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March 5, 2019

FILED VIA ECF

Honorable Vince Chhabria
United States District Court,
Northern District of California

RE: *Hardeman v. Monsanto*, Case No: 3:16-cv-00525-VC

To the Honorable Vince Chhabria:

Earlier today, Monsanto requested leave to ask certain questions of its two case-specific experts who were not disclosed as “General Causation” experts in Phase 1 of this MDL: Dr. Arber and Dr. Levine. Mr. Hardeman responds as follows:

Dr. Arber

1. What, if any, role does Roundup play in your clinical practice as a pathologist?

Response: Plaintiff needs more clarification as to the basis of this question.

Dr. Levine

At Monsanto’s request, and over Plaintiffs’ strong objection, the Court bifurcated MDL 2741, and the parties spent almost two years and millions of dollars litigating general causation. During that process, the experts’ opinions were thoroughly challenged, subjected to multiple depositions, and a week-long *Daubert* hearing. The Plaintiffs ultimately prevailed, and now that we are finally in trial, Monsanto asks the Court – once again – for permission to bring new general causation opinions from general causation experts not disclosed in the Phase 1 MDL proceedings. The request has been recycled and denied several times. Once again, Mr. Hardeman responds as follows.

During the October 29, 2018 hearing, it became clear that Monsanto intended to use its “specific causation” experts to proffer general causation opinions—even suggesting it may not call a single general causation expert from the general causation phase to the February trial. The Court rejected this proposal:

[T]he answer to that question is basically no. You cannot add general causation experts. If there is an emergency-type situation, if Lorelei Mucci has a medical emergency or, you know, something like that, and you want to seek permission to sub somebody in to provide, you know, substantially the same testimony, I will entertain it. I’m not saying I will grant it, but I will entertain it. But the basic answer is, no, I don’t think it’s

appropriate, given everything we've been through already as a team, to be adding general causation experts.

Ex. 1, Tr. of Proceedings at 41:8-18 (Oct. 29, 2018). Monsanto did not object.

After further briefing, the court stated, "only the experts whose opinions were put to the test at Phase 1 would be permitted to present opinions on general causation at trial." *See* PTO 74, ECF Dkt. No. 2682. Then, again, in PTO 81 (ECF Dkt. No. 2799), the Court held:

"...Monsanto disclosed reports from specific causation experts that effectively included opinions on general causation – that is, that Roundup is simply not a risk factor for NHL. These opinions are in large part excluded. Monsanto's experts may attack the decisions by the plaintiffs' experts to exclude other risk factors, such as hepatitis C. They may also testify that, even if Roundup were a risk factor, it nonetheless would not have caused a particular plaintiff's NHL given the strength of the risk factor and/or the presence of other risk factors. But they may not offer an analysis of the epidemiological literature to support an opinion that Roundup is not a risk factor for NHL, because they offered no such analysis at Phase 1. To the extent this creates challenges for Monsanto, it is in part a product of Monsanto's desire to bifurcate general and specific causation."

Monsanto declared that the only general causation expert it intends to bring to trial is its epidemiologist, Dr. Mucci, and that its new expert, Dr. Levine, will provide specific causation testimony. Because Dr. Levine was not disclosed in Phase 1 of the MDL and her epidemiological opinions on general causation were not tested, many of the questions proffered below are improper. Indeed, rather than offer her own new – untested – opinion on the epidemiological evidence regarding general causation, Dr. Levine must build her specific causation opinion from Monsanto's admissible general causation opinions (*i.e.*, Dr. Mucci). *See* PTO 85, ECF Dkt No. 2799, Page 2 ("as the Court has previously ruled, the specific causation experts are permitted to build from [] admissible general causation opinions). Said another way, Pursuant to the bifurcated rules that Monsanto requested, Dr. Levine must adopt Dr. Mucci's general causation opinion as the basis of her specific causation opinion. As the Court previously held, Dr. Levine cannot offer a new general causation opinion. The questions below appear to be a back door attempt to do so.

Proposed Questions

1. Have you reviewed the epidemiological literature regarding Roundup and NHL?

Response: Object. Dr. Levine was not disclosed as a General Causation expert in Phase 1 of the MDL and her epidemiological opinions have not been tested. Therefore, as set forth above, Dr. Levine must build her specific causation opinion upon Dr. Mucci's analysis of the epidemiological literature. Asking this question invites improper expert testimony. If the Court allows this question, Mr. Hardeman should be allowed to elicit testimony on cross examination that: (1) although she reviewed the epidemiological literature regarding Roundup and NHL, she is not relying on that review as a basis of her specific causation opinion; and (2) she is instead relying on Dr. Mucci's testimony as the basis for her specific causation opinion. Further, Dr.

Levine should not be permitted to provide the jury with her own analysis of the epidemiological literature.

2. Have you also reviewed Dr. Mucci's report?

Response: No objection to asking Dr. Levine if she has reviewed Dr. Mucci's report.

3. Are you relying on Dr. Mucci's explanation of the epidemiology to the jury so you can focus on a discussion of Mr. Hardeman?

Response: Pursuant to the bifurcation rules, Dr. Levine must not only rely on Dr. Mucci's explanation of the epidemiology, but also on Dr. Mucci's analysis of that literature. Plaintiff objects to any insinuation that Dr. Levine's reliance on Dr. Mucci's explanation is to save time.

4. Is Dr. Mucci's analysis consistent with your own professional and clinical experience as a practicing hematologist- oncologist?

Response: Mr. Hardeman needs further clarification from Defendant before lodging any possible objection.

5. Based on your clinical practice, do you have an opinion on whether there is an association between Roundup and NHL?

Response: Because Dr. Levine was not disclosed as a General Causation expert in Phase 1 of the MDL, she must adopt Dr. Mucci's opinion on this question. If Dr. Levine does anything but adopt Dr. Mucci's opinion on this question, it would become a new general causation opinion that is inadmissible because it was not tested through the two-year *Daubert* process. Further, this opinion was not disclosed in Dr. Levine's expert report.

6. What, if any, opinion do you have on whether Roundup is a risk factor for NHL?

Response: Because Dr. Levine was not disclosed as a General Causation expert in Phase 1 of the MDL, she must adopt Dr. Mucci's opinion on this question. If Dr. Levine does anything but adopt Dr. Mucci's opinion on this question, it would become a new general causation opinion that is inadmissible because it was not tested through the two-year *Daubert* process.

7. What, if any, opinion do you have on whether Roundup can cause NHL?

Response: Because Dr. Levine was not disclosed as a General Causation expert in Phase 1 of the MDL, she must adopt Dr. Mucci's opinion on this question. If Dr. Levine does anything but adopt Dr. Mucci's opinion on this question, it would become a new general causation opinion that is inadmissible because it was not tested through the two-year *Daubert* process.

