

EXHIBIT 3

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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IN RE: ROUNDUP PRODUCTS)

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LIABILITY LITIGATION)

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) MDL No. 2741

12

This document relates to:)

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) Case No. 16-md-02741-VC

14

Stevick v. Monsanto Co., et al.)

15

Case No. 3:16-cv-2341-VC)

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VIDEOTAPED DEPOSITION OF ANDREI SHUSTOV, M.D.

22

23

December 16, 2018

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Seattle, Washington

Page 2

APPEARANCES

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Page 3

EXAMINATION INDEX

EXAMINATION BY:	PAGE NO.
Mr. Brenza	6
Mr. Wisner	80

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit No. 36	Monsanto Company's Notice to Take Oral and Videotaped Deposition of Dr. Andrei Shustov.	4
Exhibit No. 37	Expert Report of Dr. Andrei R. Shustov.	4
Exhibit No. 38	Expert Report of Dr. Chadi Nabhan.	18
Exhibit No. 39	Clinical Summary for Elaine M. Stevick dated 9/6/2018. Labeled Confidential-Stevick-EStevick -KPNValley-MD-000010.	56
Exhibit No. 40	Decision/Reason, dated 7/14/2016. Labeled Confidential-Stevick-EStevick -PPR-000158.	60
Exhibit No. 41	Office visit for Elaine M. Stevick dated 8/2/2018. Labeled Confidential-Stevick-EStevick -KPNValley-MD-005067.	62

Page 4

BE IT REMEMBERED that on Sunday, December 16, 2018, at 1900 Fifth Avenue, Seattle, Washington, at 2:35 p.m., before JOHN M.S. BOTELHO, Certified Court Reporter, appeared ANDREI SHUSTOV, M.D., the witness herein;

WHEREUPON, the following proceedings were had, to wit:

<<<<<<>>>>>>

(Exhibit Nos. 36 and 37 marked for identification.)

THE VIDEOGRAPHER: We are on record at 2:35 p.m. on Sunday, December 16, 2018, in the matter of Stevick vs. Monsanto. The deponent today is Dr. Andrei Shustov.

Will counsel and -- counsel please identify themselves for the record, and then the court reporter may swear in the witness.

MR. WISNER: Brent Wisner on behalf of the deponent and the plaintiffs in this case.

MR. BRENZA: Lin Brenza with Bartlit Beck on behalf of Bayer.

MR. KERSCHNER: David Kerschner

Page 5

from Arnold & Porter on behalf of Monsanto.

MR. LEVINE: Aaron Levine from Arnold & Porter on behalf of Monsanto.

MR. WISNER: Technically Bayer is not a party to this case.

MR. BRENZA: I don't know.

MR. WISNER: Okay.

MR. BRENZA: I'll be on behalf of Monsanto if you want me to be.

MR. WISNER: Okay.

MR. BRENZA: So -- I'm sorry. Go ahead.

ANDREI SHUSTOV, M.D., having been first duly sworn by the Certified Court Reporter, deposed and testified as follows:

MR. WISNER: Before you begin, sir, just the same objections as last time. He's being offered for a specific cause only, not general cause, and this is related specifically to Mrs. Stevick's case.

////

////

1 EXAMINATION
 2 BY MR. BRENZA:
 3 Q Doctor, I know it's been long, a long --
 4 A Yes, it has been.
 5 Q -- two days. We're -- hopefully we're getting near
 6 the end here. We have one more plaintiff to talk
 7 about. It's Ms. Stevick.
 8 [REDACTED]

1 [REDACTED]
 [REDACTED]

1 [REDACTED]
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1 [REDACTED]
 [REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

16

[REDACTED]

16 Q We'll get back to your report in a minute. I just
17 want to just deal with some of the other housekeeping
18 items.

