

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 8B

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

FEBRUARY 5, 2020

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APPEARANCES:

FOR PLAINTIFFS BADER FARMS, INC., ET AL:

Tracey F. George, Esq.
DAVIS GEORGE MOOK, LLC
1600 Genessee St., Suite 328
Kansas City, MO 64102

Beverly Turina Randles, Esq.
Billy R. Randles, Esq.
RANDLES AND SPLITTGERBER, LLP
5823 N. Cypress Ave.
Kansas City, MO 64119

REPORTED BY: REAGAN A. FIORINO, RMR, CRR, CSR, CRC, CCR
Official Court Reporter
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102 | (314)244-7989

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APPEARANCES CONTINUED:

FOR DEFENDANT MONSANTO COMPANY:

David E. Dukes, Esq.
NELSON AND MULLINS, LLP
1330 Lady Street, Third Floor
Columbia, SC 29211-1070

Jan Paul Miller, Esq.
Sharon B. Rosenberg, Esq.
THOMPSON COBURN, LLP
One US Bank Plaza
505 N. 7th Street, Suite 2700
St. Louis, MO 63101

FOR DEFENDANT BASF CORPORATION:

John P. Mandler, Esq.
Anthony W. Finnell, Jr., Esq.
FAEGRE BAKER DANIELS
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, MN 55402

Troy A. Bozarth, Esq.
HEPLER BROOM
130 N. Main Street
Edwardsville, IL 62025

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FEBRUARY 5, 2020

(The proceedings commenced at 12:52 p.m.)

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

THE COURT: Mr. Miller.

MR. MILLER: Thank you, Your Honor.

Good afternoon, ladies and gentlemen.

May it please the Court.

CROSS-EXAMINATION

BY MR. MILLER:

Q. Good afternoon, Mr. Bader.

A. Good afternoon.

Q. Mr. Bader, since you are the first witness in the case who has testified at any length about Bader Farms itself, we have a lot of ground to cover. So if you need to take a break at any time, just let us know.

A. Okay.

Q. Also, like Mr. Randles and Mrs. Randles, I am going to be using some documents with you that I am going to try and use with the screen so that everybody can see them. But if there's a document that you need to see in hard copy with all the pages, I have copies for you right here. Okay? Just let me know.

A. Yes, sir.

Q. Okay. Now, Mr. Bader, you are here basically

1 representing Bader Farms, Incorporated; is that correct?

2 A. Yes, sir.

3 Q. And the claim that Bader Farms, Inc. has made in this
4 case is that the peach orchard part of Bader Farms, Inc. has
5 been damaged by dicamba sprayed over the top of Xtend crops;
6 is that correct?

7 A. Yes, sir.

8 Q. Okay. And the claim is that the damage started in 2015;
9 is that right?

10 A. Yes, sir.

11 Q. And has continued every year up through the present; is
12 that correct?

13 A. Yes, sir.

14 Q. And the claim at this point is that the Bader Farms will
15 no longer at some point be able to exist as a result of that;
16 is that right?

17 A. Yes, sir.

18 Q. Okay. Now, let me start with 2015, which is the first
19 year that Bader Farms alleges that there was dicamba damage
20 from sprayed over the top of Xtend crop. And that's an
21 important fact. You are not suing for dicamba that was
22 sprayed, say, in a burndown; correct?

23 A. Correct.

24 Q. Or sprayed over corn. Correct?

25 A. Correct.

1 Q. Or over wheat or anything other than an Xtend crop;
2 correct?

3 A. Yes.

4 Q. Because you know those -- those applications of dicamba
5 have nothing to do with Xtend seed and have been legal for
6 years and years and years. You understand that; correct?

7 A. Yes, sir.

8 Q. Okay. So let's start with 2015, which is the first year
9 that Bader Farms alleges that there was damage to the peach
10 orchards from specifically dicamba sprayed over -- at that
11 time the allegation is Xtend cotton. Is that right?

12 A. Yes, sir.

13 Q. Because it was -- Xtend cotton was on the market, but
14 there was no legal dicamba to use over the top in 2015; is
15 that correct?

16 A. Yes, sir.

17 Q. And listening to your testimony this morning with your
18 attorney, is Bader Farms claiming that all of the yield loss
19 for 2015 was the result of dicamba sprayed over the top of
20 Xtend crops?

21 A. We did have some hail damage that was reported. We did
22 have some hail damage that was reported.

23 Q. Okay.

24 A. In '15.

25 **MR. MILLER:** Okay. Well, let's pull up -- can we

1 pull up -- I believe it's Plaintiffs' 2195, demonstrative.

2 Yeah, that's the right one. Thank you.

3 Q. (By Mr. Miller) And this is one of the demonstratives
4 that your attorney showed you; correct?

5 A. Yes, sir.

6 Q. Okay. If you look at the first rating there under yield
7 in 2015, you see your yield was 39,000 and those are all in
8 bushels; is that right?

9 A. Yes, sir.

10 Q. And you said you were expecting 100,000 bushels; is that
11 correct?

12 A. Yes, sir.

13 Q. So you were off by about 60 percent, 6-0?

14 A. Yes.

15 Q. Okay. How much of that loss of the 60 percent are you
16 claiming was due to dicamba sprayed over the top of Xtend
17 crop?

18 A. The original was 40 percent.

19 Q. So 40 percent of it, you are claiming 40 percent of the
20 60,000?

21 A. No. We are saying -- we're predicting a hundred thousand
22 plus.

23 Q. Right.

24 A. And we are saying 40 percent.

25 Q. You only got 40 percent of what you thought you were

1 going to get?

2 A. Yes.

3 Q. Are you claiming the other 60 percent was all due to
4 dicamba sprayed over the top of Xtend seed?

5 A. Yes, sir.

6 Q. Okay. So you are not attributing any of that 60,000 or
7 60 percent loss to anything other than Xtend sprayed over the
8 top -- excuse me, dicamba sprayed over the top of Xtend seed;
9 is that correct?

10 A. It was my testimony earlier, the aerial application.

11 Q. Okay. Let's talk about that. You testified on April 11,
12 there was an aerial crop duster application; correct?

13 A. Yes.

14 Q. And that drifted on to your property and caused damage to
15 your peach orchard; is that right?

16 A. Yes, sir.

17 Q. And you reported that to the Missouri Department of
18 Agriculture; is that correct?

19 A. Yes, sir.

20 Q. Because you know that the Missouri Department of
21 Agriculture, if there's an off-target movement of herbicide,
22 they're the folks you go to because they investigate it;
23 right?

24 A. Yes.

25 Q. And they can find people who are violating the law and

1 that sort of thing; right?

2 A. Yes, sir.

3 Q. Okay. And so you went to them with this complaint or
4 concern. And let's have --

5 **MR. MILLER:** Could we show, please, to counsel and
6 to the witness and the Court, M-304.

7 Q. (By Mr. Miller) And Mr. Bader, I ask you to take a look
8 at M-304. Is this the investigation statement --

9 **MR. MILLER:** If we can scroll down to the bottom so
10 he can see it, please.

11 Q. (By Mr. Miller) -- that you signed, sent into the
12 Missouri Department of Agriculture?

13 A. Yes, sir.

14 Q. Okay.

15 **MR. MILLER:** I move for the admission of M-304, Your
16 Honor.

17 **MS. RANGLES:** No objection, Your Honor.

18 **THE COURT:** Admitted.

19 Q. (By Mr. Miller) And you said that as part of the
20 investigation, the Department of Agriculture came out and they
21 pulled leaf samples.

22 **MR. MILLER:** Yes, can we publish that, please, Your
23 Honor?

24 Thank you.

25 Q. (By Mr. Miller) You said that the Department of

1 Agriculture came out and pulled leaf samples from your
2 orchard; is that correct?

3 A. Yes.

4 Q. And when the leaf samples came back, they showed positive
5 for Valor, which is -- the chemical name is Flumioxazin. Is
6 that right?

7 A. Yes.

8 Q. It showed positive for 2,4-D; correct?

9 A. Yes.

10 Q. And it showed positive for glyphosate, which is the
11 chemical name for Roundup; right?

12 A. Yes.

13 Q. And it also showed positive for some dicamba; is that
14 right?

15 A. Yes.

16 Q. Now, you know that that dicamba, because it was in early
17 April or mid April of 2015, you are not saying that that
18 dicamba came from a spray over the top of Xtend crops; right?

19 A. No, sir.

20 Q. That was from, you believe, somebody doing a burndown or
21 over corn?

22 A. Yes, sir.

23 Q. So the aerial crop drift, aerial crop duster drift is not
24 any damage that you are claiming is attributable to dicamba
25 sprayed over Xtend crop; is that correct?

1 A. Yes, correct.

2 Q. Isn't it true, sir, that you lost -- well, you have
3 claimed at one point that you lost 10 to 15 percent of your
4 yield that year from that aerial crop damage?

5 A. Yes, sir.

6 Q. Okay. So that's another 10 to 15 percent that should
7 come off of any damage caused by dicamba over the top of Xtend
8 crops; is that right?

9 A. That's correct.

10 Q. So, so far we've got the hail damage, and we'll get to
11 the amount of that in a minute, and we have 10 or 15 percent
12 from the aerial crop duster drift; is that correct?

13 A. Correct.

14 Q. Which should not be part of this case; is that correct?
15 Is that right?

16 A. Correct.

17 Q. Okay. Now, previously, though, prior to bringing this
18 lawsuit, Mr. Bader, is it true that you were telling folks
19 that the aerial crop duster application actually caused a
20 50-percent loss, the aerial crop drift caused a 50-percent
21 loss of your yield?

22 A. No.

23 Q. You did not tell anybody that prior to filing this
24 lawsuit?

25 A. No.

1 Q. Do you recall this lawsuit was filed in November of 2016?

2 Do you know that?

3 A. Yes.

4 Q. I think Mr. Randles has brought that up in the case.

5 And you testified that you were at Portageville
6 twice earlier in 2016; is that right?

7 A. Yes.

8 Q. And do you recall being interviewed after one of those
9 meetings, I believe it was the one on August 31, 2016?

10 A. I was interviewed the first one.

11 Q. You were interviewed the first one?

12 A. Yes.

13 Q. So that was earlier in 2016?

14 A. Yes.

15 Q. And that was a few months before you filed this lawsuit?

16 A. Yes.

17 Q. Is that right?

18 Do you recall telling that interviewer that the
19 damage started around April 11, 11th day of April, and that
20 the drift -- and you talk about the drift with 2,4-D and
21 Roundup and Valor, that it took about 50 percent and then you
22 got a hailstorm that took out another 10 percent? Do you
23 recall telling the interviewer that?

24 A. That was in '15.

25 Q. Right. That's what I'm talking about, sir.

1 A. Okay.

2 Q. I'm talking about the damage in 2015, yes.

3 Do you recall telling the interviewer that?

4 A. I told her we received about 50 percent damage.

5 Q. And that was from the aerial crop application; correct?

6 A. Excuse me, sir?

7 Q. That's all right.

8 A. Repeat the question, please.

9 Q. Sure. Well, I tell you what, why don't we play it. Let
10 me play the tape recording and see if that refreshes your
11 memory.

12 **MR. MILLER:** Could you play that, please?

13 (Video clip played as follows:)

14 "Q. -- Missouri's largest peach grower?

15 "A. Yes. We accomplished about 60 to 70 percent of
16 all peaches raised in the State of Missouri.

17 "Q. Talk about the damage that you've had from --
18 from dicamba drift.

19 "A. Well, the dicamba drift, really our damage
20 started last year. We got hit early. It was the 11th day of
21 April. We got hit with the 2,4-D, Roundup and Valor. It hit
22 us the 11th day of April of 2015.

23 "Well, we spent -- we had some great people to work
24 with and we put a lot of micronutrients and got our trees
25 looking -- coming back good. But it ended up taking about

1 60 -- the drift took about 50 percent. Then we had a
2 hailstorm that took out another 10 percent. So we ended up
3 with about 40 percent of the crop.

4 "The actual drift last year cost us about a million
5 and a half bucks in gross sales. The difference was last year
6 it was done by a crop duster, reliable crop duster that made a
7 mistake, it volatilized and walked off on him."

8 (End of clip)

9 Q. (By Mr. Miller) So back before you filed this lawsuit,
10 you were telling the interviewer that the 50 percent damage
11 you got in 2015 was from a crop duster who was a reliable crop
12 duster but made a mistake, sprayed it in the wrong place and
13 you get hit with dicamba and 2,4-D and Valor; is that right?

14 A. The 2,4-D, the Roundup and the Valor did volatilize and
15 walk off in early April of 2015.

16 Q. And that's the drift that you are talking about here --

17 A. Yes.

18 Q. -- the 50 percent that took your -- 50 percent of your
19 crop; correct?

20 A. Yes.

21 Q. Okay. So between the early drift in April of 2015 and
22 then the hail damage from 2015, that added up to a 60 percent
23 crop loss; correct? 50 percent from the crop duster
24 application, 10 percent from the hail?

25 A. No, it was 10 to 15 percent from the crop duster and

1 about 10 percent from the hail.

2 Q. Okay. So when you were talking about the fact here that
3 the difference last year, meaning 2015, was that it was done
4 by a crop duster, reliable crop duster that hit a mistake that
5 volatilized and walked off on him, you are not talking about
6 the early dicamba that has nothing to do with Xtend crops?
7 Isn't that what you were referring to then, sir?

8 A. There was a second follow-up on the spray application.

9 Q. Not by a crop duster, though; right?

10 A. It was the same crop duster, same issue.

11 Q. Same crop duster that sprayed over a burndown; is that
12 right?

13 A. The crop duster called his insurance company in.

14 Q. Right. And because he sprayed over a burndown and it
15 drifted over; correct?

16 A. No. The crop duster come in, flew his insurance agent --
17 the crop duster had old -- Old Republic Aerospace insurance.
18 They called their adjustor in.

19 Q. And what happened?

20 A. They flew in roughly the 20th of April. And they pulled
21 their leaf samples over everything and come back and denied
22 the claim because they said it was dicamba, but they found
23 dicamba instead of Roundup, 2,4-D and Valor.

24 Q. That's the -- 20th of April, that's the dicamba you are
25 talking about that was over a burndown of some sort?

1 A. They didn't -- they just denied the claim.

2 Q. And the dicamba that would have been sprayed in early
3 April, as you said before, was over a burndown of some sort;
4 correct?

5 A. Yes, sir.

6 Q. Okay. And then you talked about the --

7 **MR. MILLER:** I'm sorry? Oh, my ear. Sorry. I
8 sometimes hear the back and -- yeah. I apologize.

9 Q. (By Mr. Miller) You talked about the hail claim, too.
10 Let's take a look at that. Also in April, after the crop
11 duster incident or incidents, you also had a hailstorm in
12 April; is that correct?

13 A. Yes, sir.

14 Q. And you filed an insurance claim on that; is that right?

15 A. Yes, sir.

16 **MR. MILLER:** Could we show, please, to the witness
17 and the Court and counsel M-248.1 to .3.

18 Q. (By Mr. Miller) And, Mr. Bader, is this the insurance
19 claim that you signed and sent in for the damage from hail in
20 April of 2015?

21 And if you need -- I know it's hard to see that on
22 the screen. If you need a hard copy, I can give it to you.

23 A. The first one you call -- when you do -- you call in and
24 you turn in a work order and then it -- it's not processed
25 until you get done picking the peaches.

1 Q. Is this the insurance claim that you sent in for the hail
2 damage?

3 A. Yes.

4 **MR. MILLER:** Okay. Could we move for admission of
5 248.1 to .3, Your Honor?

6 **THE COURT:** 248 what?

7 **MR. MILLER:** .1 through .3.

8 **THE COURT:** Any objection?

9 **MS. RANGLES:** No objection, Your Honor.

10 **THE COURT:** They are admitted.

11 **MR. MILLER:** And if we could have that up, please,
12 Ms. Bedard.

13 Q. (By Mr. Miller) And on this claim, Mr. Bader, you claim
14 that your loss was 100 percent hail; is that right?

15 Could we have that -- I think it's on the third
16 page. There it is.

17 Is that correct, sir?

18 A. Of the loss that was -- that wasn't 100 percent loss on
19 that unit. It's several units. And the hail -- if there was
20 going to be a loss, it was caused by 100 percent hail on them
21 units and these units were outside where the drift was.

22 Q. Right. So you got the crop duster drift that you told
23 the investigator -- that you told the reporter is 50 percent?

24 A. Yes.

25 Q. And then you got a different 10 percent from the hail;

1 correct?

2 A. Yes.

3 Q. And that's what this claim was for?

4 A. Yes.

5 Q. Again, having nothing to do with dicamba sprayed over the
6 top of Xtend seed; right?

7 A. Not at the present time.

8 Q. Okay. And so I want to take a look at --

9 **MR. MILLER:** Can we have M-271 up, please, just for
10 the witness, the Court and counsel. M-271.1.

11 Q. (By Mr. Miller) Mr. Bader, is this the list of the
12 specific fields that were hit with the hail that the insurance
13 claim was for?

14 A. Yes. If you notice the -- yes. If you notice, there was
15 just -- if you notice for every bushel we pick off these
16 units, it takes off your -- so the total production, the
17 income off these farms if we had a full peach crop should have
18 been about a million and a half bucks gross, million and a
19 quarter. And you can see on this 230 acres, we have one farm
20 that -- there's just a couple farms that show up a deduction,
21 but the rest -- you can see they took off -- so they paid us
22 \$25,036.

23 Q. And that's for the 10 percent hail damage; correct?

24 A. Yes.

25 Q. Okay. And -- you can take --

1 **MR. MILLER:** Actually, can we publish that, Your
2 Honor? I move for admission of M-261.1.

3 **MS. RANGLES:** No objection.

4 **THE COURT:** Admitted.

5 **MR. MILLER:** If we can publish that briefly, please.
6 Thank you.

7 Q. (By Mr. Miller) Now, Mr. Bader, you talked about this
8 claim. Back on the crop duster claim, on the crop duster
9 damage that you had in April of 2015, that cost you, including
10 expenses, about half a million dollars; is that correct? The
11 crop duster drift?

12 A. Yes.

13 Q. Okay. And that damage should not be -- is not part of
14 this lawsuit or should not be part of this lawsuit; correct?
15 Because it was from the crop duster?

16 A. The -- the crop duster incident was -- they said they
17 were not responsible. They blamed it on the dicamba.

18 Q. They were spraying over a burndown?

19 A. At a later date.

20 **MR. MILLER:** So if we could go back to 2195, please.

21 Q. (By Mr. Miller) So, Mr. Bader, if we look at the
22 39,000 yield in 2015, if you add back in the 50 percent from
23 the crop duster, if that's what it was, and the 10 percent
24 from the hail, that would get you up to about the
25 100,000 bushels that you were expecting; is that right? That

1 would get you back your 60 percent?