Dated: March 5, 2019

Respectfully submitted,

/s/ Aimee H. Wagstaff

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EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VINCE CHHABRIA, JUDGE

IN RE ROUNDUP PRODUCTS)
LIABILITY LITIGATION) Case No. 16-md-02741
San Francisco, California
Monday, October 29, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(Appearances continued on next page)

Reported By: Katherine Powell Sullivan, CSR #5812, RPR, CRR
Official Reporter - U.S. District Court

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1 Monday, October 29, 2018 2:11 p.m. 3
2 **P-R-O-C-E-E-D-I-N-G-S**
3 **—000—**
4 **THE CLERK:** Calling case number 16-md-2741, In re
5 Roundup Products Liability Litigation.
6 Counsel, please state your appearances for the record.
7 **MS. GREENWALD:** Robin Greenwald for the plaintiff.
8 **MS. WAGSTAFF:** Good afternoon, Your Honor. Aimee
9 Wagstaff for the plaintiffs. And if I may, I'd like to
10 introduce you to my clients, Mr. and Mrs. Hardeman, who
11 traveled down here from Santa Rosa.
12 **MR. HARDEMAN:** Nice to meet you.
13 **MS. WAGSTAFF:** They've read all your orders. And I
14 thought I'd come introduce you to them.
15 **THE COURT:** Welcome.
16 **MR. BRAKE:** Good afternoon, Your Honor. My nine is
17 Brian Brake. I'm here with the Miller Firm. Pleasure to meet
18 you. Thank you.
19 **MS. FLAHERTY:** Good afternoon, Your Honor. Yvonne
20 Flaherty, from Lockridge.
21 **MR. LUNDY:** Good afternoon, Your Honor. Hunter Lundy,
22 from Lundy, Lundy, Soileau and South for Plaintiffs.
23 **MR. BURTON:** Good afternoon, Your Honor. Mark Burton
24 for Audet Partners.
25 **THE COURT:** Anybody else on the plaintiffs side want

1 to make an appearance? 4
2 **MR. TSADIK:** Yes. Good afternoon, Your Honor.
3 Tesfaye Tsadik, spelled T-s-a-d-i-k, for plaintiff
4 G-e-b-e-y-e-h-o-u.
5 **THE COURT:** Could you pronounce it one more time.
6 I've been wondering how to pronounce it.
7 **MR. TSADIK:** Gebeyehou.
8 **THE COURT:** Gebeyehou?
9 **MR. TSADIK:** Yes.
10 **THE COURT:** Great. Thank you.
11 **MR. WISNER:** Brent Wisner on behalf of plaintiffs,
12 Your Honor .
13 **THE COURT:** Hello.
14 **MR. LASKER:** Good afternoon, Your Honor. Eric Lasker
15 on behalf of Monsanto.
16 **MR. GRIFFIS:** Kirby Griffis on behalf of Monsanto.
17 **MR. STEKLOFF:** Good afternoon, Your Honor. Brian
18 Stekloff, from Wilkinson Walsh, on behalf of Monsanto.
19 **MS. YATES:** Good afternoon, Your Honor. Pamela Yates,
20 from Arnold & Porter, on behalf of Monsanto.
21 **THE COURT:** Hello. I'm sorry that we came out late.
22 We just finished up a trial. We had a jury verdict in a civil
23 case, and we were in there talking to the jurors. Defense
24 verdict. That happens sometimes in San Francisco, actually.
25 So I have -- I have a list of things to talk about. And

1 what I would suggest that I do is -- let me rattle off the list
2 of things, just topics to discuss, to make sure you don't have
3 anything to add to it before we dive in.

4 And I cannot guarantee you that this is in a good order or
5 the most sensible order in which we should discuss things. But
6 the depositions of the doctors, the discovery letter that you-all
7 sent, is that resolved?

8 **MS. WAGSTAFF:** It wasn't in the discovery letter, but
9 in the CMC statement for Mr. Hardeman, that's been resolved.

10 **THE COURT:** The deposition of -- yeah, I couldn't
11 remember if it was discovery letter or the CMC. We're talking
12 about the deposition of the doctors that were going to start
13 tomorrow?

14 **MS. WAGSTAFF:** Yes. That's been resolved.

15 **THE COURT:** That's been resolved. Okay. So that's
16 good. Cross that off.

17 All right. One for one.

18 The Bailey case, the case that there's -- there's this
19 case that I think is a potential to include in Group 1, the
20 Bailey case. I'll talk to you about that later.

21 There's the Wieland stipulation, the issue about Stevick?
22 Have I pronounced that correct?

23 **MR. BRAKE:** Yes, sir. I represent Stevick, is how you
24 say it.

25 **THE COURT:** Stevick?

1 **MR. BRAKE:** Yes, Chris and Elaine Stevick.

2 **THE COURT:** Okay. The issue of filling out the fact
3 sheet for -- I guess it would be Elaine Stevick?

4 (Inaudible response)

5 **THE COURT:** I'm sorry?

6 **MR. BRAKE:** Her husband has the loss of consortium
7 claim.

8 **THE COURT:** Oh, okay.

9 **MR. BRAKE:** She has the actual claim. Thank you.

10 **THE COURT:** And then the authorizations for
11 plaintiff -- the plaintiff, whose name I've already forgotten
12 to pronounce, even though you told me how to pronounce it.

13 **MR. TSADIK:** Gebeyehou.

14 **THE COURT:** Gebeyehou?

15 **MR. TSADIK:** Yes.

16 **THE COURT:** Okay. So the authorizations for
17 Gebeyehou.

18 We'll talk about how to handle -- I've got some thoughts
19 about how to handle the Group 2 plaintiffs and the issue of
20 getting them into Group 1. I'll probably start with that,
21 actually.

22 The issue of jury selection that you-all raised.

23 The issue of when we're going to identify the first case
24 of the bellwether group to go to trial.

25 The issue of adding general causation experts.

1 The briefing -- *Daubert* summary judgment briefing.

2 The defense fact sheet, whether there should be one and,
3 if so, what should be in it.

4 Other -- other discovery that might be permissible for the
5 plaintiffs to take of Monsanto, and what the timeline should be
6 for that.

7 That's -- that's what I have that -- those are the items
8 that I have for discussion today.

9 Does anybody have anything else that I should be adding to
10 that list?

11 **MS. GREENWALD:** I don't believe so, Your Honor.

12 **MR. LASKER:** I don't believe so either, Your Honor.

13 **THE COURT:** Okay. Maybe let me start with the issue
14 that we've been talking about for a few months, a couple months
15 now, which is the issue of the Group 2 plaintiffs, and is there
16 any way to get any of the Group 2 plaintiffs into Group 1
17 absent a *Lexecon* waiver from both sides.

18 I think that, as a legal matter, that is something that
19 could probably be done. But I have given it some thought and
20 I've decided that, at least at this time, I do not want to use
21 that process that I floated with you-all earlier of sending --
22 sending cases back to the MDL panel, to get sent back to the
23 transferor court, with an idea that they may transfer those
24 cases back to me under 1404(a) for trial. I've decided that I
25 do not, at least at this time, want to utilize that process.

1 And even if it may be appropriate as a legal matter, I'm
2 not sure yet whether I would be comfortable doing it --
3 whether, as a matter of discretion, I would be comfortable
4 doing that.

5 So where does that leave us? I mean, when we spoke
6 previously, I was talking about how I very much wanted to get
7 other cases into Group 1, right, to avoid the risk of these
8 three cases, possibly four cases -- we'll talk about the Bailey
9 case in a second -- disappearing and then not having a trial.

