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15  
16 Proceedings recorded by mechanical stenography;  
transcript produced by computer-aided transcription.

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1           *(Proceedings convened in open court at 1:21 p.m.)*

2           *(Following conducted outside presence of jury:)*

3           **THE COURT:** Let me review what we'll do. You have a  
4 video first after this witness? You can come up.

5           **MR. MANDLER:** Your Honor, good question. After this  
6 witness we intend to read into evidence a request for  
7 admission and response from Monsanto as it relates to  
8 control over the release of the seed.

9           **THE COURT:** Well, I thought there was video, too?

10          **MR. MANDLER:** I just want to say what's next. I'm  
11 not -- I want to make sure if there's any issues from that.  
12 From there, we're going to go to the video.

13          **MR. RANGLES:** We object to the request for admissions.  
14 I mean it's a document generated during trial that we saw  
15 for the first time, I believe, last night; is that correct?  
16 It was generated last night. I think it was part of the  
17 11:59 dump, or thereabouts.

18          **THE COURT:** Why don't you wait 'til tomorrow morning.

19          **MR. MANDLER:** Okay. But I want to respond to that  
20 because it's not accurate. It's nothing more -- there was a  
21 stipulation that Your Honor has seen. It was a stipulation  
22 that was submitted in support of our motion in limine on --

23          **THE COURT:** Well, they still get to see it.

24          **MR. MANDLER:** They saw that all we did was take the  
25 stipulation and turn it into a request. We can read the

1 stipulation instead, Your Honor, and there's no -- we don't  
2 have to give notice for that. That's -- the stipulation has  
3 already been agreed to by Monsanto.

4 **THE COURT:** Well, you can do it that way then.

5 **MR. MANDLER:** Pardon me? Okay, we will.

6 **THE COURT:** If you've got a stipulation you can read  
7 the stipulation.

8 **MR. MANDLER:** All right. We'll do that then at the  
9 close of this and then we'll go right to the video.

10 **THE COURT:** That's an hour-and-a-half?

11 **MR. MANDLER:** The first video's an hour, the second  
12 video's a half-hour.

13 **THE COURT:** You know, we've got a basketball coach and  
14 he wanted to get done early today.

15 **MR. MANDLER:** That's excellent. Good. Very well. We  
16 certainly will.

17 **THE COURT:** Now, you'll finish tomorrow?

18 **MR. MANDLER:** Yes, Your Honor.

19 **THE COURT:** I'm just trying to think. I want to give  
20 them some idea of -- so we might even finish Thursday. I  
21 don't know about rebuttal witnesses.

22 **MR. MANDLER:** I don't know what the rebuttal case is.  
23 I expect working this afternoon and whatever time we have  
24 left on Wednesday on the charge conference, we may be able  
25 to do closings Thursday morning.

1           **THE COURT:** Okay.

2           **MR. RANGLES:** Our thinking on rebuttal case is, much  
3 of what I planned to do was done today, so I think we may  
4 have two or three documents, and I'm sure there'll be a  
5 dispute over it that. We may want to read to the jury. I  
6 don't have any plans for witnesses, so we're talking, if we  
7 do something, five minutes.

8           **THE COURT:** Okay. Did you determine how much time you  
9 want for closing?

10          **MR. MILLER:** We haven't talked about it. I would  
11 suggest, Your Honor, that we go with an hour for the  
12 plaintiff, and BASF and Monsanto would like to talk about  
13 splitting up the -- openings, it was an hour total for the  
14 plaintiffs, 80 minutes total.

15          **THE COURT:** That's different from what you said  
16 yesterday.

17          **MR. MILLER:** I'm good with leaving those -- we might  
18 want to split up our time a little differently, but  
19 fifty-fifty.

20          **MR. RANGLES:** So we're not talking going back to  
21 opening an hour for each --

22          **MR. MILLER:** An hour for you guys, 80 minutes total.

23          **MR. RANGLES:** I'm fine with that, too.

24          **MR. MANDLER:** -- whether Jan gets any more time.

25          **MR. RANGLES:** I'm fine with that.

1           **THE COURT:** Okay. That simplifies things, too, so  
2 maybe we can finish Thursday then. But I know that we've  
3 got a lot of record to make tomorrow and work today, too,  
4 because I'm still very uncertain at least about the verdict  
5 director problems. So --

6           **MR. MANDLER:** Understand, Your Honor.

7           **THE COURT:** Okay.

8           **MR. RANGLES:** We wouldn't close before Thursday  
9 morning, would we? Just for planning purposes.

10          **THE COURT:** Well, I thought that we might be able to  
11 argue Thursday morning.