2 A. Repeat the question, sir.

3 Q. Sure. We've heard that there was a 10 percent loss from
4 the hail in 2015; right?

5 A. Yes.

6 Q. And then we've heard the tape where you said there was a
7 50 percent loss from crop duster applications; correct?

8 A. There was 10 to 15 percent.

9 Q. Okay. So if there's 10 to 15 percent there, that's about
10 25 percent?

11 A. Yes.

12 Q. Okay. Now, you testified that the 2015, later in the
13 year you got hit by dicamba that you believe was sprayed over
14 Xtend cotton; is that right?

15 A. Yes.

16 Q. Okay. And you said you believed that it was Mr. Murphy
17 and Mr. Fullerton?

18 A. Yes. And Jeff Todd and Bruce Dawson.

19 Q. Now, it's true that you suspect the Dawsons made an
20 illegal application of dicamba in crop in 2015, but you don't
21 have any proof of that; is that right?

22 A. Correct.

23 Q. And as to the other gentlemen -- Mr. Murphy,
24 Mr. Fullerton, Mr. Todd -- you can only speculate as to where
25 the dicamba came from; is that correct?

1 A. Correct.

2 Q. You don't have any actual proof of any particular damage
3 from any particular application of dicamba in 2015; correct?

4 A. Correct.

5 Q. Now, you testified on direct that you knew Mr. Fullerton
6 planted Xtend cotton because you went and looked at his fields
7 and they were clean; is that right?

8 A. Yes.

9 Q. So did you actually go down and see the fields?

10 A. They are right there beside my farm.

11 Q. So you knew which field it came from?

12 A. Yes.

13 Q. And you actually inspected it and that's how you knew he
14 sprayed dicamba there?

15 A. We suspected it.

16 Q. You are not sure? You suspect it?

17 A. We -- we were sure when we seen it on our peaches, the
18 damages on our peaches.

19 Q. And are -- you are aware that we have turned over to your
20 counsel, because Mr. Randles has made note of it in his
21 opening statement, you turned over -- we turned over to your
22 counsel records of all of the sales of Xtend cotton in 2015 in
23 your area. You are aware of that?

24 A. Yes.

25 Q. And are you aware of the fact that Mr. Fullerton didn't

1 buy any Xtend cotton in 2015?

2 A. I wasn't aware of the fact.

3 Q. And when you were originally deposed on this particular
4 matter, you stated that the reason you suspected it was
5 Mr. Fullerton was because you were hit on the west side and he
6 was over on the west side; is that right?

7 A. We were hit from all four directions.

8 Q. You were hit from all four directions?

9 A. Yes.

10 Q. I understand. But I'm talking about your allegation
11 against Mr. Fullerton. You testified this morning it was
12 because you saw his cotton fields were clean; correct?

13 A. Yes, but he farms cotton on all four sides of me.

14 Q. When you were deposed, however, you testified that the
15 reason you thought it was hit is because he was on the west
16 side and you got hit from the west side; correct?

17 A. I never did testify we got hit from the west side, sir.

18 Q. Okay.

19 **MR. MILLER:** Could we have clip A, please.

20 (Video clip played as follows:)

21 "Q. Do you know what field -- well, why do you
22 suspect Chad Fullerton made an illegal application --

23 "A. To his cotton.

24 "Q. I'm sorry?

25 "A. To his cotton.

1 "Q. To his cotton?

2 "A. Yes.

3 "Q. Why do you believe that you were hit from the
4 west from an illegal application to an Xtend field by Chad?

5 "A. Because when we get a rain shower and the wind
6 would -- when it come out of the west and usually it was --
7 the symptoms would start showing up on the west side of the
8 trees, you know. It's pretty obvious when you ain't hit
9 there, not once. Two days later, you are hit and so it starts
10 on the west side of the trees within two days it's -- and it's
11 a pretty consistent pattern.

12 "Q. And -- and what field do you -- do you know --
13 do you have any idea of when --

14 "A. No, sir.

15 "Q. -- an application would have been made?

16 "A. No, sir."

17 (End of clip)

18 Q. (By Mr. Miller) Does that refresh your recollection?

19 A. Yes, sir.

20 Q. At the end of the day, Mr. Bader, you don't have any idea
21 where any of the alleged dicamba movement came from in 2015;
22 correct?

23 A. When it volatilizes, it could come from 10 miles away.

24 Q. I'm sorry?

25 A. When it volatilizes, it could have come from 10 miles

1 away.

2 Q. So you have no idea where it actually came from around
3 your farm; is that right?

4 A. I gave you names of the suspects.

5 **MR. MILLER:** Could we have clip 34A, please.

6 (Video clip played as follows:)

7 "Q. You don't have any idea where any of your
8 claims of dicamba off-target movement came from now or in
9 April of 2015 when it was found in your leaf tissue in early
10 April; correct?

11 "A. Correct."

12 (End of clip)

13 Q. (By Mr. Miller) Does that refresh your recollection,
14 Mr. Bader?

15 A. When was this --

16 Q. The deposition was August 21 last year.

17 A. Okay. That's the reason I asked because, sir, you said
18 '15.

19 Q. Yes.

20 A. And I had a different shirt on, so --

21 Q. Well, I was talking about your testimony regarding what
22 happened in 2015.

23 A. Okay. Excuse me, sir.

24 Q. I'm sorry?

25 A. I said excuse me.

1 Q. Does that refresh your recollection?

2 A. Yes, I was just -- I thought you both was on the '15.

3 Q. I'm sorry. I didn't mean to imply that.

4 A. Okay.

5 Q. Let me talk now about damage in 2016. Your claims in
6 this case, Bader Farms' claims is that all of the yield loss
7 in your peach orchard in 2016 is from dicamba sprayed over
8 Xtend crop; is that correct?

9 A. Yes, sir.

10 Q. Now, you also believe you had other herbicide damage that
11 caused damage to your trees in 2016; is that right?

12 A. I don't recall, sir.

13 Q. You don't recall that?

14 A. No.

15 Q. Do you recall being deposed September 15 of 2017 in this
16 case?

17 A. No, sir -- I do not remember exactly, sir.

18 **MR. MILLER:** Okay. Let's see clip 48, please.

19 (Video clip played as follows:)

20 "Q. Are there other herbicides, pesticides,
21 insecticides that you claim caused damage to your trees or
22 other crops other than the dicamba in 2016?

23 "A. Yes, sir."

24 (End of clip)

25 Q. (By Mr. Miller) Does that refresh your memory,

1 Mr. Bader?

2 A. Yes.

3 Q. Okay. And those other herbicides that hurt your crops in
4 2016 were Liberty and Roundup; is that right?

5 A. I don't recall that, sir.

6 **MR. MILLER:** Okay. Could we play clip 49, please.

7 (Video clip played as follows:)

8 "Q. Are there other herbicides, pesticides,
9 insecticides that you claim caused damage to your trees or
10 other crops other than dicamba in 2016?

11 "A. Yes, sir.

12 "Q. What are those?

13 "A. Liberty and Roundup."

14 (End of clip)

15 Q. (By Mr. Miller) And Liberty is another name for
16 glufosinate; correct?

17 A. Yes.

18 Q. And Roundup is another name for glyphosate; correct?

19 A. Yes.

20 Q. So you also had damage to your peach trees from
21 glufosinate and glyphosate in 2016; correct?

22 A. That wasn't done to my peach trees. That was done to my
23 pear trees in my front yard.

24 Q. Well, you testified, did you not, back at your deposition
25 that the damage was from one end of your farm to the other; is

1 that right?

2 A. That was on pear trees.

3 Q. That was only on the pear trees.

4 **MR. MILLER:** Can we have clip 51, please.

5 (Video clip played as follows:)

6 "Q. In 2016 did you -- did you, Bader Farms, Inc.,
7 sustain damage to peach trees and other crops from glufosinate
8 and glyphosate?

9 "A. Yes, sir.

10 "Q. -- across your peach farm operations?

11 "A. Yes, it pretty well scattered from one end to
12 the other, different blocks, different areas."

13 (End of clip)

14 Q. (By Mr. Miller) Now, you claim that you were also --
15 does that refresh your memory, Mr. Bader?

16 A. Yes, sir.

17 Q. Okay. Now, you also claim that you were injured -- your
18 peach trees were injured in 2016 by dicamba; correct?

19 A. Which year, please?

20 Q. In 2016, besides the gluphosinate and glyphosate, you
21 claim there was damage from dicamba in 2016?

22 A. Yes.

23 Q. And, in fact, you allege that in your complaint.

24 **MR. MILLER:** If we could have, please, paragraph 527
25 of the third amended complaint just for counsel and the Court

1 and Mr. Bader.

2 **THE CLERK:** I'm sorry, what exhibit was that?

3 **MR. MILLER:** I'm sorry?

4 **THE CLERK:** What exhibit?

5 **MR. MILLER:** It's a paragraph from the complaint.

6 Court's indulgence, one moment, Your Honor.

7 Technical stuff. Here we go.

8 Q. (By Mr. Miller) I can submit to you, Mr. Bader, this is
9 a copy. You can tell from the top there with the docket
10 number and everything, this is a copy of the complaint that
11 Bader Farms filed in this case.

12 And do you see paragraph 527? Correct?

13 A. Yes.

14 Q. And in there Bader Farm alleges that "based upon
15 Plaintiffs' damage and knowledge, the older dicamba
16 formulations sold to those same local farmers was sprayed
17 initially on or about June 10, 2016." Correct?

18 A. I have never seen this document, sir.

19 Q. You have never seen the complaint that was filed in this
20 case?

21 A. My recollection, I have never seen this.

22 Q. Okay. We will take it down then if you haven't seen the
23 complaint.

24 Now, you also had a frost event in 2016; is that
25 correct?

1 A. Yes, sir.

2 Q. But that was not enough to submit for an insurance claim.
3 There was damage, but not enough to submit for an insurance
4 claim; correct?

5 A. I think you were -- there's a misquote on the frost.

6 Q. I'm sorry?

7 A. The frost claim shouldn't have never been submitted.

8 Q. I'm sorry. That's what I was saying. You had a frost --
9 you had frost damage, but there was not enough damage to
10 submit to the insurance company?

11 A. Yes, sir.

12 Q. Because the way the crop insurance works, you have
13 basically a guarantee of an amount that you will harvest and
14 if the loss doesn't drop it below that, you are not going to
15 get any payment from the insurance company; right?

16 A. Yes.

17 Q. So there was some loss from frost in 2016, but it wasn't
18 enough to submit to the insurance company; correct?

19 A. Correct.

20 Q. And that loss, that yield loss should not be part of this
21 lawsuit; correct?

22 A. Dicamba, the way it attacks the tree, that would be an
23 inconclusive statement I think, sir.

24 Q. Okay. And so do you believe -- is your allegation that
25 because there was dicamba, the freeze -- or excuse me, the

1 frost damage should be part of this case?

2 A. No.

3 Q. Okay. How about the damage sustained from the
4 gluphosinate and the glyphosate? That's different than
5 dicamba over Xtend crops; correct?

6 A. To be honest with you, I don't -- never remember about
7 the Liberty.

8 Q. Okay. Now, 2016, you believe that those same four
9 neighbors of yours were the ones who sprayed the dicamba that
10 you claim injured your peach orchard; correct?

11 A. Yes, sir.

12 Q. And that's Mr. Murphy, Mr. Fullerton, Mr. Todd and
13 Mr. Dawson; is that right?

14 A. Yes, sir.

15 Q. And again, you don't have any particular evidentiary
16 support for that. That is just your speculation; is that
17 right?

18 A. Yes, sir.

19 Q. However, in spite of that, you actually sent your
20 neighbors invoices for the dicamba damage that you allege they
21 caused; is that right?

22 A. Yes, sir.

23 **MR. MILLER:** Could we have up, please, M-273.2
24 through .4. And let's take a look at M-237.2 first.

25 Q. (By Mr. Miller) Do you recognize that, Mr. Bader?

1 A. Yes, sir.

2 Q. And is that the invoice that you sent to your neighbor,
3 Bruce Dawson?

4 A. Yes, sir.

5 **MR. MILLER:** Move for the admission of 273.2, Your
6 Honor.

7 **MS. RANGLES:** No objection, Your Honor.

8 **THE COURT:** Overruled and admitted.

9 **MR. MILLER:** Can we publish that, Your Honor?

10 **THE COURT:** Yes.

11 Q. (By Mr. Miller) We are looking at an invoice that you
12 prepared and had delivered to your neighbor, Mr. Dawson, for
13 \$720,000; is that right?

14 A. Yes, sir.

15 Q. And you say on there, "damage to future bean crop will be
16 determined at a later date." At the top it says, "damage to
17 peach trees and production."

18 Is that right?

19 A. Yes.

20 Q. And you -- you gave this invoice or you had this invoice
21 delivered to Mr. Dawson in spite of the fact that you didn't
22 have any evidence; it was just speculating as to whether he
23 was doing anything wrong here?

24 A. Yes, sir.

25 Q. Okay. Let's take a look at 273.3.

1 Mr. Bader, is this the invoice that you sent to Gary
2 Murphy --

3 A. Yes, sir.

4 Q. -- in July of 2016?

5 **MR. MILLER:** I move for the admission of 273.3, Your
6 Honor.

7 **MS. RANGLES:** No objection, Your Honor.

8 **THE COURT:** It is admitted.

9 **MR. MILLER:** Can we publish that, please? Oh, I
10 think it already is.

11 Q. (By Mr. Miller) And here you have sent an invoice to
12 Mr. Murphy for 660 -- or is that 66,000?

13 A. Yes.

14 Q. \$660,000. Correct?

15 A. Yes.

16 Q. And again, you had no evidence that Mr. Murphy had done
17 anything in 2016; that was speculation on your part but you
18 had an invoice sent to your neighbor --

19 A. Yes, sir.

20 Q. -- for \$660,000?

21 **MR. MILLER:** Let's take a look at 273.4., just for
22 the witness and counsel and the judge.

23 Q. (By Mr. Miller) Mr. Bader, is this a copy of the invoice
24 that you sent to Chad Fullerton in 2016?

25 A. Yes, sir.

1 **MR. MILLER:** Move for the admission of 273.4, Your
2 Honor.

3 **MS. RANGLES:** No objection.

4 **THE COURT:** Admitted.

5 **MR. MILLER:** And if we can publish that, please.
6 Thank you.

7 Q. (By Mr. Miller) And here you sent an invoice to your
8 neighbor, Mr. Fullerton, for \$1.2 million; is that correct?

9 A. Yes, sir.

10 Q. And you sent these invoices to your three neighbors,
11 Mr. Bader, in spite of the fact that at that point you didn't
12 know how many trees you were even going to allegedly lose; is
13 that right?

14 A. As I stated in my deposition in last year, that I -- I
15 admitted to them I made a mistake and I was blowing off steam.
16 And when you start seeing the problems, I was looking for
17 answers. But I admitted to -- I made a mistake on these.

18 Q. You admit that you made a mistake, you shouldn't send
19 invoices when you are speculating as to where something came
20 from as opposed to having actual evidence of it?

21 A. Yes, sir.

22 Q. Let's talk about the 2017 freeze damage. You testified
23 about that on your direct examination. Do you recall that,
24 Mr. Bader?

25 A. Yes, sir.

1 Q. And in 2017, you had a freeze damage that occurred over a
2 four-day period of time; is that right? Freeze event I guess?

3 A. Do what?

4 Q. You had a freeze event --

5 A. Excuse me, sir.

6 Q. That's all right. You had a freeze event at your farm at
7 the orchard in 2017; is that correct?

8 A. We had four days that was -- I don't really say it was a
9 freeze, but just we had cooler weather.

10 Q. Well, you testified previously, did you not, Mr. Bader,
11 that you lost 30 to 35 percent of your peach crop from that
12 freeze in 2017?

13 A. No, sir. We lost 30 -- 30 and 35 percent of our bud
14 crop.

15 Q. And the buds meaning if you lose the buds, you are not
16 going to have those peaches; correct?

17 A. You can end up with 10 percent of a bud crop and have a
18 full crop of peaches.

19 **MR. MILLER:** Can we have clip 55, please.

20 (Video clip played as follows:)

21 "Q. Did the freeze in 2017 affect any of your peach
22 orchards?

23 "A. In -- it probably affected some, but it was
24 very weird how this freeze affected. We went in and hit them
25 with -- we took a gamble. We hit them with a heavy dose of

1 Nurti-K. It was an old plan I pulled out of my hat from an
2 old professor about 20 years ago from Illinois, and there was
3 me and three other growers in Illinois that done the same
4 thing. And we ended up probably about 70 -- 65 to 70 percent
5 of the crop."

6 (End of clip)

7 Q. (By Mr. Miller) So, Mr. Bader, does that refresh your
8 recollection that you ended up with about 60 to -- 65 to
9 70 percent of your crop after the freeze; correct?

10 A. Yes.

11 Q. And that should be a loss, a crop loss of 30, 35 percent;
12 correct?

13 A. Yes.

14 Q. And that was in 2017; is that right?

15 A. Yes.

16 Q. And as your attorney pointed out, and as you have pointed
17 out, obviously you can't help the weather. If a freeze come
18 or if a hailstorm come, it's going to take out what it's going
19 to take out; right?

20 A. Yes.

21 Q. And in 2018, you had additional freeze damage; is that
22 correct, Mr. Bader?

23 A. Yes, sir.

24 Q. And that freeze damage affected all of your acres to some
25 extent; is that right?

1 A. Yes, sir.

2 Q. That's the one -- is this the one now that you testified
3 on direct examination was, I think you said, a light -- I
4 forget the word you used, frost or --

5 A. Yes, we had light frost.

6 Q. But you did file an insurance claim on that; is that
7 correct?

8 A. Yes.

9 **MR. MILLER:** And could we see, please, just for
10 counsel and the Court and Mr. Bader, M-251.27 to .31.

11 Mr. Bader -- maybe if we can go to the last page or
12 the third page, I guess it would be. Yeah. No, let's go to
13 the third page of that.

14 Here it is. Could you blow up his signature there,
15 please.

16 Thank you, Ms. Bedard.

17 Q. (By Mr. Miller) Mr. Bader, do you recognize this as the
18 insurance claim that you sent in for the 2018 freeze damage?

19 A. Yes, sir.

20 **MR. MILLER:** Move for admission of 251.27 to .31,
21 Your Honor.

22 **MS. RANGLES:** No objection.

23 **THE COURT:** Admitted.

24 Q. (By Mr. Miller) And, Mr. Bader, on this claim -- oh,
25 thank you.

1 On this claim, again, you submitted to the insurance
2 company that 100 percent cause of the loss was from freeze; is
3 that right?

