

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

BADER FARMS, INC.,
Plaintiffs,

vs.

Cause No. 1:16CV299

SNLJ

MONSANTO CO., AND BASF CORPORATION,
Defendants.

=====

TRIAL DAY 8
VOLUME 8A - Pages 950 - 1035

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

FEBRUARY 5, 2020

=====

Reported by:

22 Alison M. Garagnani, CCR #475, CSR, RMR, CRR
23 Official Court Reporter
24 United States District Court
25 555 Independence, Room 3100
Cape Girardeau, MO 63703
(573) 331-8832

951

1 APPEARANCES:

2
3 For Plaintiffs Bader Farms:

4 Billy R. Randles
5 Beverly Turina Randles
6 Angela Marie Splittgerber
7 RANGLES AND SPLITTGERBER, LLP
8 5823 N. Cypress Ave.
9 Kansas City, MO 64119

10 Tracey F. George
11 Lawrence Benjamin Mook
12 DAVIS AND GEORGE LLC
13 1600 Genessee St.
14 Suite 328
15 Kansas City, MO 64102

16
17
18 For Defendant Monsanto Company:

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

19
20
21
22
23
24
25

952

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

APPEARANCES CONTINUED:

For Defendant BASF Corporation:

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

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

16
17
18
19
20
21
22
23
24
25

953

Page 1 I N D E X
2
3 FEBRUARY 5, 2020
4
5 Trial Continued:
6 BILL BADER
DIRECT EXAMINATION CONTINUED
956 7 BY MS. RANGLES
8
9
10
11

12
13
14
15
16
17
18
19
20
21
22
23
24
25

954

1 EXHIBIT INDEX

2	3	Plaintiff's Exhibit	Description	Id
4	1011	2116	Aerial Footage August 22nd, 2018	1011
5	1016	2117	More Aerial Footage of 2018	1016
6	960	2194	Demonstrative of Average Yields	959
7		2195	and Plantings and Weather Events Demonstrative yields 2015 - 2019	984

985

- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

955

- 1
- 2

T R I A L

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

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

11 THE COURT: Good morning.

12 MR. MILLER: Good morning, Your Honor.

13 MR. MANDLER: Good morning.

14 THE COURT: Any preliminary matters?

15 MR. MILLER: No, Your Honor.

16 MR. RANGLES: No, Your Honor.

17 THE COURT: Mr. Bader, do you want to come
up.

18 THE WITNESS: Yes, sir.

19 THE COURT: And you can bring the jury in.

20 (Jury in.)

21 (Proceedings resumed in open court.)

22 THE COURT: Please be seated.

23 Good morning, ladies and gentlemen.

24 Mr. Bader, you're still under oath, and you
may

25 proceed.

956

1

BILL BADER,

2

Being previously sworn, testified as follows:

3

DIRECT EXAMINATION CONTINUED

4

BY MS. RANGLES:

5

Q. Good morning, Mr. Bader.

6

A. Good morning.

7

Q. How are you this morning, sir?

8

A. Oh, just fine.

9

Q. Good. Mr. Bader, I have a few follow-up questions

to

10

what we were talking about yesterday about your peach

11

business and production and management, and then we'll

get

12

into some other things; okay?

13

A. Yes, ma'am.

14

Q. Do you ever have the soil tested at Bader Farms?

15

A. Yes. We have the soil tested every year, and then

we

16

follow up with a leaf analysis.

17

Q. And what is the soil -- the purpose of the soil

testing?

18

A. We test all the micronutrients and all of the P, K

and N

19 which is the nitrogen, potassium and phosphate.
20 Q. And do you ever have the calcium levels tested?
21 A. Yes.
22 Q. And you said potassium as well?
23 A. Yes.
24 Q. Who handles that for you?
25 A. It's done by the University of Arkansas.

957

some 1 Q. And do you have any other companies that also do
 2 testing for you?
 3 A. A&L normally does our tissue sampling.
that you 4 Q. Okay. And do they do the same kind of testing
 5 were referring to a moment ago?
 6 A. Yes.
 7 Q. And when does this happen?
March. 8 A. Usually we do it -- the fall testing in February,
 9 And then we do -- on the leaf analysis we do -- usually
it's 10 late May or early June to make sure we got the proper
amount 11 of nutrients in the leaf and in the trees for the crop.
 12 Q. Would you explain to the jury why it's important
that

and the 13 you have the proper amount of nutrients in the trees
14 soil?
very 15 A. It's very important, because -- excuse me, it's
thing we 16 important. You got to have a nutrient level. One
putting 17 usually check it in late May or early June because
a 18 the bloom crop out takes about as much nutrients out of
a good 19 tree -- you know, producing a good bloom crop, you got
nutrients. 20 heavy bloom crop, pulls out an extreme amount of

a leaf 21 So when we come back in and check when we pull
nutrients in 22 analysis, we want to make sure we got plenty of
mature 23 the tree to support that tree until the peaches become
24 on them.

the 25 Q. Do you ever have to make adjustments throughout

958

have in 1 growing season for the amount of nutrients that you
2 the tree?

3 A. Yes, we do.

4 Q. How does that happen?

5 A. We -- you know, since the trees -- we got sod --
we do
6 it -- what they call a foliar feed.

7 Q. And explain to the jury what a foliar feed is.

8 A. A foliar feed is what you put your micronutrients
in,
9 your nutrients in you're putting it actually -- usually
when
10 we're spraying our fungicide we're putting it actually
on the
11 tree on the leaf, and then the leaf takes it into the
-- to
12 the tree and into the peach.

13 Q. And, Mr. Bader, would you explain to the jury what
a
14 packout rate is. What does that phrase mean?

15 A. The packout rate is the percentage of peaches.
When you
16 bring them in the packout rate is actual what you pack
out.

17 Q. All right. And what is Bader Farms' packout rate?

18 A. I average pretty close to 85 percent.

19 Q. Okay. And speaking of percentages, do you know
about
20 what percentage of Missouri's peaches Bader Farms
produces?

21 A. Anywhere from 40 to 70 percent.

22 Q. It's just dependent on the year?

23 A. Yes, depending on the year.

about 24 Q. Okay. Now, we talked a little bit yesterday also
25 farming being a tough business. Do you remember that?

959

1 A. Yes.

and 2 Q. And you said that there was some real good years
3 some years that are not as good; is that right?

4 A. Yes.

little 5 Q. And so, Mr. Bader, I'd like to talk with you a
6 bit about maybe some of the years of Bader Farms'
existence 7 and just how you—all have done; okay?

show to 8 MS. RANGLES: Your Honor, I would like to
9 the Court and Plaintiff and counsel Plaintiff's Exhibit
2194.

10 BY MS. RANGLES:

Exhibit 11 Q. Mr. Bader, do you see Plaintiff's Demonstrative
12 2194?

13 A. Yes, ma'am.

down and 14 Q. Now, Mr. Bader, did you and I and our team sit
15 yields put this demonstrative together to show the average

16 and various weather events and plantings and such that

17 occurred between 2002 and 2014?

18 A. Yes.

19 (Plaintiff's Exhibit No. 2194, Demonstrative
of Average Yields and Plantings and Weather Events, was
21 identified.)

22 BY MS. RANGLES:

23 Q. And does this demonstrative fairly and accurately
show what we talked about and what we put together?
24

25 A. Yes, ma'am.

960

1 Q. Would it help you to explain these things to the
jury to use this demonstrative?
2

3 A. Repeat the question, please.

4 Q. Would it help you to explain these things to the
jury if we were able to use this demonstrative?
5

6 A. Yes.

7 Q. Okay.

8 MS. RANGLES: Your Honor, I offer into
evidence Plaintiff's Exhibit 2194 as a demonstrative.
9

10 MR. MILLER: No objection.

11 MR. MANDLER: Your Honor, no objection as to
12 demonstrative. I assume it's not submitted as
substantive
13 evidence, but as a demonstrative, no objection.

14 THE COURT: So that objection is overruled,
but
15 it's admitted.

16 (Plaintiff's Exhibit No. 2194, Demonstrative
of
17 average yields and plantings and weather events, was
18 received.)

19 MS. RANGLES: Thank you, Your Honor.

20 May I publish to the jury?

21 THE COURT: Yes.

22 MS. RANGLES: Is everyone able to see that
just
23 fine? Okay.

24 BY MS. RANGLES:

25 Q. Now, Mr. Bader, let's start at the far left corner
there

961

1 that's the year 2002 to 2006: Do you see that?

2 A. Yes, ma'am.

3 Q. So there it says your average yield in those years
was

4 162,259. Does that sound right?

5 A. Yes. That was a five-year average.

6 Q. Okay. And was that pretty typical of what was
7 happening during that period for Bader Farms?

8 A. Yes. You know, yes, that was a typical -- you
know,
9 that was what our goal was.

10 Q. Okay. So if that was what your goal was, I guess
it's
11 fair to say that you were happy with those numbers;
right?

12 A. Yes.

13 Q. So let's move to 2007. Do you see there where we
are
14 2007?

15 A. Yes, ma'am.

16 Q. Okay. So it says for 2007 there was an April
freeze, no
17 harvest, and some of the trees were pushed out, because
they
18 were damaged trees; is that right?

19 A. Yes.

20 Q. So -- so in 2007 can you just tell the jury what
21 happened when -- about when was the freeze in April?

22 A. It was the 7th and 8th of April.

23 Q. And there was a -- was there a zero harvest that
year?

24 A. There was a zero harvest.

25 Q. When is the last time that that happened where you
had a

1 zero harvest?

2 A. In my lifetime in '85, and there's one other been
in

3 Missouri which was '55.

4 Q. I guess it's fair to say that that was a tough
year for

5 the farm?

6 A. Yes.

7 Q. What did you-all do since you didn't have a peach
8 harvest? What were you doing on the farm then in that
9 growing season?

10 A. We raised a few tomatoes, a few watermelon, and we
11 shipped in peaches from California.

12 Q. What did you do about the peach trees? The
13 demonstrative says that peach trees were pushed out,
because

14 they were damaged.

15 A. Yes. In our linear plan where we pushed a few
more
16 trees out, because they were up to the age where they
were

17 needing to be pushed.

18 Q. So were you pushing the trees out because they
were

19 damaged because of the freeze or because of age?

20 A. Because mainly of age -- mainly of age.
21 Q. What did the freeze do to the trees, if anything?
22 A. When it was -- it was a really extreme late
freeze,
23 which is very unusual the way it came in. The peaches
were
24 the size of nickels and dimes, so they really pulled
the tree
25 heavy.

963

1 And we just didn't have -- we had been that
cold
2 before and had, you know, a decent peach crop and even
a good
3 peach crop, but the way the weather was set up there
was no
4 ceiling, the cold air just -- just took them all.

5 Q. And what do you mean when you say there was "no
6 ceiling"?

7 A. Usually, you know, on the terrain where we plant
on our
8 hills, you know, the hills, it would be just like this
9 morning you'd be driving in, and you see a fog or
whatever,
10 it's usually 6, 8 foot off the ground. That's the
difference
11 between the warm weather -- the warm air and the cold
air,

the
down
got a
12 and that's why we use -- we plant on the hills and on
13 hillsides is we've got air flow. The warm air settles
14 into the valleys to replace the cool air. And when you
15 little bit of wind blowing, you know, it's not going to
16 frost.

on
17 Q. Did the April freeze in 2007 have a lasting effect
18 the trees?

of it.
19 A. It took them a couple of years really to come out

come out
20 Q. Okay. But is it your testimony that they did
21 of it?