10 It might mean -- I guess what I want to do for now is just
11 press the pause button on that, not worry too much about that,
12 focus more on the cases that could be bellwether trials, and
13 hope that -- well, I don't know if it's right to say that I
14 hope that one of them goes, but aim for one of them -- one or
15 more of them going to trial early next year on the dates that
16 we've discussed.

17 As for the -- what we have now identified as the Group 2
18 plaintiffs, the placement of these 80-some cases into Group 2
19 has now become somewhat artificial; right? Because,
20 originally, they were placed in Group 2 because the thought was
21 they're the most likely to have enough of a nexus to the
22 Northern District of California where we could undergo this
23 process to get them tried here. Right?

24 On the other hand, the fact that the delineation is
25 somewhat artificial, I'm not really sure it matters. We've set

1 a schedule for these Group 2 cases, and you've got to pick a
 2 certain group of cases to move along faster than others.
 3 So I'm happy to hear thoughts from anybody about whether
 4 we should engage in some sort of recategorization process, but
 5 my gut is that we may as well just keep the cases categorized
 6 the way they are categorized even though it may be a little bit
 7 artificial at this point.
 8 Without yet asking you for your views on that, I just want
 9 to ask: Did it make sense what I just said?
 10 **MS. GREENWALD:** Yes.
 11 **THE COURT:** Are you-all with me on what I have tried
 12 to articulate?
 13 **MR. LASKER:** I understand what you're saying.
 14 **THE COURT:** All right. That's not always the case
 15 that people understand what I'm saying, so don't be shy about
 16 saying that you don't.
 17 Okay. So one possibility, with respect to these
 18 plaintiffs who are in Group 2 -- I know that all the fact
 19 sheets have not been submitted on behalf of those plaintiffs,
 20 but one thing that we may consider -- if we are unable to take
 21 any of the Group 1 cases to trial early next year, one thing we
 22 may consider is my going there and everybody going there.
 23 In other words, a lot of these cases are in the Eastern
 24 District of -- a lot of these cases in Group 2 are in the
 25 Eastern District of Missouri; right? So I would have no

1 **MR. LASKER:** I don't think at this time, Your Honor,¹¹
 2 no.
 3 **MS. GREENWALD:** Same for the plaintiffs, Your Honor.
 4 **THE COURT:** Okay. So that, of course, may inform the
 5 discussion we have about some of these other issues.
 6 Now, this Bailey case that I'm referencing, I'm going to
 7 try to pull up the case number for you in case you need it.
 8 Here we go.
 9 Well, I'm having a little bit of an iPad glitch and the
 10 document is loading, so I don't have the case number in front
 11 of me. But, anyway, the plaintiff is --
 12 Do you have the case number?
 13 **MS. GREENWALD:** I do. I can give it to you, Your
 14 Honor. It's 3:18-cv-05827.
 15 **THE COURT:** Can you give me that one more time?
 16 **MS. GREENWALD:** Sure. I'm sorry. New York talking.
 17 3:18-cv-05827.
 18 **THE COURT:** This is a case, as I understand it, that
 19 was filed in state court, and the -- the defendants, who were
 20 named, were Monsanto as well as a distributor, a California
 21 distributor.
 22 And so there was, I think -- I don't know -- I think the
 23 plaintiff is from California, and I think, therefore, that
 24 there may not be diversity. But it was removed to federal
 25 court.

1 objection -- as long as it works for our schedule and whatnot,¹⁰
 2 I would have no -- or at least I don't think I would have an
 3 objection.
 4 We'll see where we are at the time, but I don't think I
 5 would have any objection to going to the Eastern District of
 6 Missouri to try a case or two if that would help advance the
 7 ball. I even notice that one of the cases is in Hawaii.
 8 (Laughter)
 9 **THE COURT:** I'm sure everybody would prefer, however,
 10 to go to the Eastern District of Missouri. And there are --
 11 many more of the cases are in the Eastern District of Missouri.
 12 So, anyway, that is -- that may be one way to advance the
 13 ball on Group 2, but I think for the most part we should just
 14 be focusing primarily on getting the Group 1 cases ready for
 15 trial.
 16 So those are my -- Christine Shepherd is the name of the
 17 plaintiff in Hawaii, by the way, in case anybody is curious.
 18 Does anybody here represent Ms. Sheppard?
 19 **MS. WAGSTAFF:** I'm sure it's Mr. Miller.
 20 **THE COURT:** So, anyway, we can talk about all of that
 21 later.
 22 So I think that may -- so that's what I wanted to tell you
 23 about how I want to approach Group 2.
 24 Now, does anybody have any comments or questions or issues
 25 specifically about that before we turn to the other issues?

1 Monsanto removed the case, and there was not a motion to¹²
 2 remand. So I -- I think maybe that was -- I think maybe that
 3 issue was waived. I'm not sure. I may not be remembering
 4 correctly.
 5 **MS. WAGSTAFF:** Your Honor, I believe the plaintiff is
 6 from Nebraska.
 7 **MR. LASKER:** Yes.
 8 **THE COURT:** The plaintiff is from Nebraska.
 9 **MS. WAGSTAFF:** That's what I believe, yeah.
 10 **THE COURT:** So there is diversity.
 11 **MS. WAGSTAFF:** That's my understanding.
 12 **THE COURT:** So that was filed here. Oh, I remember
 13 what it was. Now, I remember. It was that Monsanto did not
 14 make a jurisdiction argument, and Monsanto at least has not yet
 15 made a venue argument as relates to that case. I'm not sure
 16 Monsanto has made a venue argument at all in its answer.
 17 **MR. LASKER:** Right. I don't think the jurisdictional
 18 issue has been addressed yet either. We haven't waived either
 19 of those arguments. We don't know yet. All we have is the
 20 complaint. So we would need to --
 21 **THE COURT:** Well, I think you answered. And so I
 22 think if you answered and you didn't include any sort of
 23 argument about jurisdiction -- personal jurisdiction, I assume
 24 it's waived, but I'm not up to date on the rules of waiver of
 25 personal jurisdiction.

1 **MR. LASKER:** I'm fairly certain we did not waive¹³
 2 jurisdiction, because that would be a big issue in the case.
 3 **THE COURT:** Okay. Or maybe you determined that there
 4 was jurisdiction, there was personal jurisdiction.
 5 And then -- but, anyway, the long and the short of it is I
 6 don't think we need to get into the details right now
 7 necessarily, but it seems like this Bailey case could become
 8 part of Group 1 if we -- or at least we could tee it up for
 9 trial in May potentially.
 10 **MS. WAGSTAFF:** I spoke with the lead counsel, who
 11 filed that case, and just as a practical matter there's no real
 12 way they could catch up on the deadlines we're currently at.
 13 Meaning close of discovery is in a month, expert disclosures is
 14 in a month. And, like I said, there's still jurisdictional
 15 issues and things like that.
 16 We could perhaps talk about teeing it up in May. I'm not
 17 sure what sort of objections Monsanto is going to have, but I
 18 know that she would be willing to sort of get that case going
 19 but certainly not the deadlines we have now.
 20 **THE COURT:** Who is it?
 21 **MS. WAGSTAFF:** Arias, Sanguinetti out of -- where are
 22 they? Oakland. Los Angeles.
 23 **THE COURT:** What's the firm again? Sorry.
 24 **MS. WAGSTAFF:** Arias, Sanguinetti, Wang & Torrijos
 25 **THE COURT:** Okay. And what's the name of the lawyer?