4 A. Yes, sir.

5 Q. And this is now part of the claim that you are claiming
6 for dicamba sprayed over Xtend crop; correct?

7 A. Correct.

8 Q. And all totaled, this insurance claim was about
9 400 acres; is that right? Covered about 400 acres?

10 A. Yes, sir.

11 Q. Mr. Bader, I want to show you a slide that we have. This
12 is slide 6, please.

13 **THE CLERK:** Is it published?

14 **MR. MILLER:** Not yet, I'm sorry.

15 Q. (By Mr. Miller) And, Mr. Bader, this is a slide -- if
16 you look at the numbers at the bottom, the yield numbers, at
17 least in the bottom row, those are the numbers directly from
18 the chart that your attorney used for those corresponding
19 years. Would you agree with that? Looks about right?

20 A. On line 2 --

21 Q. Not line 2, just the one below.

22 A. What is on line 2?

23 Q. Those are if we had added in the losses from the frost
24 and the freeze and the hail. The bottom line numbers -- I'm
25 going to get to that.

1 The bottom line numbers and the blue bars are a
2 rough estimation of your yields from 2009 to 2018; is that
3 correct?

4 A. Yes, sir.

5 **MR. MILLER:** Move for the admission of slide 6 as a
6 demonstrative only, Your Honor.

7 **MS. RANGLES:** No objection.

8 **THE COURT:** It's admitted. So is that an exhibit
9 number? Or just -- I will mark it down as slide 6 for now.

10 **MR. MILLER:** Thank you, Your Honor. We will get you
11 an M number on that.

12 Can we publish that, please, Your Honor.

13 Q. (By Mr. Miller) Now, this shows the various yields you
14 had from 2009 though 2018, correct, Mr. Bader?

15 A. Yes.

16 Q. And we already talked about 2015. Even taking the lower
17 numbers, we talked about you had 10 to 15 percent loss from
18 hail, is that right, in 2015?

19 A. About 10 percent.

20 Q. And about 10 to 15 percent I think you said from the crop
21 duster --

22 A. Yes.

23 Q. -- the lower of the numbers that we've discussed?

24 So if we add that on, that's about another 21,000.
25 And you get this little red bar up here.

1 **MR. MILLER:** Can we move to the ...

2 Thank you.

3 Q. (By Mr. Miller) Would you agree with that, sir?

4 A. Yes, I will agree with them figures, but you ain't
5 figured in the dicamba damage.

6 Q. And then 2017, the red bar there refers to the 30 to
7 35 percent loss from the freeze that year that we've talked
8 about a few minutes ago; correct?

9 A. Excuse me, sir. Repeat that, please.

10 Q. Sure. The red bar on the top of 2017, the extra roughly
11 25,000 bushels, that's the 30 to 35 percent that you say was
12 lost in your -- from the freeze that occurred that year. We
13 talked about that a few minutes ago.

14 A. Yes.

15 Q. Okay. And so if not for the freeze and the crop duster
16 application and the hail, crop duster application and hail in
17 2015, freeze in 2017, you would have these numbers roughly for
18 your yield along those years; correct?

19 A. Correct.

20 Q. And so we see -- this is a ten-year span. In roughly
21 eight of those years -- some are higher than others,
22 obviously, and that's normal for the yields to go up and down
23 year to year; is that correct?

24 A. It's normal, but they should have been climbing.

25 Q. They should have been climbing, but it's normal,

1 generally speaking, even if --

2 A. Yes.

3 Q. -- 2010, 2011, for example, from '9 to '10 it goes down,
4 then it slowly starts going up, then it goes down again in
5 2014. That's normal. Right?

6 A. Yes, but them numbers should have been climbing.

7 Q. And so roughly eight out of these years, 2009, '10, '11,
8 '12, '13, '14, '17 -- '16 and '17, you have yields from
9 65,000 bushels on up; correct?

10 A. Repeat the question, please.

11 Q. Sure. In eight out of those ten years, if you add in the
12 30 to 35 percent that was lost from the freeze in 2017, you
13 have yields 65,000 or higher?

14 A. Yes.

15 Q. Then the other two years, 2015 and 2018, you basically
16 got partial yields there, much lower than 2018; correct?

17 A. Excuse me. Repeat that.

18 Q. Sure. 2015 and 2018, you have less than 60,000 bushels,
19 actually significantly less than 2018, those are partial
20 yields?

21 A. Yes, I missed some on the figures on '18.

22 Q. Okay.

23 A. Thank you.

24 Q. No problem.

25 And you talked about on direct examination that you

1 were interviewed for a booklet that came out regarding
2 Missouri peaches. Do you recall that?

3 A. Yes.

4 Q. That was back in 2000; is that right?

5 A. Yes, sir.

6 Q. And they came to you because of your experience in the
7 peach industry here in Missouri; is that right?

8 A. It was coordination of the -- several peach growers in
9 Missouri.

10 Q. And you said it was split up into different areas. I
11 assume you covered southeastern Missouri?

12 A. Yes.

13 Q. They took the information that you gave them and put it
14 into this pamphlet; is that right?

15 A. Me and the four other growers.

16 Q. Sure. Were the -- were you the one covering southeastern
17 Missouri?

18 A. No.

19 Q. Who else was?

20 A. Me and George Levin and Mr. Cates.

21 Q. Did you read the pamphlet after it was put out?

22 A. Yes.

23 Q. Good pamphlet?

24 A. Yes.

25 Q. Get distributed to people to be used?

1 A. Yes.

2 Q. Have any problem with the pamphlet at all or were you
3 happy with that?

4 A. Do what, sir?

5 Q. Were you happy with the pamphlet, how it turned out?

6 A. Yes, sir. The university -- the back contents, there was
7 several people put their -- this was -- they were taking the
8 growers -- the growers extension and the state heart. It was
9 more or less a joint application of everybody's knowledge.

10 Q. And that was a pamphlet that you assisted in or you gave
11 information for that went out to help people who wanted to
12 look into the peach industry here in Missouri; is that
13 correct?

14 A. Yes, sir.

15 **MR. MILLER:** Can we take a look, please, just for
16 counsel and Mr. Bader and the Court, M-116.

17 Q. (By Mr. Miller) Mr. Bader, is this that pamphlet, Crop
18 Profile for Peaches in Missouri?

19 A. Yes.

20 Q. And if we go to the last page, please, page 14, although
21 they misspell your name, they talk about personal
22 communication with Bill Bader, misspelled B-A-E-D-E-R, and
23 several other growers; correct?

24 A. Yes.

25 **MR. MILLER:** Move for the admission of M-116, Your

1 Honor.

2 **MS. RANGLES:** No objection.

3 **THE COURT:** It's admitted.

4 **MR. MILLER:** Let's go back to the first page,
5 please, Ms. Bedard.

6 Can we publish that, please, Your Honor.

7 Q. (By Mr. Miller) So this is the pamphlet we are talking
8 about, Mr. Bader?

9 A. Yes, sir.

10 **MR. MILLER:** And if we can go to, please, pages 2
11 and 3 and let's blow up the bottom paragraph of 2 and the top
12 paragraph of 3.

13 Q. (By Mr. Miller) This pamphlet that you gave information
14 for says, "The most limiting factor affecting peach production
15 in Missouri is the occurrence of spring frosts in southeast
16 and southwest Missouri and winter freezes in north-central
17 Missouri. Winter temperatures below negative 10 to negative
18 15 Fahrenheit kill dormant fruit buds."

19 Am I reading it correctly so far, Mr. Bader?

20 A. Yes.

21 Q. Going on it says, "Because central and northern Missouri
22 are only marginally adapted for peaches, growers in these
23 areas plant varieties that are winter hardy." Correct?

24 A. Yes.

25 Q. Then it says, "A full crop in these areas is only

1 expected four out of ten years."

2 That would be up in central and northern Missouri;
3 right?

4 A. Yes.

5 Q. "A partial crop three out of ten years and a complete
6 crop failure is expected every three out of ten years."

7 Correct?

8 A. Correct.

9 Q. Then going on talking about your section, it says, quote,
10 "In contrast, growers in southeast Missouri expect a full crop
11 every eight out of ten years." Is that right?

12 A. Yes.

13 Q. And "a complete crop failure occurs only one out of every
14 ten years." Is that correct?

15 A. Them numbers are off a little bit.

16 Q. Those numbers are off a little bit?

17 A. Because we only know peaches planted in the Campbell area
18 were planted in 1918 and they were just three complete
19 failures that was in '55, '85 and '07.

20 Q. So you disagree with the information that's in this
21 booklet you assisted with?

22 A. Yes.

23 Q. Okay. Well, going back to the full crop only eight out
24 of ten years.

25 **MR. MILLER:** Can we go back to slide 6, please.

1 Q. (By Mr. Miller) You have a partial crop here two out of
2 the ten years, correct, Mr. Bader? As we just talked about,
3 2015 and 2018?

4 A. Yes. We go back 25 years before dicamba come along, you
5 know, there would be a big difference there.

6 Q. And back 25 years before 2007, I believe the slide that
7 your counsel used shows that you were averaging
8 163,000 bushels a year; is that right?

9 A. It was from -- from '02 up through '06.

10 Q. '02 to '06, I'm sorry.

11 **MR. MILLER:** Can we have that slide. I think it's
12 2194, I think.

13 No. Yeah. That's it. We can scroll up a little
14 bit, please.

15 Q. (By Mr. Miller) And so we have here 2002 to 2006, the
16 average yield was 162,000; correct?

17 A. Yes.

18 Q. And then you had no yield in 2007 because of the freeze;
19 is that right?

20 A. Correct, sir.

21 Q. And then when we look ten years later, roughly ten years
22 from the middle of 2002 to 2004, this is before any dicamba
23 was sprayed over any Xtend seed anywhere, correct, in 2014?

24 A. Yes.

25 Q. And you're less than half the yield that you had prior to

1 the ice storm or the freeze; is that correct?

2 A. That's correct.

3 Q. And none of that drop from 162,000 down to 70,000 has
4 anything to do with dicamba sprayed over Xtend crop; is that
5 correct, Mr. Bader?

6 A. That's correct.

7 Q. Mr. Bader, this case you would agree boils down to
8 whether it was dicamba sprayed over Xtend seed that caused any
9 damage at Bader Farms; is that right?

10 A. Yes, sir.

11 Q. And you've had your leaves tested there many times; is
12 that correct?

13 A. Repeat the question, please.

14 Q. Sure. You testified at direct examination, I believe,
15 that you have your leaves tested several times a year, I
16 think, for nutrients and that sort of thing; is that right?

17 A. Yes.

18 Q. Now, in 2015, when the Department of Agriculture came out
19 because of the crop duster situation, you said they had leaf
20 samples taken; right?

21 A. Yes, they were checking -- we take leaf samples for the
22 nutrient level.

23 Q. Right. But I am talking about when the -- when you put
24 in the complaint for the Missouri Department of Agriculture
25 for the crop duster in 2015.

1 A. Yes.

2 Q. Do you recall that? And the Missouri Department of
3 Agriculture came out and took leaf samples to see if there was
4 a herbicide drift on to your property; right?

5 A. Yes.

6 Q. And they found -- when those tests came back, they found
7 2,4-D; right?

8 A. Yes, sir.

9 Q. They found glyphosate; correct?

10 A. Yes, sir.

11 Q. They found Flumioxazin; right?

12 A. Yes.

13 Q. And they found some dicamba that we talked about was over
14 a burndown; correct?

15 A. Yes, sir.

16 Q. Okay. Now, there were some other tests done then in
17 2016; is that right?

18 A. Yes.

19 Q. By the FDA?

20 And you've told us a lot about how peach trees and
21 the peach industry work. Basically you go from the leaves,
22 then eventually you start getting buds; is that correct?

23 A. Do what, sir?

24 Q. Sometime in the spring you start getting buds on the
25 peach trees?

1 A. Explain it a little clearer, please.

2 Q. You are going to need to explain it because I'm not a
3 peach guy.

4 A. Are you talking about the leaves versus peach buds or --

5 Q. Well, the tree starts off growing leaves, correct,
6 earlier in the year?

7 A. Year.

8 Q. That's where the energy is going for the tree; right?

9 A. Yes, you start with your buds. Your buds are the first
10 things.

11 Q. Okay. Then what comes after that?

12 A. The leaf.

13 Q. Okay. And then what comes after that before you get to
14 the peaches?

15 A. Well, you got your peach bud. Your peach crop for that
16 year is made the year before.

17 Q. Right. From the buds the year before?

18 A. Yes.

19 Q. And eventually after the blooms go, then the fruit starts
20 growing; is that correct?

21 A. Yes.

22 Q. And all the nutrients and everything that's in the tree
23 starts going into that peach?

24 A. It goes into the bloom, yes.

25 Q. To start growing the peach; right?

1 A. Yes.

2 Q. And the FDA obviously was concerned to make sure there
3 was no dicamba in your peaches; is that right?

4 A. I called them, sir.

5 Q. You called because you wanted to have them checked?

6 A. The plant board -- I said we need to make a call because
7 in -- excuse me, in 2016, we had trees that looked terrible up
8 and down the road. We had trees loaded with golf ball
9 quarter-size peaches and people -- we -- people were asking me
10 questions. They knew about this and they said, are they safe
11 to eat?

12 Q. So you called the FDA?

13 A. I called the FDA and the -- they sent the health
14 department and the FDA come out.

15 Q. And the FDA took about 400 pounds of your peaches to
16 test?

17 A. About 420 pounds.

18 Q. About 420 pounds. And the tests came back negative for
19 dicamba; is that right?

20 A. The test -- what he told me was there was a lot of
21 question about food safety and the food people eat. He come
22 back, he took peaches. He took watermelon. He took
23 cantaloupe, he took a lot of vegetables and anything edible
24 that was raised in southeast Missouri, at the time with all of
25 this dicamba drift was on.

1 Q. Well, I'm just asking about your peaches, Mr. Bader. The
2 FDA took about 420 pounds of your peaches and tested it for
3 dicamba; correct?

4 A. Yes.

5 Q. And they came back negative; there was no dicamba in your
6 peaches. Right?

7 A. This study here is what he told me. He said it's a
8 good -- we are taking samples on all of this here and he said
9 dicamba attacks the plant and he said it should just attack
10 the plant, he said it -- but if it gets in the fruit, he said
11 it would be in the milk you drink, the bacon you eat, the
12 peaches you eat, it would be in everything. He said if it
13 does that, he said it presents a big problem.

14 Q. So you had your peaches tested for dicamba and it came
15 back negative?

16 A. We had it tested and he said if they test, he said, we
17 will have to set up a tolerance level and he said -- I said,
18 set up a tolerance level before you test them or after? And
19 he wouldn't give me an answer on that.

20 Q. Did the test come back negative for dicamba, Mr. Bader?

21 A. Yes, sir, luckily it did.

22 Q. And it came back negative for any leaf samples for
23 dicamba that year as well, did it not, that the Missouri
24 Department of Agriculture took?

25 A. I have never seen them samples, sir.

1 Q. They took leaf samples in 2016, correct?

2 A. Yes.

3 Q. The Missouri Department of Agriculture?

4 And you've never received a report from them
5 saying --

6 A. I've never received a report back from them.

7 Q. They've never notified you and said, yes, there's
8 dicamba. Correct?

9 A. They said they turned them over to EPA and I never have
10 seen them.

11 Q. And you've taken a number of samples, you or your son has
12 taken a number of samples over time, leaf samples from your
13 farm; is that right?

14 A. I haven't, sir.

15 Q. You or Cody has?

16 A. Cody took some for somebody else. I don't know who for.

17 Q. Well, you have testified previously, have you, Mr. Bader,
18 that you have a freezer full of leaf samples that you have
19 taken from your farm but have not had tested?

20 A. Who testified?

21 Q. I'm sorry?

22 A. I said, excuse me, who has testified, sir?

23 Q. You, sir. Do you recall testifying in your deposition
24 that you have taken -- you have a freezer full of leaf samples
25 from your farm that you have never had tested for dicamba?

1 A. I don't recollect that, sir.

2 **MR. MILLER:** Okay. Can we play clip 47, please.

3 (Video clip played as follows:)

4 "Q. Have you done any sampling and testing in 2017?

5 "A. No, we got a freezer full of it.

6 "Q. So you have storage samples but nothing tested?

7 "A. Yes.

8 "Q. Is that accurate?

9 "A. Yes, sir."

10 (End of clip)

11 Q. (By Mr. Miller) Does that refresh your recollection,
12 Mr. Bader?

13 A. Yes, sir. But I -- you know, I will be honest with you,
14 that was --

15 Q. And, Mr. Bader, you have -- you testified on direct
16 examination that you have leaf analysis for nutrients done
17 every year at your farm; is that correct?

18 A. Yes.

19 Q. Have you had any of those folks test for dicamba?

20 A. They just test for nutrients.

21 Q. You could ask them to test for dicamba; is that correct,
22 Mr. Bader?

23 A. They were testing for -- they just test for nutrients.
24 We asked them and they told us they didn't want to get
25 involved with it.

1 Q. They didn't want to get involved?

2 A. No.

3 Q. Now, Mr. Bader, the dicamba that you allege was sprayed
4 over Xtend crops that came on to your farm, you are not aware
5 of what brand of dicamba that would be; correct?

6 A. I don't have no idea which brand.

7 Q. And you are aware that in '15 and '16, in 2015 and 2016,
8 it was illegal to spray any dicamba over Xtend crop. Are you
9 aware of that?

10 A. Yes.

11 Q. You also have no knowledge of whether the alleged dicamba
12 that came on to your farm was applied to corn or cotton or
13 soybeans or as a burndown or another use; is that right,
14 Mr. Bader?

15 A. Yes.

16 Q. And if it was sprayed over corn or burndown or another
17 use, that would not be over an Xtend crop; correct?

18 A. It depends what time a year it came in.

19 Q. Well, what I am saying is you don't know what it was
20 sprayed over and if it was sprayed over those items, it would
21 not be sprayed over an Xtend crop; correct?

22 A. There was Xtend crops in the area, sir.

23 Q. But you don't know whether the dicamba that you allege
24 has come on your farm was sprayed over the Xtend crops or
25 sprayed over corn or burndown or a different use; correct?

1 A. Correct.

2 Q. Now I want to talk about something your counsel brought
3 up regarding management of your peach orchard. You talked
4 about weed strips and chemical strips.

5 A. Yes, sir.

6 Q. And why do you do that?

7 A. We spray the band underneath the tree for weed control.

8 Q. And weeds will compete with the trees, is that correct,
9 Mr. Bader, for nutrients and water and things of that nature?

10 A. To some extent.

11 Q. That's why you want to get rid of them, so the trees --

12 A. Yes.

13 Q. -- can grow better?

14 A. Well, you -- the -- when we pick peaches, you have to
15 keep the weed -- we mow all the roadways and, you know, we try
16 to maintain the weed-free strip underneath the tree.