22 A. Yes.

that
23 Q. Let's move to 2008, Mr. Bader, if we could get to
24 point.

25 A. Yes.

964

that
it took
1 Q. So it says, "2008 continuing freeze impact." Is
2 what you were referring to a moment ago when you said
3 a couple of years for them to come out of it?

4 A. Yes.

5 Q. And it says, "April pesticide drift damage fruit
and
6 planting limited by unavailable trees." So let's
first talk
7 about this April pesticide drift damaging the trees.
What
8 kind of herbicide was involved in that?
9 A. It was 2,4-D.
10 Q. How many acres of the orchards did it damage?
11 A. Approximately about 160.
12 Q. And about when in April did that occur?
13 A. It happened the first day of April.
with
14 Q. And had you ever had any incident like that before
15 a herbicide drift damaging the trees?
16 A. No.
17 Q. So how did you respond to that?
took
18 A. Hitting in the bloom situation the way it was it
damage of
19 really about three weeks to evaluate the complete
20 it.
the
21 Q. And did you have any help assessing the damage of
22 trees?
23 A. They called the plant board out.
24 Q. You mean the Missouri Plant Board?
25 A. The Missouri Plant Board.

1 Q. So did the Missouri Plant Board physically send
somebody
2 out to the farm?
3 A. Yes, ma'am.
4 Q. And then what did they do when they were out
there?
5 A. They looked, done an investigation.
6 Q. What kinds of things did you do to respond to that
drift
7 event? What did you do with the trees I mean?
8 A. Some of the trees we were questioning about we
went in
9 there, and we put additional micronutrients and some
10 additional fertilizer on them.
11 Q. Did that seem to help?
12 A. Yes.
13 Q. How did it affect your yield that year?
14 A. It affected it between the freeze and the losing
the
15 trees from '07, and this I say it affected the yield as
high
16 as 30 percent, 30 to 40 percent.
17 Q. Okay. So this number on the bottom here, this
little
18 more 81,000, the yield would have been a bit higher
than that

19 were it not for the 2,4-D damage. Is that your
testimony?

20 A. Yes, it should have been. It should have been in
the
21 130 to 140. When we say 2,4 -- we explained yesterday
how
22 size makes the difference. And some of these trees
that
23 were, you know, the damage that got whiff of it we were
down
24 on size. And when -- like I said, when you lose size,
you
25 lose volume.

966

1 Q. So how much does a bushel weigh?

2 A. There's two different counts for a bushels. With
the
3 eastern -- the eastern is 50, the western is 48, but we
go to
4 the 50-bushel. We use the 50-pound per bushel.

5 Q. And so however many peaches that it takes to fill
up and
6 make 50 that's just -- that's a bushel; right?

7 A. Yes.

8 Q. Mr. Bader, what did the trees look like in light
of that
9 2,4-D damage?

10 A. The -- we had the leaves -- the peach leaves, they
were

11 cupped, kind of cupped down and crinkled up.

12 Q. Did you say they were cupped down?

13 A. Yes.

14 Q. Anything else that you remember about the
appearance of

15 the trees after the 2,4-D damage?

16 A. It was pretty well -- the initial damage on the
leaves

17 being this early was gone roughly in about 72 hours.

18 Q. And when did you first notice the change in the
19 appearance of the leaves?

20 A. Well, being in the spring of the year one thing is
you

21 could smell it. That morning it was -- the smell
would

22 actually knock you down.

23 Q. So you could smell the 2,4-D? Is that what you're
24 saying?

25 A. Yes.

967

1 Q. How did you know that it was 2,4-D?

2 A. The smell. And then when we called the plant
board,

3 Missouri Plant Board, they come out and identified it.

4 Q. Did you ever find out which farmer did it?

5 A. Yes.

6 Q. Okay. Mr. Bader, it also says planting limited
by
trees
7 unavailable trees. Can you explain to the jury why
8 were unavailable in 2008?

9 A. Well, in 2007 -- we have to go back to 2007.
This
10 freeze was very -- it was probably 250, 300 miles wide,
11 500 miles wide and probably a 1,000, 1,500 foot, a
12 thousand -- well, it went pretty well from Oklahoma all
the
13 way to the East Coast.

14 The nursery where we buy our trees, everything
is
15 planted on June buds. And when we're talking about
June
16 buds, they plant the seed in the fall before, and the
17 seedlings start coming up and being a warm, early
spring the
18 seedlings were probably three to four inches out of the
19 ground and very tender, and with the extreme cold at
the
20 nurseries it pretty well killed all our nursery stocks.

21 So they -- they just didn't have the supply of
trees
22 to supply, because when we -- when we -- you order
peach
23 trees, we order them -- usually if we're going to plant
this
24 year, we usually have the order in the 1st of June of

last

25 year. And so since they're all budded trees, then
they bud

968

1 the amount of trees that you want.

2 Q. And where do you ordinarily buy your trees?

3 A. Mainly in eastern Tennessee, McMinnville. In the
4 McMinnville area.

5 Q. All right. Mr. Bader, let's look at 2009. I'll
give

6 you a moment to read that. So here I just want to
walk

7 through this because there's a lot here. Okay. It
says,

8 "January ice storm." When did you have an ice storm?
About

9 when in January did that occur?

10 A. It was January roughly 28th, 29th.

11 Q. So tell the jury about that. Was it a pretty bad
ice

12 storm?

13 A. It was probably the worst ice storm we'd seen in
45,

14 50 years. We had anywhere from two to four inches of
15 accumulation of ice. It's -- luckily we had probably

a

16 third of our trees pruned.

17 Q. And why is that important?
18 A. Because, well, where we had thinned, pruned there
wasn't
19 near as much area for the ice to accumulate, and the
trees
20 withstood it better.
21 Q. Okay. And about how much of your orchard did
this ice
22 storm impact?
23 A. It affected every acre.
24 Q. So then in response to that did you have to do
anything
25 to the trees?

969

1 A. If it -- it turned into a full-time job. We
worked
2 seven days a week, because we had a lot of two-,
three-,
3 four- and five-year old trees that were coming online
for
4 production. And they were just literally split --
split,
5 you know, split in pieces. You know, the tree just
split.
6 Both sides were laying on the ground.
7 Q. And so you just separated the trees into age.
Did some
8 age groups fare better than others?

9 A. Yes.

10 Q. So which age group of the trees were most
negatively

11 impacted by the ice storm?

12 A. It was probably the oldest, 7- to 12-year old
trees.

13 Q. So you said the 7- to 12-year old?

14 A. Yes.

15 Q. So what did you do, if anything, to those trees?

16 A. They were -- they were impacted, but we still had
a good

17 scaffold. A good -- you know, which is -- the
scaffold is

18 the main center of the tree. We could -- there's
limbs

19 broke on them, but we had a good healthy tree, and we
had to

20 cut away sometimes as high as 90 percent of the tree.

21 Q. Okay. And was that on the younger trees that you
just

22 talked about?

23 A. On the young trees we would cut as high as 50
percent of

24 them away, and they were young enough and light enough
we

25 could pick them up. And we'd use -- we'd cut them down
to

tree. 1 probably -- we'd cut probably 60, 70 percent of the
2 And then we'd pull them together, and we'd take what we
call 3 a lag screw and bolt them back together.
4 Q. And so just so the jury is completely clear, on
what age 5 group of trees did you do that, the bolting?
6 A. The two-, three- -- the two- to about five-year
old, 7 because once you got over five years the circumference
of the 8 tree was too big.
9 Q. Mr. Bader, had you ever done that to trees before?
10 A. I used to on some of the older trees, yes, we
have.
11 Q. How did you know to do that?
12 A. That was usually a standard of what we did. Back
in 13 when I first started peaches, we bolted some trees
together, 14 because back then they were on a -- you know, they were
a lot 15 bigger tree, and we would -- the way that the peaches
-- a 16 lot of times we'd bolt them back together because of
the way 17 of the peaches on them.
18 Q. Had you had success with that in the past?
19 A. Yes.
20 Q. And did you have success with that when you did it

for

21 the 2009 ice storm?

22 A. Yes, we did.

23 Q. Are any of those trees still in production?

24 A. Probably about 75 percent of them.

25 Q. Did the bolting of the trees have a negative
impact on

971

1 their productivity over the years?

2 A. It took the first two years really because some of
them

3 we'd cut back so severely we just more or less had to
grow a

4 new tree.

5 Q. Did you lose any trees because of the 2009 ice
storm?

6 A. Yes.

7 Q. About how many trees did you just lose?

8 A. Probably close to 80 acres.

9 Q. And how many -- if you know, about how many trees
would

10 that have been?

11 A. That was roughly, you know, 8,000 trees.

12 Q. Okay. Now, you said a minute ago that you-all
were

13 working seven days a week to repair and as to any sort
of

14 remediation from this ice storm. How many people did
you
15 have working on this?
16 A. Probably 23, 24.
17 Q. And the damage that occurred, I guess, did that
have any
18 impact on your productivity for your yields for 2009?
19 A. Yes.
20 Q. And the yield number it says down here at the
bottom is
21 93,231. Do you see that?
22 A. Yes.
23 Q. Is that accurate?
24 A. Yes, that's accurate.
25 Q. Were you -- were you also planting trees in 2009?

972

1 A. Yes, we were planting -- we planted a few, because
I
2 think we may have planted a couple of thousand, because
we
3 were still -- the nurseries were still trying to
rebuild from
4 the '07, and they were rationing the trees out to try
to make
5 all the customers happy.
6 Q. So you just didn't have as many trees available to
you;

7 is that right?

8 A. In '09, yes, we were short.

9 Q. Let's move to 2010. Okay. Give it just a minute
here.

10 All right. Mr. Bader, for 2010 it says, "Continuing
ice

11 storm impact." What does that mean?

12 A. We -- some of the trees after '09 the -- when we
got

13 done picking them in '09, we had a -- I said, you know,
we

14 had 80 to 100 acres of production. We picked the
peaches,

15 but the production was really off. And being the age
of the

16 trees -- like I said, the age, the production was --
I'm

17 trying to rebuild a tree back at the age when they were
18,

18 19 years old. The production had really dropped. So
it

19 was just go ahead and start pushing.

20 Q. So when is a peach tree in its prime?

21 A. It really starts in its prime about the seventh
year.

22 Q. And you had had three kind of challenging years
for

23 reasons not your fault at all with -- between the
weather and

24 the 2,4-D. So what were you doing, I guess, in terms
of

2006 25 trying to make sure that you got back to your 2002,

973

1 numbers of yield?

2 A. We started planting trees real aggressive.

3 Q. And when did you start doing that?

4 A. In -- being having some rough years revenue was limited,

5 so in 2010, I think, roughly we planted about 8,000, 8,700

6 trees, which was roughly 80 acres.

7 Q. Is that normal, or is that more than you ordinarily

8 would plant?