1 **MS. WAGSTAFF:** On the last page, page 4 of 4.¹⁵
 2 **THE COURT:** Hold on one second. Exhibit A?
 3 **MS. WAGSTAFF:** Yeah.
 4 **THE COURT:** Hold on. You said page 4?
 5 **MS. WAGSTAFF:** Yeah. If you go to the fourth row from
 6 the bottom is the case we're talking about.
 7 **THE COURT:** Okay. Bailey.
 8 **MS. WAGSTAFF:** Yeah.
 9 **THE COURT:** Okay.
 10 **MS. WAGSTAFF:** Now, I know it's a little different
 11 because they named Wilbur-Ellis, but they have put that they
 12 have no to every answer and then they put yes that they
 13 consented. So I don't know if Monsanto is not consenting. I
 14 just don't know how that will all play out.
 15 I guess that's something that Mr. Lasker and I will
 16 discuss over the next couple weeks.
 17 **THE COURT:** But this case was brought -- the case was
 18 brought here. So --
 19 **MS. WAGSTAFF:** Right. I believe that's because they
 20 named Wilbur-Ellis, which gives them the jurisdiction. But
 21 there's otherwise no contact with it, what this chart shows me.
 22 **THE COURT:** Otherwise no what?
 23 **MS. WAGSTAFF:** I think everything happened in
 24 Nebraska.
 25 **THE COURT:** Okay. But it may still be that the case

1 **MS. WAGSTAFF:** Elise Sanguinetti.¹⁴
 2 **THE COURT:** Okay. What I would propose we do is that
 3 we set a schedule for that case. I mean, I guess she's not
 4 here right now, so we maybe won't do it today, but what I would
 5 propose we do is we get that case ready to go to trial in May,
 6 on May 5th.
 7 **MS. WAGSTAFF:** Okay. So how about in two weeks,
 8 perhaps we could spend two weeks meeting and conferring with
 9 Monsanto on what that would look like and submit something to
 10 you?
 11 **THE COURT:** Sure. That would be fine. Would it --
 12 would it make sense to have a CMC on that case specifically?
 13 **MS. WAGSTAFF:** Sure.
 14 **THE COURT:** And set it -- you know, set a schedule for
 15 it and set it for trial in May?
 16 I mean, it may be like if we get to late February and
 17 there are still more than one -- there's still more than one
 18 plaintiff in the -- of the three plaintiffs who are currently
 19 in Group 1, it may be that we set one of those cases for May.
 20 But I think we should work on getting this case ready for May
 21 also.
 22 **MS. WAGSTAFF:** The only thing I would say to bring to
 23 the Court's attention is, in this chart that we created as
 24 Exhibit A to our filing, this is the fourth from the bottom.
 25 **THE COURT:** Okay. Wait hold on a quick second.

1 can be tried here.¹⁶
 2 **MS. WAGSTAFF:** Right. Right. I just wanted to bring
 3 that to the Court's attention.
 4 **THE COURT:** I mean, the *Lexecon* issue comes up when a
 5 case was filed in another district. This case was filed in
 6 this district.
 7 **MS. WAGSTAFF:** Right.
 8 **THE COURT:** But that's for you-all to work out.
 9 And so when should we have -- when should we have a
 10 further CMC? If it's only going to be about the Bailey case,
 11 we could, I suppose, potentially do it by phone, if that would
 12 be easier for you-all.
 13 **MS. GREENWALD:** It would.
 14 **MR. LASKER:** It would, Your Honor. Thank you.
 15 **THE COURT:** When should we do that, Kristen? 21 days?
 16 14 days?
 17 **THE CLERK:** Want to do the 14th of November? In the
 18 morning? In the afternoon?
 19 **THE COURT:** I'd say we -- why don't we do the 15th?
 20 Why don't we just put it on the law and motion calendar for the
 21 15th. We'll just do it by -- because even when we do a
 22 telephonic case management conference in these cases, we do it
 23 in open court because of the public interest involved.
 24 So we'll just do it to kick off our law and motion
 25 calendar on the 15th.

1 (The Court and courtroom deputy confer off the record.)¹⁷
 2 **THE COURT:** Let's do Thursday, November 15, at
 3 2:00 p.m., because actually we might end up moving some of the
 4 other matters to 2:00 p.m. anyway.
 5 **MS. WAGSTAFF:** Your Honor, are you wanting us to file
 6 anything beforehand?
 7 **THE COURT:** Yeah. Seven days prior, file a case
 8 management statement.
 9 **MS. WAGSTAFF:** Okay.
 10 **THE COURT:** The main thing I want -- you can include
 11 whatever aspects of the typical Northern District case
 12 management statement that you want, exclude whatever you think
 13 needs to be excluded.
 14 The main thing is I just want to know if we can -- I want
 15 a proposal -- a scheduling proposal for setting the case,
 16 getting the case trial ready by May 5th or whatever was the
 17 date in May that we've identified as the trial date in this
 18 case. Okay. So it's Bailey.
 19 Oh, there was a stipulation in this Wieland case that was
 20 filed directly here, and you submitted a stip to -- to dismiss
 21 it and allow it to be refiled in the Eastern District of
 22 Missouri and then have the panel consider whether it be
 23 transferred here. That's fine. I will go ahead and grant that
 24 stip.
 25 Okay. Let's talk about -- is it Mr. Tsadik?

1 **MR. TSADIK:** Tsadik.
 2 **THE COURT:** Tsadik. I'm sorry. Let's talk about your
 3 case.
 4 So I think there are, Mr. Tsadik, there are two issues --
 5 at least two issues for us to discuss regarding your case. If
 6 there are more, let me know.
 7 **MR. TSADIK:** Sure.
 8 **THE COURT:** But one issue is -- is the issue of these
 9 authorizations, right? And it's the signing of the
 10 authorizations for -- to access employment records --
 11 **MR. TSADIK:** Yes.
 12 **THE COURT:** -- and workers' comp records.
 13 **MR. TSADIK:** Not really workers' compensation. It's
 14 social security records.
 15 **THE COURT:** Social security.
 16 **MR. TSADIK:** Yes. Social security.
 17 **THE COURT:** Okay. I thought -- okay. So has your
 18 client signed the other authorizations?
 19 **MR. TSADIK:** They have signed all the authorizations
 20 that you ordered, and served them on the same day, October 4th.
 21 The question is, after a few days he represented to me that
 22 he's not interested in making a claim of wage loss, revenue
 23 loss.
 24 And then I notified the defendant, you know, that you
 25 cannot have any access or disclosure of the personnel file

1 because there's no wages claim in this case. Nor would there¹⁹
 2 be a claim for disclosure of tax returns of Mr. Gebeyehou, and
 3 as well as, also, the social security disability benefit,
 4 because he never received any social security disability
 5 benefit.
 6 **THE COURT:** Okay. So the issue is -- so he has
 7 already signed the authorization for -- about workers' comp
 8 claims?
 9 **MR. TSADIK:** Yes.
 10 **THE COURT:** He has.
 11 **MR. TSADIK:** Yes.
 12 **THE COURT:** Okay. So we're just talking about the
 13 employment records authorization and the SSDI records
 14 authorization and the tax records authorization?
 15 **MR. TSADIK:** Yes.
 16 **THE COURT:** Is that right?
 17 **MR. TSADIK:** That's correct.
 18 **THE COURT:** Okay. And so the -- so let me hear
 19 from -- and you take the position that he should not be
 20 required to sign those authorizations simply because he's not
 21 making a lost wages claim.
 22 **MR. TSADIK:** Exactly. And also, at the same time,
 23 those records really have no relevance to any claim or defense
 24 the defendant is making in this case. We contend that the
 25 employment file, you know, personnel file includes promotion,