12          **MR. RANGLES:** That's what I meant, closing arguments  
13 Thursday.

14          **THE COURT:** It won't be before then. Oh, no.

15          **MR. RANGLES:** I should have been clearer.

16          **THE COURT:** I probably need 'til Friday.

17          *(Jury in)*

18          **THE COURT:** Just a little planning for you. We are  
19 going to break a little early today, so that will help with  
20 the basketball game. And then we will finish for certain  
21 this week, too. I just wanted to let you know that, too.  
22 So not to worry about any of those things.

23          So, with that, you may proceed.

24          **MS. ROSENBERG:** May it please the Court, ladies and  
25 gentlemen of the jury. Good afternoon, Ms. Emanuel.

1           **THE WITNESS:** Good afternoon.

2                           **CROSS-EXAMINATION**

3                           **QUESTIONS BY MS. ROSENBERG:**

4       Q.     My name is Sharon Rosenberg. I represent Monsanto in  
5 this case. And we haven't met before today, have we?

6       A.     No.

7       Q.     Okay. I just have a couple of questions that I would  
8 like to ask you. Ms. Bedard, could we please pull up B672,  
9 previously admitted.

10            Okay. And you recall, Ms. Emanuel, that you were  
11 asked questions about the Dicamba-Tolerant System Agreement  
12 from 2011?

13       A.     Yes.

14       Q.     Okay. And if we can go to page 15 of the agreement,  
15 please. And looking at B672, page 15, do you recall that  
16 you were asked questions by Ms. George about the definition  
17 of DT System Crop Protection Product?

18       A.     Yes.

19       Q.     And that's Dicamba-Tolerant System Crop Protection  
20 Product?

21       A.     Yes.

22       Q.     Okay. And when Ms. George asked you questions about  
23 what chemistries, what herbicides this includes, you  
24 responded to her that you believed that DT System Crop  
25 Protection Product includes only herbicides approved for use

1 over the top of dicamba-tolerant seed; is that correct?

2 A. Registered by EPA, yes.

3 Q. Okay. And Ms. George asked you some questions about  
4 whether that language could be found in this paragraph. Do  
5 you recall that?

6 A. It doesn't say "registered," but it says  
7 "Commercialize" with a capital C.

8 Q. Okay. And Commercialized -- yes, it does say  
9 Commercialized with a capital C, so let's look at that  
10 definition. If we could go to B672, page 12, please.

11 In paragraph 1.25, there's a definition of  
12 Commercialized with a capital C. Do you see that?

13 A. Yes.

14 Q. And the third requirement for commercializing is  
15 permitting a grower to use it. Do you see, "in accordance  
16 with the terms of this agreement and the pesticide  
17 registration, crop registration, or license for, or label on  
18 such product"? Do you see that language?

19 A. Yes.

20 Q. Do you understand that to mean that the DT -- excuse  
21 me -- that the DT System Crop Protection Product includes  
22 only herbicides approved for use over the top?

23 A. Yes.

24 Q. Okay. Thank you.

25 Now, Ms. George also asked you a number of questions



1 about seed and trait, and I just want to be clear on that.  
2 I heard you say, and I wrote this down, that Monsanto had  
3 control of Monsanto dicamba-tolerant seed. Do you recall  
4 giving that testimony?

5 A. Yes.

6 Q. Okay. And dicamba-tolerant seed is often referred to  
7 as Xtend seed?

8 A. Yes.

9 Q. Okay. And you understand, don't you, that Monsanto is  
10 not the only manufacturer and seller of Xtend cottonseed?

11 A. Yes.

12 **MS. GEORGE:** Object to form, foundation. Go ahead.

13 Q. (By Ms. Rosenberg) You understand also that Monsanto is  
14 not the only manufacturer and seller of Xtend soybean seed?

15 A. Yes.

16 Q. For instance, have you heard of the brand, the seed  
17 brand Pioneer?

18 A. Yes.

19 Q. Okay. And Pioneer, you understand, was formerly owned  
20 by DuPont, now called Corteva?

21 **MS. GEORGE:** Objection, foundation, lack of knowledge.

22 Q. (By Ms. Rosenberg) Do you have that understanding?

23 A. Yes, I do.

24 Q. Now, Pioneer is not a Monsanto brand, is it?

25 A. No.

1 Q. Okay. And does Pioneer sell Xtend seed?

2 A. It sells its own brand of seed.

3 Q. And does it --

4 A. Of DT seed.

5 Q. I'm sorry?

6 A. It sells its own brand of DT seed.

7 Q. It sells dicamba-tolerant seed?

8 A. Uh-huh.

9 **MS. ROSENBERG:** That's all the questions I have.