9 A. We normally plant about 6,000 trees on a normal planting. It had been pretty well close to 6,000 trees a

11 year, but since we had lost out -- you know, we had lost out

12 on '08 and '09 we had to really play catchup.

13 Q. Now, did the nurseries have the trees available for you

14 again by 2010?

15 A. Yes.

16 Q. And it says here you were pushing out more trees from

17 the ice storm damage. So that continued through 2010; is

18 that right?

19 A. Yes.

20 Q. Can you tell the jury about how many more trees
you
21 pushed out in 2010 just because of the ice storm?

22 A. We roughly pushed out about another 100 acres.

23 Q. And did that account for all the trees that were
damaged
24 from the ice storm?

25 A. Really some trees were never -- the production --
we had

974

1 to save them, because we didn't have young trees coming
2 online. Our production was down a little bit, but we
needed
3 the varieties to fill in our variety to fill in to keep
our
4 supply -- supply going for our customers.

5 Q. Mr. Bader, let's look at 2011. Now, was there
anything
6 else that occurred in 2011, or were there any weather
events,
7 or anything like that, that occurred would have
affected the
8 peach orchards?

9 A. 2011 was probably the wettest spring on record in
10 Southeast Missouri.

11 Q. Okay. What happened?
12 A. The -- it was just continuous rain. Usually we
get all
13 of our floodings in April. This here was up in May.
It
14 was the first week of May.
15 Q. Did any flooding or anything like that occur?
16 A. On the farm, yeah, and then on the orchard was
extremely
17 wet.
18 Q. Did that affect your productivity that year?
19 A. Yes. Because staying wet they kind of -- it
affected
20 them, because of what we call the wet feet, and it was
up in
21 May, the temperatures were up. And as the temperature
22 raises and a tree is bloomed out, and it's bloomed out
and
23 it's growing and it's standing in water, it really
damages
24 the tree.
25 Q. So, Mr. Bader, we've got several years -- a few
years in

975

1 a row where you got some weather-related events or
herbicide
2 damage, and then you also testified that there were

3 limitations with respect to the tree plantings.

4 Did you -- did you decide at any point that you
5 needed to do something different?

6 A. No. I -- I always had a positive attitude that,
you
--
7 know, we looked, we done everything, but we just had a
8 mother nature does its course.

9 Q. Did have you any intention of trying to get back
up to
a
10 your prior production levels of over 100,000 bushels in
11 year?

12 A. We were shooting for '15.

13 Q. '15?

14 A. The year 2015.

15 Q. Can you explain that to the jury? What was your
plan to
16 get the productivity back up by 2015?

17 A. Well, like I said, in 2010, '11 -- I think 2011 we
18 planted 12,000 trees. In 2013 we were up probably 10,
11,000
trees in
19 trees. And we planted approximately about 50,000
20 that time period.

21 Q. Did you do that intentionally, and was it toward a
22 specific goal?

23 A. Yes. We were trying to get back to our post
freeze,

24 post ice storm numbers.

25 Q. And did you expect that to happen by 2015?

976

the 1 A. We were expecting -- we should have been picking
2 100 -- we were expecting 120,000 bushels.

a 3 Q. So these yields from about 2010 to 2014, was that
4 surprise to you?

count and 5 A. Yes. We were off -- you know, with the tree
6 surprise. that and what we went to, yes, it was kind of a

extremely 7 You know, the one thing like 2011 you got a wet --

this 8 wet year. Our size was off a little bit. You know,

you have 9 is a business that goes on size, you know. And when

you take 10 smaller peaches of seeing weather you can't control,

11 it and go.

given the 12 Q. Were your expectations for 2011 through 2014,

targets 13 number of trees that you had, were you close to your

14 or not?

15 A. We were -- well, yes.

16 Q. And were there additional plantings that occurred
17 throughout that period --

18 A. Yes.

19 Q. -- up to 2014?

20 A. Yes.

21 Q. And you said many times already this morning that
we
22 expected the trees to be online. Tell the jury what
that
23 phrase means.

24 A. What I meant online it should have been in
production.

25 Q. And how long would it take for them to be in
production?

977

1 A. We should have been picking some of them, you
know, the
2 fourth year -- by the fourth year they should be within
60 to
3 70 -- well, 50 to 60 percent. The fifth year -- sixth
year,
4 seventh year they get up and -- the biggest jump is
usually
5 between the fourth year and the sixth year.

6 Q. All right. Mr. Bader, I would like to switch
gears a
7 little bit and let's talk about dicamba. When did you
first

the 8 hear about the Xtend cotton and soybean seed coming on
9 market?

10 A. It was roughly 2011.

11 Q. How did you find out about that?

or 12 A. There was an article in the American Fruit Growers
13 the American Fruit and Vegetables there was a scientist
in 14 California who was voicing his real screen.

15 Q. So did you know what dicamba was before that?

16 A. Not really.

17 Q. Had you ever heard of dicamba before that?

18 A. Not really.

on the 19 Q. And so when you read about the Xtend crops coming
20 market, what was your thought?

technology, 21 A. I thought -- my thoughts were was with new
22 if it's done right, it works.

that 23 Q. Okay. Did you have any concerns then at all at
24 point?

technology, 25 A. No, because the farm business is run on new

978

1 but it just has to be done right.

2 Q. So let's start with the 2015 growing season.
What were
3 your expectations at the beginning of that season?
4 A. We should have been to 125,000 bushels. You
said,
5 excuse me, ma'am, 2016?
6 Q. No, 2015, sorry.
7 A. 2015 we should have been -- we should have been
pushing
8 that 100,000 bushel plus.
9 Q. And were you at 100,000 bushels plus in 2015?
10 A. No.
11 Q. Now, in April of 2015 did you have an incident
occur at
12 Bader Farms?
13 A. Yes, ma'am.
14 Q. And what was that?
15 A. It was April 11th. It was an aerial application.
16 Q. And aerial application of what?
17 A. 2,4-D, Roundup and Valor.
18 Q. How did you know that that had affected the farm?
19 A. I could -- we had crinkled up peach leaves, peach
leaves
20 were falling off. Being young in the season with
leaves --
21 in about three days the leaves were just literally --
the
22 trees were literally defoliating.

point? 23 Q. And what was the appearance of the leaves at that

24 A. The leaves were just tamped down, falling off.

25 Q. Did they look like they did with the 2008 2,4-D

979

1 incident?

2 A. Yes.

3 Q. Now, since it happened in April, was -- did it
have any

4 effect on the trees that you could notice from a
productivity

5 standpoint?

6 A. We called the Missouri Plant Board. They come
out.

7 They pulled their samples. We had other agronomists
come

8 out and look at it they said with the 2,4-D, and they
gave

9 their advice on what to do.

10 Q. Okay. And what was that advice?

11 A. The advice was to hit them with a heavy dose of
12 micronutrients and put some additional fertilizer on
them.

13 Q. How many acres did that affect?

14 A. It affected roughly 400 acres.

15 Q. And when you say hit them with a heavy dose of

16 micronutrients, what kind of micronutrients were you

using?

17 A. A wide variety, but a lot of zinc.

18 Q. So after you hit them with the micronutrients --
well,

19 let me ask you, did you do anything else to the trees?

20 A. No, ma'am.

21 Q. Okay. So after you hit them with the
micronutrients,

22 how did the trees look?

23 A. The trees by the first of June -- you know, late
May,

24 early June the trees had their foliation back. They
looked

25 good. The peaches were growing, and there was, you
know, a

980

1 pretty high expectation of a normal crop.

2 Q. And was it a good crop?

3 A. Do what, ma'am?

4 Q. Was it a good crop in 2015?

5 A. We were shooting, like I said, for 100,000 bushel
plus.

6 Q. So did the trees experience any other issues in
the

7 summer?

8 A. Yes.

9 Q. Okay. What happened?

10 A. On our southern orchards we got hit with hail.

11 Q. And I want to get to that in a little bit, but
were

12 there any other incidents that occurred with respect to
13 herbicide in your mind?

14 A. In '15?

15 Q. Yes, sir.

16 A. Yes.

17 Q. Okay. When did that occur?

18 A. It occurred in late June, early July.

19 Q. Tell the jury what happened.

20 A. We started noticing the peach leaves were kinked
up,

21 curled up. The foliage just something I had never
seen --

22 in my 45 years of being in the peach business I never
seen

23 nothing like it.

24 And we were -- it was just disgusting. I
mean,

25 it's -- it -- and then about two weeks later we went
in, and

981

1 we hit them again with some micronutrients and some

2 fertilizer, and about two weeks later they were hit
again.

3 Q. And what did you think had occurred to the trees?
4 A. Like I said, we were working with a couple of co-
ops,
5 and they were -- they live there close, and they come
and
6 evaluated it. And they said it was 2,4-D -- I mean,
the
7 dicamba.
8 Q. Did you think that it was dicamba?
9 A. Yes, I did.
10 Q. And now in 2015 -- you've heard testimony that in
2015
11 the only Xtend seed on the market was the XtendFlex
cotton
12 seed?
13 A. Correct.
14 Q. Are there farmers around Bader Farms who were
planting
15 the Xtend cotton in 2015?
16 A. Yes.
17 Q. Okay. Do you know who those folks were?
18 A. Chad Fullerton and Gary Murphy.
19 Q. Were there any others?
20 A. Them were the -- in '15 them were the two that
were
21 close to me.
22 Q. When you say close, about how close were they,
their
23 fields I mean?

24 A. Within -- I forgot Jeff Todd.

25 Q. So you said Jeff Todd also in 2015?

982

1 A. Yes.

2 Q. All right. And why did you believe that those
were the
3 folks who were spraying dicamba over their Xtend cotton
4 crops?

5 A. Because their cotton was clean.

6 Q. You said it was clean?

7 A. Very clean.

8 Q. Okay. Tell the jury what that means.

9 A. There wasn't a weed in it. And there wasn't a
weed in
10 it where you'd go to the neighboring cotton fields and
think

11 they have a few weeds and stuff in there in the
neighboring

12 cotton. And some of the ones that brought it to my
13 attention was the other neighboring cotton farmers that
14 didn't have Xtend seed.

15 Q. So were there still cotton farmers in the area who
16 didn't plant Xtend?

17 A. Yes, there was a few.

18 Q. Do you know whether Mr. Fullerton and Mr. Murphy
and

19 Mr. Todd plant significant acres of cotton in that
area?

20 A. Yes. They plant quite a few.

21 Q. So, Mr. Bader, did the appearance of the trees in
that

22 June and July after the exposure to dicamba, did the
trees

23 look different than they did with the 2,4-D?

24 A. Yes, they did.

25 Q. And did the trees just look different than they
had at

983

1 any other point?

2 A. Yes.

3 Q. Now, in 2015 did you call Monsanto?

4 A. Yes, I did.

5 Q. When did you call?

6 A. It was roughly June 20th -- I mean July 20th, July
21st.

7 Q. Why did you call Monsanto?

8 A. I invited them down to see, you know, what their
dicamba

9 was doing to the peaches.

10 Q. And what was their response?

11 A. Their response was that they didn't have the
manpower or

12 the money to come down to look at it.

any 13 Q. Did you receive a call from anybody from Monsanto,

14 followup after that?

two 15 A. I received one from Greg Starling that day about

16 hours later that day.

saw the 17 Q. Okay. And is that the same Greg Starling who we

18 video testimony of last week?