1 evaluation of his performance, and all those things. Really²⁰
 2 has nothing to do with a claim here
 3 **THE COURT:** I'm sorry, I haven't -- I haven't reviewed
 4 the responses that Mr. Gebeyehou has made to the fact sheet
 5 here. I don't know anything about the specific facts of
 6 Mr. Gebeyehou's case yet.
 7 What does he allege about his exposure? Was it a
 8 work-related exposure?
 9 **MR. TSADIK:** He's exposed on his property, residence
 10 in Oakland. And he was exposed from the period of '87 all the
 11 way through 2014.
 12 **THE COURT:** Okay.
 13 **MR. TSADIK:** Almost 25 years, 26 years. And he was
 14 spraying Roundup at least every three months on his property,
 15 one and a half gallon every year.
 16 **THE COURT:** Okay.
 17 **MR. TSADIK:** He provided those information in the fact
 18 sheet.
 19 **THE COURT:** So he doesn't make any allegations that he
 20 was exposed to glyphosate on the job --
 21 **MR. TSADIK:** No.
 22 **THE COURT:** -- or anything? Okay.
 23 So -- and you've filled out all the remaining parts of the
 24 fact sheet, about his employment history and all that stuff?
 25 **MR. TSADIK:** Yes.

1 **THE COURT:** Okay.

2 **MR. TSADIK:** Yes.

3 **THE COURT:** Okay. So in light of that, what's the

4 point of having him sign the employment records authorization

5 and the SSDI and the tax records authorization?

6 **MR. LASKER:** Yes, Your Honor, we addressed this at the

7 last case management conference.

8 The reason for those records has to do with potential

9 alternative causes, potential exposures in the workplace. And

10 that was the basis for seeking those authorizations. We

11 actually addressed that back and forth.

12 **THE COURT:** Well, my recollection of our discussion --

13 and I will admit to you that I didn't go back and read the

14 transcript or anything, but my recollection of that discussion

15 was that the primary purpose of getting the employment records

16 were -- was to explore whether there were any particular

17 incidents of exposure or any particular instructions about, you

18 know, using safety precautions that may or may not have been

19 used, things along those lines.

20 Not necessarily to look behind whether there were

21 exposures to other substances on the job. I don't recall us

22 contemplating that that was really the purpose of looking

23 through the employment records.

24 Am I misremembering that?

25 **MR. LASKER:** I believe so, Your Honor. I mean, the

1 the employers themselves as far as what exposures might be²³

2 relevant.

3 I'm looking right now, though, at -- so all the -- what we

4 know is that he worked at PG&E. And we know when he worked

5 there. But, again, to be able to tell from that information --

6 we just know the name of a company -- that's not going to

7 provide us with any information that would be -- allow us to

8 determine -- and, frankly, the name of an employer may give --

9 gives us some limited information, but doesn't provide us with

10 a lot of information, frankly.

11 And that's why these authorizations. And courts have

12 upheld in MDLs, particularly Plaintiff's Fact Sheet, routine

13 authorizations that are provided in all these litigations,

14 because that allows us to find that information out.

15 So I do -- at least my recollection of our conversation,

16 and certainly my understanding of other cases where we

17 routinely get these authorizations, and courts have upheld the

18 right for a defendant to get these authorizations as part of a

19 PFS process, is exactly for that reason, to be able to find

20 out -- and, of course, if there's nothing in those employment

21 records that go to that issue, then it sort of ends there. But

22 that is the purpose of providing these authorizations --

23 **THE COURT:** In this case, I mean, obviously, you are

24 allowed to conduct discovery. You're allowed to take the

25 plaintiff's deposition. You can make document requests.

1 big issue -- and these are why these records are provided, and

2 we have some citations that Your Honor, I expect, has seen, why

3 these types of authorizations are provided in these cases.

4 It's specifically to be able to determine whether or not

5 there were workplace exposures that may give rise and may be

6 relevant to the issues of medical causation

7 **THE COURT:** Have you reviewed his -- Mr. Gebeyehou's

8 employment history? And do you have any reason to believe that

9 he might have had some exposures?

10 **MR. LASKER:** We don't have -- and let me just -- I

11 will say, as a general matter, there's no way to tell from the

12 information we get from a plaintiff fact sheet. It's not going

13 to have that level of detail to allow us --

14 **THE COURT:** I don't agree. I mean, the fact sheet was

15 designed to give you, sort of, keys to signal when you needed

16 to look more closely at somebody's employment activities to see

17 if there was another exposure there.

18 That was the whole -- that was the whole point of

19 requiring such detail about people's employment history and

20 whether -- and past exposures and all that stuff.

21 **MR. LASKER:** If I could have just a second, Your

22 Honor.

23 Again, we had, if you'll recall, at our last case

24 management conference a discussion of some of the issues as to

25 why we would want to be able to have further information from

1 In this case, I assume that Mr. Tsadik is not going to²⁴

2 dispute that any employment records relating to exposure to

3 other substances at the job site or on the job would be

4 relevant to this case.

5 You don't dispute that, right?

6 **MR. TSADIK:** That's absolutely correct, Your Honor.

7 **THE COURT:** So if they gave you a request for any

8 documents, any employment-related documents, or they asked PG&E

9 for any employment-related documents that bear on exposure to

10 any substances at the workplace, you would support that

11 request, yes?

12 **MR. TSADIK:** I would support, Your Honor. The only

13 problem is in this case what they are trying to get is the

14 entire personnel file.

15 **THE COURT:** Right. That's why I'm narrowing it. I'm

16 trying to narrow it down now.

17 So you're saying what you would support, you would support

18 them getting any employment records, any records from -- it's

19 PG&E or any other employer that would relate to exposure to any

20 substances at the job site.

21 **MR. TSADIK:** That's fine.

22 **THE COURT:** Agree?

23 **MR. TSADIK:** Yes, I agree.

24 **THE COURT:** Okay. All right. So that seems like a

25 more efficient way to take care of it in this case.

1 What else would you need?
 2 **MR. LASKER:** Well, Your Honor, again, I don't know,
 3 depending on what his -- part of this also, of course, is
 4 workers' comp or any illnesses that are in those records,
 5 anything along those lines. Those are going to be relevant as
 6 well.
 7 **THE COURT:** Well, he said he signed the authorization
 8 for the workers' comp claims; right?
 9 **MR. TSADIK:** Yes.
 10 **MR. LASKER:** He has signed all of the authorizations,
 11 Your Honor. He has asked us, after signing the authorizations,
 12 not to actually proceed with getting those documents. And
 13 given his objection, we haven't done that.
 14 **THE COURT:** But I thought -- okay. So which --
 15 which -- I thought you were not taking issue with them
 16 proceeding to get the workers' comp documents.
 17 Am I wrong about that?
 18 **MR. TSADIK:** You're not wrong. But the problem is he
 19 has not taken any workers' -- his testimony here in the fact
 20 sheet stated that he never received any workers' compensation
 21 benefits.
 22 **THE COURT:** Yeah, right. So then in the cases where
 23 somebody says under penalty of perjury that they've never filed
 24 any workers' comp claims, then they don't need to sign that
 25 authorization form.