17 Q. And is that so that you get a better yield on your
18 peaches?

19 A. Repeat the question, please.

20 Q. Sure. Is that so the peaches -- you'll get a better
21 yield for your peach trees?

22 A. It's mainly to improve the --

23 Q. I'm sorry?

24 A. It's mainly to improve the pickers' ability to keep
25 the -- pick the peaches.

1 Q. So you don't think that the -- the weed strip has nothing
2 to do with allowing the tree to grow without competition?

3 A. Usually when we spray in the spring if the trees what we
4 call shaden, you know, the trees are leafed out good, that if
5 they got a good canopy on them because the grass will not grow
6 underneath the trees.

7 Q. So if the canopy is up there, you can't get the weeds
8 down there?

9 A. Do what, sir?

10 Q. If the canopy is over, it's your testimony that you won't
11 get weeds or grass under the tree?

12 A. That's what the plan was, what worked for years for it.

13 Q. And do you do the weed strip regularly throughout your
14 orchard or no?

15 A. We do it every year.

16 Q. You do that every year?

17 A. Yes.

18 Q. At what time of the year or is it throughout the year?

19 A. It depends which chemical because a lot of the chemicals
20 have to put down before -- you have a preharvest date. They
21 have to be applied before the preharvest date.

22 Q. And you use a variety of chemicals at your peach orchard;
23 is that correct, Mr. Bader?

24 A. We do.

25 Q. I am probably going to get some of these names wrong, but

1 you use diuron? Diuron? Correct?

2 A. That's -- yes.

3 Q. Gramoxone?

4 A. Do what?

5 Q. Gramoxone? Gramoxone?

6 A. I'm not -- I ain't no chemical expert. You know, we go
7 by the brand name like Karmex, Simazine. You know, Simazine
8 can be marketed under a dozen different names. You know,
9 Karmex, can be -- is diuron. You know, there's --

10 Q. And you have -- I'm sorry, sir. Go ahead.

11 A. I'm done, sir.

12 Q. And you have a pesticide applicator's license; is that
13 right, Mr. Bader?

14 A. Yes.

15 Q. Had that since 1975?

16 A. Yes.

17 Q. And as a licensed applicator, you read all the labels
18 before you apply anything; is that correct?

19 A. Yes, sir.

20 Q. And you do that because it's both the state and EPA
21 requirement to do that; is that right?

22 A. Yes, sir.

23 Q. I think you said something in your direct testimony
24 yesterday about necessary to follow the law, that's one of the
25 areas you have to follow the law -- any applicator has to

1 follow the law in; is that correct, Mr. Bader?

2 A. Yes.

3 Q. And you've heard the term "the label is the law." That's
4 come up in this case a few times; is that correct?

5 A. Yes.

6 Q. Now, your belief is if somebody does something that's off
7 label, if an applicator or a farmer does something that the
8 label does not allow, that they ought to be responsible for
9 that; is that correct?

10 A. The farmer or the company?

11 Q. The applicator, if somebody does something off label,
12 they ought to be responsible for it?

13 **MS. RANGLES:** Your Honor, objection.

14 **THE COURT:** What is the objection?

15 **MS. RANGLES:** Calls for a legal conclusion. And we
16 have a motion *in limine* on this issue as well.

17 **MR. MILLER:** It's not a legal -- I'm sorry?

18 **THE COURT:** I thought we did but --

19 **MR. MILLER:** I am not asking for a legal conclusion,
20 Your Honor. I'm asking him for the responsibility from his
21 point of view as a pesticide applicator whether it's the
22 responsibility of the applicator to make sure that they don't
23 go off label.

24 **THE COURT:** I mean, that's -- that's been in
25 evidence already. I don't understand what the problem is.

1 **MS. RANGLES:** Well, Your Honor, we have a motion
2 *in limine* on responsibility of third-party applicators and --

3 **THE COURT:** I know, but that's not what he is
4 getting at, I don't think. I will overrule the objection.

5 **MR. MILLER:** Thank you, Your Honor.

6 Q. (By Mr. Miller) Mr. Bader, do you believe -- let me
7 repeat it for you.

8 Do you believe that if someone does something off
9 label with a herbicide or pesticide, that they ought to be
10 responsible for that?

11 A. Yes, sir, I do.

12 Q. And you've used a variety of herbicides on your peach
13 orchard; is that correct?

14 A. Yes.

15 Q. And it's important to make sure that you use them
16 correctly because if you don't use the right herbicide with
17 the right combination, you can actually damage the plants; is
18 that right?

19 A. Yes, sir.

20 Q. Now, you keep records of what you spray --

21 A. Yes, sir.

22 Q. -- is that right?

23 **MR. MILLER:** And can we see Exhibit 205.41, please,
24 or 205.39 to .48, just for counsel, Mr. Bader and the Court.

25 If we can flip through those a little bit so

1 Mr. Bader can see them.

2 Q. (By Mr. Miller) Mr. Bader, are these your spraying
3 application records for Bader Farms for 2017?

4 A. Yes.

5 **MR. MILLER:** Your Honor, move for the admission of
6 M-205.39 through .48.

7 **MS. RANGLES:** No objection.

8 **THE COURT:** Admitted.

9 **MR. MILLER:** If we can have them published, please,
10 Your Honor.

11 Q. (By Mr. Miller) Now, Mr. Bader, what happens with the
12 spraying record application is you have to put down the week
13 that the herbicide was applied; correct?

14 A. Yes.

15 Q. And you put the location and then chemicals that are
16 actually used, both the type and the amount; is that right?

17 A. Yes.

18 Q. And here we are looking --

19 **MR. MILLER:** If we could go to the next page,
20 page 41.

21 Q. (By Mr. Miller) Here it shows an application in
22 March 16 to 19 of 2017; is that correct?

23 A. Yes.

24 Q. And it shows -- I'm probably going to get at least one of
25 these names wrong. It shows that one of the chemicals was

1 Captan; right? C-A-P-T-A-N. Is that right?

2 A. Captan.

3 Q. And then how do you pronounce this one, sir?

4 A. Diazinon.

5 Q. Diazinon?

6 A. Yes.

7 Q. And those were applied in one and a half tanks to the
8 various locations that you are talking about; correct?

9 A. Yes.

10 Q. Now, you are aware that the label for Captan -- or for
11 Diazinon in particular says you cannot mix it with Captan
12 because plant injury might occur; correct?

13 A. Correct.

14 Q. But you -- you sprayed that in March of 2017; is that
15 right?

16 A. I didn't spray it, but --

17 Q. Someone on your farm on your behalf sprayed it?

18 A. Correct.

19 Q. And that could have damaged your crops as well that year;
20 is that right?

21 A. With that low a rate, no, sir.

22 **MR. MILLER:** Let's look at M-206.1, please.

23 **THE CLERK:** Is that in evidence?

24 **MR. MILLER:** No, just for Court, counsel and
25 Mr. Bader.

1 **THE CLERK:** Okay.

2 Q. (By Mr. Miller) Mr. Bader, is this a record from 2018
3 regarding some spray at your Bader Farms?

4 A. Yes, sir.

5 **MR. MILLER:** Move for the admission of M-206, Your
6 Honor.

7 **MS. RANGLES:** No objection.

8 **THE COURT:** Admitted.

9 Q. (By Mr. Miller) Mr. Bader, this is in June and August of
10 2018; correct?

11 A. Yes, sir.

12 Q. And again we have a mixture of Captan and Diazinon
13 sprayed on the farm; is that right?

14 A. It wasn't sprayed August -- it was June 4 and 6th.

15 Q. And that was sprayed on numerous fields on your farm; is
16 that correct?

17 A. I wasn't aware of this incident. I knew of the other
18 incident. I wasn't aware of this one.

19 Q. You don't recall testifying about this one?

20 A. No, sir.

21 Q. You would agree, though, it's not a good idea to combine
22 those two products when the label says you could cause crop
23 injury?

24 A. Yes. But using that low rate -- it's a very low rate.

25 Q. Mr. Bader, I want to move on to the FSA-578 records.

1 **THE COURT:** Do you all want to take a break at this
2 point?

3 **MS. RANGLES:** Counsel, I think it would be good to
4 get a break.

5 **MR. MILLER:** That's fine.

6 **THE COURT:** Okay. We will take another ten-minute
7 break or so. Go to the jury room and remember the admonition
8 I have given you not to discuss the case.

9 We will be in recess for about ten minutes.

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

11 Q. (By Mr. Miller) Mr. Bader, I want to talk about the
12 FSA-578 records --

13 A. Yes, sir.

14 Q. -- that we talked about a little bit, the Farm Service --
15 agency or administration? I don't remember.

16 A. Repeat the question, please.

17 Q. Sure. Every year you have to do what's called a 578, an
18 FSA-578 form; correct?

19 A. Yes, sir. That's when you certify your crop.

20 Q. Right. And you are certifying both the acreage and
21 what's being planted on each field; correct?

22 A. Yes, sir.

23 Q. And you also are to list the planting dates; correct?

24 A. Yes, sir.

25 Q. And in this particular case, the planting dates are

1 important for peach trees because as you've testified already,
2 the yield can change depending on the age of the tree; is that
3 right?

4 A. Yes, sir.

5 Q. For example, the first few years you are not going to get
6 really any salable fruit off of it. I think you said you
7 start really picking commercially at year four; is that right?

8 A. Yes, sir.

9 Q. Okay. So on the FSA-578 forms, you certify the acreage
10 per field, the crop and when the crop was planted; is that
11 right?

12 A. Yes, sir.

13 Q. Now, with your FSA-578s for the Bader Farms orchards that
14 we are talking about and various fields that we are talking
15 about, unfortunately the actual planting dates you can't
16 really tell by your FSA-578s; is that right?

17 A. Yes, we can, sir.

18 Q. Well, you sometimes plant part of a field and don't
19 necessarily match up the change of that date on the 578; is
20 that right?

21 A. Correct, sir.

22 Q. And so someone looking at the FSA-578 for your fields
23 can't tell the actual planted date, necessarily, by looking at
24 the form; isn't that correct?

25 A. There should be -- you know, if the fields are split up,

1 it would be like 1B, 1A, on different planting dates.

2 **MR. MILLER:** Well, can we take a look, please -- I
3 would like to publish to the jury, Your Honor, clip 79.

4 **THE COURT:** Has that been admitted?

5 **MR. MILLER:** No, it's a clip from Mr. Bader's
6 deposition. It's a statement of a party-opponent.

7 **THE COURT:** Okay.

8 (Video clip played as follows:)

9 "Q. So if I was or somebody else was looking at
10 your FSA records to determine maturity of trees and they were
11 using the FSA records, this is an example of where the
12 maturity and the plant date would be inaccurate?

13 "A. Uh-huh.

14 "Q. Is that correct?

15 "A. It is."

16 (End of clip)

17 Q. (By Mr. Miller) So there are instances in your FSA-578s
18 where the maturity dates, the planting dates are not accurate;
19 is that right?

20 A. They should be, sir.

21 Q. They should be, but there are -- for example, the example
22 you were talking about there was fields 7A and 7B of what's
23 called the Red Schoolhouse Farm; is that right?

24 A. Correct.

25 Q. On the 578s for that one, it shows a planting date of

1 2010, but it really should say 2000; isn't that correct?

2 A. There was some replant in 2010 on that lot.

3 Q. Right. And there was some replanting, but other parts on
4 that plot are from 2000, it should say 2000 for those trees
5 and it does not; is that right?

6 A. It should be -- yeah, some were 2000, some were 2010.

7 **MR. MILLER:** Could we show, please, to the jury,
8 Your Honor, clip 78.

9 **THE COURT:** Yes.

10 (Video clip played as follows:)

11 "Q. The planting date for Red Schoolhouse, field 7A
12 and 7B, should be 2000, not 2010?

13 "A. Yes, sir. Because if you look at the
14 consistency on the orchard, we planted that all orchard -- you
15 know, we planted '97 -- you know, '09."

16 (End of clip)

17 Q. (By Mr. Miller) Does that refresh your recollection,
18 Mr. Bader?

19 A. Yes, sir.

20 Q. And, in fact, there is a discrepancy between what you
21 know in your head as to what was planted when and where and
22 what's in the actual FSA records; isn't that right?

23 A. Yes, sir.

24 Q. So if somebody was doing calculations based on the FSA
25 records that depended on getting the right acreage and the

1 right planting dates might not be the right information they
2 are getting off your FSA records; correct?

3 A. Correct.

4 Q. And, in fact, the best calculation for the actual number
5 of trees and acres in your peach orchard are your insurance
6 records; isn't that right?

7 A. The insurance records pretty well got all the acres.

8 Q. They are more accurate than your FSA reports; isn't that
9 correct, sir?

10 A. Yes.

11 Q. And, in fact, for example -- and Great American is your
12 insurance company; is that right?

13 A. Yes, sir.

14 Q. They come out every year and check the tree counts and
15 the acreage counts for your peach trees; isn't that right?

16 A. Yes, sir.

17 Q. And so, for example, in 2018, Great American determined
18 that you had 538 peach acres but the FSA forms said 834;
19 right?

20 A. Yes, sir.

21 Q. So that's off -- FSA is off by almost 300 acres?

22 A. No, sir.

23 Q. No?

24 **MR. MILLER:** Can we have clip 83 played, please.

25 (Video clip played as follows:)

1 "Q. In 2018, Great American determined that you had
2 538 peach tree acres versus the 834 that were -- that were in
3 your FSA records. Do you -- do you have any reason to dispute
4 that number?

5 "A. No."

6 (End of clip)

7 Q. (By Mr. Miller) In 2016, the Great American insurance
8 record shows 581 peach acres but the FSA record says 918;
9 correct?

10 A. Correct.

11 Q. And you have no reason to dispute the Great American
12 number; right?

13 A. Not the Great American number.

14 Q. And in 2015, the Great American numbers determined you
15 had 827 peach acres but the FSA said 938; right?

16 A. Correct.

17 Q. And you have no reason to dispute the Great American
18 number; correct?

19 A. No, sir.

20 Q. So there's a difference of hundreds of acres from year to
21 year between the insurance records that you say are more
22 accurate and the FSA records; correct?

23 A. I'm saying there's a difference between insurance acres
24 and FSA acres.

25 Q. Now, you said the FSA-578s, you have to submit them under

1 law; is that right?

2 A. Yes.

3 Q. And that's because you need to submit them if you want to
4 get crop insurance; correct?

5 A. Yes.

6 Q. And you have to submit them if you want to get federal
7 farm subsidies; correct?

8 A. Yes, sir.

9 Q. As a result of the 578s that Bader Farm and the various
10 other entities have submitted, it has collected over
11 \$2 million in federal farm subsidies based on those 578s; is
12 that right? In total?

13 A. Over what period of time, sir?

14 Q. Fifteen years or so, I believe.

15 A. Yes, sir.

16 Q. I want to ask you some questions about how long a peach
17 tree lives. Your counsel asked you questions about that. Do
18 you recall those?

19 A. Yes, sir.

20 Q. And isn't it true, sir, that peach trees have a useful
21 life of about 15 to 16 years starting from the initial
22 planting?

23 A. We got -- at the right environments right there, you
24 know, like I said, we have some 25 years old, sir.

25 Q. Certainly there are some that can get that old and I will

1 get there in a minute. But generally speaking, peach trees
2 have a 15- to 16-year useful life from the initial planting;
3 correct?

4 A. I think we are a little bit short on the days, sir.

5 **MR. MILLER:** Can we play clip 26, please, and
6 publish it.

7 (Video clip played as follows:)

8 "Q. -- as how many years of useful life?

9 "A. 15, 16.

10 "Q. Does that include the first --

11 "A. Then some of them 20, when the quality goes --
12 you know, if the quality goes to heck.

13 "Q. 15 to 16 from the initial planting?

14 "A. Yeah, sometimes, you know, like I said, I have
15 some that's going to be 23 years old."

16 (End of clip)

17 Q. (By Mr. Miller) So generally 15 to 16, although from the
18 initial planting, but you do have some -- and as I said, I am
19 going to get to that -- 23, maybe even 25 years old; correct?

20 A. Yes, sir.

21 Q. But you have very few that are that old; isn't that
22 right, Mr. Bader?

23 A. Yes, sir.

24 Q. And usually it's unusual -- it's unusual for your peach
25 trees to go that long, 23 to 25 years, and still be

1 productive; correct?

2 A. Yes, sir.

3 Q. And you don't -- as you said, you don't start looking at
4 the yield until the fourth year; is that correct, Mr. Bader?

5 A. Sometimes we start picking them the third year.

6 Q. But generally you don't look at yield until the fourth or
7 fifth year; is that right?

8 A. It depends how the tree grows, sir.

9 Q. Well, the fourth year is when you usually get 30 to
10 50 percent production; correct?

11 A. Yes, sir.

12 Q. So the average would be about a 40 percent production in
13 the fourth year?

14 A. Yes, sir.

15 Q. And fifth year you get generally 60 to 80 percent
16 production; correct?

17 A. Yes.

18 Q. So the average there would be about 70 percent production
19 by the fifth year; correct?

20 A. Yes, sir.

21 Q. And so you've got potentially average 40 percent on the
22 fourth year, 70 percent on the fifth year; correct?

23 A. Yes, sir.

24 Q. And most trees, generally you are going to have a useful
25 life, a total useful life from initial planting of 15 to

1 16 years; correct?

2 A. Useful but 15 years; correct.

3 Q. And the useful life will depend on the variety; right?

4 A. Yes, sir.

5 Q. Some last longer, some last shorter; correct?

6 A. Correct.

7 Q. Now, you are aware that you have hired an expert
8 agricultural economist in this case; correct, Mr. Bader?

9 A. Yes, sir.

10 Q. And he has done your damages calculation of about
11 \$21 million; right?

12 A. Yes, sir.

13 Q. Are you aware that he bases all of his calculations on
14 the acreage numbers and maturity dates in your FSA-578 forms
15 that you have told the ladies and gentlemen of the jury are
16 not accurate?

17 A. Sir, we will correct that later.

18 Q. I'm sorry?

19 A. Repeat the question, please.

20 Q. Sure. Are you aware that Dr. Guenthner, your damages
21 expert, has based his 21 million-dollar figure on the acreage
22 numbers and the planting dates from your 578s that you
23 testified a few minutes ago to the jury are not necessarily
24 accurate?

25 A. They are accurate as much to my knowledge, yes.

1 Q. You don't recall testifying five to ten minutes ago that
2 there are different numbers in your head and that the
3 insurance numbers are more accurate than the FSA numbers? You
4 don't recall that testimony?

5 A. The FSA numbers count the total acres.

6 Q. You don't recall your testimony from about ten minutes
7 ago that the Great American insurance numbers are more
8 accurate and that you don't doubt those numbers? Do you
9 recall that testimony, sir?

10 A. Yes, sir, I recall that testimony.

11 Q. And you said -- you testified a few minutes ago that most
12 of the trees, the general useful life is 15 to 16 years;
13 correct?

