weed-free strips?

11 A. Anything that's -- you know, once we get up to the
12 established orchard, we try to keep them all that way.

13 Q. How else do you keep the weeds down or basically managed
14 in the orchard?

15 A. It becomes a challenge.

16 Q. Okay. Why is that?

17 A. One thing, when we put a herbicide down or what we call,
18 you know, a burndown underneath a tree, we have to do it early
19 enough in the spring before the peaches bloom or -- before the
20 peaches get bloomed out or -- what we call a burndown that
21 will kill the grass and the weeds down.

22 And the herbicides we use, when you look at the
23 restriction on it, it says preharvest date. So, you know,
24 some of them are 45 days. Some are 30 days on it. It depends
25 really. But we need a herbicide strip down before the peaches

1 get -- you know, we have to use them early enough to kill our
2 grass down but still stay in compliance from when we pick the
3 peaches. Because there's a restriction from the date, you
4 know, you apply it until the date you start picking the fruit.

5 And it's pretty well standard on all crops. There's
6 a preharvest, but it gets challenging when you are putting it
7 down that early and then you get a year you get 20 inches of
8 rain.

9 Q. Well, now, Mr. Bader, you said you sometimes use
10 herbicides. Do you use dicamba ever in your orchard?

11 A. No. No, ma'am.

12 Q. Do you use dicamba on your property at all?

13 A. No, ma'am.

14 Q. Have you ever used dicamba on your farm?

15 A. No, ma'am.

16 Q. Do you ever mow around the trees to help control grass?

17 A. Yes.

18 Q. How often do you do that?

19 A. Weather wise, it's -- like I said, we have mowed --
20 sometimes we go two weeks but on -- when you have extreme
21 weather and -- if we got moisture and weather, sometimes we
22 have to stay in every week.

23 Q. Now, and you have mentioned weather a few times. Is
24 weather something that can affect your orchard?

25 A. Yes.

1 Q. Okay. And is that the case with farming in general?

2 A. Yes.

3 Q. Has that always been the case since you have had your
4 farm?

5 A. Weather -- if we could predict the weather, all farmers
6 would be a millionaire in a couple of years.

7 Q. Mr. Bader, what about disease, do you have a disease
8 management program with Bader Farms?

9 A. Yes.

10 Q. Okay. And to not go into too much detail, but if you
11 would tell the jury briefly just a few of the diseases that
12 you have to combat with peaches.

13 A. You know, peach -- our main concern is insects and
14 funguses. We use a wide variety of insecticides because
15 there's really about four or five insects that will literally
16 feed on peaches, which once they bite them, it's called
17 cat-facing, which makes it an unsalable peach or undesirable
18 peach.

19 We use the fungicides. It depends on the weather.
20 We like to use a real good fungicide. If we got a wet spring
21 and it rains -- it's raining while they are blooming, we have
22 to really watch to see if we get what they call bloom rot
23 or -- I can't think of the name right now, but it's -- if we
24 get too much rain, you know -- but like on peaches, the --
25 when you -- early in the year you got to control your insects

1 and your disease. That's the crucial time, up until the peach
2 gets the shuck off.

3 Q. So for all of those things, insects, disease, whatever
4 other weather-related events, does Bader Farms historically
5 have a plan in place to control those things?

6 A. Yes, ma'am.

7 Q. Have you been successful in controlling and managing
8 those things in past years?

9 A. Yes, ma'am.

10 Q. When did it become -- or has it become more difficult to
11 control those things in recent years?

12 A. Yes, extremely difficult.

13 Q. Okay. In what year did that change occur?

14 A. In '15.

15 Q. Mr. Bader, also, now, is Bader Farms located near a state
16 park?

17 A. Yes.

18 Q. And do any of your orchard management practices have
19 anything to do with you being close to the state park?

20 A. Yes. We have approximately about a mile and a half that
21 adjoins a state park.

22 Q. Do you ever have any -- any deer come into any of the
23 orchards?

24 A. Yes, we do.

25 Q. Okay. Are you able to control the deer?

1 A. Yes, we -- we got a plan to control the deer legally.

2 Q. And have you always had that in place?

3 A. Yes.

4 Q. All right.

5 **MS. RANGLES:** Your Honor, I need to switch gears,
6 but the next section is pretty lengthy.

7 **THE COURT:** Okay. Why don't we just recess for the
8 day then.

9 And, again, I will remind you of the admonition, do
10 not discuss the case among yourselves or with others or permit
11 anyone to discuss it in your presence and do not form or
12 express any opinion about the case until it's given to you to
13 decide.

14 So thank you again for your attentiveness, for your
15 patience. We will reconvene at 9:00. And, again, we will be
16 going all through next week.

17 So you are excused at this time and you can go to
18 the jury room with the clerk.

19 (The following proceedings were held in the
20 courtroom out of the presence of the jury:)

21 **THE COURT:** Any matters you want to discuss for
22 Plaintiffs or Defendants?

23 All right. We will be in recess until
24 9:00 tomorrow.

25 (The proceedings concluded at 4:51 p.m.)

CERTIFICATE

I, Reagan A. Fiorino, 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 907 through 948 inclusive and was delivered electronically 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 at St. Louis, Missouri, this 4th day of February, 2020.

/s/ Reagan A. Fiorino

Reagan A. Fiorino, CRR, RMR, CCR, CSR
Official Court Reporter