1 medical leave for some entirely different reason. As long as
 2 they're for chemical exposure, that's fine.
 3 **THE COURT:** Well, that's fair enough, but in terms
 4 of -- and you're not asserting a lost wages claim --
 5 **MR. TSADIK:** No.
 6 **THE COURT:** -- so it wouldn't be relevant to that.
 7 But might that be relevant to -- I mean, I assume that
 8 other medical conditions might have correlation with
 9 non-Hodgkin's lymphoma. And so, you know, I would think that
 10 if there were any -- if there were any -- and they may also
 11 have relevance to the extent to which your client is suffering
 12 in a damages sense from non-Hodgkin's lymphoma as opposed to
 13 other conditions.
 14 So what would be the problem -- I mean, if this were a
 15 regular case and there were no authorization forms involved and
 16 you just received a discovery request saying, "We want
 17 information about other health problems that you've had," I'm
 18 guessing you probably wouldn't object to that in a different
 19 context.
 20 **MR. TSADIK:** Your Honor, his medical condition
 21 manifested itself in 2012 and 2014.
 22 **THE COURT:** Okay.
 23 **MR. TSADIK:** And he retired from PG&E in 1996.
 24 **THE COURT:** Okay.
 25 **MR. TSADIK:** So, I mean, they're really trying to get

1 **MR. TSADIK:** That's correct. Yes.
 2 **THE COURT:** And there's no need to go through that
 3 process.
 4 **MR. TSADIK:** Yes. I agree with you.
 5 **THE COURT:** Okay. So, all right. So we have
 6 agreement, now, that Mr. Gebeyehou is not going to oppose
 7 Monsanto's acquisition of any employment-related records that
 8 relate to exposure to substances at the job site or in
 9 connection with work.
 10 So can you explain, again, to me what else you might need?
 11 **MR. LASKER:** Well, again, depending on whether or not
 12 any medical leave was taken during his employment, doesn't have
 13 to be a workers' comp case, that also is going to potentially
 14 relate to his medical condition.
 15 **THE COURT:** But he just said that he didn't file any
 16 workers' comp claims.
 17 **MR. LASKER:** Right, but workers' comp is not
 18 necessarily the only medical condition that -- if he took a
 19 leave of absence unrelated to an injury at the job, that still
 20 is medical --
 21 **THE COURT:** Medical leave.
 22 Okay. Do you have any objection to Monsanto getting any
 23 documents from your client's employers regarding taking medical
 24 leave?
 25 **MR. TSADIK:** As long as they're not related to any

1 20 years or so back.
 2 **THE COURT:** Okay. But is there any harm? I mean, it
 3 may end up not being relevant, but is there any harm with -- is
 4 there any reason to object if we -- so one issue is employment
 5 records that relate to exposure. Another issue is employment
 6 records relating to taking medical leave.
 7 What's the big deal? It may end up they're not being
 8 relevant, and they can obviously be protected by a protective
 9 order; right? Their confidentiality can be protected.
 10 In the interest of advancing the ball here, what's the
 11 problem?
 12 **MR. TSADIK:** I will do that, Your Honor, if you
 13 insist. I mean, I will do that because the procedure should
 14 usually be, is this information in the file relevant to this
 15 issue they raise? There's no relevancy.
 16 **THE COURT:** I understand, but I'm just trying --
 17 **MR. TSADIK:** Number two, can they get it from other
 18 source? They could get it from the employer.
 19 **THE COURT:** I understand what you're saying but I'm
 20 just trying to be efficient about it here. Trying to make it
 21 easier for everybody.
 22 Okay. So employment records relating to exposure.
 23 Employment records related to taking medical leave.
 24 Is there any other -- anything else, Mr. Lasker?
 25 **MR. LASKER:** I think it would just be -- and I don't

1 want to -- because sometimes there is healthcare provided
 2 through the job. They have nurses come in. I would just say
 3 anything related to medical care.
 4 **THE COURT:** But they've already -- they're going to be
 5 providing you that through the responses to the fact sheet and
 6 in any discovery you do specifically of the plaintiff.
 7 **MR. LASKER:** Well, I mean, we have medical
 8 authorizations from his healthcare provider. If they had a
 9 nurse's clinic or something coming in, I don't know we would
 10 get it that way.
 11 **THE COURT:** We're not going to expand this to that.
 12 So, anything else?
 13 **MR. LASKER:** No, Your Honor.
 14 **THE COURT:** Okay. So we now have an agreement on
 15 that.
 16 The plaintiff will -- I assume that you'll be getting
 17 these records from the employer. You'll be seeking these
 18 records from the employer or can -- because he hasn't worked
 19 there since 1997, you say; right?
 20 **MR. TSADIK:** 1996, yeah.
 21 **THE COURT:** So what we have now is an agreement on the
 22 record that the plaintiff is going to consent, the plaintiff is
 23 going to authorize Monsanto obtaining records from the
 24 plaintiffs' employer that relate to exposure to any substances
 25 or taking any medical leave.

1 **THE COURT:** Well, why can't you help the leadership³¹
 2 group -- I mean, there are a lot of resources behind the
 3 leadership group. Why can't you help them get the case ready
 4 to be tried in -- on February 25th?
 5 **MR. TSADIK:** That is because I am solo practitioner,
 6 and the plaintiffs really wants me to be part of the case, but
 7 my schedule really doesn't allow me. I have a trial already
 8 set in Santa Cruz, which is continued second time, for sure
 9 will go forward.
 10 **THE COURT:** Is that a criminal case?
 11 **MR. TSADIK:** It's a civil case.
 12 **THE COURT:** And what is the case about? What's the
 13 subject matter?
 14 **MR. TSADIK:** It's a premises liability case, somebody
 15 who was injured at the property of a church.
 16 **THE COURT:** Okay.
 17 **MR. TSADIK:** So I represent them. And we're ready to
 18 go to trial in February. So that's --
 19 **THE COURT:** Okay. And has that case been assigned to
 20 a judge already for trial?
 21 **MR. TSADIK:** Yes.
 22 **THE COURT:** It has.
 23 **MR. TSADIK:** Yes, it has.
 24 **THE COURT:** Do you know the judge -- do you know who
 25 the judge is who's going to try the case?