19 A. Yes, ma'am.

with 20 Q. Would you tell the jury what your conversation

21 Mr. Starling entailed.

22 A. Really not much.

23 Q. Well, what did he say?

24 A. He wasn't aware of none of it.

25 Q. You said he wasn't aware?

984

illegally. 1 A. He wasn't aware of anybody spraying dicamba

2 Q. Is that what he said to you?

3 A. More or less.

4 Q. What did you say to him?

5 A. I said I wish you'd just come look at it.

6 Q. And what was his response to that?

7 A. He told me he was just a seed salesman.

2015? 8 Q. Did you have any more followup with Monsanto in

9 A. No.

10 Q. All right.

11 MS. RANGLES: And, Your Honor, I would like
to show

12 to the Court, Plaintiff, Mr. Bader, and counsel,
Plaintiff's

13 Exhibit 2195.

14 BY MS. RANGLES:

15 Q. Now, Mr. Bader, I'll give you a chance to look at
that.

16 Did we sit down and put this demonstrative exhibit
together

17 to show your yields and revenues in 2015 through 2019?

18 A. Yes.

19 (Plaintiff's Exhibit No. 2195, Demonstrative
yields

20 2015 - 2019, was identified.)

21 BY MS. RANGLES:

22 Q. Does this accurately reflect what we put together?

23 A. Yes, ma'am.

24 Q. And would this be helpful for you to explain to
the jury

25 these things?

1 A. Yes.

2 MS. RANGLES: Your Honor, I offer into
evidence

3 Plaintiff's Exhibit 2195, the demonstrative.

4 MR. MILLER: No objection.

5 MR. MANDLER: No objection to the
demonstrative,

6 Your Honor.

7 THE COURT: That's all it's being offered
for.

8 MR. MANDLER: Okay.

9 THE COURT: It's admitted.

10 (Plaintiff's Exhibit No. 2195, Demonstrative
yields

11 2015 - 2019, was received.)

12 MS. RANGLES: Can I publish to the jury?

13 THE COURT: Yes.

14 BY MS. RANGLES:

15 Q. Okay. So, Mr. Bader, if you look at the bottom
there

16 it says the yield for 2015 is 39,025. Do you see that?

17 A. Yes, ma'am.

18 Q. And is that accurate?

19 A. Yes.

20 Q. So that number is a lot lower than even the 2011
through

21 2014. Were you surprised by this yield number?

22 A. Yes, I was.

23 Q. Okay. And what do you attribute that to?

24 A. Dicamba.

25 Q. And it also looks like your revenues were down as
well

986

1 from the prior years?

2 A. Yes. Because of -- when you have smaller
peaches, you

3 get less money for them.

4 Q. Mr. Bader, I'd like to turn to 2016. You've
heard

5 testimony in court that 2016 was the first year that
the

6 Xtend soybean was available for commercialization. Do
you

7 recall that testimony?

8 A. Yes.

9 Q. So what were your expectations about the 2016
growing

10 season?

11 A. The 2016 was we should have been -- with as many
as

12 young trees that were coming into production we should
have

13 been in -- we should have been the 100 -- roughly
125,000

14 bushel approximately.

15 Q. Okay. And when you say the trees were coming into
16 production, are you referring to the trees that you
17 planted --

18 A. Yes.

19 Q. -- in 2010, 2011?

20 A. Yes, ma'am.

2016 21 Q. Did anything happen to the trees in the summer of
22 that altered the production?

23 A. Yes.

24 Q. Okay. What happened?

25 A. I believe we were severely hit with dicamba.

987

1 Q. When do you believe that occurred?

2 A. Approximately around June 20th.

with 3 Q. And why did you think that the trees had been hit

4 dicamba again?

the 5 A. One thing we called -- we did go ahead and call

6 Missouri Plant Board.

7 Q. I'm sorry, say that again.

8 A. We called the Missouri Plant Board.

that 9 Q. But I want to know why -- what was the first thing

again? 10 made you believe that they had been hit with dicamba

had 11 A. It was the same thing. It was the same thing we

Southeast 12 seen in '15, you know, and it was -- everybody in

13 Missouri was screaming about it, and I was too.

2015? 14 Q. So the -- did the trees look like they did in

15 A. Yes.

symptoms on 16 Q. And would you explain to the jury what the

17 the trees were.

normal 18 A. Leaves cupped up, rolled up, which people say, oh,
19 that's normal in the heat of the day, but it's not

the 20 when you look at it at 6:00 o'clock in the morning when

them. 21 temperature is -- and you just got to an inch rain on

orchards? 22 Q. Mr. Bader, how often do walk or drive your

23 A. This time of year every day.

season? 24 Q. And by this time of year you mean in the growing

25 A. Yes.

988

1 Q. And have you always done that?

2 A. Yes.

3 Q. So you said a moment ago that you called the
Missouri
4 Department of Ag; is that right?

5 A. The plant board.

6 Q. Okay. And so when did you do that?

7 A. It was approximately June the 20th.

8 Q. Why did you call them?

9 A. Because we had a severe problem.

10 Q. And that problem was?

11 A. Dicamba.

12 Q. Did you invite them to come out?

13 A. The plant board?

14 Q. Yes, sir.

15 A. Yes.

16 Q. Did they come?

17 A. Yes, they came.

18 Q. When did they come?

19 A. Around June 22nd.

20 Q. And when did you call them?

21 A. June 20th.

22 Q. And so when they came out, what did they do?

23 A. They pulled a leaf analysis, and they pulled leaf
24 samples.

25 Q. Over how much of the orchard did they take
samples?

1 A. Approximately all of it.

2 Q. And did they require anything of you? Did they
get any

3 information from you?

4 A. Yes. You know, we have to fill out an inspection
form.

5 Q. What does that mean? What is an inspection form?

6 A. Well, our claim form where you write in where it's
7 suspected it came from.

8 Q. And so did you identify where you thought it came
from?

9 A. Yes.

10 Q. And which farmers did you think it came from?

11 A. It was Chad Fullerton and Gary Murphy.

12 Q. Okay. Were there any others that you identified?

13 A. Them were the close ones. You know, we just
identified

14 them on a plat map.

15 Q. You said a plat map?

16 A. Yes.

17 Q. And were these the same farmers that you
identified in

18 2015?

19 A. That's who I named, yes.

20 Q. Yes. And what were the plant board's results?

21 A. Until this date I ain't never seen their results.

22 Q. So the Missouri Plant Board never got back with
you with

23 anything?

24 A. No.

25 Q. Do you know why that is?

990

1 A. No, I don't.

2 Q. Mr. Bader, did you invite anybody else to come out
to

3 your farm in 2016?

4 A. Yes.

5 Q. Who was that?

6 A. Dr. Bradley.

7 Q. Okay. And who was Dr. Bradley?

8 A. Dr. Bradley is a weed scientist from the
University of

9 Missouri at Portageville.

10 Q. Okay. And is it Portageville or Columbia?

11 A. Portageville.

12 Q. Okay. If I represent to you that he's in
Columbia?

13 A. Extension, yes.

14 Q. Okay.

15 A. Excuse me, ma'am. He's from the Delta Center,
what we

16 call the Delta Center that does their --

17 Q. Okay. But Dr. Bradley is a University of Missouri
weed

18 scientist; right?

19 A. Yes.

20 Q. And so why did you call Dr. Bradley?

21 A. Because him and Jimmy Heiser and Associates and --
Jimmy

22 Heiser lives right down the road from me, and he said,
I

23 think you need to call Mr. --

24 Q. And you -- and I don't want you to say what
someone

25 said.

991

1 A. Yes.

2 Q. I just want to know why you called Dr. Bradley.

3 A. I called him just to invite him out to see it, to
see

4 the problems.

5 Q. Okay. And what was Dr. Bradley's response? Did
he

6 come?

7 A. It was, you know, probably seven to ten days later
he

8 showed up one day and --

9 Q. Now, why did you want Dr. Bradley specifically to
look

10 at the orchards, though?

11 A. Because he was doing work in dicamba. And he
should

12 have -- in my opinion, I think he was the closest
expert we

13 had to -- you know, to the orchard.

14 Q. And so you said you invited him. And did he make
an

15 appointment to come, or did he just show up?

16 A. He just showed up.

17 Q. And so when he came to the orchard, what did you
do?

18 A. We just walked out in the orchard. I showed him
trees

19 and the symptoms.

20 Q. How much of the orchard did you allow him to see?

21 A. He -- I told him he was welcome to see all he
wanted,

22 but he said he had seen enough.

23 Q. About how long was his visit?

24 A. Approximately 30 minutes.

25 Q. And were there -- were there some meetings that
occurred

1 in that summer about dicamba?

2 A. Yes, in late July.

3 Q. Did you attend any of that?

4 A. Yes, I did.

5 Q. So earlier there was some testimony about a
meeting in

6 Portageville. Do you remember that from Dr. Boyd
Carey's

7 testimony?

8 A. Yes.

9 Q. Did you attend that meeting?

10 A. Yes, I did.

11 Q. And do you know whether anybody from Monsanto was
at

12 that meeting?

13 A. No, ma'am.

14 Q. So did you speak with anybody that you thought
maybe was

15 from Monsanto?

16 A. No, ma'am.

17 Q. How did you find out about the meeting?

18 A. It was advertised -- it was called Dicamba
Dilemma. It

19 was advertised in the paper. And there was several
20 concerned growers in the area, grow crop farmers, that
told

21 me they were going to attend it too.

22 Q. And what was your understanding of the purpose for
this

23 meeting?

24 A. It was to educate farmers on spraying dicamba.

25 Q. Were you pretty upset by the time you went to this

993

1 meeting?

2 A. Fairly upset, yeah.

3 Q. So do you remember who presented at this meeting?

4 A. It was pretty well put on by all the weed
scientists at

5 the Delta Center. Kevin Bradley was pretty well the
-- he

6 gave his presentation.

7 Q. And what was his presentation about?

8 A. He showed cupped up crops, and he showed the --
while he

9 was at my orchard, he took pictures of peach trees.

10 Q. So is this the presentation where Dr. Bradley
showed the

11 train wreck photo that Dr. Carey testified about?

12 A. Yes.

13 Q. And but you testified that he also showed pictures
of

14 your peach orchard; is that right?

15 A. Yes.

16 Q. Do you remember the subject of -- like the topic
of his

17 presentation?

18 A. Yes.

19 Q. What was it?

20 MS. MILLER: Objection, Your Honor.
Hearsay.

21 THE COURT: This is just the subject of
22 presentation that he was there.

23 MS. MILLER: The link, Your Honor. The fact
that

24 he was there and presented I have no problem with.
It's just

25 talking about what he talked about.

994

1 THE COURT: Overruled.

2 BY MS. RANGLES:

3 Q. Mr. Bader, you can answer, sir.

4 A. It was this here when stuff likes this happens, it
gives

5 the whole farming community a black eye.

6 Q. Well, but, Mr. Bader, what I'm asking specifically
is

7 what was the subject of his presentation, the topic?