10 Thank you, Ms. Emanuel.

11 **THE COURT:** Mr. Mandler?

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

13 **REDIRECT EXAMINATION**

14 **QUESTIONS BY MR. MANDLER:**

15 Q. Good afternoon, Ms. Emanuel. I'd like to ask you a  
16 few questions about some of the materials that Ms. George  
17 showed you.

18 Let's start with Exhibit 1017. You were asked about  
19 this Alliance Management Team meeting on December 1st of  
20 2017, if we can show the date up there in the corner. See  
21 that?

22 A. Yes.

23 Q. I'll represent to you, Ms. Emanuel, that BASF was  
24 added to this case -- Monsanto had previously been in it --  
25 but added to this case in October of 2017, okay? So,

1 understanding that, this meeting was after October of 2017,  
2 correct?

3 A. Correct.

4 Q. Okay. Even if BASF -- and in the case you  
5 understand -- or do you have an understanding that there's  
6 an allegation in the complaint that BASF and Monsanto were  
7 conspiring in a joint venture?

8 A. I understand the allegation.

9 Q. So if there's an allegation out and a lawsuit out  
10 alleging that BASF and Monsanto were in a conspiracy and a  
11 joint venture, do you have an understanding if BASF disputes  
12 that allegation?

13 A. Yes, we dispute that allegation.

14 Q. Okay. And if BASF is sued in a case alleging a  
15 conspiracy and a joint venture, and you're disputing that  
16 allegation, even if BASF talks to Monsanto about that, is  
17 it -- does it show a BASF intent to enter into conspiracy to  
18 defend itself in a lawsuit?

19 A. I think we need to defend ourselves in a lawsuit.

20 Q. Let's look at Plaintiffs' Exhibit 1220. This is  
21 another one where the date wasn't pointed out to you. If  
22 you look at the top of the exhibit, can you see that this  
23 exhibit was dated 8/15 of 2012?

24 A. Yes.

25 Q. How long is that before Monsanto decided to

1 commercialize DT seed in 2015?

2 A. Three years.

3 Q. And there's a discussion about deregulation of DT seed  
4 in this exhibit, correct?

5 A. Yes.

6 Q. And is deregulation the same as a decision as to when  
7 to commercialize?

8 A. No.

9 Q. Does it have anything to do with the decision of when  
10 to commercialize?

11 A. It has some input but not directly.

12 Q. Was it illegal to seek deregulation of DT seed?

13 A. No.

14 Q. Can you explain what deregulation of a seed is.

15 A. It's basically the specific registration process for  
16 seed with a trait, and it's very different than registering  
17 a pesticide.

18 Q. Is it a different branch of the U.S. government?

19 A. Yes.

20 Q. Who deregulates seed?

21 A. The USDA.

22 Q. Okay. Did --

23 A. Department of Agriculture.

24 Q. Did BASF have any control over the time offering of  
25 when DT seed was deregulated?

1 A. No.

2 Q. And after deregulation did BASF have any control over  
3 the timing of when BASF would commercialize the DT seed?

4 A. No.

5 Q. Okay. Let's look at Exhibit 1075. And there's  
6 discussion in this document about -- I think on the next  
7 page about the decision -- and the top paragraph, "and the  
8 planning to sell Engenia herbicide for use on Xtend seed in  
9 2017." Do you see that?

10 A. Yes.

11 Q. Was it legal to sell Engenia herbicide in 2017?

12 A. I'm sorry. What was the question?

13 Q. Was it legal to sell Engenia herbicide in 2017?

14 A. Yes.

15 Q. Does this document have anything to do with  
16 encouraging off-label or illegal use in dicamba in 2016?

17 A. No.

18 Q. Do you have any knowledge whatsoever of anybody at  
19 BASF ever encouraging illegal or off-label use in 2016?

20 A. No.

21 Q. Let's look at Exhibit 1164, and let's go to page 8 of  
22 that exhibit. And let's blow that map up. Just the map,  
23 let's blow up.

24 Do you have an understanding of whether these are  
25 national sales or that same ten-state cotton, soybean region

1 you were looking at?

2 A. It looks to be that it's national sales because  
3 there's numbers on a lot of states in there that are not in  
4 that ten-state group.

5 Q. And some of the numbers have parentheses around. How  
6 do you interpret that?

7 A. That they're -- represent a decrease over the year  
8 before.

9 Q. And some numbers don't. How do you interpret that?

10 A. That they're an increase.

11 Q. Okay. And what does the State of Missouri look like?  
12 Is there an increase or a decrease?

13 A. Well, there's no number there.

14 Q. And what does the State of Arkansas look like? Is  
15 there an increase or a decrease?

16 A. There's no number.

17 Q. And if this document was -- includes -- let's zoom out  
18 a little bit -- 2016 projections, or numbers -- I think you  
19 can see right there involves 2016 sales figure. Do you have  
20 an understanding of whether this document was prepared,  
21 presented at the end 2016 or the beginning of 2017?