14 A. That's useful life.

15 Q. Yeah. Do you know that Mr. Guenther -- Dr. Guenther,
16 excuse me, bases his 21 million-dollar figure assuming that
17 every single peach tree in your orchard will have a useful
18 life up through 23 years? Are you aware of that?

19 A. Yes, sir.

20 Q. And if that's true, that grossly overestimates the number
21 that Dr. Guenther comes up with, doesn't it?

22 A. No, sir.

23 Q. It does not? Still sticking with the 21 million?

24 A. Yes, sir.

25 Q. Okay. Are you aware that Dr. Guenther -- you said that

1 on average, you are going to get 40 percent yield in the
2 fourth year; correct?

3 A. 40 percent plus.

4 Q. Are you aware that Dr. Guenthner uses a number of over
5 50 percent yield in the fourth year to come up with his
6 21 million-dollar damage figure?

7 A. I said 40 percent plus.

8 Q. Well, the range you gave was 30 to 50 and he is over 50;
9 correct, Mr. Bader?

10 A. Correct.

11 Q. And that makes the damage number go up; right?

12 A. It -- there's various reasons of planting that -- where
13 you get his estimation.

14 Q. And you testified a few minutes ago that generally you
15 get, in the fifth year, a production of 60 to 80 percent with
16 an average of 70 percent; correct?

17 A. 70 percent plus.

18 Q. Yeah. And do you know that Dr. Guenthner uses
19 83 percent, I believe, production in the fifth year for his
20 21 million-dollar calculation?

21 A. He's the expert, sir.

22 Q. Well, he actually -- are you aware that he bases all of
23 his numbers for the peach tree life and for the maturity
24 dates -- well, excuse me, for the peach tree life and for
25 production life on conversations he had with you?

1 A. Yes, sir.

2 Q. You have another expert in this case, Dr. Ford Baldwin,
3 correct, Mr. Bader?

4 A. Yes, sir.

5 Q. And Dr. Baldwin has been out to your orchard several
6 times; is that right?

7 A. Yes, sir.

8 Q. Most recently last year, 2019; right?

9 A. Yes, sir.

10 Q. And you accompanied him on the tour of the orchard; is
11 that right?

12 A. Yes.

13 Q. And the complaint in this case is that the dicamba
14 sprayed over Xtend crop volatilizes and floats off and goes on
15 to your peach trees; is that right?

16 A. Yes.

17 Q. That's different than regular spray drift direct hit;
18 correct?

19 A. There's both is what appeared.

20 Q. Well, any herbicide can drift; right?

21 A. Yes.

22 Q. Nothing unusual about dicamba drifting than any other
23 herbicide; correct?

24 A. Dicamba is worse.

25 Q. For regular physical spray drift?

1 A. And volatilization.

2 Q. Well, it's two different things we are talking about now,
3 Mr. Bader; right? One is direct spray drift like the crop
4 duster; correct?

5 A. We -- we weren't talking about the crop duster, sir.

6 Q. Let's talk about dicamba then. Your claim is that
7 dicamba volatilizes too much, turns back into a gas after it's
8 been sprayed and floats over to your peach orchard; is that
9 correct?

10 A. I think that is Mr. Ford Baldwin's expertise on that,
11 sir.

12 Q. Right. And his -- or your complaint is not because of
13 direct hits; it's because of this volatilization and movement
14 after spraying. Correct?

15 A. That is Dr. Ford Baldwin's.

16 Q. Now, when you took Dr. Baldwin out to your peach orchard
17 last year in 2019, you went around and showed him the damage
18 that you saw that you claim came from dicamba on your peach
19 orchard; correct?

20 A. He knows the damage, sir.

21 Q. And he would point damage out to you and he told you
22 that's not volatility, that's a direct hit. Didn't he say
23 that to you?

24 A. Yes, sir.

25 Q. I want to ask you about a topic your counsel did not ask

1 you about and that is armillaria. You are familiar with
2 armillaria, yes, Mr. Bader?

3 A. Yes, sir.

4 Q. And you agree that armillaria can kill an orchard; is
5 that right?

6 A. Yes, sir.

7 Q. You are aware that Dr. Brannen has come out several times
8 to your orchard over the last several years and taken multiple
9 tests from various places around the orchard to test for
10 armillaria; correct?

11 A. Correct.

12 Q. And you know that those tests have come back positive for
13 armillaria; correct?

14 A. Correct.

15 Q. And you have no reason to doubt those test results;
16 correct?

17 A. I doubt the way they were took.

18 Q. You doubt the way they took the samples?

19 A. Yes, sir.

20 Q. Were you there when they took the samples?

21 A. If they took the samples on the farm, I seen them. I
22 kind of doubt it.

23 Q. You doubt that there's actually armillaria there?

24 A. There's armillaria, but you got to take a sanitized test.

25 Q. Okay. So you don't believe that Dr. Brannen took the

1 proper testing to test for armillaria?

2 A. I think he took -- I think he took a contaminated test.

3 Q. I'm sorry?

4 A. I think he could have took a contaminated test.

5 Q. On all 22 samples that he did?

6 A. I didn't know how many samples he had pulled, sir.

7 Q. Okay. Well, Dr. Brannen will be able to explain to the
8 jury.

9 Now, you agree that armillaria will cause peach
10 trees to die younger than they should; right?

11 A. Yes, sir.

12 Q. And you agree that they will not allow -- they cause the
13 peach tree not to pull in the nutrients that you've talked
14 about the way they should; correct?

15 A. Yes, sir.

16 Q. You agree armillaria will cause you to get small fruit
17 size; correct?

18 A. Yes, sir.

19 Q. And you agree that armillaria will kill off the trees in
20 your orchard; correct?

21 A. Yes.

22 Q. Those were all the same things that you are claiming that
23 dicamba is doing to your orchard; correct?

24 A. We were not noticing much.

25 Q. I'm sorry?

1 A. We were not -- the root rot was very -- armillaria is
2 like what you said, if it's been in the soil maybe 50 years.
3 Until dicamba come along, it -- since dicamba has come along,
4 it has come -- got bad.

5 Q. So before 2015, you didn't have big dead spots in your
6 orchard?

7 A. We had dead spots, yes, sir, from water, freeze.

8 Q. That's all they were from?

9 A. Yes.

10 Q. Let me ask you something. You said that in 1970 when you
11 started in peaches in southeast Missouri, there were 34
12 growers?

13 A. Yes.

14 Q. By the time you got to 1988, there were only four growers
15 left?

16 A. Yes.

17 Q. The other 30, were they up on the ridge or were they down
18 on low land?

19 A. They were on both sides.

20 Q. They were on both sides of the ridge?

21 A. Yes.

22 Q. So they were lower away than where your farm is?

23 A. No, some of them were the same farms.

24 Q. Some of them were the same farms that you have now?

25 A. Yes, sir.

1 Q. But they have all died out over the years from 1970
2 through 1988?

3 A. Do you mean the farmers?

4 Q. The peach farms?

5 A. Yes, sir.

6 Q. Mr. Bader, I think right at the end of your testimony
7 with your counsel you said -- I apologize, I didn't quite get
8 the words that you used, but essentially said that Bader Farms
9 was not going to exist anymore because of the allegations in
10 this case. Is that right?

11 A. There's a strong possibility, yes.

12 Q. That Bader Farms will go under?

13 A. Yes, sir.

14 Q. Now, you also testified in this case, yesterday I
15 believe, that you have about a thousand acres of peach trees;
16 correct?

17 A. Yes, sir.

18 Q. And about 7400 acres of row crops; correct?

19 A. About 5400 acres of row crops, sir.

20 Q. Sorry?

21 A. 54.

22 Q. I beg your pardon. 5400 acres of row crops.

23 Now, peaches are a very high-expense crop, are they
24 not?

25 A. Correct, sir.

1 Q. And that's because you got a lot of labor when you're
2 growing and picking and packing peaches; correct?

3 A. Yes, sir.

4 Q. You have expenses for the picking, which has to be done
5 manually; right?

6 A. Yes, sir.

7 Q. As opposed to, say, using a combine for a row crop;
8 right?

9 A. Yes, sir.

10 Q. You got labor for the boxing; correct?

11 A. Yes, sir.

12 Q. You gotta pay for the shipping; right?

13 A. A percentage, yes.

14 Q. And then there's pruning and there's thinning that you
15 have to pay for labor; right?

16 A. Yes, sir.

17 Q. And there's -- obviously you've talked about fertilizers
18 and micronutrients and things of that nature; correct?

19 A. Yes, sir.

20 Q. And so you are going to have higher expenses per revenue
21 dollar for peaches than you are for your other row crops
22 because they are not as labor intensive; right?

23 A. Yes, sir.

24 Q. Now, you get about -- Bader Farms, since you talked about
25 Bader Farms not existing financially, Bader Farms roughly over

1 the last ten years or so gets about half of its revenue from
2 peaches and about half of its revenue from the other crops.

3 Is that fair?

4 A. It's -- the peaches are a little more.

5 Q. A little more. So roughly -- we saw numbers before 2015
6 around -- anywhere from two to \$2.4 million of revenue from
7 peaches a year?

8 A. The peaches, they used to make up for 60 to 80 percent of
9 the income.

10 Q. Sixty to 80 percent of your income?

11 A. Yes.

12 Q. Of your revenue, gross revenue?

13 A. Yes.

14 Q. Do you know what percentage of your profits it makes up?

15 A. It's about 50/50.

16 Q. So about 50 percent of your profit is peaches and
17 50 percent of your profit is row crops; correct?

18 A. Yes, sir.

19 Q. Prior to 2015, what was your average profit every year at
20 Bader Farms?

21 A. Probably around -- it bounced.

22 Q. I'm sorry?

23 A. It varied.

24 Q. It was around \$109,000 a year, was it not?

25 A. Yes, sir.

1 Q. So prior to the armillaria -- or excuse me, prior --

2 **MS. RANGLES:** Objection, Your Honor. Objection.

3 Can we have sidebar?

4 **THE COURT:** Yes.

5 (Counsel approached the bench and the following
6 proceedings were held:)

7 **MS. RANGLES:** Your Honor, this was covered by the
8 motion *in limine*.

9 **THE COURT:** What is your objection?

10 **MS. RANGLES:** My objection is this violates the
11 motion *in limine* on the income, taxes and profits and losses.

12 **THE COURT:** I will sustain the objection.

13 **MR. MILLER:** Your Honor, may I be heard? I am not
14 going to show him those. He is the owner and he is the
15 operator and he would know what the profit is. He said -- and
16 they opened the door, Your Honor. They talked about all the
17 other land he has. They said at the end of his testimony that
18 Bader Farms was going to go out of business.

19 **THE COURT:** Yeah, but this is a direct reference to
20 the income tax calculation, so I'm going to sustain the
21 objection.

22 **MR. MILLER:** Your Honor, clarification. Just so I
23 don't go awry. Can I ask him if he knows what his profit is?
24 Without suggesting a number to him? He is the owner of the --
25 he is here. I mean, he is the corporation.

1 **MS. RANGLES:** Your Honor, our --

2 **MR. MILLER:** And if he doesn't know, that's
3 something the jury should know too.

4 **MS. RANGLES:** Your Honor, my questions were
5 specifically related to his peach business. I said Bader
6 Farms' peach business. So that's what this is related to. We
7 never said that he could not continue row crop.

8 **THE COURT:** That needs to be clear. Because this
9 is -- the statement has been made that Bader Farms is going
10 under. It needs to be clarified that you are talking about
11 the peach program only.

12 **MS. RANGLES:** Yes. Yes, Your Honor.

13 **MR. MILLER:** And that was opened at the end of --
14 right at the end of his testimony this morning.

15 **THE COURT:** Yeah, but I think everybody does agree
16 and understand that they say that the peach -- that the Bader
17 Farms is going under, that's a reference to the peach
18 operation only. And that's the understanding all of us have
19 had throughout the trial and throughout the proceedings.

20 **MR. MILLER:** May I ask him if he knows what his
21 rough profit is every year prior to 2015 on peaches?

22 **THE COURT:** I think peaches is fine.

23 **MR. MILLER:** Okay. I will ask him.

24 **MS. RANGLES:** On peaches. And I think that's part
25 of the demonstrative from earlier today, so --

1 **MR. MILLER:** No, that's revenue. That's not profit.
2 That's revenue.

3 **MR. MANDLER:** Peaches is only -- I don't know if he
4 knows off the top of his head --

5 **MS. RANGLES:** I don't understand why the profit is
6 relevant. This seems to be trying to skirt around the motion
7 *in limine* ruling.

8 **MR. MILLER:** The profit is relevant, Your Honor,
9 because their expert bases it on profit. He takes revenue
10 minus costs. That is what his calculation is.

11 **MR. MANDLER:** Your Honor --

12 **THE COURT:** It was limited to the peach orchard only
13 and no reference to tax returns. If he knows, he can testify.

14 **MS. RANGLES:** My recollection, Your Honor, is that
15 it was related specifically to the profits and losses overall.

16 **MR. MANDLER:** Your Honor -- I think Your Honor is
17 right. The basis for that ruling was that they are
18 commingled. If he can off the top of his head un-commingle
19 them and talk just about peaches --

20 **THE COURT:** I don't think he is prepared to give an
21 answer.

22 **MR. MILLER:** If he doesn't know, he doesn't know.

23 **MS. RANGLES:** I don't think he will know, but if
24 that's your ruling. Thank you, Your Honor.

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

1 **MR. MILLER:** Thank you, Your Honor.

2 (The proceedings returned to open court.)

3 **MR. MILLER:** Thank you, Your Honor.

4 Q. (By Mr. Miller) Mr. Bader, can you estimate for the
5 ladies and gentlemen of the jury prior to 2015, on average
6 every year, about how much profit, not revenue, how much
7 profit on peaches did Bader Farms make?

8 A. What time period, sir?

9 Q. From 2011 through 2014 each year.

10 A. Probably around 125 to 130,000.

11 Q. And that's profit on peaches?

12 A. Yes.

13 Q. 125 to \$130,000 per year on peaches from 2011 through
14 2014; is that correct?

15 A. That's on my farm.

16 Q. That's on the whole farm or just peaches?

17 A. It's on the farm.

18 Q. All right. What about just peaches?

19 A. I don't have that number, sir.

20 Q. Was it -- would it be less -- it would be less than the
21 whole; correct?

22 A. We run the peaches and row crop and everything through
23 Bader Farms.

24 Q. And your row crops are profitable every year; correct?

25 A. Yes.

1 Q. So your total peach profit in the years 2011 to 2014
2 would be something less than 125 to \$130,000 a year; correct?

3 A. Yes, sir.

4 Q. Okay.

5 **MR. MILLER:** Court's indulgence. One moment, Your
6 Honor.

7 Q. (By Mr. Miller) So, Mr. Bader, let's take the low end,
8 \$125,000 a year. That's before -- that's before any of this
9 allegation of dicamba over Xtend crops, correct, 2011 to 2014?
10 Right?

11 A. Yes.

12 Q. And your damage expert says that your damages over the
13 next, I think, about 30 years he claims is \$21 million. You
14 are aware of that; right?

15 A. Yes, sir.

16 Q. In round numbers?

17 Will you take my word for it, if I punched this into
18 the calculator properly, that if you take \$21 million and you
19 divide it even by \$125,000 a year, the low end, as you said
20 it's below that, it would take you 168 years to make that
21 amount of money? Is that correct, Mr. Bader?

22 A. On your calculations, yes.

23 Q. Mr. Bader, not all of the farms, fields and tracts are
24 owned by Bader Farms, Inc.; correct?

25 A. No, sir.

1 Q. In fact, there's only one field that's owned by Bader
2 Farms, Inc.; is that right?

3 A. There's -- everything should be in me and Denise Bader.

4 Q. I'm sorry?

5 A. Everything should be Bill and Denise Bader.

6 Q. Well, Bader Farms, Incorporated, the plaintiff in this
7 case, is a separate legal entity; right?

8 A. Yes, it's a corporation.

9 Q. And that corporation owns one of the fields that's part
10 of Bader Farms; correct?

11 A. Yes, sir.

12 Q. And the rest of the fields are owned by a number of
13 trusts that you have, you and your wife, various other legal
14 entities; correct?

15 A. Yes, sir.

16 Q. Let's see if we can let the ladies and gentlemen of the
17 jury see how that is set up.

18 **MR. MILLER:** Your Honor, I have some slides -- let
19 me have the first RKK slide, No. 1, just for Mr. Bader and the
20 Court and counsel.

21 Q. (By Mr. Miller) Mr. Bader, is this a map of Dunklin
22 County with a little square up there, a blow-out, showing
23 where Campbell is and where your farm and where you live is?

24 A. Yes, sir.

25 **MR. MILLER:** May I publish, for demonstrative

1 purposes only, RKK No. 1, Your Honor?

2 **THE COURT:** Any objection?

3 **MS. RANGLES:** No objection.

4 **THE COURT:** It is admitted.

5 **MR. MILLER:** Your Honor, as I understand it from
6 counsel, there is no objection. I will number them as we go,
7 but I think we can go directly so we save some time rather
8 than back and forth with nonpublishing and publishing. Is
9 that -- that's my understanding.

10 **THE COURT:** That's fine.

11 Q. (By Mr. Miller) Okay. So here, Mr. Bader, we are
12 looking at, again, just a map of Dunklin County and then we
13 have the red square up here with the blow-out to the right
14 that shows the area of Campbell; correct?

15 A. Yes, sir.

16 **MR. MILLER:** Can we go to, so we get this set up,
17 KRR 4, please.

18 Q. (By Mr. Miller) And now, this is more of a close-up.
19 This is a plat layout of that red square part of Dunklin
20 County; correct?

21 A. Yes, sir.

22 Q. And down here is Campbell where I am circling with red;
23 right?

24 A. Yes, sir.

25 Q. And the square up here is where your home and farm is;

1 correct?

2 A. Yes, sir.

3 Q. That general area.

4 **MR. MILLER:** Okay. Can we have KRR No. 5, please.

5 Q. (By Mr. Miller) So this is your home area; correct?

6 A. Yes, sir.

7 Q. And -- let's see if I can get this thing to -- here we
8 go.

9 And is this your house right here?

10 A. Yes, sir.

11 Q. What are these other outbuildings here, like this one?

12 A. That's machine shed.

13 Q. And what's this one over here, if you know?

14 A. That's just another machine shed.

15 Q. Okay. Now, that's not where your farm is; right?

16 A. That's where I live.

17 Q. I'm sorry?

18 A. That's where I live at.

19 Q. That's your house?

20 A. Yes, sir.

21 **MR. MILLER:** So let's go to KRR 6, please.

22 Q. (By Mr. Miller) Okay. So your house is over here in
23 this area. And then this pink area with the red square around
24 it, that's where the peach orchard is; correct?

25 A. Yes, sir.

1 **MR. MILLER:** Okay. Can we go to KRR 7, please.
2 There's a blowup.