8 A. The dicamba.

9 Q. Okay. Mr. Bader, did you -- do you remember
there

10 being anybody else there from -- anywhere in the

Missouri

11 Department of Ag, or anything like that, presenting?

12 A. Yes. Paul Bailey.

13 Q. And who was Mr. Bailey?

14 A. Paul Bailey is with the Missouri Plant Board.

15 Q. And do you remember the subject of his
presentation?

16 A. Yes. He was -- he was talking about all the
complaints

17 that were being turned in. And some days it was as
high as

18 30 or 40 a day turned in.

19 Q. What was your understanding of why the meeting
occurred

20 in Portageville?

21 A. Because there was a -- there was trouble brewing.

22 Q. Mr. Bader, did you call Monsanto in 2016?

23 A. Yes.

24 Q. Why would you call Monsanto in 2016?

25 A. I called them to complain and invited them to the
farm.

995

1 Q. Do you remember when you called?

2 A. The first time it was around the 13th or 14th of
July.

3 Q. And how long was it between when you first noticed
the

4 symptoms in 2016 to when you called?

5 A. About three weeks.

6 Q. Is there any reason you waited three weeks to
call?

7 A. Do what?

8 Q. Is there any reason in particular you waited three
weeks

9 to call?

10 A. No, ma'am.

11 Q. So when you called you said the first time, who
did you

12 speak with?

13 A. I do not -- the first time I called I guess crop

14 information.

15 Q. I'm sorry, say that again.

16 A. It was crop information.

17 Q. Okay. Is that like a toll free number?

18 A. Like a toll free number, yes.

19 Q. Where did you get that number?

20 A. It was off of -- I think it was off of an Xtend
label.

21 Q. Is that the same number you called in 2015?

22 A. I called -- I called customer service in 2015.

23 Q. And so when you called in 2016 this first time,
tell the

24 jury what you said.

25 A. I was -- I wasn't a very likeable guy. I
complained to

1 them about the damage of -- to my orchard and what it
was

2 doing. We had other problems. I had -- I got a
little

3 small pecan orchard, and all the pecans had fell off.

4 Q. Mr. Bader, were you seeing damage to anything
other than

5 peach trees?

6 A. Yes. We had noticed some damage on soybeans.

7 Q. Did you see any damage to any of your other fruit
trees?

8 A. The peach trees were terrible, and then the apples
and

9 pears, the alfalfa.

10 Q. I'm sorry. So you said the first call. Was there
11 another call?

12 A. Yes. There was another call.

13 Q. Did you call Monsanto, or did they call you?

14 A. I called them.

15 Q. Do you remember about when that call was?

16 A. It was approximately August 22nd through the 24th,
17 somewhere in there.

18 Q. Why did you wait so long between calls?

19 A. I was giving them the benefit of the doubt.

20 Q. So when you called the second time, who did you
speak

21 with?

22 A. Nobody in particular, but then they took my
number, and

23 they returned the phone call.

24 Q. Do you remember who returned the phone call?

25 A. Yes. It was Boyd Carey.

997

1 Q. Do you ever remember talking to any Monsanto
lawyers?

2 A. Not really.

3 Q. Okay. Mr. Bader, when you talked to Dr. Carey,
do you

4 remember about what date that was?

5 A. Yes. It was in August. I want to say August
20th,

6 20ish, somewhere in there.

7 Q. And when Dr. Carey, called, why did he tell you he
was

8 calling?

9 A. Do what, ma'am?

10 Q. Why did Dr. Carey tell you he was calling?

11 A. Because he was told to give me a call.

12 Q. Did he say who told him to call?

13 A. No.

that 14 Q. And tell the jury what you said to Dr. Carey on
15 call.

You 16 A. I told him all hell was going to break loose.

17 know, we had damaged peach trees. We have damaged --
18 there's 75,000 acres plus beans damaged. And --

19 Q. What was Dr. Carey's response?

well -- 20 A. He really didn't respond. You know, he said,

was not 21 he said, we're taking more or less -- more or less it
22 a good response.

the 23 Q. Did you invite Dr. Carey to come down and look at
24 orchard?

25 A. Yes.

998

1 Q. What was his response?

2 A. More or less that wasn't his division.

3 Q. Did you ask him to send somebody else?

4 A. Yes.

5 Q. And what was his response to that?

the 6 A. The same thing, that they didn't have the money or
7 manpower.

8 Q. On that first call to Dr. Carey did you identify
what
9 dicamba herbicides you thought were being used?
10 A. Yes.
11 Q. What did you say?
12 A. I said it could have been Banvel. It could have
been
13 Clarity.
14 Q. So you didn't say you knew. You just said could
have
15 been?
16 A. Yes.
17 Q. Was there another call to Dr. Carey -- with Dr.
Carey?
18 A. Yes. There should have been two calls to him.
19 Q. So --
20 A. One where he called me back, and then where I
called
21 him.
22 Q. Why did you call him for the second call?
23 A. Like I said, I was giving him the benefit of the
doubt.
24 I think they just weren't going to do a darn thing, and
I
25 kind of advised him I was going to seek an attorney and
come

1 after them.

2 Q. Now, on that call did you tell Dr. Carey that they
3 should not have put out a trait without chemistry?

4 A. Yes.

5 Q. Did you also tell him that you thought they were
using
6 it as a testing ground?

7 A. Yes.

8 Q. Did you also tell him that you had 12 acres of
pecan
9 trees killed?

10 A. I said damaged.

11 Q. You said damaged. What was Dr. Carey's response
during
12 that call?

13 A. More or less that the farmers had broke the law,
and
14 they didn't have no control over the farmers.

15 Q. Did you respond to him in any way about that?
What did
16 you say?

17 A. I said, yes -- I said in a nice way that was a
lie,
18 because eight, ten years earlier there was a Monsanto
rep on
19 every street corner or policeman or whatever we -- a
lot of
20 people call them policemen trying to catch everybody
pirating
21 the seed.

22 MS. RANGLES: Your Honor, may I approach?

23 THE COURT: Yes.

24 (Proceedings were held at side bar, outside
the
25 hearing of the jury.)

1000

1 MS. RANGLES: I'm sorry, Your Honor. Mr.
Bader,
2 has blood sugar issues, and I can tell he is really
fading.
3 We had to take a little bit of a break during his
deposition.

4 MR. MANDLER: Yes. You said that during the
5 deposition.

6 MS. RANGLES: So we need to take a little bit
of a
7 break.

8 THE COURT: Oh, sure.

9 (Proceedings resumed in open court.)

10 THE COURT: Okay. We're going to take a
break for
11 about 10 minutes. Remember the admonition I've given
you
12 not to discuss the case. You can go to the jury room,
and
13 we'll bring you out shortly.

14 And you may step down now.

15 (Jury out.)
16 (Witness steps down from the stand.)
17 (Proceedings stood in temporary recess.)
18 (Proceedings resumed in open court.)
19 (Jury in.)
20 THE COURT: Please be seated then.
21 You can continue.

22 BY MS. RANGLES:

23 Q. Mr. Bader, do you remember there being a second
meeting
24 in Portageville of the summer of 2016?

25 A. Yes, ma'am.

1001

1 Q. And what was that second meeting about?

2 A. I was invited to it. It was a Missouri
Department of

3 Agriculture meeting on the meet -- on the -- on
dicamba.

4 Q. And was it at the same location as the meeting
that was
5 in late July?

6 A. No, ma'am. I think it was a different location.
I
7 think it was at Rone Hall.

8 Q. I'm sorry?

9 A. I thought it was at Rone Hall.

10 Q. Was it in Portageville?

11 A. Yes.

12 Q. And do you remember who all spoke at that meeting?

13 Well, let me break it down for you.

14 Do you remember whether Monsanto attended that
15 meeting?

16 A. Yes.

17 Q. Do you remember who from Monsanto was there?

18 A. No, ma'am.

19 Q. Did a person from Monsanto speak?

20 A. Yes.

21 Q. What did they say?

high 22 A. Just more or less that farmers needed this new
23 yield with Xtend crops.

24 Q. Did he say anything else?

25 A. Nothing to my --

1002

1 Q. Do you remember anyone else who presented at that
2 meeting?

3 A. Yes. Kevin Bradley was there.

4 Q. And what was the subject of Dr. Bradley's
presentation?

a
5 A. I'll be honest with you, I come in, and I was just
6 little bit late showing up at this meeting.
7 Q. And that's okay. Did you also speak at that
meeting?
8 A. Yes. I was called up.
9 Q. Why did you decide to speak at the meeting?
10 A. Senator Don Roney invited me. And he's -- he was
on
11 the judicial committee, and he invited me to speak.
12 Q. Did you voice your concerns about the dicamba
system?
13 A. Yes, I did.
14 Q. Now, Mr. Bader, did you attempt to do anything to
bring
15 your trees back to health in 2016?
16 A. Yes.
17 Q. Okay. Did you do the same thing that you had
done in
18 2015 or something else?
19 A. After the 2016 we started a little earlier, and
then we
20 had people sharing their ideals. And in the fall after
we
21 got done picking what small crop we had, we started --
we
22 started putting our micronutrients in and fertilizer to
them,
23 because I felt and from experience I think we needed to
beef
24 our buds up going into winter, because our bud crop --

you

is 25 know, our bud crop, our peach crop made for next year

1003

think 1 usually made in late August, early September. And I

beef 2 the way the trees looked we needed to, you know, shoot,

3 them up going into winter.

yield? If 4 Q. And speaking of your 2016 crop, what was your

yield 5 we could put Exhibit 2195 back up. It says your field

6 was 67,682 for 2016, Mr. Bader, is that --

7 A. Yes.

8 Q. And the number it has for your revenues about

9 2.3 million; is that correct?

10 A. That's correct.

11 Q. Okay. Let's turn to 2017. You've been hit with

for 12 dicamba two years in a row. What was your expectations

13 your 2017 crop?

14 A. The expectation was high.

experienced 15 Q. Now, was why it high even after what you had

16 in '15 and '16?

17 A. Because all the hearsay, all the talk was these

new

18 dicamba formulations would stay put. They wouldn't

19 volatilize. They wouldn't walk off. They more or
less

20 ensured the farmers that they had a product here that
21 wouldn't volatilize.

22 Q. And did you believe that?

23 A. Yes, I did.

24 Q. Did you do any more tree plantings in 2015 and
2016?

25 A. Yes. In 2017, as beat up as the orchards had
gotten in

1004

1 '15 and '16, we planted approximately 11,000 trees in
2017.

2 Q. And so despite what happened in '15 and '16 you
thought

3 it made sense to plant more trees than that in '17?

4 A. Being that they were going to come out with a
5 formulation, and the way I seen our trees got beat up,
to

6 stay in business, we needed to plant new trees.

7 Q. Were you seeing the fruits of your labor from
those

8 extra plantings in 2010 and 2011? Had you started to
see any

9 of that come to fruition yet?

were 10 A. Yes. They were coming -- they were coming in. We

11 starting to see our production come.

12 Q. Okay. What was your -- was your production being
13 affected negatively in -- by 2017?

14 A. Yes.

15 Q. And was that because of dicamba?

16 A. Yes.

17 Q. So in 2017 you started with high expectations.
Did you

18 end with high -- or feelings of high hopes?