19 I've handed you your deposition notice for this
20 deposition, marked as Exhibit 36. Do you see that?

21 A It is notice of deposition. Is that what you're
22 asking?

23 Q Yes.

24 A Yeah.

25 Q And have you had a chance to look at that before the

Page 14

1 deposition?
 2 A I did.
 3 Q And I'll ask you the same questions. Have you
 4 provided all the documents to your counsel that are
 5 responsive to the documents requested in this notice?
 6 MR. WISNER: Objection. Answer
 7 that question to the extent that doesn't disclose
 8 privileged communications with counsel.
 9 THE WITNESS: To the best of my
 10 ability, yes.
 11 Q (By Mr. Brenza) And like the -- well, let me strike
 12 that.
 13 Was the list of materials that you relied on the
 14 same list that we've previously marked in depositions
 15 that we've taken today and yesterday? Do you need me
 16 to --
 17 A Can I verify?
 18 Q Yeah. It's going to be in --
 19 A Exhibit 4.
 20 Q -- that stack. It's Exhibit 4.
 21 A It's for previous case or for...?
 22 Q It's a previ -- we marked it previously, so I'm --
 23 A Is it --
 24 Q -- asking if we need to remark another copy or if
 25 it's the same exact copy and we'll just -- you can

Page 15

1 just say that.
 2 MR. WISNER: Are the medical
 3 records listed on there? Is that --
 4 MR. BRENZA: No.
 5 MR. WISNER: Oh.
 6 MR. BRENZA: It's maybe in the
 7 supplemental one, but then this one -- it's --
 8 MR. LEVINE: --
 9 MR. BRENZA: It's just articles and
 10 expert reports.
 11 THE REPORTER: What was that,
 12 Mr. Levine, you said?
 13 MR. LEVINE: I said medical records
 14 are not in the supplemental either.
 15 Q (By Mr. Brenza) Do you have Exhibit 4?
 16 A Yes. That's what I'm looking for, looking at.
 17 Q You're just verifying. Okay. Good.
 18 A Do you -- do you have the actual list for this case?
 19 I want to verify something.
 20 Q I may.
 21 MR. LEVINE: There wasn't a list
 22 for this case other than the expert reports you
 23 reviewed.
 24 MR. WISNER: That's right. I'm
 25 thinking of the expert disclosures that we did.

Page 16

1 MR. BRENZA: It was one -- it was
 2 one for all, wasn't it?
 3 MR. WISNER: Yeah, it was one for
 4 all, and then we stated plus any references cited in
 5 the expert report.
 6 MR. LEVINE: Right.
 7 MR. WISNER: This is what we said.
 8 MR. LEVINE: Yeah.
 9 MR. BRENZA: Okay. So --
 10 MR. LEVINE: That's -- I'm just
 11 clarifying that also.
 12 MR. WISNER: Yeah.
 13 MR. LEVINE: Yeah.
 14 THE WITNESS: Okay.
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 MR. WISNER: Exactly.
 25 THE WITNESS: Okay. So that --

Page 17

1 that answers my question.
 2 Q (By Mr. Brenza) So if you'll look at Paragraph 6 of
 3 your -- oh, we haven't marked your report. So I've
 4 previously handed you what I've marked as Exhibit 37.
 5 A 36. There we go.
 6 MR. WISNER: It's in your hand.
 7 THE WITNESS: Yeah.
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
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 16 [REDACTED]
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 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 (Exhibit No. 38 marked for
 2 identification.)
 3
 4 Q (By Mr. Brenza) And I also have marked, I think it
 5 says 38. Dr. Nabhan's report --
 6 A Mm-hmm.
 7 Q -- in the Stevick case. Do you see that?
 8 A I do.
 9 Q And is this -- do we have the same situation here
 10 where you borrowed language from Dr. Nabhan's report
 11 and used it in your report for Ms. Stevick?
 12 A I see the same language in general causation section
 13 that I used.
 14 [Redacted text block]

1 [Redacted text block]

1 [Redacted text block]

1 [Redacted text block]

Page 26

1 [REDACTED]

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Andrei Shustov, M.D.

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22 [REDACTED]

23 [REDACTED]

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Page 49

1 [REDACTED]

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3 [REDACTED]

4 [REDACTED]

5 Q Okay. I see it.

6 A Could I request a bathroom break?

7 Q Sure.

8 A Okay.

9 THE VIDEOGRAPHER: All right.

10 We're going off record. The time is 3:48 p.m.

11 (Pause in proceedings.)

12 (The following held off the

13 videotape record.)

14

15 MR. WISNER: At this time the

16 plaintiffs designate this deposition, the one before,

17 and the one before that, all related to Dr. Shustov,

18 as confidential pursuant to the protective order.

19 (The following held on the

20 videotape record.)

21

22 THE VIDEOGRAPHER: We are back on

23 record. The time is 4:03 p.m.