22 A. There's no date on it. It's -- it talks about  
23 different dates but it's not clear.

24 Q. Would it have to be after the 2016 season to include  
25 2016 numbers?

1 A. Yes.

2 Q. Is this any evidence of an intent way back in 2014 to  
3 somehow flood the market with Engenia?

4 A. No.

5 Q. Could it be logically?

6 A. No.

7 Q. In your look, not nationally, but on the ten-state soy  
8 and cotton regions, did Engenia -- or did Clarity sales go  
9 up?

10 A. No. They went down.

11 Q. Let's look at 1046, please. The demonstrative.

12 Okay. Did the Clarity sales actually go up during  
13 that period for the ten-state cotton, soybeans where  
14 Arkansas and Missouri is?

15 A. No.

16 Q. And then skip ahead a couple slides.

17 Did the private label Clarity sales go up?

18 A. No. It went down.

19 Q. Okay. Ms. George asked you questions about, rather  
20 than using the numbers of what BASF did, which actually was  
21 sell to distributors, we should somehow use the numbers of  
22 what was done once those distributors sold it to retailers  
23 and what those retailers sold it to farmers. For private  
24 label Clarity, does BASF have any control whatsoever about  
25 what Loveland or Winfield or Helena, what other

1 distributors, independent distributors, do with your  
2 product?

3 A. No.

4 Q. Do you have any control over who uses your product  
5 once they -- you sell it to them, for private label Clarity,  
6 not Clarity itself?

7 A. No.

8 Q. Do you have any control over whether a farmer decides  
9 to use it illegally?

10 A. No.

11 Q. And, again, do you have any knowledge anywhere, any  
12 evidence that BASF ever encouraged off-label use of either  
13 Clarity or private label Clarity?

14 A. We discouraged it.

15 Q. I think I may have misspoke earlier on the record when  
16 I asked you whether BASF had any control over the decision  
17 of the timing of when to release the dicamba seed, when to  
18 deregulate it, and when to commercialize it. I meant to say  
19 Monsanto. Did Monsanto have that control and not BASF?

20 A. Yes, and sole discretion.

21 Q. All right. I think this next issue was covered by  
22 Ms. Rosenberg's question, but I just want to make sure that  
23 we're clear on it.

24 You were asked some questions about the DGA salt as it  
25 relates to the agreements, correct?



1 A. Yes.

2 Q. And the DGA salt, is that Clarity?

3 A. Yes.

4 Q. Was Clarity ever registered for over the top use in DT  
5 seeds?

6 A. No.

7 Q. And within the agreements was there ever any intention  
8 that a product that was never registered for over the top  
9 use be part of the system?

10 A. No.

11 Q. And why not?

12 A. Because it's illegal.

13 Q. Is Clarity part of the dicamba system, the  
14 Dicamba-Tolerant Seed System?

15 A. Not that I know of.

16 Q. All right. You were shown an invoice from  
17 Heidi Pittner. Do you know Heidi Pittner?

18 A. No.

19 Q. Was she part of the team that negotiated the  
20 agreements?

21 A. No.

22 Q. Was she part of the executive team that authorized the  
23 agreements or signed the agreements?

24 A. No.

25 Q. Do you know whether she has any authority or insight

1 as to the terms of the agreements?

2 A. I would say she doesn't.

3 Q. Was there a term in the agreement to make clear that  
4 any outside discussions, documents, other agreements would  
5 bind and control the agreement?

6 A. Yes. We were very specific that the DTSA was the  
7 entire agreement and the only agreement, and it superseded a  
8 number of agreements, and that in order to amend the  
9 agreement, it needed to be in writing by both and agreed to  
10 by both parties.

11 Q. So that invoice that you were shown from  
12 Heidi Pittner, was that agreed to by both parties?

13 A. No.

14 Q. Did it amend the agreement in any way?

15 A. No.

16 Q. All right. Let's take a look at 1013. It was a  
17 document you were shown that was authored by  
18 Wendy Bair-Johnson. What Ms. George didn't show you is the  
19 bottom. Let's blow up the very bottom section there. Even  
20 more. The last -- the very last line. Very last line of  
21 the document.

22 Okay. She didn't show you it was a draft, did she?

23 A. Not at the time.

24 Q. Do you have any knowledge --

25 **MS. GEORGE:** I've got to object. That misstates -- we

1 actually blew that entire section up for her. I can --

2 **THE COURT:** Overruled.