19 A. No.

20 Q. Okay. Why is that?

21 A. Because we started getting -- showing multiple
symptoms

22 of dicamba.

23 Q. Okay. Were there farmers around Bader Farms --
I'm

24 just going to say within five miles of Bader Farms.
Were

25 there farmers within five miles of Bader Farms who were

1005

1 planting Xtend cotton and Xtend soybean in 2017?

2 A. There were several.

3 Q. Could you tell the jury who those folks were?

4 A. Chad Fullerton, Gary Murphy, Jeff Todd, Bruce

Dawson.

5 Q. And were they spraying dicamba over the top of
their

6 Xtend crops that summer?

7 A. Yes.

8 Q. Mr. Bader, what did the trees look like in 2017?

9 A. By the end of -- by the first of August the trees
10 started -- it took a beating.

11 Q. Did you notice any symptoms that you thought were
12 dicamba symptoms on the trees?

13 A. Yes, we seen them.

14 Q. What were the symptoms?

15 A. Just curled up, kinked up, you know, dead terminal
16 limbs.

17 Q. Did you call the Missouri Department of Ag in
2017
18 after you suspected dicamba exposure on the trees?

19 A. No -- yes, I did, but he said there was -- wasn't
no

20 need to -- we didn't fill a complaint out. He just
took a

21 bunch of pictures because he said because I was still
-- I

22 told him, I said I hadn't heard nothing back from '16
yet,

23 and he said it may be two or three years before we give
you

24 results about it.

25 Q. Who is "he"?

1006

1 A. That was Mr. Hawse.

2 Q. And --

3 A. Excuse me, H-a-w-s-e.

Plant
4 Q. And is he someone that works with the Missouri
5 Board Division of the Department of Ag?

6 A. They -- he resigned shortly after that.

7 Q. So he doesn't work there anymore, but he did at
the
8 time?

9 A. Yes.

10 Q. So when did they come out?

11 A. He was coming by about once a week.

12 Q. Why was he coming by?

13 A. He was in the area doing, you know -- he was in
the area
14 doing -- you know, doing complaints and just taking
pictures.

15 Q. Is it your testimony that he was in the area doing
16 inspections on other farms?

17 A. He was doing inspections and taking pictures and
--

18 Q. Mr. Bader, as I asked you with respect to '16 and
-- or

19 '15 and '16, did you do anything to help nurse the

trees back

20 to health?

21 A. Yes.

22 Q. Did you do the same thing that you had done the
prior

23 couple of years?

24 A. Yes. We done -- we done pretty well the same
except we

25 done some changing. We changed up. We started
putting a

1007

1 little more zinc, and then we started feeding them with
some

2 iron and some other micronutrients.

3 Some of these were just -- some of the
different

4 chemical reps -- I mean, not chemical reps, but fellows
who

5 were saying what they were seeing a better response on
their

6 soybeans with.

7 Q. And now what companies did they work with?

8 A. Well, you had C-Cat. One of them was Helena.
Agrigro.

9 Q. And are these companies whose opinions you have
valued

10 in the past?

11 A. Yes.

12 Q. So you trusted their advice?

13 A. Yes. Yes. I trusted their advice. Because a
lot of
14 them had been in the micronutrient business for, you
know,
15 25, 30 years.

16 Q. So, Mr. Bader, in 2017 did you notice any what I
will
17 call overall deterioration of the trees?

18 A. Yes.

19 Q. Could you describe that to the jury?

20 A. We had several trees that come out -- leaf out and
had a
21 good peach trial. And usually -- they just started
dying.
22 The leaves would fall off. And they just started
dying.

23 Q. Were all of the trees affected?

24 A. Mainly it was in -- you know, when we talked about
our
25 water areas -- water zones -- well, we talked about our

1008

1 waterways. We use them as airways. And there are
areas that

2 when the drift walks in, you know, a volatilization
walks in,

3 it's the valleys that it settles in worse. It may be a

4 valley. It may be a hillside.

5 Q. Were young trees affected as well?

6 A. Yes.

7 Q. So, Mr. Bader, if we look at Plaintiff's 2195, it
looks

8 like the yield in '17 was a little over 60,000; is that
9 right?

10 A. Yes.

11 Q. And your revenues were almost 2.3 million; is that
12 right?

13 A. Yes.

14 Q. Okay. Let's talk about 2018, Mr. Bader. I'm
going to

15 ask you again what were your expectations for the 2018
16 growing season?

17 A. The expectation was we was, you know, expecting as
high

18 as 70 percent of the crop.

19 Q. Okay. And what would that have translated into
in

20 yield?

21 A. We should have been up, pushing the 100,000
bushel.

22 Q. So your expectations were high going into 2018; is
that

23 right?

24 A. Yes.

25 Q. Okay. Was there a point when you changed your
mind

1 about having high expectations for 2018?

2 A. Yes.

3 Q. When did that happen?

4 A. It happened in late May.

5 Q. Why was that?

6 A. Late May, early June.

7 Q. Tell the jury why that was.

8 A. We had -- you know, of course, we had a freeze.

We had

9 a couple of light freezes. And, you know, I spent a

long

10 time -- well, several days in the orchard evaluating

the

11 crop, because there's various things that you have got

to

12 have done before the 1st of June. That's whether

you're

13 ordering boxes or getting your orders in.

14 And I felt real comfortable about -- but it was

a

15 Sunday afternoon. My grandson was there. And we got

on

16 the side by side, and he wanted a ripe peach. And so

17 anyway -- excuse me, but I'm human.

18 But, anyway, we got on the side by side, and we

went

We had 19 for a little ride. And I couldn't believe my eyes.
it. 20 peaches the size of baseballs, everything we put into
-- my 21 The trees were literally throwing the fruit. And the
22 expectation for that peach crop went to heck.
I 23 And he said, What are we going to do now since
thing that 24 didn't find the right peach? And I said, the best
25 I know to do is just to go fishing, so we went fishing.

1010

about a 1 Q. And, Mr. Bader, you said something a moment ago
little bit. 2 light freeze, and we're going to get to that in a
suspect 3 But in the summer, say June and July of 2018, did you
4 additional dicamba injury occurred?

in 5 A. Yes. Like we stated earlier in '17, we come in
shape. 6 '17 -- finishing up '17 the trees were in terrible

7 Q. And I see the yield for 2018 was just right around
8 12,000 bushels; is that right?

9 A. Yes.

10 Q. As you had done in prior years, Mr. Bader, did you

also

and 11 try to do some mitigation efforts with micronutrients

12 that kind of thing?

beef our 13 A. Yes. You know, like I said, we were trying to

14 blooms up, you know, for the wintertime.

exposure, 15 Q. Mr. Bader, after three, four years of dicamba

close 16 what was the overall condition of your orchard by the

17 of the growing season of 2018?

18 A. There was several dead spots in the orchard.

for 19 MS. RANGLES: Your Honor, permission to show

20 the Court, Mr. Bader and counsel my next Exhibit 2116.

21 MS. MILLER: 2116?

22 MS. RANGLES: 2116.

23 MS. MILLER: Thank you.

24 BY MS. RANGLES:

someone 25 Q. Mr. Bader, back in 2018 did you -- did you hire

1011

orchard? 1 to come out and shoot some aerial footage of the

2 A. Yes, we did.

3 (Plaintiff's Exhibit No. 2116, Aerial Footage

4 August 22nd, 2018, was identified.)

5 BY MS. RANGLES:

6 Q. Do you recall that being about August 22nd of
2018?

7 A. Yes.

8 Q. And have you had a chance to view Plaintiff's
9 Exhibit 2116?

10 A. Yes.

11 Q. And does this video reflect your memory of what
the
12 orchard looked like in August of 2018?

13 A. Yes.

14 MS. RANGLES: Your Honor, permission to give
enter
15 this into evidence.

16 MR. MILLER: No objection, Your Honor.

17 MR. MANDLER: No objection.

18 THE COURT: Admitted.

19 (Plaintiff's Exhibit No. 2116, Aerial Footage
20 August 22nd, 2018, was received.)

21 BY MS. RANGLES:

22 Q. So, Mr. Bader, I'd like for you to walk through
this
23 video. And so right here at the beginning of the
video
24 where are we?

25 A. We're sitting right behind on the west side of the

1012

1 packing shed.

2 Q. Okay. And so which orchard is this that we're
seeing

3 right now?

4 A. It's what we call -- we refer to as the packing
shed.

5 Q. And I see this area under here where there doesn't
seem

6 to be very much in the way of grass. Is that where
your weed

7 free strips are?

8 A. Yes. That's where we got good canopy, and it just
keeps

9 the grass shaded out.

10 Q. So I see some spots where there's some trees that
appear

11 to be missing. And why in those areas do you think
there

12 were trees missing?

13 A. That's what we considered, you know, the lower
waterways

14 where the air flows -- water flows off of it.

15 Q. Okay. Is all of that waterways?

16 A. Well, it's -- you can see that's kind of a bowl
there.

17 Q. Uh-huh.

18 A. It's -- it creates a pocket that catches -- the

water

19 runs off of -- it can catch -- it's a trap, you know.

20 Q. And so this area that I've just circled here, is
that

21 also what you're talking about, sort of the water
catching in

22 a trap?

23 A. Yes.

24 Q. Okay.

25 A. Or where air traps.

1013

1 Q. Thank you. So which orchard is this?

2 A. This is here by the packing shed.

3 Q. Mr. Bader, here it appears that these trees are
smaller

4 than these trees. Were they all planted at the same
time?

5 A. Yes. These trees were all planted at the same
time.

6 Q. So why is it -- if you could pause it for just a
moment.

7 Why is it that the trees in this area it seems that
even

8 that -- the drone is having difficulty picking them up?
Why

9 is that?

10 A. We started on this orchard, and we were what we
call

the 11 summer pruning. You know, we go through, you can see
see the 12 ground has been fairly freshly collated, and you can
them 13 trees what they do when they go in there, and they weed
cut the 14 then and what we call summer pruning. What we do is
farm -- 15 center out and open it and getting the trees up, the
16 farm the trees.

the 17 Q. And what are we seeing, Mr. Bader, the trees in
Are 18 background there, the larger trees, what are those?
19 those just to grow, or what is that?

20 A. Just to the west or the top of the picture?

top 21 Q. Yes, sir. And is that a different orchard at the
22 of the picture there too?

-- as 23 A. That's what we call Miller -- the one to the west
what 24 we're looking west here on this picture, that would be
25 we call Miller's Orchard.

1014

1 Q. And what's this in this area?

2 A. That's corn.

3 Q. Is that yours?

4 A. Yes.

5 Q. Now, at this time of year what would you--all
ordinarily

6 be doing? Are you still picking peaches at this time?

7 A. We were -- we were picking a few peaches, but
that's why

8 I -- the peach production this time of year was being
-- as

9 low as it was we had too many other chores to do
besides

10 picking peaches.

11 Q. So at this point in 2018 were you done picking all
the

12 peaches that there was to pick?

13 A. We just -- we just had a handful left. If we
could roll

14 this picture back.