3 Q. (By Mr. Miller) That's specifically where the packing
4 shed is and we have a picture of the packing shed there;
5 right?

6 A. Yes, sir.

7 Q. Okay. And the distance --

8 **MR. MILLER:** If we could go to KRR 8, please.

9 Q. (By Mr. Miller) I think you testified to this before in
10 your direct. The distance between roughly your house and your
11 packing shed, KRR 8, please, is about 7 miles; right?

12 A. Yes, sir.

13 Q. You testified that in 2018, 2019, you purchased some
14 Xtend seed soy; is that correct?

15 A. Yes, sir.

16 Q. And so your address that would be listed on where the
17 seed was going would be your home address out here; correct?

18 A. Yes, that's our billing address.

19 Q. But it was planted 7 miles away; correct?

20 A. No, sir.

21 Q. Where was it planted?

22 A. It was planted about 4 1/2 miles north.

23 Q. I'm sorry?

24 A. It would be planted right next to the Stoddard County
25 line.

1 Q. Right up in this area?

2 A. No, up further.

3 Q. Further up?

4 A. Yeah, it's up --

5 Q. Up here?

6 A. No.

7 Q. Okay. So still a few miles away from your home?

8 A. It was about 5 1/2 miles.

9 Q. Okay. About 5 1/2 miles away.

10 Now, and you have farms -- this area down here where
11 the packing shed is, that's not the only farm land that you
12 own or you and your wife own under a variety of entities;
13 correct?

14 A. Correct.

15 **MR. MILLER:** Can we go to KRR 11, please.

16 Okay. Can we -- yeah, let's stop with that one.

17 Q. (By Mr. Miller) Now, in yellow, these are the various
18 farm fields in yellow that you and your wife own under your
19 names; correct? Does that look right?

20 A. Yes, sir.

21 Q. And then if we go to the next slide, and then you have
22 the Bill Bader trust which owns the various pink areas;
23 correct?

24 A. Yes, sir.

25 Q. And then finally you have Bader Farms, Inc. and it owns

1 that one blue square there; correct?

2 A. Yes.

3 Q. And let's zoom in and let's go to KRR 12.

4 And this is -- well, let's back up a little bit
5 first. This area that we are looking at here, this is really
6 where the peach orchard is; right?

7 A. Yes, sir.

8 Q. And the yellow are the fields that are owned -- now, it's
9 not just peach orchards here, you also have -- as you saw from
10 the aerial views you had, you planted some soybeans and
11 various other things in there, too; right?

12 A. Yes, sir.

13 Q. Okay. So the yellow ones is where it's owned by you and
14 your wife in your names; correct?

15 A. Yes.

16 Q. And then we go to the pink and those areas are owned by
17 the Bill Bader trust; correct?

18 A. Yes, sir.

19 Q. And then we go to the blue and that one farm there,
20 that's the only piece of land owned by the plaintiff in this
21 case, Bader Farms, Inc.; is that correct?

22 A. Yes, sir.

23 Q. And you don't grow any peaches on that land, do you?

24 A. Not -- not now.

25 Q. Haven't for a number of years; correct?

1 A. Correct.

2 Q. Now, Mr. Bader, you brought this suit in November of
3 2016; correct?

4 A. Do what, sir?

5 Q. You brought this lawsuit -- Bader Farms, Inc. sued in
6 November of 2016; is that right?

7 A. Correct.

8 Q. And that was because you believed you saw dicamba damage
9 both in 2015 and 2016; is that correct?

10 A. It started in '15, correct.

11 Q. In 2016, though, you planted 35 -- excuse me 3,350 new
12 trees; is that right?

13 A. In which year, please?

14 Q. 2016 after you started seeing damage from what you allege
15 is dicamba over Xtend?

16 A. Yes, because the trees -- the trees were ordered.

17 Q. And in 2017, you ordered more trees for 2017 after you
18 had alleged -- allegedly were seeing your peach orchard being
19 devastated by dicamba over Xtend crop; correct?

20 A. Correct.

21 Q. And you planted over 9,000 trees in 2017; right?

22 A. Yes.

23 Q. And then in 2018, after three years of seeing what you
24 are alleging was devastation to your farm, you planted another
25 5200 trees; correct?

1 A. Yes.

2 Q. And then just last year after four years of what you
3 allege is devastation to your farm, you planted another 3,000
4 trees; correct?

5 A. Correct.

6 Q. And, in fact, some of those fields that you planted, you
7 weren't just replacing peach orchards, you were planting them
8 in fields that had never had peaches in them before; right?

9 A. Correct.

10 Q. And other fields like, for example, the McCormick farm
11 was planted to corn in 2018, but just last year you turned it
12 into a peach orchard; right?

13 A. Yes, sir.

14 Q. And since 2015, since you alleged that you've started
15 seeing this devastation on your peach orchard from dicamba
16 sprayed over Xtend crops, you've actually purchased, not from
17 Bader Farms, Inc. but through some of your other entities,
18 you've purchased other peach orchards; correct?

19 A. Yes. The peach orchard that had been running since 1989.

20 Q. So you purchased the -- I think it's -- is it Ockles or
21 Ockles, O-C-K-L-E-S?

22 A. Ockles was purchased in '14.

23 Q. In '14. Okay. Sorry about that.

24 How about McGees, when did you purchase that one?

25 A. It was in '17.

1 Q. So you purchased the McGee farm in 2017?

2 A. Yes.

3 Q. And that's a couple years after you've seen dicamba
4 ruining your peach orchard?

5 A. Yes.

6 Q. And then in 2018, you made a rather large purchase; is
7 that right?

8 A. Yes, sir.

9 Q. And you purchased the Morris farms; correct?

10 A. Correct.

11 Q. And you purchased the packing shed and the truckers and a
12 variety of things in the Morris purchase; correct?

13 A. Yes, sir.

14 **MR. MILLER:** Can we go back to slide KRR 12, please.

15 And if we could go --

16 Q. (By Mr. Miller) And we see the Morris farms you
17 purchased over in this area; is that right?

18 A. Yes, sir.

19 Q. And you paid \$1.1 million for that land; is that correct?

20 A. Yes. Me and Progressive Farm Credit.

21 Q. And you paid that -- you bought that land for
22 \$1.1 million in 2018 because you believe that that was a good
23 investment; correct?

24 A. Yes.

25 Q. Now there's -- Mr. Bader, are you planting trees for

1 2020?

2 A. Yes, sir.

3 Q. How many have you ordered?

4 A. About 2,000.

5 Q. About 2,000 more peach trees for 2020?

6 A. Yes, sir.

7 **MR. MILLER:** Court's indulgence. One moment,
8 please.

9 I have no further questions. Thank you, Your Honor.
10 Thank you, Mr. Bader.

11 **THE WITNESS:** Thank you.

12 **THE COURT:** Mr. Mandler.

13 **CROSS-EXAMINATION**

14 **BY MR. MANDLER:**

15 Q. Doing all right, Mr. Bader? Do you need a break at all?
16 Are you good to go?

17 A. Yeah, I am good to go, sir.

18 Q. Excellent. Good afternoon. We've met a few times in the
19 past. Again, my name is John Mandler, representing BASF.

20 One of the pleasures of going third is that most of
21 my notebook includes questions that have either been asked by
22 your counsel or Monsanto's counsel; so I am going to do my
23 very best, given how long we have been here, not to repeat
24 questions. Okay?

25 A. Thank you, sir.

1 Q. If you see me taking pauses and crossing things out,
2 there may be a pause but it really is going to speed things
3 up. All right?

4 A. Thank you, sir.

5 Q. All right. You purchase and use products from BASF;
6 right?

7 A. Do what, sir?

8 Q. You use some of BASF's products; correct?

9 A. I use -- probably about 50 percent of my chemical
10 supplies come from BASF.

11 Q. And that's current to today; right?

12 A. Yes, sir.

13 Q. And that includes fungicides; right?

14 A. Fungicides.

15 Q. And what else?

16 A. Do what?

17 Q. Other than fungicides, what other kind of BASF products
18 do you use?

19 A. Oh.

20 Q. Do you use herbicides from them? Do you use Poast?

21 A. Well, we use Verdict. Just like Verdict, just like it's
22 pronounced. Zidua. We use Prowl. We use about 12 or 13
23 different fungicides and some herbicides.

24 Q. And in the past, you've had a BASF sales representative
25 in the area that you'd interact with, right, Ms. Kim Mayberry?

1 A. Yes. Before that it was Ruben Garza.

2 Q. And at least Kim Mayberry was pretty good about coming
3 around and visiting you on your farm; right?

4 A. Yes, before this.

5 Q. And by "before this," you mean you understand that you
6 added BASF to this case in 2018 -- or, I'm sorry, in the fall
7 of 2017. Right?

8 A. Yes, sir.

9 Q. When you initially brought the case, it was -- BASF
10 wasn't included; it was just against Monsanto and then later
11 you added BASF. Correct?

12 A. I have to check with counsel on that.

13 Q. Okay. You will agree, though, won't you, that you did
14 not contact BASF or Ms. Mayberry or anybody else from BASF
15 about your claim in 2015; right?

16 A. I did have a couple talk with Ms. Mayberry.

17 Q. You didn't contact them about dicamba injury in 2015?

18 A. I asked her if she would be interested in coming visit
19 the farm and we were -- when we were starting fighting this,
20 we were using a lot of Pristine because the damage to the
21 leaves, the leaves would fall off and to preserve and to keep
22 our trees healthy, we were using huge amounts of Pristine,
23 which was advised to me to use with our micronutrients.

24 Q. You testified earlier that you at one point invited the
25 representatives of Monsanto to come and inspect your fields in

1 '15 and '16. BASF didn't get a similar invitation, did they?

2 A. Like I said, I asked Kim. And ever since this incident
3 started, a lot of -- a lot of people said they had to hold a
4 neutral relationship.

5 Q. You will agree with me that the first time anyone from
6 BASF actually came to your farm to investigate was during the
7 2018 season; correct?

8 A. Yes, sir.

9 Q. Okay. Thank you.

10 You discussed a little bit with Mr. Miller the
11 difference between dicamba movement from volatility versus
12 dicamba movement from actual physical drift. Do you recall
13 that testimony?

14 A. Yes, sir.

15 Q. You'll agree that you personally can't tell the
16 difference in symptoms between physical drift or from
17 volatility; correct?

18 A. I can just tell you that it beats the heck out of peach
19 trees.

20 Q. But you can't distinguish between drift or volatility?

21 A. I have seen stuff on my peach trees that I have never
22 seen before in my life.

23 Q. Let me try my question one more time.

24 You can't distinguish between volatility and
25 physical drift as far as symptoms; right?

1 A. Yes.

2 **MR. MANDLER:** Can we publish just to counsel,
3 Mr. Bader and the Court Exhibit B-1040, please.

4 **MS. RANGLES:** John, what is this?

5 **MR. MANDLER:** B-1040.

6 Q. (By Mr. Mandler) Do you remember that photograph at all,
7 Mr. Bader?

8 A. Yes, sir.

9 Q. Was that taken at your farm?

10 A. Yes, sir.

11 **MR. MANDLER:** Move to publish B-1040 for
12 demonstrative purposes only.

13 **MS. RANGLES:** No objection.

14 **THE COURT:** You may.

15 Q. (By Mr. Mandler) Mr. Bader, did you tell anyone that you
16 believe that the symptoms that we see in this photograph are
17 the result of drift from illegal applications of dicamba?

18 A. Yes, sir.

19 Q. Do you think the holes on these leaves are something that
20 you believe are something that was caused from dicamba?

21 A. No, sir.

22 Q. Okay. Do you believe the yellow spotting on these leaves
23 was caused by dicamba?

24 A. No, sir.

25 Q. Would you agree with me those are symptoms from bacterial

1 blight?

2 A. Yes, sir. I was about to tell you that variety goes back
3 to a leaf spot.

4 Q. Thank you.

5 Mr. Bader, I think you mentioned yesterday when you
6 were going over some of the background of how peach trees are
7 grown, you mentioned the term "rootstock." Do you recall
8 that?

9 A. Yes, sir.

10 Q. I think we should just pause and have a little better
11 explanation for the jury what that means. You talked about
12 the various different varieties you have in peach trees. But
13 peach trees themselves, as I understand it, are grafted on to
14 a set of roots; correct?

15 A. Yes, sir.

16 Q. So when it goes into the ground, it's a little bit of a
17 hybrid. You have roots from one kind of peach tree and then
18 from the ground above is a different variety; correct?

19 A. Yes.

20 Q. While you may have multiple different varieties above
21 ground, you have primarily the same type of rootstock
22 underground; correct?

23 A. Yes, sir.

24 Q. And when you plant the peach tree, the portion where the
25 graft is where the roots -- where the aboveground part is

1 grafted onto the roots, your goal is to have that at or right
2 above the level of the ground?

3 A. Ground level.

4 Q. Right. So if it's below ground, it's too deep for the
5 good of the tree?

6 A. Yes.

7 Q. And I understand that your primary rootstock, not the
8 aboveground part, the belowground part, is something called
9 Guardian?

10 A. Yes, sir.

11 Q. And you were part of a test conducted by Dr. Greg
12 Reighard from the University of Clemson that ran from '94 to
13 approximately 2001 to test out different types of rootstock?

14 A. Yes, sir.

15 Q. Based on that testing -- it was conducted right on your
16 farm; right?

17 A. Yes, sir.

18 Q. As well as other peach growing locations around the
19 country?

20 A. Ten other locations all over the United States.

21 Q. And based on that testing, that's one of the reasons you
22 go with the Guardian rootstock?

23 A. Yes, sir.

24 **MR. MANDLER:** If we can just take a quick look at
25 Plaintiffs' Demonstrative Exhibit 2194. That was previously

1 admitted earlier today.

2 Q. (By Mr. Mandler) And at -- in 2011, you testified that
3 there were some yield impacts because you've had very
4 excessive rain early in the season; correct?

5 A. Yes, sir.

6 Q. Now, in 2019, you also had excessive rain early in the
7 season. In fact, there were record rains last year, were
8 there not?

9 A. Yes, sir.

10 Q. That have the same sort of yield impact in 2019 that you
11 had in 2011 from the excessive rains?

12 A. The rain in '19 was near -- it was a lot of -- more
13 scattered out.

14 Q. I would like to talk to you a little bit -- go back again
15 to the topic that Mr. Miller discussed, which is the useful
16 life of trees, and look at a couple of examples, if we could.

17 **MR. MANDLER:** If we could take a look at Trial
18 Exhibit B-5. And, Your Honor, I think this one has been
19 stipulated to; so we will move for admission.

20 **MS. RANGLES:** No objection.

21 **THE COURT:** It is admitted.

22 **MR. MANDLER:** If we could publish that to the jury.
23 And take a look at page 45 of that exhibit.

24 Q. (By Mr. Mandler) Now, Mr. Bader, this is the aerial
25 image of a field that you call west of town; correct?

1 A. Yes.

2 Q. And the trees in that field were planted in approximately
3 2006; correct?

4 A. Yes, part of them.

5 Q. Okay. And if we can look specifically at field 1A. So
6 in 2014, these fields were eight years old; correct?

7 A. Yes.

8 Q. And it was a variety you called Cresthavens?

9 A. Yes, sir.

10 Q. And these trees -- Cresthavens in general, that variety
11 you believe has a shorter life span; right?

12 A. Yes.

13 Q. And by 2014, you were beginning to see tree loss and gaps
14 in various spots in this field; correct?

15 A. Yes, sir.

16 Q. And those gaps and tree losses, since it was the year
17 before 2015, that's unrelated to dicamba; correct?

18 A. In 2014, correct.

19 Q. Right. And then you pushed them out after the 2015
20 season when they were only nine years old; correct?

21 A. Yes, sir.

22 **MR. MANDLER:** All right. In that same exhibit, if
23 we can go to page 15, please.

24 And if we can look at field 3A.

25 Q. (By Mr. Mandler) Now, this is a -- I think a field you

1 call Walker Metal Shed?

2 A. Yes, sir.

3 Q. Common name. We are looking at 2010. This field was
4 planted in 2004; correct?

5 A. Yes, sir.

6 Q. So at this point it's ten years old; correct?

7 A. Yes, sir.

8 Q. And we are beginning again to see developing gaps in the
9 trees in various spots; correct?

10 A. Yes, sir.

11 Q. And since it's 2010, that development of those gaps are
12 unrelated to dicamba; correct?

13 A. Yes, sir.

14 Q. This field was also planted with Cresthavens; right?

15 A. Not Cresthaven, Loring and Topaz.

16 Q. Okay. And you pushed these trees out when they were
17 14 years old?

18 A. We pushed them out in '15.

19 **MR. MANDLER:** Can we look at 2014, I think. It
20 might be a couple pages down from here.

21 Q. (By Mr. Mandler) All right. So this is 2014. Same
22 fields. Year before you alleged any dicamba injury. The gaps
23 we were looking at from 2010 have gotten much bigger; correct?

24 A. Yes, sir.

25 Q. Again, this is prior to dicamba?

1 A. Yes, sir.

2 Q. So they're 14 years old at this point. You say you
3 pushed them out the following years in '15 when they were
4 15 years old; correct?

5 A. Yes.

6 Q. Look at a couple of other examples of what your fields
7 looked like in 2014 before dicamba -- you allege dicamba had
8 any impact.

9 **MR. MANDLER:** If we could -- same Exhibit B-5, if we
10 could go to page 36, please. Again, this is 2010. If we can
11 look at field 1A.

12 Q. (By Mr. Mandler) All right. I think you called this
13 the -- is the Malin farm?

14 A. Malin.

15 Q. Malin. All right. So this is 2014, I believe.

16 **MR. MANDLER:** Can we zoom back out, see what year it
17 is? 2010.

18 Q. (By Mr. Mandler) And these were planted in 1996;
19 correct?

20 A. Yes, sir.

21 Q. So this is what it looked like in 2010. Again,
22 pre-dicamba alleged injury, serious gaps forming.

23 **MR. MANDLER:** Can we go to 2014.

24 Q. (By Mr. Mandler) Looks like those gaps have grown in
25 various spots. And you agree that none of those -- all of

1 those gaps are unrelated to dicamba; correct?

2 A. In 2014?

3 Q. Yes, sir.

4 A. Yes, sir.

5 Q. Okay. Let's look at the O'Neal farm. I think that's
6 page 22, same exhibit. And that's field 1A and 1B. On the
7 left side. There we go.

8 And these were planted in 2003; correct?

9 A. Yes, sir.

10 Q. And so we are looking at 2010. They are only seven years
11 old at this point; right?

12 A. Yes, sir.

13 Q. And we are starting to see gaps here and along there;
14 correct?

15 A. Yes, sir.

16 Q. And that's unrelated to dicamba; correct?

17 A. 2014?

18 Q. This is 2010 still.

19 A. Do what?

20 Q. It's 2010 still. Unrelated to dicamba; right?

21 A. Yes, sir.

22 Q. All right. Let's skip ahead to 2014. They are 11 years
23 old by this point. And we still see the same and growing gaps
24 in the trees in various spots; right?