1 **MR. TSADIK:** That will be fine.
 2 **THE COURT:** Okay. Everyone is in agreement on that;
 3 right?
 4 **MR. LASKER:** I understand.
 5 **THE COURT:** Mr. Lasker?
 6 **MR. LASKER:** I understand, Your Honor.
 7 **THE COURT:** Okay. So that's that issue.
 8 And then so it will be up to Monsanto to get that, to seek
 9 that information from the employers.
 10 Now, let's -- since I have you, Mr. Tsadik, it is not --
 11 it seems to me -- so the plaintiffs in the leadership group and
 12 defense counsel, I believe, are both suggesting -- correct me
 13 if I'm wrong, forgive me if I'm wrong about this, but I think
 14 both were suggesting that we ought to knock your case out of
 15 the bellwether group.
 16 And perhaps you have also taken the position that this
 17 case should not be in the bellwether group. What is your --
 18 **MR. TSADIK:** The only thing, Your Honor, I mean, I
 19 know the plaintiff is part of the [unintelligible] committee.
 20 I took his case, and I'm not part of this leadership group. I
 21 mean, there has been almost no discovery done, no part of it.
 22 So I'm suggesting, you know, that the case be at least,
 23 you know, be moved to May or something around that time so I
 24 can be up to snuff in time to help the leadership group in the
 25 case.

1 **MR. TSADIK:** I believe -- I don't remember, but it's³²
 2 in my records. The name is given from case management judge,
 3 it was transferred to the trial judge.
 4 **THE COURT:** Okay. So what I'm going to ask you to do
 5 is file a letter with the name of the judge who's assigned to
 6 the case --
 7 **MR. TSADIK:** Okay.
 8 **THE COURT:** -- and the name of the case, and the case
 9 number, and the contact information for the judge in Santa
 10 Cruz.
 11 **MR. TSADIK:** Yes.
 12 **THE COURT:** In Santa Cruz; right?
 13 **MR. TSADIK:** Yes.
 14 **THE COURT:** And we'll -- if it's a real problem for
 15 this case -- to go to trial for your case, your Roundup
 16 Monsanto case to go to trial in February, then maybe we'll tee
 17 it up for May. But you should plan on this case,
 18 Mr. Gebeyehou's case --
 19 **MR. TSADIK:** Yes.
 20 **THE COURT:** -- being in the group of cases that's
 21 ready to be tried on February 25th.
 22 **MR. TSADIK:** The only thing, Your Honor, is, also, I
 23 mean, the enormity of the material I have to review in this
 24 case to be prepared for a trial, participate in the discovery,
 25 expert discovery, I mean, that really will taken entirety of my

1 practice into --

2 **THE COURT:** Well, there are a lot of lawyers here who
3 have spent a lot of time on this issue, and they will be
4 participating in the prosecution of the case as well. And so
5 that will be -- it will be for you to determine which tasks to
6 give to them and which tasks to keep yourself.

7 **MR. TSADIK:** That's --

8 **THE COURT:** Strikes me that you seem -- at first
9 glance you seem like a very competent and effective lawyer,
10 well spoken. And I'm sure that you'll make it work.

11 **MR. TSADIK:** It really is going to be a big challenge.
12 I just don't want to compromise my personal relationship with
13 my professional responsibility on this case. Really tough
14 balance to keep.

15 **THE COURT:** I understand.

16 **MR. TSADIK:** That's why I bring it to your attention

17 **THE COURT:** So file that information on the case--

18 **MR. TSADIK:** Sure.

19 **THE COURT:** -- with the judge's name and everything.
20 And, you know, for now plan on the case going to trial in
21 February. But if it doesn't go -- if it doesn't go to trial in
22 February, plan on it going to trial in May.

23 **MR. TSADIK:** Sure. Thank you.

24 **THE COURT:** Okay. Is there anything -- now, I think
25 that's probably almost everything that we need to discuss for

1 Mr. Gebeyehou's case. Although I'll ask you to maybe stay up
2 here for one more second while we discuss the issue of ordering
3 the three or potentially four plaintiffs for trial.

4 Because I think it was the plaintiffs who suggested
5 that -- you said, well, we understand that we have to have all
6 three bellwether cases ready for trial, but we think it would
7 be a good idea to identify now the case that goes first so we
8 can kind of focus a little bit more on that one. Is that the
9 gist of what you suggested?

10 **MS. WAGSTAFF:** Yes, Your Honor, that's exactly what we
11 suggested. And so I represent the Hardemans, who are here
12 today.

13 **THE COURT:** And you suggested that the Hardeman case
14 go first.

15 **MS. WAGSTAFF:** Correct. It's the oldest case in
16 your -- before your court. We actually -- the preemption order
17 and other things came in that before the MDL.

18 He has a conflict that you've just heard. Mr. Stevick is
19 represented by Mr. Miller. And their law firm also is lead
20 counsel on a case going to trial in February of 2019, in
21 St. Louis City.

22 **THE COURT:** Let me cut you off there for a second.

23 **MS. WAGSTAFF:** Sure.

24 **THE COURT:** So you believe that the Hardeman case
25 should go first.

1 You believe that one of the other two cases should go
2 first, your client should not go first.

3 **MR. TSADIK:** That's correct.

4 **THE COURT:** Which case do you believe, Mr. Lasker,
5 should go first?

6 **MR. LASKER:** We are in the position of not knowing as
7 much about either of the cases. So, as we said in the case
8 management conference, or case management statement, we're just
9 not in a position to say anything. We want discovery to go
10 forward in these cases.

11 **THE COURT:** Remind me, when is the discovery cutoff as
12 it relates to the plaintiffs?

13 **MS. WAGSTAFF:** November 20th.

14 **THE COURT:** November 20th?

15 **MS. WAGSTAFF:** Three weeks.

16 **THE COURT:** All right. So what I would -- and then so
17 are depositions scheduled and stuff?

18 **MR. LASKER:** There have been depositions scheduled in
19 the Hardeman case. As you know, tomorrow we are in
20 conversations with the plaintiffs from the Stevick case, and
21 some of those treaters, we've lined those up. We have not had
22 discussions, up to this point, on Mr. Gebeyehou's case.

23 **THE COURT:** Okay.

24 **MR. LASKER:** We're not -- we have not lined those up
25 yet, as far as I know.

1 **THE COURT:** Okay. But we set a schedule for
2 Mr. Gebeyehou's case; right? I mean, it's subject to this
3 discovery cutoff; right?

4 **MR. LASKER:** That's correct, Your Honor.

5 **THE COURT:** And we set that schedule a while ago now;
6 right?

7 **MR. LASKER:** Yes, Your Honor. And we have the
8 Plaintiff Fact Sheets as of, I guess it was last week. And
9 then we had this issue that was raised by -- about whether the
10 Gebeyehou case would go forward. And that's, I think, in the
11 last week, been the issue that we've been faced with.

12 **THE COURT:** Okay. I guess what I would propose is
13 that at some point we can figure out when the right time is,
14 both of you make a filing proposing an order for the three or
15 possibly four cases.

16 And you can -- you can make that filing. You can make it
17 a separate filing. And I'll look at -- I'll look at them and
18 I'll decide which cases go first and which case is going to go
19 second and which case is going to go third.

20 So the only question now is, when should you file that and
21 when should I decide it?

22 **MS. WAGSTAFF:** So we filed that last week. So I don't
23 know.

24 **THE COURT:** Basically, you don't have anything more to
25 say on the topic, in other words?