15 Q. Mr. Bader, the trees here, about how old are those
16 trees?

17 A. Them trees were planted in 2017.

18 Q. But this was 2018?

19 A. Yes.

20 Q. And what about these trees, when were they
planted?

21 A. They were planted in 2018.

22 Q. What are we seeing here, the larger trees and the
aerial

23 through there? Which orchard is that?

there's 24 A. Well, this is you're taking a picture from --
end 25 the packing shed. We're taking a picture from the west

1015

1 of what we call the packing shed.

2 Q. And is that a pond that we're seeing right now?

3 A. Yes.

what's 4 Q. What about this orchard to the immediate left,
5 that?

2018. 6 A. Yes. You can see them trees were planted in

7 Q. And is all of this your orchards, all of these?

8 A. Yes, ma'am.

old are 9 Q. And the ones at the top of the screen here, how
10 these here, if you know?

11 A. They should have been planted around 2011 or '12.

12 Q. Which orchard is this, Mr. Bader?

the 13 A. This here is there's the packing shed right behind
14 packing shed.

15 Q. Okay. So it's still the packing shed.

grass, 16 So there should be trees here where there's

17 and I don't see anything? Is there ordinarily trees?

18 A. No. There's -- that's where we normally got our
peach
19 trailers -- empty peach trailers and stuff parked.

20 Q. All right. Thank you.

21 MS. RANGLES: And, Your Honor, also
permission to

22 show the Court and Mr. Bader and counsel Plaintiff's
23 Exhibit 2117.

24 BY MS. RANGLES:

25 Q. Mr. Bader, I'll ask you the same question I did a
few

1016

1 minutes ago. You had some someone come out and do
aerial
2 footage of your orchard in August of 2018; is that
right?

3 A. Yes.

4 (Plaintiff's Exhibit No. 2117, More Aerial
Footage
5 of 2018, was identified.)

6 BY MS. RANGLES:

7 Q. And have you seen the video footage in Plaintiff's
2117?

8 A. Yes.

9 Q. Is this an accurate representation of the way your
10 orchards looked in August of 2018?

11 A. Yes.

admit

12 MS. RANGLES: Your Honor, permission to

13 Plaintiff's Exhibit 2117 into evidence.

14 MR. MILLER: No objection.

15 MR. MANDLER: No objection, Your Honor.

16 THE COURT: Admitted.

Footage

17 (Plaintiff's Exhibit No. 2117, More Aerial

18 of 2018, was received.)

19 BY MS. RANGLES:

right

20 Q. All right. Mr. Bader, tell the jury where we are

21 here in the video.

22 A. We would be on the north end of what we call the

23 Miller's farm.

sticks.

24 Q. And I see some trees here that just look like

25 What's happened to those trees?

1017

1 A. That's after four years of dicamba drift on them.

and

2 Q. Yesterday you were talking about Crowley's Ridge

any

3 some of the elevation issues and things like that. Is

4 of this farm impacted by the topography at all, I mean,

the

5 different elevations?

can

6 A. Yes. This is part of Crowley's Ridge. If you

after --

7 look at the background one, it's only about a mile

until

8 you know, looking to the far over that's farm ground

9 you drop off that treetop ridge.

10 Q. How old is this orchard here?

rest of

11 A. These ones were planted in 2011, and up here the

12 them were planted in 2012.

13 Q. What's this area, Mr. Bader?

14 A. That's soybeans.

15 Q. Who owns those --

16 A. I do.

those?

17 Q. -- or who farms those? I'm sorry, who farms

18 A. I do.

toward

19 Q. And which orchard is this in the background there

20 the top?

21 A. This would be what we call Walford's.

22 Q. And is that a pond --

23 A. Yes.

24 Q. -- there?

25 What about this orchard, what is that?

Miller 1 A. That would be we're going back on Miller's, the
2 farm.

3 Q. Do you have any of the orchards near your house,
4 Mr. Bader?

5 A. I just have a few pear trees.

6 Q. How far away do you live from where we are right
here?

7 A. I live about seven miles to the west.

8 Q. Is this one of the low-lying areas?

9 A. Yes. That's a -- that's what we call a waterway.

10 Q. I notice you have some trees missing there.

11 And what's this, Mr. Bader?

12 A. That's soybeans.

13 Q. Who owns or farms those?

14 A. I do.

15 Q. How old is the orchard we're seeing there?

16 A. They would plant it in -- I'm pretty sure they
were
17 planted in '15.

18 Q. So when should this orchard have been producing?

19 A. We picked a few peaches off of it in '18.

20 Q. Not to jump ahead too much, but what about '19,
did you

21 pick any of them off of this orchard?
22 A. In '19 we -- they were -- we picked several
bushels off
23 of it.
24 Q. Mr. Bader, how long have you been farming these
orchards
25 that we're seeing this morning?

1019

1 A. How long I been farming this farm?
2 Q. Yes.
3 A. Since '92.
4 Q. This orchard here, which one is that one, if you
know?
5 A. This one over here we refer to it as lost orchard.
6 Q. Is there any significance to that name?
7 A. It's really just an old nickname. It's really
under
8 farm number 4541.
9 Q. Mr. Bader, what we're seeing, is this typical of
what
10 your orchard looks like?
11 A. This right here is -- it's sickening right here,
because
12 all these trees were planted the same day. These
trees are
13 the same age. They were planted in '17.
14 Q. They were planted in '17, and by '18 you were

seeing

15 trees dead?

16 A. We were seeing trees dead, and down at the lower
end you

17 can see the trees are part yellow, stunted. And, you
know,

18 when we're sitting here looking at this picture, you
know,

19 we're breaking straight south, we're looking pretty
well

20 straight south, and it's -- you can see it's a big kind
of

21 open valley that drops off into cotton ground. You
can see

22 the little shed. That's our pump house for -- that's
our

23 irrigation well we drip irrigate these orchards with.

24 Q. Now, Mr. Bader, we saw some soybean fields in the
video

25 that you said are yours. What kind of soybeans do you

1020

1 plant?

2 A. In '18?

3 Q. Yes, sir.

4 A. They were just Roundup Ready.

5 Q. Okay. Did you plant any Xtend soybeans in '18?

6 A. Yes. I was forced to.

7 Q. What do you mean by that?

8 A. Usually we order our soybean and corn seed in
December
9 of the following -- of the previous year like '17.
And our
10 Roundup Ready beans were -- they were Asgrow 5535.
They were
11 paid for in December.

12 And when it come time two days before they come
to
13 plant -- they were going to be double crop beans.

14 Q. What does that mean?

15 A. They were going to plant after wheat.

16 Q. And so when would you plant them?

17 A. This would have been somewhere around the 17th,
18th of
18 June.

19 Q. Okay. Continue.

20 A. And we called, and he said --

21 Q. Well, I'm sorry, so tell the jury who you called.

22 A. I called a co-op that I had purchased them from,
and,
23 you know, I thought they always told me they said the
seed
24 company said they were going to get them in. And I
said,
25 Well, we're going to need these beans in two days,
three

1 days. It was coming in on a weekend.

2 And he called me back and he said, We can't get
you
3 any of them Roundup Ready beans, but they said they
were
4 going to replace them with the same number, which was
the
5 55X7 Xtend beans, and they were going to cost you an
extra
6 \$18 a bag or unit.

7 So, you know, getting them this late in the
year you
8 just -- beans were getting scarce. That's how we ended
up
9 having to plant some Xtend beans.

10 Q. How many acres did you plant?

11 A. Approximately about 450.

12 Q. And did you want to plant Xtend beans?

13 A. No. I didn't really want to plant Xtend beans.

14 Q. Mr. Bader, let's go to 2019. I'm going to ask
again
15 what were your expectations for your crop in 2019?

16 A. Actually, you know, we should have been up, you
know, in
17 the 100,000 bushel plus.

18 Q. How did your crop turn out in 2019?

19 A. The June, July peaches were good.

20 Q. So when you say -- so when did you start

harvesting in

21 2019?

I 22 A. We started harvesting, oh, our early June peaches

23 think we started harvesting the 5th or 6th of June.

24 Q. And was your harvest at least early on was it
good? How

25 would you describe it?

1022

1 A. It was some varieties were real good. Some were a
2 little bit light.

2019? 3 Q. Did you notice any dicamba symptomology in early

4 A. No. We -- we were pretty -- we didn't notice much
5 symptoms at all in 2019.

that 6 Q. Were there -- was there any weather events in 2019

7 you think maybe either helped or hurt that?

8 A. Yes. 2019 was a wet year.

9 Q. And so how did that help your peach production?

were late 10 A. It went -- it would be on the wet year farmers

11 getting the crop in.

12 Q. What kind of crop?

13 A. Their corn and beans -- I mean, beans and cotton.

14 Q. And when you say beans, you mean their soybeans?

15 A. Yes.

16 purposes of

Q. So did -- did that -- what did that mean for

17 people who were planting Xtend? Were they spraying?

18 A. Yes. They were spraying.

19 Q. When did the spraying start, do you think?

20 where

A. This was in '19 they were under their new laws

21 they could spray up to 30, 40 days after they plant.

22 Q. Okay.

23 A. There's no cutoff date.

24 early

Q. All right. And so, Mr. Bader, you said your

25 yield was better. How about your late yield?

1023

1 practically

A. What we call our August peaches were just

2 zero.

3 trees

Q. Did you notice any dicamba symptoms on your peach

4 in 2019?

5 A. Yes.

6 planted

Q. And, Mr. Bader, you said a moment ago that you

7 soybean in

Xtend soybean in 2018. Did you also plant Xtend

8 2019?

9 A. Yes.

10 Q. How many acres did you plant?

11 A. All seven -- about 110 acres.

12 Q. And you said about 110 acres?

13 A. Everything with Xtend is about 110 acres.

14 Q. So about how many acres then did that mean --

15 A. About 1,800.

16 Q. Okay. Why did you plant almost all your soybean
in

17 Xtend?

18 A. Because under the new label where they would spray
for

19 pretty well like they spray all summer long we planted

20 protection.

21 Q. Did you spray dicamba?

22 A. No.

23 Q. Did you spray dicamba in 2018?

24 A. No.

25 Q. Mr. Bader, what was your yield in 2019?

1024

1 A. About 50,000.

2 Q. So in 2000 -- we talked a little bit about some
things

3 that happened in 2015 and with respect to herbicide

injury

4 early --

5 A. Yes.

few

6 Q. -- in the year, but I want to talk to you about a

You

7 weather-related events from 2015 through '18. Okay.

8 mentioned some hail damage in 2015; is that right?

9 A. Yes.

statement

10 Q. And do you recall that in Mr. Miller's opening

peach

11 he said that approximately 230 acres of Bader Farms

remember

12 orchards were destroyed by hail in 2015. Do you

13 that?

14 A. Yes.

orchards

15 Q. Was 230 some odd acres of Bader Farms peach

16 destroyed by hail in 2015?

17 A. No.

orchard

18 Q. Did there -- was there some hail damage on the

19 in 2015?

20 A. Yes.

21 Q. How would you describe that hail damage?

22 A. The hail damage it done damaged it.

it

23 Q. I mean, but was it excessive? Was it light? Was

24 medium?

mile 25 A. On the 230 acres they're spread over about a two-

1025

consists 1 stretch. And the 230 acres is not one block. It

units 2 of about seven units. And one in particular of the

hit on 3 was the worst hit. You know, when hail hits, it may

field. 4 this end of the field and not the other end of the

the 5 Q. Okay. Does hail damage have any lasting effect on

6 peach orchards?