24 [REDACTED]

[REDACTED]

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17 [REDACTED]

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22 [REDACTED]

1 [REDACTED]

2 Q (By Mr. Brenza) Have you ever used Roundup?

3 A No.

4 Q Do you know that Roundup is commonly used?

5 MR. WISNER: Objection; beyond the

6 scope, speculation.

7 THE WITNESS: I don't know how

8 widely it's used. I've seen walls of Roundup at

9 Lowe's when I go shopping there. But I don't know

10 how extensively -- what the -- what the sales are or

11 how extensively used.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

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17 [REDACTED]

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[REDACTED]

7 THE VIDEOGRAPHER: All right.

8 We're going off record. The time is 4:25 p.m.

9 (Pause in proceedings.)

10

11 THE VIDEOGRAPHER: We are back on

12 record. The time is 4:33 p.m.

13 Q (By Mr. Brenza) Coming down the homestretch. If you

14 would take out Exhibit 37, your expert report in the

15 Stevick matter, please. And I just want to verify

16 which sections you borrowed from you borrowed from

17 Dr. Nabhan and which sections you were the original

18 author of.

19 Can we go page by page and you just tell me

20 whether you authored them or you borrowed them from

21 Dr. Nabhan?

22 A Okay. I would like to say I -- I'm an author of this

23 report, and I used the language from Dr. Nabhan's for

24 some of the statements to save me time, but I stand

25 by the statement, and I -- I feel I authored this

1 report. And it's not uncommon practice in even our

2 academic world to borrow each other's slides to save

3 time. So it does not undermine my standing behind

4 any word in this report.

5 Q So which -- are the portions of your report that you

6 used Dr. Nabhan's language for the parts that have to

7 do with general causation?

8 A That's correct.

9 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Page 70

1 asking.

2 MR. WISNER: I believe it's memory.

3 See if my memory is...

4 THE WITNESS: Give me a moment to

5 find that report.

6 It is 10, is it?

7 MR. WISNER: No. It's 13, the

8 highlight.

9 THE WITNESS: 13. Sorry.

10 MR. WISNER: It's nice to have a

11 eidetic memory.

12 THE WITNESS: I have it.

13 MR. WISNER: So, Dr. Shustov, what

14 I would do is I would take this one and then look at

15 yours and just kind of go through them.

16 THE WITNESS: Take this and this?

17 MR. WISNER: Yeah. And just

18 compare them. And just for what it's worth, he just

19 wants to know if the general causation section in

20 your report is the portion that has the information.

21 And if so, then I think that would satisfy you.

22 MR. BRENZA: Yeah, I meant, let's

23 start with that and see if -- what he says.

24 THE WITNESS: Yes, it is in the

25 section on general causation that I see the overlap,

Page 72

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

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Page 71

1 yes.

2 [REDACTED]

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25 off the record while --

Page 73

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25 [REDACTED]

Page 78

1 in the studies relied on in the Schinasi
 2 meta-analysis, how did you take that into account in
 3 your analysis?
 4 A I gave to go again. It's -- at the time of writing,
 5 I had -- I decided that this was the, again, proper
 6 way of state how I adjusted my impression from those
 7 studies.
 8 Q Are you done?
 9 A I don't -- what?
 10 Q You still answering, or...?
 11 A Yes, I'm trying to still think how to answer your
 12 question.
 13 Q Okay.
 14 A I can't tell you specifics how exactly I adjusted
 15 that without, again, opening discussion of those
 16 publications. 'Cause I don't explain specifically
 17 how I did it.
 18 Q And you don't remember, as you sit here now, how you
 19 took account of whether they control or didn't
 20 control for confounding pesticides?
 21 A I don't recall my train of thought at the time.
 22 Q Do you recall your analysis, how you took it into
 23 account in your analysis?
 24 A As we discussed before for general causation
 25 analysis, I performed very brief review of the

Page 79

1 literature that we went over several times and looked
 2 at the limited amount of information in tables, and
 3 without having a deep dive into general causation,
 4 that really is not my area of expertise. So I
 5 don't -- I can't give you specifically, without
 6 looking at the studies again in area of general
 7 causation, what specific terms or what specific
 8 factors I looked at.
 9 Q Do you remember what method you used to conduct your
 10 analysis?
 11 A I read the papers. Again, for general causation, I
 12 used as a reference just to familiarize myself with
 13 general causation.
 14 Q Did you do any mathematics or anything to satisfy
 15 yourself that you could rely on studies that didn't
 16 adjust for other pesticide use?
 17 A I didn't do any calculations on my own.
 18 Q Did you receive calculations from anyone else?
 19 A No.
 20 Q Do you remember anything else about the method you
 21 used?
 22 A Method of...?
 23 Q Of taking into account whether the studies did or
 24 didn't adjust for confounding pesticides.
 25 A Again, I've taken into consideration reading the