3 Q. (By Mr. Mandler) Do you have any idea whether this  
4 draft was ever finalized?

5 A. I don't think it was.

6 Q. Do you have any idea if this draft was ever used?

7 A. No, I have no idea.

8 Q. Outside of the jury for Ms. Emanuel, Court, and  
9 counsel, can we please pull up Document MDL BASF 499846.

10 Look at the top of that document. First of all, let's  
11 go to the bottom again. This one also says May 11 draft,  
12 doesn't it?

13 A. Yes.

14 Q. Let's go to the top. Does this version of the  
15 document use the term "joint venture"?

16 A. No.

17 Q. Does it this version of the document use the term  
18 "collaborative agreement"?

19 A. Yes.

20 Q. Is a joint venture the same as a collaborative  
21 agreement?

22 A. No.

23 Q. Do you know whether this draft was submitted to  
24 anybody or used in any way with any regulatory audiences?

25 A. I don't.

1 Q. Based on this, you have any reason to say that the  
2 earlier draft that said "joint venture" was ever used at  
3 all?

4 A. No, and it wouldn't say it was.

5 Q. Let's turn to the DTSA. You mentioned the provision  
6 16.13. We can take a look at that. I think it was  
7 Exhibit -- there we go, yes. Starts on the bottom of this  
8 page and then goes to the top. Maybe we could blow those  
9 two provisions up. Okay. I think we have one where it's  
10 highlighted.

11 Okay. I think you mentioned this, Ms. Emanuel, but it  
12 says, "This agreement constitutes the entire agreement to  
13 the parties." Do you see that?

14 A. Yes.

15 Q. And what does that mean as it relates to an invoice  
16 that's sent after the fact and a draft document that uses  
17 certain terms after the fact -- can that change the terms of  
18 the agreement and create a joint venture?

19 A. No.

20 Q. It also says, "Notwithstanding the provisions of the  
21 umbrella agreement, neither party shall have any rights or  
22 obligations under the umbrella agreement."

23 Do you see that?

24 A. Yes.

25 Q. Once this agreement was signed, did the umbrella

1 agreement have anything to do with the development of the DT  
2 System?

3 A. No.

4 Q. You were asked some questions about the Commercialized  
5 Working Group. Did BASF commercialize Engenia?

6 A. Yes.

7 Q. Did BASF commercialize XtendiMax?

8 A. Did BASF? No.

9 Q. Did BASF commercialize Monsanto's DT seed?

10 A. No.

11 Q. You were asked some questions about the Development  
12 Working Group. Did BASF develop Engenia?

13 A. Yes.

14 Q. Did BASF do its own testing on Engenia?

15 A. Yes.

16 Q. There was some implications about Monsanto asking  
17 about limiting testing. Are you aware if BASF ever limited  
18 universities from doing testing on its product?

19 A. No, I'm not aware of that.

20 Q. Did BASF develop Monsanto's product XtendiMax?

21 A. No.

22 Q. Why not?

23 A. Well, because it wasn't our product and they didn't --  
24 they had their control, we had our product and our control  
25 over our product.

1 Q. Did BASF develop or test Monsanto's DT seed?

2 A. No. We sprayed Engenia over the top of it but that  
3 was it.

4 Q. You were asked about the Regulatory Working Group.  
5 Did BASF itself register its own product, Engenia?

6 A. Yes.

7 Q. Did BASF register Monsanto's product, XtendiMax?

8 A. No.

9 Q. Why not?

10 A. Because it wasn't our product.

11 Q. Did BASF deregulate Monsanto's dicamba-tolerant seed?

12 A. No.

13 Q. Why not?

14 A. Because it wasn't our product.

15 Q. Okay. You were asked at great length about whether  
16 the word "royalties" was in Section 7 of the DTSA. Do you  
17 recall that?

18 A. Yes.

19 Q. Let's pull up Exhibits 1014 and 1016 previously  
20 admitted. Put them side-by-side. Thank you.

21 Ms. George didn't show you these documents when she  
22 was asking you whether that word "royalties" ever appeared,  
23 did she?

24 A. I haven't seen these documents. Correct.

25 Q. Right there. Can you pull that up. This is a payment

1 in 2017. What does that say? These were presented to the  
2 jury by Ms. George yesterday. What does that say?

3 A. It says, "2017 dicamba royalty."

4 Q. Is the payment of the royalties under the agreements?

5 A. Yes.

6 Q. Let's look at the other documents. What does this one  
7 say?

8 A. "2016 dicamba royalty."

9 Q. So, regardless of whether in that particular Section 7  
10 the word "royalty" was used, was it your understanding that  
11 the payments to Monsanto for it giving up any claims it had  
12 in DT seed were, in fact, royalties?