7 A. No.

8 Q. And what about 2017, was there a freeze in 2017?

9 A. Yes, we had a light freeze.

10 Q. Okay. When did that occur?

11 A. In later March.

12 Q. How did that affect the peach trees?

insurance 13 A. When we have a freeze or hail or whatever, and we
14 suspect it, we got 72 hours to report it to our

15 company.

to 16 Q. So is it your testimony that you have to report it

17 your insurance company?

18 A. Yes.

19 Q. And what happens if you don't report it?

20 A. We could be -- if we did have a claim, they
wouldn't
21 have to pay it.

22 Q. And so if you -- if every time you report
something to
23 the insurance company -- I mean, to the insurance
company
24 does that mean that there's ultimately anything done
about
25 it?

1026

1 A. Usually if they do their -- sometimes they come
out and
2 take a look, and then they do their field -- they
usually on
3 the peaches they do two inspections. One they got to
do an
4 inspection early in the spring, and they do a tree
count.

5 And then they have got to come back in and do a pre-
harvest
6 inspection.

7 Q. So this 2017 freeze when that occurred, did you do
8 anything to try to mitigate the -- any effect on the
trees?

9 A. Yes.

10 Q. What did you do?

11 A. We hit them heavy with what we call Nutri-K.

12 Q. What is that?

13 A. Potassium.

14 Q. Okay. And why would you do that for a freeze?

15 A. We've done it -- we began one, and we were
16 experimenting. And there's a lot of products out there
17 what's called Frost Guard. It will cost you 20, \$25 an

acre

18 where this here was about -- this was a product that

Delta Ag

19 turned out. And he said I think you can see just as

good of

20 results, and it will run you about five bucks an acre.

21 Q. And did you see good results from that?

22 A. Yes. There was -- we seen good results.

23 Q. Did the freeze that you had in 2017 have any

effect on

24 your production?

25 A. Yes, it did, somewhat.

1027

1 Q. Okay. About how much do you think it affected

your

2 production?

3 A. 25, 30 percent.

trees? 4 Q. Did it have any effect on the longevity of the
5 A. No.
6 Q. And you also mentioned or earlier I think you
called it 7 a light frost in 2018.
8 A. Yes.
9 Q. When did that occur?
10 A. In late March, early April.
11 Q. Okay. And so tell the jury why you refer to as a
light 12 frost.
13 A. It was what we call a light frost because it was
spotty, 14 and we had a little bit of wind blowing, which keeps
the air 15 circulating. And it was what we consider spotty
because of 16 the temperature change varied on several different
areas. 17 Q. And did you do anything to try to mitigate any
effect of 18 the light freeze or frost that would have had on your
19 orchards?
20 A. Yes.
21 Q. What did you do?
22 A. You know, we hit them, you know, with our
micronutrients 23 and fertilizer and foliar feed them.

24 Q. And did this light frost have any effect on the
25 longevity of the trees?

1028

1 A. No.

2015

2 Q. Mr. Bader, this hail that we're talking about in

about

3 and freeze in 2017, or this light frost, how would you

would

4 compare those to the -- those big events that we talked

5 in 2007 and the herbicide damage in '08 and 2009? How

6 you compare these other events?

know,

7 A. We've been dealing with this kind of weather, you

almost

8 ever since I've been in peaches, you know, starting

good

9 50 years ago, but we always come out with, you know, a

always

10 crop to -- I mean, and you see the yields. But it's

dicamba --

11 a few little things, but after '15, well, and the

kind of

12 hit with dicamba it's just been a totally different

13 deal to deal with.

going

14 It just -- because you don't know when you're

know,

15 to get hit or how you're going to get hit. And, you

16 we have spent, you know, a chunk of money trying to
keep our
17 trees alive, because, you know, we're kind of trying to
18 salvage the business, and we ain't got much support
helping
19 us with it.

20 Q. Mr. Bader, what do you think Bader Farms' future
is?

21 A. It looks almost nonexistent.

22 Q. Do you think there's any way that Bader Farms can
23 continue with dicamba on the market?

24 A. No.

25 MS. RANGLES: Your Honor, I have no more
questions

1029

1 for this witness.

2 THE COURT: Do you want to take a recess now
then?

3 MS. RANGLES: I suppose so if Defendants
wants to.

4 MR. MILLER: Whatever the Court prefers, Your
5 Honor. I don't know if the witness needs a rest at
this
6 point.

7 THE COURT: That's my only concern, so do you
want
8 to do that?

and do 9 MS. RANGLES: Yes, sir. Let's just go ahead
10 lunch then.
early 11 THE COURT: Okay. We'll take a lunch recess
Is 12 today, and so we'll start, say, at a quarter to 1:00.
13 that all right?
14 MS. RANGLES: That's fine, Your Honor.
15 THE COURT: Is that okay with you-all?
repeatedly 16 Remember the admonition I've given you
or 17 not to discuss the case among yourselves or with others
form 18 permit anyone to discuss it in your presence. Do not
to 19 or express any opinion about the case until it is given
20 you to decide.
at a 21 So we'll reconvene in an hour and 15 minutes
22 quarter to 1:00. Thanks.
23 You may step down.
24 (Jury out.)
stand.) 25 (Witness stepped down from the witness

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

3 THE COURT: Any preliminary matters?

4 MR. MANDLER: Just a couple, Your Honor.

5 I just want to make sure I understand what
the
6 Court's general practice is on demonstratives so I can
be
7 clear. I've had other courts say they can be admitted
and
8 shown to the jury, used in closing, but they don't go
back
9 with the jury because they're demonstratives.

10 I just want to know just so it applies
equally to
11 the Plaintiffs and the Defendants is it your practice
to
12 allow them to go back to the jury room?

13 THE COURT: I would probably allow it, yeah.

14 MR. MANDLER: But it would apply equally to
both
15 sides?

16 THE COURT: Oh, sure. Why would you think
not?

17 MR. MANDLER: Well, but now I don't have to
object,
18 Your Honor, and it will go smoothly.

19 The second issue is you did grant motion in
20 limine -- Joint Motion in Limine Number 23 and 25,
which was

21 no lay opinions. We strayed with a couple of
questions
22 like, What do you think caused the yield loss? And
then a
23 couple of them, you know, what -- you were asking for
dicamba
24 symptoms.

25 THE COURT: I was paying attention.

1031

1 MR. MANDLER: What?

2 THE COURT: I was paying attention.

3 MR. MANDLER: I understand, but I didn't want
to
4 pop up and object every time. I just wanted to make it
clear

5 that is outside of the bounds. You can't ask --

6 THE COURT: Well, but you're going to have to
7 object on that. I mean --

8 MR. MANDLER: All right. Your Honor, then we
will.

9 THE COURT: Right. I mean, I was paying
attention
10 and waiting, and I didn't hear anybody.

11 MR. MANDLER: But, yeah, I understand.

12 THE COURT: Okay. All right. Thank you.

13 MR. RANGLES: Your Honor, just I might -- it
might

14 be a good time for me to tell the Court about schedule
wise.

15 THE COURT: Yeah. Let's talk about that.

16 MR. RANGLES: Your Honor, always a little bit
of a

17 guessing game in lengths of witnesses, but Mr. Bader
will

18 conclude. If we get to him, Ford Baldwin will start
this

19 afternoon. And he will continue in the morning.

20 We have one video issue that is two hours,
but it

21 may go down to a minute and a half. We will visit with

22 Mr. Mandler about that.

23 THE COURT: Well, I am intrigued by that
progress.

24 MR. RANGLES: And, Your Honor, we have
another

25 two-hour video issue with the cooperation of Mr. Miller
we're

1032

1 just going to introduce the documents that would have
been

2 admitted per that --

3 THE COURT: Video.

4 MR. RANGLES: -- video then preserving
objections

5 in the same fashion we've been doing it.

6 All that being said, I think chances are very
good
7 we will close midday Friday. We should certainly
close
8 Friday. I can't imagine a scenario where we wouldn't.
9 MR. MILLER: I can't imagine --
10 MS. RANGLES: Okay.
11 MR. MILLER: -- you guys -- so you got Dr.
Baldwin
12 and then you have Dr. Guenther; right?
13 MR. RANGLES: That's right. That's right.
14 MR. MILLER: And maybe this other video?
15 MS. RANGLES: And maybe this video.
16 MR. MILLER: I assume we'd be done on Friday
then
17 with their case.
18 THE COURT: So will you be ready for a
witness or
19 so?
20 MR. MILLER: It depends what time we end on
Friday,
21 Your Honor. I mean, if we're mid afternoon, I prefer
to get
22 him fresh on Monday, to be honest with you.
23 THE COURT: Well, do you have somebody that
could
24 go for a couple of hours? I just hate to lose half a
day if
25 that ends up happening.

1033

could do

1 MR. MILLER: We have a short -- yeah, we
2 that. It's not going to be very long; right? We have
3 short video excerpt from Cody Bader that we could play
4 afternoon if there's time.

a

Friday

don't

5 THE COURT: Okay. Well, obviously, I really
6 want to give up half a day because we want to finish by
7 following week.

the

8 MR. MILLER: Yes, Your Honor.

problems

9 THE COURT: And I can anticipate a lot of
10 with instructions.

11 MR. MILLER: Yes. I will, Your Honor.

think

12 THE COURT: On the other hand, now that I
13 about it I think that would work, because we'll have to
14 with the motions.

deal

15 MR. MILLER: Directed verdict, yes.

then.

16 THE COURT: Yeah. Okay. That should work

whatever

17 MR. MILLER: I'll try to be ready to go

18 way you want then, Your Honor.

19 THE COURT: Okay. Great. We'll be in recess
then.

20 MR. HOHN: Your Honor, just a quick preview,
we

21 have one exhibit issue relating to Dr. Ford Baldwin,
and it's

22 likely we're probably not going to get to him until
tomorrow,

23 but we do want to address it with you in advance. This

24 relates to the motion that Monsanto filed. And then
also

25 BASF filed a motion regarding that same exhibit. And
so we

1034

1 can talk about it. We just need to talk about it
before Dr.

2 Baldwin hits the stand.

3 THE COURT: Well, let's do it now.

4 MR. HOHN: Okay. So this, Your Honor,
relates to

5 two exhibits that Plaintiffs listed for use with Dr.
Ford

6 Baldwin, Numbers 1364 and then 2019. I have a copy
for you

7 of 1364, which is probably the best one to use.

8 MS. RANGLES: We're not going to use 1364.

9 MR. HOHN: You're not going to use 1364?

10 MR. RANGLES: 2019.

11 (A discussion was held off the record.)

12 MR. HOHN: Maybe we can talk about it over
lunch.

13 THE COURT: Sure.

14 MR. HOHN: And then we can figure this out.
And if

15 we still have an issue, maybe we can address it before.

16 THE COURT: Sure. That's fine. Yeah.

17 MR. HOHN: Thank you.

18 (A lunch recess was taken.)

19

20

21

22

23

24

25

1035

1 C E R T I F I C A T E

2

3 I, Alison M. Garagnani, Registered Merit
Reporter

4 and Certified Realtime Reporter, hereby certify that I
am a