Page 80

1 paper. I did not do any specific considerations or a
 2 specific analysis on...
 3 MR. BRENZA: Okay. That's all I
 4 have. Thank you. Pass the witness.
 5 MR. WISNER: Thank you.
 6
 7
 8 EXAMINATION
 9 BY MR. WISNER:
 10 Q Couple quick questions, Doctor. We'll get you out of
 11 here. It's been a long --
 12 A Sure.
 13 Q -- couple of days.
 14 A Appreciate it.
 15 Q The first is on the confounding issue that we were
 16 just talking about. When you say "taking into
 17 account," does that just mean you looked and see if
 18 those studies did adjust or did not adjust?
 19 A At the level that I looked at those papers, I did not
 20 do any specific analysis on general causation papers.
 21 Q Sure. And yesterday I believe we actually discussed
 22 one of the articles. It was De Roos 2003. I believe
 23 it was Exhibit 20?
 24 A I remember the paper. I don't remember the number of
 25 exhibit.

Page 81

1 Q Okay. It was Exhibit 20. And that was the study
 2 where they adjusted for 47 other pesticides. Do you
 3 recall?
 4 A I remember that.
 5 Q Okay. And you remember we discussed there's language
 6 in there showing that these other pesticides, for
 7 example, didn't confound. Do you recall?
 8 A I do remember that.
 9 Q Okay. The phrase "idiopathic causes," is that a
 10 cogent sentence or phrase?
 11 A In a way, "idiopathic causes" is kind of an oxymoron
 12 because it means we don't know the cause. We use
 13 this kind of liberally just to say we don't know the
 14 cause. It's kind of, I'd say, almost inappropriate
 15 to call it "the cause" because we don't know the
 16 cause. I -- you know, we can call it unidentified --
 17 uni -- unidentifiable causes, but the "idiopathic
 18 causes," it's kind of nonsensical, but it's very
 19 frequently used.
 20 Q Is it possible to rule out an unknown cause?
 21 A Well, technically you cannot rule out something you
 22 don't know what you're ruling out.
 23 Q Okay.
 24 A So if...
 25 [REDACTED]

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1 [REDACTED]
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4 MR. WISNER: Okay. Pass the
5 witness.
6 MR. BRENZA: Nothing further.
7 THE VIDEOGRAPHER: All right. That
8 concludes the video deposition of Dr. Andrei Shustov.
9 We're now going off record at 5:09 p.m.
10 (Signature reserved.)
11 (Deposition concluded at
12 5:09 p.m.)
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1 STATE OF WASHINGTON) I, John M.S. Botelho, CCR, RPR,
2) ss a certified court reporter
3 County of Pierce) in the State of Washington,
4 do hereby certify:
5
6 That the foregoing deposition of ANDREI SHUSTOV,
7 M.D., was taken before me and completed on December 16,
8 2018, and thereafter was transcribed under my direction;
9 that the deposition is a full, true and complete transcript
10 of the testimony of said witness, including all questions,
11 answers, objections, motions and exceptions;
12 That the witness, before examination, was by me
13 duly sworn to testify the truth, the whole truth, and
14 nothing but the truth, and that the witness reserved the
15 right of signature;
16
17 That I am not a relative, employee, attorney or
18 counsel of any party to this action or relative or employee
19 of any such attorney or counsel and that I am not
20 financially interested in the said action or the outcome
21 thereof;
22
23 IN WITNESS WHEREOF, I have hereunto set my hand
24 this 18th day of December, 2018.
25

John M.S. Botelho, CCR, RPR
Certified Court Reporter No. 2976
(Certification expires 5/26/19.)

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Andrei Shustov, M.D.

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WITNESS: Andrei Shustov, M.D.

DATE: December 16, 2018

CASE: Stevick v. Monsanto Co., et al.

Please note any errors and the corrections thereof on this errata sheet. The rules require a reason for any change or correction. It may be general, such as "To correct stenographic error," or "To clarify the record," or "To conform with the facts."

PAGE	LINE	CORRECTION	REASON FOR CHANGE
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