13 A. The payments that we got from Monsanto were royalties.

14 Q. Did BASF sell a DT System? Do you sell the entire  
15 system?

16 A. No.

17 Q. Did BASF sell Engenia?

18 A. Yes.

19 Q. After everything you've heard and all the drafts and  
20 the invoices that were presented this morning, do you  
21 believe that BASF intended to enter into a joint venture  
22 with Monsanto?

23 A. No.

24 Q. And even after what you were presented, do you believe  
25 that BASF intended to enter into a conspiracy to commit

1 illegal act with Monsanto?

2 A. Absolutely not.

3 **MR. MANDLER:** Thank you.

4 **RE CROSS-EXAMINATION**

5 **QUESTIONS BY MS. GEORGE:**

6 Q. So, Ms. Emanuel, I just have a few more questions for  
7 you.

8 First, I wasn't aware that you had such a working  
9 knowledge of Monsanto's commercialization and traits and  
10 licensing, so I want to ask you: Ms. Rosenberg from  
11 Monsanto asked you about Monsanto's selling of the DT seed.  
12 Do you recall that question?

13 A. Yes.

14 Q. And so you know, right, that Monsanto owns the  
15 dicamba-tolerant trait, correct?

16 A. They own -- yes, they own the dicamba-tolerant trait.

17 Q. And did you learn about that as part of the  
18 negotiations of that settlement with University of Nebraska?

19 A. Well, we gave up our claims to develop it. We gave  
20 our ownership rights to Monsanto.

21 Q. And you gave exclusive ownership rights to Monsanto,  
22 right, not to -- you didn't retain anything as far as your  
23 rights to do anything like that; that's all Monsanto, right?

24 A. Correct.

25 Q. Okay. And you know, because of your familiarity with



1 this, that no one can sell dicamba-tolerant seed containing  
2 that trait without Monsanto's permission, right?

3 A. They have the ability to license it out.

4 Q. They have to either do it through some sort of a  
5 license or other agreement, which they get permission from  
6 Monsanto to do, correct?

7 A. Yes.

8 Q. And because you're so familiar with this process, you  
9 understand that Monsanto gets paid for that, right? When  
10 those seeds containing that trait are sold by anyone in the  
11 country, Monsanto gets paid for that, right?

12 A. I don't know that specifically.

13 Q. Well, you must because I objected that you didn't have  
14 any basis to be testifying about this, and you said that you  
15 did. So if you do, I want to know that certainly you  
16 understand, if they do it pursuant to a license or  
17 distributed with other people, right, and that they own that  
18 trait, you certainly also understand that they're getting  
19 paid for every bag of those seeds that they sell, true?

20 A. Not necessarily.

21 Q. Okay. So you don't know that now?

22 A. I do know that. Sometimes it's a royalty-free  
23 license.

24 Q. Okay. A royalty-free license negotiated pursuant to  
25 other consideration, even if it's not particularly in the

1 form of cash per bag, there's compensation for a license,  
2 isn't there, ma'am?

3 A. I don't know the specific terms of the license  
4 agreement that they may have.

5 Q. Okay. But you testified that you did have knowledge  
6 to testify about this, so I'm going to ask you about it.

7 You understand the dicamba-tolerant trait is  
8 Monsanto's property, right?

9 A. The rights that we gave up in the settlement to  
10 Monsanto to the UNL technology.

11 Q. And do you understand that Monsanto broadly licenses  
12 its products to allow other companies to distribute those  
13 seed products containing those traits and gets paid for  
14 that?

15 A. I don't know the terms of their license agreements. I  
16 can't testify to that.

17 Q. Okay. Well, let's look at -- let me talk to you about  
18 something that's in Monsanto's 10K, since you had the  
19 knowledge to testify about how Monsanto's seed sales work  
20 with other companies. Monsanto's 10K says, "We broadly  
21 license technology and patents to other parties."

22 Do you have any reason to dispute that?

23 **MS. ROSENBERG:** Objection, Your Honor. I would just  
24 move to strike the statement before the question.

25 **THE COURT:** Why don't you rephrase your question.

1 Q. (By Ms. George) Sure. I'm going to read this to you  
2 from Monsanto's 10K, and tell me if it matches your  
3 understanding of how their trait sales for DT work, okay?  
4 Fair enough?

5 Okay. "We broadly license technology and patents to  
6 other parties. For example, we have licensed the Roundup  
7 Ready trait in soybean, corn, canola, and cottonseeds, the  
8 YieldGard traits in corn, and the Intacta RR2-PRO, and the  
9 Roundup Ready 2Xtend traits in soybeans to a wide range of  
10 commercial entities, and in some cases academic  
11 institutions."