25 A. Yes, sir.

1 Q. And none of that was caused by dicamba; correct?

2 A. No, sir.

3 **MR. MANDLER:** I'd like to look at Trial Exhibit B-6,
4 please, just for Court and counsel and Mr. Bader at the
5 moment. B-6.

6 Q. (By Mr. Mandler) This is a photograph that you produced
7 in the litigation, Mr. Bader. Written on it, I think before
8 you produced it to us, is farm 2653, tract 3794.

9 Do you recognize that?

10 A. Yes, sir.

11 Q. So you showed -- with your counsel -- showed the jury
12 some drone photograph from 2015, but this looks -- from 2018,
13 earlier this afternoon, but this looks like it was taken in
14 July of 2015. Correct?

15 A. Yes. I just got the wrong tract number on it.

16 Q. It does have the wrong tract number? What would be the
17 right one?

18 A. It should be 4541. I don't know which tract exactly.

19 Q. What's the common name for the particular orchard?

20 A. Across from the packing shed.

21 Q. Okay. All right. Let's take another example.

22 Let's look at -- going back to Exhibit B-5, let's
23 look at page 29. And I think this is fairly recognizable.
24 That's the packing shed right there; correct?

25 A. Yes, sir.

1 Q. And we are looking at 2010. Let's just focus on that
2 field 1A right north of the packing shed there. You recognize
3 that field; correct?

4 A. Yes, sir.

5 Q. So again, this is 2010, five years before you allege the
6 first dicamba exposure. And you see those large gaps in this
7 field; correct?

8 A. Yes, sir.

9 Q. That was not caused by dicamba; correct?

10 A. Correct.

11 Q. If you testified that you think that was caused -- those
12 gaps were caused by smoke from a tire fire that happened
13 12 years earlier in 1998; correct?

14 A. Yes, that was part of it.

15 Q. And other reasons too?

16 A. Well, they survived the ice storm of '09.

17 Q. Now, this is -- this is a field that you replanted, did
18 you not, in approximately 2014? We can look at 2014. That
19 field has been replanted; correct?

20 A. Yes.

21 Q. Was it around '13 or '14 that you replanted it?

22 A. Replanted it in 2011.

23 Q. '11. Okay. So can we skip ahead to 2018?

24 In 2018, we are starting to see gaps in the exact
25 same places they were in from 2010, are we not?

1 **MR. MANDLER:** Maybe we can put those side by side.

2 Q. (By Mr. Mandler) So you see where the gaps are in 2010
3 before dicamba? You will agree they are starting to form in
4 the exact same places in 2018; correct?

5 A. Yes, in the wet spots.

6 Q. Pardon me?

7 A. In the wet spots, yes, sir.

8 Q. In the lower spots where the feet get wet; correct?

9 A. Yes.

10 Q. Maybe just one more example. Let's look at page 29. And
11 this is a field. I think you call it Woffords. Is that
12 correct?

13 A. Yes, sir.

14 Q. And it was planted in 1993 or 1994?

15 A. '93.

16 Q. Okay. And so by 2010, the trees were about 17 years old?

17 A. Yes, sir.

18 **MR. MANDLER:** And let's go back. I will just make
19 sure we are looking at 2010. Yep, all right. We can go back
20 now.

21 Q. (By Mr. Mandler) So at this point the trees are -- the
22 trees in this field are 17 years old and very few of them are
23 left; correct?

24 A. Yes, sir.

25 Q. And none of that had to do with dicamba; correct?

1 A. That's 2010?

2 Q. Correct.

3 A. Yes, sir.

4 Q. Now, this one you also replanted -- approximately 2013.

5 Maybe we can look at 2014. Looks like they are replanted.

6 Pretty small yet. Correct?

7 A. What's the date, 2014 on this?

8 Q. Yes.

9 A. Yes, they are small.

10 Q. And so they -- you think they were planted in 2013, then;
11 correct?

12 A. '13 or '14, I just --

13 Q. Oh. For purposes of my question it doesn't matter. In
14 your deposition you said '13, but whichever you think now
15 if --

16 A. Well, there is one strip, long row that was planted.
17 They were planted a year earlier.

18 Q. Maybe we can take a look at what they looked like in 2018
19 and then compare that to the 2010 picture.

20 So you'll see where the gaps were in 2010. They are
21 starting to appear again in 2018; correct?

22 A. Correct.

23 Q. One thing is curious is the pond has disappeared, though.
24 Where did the pond go?

25 A. Do what?

1 Q. Where did the pond go?

2 A. The pond, that was took out in 2012.

3 Q. Okay. I want to talk a little bit about the testing --

4 **THE COURT:** Mr. Mandler, why don't we take one more
5 recess. I will get you out before 5:00 today, but we probably
6 need to have one more recess in order to go to before 5:00.

7 You can go to the jury room and we will call you
8 back out shortly and remember the admonition, please.

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

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

12 **THE COURT:** I've been advised that I can go until
13 about ten to 5:00, but I have to recess no later than that; so
14 hopefully we can finish in that time. We'll see. If not, we
15 will continue in the morning. So we will be in recess then.

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

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

19 **THE COURT:** Mr. Mandler.

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

21 If we could go back very quickly to Exhibit B-6.

22 I think I asked you about this, but I neglected to
23 offer it into evidence, Your Honor, so we would offer this
24 photograph, Exhibit B-6.

25 **MS. RANGLES:** No objection.

1 **THE COURT:** Admitted.

2 **MR. MANDLER:** If we can publish that to the jury.

3 **THE COURT:** Yes.

4 Q. (By Mr. Mandler) And again, the field that you think
5 this is, is across from the packing shed; right?

6 A. Yes, sir.

7 Q. All right. And then the last field we were looking at
8 before we took a break, I think, was Woffords.

9 **MR. MANDLER:** If we could publish to Mr. Bader, the
10 Court and counsel, Exhibit B-9, please.

11 Q. (By Mr. Mandler) To me this looks like another aerial
12 photograph from 2015. Do you recognize that?

13 A. Yes.

14 Q. And maybe we can put that -- was it taken on or about
15 July of 2015?

16 You will agree it was taken on or about July of
17 2015?

18 A. No, sir.

19 Q. Do you know when it was taken?

20 A. No, sir.

21 Q. You understand it was produced by your counsel from Bader
22 Farms; correct?

23 A. Okay. Yes, sir.

24 Q. Okay. And you do recognize it as farm 5026, tract 1952;
25 correct?

1 A. Yes, sir.

2 **MR. MANDLER:** Your Honor, we would offer
3 Exhibit B-9.

4 **MS. RANGLES:** No objection.

5 **THE COURT:** Admitted.

6 **MR. MANDLER:** And if we could put that one next to
7 Exhibit B-5, page 29. And maybe we can zoom up on -- right
8 there.

9 Q. (By Mr. Mandler) So just to orientate ourselves,
10 Mr. Bader, the shed that we are looking at right here in the
11 satellite photograph is what we are looking at right there;
12 correct?

13 A. Yes.

14 **MR. MANDLER:** Okay. Thank you. You can take those
15 down.

16 Q. (By Mr. Mandler) You talked briefly with Mr. Miller
17 about some testing you did along with the FDA of your peaches
18 in 2016. Do you recall that?

19 A. Yes, sir.

20 Q. And they were testing to see if there was any dicamba
21 residue in the peaches themselves and it came back negative;
22 correct?

23 A. Yes, sir.

24 **MR. MANDLER:** We can look at Exhibit B-109 for
25 Mr. Bader, Court and counsel.

1 Q. (By Mr. Mandler) At the very top of it, it says, "I did
2 have a good conversation with Mr. Bill Bader."

3 It looks like it was somebody from the Kansas City
4 district office of the FDA talking to you. Do you recall that
5 conversation?

6 A. Yes, sir.

7 Q. And then if we can turn to page 158. In the middle of
8 the page, I think this is the sample collection records and it
9 shows that samples were collected from Bader Farms, Inc.;
10 correct?

11 A. Yes, sir.

12 **MR. MANDLER:** Your Honor, we would offer B-109.

13 **MS. RANGLES:** No objection.

14 **THE COURT:** Admitted.

15 Q. (By Mr. Mandler) You agree, Mr. Bader, that these
16 testings show that there was no residue from dicamba in the
17 peaches; correct?

18 A. On the peaches?

19 Q. Correct.

20 A. Correct.

21 **MR. MANDLER:** If we can go to 134, please. And then
22 maybe the middle half of that, zoom in on.

23 Q. (By Mr. Mandler) Do you agree there was residue of a
24 product or an active ingredient called acifluorfen; right? Do
25 you see that?

1 A. Yes, sir.

2 Q. You understand that that's the active ingredient in a
3 herbicide called Blazer?

4 A. Yes, sir.

5 Q. And in 2018, you were using Blazer on your farm; correct?

6 A. 2018, but not 2016.

7 Q. I'm getting there. In 2018, you used Blazer on your
8 farm; right?

9 A. Yes, sir.

10 Q. In 2016, you weren't using Blazer; correct?

11 A. Correct, sir.

12 Q. And you never did figure out where this Blazer came from
13 that was found in your peaches in 2016, did you?

14 A. No. No, sir.

15 Q. You testified earlier about after your peaches were
16 damaged by the Hampton air aerial application in 2015, you
17 used micronutrients to try to bring them back; correct?

18 A. Yes.

19 Q. And you tried to save all your trees that way; correct?

20 A. Yes.

21 Q. And you spent about \$100,000 doing that; correct?

22 A. Yes, sir.

23 Q. And that was for the purposes of addressing the damage
24 from the Hampton air aerial application; correct?

25 A. Yes, sir.

1 Q. Now, in this case Dr. Guenther is claiming that you
2 spent \$200,000 for micronutrients in 2015; correct?

3 A. Correct.

4 Q. And you don't have any invoices or any documents or any
5 application records that you provided to Dr. Guenther to show
6 those amounts; correct?

7 A. Yes, sir.

8 Q. You are claiming additional \$300,000 a year for
9 micronutrients -- in this case you are claiming it through
10 Dr. Guenther for 2016, 2017, 2018; correct?

11 A. Yes.

12 Q. And you don't have any documents or application records
13 or invoices that you provided to Dr. Guenther for those
14 claims; correct?

15 A. Yes, sir.

16 Q. Dr. Guenther in his report includes costs for additional
17 irrigation. You don't run irrigation and haven't run
18 irrigation on your farm since 2012; correct?

19 A. I didn't know nothing about the irrigation, sir.

20 Q. So if Dr. Guenther is claiming additional costs for
21 irrigation, that's inappropriate?

22 A. In which year, sir?

23 Q. Well, for the damage year starting in 2015, the alleged
24 damaged years. You didn't run irrigation in those years, did
25 you?

1 A. No, sir.

2 Q. Mr. Miller asked you a couple of questions about a tank
3 mix application that you made in 2017 and 2018.

4 **MR. MANDLER:** And maybe we can repull up, I think it
5 was M-205 at page 3.

6 I'm sorry, page 41. My mistake.

7 Q. (By Mr. Mandler) And that was the tank mix of Captan and
8 Diazinon that you applied to one, two, three, four, five, six,
9 seven, eight, nine, ten -- 11 different of your orchards;
10 correct?

11 Mr. Bader?

12 A. Yeah, 11 different fields.

13 Q. And then the next year, in 2018, if we can look at M-206,
14 page 1, you applied that same tank mix to six more fields;
15 correct?

16 A. Yes, sir.

17 **MR. MANDLER:** Okay. If we can take a look at
18 Exhibit 968 for Mr. Bader, Court and counsel.

19 Q. (By Mr. Mandler) This is the label of the Diazinon AG500
20 that you used; correct?

21 A. Yes, sir.

22 **MR. MANDLER:** Your Honor, we would offer B-968.

23 **MS. RANGLES:** No objection.

24 **THE COURT:** Admitted.

25 **MR. MANDLER:** If we could turn to page 4 of that

1 label.

2 Q. (By Mr. Mandler) This label says, "Do not mix
3 Diazinon AG500 with any formulation of Captan or Captec
4 because crop injury may occur."

5 Do you see that?

6 A. Yes, sir.

7 Q. And there's no exception for the amount of the
8 application; correct?

9 A. Yes, sir.

10 Q. And there's no exception for the time of year; correct?

11 A. Yes, sir.

12 Q. So combining those two products would be an off-label
13 use; correct?

14 A. Correct.

15 Q. Let's go back to 2016 and a different tank mix
16 application that you made that year.

17 **MR. MANDLER:** If we could look at Exhibit B-19, for
18 Mr. Bader, Court and counsel.

19 Let's go to the first page, page 1.

20 Q. (By Mr. Mandler) Do you recognize these as your
21 application records --

22 **MR. MANDLER:** I'm sorry. Let's skip ahead to B-19.
23 To page 4, I'm sorry.

24 Q. (By Mr. Mandler) You recognize these applications
25 records for 2015, April 10 of 2015; correct?

1 A. Yes.

2 Q. And these are -- this is your entire set of application
3 records for 2015; correct? If we go back to the first page.

4 A. Yes.

5 Q. Okay.

6 **MR. MANDLER:** Your Honor, we would offer B-19.

7 **MS. RANGLES:** No objection.

8 **THE COURT:** Admitted.

9 **MR. MANDLER:** May we look at the first page and then
10 we'll go ahead to the April 10th entry.

11 Q. (By Mr. Mandler) Those are your records. Let's look at
12 the entry for April 10th.

13 On that day you applied a tank mix of Captan,
14 5 gallons of oil and 2 1/2 gallons of Yuma. Do you see that?

15 A. Yes.

16 **MR. MANDLER:** Can we look at Exhibit 969, please,
17 for Mr. Bader, Court and counsel.

18 Q. (By Mr. Mandler) Do you recognize that as the Captan
19 label?

20 A. Yes, sir.

21 **MR. MANDLER:** Your Honor, we would offer 969.

22 **MS. RANGLES:** No objection.

23 **THE COURT:** Admitted.

24 Q. (By Mr. Mandler) If we turn to page 6 of the label. In
25 the Captan label it says, "Do not apply Captan Gold in

1 combination with or immediately before or closely following
2 oil sprays." Correct?

3 A. Correct.

4 Q. And that combination of Captan and oil is a no-no; right?

5 A. Correct.

6 Q. And it would be an off-label application?

7 A. Correct.

8 Q. So your pesticide application records show off-label tank
9 mixes in '15, '17 and '18. Do you agree?

10 A. Yes, sir.

11 **MR. MANDLER:** Let's stay with that label for a
12 minute and look at page 6. I think there's a restriction on
13 around -- if we go to page 6. Yeah, thank you.

14 Q. (By Mr. Mandler) Is there a restriction here on wind
15 speed? Do you see that?

16 "Drift potential is lowest between wind speeds
17 between 2 and 10 miles per hour." Correct?

18 A. Yes.

19 Q. And when you or your employees apply Captan, you apply it
20 between 2 and 10 miles per hour because that's what the label
21 says; correct?

22 A. Yes.

23 Q. And you don't have any problem following that direction,
24 do you?

25 A. No, sir.

1 Q. The label also says that the product should not be
2 applied during a temperature inversion a little lower down on
3 that page.

4 And you always take care not to apply pesticides
5 during a temperature inversion; isn't that right, Mr. Bader?

6 A. Yes.

7 Q. And that's something you think you can do and you can
8 follow those directions; correct?

9 A. Yes, sir.

10 Q. You also use a product called Mustang. Do you recognize
11 that?

12 A. Yes, sir.

13 Q. Mustang has a buffer restriction, doesn't it?

14 A buffer restriction?

15 A. You said a buffer restriction?

16 Q. Yes, sir.

17 A. Yes, sir.

18 Q. And that buffer restriction is something, when you apply
19 Mustang, that you follow?

20 A. Yes.

21 Q. And you are able to do that; correct?

22 A. Yes.

23 Q. Do you use Poast Plus, the product Poast Plus?

24 A. We use a little bit of Poast Plus, sir.

25 Q. That product also has a prohibition applying during an

1 inversion, doesn't it?

2 A. Yes.

3 Q. And you are able to follow that direction; correct?

4 A. Yes, sir.

5 Q. It also has a direction to apply it between 2 and
6 10 miles per hour and you are able to follow that as well;
7 correct?

8 A. Yes, sir.

9 Q. And you use a product called Quilt?

10 A. Yes, sir.

11 Q. And that product on the label has restrictions on nozzle
12 size, wind speed, not applying during the inversion; and you
13 are able to follow all of those, aren't you?

14 A. Yes, sir.

15 Q. And if someone would say to you as a farmer you are not
16 able to follow those label instructions, that would be wrong,
17 wouldn't it?

18 A. Yes, sir.

19 Q. Mr. Bader, for any of the years in question, you are not
20 able to tell us what brand or what type of dicamba you think
21 reached your farm; correct?

22 A. Repeat the question, please.

23 Q. You can't identify for any of the years in question that
24 you are claiming damage, you can't tell us what the brand of
25 the dicamba was that you think got to your farm; right?

1 A. No.

2 Q. No, you are not able to?

3 A. Do what, sir?

4 Q. I asked a bad question. I want to make sure it's clear
5 on the record.

6 You will agree with me for any of the years in
7 question, you can't tell us what brand of dicamba reached your
8 farm?

9 A. I cannot tell you which brand of dicamba.

10 **MR. MANDLER:** Okay. Thank you for your time.
11 That's all I have.

12 **THE COURT:** Ms. Randles.

13 **REDIRECT EXAMINATION**

14 **BY MS. RANGLES:**

15 Q. Good afternoon, Mr. Bader. I want to go through and ask
16 you some follow-up questions about -- from questions that you
17 got from Mr. Miller and Mr. Mandler, okay?

18 A. Yes, ma'am.

19 Q. And I apologize. They may not exactly be in order, but
20 just bear with me.

21 So initially early on, Mr. Miller asked you about
22 some statements that you made about the 2015 aerial
23 application. Do you remember that?

24 A. Yes.

25 Q. And do you remember what you ultimately testified about

1 and what you said here is it was, I believe, 10 to 15 percent
2 of the damage from that aerial application. Is that what you
3 testified to?

4 A. Yes.

5 Q. Okay. So in the radio interview that he played, when you
6 said 50 percent, what were you really referring to when you
7 said 50 percent of damage? What were you talking about?

8 A. The 50 percent damage?

9 Q. Yes.

10 A. We were talking in '15. The radio interview was took in
11 '16. And the 50 percent was the total covered acres.

12 Q. But did you -- were you referring to the aerial
13 application causing all of the damage in 2015?

14 A. No.

15 Q. So what else caused the damage in 2015?

16 A. Dicamba.

17 Q. Okay. But was it dicamba sprayed over the top of Xtend,
18 is that what you were saying?

19 A. Yes.

20 Q. Okay. And so is the number you gave today the 10 to
21 15 percent that you thought affected your production in 2015
22 from the aerial application, is that what you think?

