

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 7
VOLUME 7A - Pages 892 - 906

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

FEBRUARY 4, 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 4, 2020

Trial Continued:

Excerpts of Videotaped Deposition Played
Of Nathan Borgmeyer 898

Excerpts of Videotaped Deposition Played
Of Dr. Jeffrey Howard Birk 900

T R I A L

1
2
3 The trial resumed on Tuesday, the 4th 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. MILLER: Good morning.

12 MR. MANDLER: Good morning, Your Honor.

13 THE COURT: So any preliminary matters?

14 MR. MANDLER: At your pleasure, Your Honor, at some
15 time today we are going to raise an issue about a fourth
16 amended or third amended supplemental exhibit list that was
17 filed this week.

18 In addition, if we're going to go to Birk, I'd
19 probably want to pass out the Birk, Your Honor, our formal
20 objections before we get rolling.

21 MS. GEORGE: We're going to start with Borgmeyer
22 and then Birk.

23 MR. MANDLER: Are you going to start with
24 Borgmeyer?

25 MS. GEORGE: So if you want to pass it out now you

1 can.

2 MR. MANDLER: Well, I can do both of them if you
3 want.

4 MS. GEORGE: Whatever you prefer.

5 Your Honor, we have a video that will get us until
6 about 10:15, and then maybe a break. And then if we could do
7 another hour, hour and a half with lunch. Then we'll still
8 have another hour, hour and a half. And then Bill Bader
9 could go on after that to start the live witnesses.

10 THE COURT: Oh, really, live witnesses?

11 MS. GEORGE: Yes.

12 So we're going to play Borgmeyer, he's an hour and
13 12.

14 MR. MANDLER: Right.

15 MS. GEORGE: And then we'll play Birk, who's two
16 hours, and then we'll split him over the lunch break. And
17 then we'll have an hour of Repage.

18 MR. MANDLER: Okay. So here is for the first
19 witness, Mr. Borgmeyer. And then since we may go through
20 directly to Birk I'll pass those out as well.

21 THE COURT: And these are all matters that we took
22 up before?

23 MR. MANDLER: Yeah. And then you've ruled on,
24 Your Honor, one way or the other.

25 THE COURT: Yeah. Okay.

1 Same with the second submission?

2 MR. MANDLER: Yes, Your Honor.

3 THE COURT: All right. Thank you very much.

4 MR. HOHN: Your Honor, Monsanto also has some
5 proposed orders that reflect your rulings overruling certain
6 deposition designations and exhibits, obviously, preserving
7 our objections, but knowing that they've been overruled.

8 THE COURT: Same deal?

9 MR. HOHN: Yes, Your Honor.

10 Just the colored one, Your Honor, just to note this
11 is a revised order regarding the Boyd Carey exhibits that I
12 mentioned yesterday.

13 THE COURT: Oh, yes. Okay. I remember.

14 MR. HOHN: Thank you, Your Honor.

15 THE COURT: Anything else then?

16 MR. RANGLES: Not for Plaintiffs, Your Honor.

17 THE COURT: Okay.

18 (Proceedings resumed in open court.)

19 (Jury in.)

20 THE COURT: Please be seated.

21 Good morning, ladies and gentlemen.

22 You may call your next witness.

23 MS. GEORGE: The Plaintiffs will play this video
24 deposition of Nathan Borgmeyer.

25 (Excerpts of the Videotaped Deposition of Nathan

1 Borgmeyer taken on June 27th, 2019, were played for the jury
2 as reflected in Exhibit A that is attached to this Transcript
3 in the file.)

4 MS. GEORGE: I'm sorry. Just a second, Your Honor.

5 We'll start replaying page 117 at 7, Mr. Mandler.

6 (Excerpts of the Videotaped Deposition of Nathan

7 Borgmeyer resumed playing for the jury.)

8 MS. GEORGE: That concludes that deposition, Your

9 Honor.

10 THE COURT: We'll take a recess. And remember the

11 admonition I've given you not to discuss the case and go to

12 the jury room, and we'll call you back in shortly.

13 (Jury out.)

14 (Proceedings resumed in open court outside the

15 presence of the jury.)

16 THE COURT: All right. Who's next again then?

17 MS. GEORGE: Dr. Birk will be next.

18 THE COURT: And that's, what, an hour and a half?

19 MS. GEORGE: So we have three total hours left of

20 deposition.

21 THE COURT: Okay.

22 MS. GEORGE: And then we'll start with Mr. Bader.

23 THE COURT: Okay. All right. We'll be in recess

24 then.

25 (Proceedings stood in temporary recess.)

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

3 THE COURT: So this is a three-hour --

4 MS. GEORGE: There's a two-hour and then a
5 one-hour.

6 THE COURT: Okay.

7 MS. GEORGE: So we'll break in the middle of this
8 one.

9 THE COURT: So we might as well take a regular
10 lunch hour then?

11 MS. GEORGE: Yes. So we can get it done.

12 (Jury in.)

13 (Proceedings resumed in open court.)

14 THE COURT: Please be seated.

15 Call your next witness.

16 MS. GEORGE: Plaintiffs call Dr. Birk by video.

17 (Excerpts of the Videotaped Deposition of Dr.
18 Jeffrey Howard Birk taken on June 20th, 2019, were played for
19 the jury as reflected in Exhibit B that is attached to this
20 Transcript in the file.)

21 THE COURT: Is this a good time?

22 MS. GEORGE: We're almost done with this exhibit.

23 THE COURT: Okay.

24 MS. GEORGE: We just have a minute or two.

25 THE COURT: Okay. Yeah.

1 MS. GEORGE: That is a good stopping point.

2 THE COURT: We'll take our lunch recess at this
3 time. Would 10 after 1:00 be okay? Do you think you-all can
4 get back at that time within a little over an hour?