12 Does that match the way you would think that those  
13 licenses would work with regard to Xtend seed sales?

14 A. I can't really remember the question. I don't know  
15 the terms of their specific license agreements.

16 Q. I mean you do or you don't. I mean you answered  
17 questions saying that you know about these other companies  
18 that distribute Monsanto's seeds, and so I'm going to ask  
19 you if you understand that that's done broadly pursuant to a  
20 license because there's a trait contained in that, and that  
21 Monsanto gets paid for all of that?

22 **MS. ROSENBERG:** Objection, Your Honor. I did not ask  
23 Ms. Emanuel any questions about license.

24 **MS. GEORGE:** She left out the part of the license,  
25 just implying other people were selling it.

1           **THE COURT:** Overruled.

2           Q.     *(By Ms. George)* So you do know then that there were  
3 other companies discussed in your questioning with  
4 Ms. Rosenberg which may sell the DT seeds, but they're doing  
5 it pursuant to Monsanto licenses, which result in  
6 compensation to Monsanto, right?

7           A.     I don't -- I can't testify to that.

8           Q.     And you also know that that compensation that flows to  
9 Monsanto through those licenses flows to BASF pursuant to  
10 your contract? Don't you know that?

11          A.     I'm sorry. What was the question?

12          Q.     Please pull up B673. Let's go to page 22.

13                 Paragraph 1.67 says, "included acre." This is from  
14 the amended restated Dicamba-Tolerant System Agreement. I'm  
15 sure you recognize that? Yes?

16          A.     I see what it's -- I see it on the screen.

17          Q.     "'Included acre' means any acre of land on which a  
18 grower has planted a DT seed product that, one, was sold or  
19 licensed by or on behalf of a member of the Monsanto group  
20 and for which a member of the Monsanto group collected or  
21 expected to collect payment or other commercial  
22 consideration, other than commercial consideration given in  
23 exchange for DT seed product provided for research or  
24 development purposes."

25                 Did I read that correctly?

1 A. You.

2 Q. So, as I was suggesting earlier, they're going to get  
3 some sort of compensation in the form of a payment from a  
4 license or other commercial consideration regardless of  
5 whether they directly sell it or one of these other  
6 companies you mentioned sold it, right?

7 A. I don't know the specifics of the license agreements.  
8 I see what it says on the screen.

9 Q. You don't have any reason to dispute that Monsanto  
10 gets paid when other companies sell the dicamba-tolerant  
11 seed containing the trait that it owns and licenses out, do  
12 you?

13 A. I see what -- the section you read to me.

14 Q. And you also don't have any reason to dispute that  
15 that is part of the reason that those included acres form  
16 the basis for the trait payments that BASF itself receives?

17 A. I don't know that.

18 Q. You don't know that, but -- you have this intimate  
19 familiarity with this contract, and you don't know that?

20 A. I see what it says and I see what you -- and you read  
21 it correctly, and I know that we get royalty payments for  
22 where the DT seed is planted.

23 Q. So we discussed -- and I understand that the word  
24 "royalty" was typed up on an invoice in 2017 after this  
25 lawsuit was filed, and I understand that there was one in

1 '16, which was also typed up after this lawsuit was filed.  
2 But the contracts that were written before the lawsuit was  
3 filed don't call those -- they call them value share  
4 payments?

5 A. The word "royalty" is also in that contract.

6 Q. It is not in the section about payments, is it, ma'am?

7 A. The 7.1 value share statement that you read to me, as  
8 far as what I got to see, I didn't see the word.

9 Q. Would you like a chance to look at the rest of 7.1,  
10 7.2 regarding the traded acre payments? I don't want you to  
11 suggest to this jury I'm somehow misleading them, if you  
12 would like an opportunity. You're the one who told me you  
13 negotiated these contracts and were familiar with these, so  
14 if you want to look at them --

15 A. So, I'm sorry. Can you just state the question.

16 Q. Sure. The question is: The value share payments that  
17 are referenced in Section 7, nowhere in that section are  
18 they referred to as royalties payments, true?

19 A. Okay. I haven't read it recently but I take your word  
20 for it.

21 **MS. GEORGE:** No further questions.

22 **FURTHER REDIRECT EXAMINATION**

23 **QUESTIONS BY MR. MANDLER:**

24 Q. Just one question, Ms. Emanuel.

25 Does it make sense to you that an invoice that says

1 "joint venture" and a draft document that says "joint  
2 venture" can change the terms of the agreement, but an  
3 invoice that says "royalties" can't? Does that make any  
4 sense?