23 A. That's correct.

24 Q. Mr. Miller asked you about some insurance claims. Do you
25 remember that?

1 A. Yes, ma'am.

2 Q. So on the insurance claims, when it says 100 percent
3 loss, say for the 2015, can you explain to the jury what that
4 actually means?

5 A. What it actually means is the -- like, if it was
6 referring to hail, the hail claim that the damage was done was
7 100 percent caused by hail. Since we have all these units, it
8 was 230 acres, but as you seen in the -- on the slide they
9 showed on the check we got, it's just a little over a hundred
10 bucks an acre.

11 Insurance, we are insured by our actual production
12 history. So any time we turn a claim in, we are taken away
13 from our insurance. And like the particular farms, they
14 should have produced, you know, a substantial -- good crop
15 would have had a million dollars of peaches on it. We had
16 hail damage, we took -- the insurance paid off 25,000 bucks.

17 Q. And likewise, with the 2018 light freeze, let me ask you:
18 Did the insurance company, were they aware of the dicamba
19 injury to your farm at that point?

20 A. Yes. They didn't show the special letter that was
21 attached that the agent wrote out and they -- when you turn a
22 claim in, if you notice, the check is always usually 60 to 90,
23 sometimes 120 even. Some are almost a year. Because all your
24 insurance is reviewed by what they call RMA. And they review
25 it and they give the -- you know, they give the final estimate

1 and they pay you the final settlement.

2 Q. So were you -- did you give the insurance company all of
3 the information that they requested?

4 A. We give the insurance all the information they request.

5 Q. And did you tell them about the dicamba exposure to your
6 farm?

7 A. Yes.

8 Q. And what was their -- what was their outcome?

9 A. Their outcome was -- they said we are going to go ahead
10 and pay the claim because the trees -- they figured the trees
11 were hurt, which caused the freeze damage.

12 Q. Okay. And they figured the trees were hurt from what?

13 A. From dicamba.

14 Q. Now, when Monsanto's lawyer was questioning you, he asked
15 you about a certain -- some invoices that you sent some of the
16 farmers who you suspect were spraying dicamba over their Xtend
17 crop. Do you remember that?

18 A. Yes.

19 **MS. RANGLES:** Your Honor, I would like to show --
20 just show to the Court and Mr. Bader and counsel this
21 Exhibit No. M-273.

22 Q. (By Ms. Randles) Mr. Bader, does that invoice look
23 familiar?

24 A. Yes, sir. I mean, yes, ma'am. Excuse me.

25 Q. No offense.

1 Okay. So did you send this invoice?

2 A. Yes, I did.

3 Q. Okay. And who is this invoice to?

4 A. It was directed to Monsanto.

5 Q. Mr. Miller didn't ask you about this invoice, did he?

6 A. No, ma'am.

7 **MS. RANGLES:** Your Honor, may we publish to the
8 jury? I would like to move into evidence M --

9 **THE COURT:** Any objection?

10 **MR. MILLER:** No objection.

11 **THE COURT:** It is admitted.

12 Q. (By Ms. Randles) So now, Mr. Bader, if we look here, it
13 says -- under amount, I believe that's \$3 million. Is that
14 what that is?

15 A. Yes, ma'am.

16 Q. Okay. And under description, if we can blow that up,
17 description says, "Damage to peach trees and environment."
18 Right?

19 A. Correct.

20 Q. Okay. Now, when did you send this invoice to Monsanto?

21 A. It was in July of '16.

22 Q. Was it around the same time that you sent the other
23 invoices to the neighbors?

24 A. It was the same day.

25 Q. Okay. So you sent them all the same day?

1 A. Yes.

2 Q. Why did you send Monsanto an invoice for \$3 million for
3 damage to peach trees and the environment?

4 A. Because I was blowing off steam, thought maybe I would
5 get their attention.

6 Q. Okay. Did it get their attention?

7 A. No, ma'am.

8 Q. Did you ever get a response from Monsanto about that?

9 A. No, ma'am.

10 Q. Also, if you recall, Mr. Miller asked you questions about
11 other herbicides that may have damaged your orchard in -- I
12 believe it was in 2016. Do you remember those questions?

13 A. Yes.

14 Q. Okay. And he identified two other herbicides, one was
15 glyphosate and the other glufosinate. Do you remember that?

16 A. Yes.

17 Q. Do you remember being deposed in September of 2017 in
18 this case?

19 A. Yes.

20 Q. And you've been deposed a number of times; right? How
21 many times have you been deposed or how many days have you sat
22 for deposition?

23 A. Four days.

24 Q. Okay. So you've sat for four full days and so -- just in
25 this case alone; is that right?

1 A. Yes.

2 Q. Okay. And in one of those times, you discussed potential
3 damage caused by glyphosate and glufosinate and that's part of
4 the clip that Mr. Miller showed. Okay?

5 A. Yes.

6 Q. Do you remember why -- how you thought the glyphosate and
7 glufosinate got to your peach orchard? Do you remember what
8 you testified to?

9 A. Yes, it was carried in the dicamba.

10 Q. So at the time of the deposition, which was in September
11 of 2017; is that right?

12 A. Yes.

13 Q. What you believe is that the glyphosate and glufosinate,
14 the Liberty herbicides?

15 A. Yes.

16 Q. Was carried into the orchard along with the dicamba;
17 right?

18 A. Yes.

19 Q. Okay. So when you were testifying and Mr. Miller was
20 asking you questions, were you saying that the glyphosate and
21 glufosinate got there on their own at all?

22 So were you saying that there were separate
23 applications of that?

24 A. There were several -- separate applications of that.

25 Q. No, not several. Were there --

1 A. Separate -- you said separate?

2 Q. Yes, sir. Do you just believe that they got there
3 because they were transported with the dicamba?

4 A. Yes.

5 Q. Okay. You have no basis for that, or do you?

6 A. No, I don't.

7 Q. So were you just expressing your own personal belief?

8 A. I was express -- you know ...

9 Q. And Mr. Miller also asked you questions about losses from
10 a frost in 2016. Do you remember that?

11 A. Yes.

12 Q. But I believe you testified that it wasn't enough to
13 submit an insurance claim?

14 A. Yes.

15 Q. Okay. Can you explain that to the jury with respect to,
16 for instance, 2016, a frost where you wouldn't really submit
17 an insurance claim? Why would that be the case?

18 A. When we figure we can pick over the guarantee, we don't
19 submit a claim because I stated earlier our insurance is based
20 on what we call actual production history. We -- which is --
21 we got to build our actual production history.

22 Q. Do frost, light frost and freezes occur often in
23 orchards?

24 A. Yes. They are just another act of God that happens
25 pretty often sometimes.

1 Q. And in your 50-plus years working in peaches, do these
2 kinds of acts of God happen with some regularity?

3 A. There have been very few years that we haven't had a
4 light frost.

5 Q. Okay. What about freezes?

6 A. The freeze when it kill the buds, like the extreme kill,
7 winter kill was the only -- '85 was the only extreme winter
8 kill.

9 Q. Are there different levels of freezes?

10 A. Yes, there is. What we call winter kill is when the
11 buds -- when it gets below -- get much below 15, 20 below zero
12 will kill them buds. And in '85 we were 20 below zero.

13 Q. And with respect to the 2018 freeze damage claim, did you
14 testify that that was on 400 acres? Did that cover 400 acres?
15 Was that your testimony?

16 A. On the -- it should have been the total acres.

17 Q. Okay.

18 A. The total farm. He was going -- excuse me, ma'am. He
19 was going by the insured acres or what they so call insured
20 acres on I just think Bader Farms.

21 Q. And so let's talk a little bit about this notion of
22 insured acres versus not, and what I really want to talk to
23 you about is the FSAs.

24 Mr. Miller asked you a series of questions about the
25 FSA documents. Do you remember that?

1 A. Yes, ma'am.

2 Q. And he asked you about those in contrast to the Great
3 American insurance claims document. Do you remember that?

4 A. Yes.

5 Q. So tell the jury, explain to the jury, please, how FSA
6 calculates the number of acres that you have. What does their
7 number mean?

8 A. They -- when we certify a farm, it's a complete farm,
9 complete block. It may be a 40-acre block. It may be an
10 80-acre block. We count the whole field. The FSA counts the
11 whole field.

12 Of course you have to have roadways, you have to
13 have roadways around it. And just like row crop farming,
14 there's a percentage of it that ain't planted. It's not
15 planted. So -- but Farm Service counts the whole field or the
16 whole block.

17 When Great America comes in, they insure it, they
18 count the trees. They count the total number of trees and
19 divide it by 109. So by doing that, they come out with a
20 lower number because, you know, when you got to turn around at
21 the end of orchards or fence rows or you have a roadway
22 through, so a lot of times 40 acres, they may show 33,
23 34 acres.

24 And the -- on a crop insurance, they are showing
25 like the 400 acres. They were showing the 400 acres I think

1 that were just in production where we are showing the trees
2 coming in production at that Farm Service Agency.

3 Q. So I want to break that down a little bit just to make
4 sure the jury fully understands it.

5 So with -- with the insurance company, do they
6 count, for instance, your young trees?

7 A. They count anything that's bearing.

8 Q. Okay. Are there certain trees that are -- that just
9 aren't counted with the insurance company?

10 A. You got to look at two different numbers. One of them
11 will be insurable. The other number will be the ones that are
12 too young. It depends on what time they count them.
13 Sometimes we have to -- they got to count -- we got to -- if
14 we have them planted before they count them, they get them
15 counted. If they -- if we plant them after they count, they
16 don't have them counted until the next year.

17 Q. So with the FSA, I think you used the phrase "total
18 acres." What does total acres mean?

19 A. Well, you know, it's just like their yield maps. They
20 will show --

21 Q. I'm sorry. When you say "they," who is --

22 A. The Farm Service Agency, when they showed your field
23 maps, you know, they will say this field or that field and
24 then they will have it -- they will go from fence row to fence
25 row to the road, whatever. They are counting one total field.

1 Q. And so with the insurance company, just so I and the jury
2 are clear, they are not counting the same way that FSA counts.

3 Is that what your testimony is?

4 A. That's correct.

5 Q. So is it then surprising to you, given the way it's all
6 calculated and counted, that the numbers aren't the same?

7 A. The numbers will not be the same because --

8 Q. I'm sorry. Go ahead.

9 A. Because they -- they are not insuring us by the acre.
10 They are insuring us by the actual production history. And
11 that's how we build our actual history is they count the
12 actual bushels we pick every year.

13 Q. So the insurance company is not trying to capture all of
14 the acres of the orchard the same way the FSA is. Is that --

15 A. That's correct.

16 Q. Also with the FSAs, Mr. Miller played a little clip of
17 one of the days of your August deposition, August 2019
18 deposition where you said this is an example -- or maybe the
19 other lawyer said this is an example of a time where the
20 maturity date would be inaccurate. That's the question that
21 the Monsanto lawyer asked you, and you said yes.

22 Do you remember seeing that clip?

23 A. Yes, ma'am.

24 Q. But he said an example. Are the FSA documents that you
25 submit to FSA accurate?

1 A. Yes, ma'am.

2 Q. Do you believe the vast majority of those are accurate?

3 A. Yes, they are accurate.

4 **MS. RANGLES:** Your Honor, I would like to pull up
5 M-116 again.

6 Q. (By Ms. Randles) Mr. Miller showed you this, Mr. Bader.
7 This is Crop Profile for Peaches in Missouri that you were a
8 part of contributing to back in late '90s/2000, as you
9 previously testified.

10 Let's go back to, I guess, bottom of page 2 through
11 page 3. And the portion that he read to you was the most
12 limited -- sorry, Mr. Randles is negatively affecting me just
13 now.

14 "The most limiting factor affecting peach production
15 in Missouri is the occurrence of spring frosts in southeast
16 and southwest Missouri and winter freezes in north-central
17 Missouri. Winter temperatures below negative 10 to negative
18 15 kill dormant fruit buds. Because central and northern
19 Missouri are only marginally adapted for peaches, growers in
20 these areas plant varieties that are winter hardy.

21 "A full crop in these areas is only expected four
22 out of ten years, a partial crop three out of ten years and
23 complete crop failure is expected every three out of ten
24 years. In contrast, growers in southwest Missouri expect a
25 full crop every eight out of ten years. Complete crop failure

1 occurs only one out of every ten years."

2 Okay. So Mr. Bader, I know you contributed to this,
3 but do you agree that in southeast Missouri, you expect a full
4 crop only one out of every ten years?

5 A. No.

6 Q. And has that been the history of your experience with
7 Bader Farms?

8 A. We had -- like I said, we had a complete freeze-out in
9 '85. And we -- which was winter kill which, you know, they
10 described in here and then frost in '07.

11 Q. And prior to the freeze in '85, when was the previous
12 one?

13 A. '55.

14 Q. So based on your own personal experience and what you
15 know of from before you were around, that would not be
16 accurate for southeast Missouri, would it?

17 A. No.

18 Q. Okay. And your -- your experience on your orchard is
19 really what matters most in this case, isn't it?

20 A. Yes, ma'am.

21 Q. I am not going to go back to it, but do you remember the
22 slide that Mr. Miller had that showed the -- your production
23 over the years from -- I think it started in 2002 and went all
24 the way up and it showed the blue bars on it? Do you remember
25 that?

1 A. Yes.

2 Q. Okay. And then there was some red bars that showed what
3 he said would be the differences that these various weather
4 events, this is how it affected you. Do you remember seeing
5 that?

6 A. Yes.

7 Q. Mr. Bader, let me just ask you: Do you believe that the
8 various weather events of '15, '16, '17, '18 had a great
9 impact on your peach production?

10 A. No. They -- they did not.

11 Q. Okay. What do you believe had the biggest impact on your
12 peach production?

13 A. I think dicamba.

14 Q. Mr. Miller also asked you questions about samples of
15 leaves that were pulled. Do you remember that, that -- of you
16 pulling samples?

17 A. Yes.

18 Q. Okay. So, Mr. Bader, when is the first time that
19 Monsanto came to Bader Farms to do an inspection?

20 A. January 26, 27, 28 of 2017.

21 Q. Okay. And was that after you had filed the lawsuit?

22 A. Yes, ma'am.

23 Q. And how many days were they on the farm?

24 A. They were on two days.

25 Q. And have they done any inspection since then?

1 A. Yes.

2 Q. Okay. How many days of inspections have they done since?

3 A. They have done six on farm.

4 Q. Okay. And was BASF --

5 A. Six more.

6 Q. Six more days?

7 A. Six more -- they have done a total of seven.

8 Q. And was BASF also present for any of these events?

9 A. BASF were for the last three, maybe four.

10 Q. Now, with respect to the questions that Mr. Miller asked
11 you about samples, for at least one of these times that
12 Monsanto was at your farm, did you pull samples?

13 A. Yes. When they were pulling samples, I was pulling a few
14 leaves and sticking them in a bag, too.

15 Q. Okay. Why did you do that?

16 A. Just to more or less to aggravate them.

17 Q. Okay. So was your intention --

18 (Laughter)

19 Q. We appreciate your honesty.

20 Was your intention when you pulled the samples to
21 send them for sampling and testing?

22 A. It was, but it was -- it's 500 bucks to get a sample
23 done.

24 Q. But they were pulling samples those days?

25 A. Yes.

1 Q. Now, there are also a number of questions earlier from
2 defense counsel that you don't know what brand of dicamba
3 affected your crop. Do you remember that question?

4 A. Yes.

5 Q. You don't have any idea whether it was sprayed over corn
6 or Xtend or anything else. Do you remember that question?

7 A. Yes.

8 Q. But, Mr. Bader, other than the April 2015 burndown
9 application and the 2008 2,4-D application that you talked
10 about yesterday or this morning, have you ever had any
11 herbicide injury to your orchard?

12 A. Practically none.

13 Q. Okay. And when is burndown sprayed?

14 A. Usually burndown is sprayed early in the spring.

15 Q. So when you have the two burndown incidents that you
16 already testified about in 2008 and April of 2015, how soon
17 after those events did you see the symptomology on the peach
18 tree?

19 A. Within a day or two.

20 Q. Okay. So that happened fairly quickly both times?

21 A. Yes. In '08 they were spraying 2,4-D on wheat is what
22 they were doing.

23 Q. Okay. But your farm has been in Dunklin County the same
24 place the whole time; correct?

25 A. Yes. They have been spraying burndown, even myself

1 spraying burndown since '83, '84.

2 Q. And have you ever managed to damage your own crops?

3 A. No.

4 Q. And when is -- do you plant corn at Bader Farms?

5 A. Yes, we do.

6 Q. When is corn typically sprayed?

7 A. Usually our burndown on corn and our no-till is done
8 somewhere 15th of March to the 1st, 15th, 20th of March.

9 Q. So if these things have been happening in the past, how
10 can you separate the corn and the burndown applications from
11 Xtend dicamba applications? Do you understand my question?

12 A. Yes, ma'am.

13 Q. How can you distinguish them -- the symptoms on your
14 peach trees and attribute it to Xtend versus these other
15 things?

16 A. Like I said, they've been spraying burndown for 25,
17 30 years. Until Xtend system come in, we never did have
18 problems with dicamba.

19 **MS. RANGLES:** Your Honor, I may have another ten or
20 15 minutes.

21 **THE COURT:** Actually, in that case I think we do
22 need to take a recess.

23 So ladies and gentlemen, we will recess for the day.
24 Is this --

25 You can go another five or a little bit farther

1 but --

2 **MS. RANGLES:** I think it's going to take at least
3 ten, maybe 15.

4 **THE COURT:** Let's just recess for the day.

5 And, ladies and gentlemen, please remember the
6 admonition I have given you repeatedly. Especially when you
7 go home, when your friends, family, spouses and so forth will
8 want to know what's going on here, remind them, you are under
9 oath not to discuss the case in any respect.

10 So thanks again for your attentiveness and your
11 patience. We will reconvene at 9:00 in the morning and you
12 are excused for the evening then.

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

15 **THE COURT:** Anything you want to discuss briefly?

16 **MR. RANGLES:** No, Your Honor.

17 **MS. ROSENBERG:** Tomorrow morning I believe there is
18 something to take up before Baldwin. I didn't know if we had
19 time in the morning for that.

20 **THE COURT:** Okay. That's fine. Ten till or
21 something like that.

22 **MS. ROSENBERG:** Thank you, Your Honor.

23 **THE COURT:** We will be adjourned until tomorrow at
24 8:50.

25 (The proceedings concluded at 4:49 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 1036 through 1177 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 5th day of February, 2020.

/s/ Reagan A. Fiorino

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