5 Okay. Remember the admonition I've given you not
6 to discuss the case, and so forth.

7 So you're excused at this time for lunch and be
8 back to the jury room by 1:10 then. Thank you.

9 (Jury out.)

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

12 THE COURT: You can be seated.

13 What do you want me to do with the BASF
14 Corporation's Motion to Strike Plaintiff's Untimely
15 Supplemental Exhibit List?

16 MR. MANDLER: We'd like you to strike it, Your
17 Honor. We're a week into trial. We're 44 days past the
18 deadline to disclose the exhibits, and we get yet another
19 disclosure of 20 new ones. And I'm not -- this doesn't apply
20 to demonstratives. I understand during trial you're going to
21 disclose each other's, you know, demonstratives.

22 These are actual exhibits that we've had no ability
23 to, you know, know that they were coming in. We may have had
24 a witness who knows about it over the past month, but to do
25 it in the middle of trial, Your Honor, is just too late and

1 too inappropriate under the rules.

2 THE COURT: I don't have any idea what these
3 exhibits are.

4 Do you want to address that?

5 MR. MANDLER: Our position is regardless of what
6 they are. And I haven't spend a lot of time looking at
7 them. It's too late.

8 MR. RANGLES: Well, Your Honor, this isn't the only
9 supplemental exhibit list filed by anybody. We've had
10 several filed in this case. Our fourth list are -- is
11 composed of eight Missouri Department of Ago investigations,
12 which are in response to the investigation files Monsanto
13 used in opening that I objected to.

14 We've got six photos of Dr. Baldwin, which I intend
15 to use with him that they have had in discovery for the whole
16 time. And there's a massive amount of photos here, Your
17 Honor, so selecting the exact ones is difficult, but that's
18 what those are.

19 And those are the only ones on this list other than
20 the demonstratives intended to be used in our case. The
21 rest of these are going to be used in cross or impeachment
22 anyway, so they don't need to be on the list anyway, but we
23 went ahead --

24 THE COURT: That's right.

25 MR. RANGLES: So we went ahead and just numbered

1 them out of abundance of caution.

2 There are six BASF documents we found during a
3 review for Hornberger, Murray and Pace, which we talked at in
4 some detail that -- when we objected to those witnesses. We
5 asked for the custodial files. Mr. Mandler said can't be
6 done. He said there are 2,600 or 3,600 -- I don't remember
7 the number -- relative to these people, and you said, Well,
8 can't you search for them? So we searched for them. And we
9 found some and put it on the list. But, again, I don't
10 intend to insert those into our case. They're going to be
11 cross or impeachment, obviously.

12 THE COURT: Well, can you whittle the list down to
13 the ones from the 20 he's got on his list so that I can
14 evaluate them separately?

15 MR. RANGLES: I believe the only ones that we
16 intend to use in our case are six Ford Baldwin photos of just
17 damage at Bader Farms, which, again, had been produced, but I
18 don't think all of them had -- or had been marked as an
19 exhibit on a prior list.

20 THE COURT: So six photos, that's the only part of
21 the 20 -- listed 20 that you had down other than on cross, or
22 something like that then, huh?

23 MR. RANGLES: That's my understanding.

24 THE COURT: Why did you even list those if you
25 didn't need to?

1 MR. RANGLES: Those I'm going to use with Dr.
2 Baldwin. So those --

3 THE COURT: The six?

4 MR. RANGLES: Yes, sir. I need to list those.

5 THE COURT: Well, I mean, the six photographs --
6 Dr. Baldwin has been in the case since day one, and so it
7 seems like you should have disclosed those.

8 MR. RANGLES: We have disclosed those. We've
9 produced mountains of photos to them, and they've produced
10 mountains of photos back to us.

11 THE COURT: Oh, no, but, I mean, as part of the
12 trial exhibit list so that they could register objections.

13 MR. RANGLES: Again, I don't think there are going
14 to be any objections. I mean, I'll lay the proper
15 foundation. They're photos of the trees and surrounding
16 vegetation. I mean, these have all been covered in the
17 depositions.

18 MR. MANDLER: Well, Your Honor, why have an exhibit
19 list at all then if we're just going to be able to pick the
20 exhibits from the 1.5 million that have been produced and try
21 them out whenever somebody comes in?

22 The whole point of having an exhibit list is to
23 have this go in an orderly fashion. You can't amend it four
24 weeks -- or one and a half weeks into trial.

25 MR. RANGLES: That was my question about your

1 exhibit list too well after the deadline -- a witness list,
2 but that was okay apparently.

3 MR. MANDLER: It was.

4 MR. RANGLES: And that had three -- four new
5 witnesses in trial that weren't disclosed before in a timely
6 fashion, so I think six photos is hardly a stretch.

7 MR. MANDLER: That's not an analogy. We met the
8 deadline with our exhibit list, Your Honor. This is a week
9 into trial. It will be as if I gave you my exhibit list
10 yesterday, which is what you did with your witness -- with
11 your exhibit list.

12 THE COURT: And this was -- when was this fourth
13 exhibit list filed?

14 MR. MANDLER: It was originally due on
15 December 20th. It was filed on February 2nd, again, Sunday.

16 THE COURT: Yeah. Okay. I think I will grant as
17 to those six photographs then, because they should have been
18 on the list a long time ago. So they're entitled to know
19 what photographs that you're going to introduce so that they
20 can prepare a defense. So --

21 MR. RANGLES: Well, I will make those a proffer.

22 THE COURT: Okay. We'll be in recess until 1:10.

23

24

25

C E R T I F I C A T E

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, 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 892 through 906 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 4th day of February, 2020.

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