5 A. No.

6 **MR. MANDLER:** Thank you.

7 **THE COURT:** You may step down. Mr. Mandler?

8 **MR. MANDLER:** At this point we'll read the stipulation  
9 that we talked about.

10 Ladies and gentlemen of the jury, Monsanto Company,  
11 through its undersigned counsel, hereby stipulates as  
12 follows: Effective March 8th, 2011, BASF Corporation and  
13 Monsanto executed the Dicamba-Tolerant System Agreement,  
14 hereinafter "DTSA."

15 Section 3.1 of the DTSA states as follows: "DT seed  
16 product commercialization. Monsanto shall, in its sole  
17 discretion and at its sole expense, determine when and how  
18 to commercialize any DT seed product in each country in the  
19 territory. If Monsanto decides not to commercialize or to  
20 delay commercialization of or any given DT seed product in a  
21 given country, it shall promptly notify BASF thereof in  
22 accordance with Section 3.2."

23 Prior to the 2017 growing season, Monsanto exercised  
24 its sole discretion under the DTSA and made the decision to  
25 commercialize dicamba-tolerant cottonseed, known as DT

1 cottonseed.

2 Prior to the 2016 growing season, Monsanto exercised  
3 its sole discretion under the DTSA and made the decision to  
4 commercialize dicamba-tolerant soybean seed, DT soybean  
5 seed.

6 BASF Company was not involved in and had no role in  
7 Monsanto's decision to commercialize DT cottonseed prior to  
8 the 2015 growing season and DT soybean seed prior to the  
9 2016 growing season.

10 Okay. It was pointed out -- just for the record, let  
11 me correct in paragraph 3. Apparently I misread it.

12 Prior to the 2015 growing season, "Monsanto exercised  
13 its sole discretion under the DTSA and made the decision to  
14 commercialize dicamba-tolerant cottonseed, or DT  
15 cottonseed."

16 **THE COURT:** All right. Next?

17 **MR. MANDLER:** Next we'd call, by video deposition,  
18 Scott Ray.

19 **THE COURT:** Okay. And just so the jury -- this is,  
20 you said, about an hour-and-a-half deposition?

21 **MR. MANDLER:** An hour.

22 **THE COURT:** An hour? Okay. And so we'll probably  
23 recess for the day at the conclusion of the deposition.

24 **MR. MANDLER:** There is another half-hour deposition  
25 after that if we want to get two in today.



1           **THE COURT:** We'll play it by ear.

2           **MR. MANDLER:** Same way that we did earlier for the  
3 other depos. Can we move this?

4           **THE COURT:** Yeah.

5           *(Excerpts of the deposition of F. Scott Kay were*  
6           *played for the jury)*

7           **MR. MANDLER:** Thank you, Your Honor. We just want to  
8 move in the three exhibits that reference B45, B46, and  
9 B682.

10          **MS. GEORGE:** And no objection.

11                   And we'd also like to move in Plaintiffs' 1174, 1153,  
12 1282, and 1284.

13          **MR. MANDLER:** We'll just provide our objections,  
14 understanding your order.

15          **THE COURT:** All those are admitted. And is that the  
16 conclusion of the videotape?

17                   *(Plaintiffs' Exhibit Nos. 1174, 1153, 1282, and 1284*  
18                   *admitted)*

19                   *(Defendant's Exhibit Nos. B45, B46, and B682 admitted)*

20          **MR. MANDLER:** That's conclusion of this videotape.

21                   We have one other or we can break for the day,  
22 whatever Your Honor wants to do. It's a half-an-hour video.

23          **THE COURT:** Want to break for the day?

24                   We'll break for the day. So remember the admonition  
25 I've given you not to discuss the case.

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Thanks again for your attentiveness and patience.  
Reconvene at 9:00 in the morning, and you're excused for the  
day. Thank you again.

*(Jury out)*

**MR. MANDLER:** Your Honor, we'd offer our proposed  
order on the Scott Kay deposition designations and trial  
exhibits that reflects your prior ruling, and we maintain  
our objections and understand your ruling.

**THE COURT:** All right. I'll enter those. Thank you.  
Now we can go off the record.

*(Off the record)*

*(Proceedings adjourned at 3:19 p.m.)*

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**REPORTER'S CERTIFICATE**

I, Laura A. Esposito, Registered Professional Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter for 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, that said transcript contains pages 1 through 34, inclusive, and was delivered electronically. 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 11th day of February 2020.

*Laura A. Esposito*  
\_\_\_\_\_  
Laura A. Esposito, RPR, CRR, CRC  
Official Court Reporter