1 **MS. WAGSTAFF:** We certainly can, but we would stand on ³⁷
 2 our papers as well.
 3 **THE COURT:** Okay.
 4 **MS. WAGSTAFF:** We think that the discovery-- preMDL
 5 discovery for Mr. Hardeman is further along, for example. The
 6 discovery we just served was the fifth set of written discovery
 7 that we've served in that case. The treaters are set for
 8 tomorrow and Wednesday. We have --
 9 **THE COURT:** You don't need to argue it now. I mean,
 10 I've read your reasons why you think the Hardemans' case should
 11 go first.
 12 But, Mr. Lasker, when can you file something with a
 13 proposal for which case should go first, second, and third, and
 14 possibly fourth?
 15 **MR. LASKER:** Right.
 16 **THE COURT:** I think part of it is we want to sort out,
 17 you know, Bailey, and we want to figure out if Bailey is going
 18 to be part of this group. Although, as I said, you know, it
 19 probably makes the most sense to be setting Bailey for --
 20 having a schedule for Bailey for May rather than February.
 21 So Bailey is sort of part of this group, but I think it's
 22 probably unrealistic to say that Bailey will go to trial in
 23 February.
 24 **MR. LASKER:** Right.
 25 **THE COURT:** So, yeah, so when do you want to file

1 that, they can file something by no later than November 19th, ³⁹
 2 and you'll have your answer before Thanksgiving. Okay.
 3 **MS. WAGSTAFF:** Thank you, Your Honor.
 4 **MR. LASKER:** That's fine, Your Honor.
 5 **THE COURT:** Not a particularly hard decision. Okay.
 6 **MR. TSADIK:** Thank you, Your Honor.
 7 **THE COURT:** All right. Let's see. That's that.
 8 Okay. Is it Stevick or --
 9 **MR. BRAKE:** Stevick, Your Honor.
 10 **THE COURT:** Stevick, I'm sorry.
 11 **MR. BRAKE:** Yes, sir.
 12 **THE COURT:** So in the Stevick case, this issue about
 13 filling out a fact sheet for loss of consortium, I don't think
 14 we need to discuss this much. It seems like there are two
 15 issues or two types of cases; right?
 16 There's a type of case where there are two plaintiffs.
 17 One is the person who has NHL, and the other person is the
 18 spouse who's asserting a loss of consortium claim. It seems
 19 quite obvious to me that the -- in that type of case -- so
 20 that's one type of case.
 21 And then the other type of case is the case where the
 22 person with NHL has passed away. And I guess the only -- I
 23 mean, even in that case there would still be, presumably, the
 24 spouse who would be asserting a claim on behalf of the estate,
 25 right, and then might also be asserting a loss of consortium

1 something explaining which case you want first, second, and ³⁸
 2 third, and why?
 3 **MR. LASKER:** Right. The simple answer would be
 4 November 22nd, but I don't know we need to wait that long.
 5 It's just going to depend on how quickly discovery goes in
 6 these cases.
 7 **THE COURT:** November 22nd is Thanksgiving.
 8 **MR. LASKER:** Whatever the deadline was, I'm sorry,
 9 Your Honor.
 10 **MS. WAGSTAFF:** 20th.
 11 **MR. LASKER:** November 20th for fact discovery. But we
 12 may be in a position earlier. What I'm trying to figure out,
 13 and I just don't have the information now to know this, is
 14 whether -- and it may be that we wouldn't have filed something
 15 a week ahead of time. It may be that on November 15th we just
 16 happen to be at a point that we can file something a day in
 17 advance or something.
 18 **THE COURT:** Well, why don't I ask you to file
 19 something -- I'm going to require you to file something by no
 20 later than November 16th.
 21 **MR. LASKER:** November 16th.
 22 **THE COURT:** Okay. And that's filing something on the
 23 order in which the cases should be teed up for trial, the
 24 Group 1 cases.
 25 And then if the plaintiffs want to file any response to

1 claim. ⁴⁰
 2 In either scenario there's always going to be a fact sheet
 3 filled out by the plaintiff or by a representative of the
 4 plaintiff -- by the person with NHL or a representative of the
 5 person with NHL, about the person with NHL and their exposure
 6 and their employment history and all that stuff; right?
 7 So then this is only a question about whether the spouse
 8 who's asserting a loss of consortium should also be filling out
 9 the fact sheet and should also be signing the authorizations.
 10 The answer to that question is no.
 11 I think that we may have had a passing assumption that
 12 maybe that would happen, but it doesn't make any sense for it
 13 to happen. If there's any specific discovery that needs to be
 14 done of a spouse that's asserting a loss of consortium claim,
 15 you can do more specific and sensible discovery directed at the
 16 spouse asserting the loss of consortium claim.
 17 So neither the Stevick spouse -- Chris Stevick?
 18 **MR. BRAKE:** Yes, sir, that's correct.
 19 **THE COURT:** -- nor any other spouse who falls in this
 20 category needs to fill out a separate Plaintiff's Fact Sheet.
 21 **MR. BRAKE:** Thank you, Your Honor. Brian Brake, for
 22 the record.
 23 There was a proposed order attached to the joint letter we
 24 sent to the Court, which is --
 25 **THE COURT:** Does it capture what I just said?

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1 **MR. BRAKE:** Not exactly, but it's pretty darn close.

2 **THE COURT:** Okay.

3 **MR. BRAKE:** So you may want to look at that. Thank
4 you.

5 **THE COURT:** All right. Somewhere in the case
6 management statement you asked about the briefing -- the length
7 of briefs. That sounds fine. That's approved.

8 Adding general causation experts, the answer to that
9 question is basically no. You cannot add general causation
10 experts.

11 If there is an emergency-type situation, if Lorelei Mucci
12 has a medical emergency or, you know, something like that, and
13 you want to seek permission to sub somebody in to provide, you
14 know, substantially the same testimony, I will entertain it.
15 I'm not saying I will grant it, but I will entertain it.

16 But the basic answer is, no, I don't think it's
17 appropriate, given everything we've been through already as a
18 team, to be adding general causation experts.

19 **MR. LASKER:** If I may, Your Honor?

20 **THE COURT:** Sure.

21 **MR. LASKER:** There's a separate issue there, and I'd
22 like to invite either Brian to step up, or Pamela Yates to come
23 up. They'll be trial counsel for the first case.

24 **THE COURT:** Sure.

25 **MR. LASKER:** And the issue, just to tee it up, and

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1 You know, sort of mildly hopeful that not everybody's
2 deposition is going to be taken again and that most people's
3 depositions will not be taken again. But if there's a --
4 hopefully, you can all work it out if there's a good reason to
5 take -- you know, do a further deposition, you know, that's
6 potentially permissible.

7 **MR. STEKLOFF:** Thank you, Your Honor.

8 **THE COURT:** Okay. Any disagreement from the
9 plaintiffs?

10 **MS. GREENWALD:** Not at all. Not at all, Your Honor.

11 **THE COURT:** Okay. Jury selection. There was some
12 discussion in the case management statement about jury
13 selection.

14 I see that Mr. Wisner has gotten up for that part of the
15 discussion.

16 (Laughter).

17 **THE COURT:** I also saw Mr. Wisner in the back of the
18 courtroom today watching closing arguments.

19 **MR. WISNER:** Yes, Your Honor.

20 **THE COURT:** Please don't try anything remotely like
21 what the EEOC lawyer did in closing argument, because --

22 **MR. WISNER:** Yeah.

23 **THE COURT:** -- I will come down on you if you do.

24 **MR. WISNER:** Well, I mean, I think you telling the
25 jury that she misrepresented it twice was well done, Your

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1 they can continue, is these experts have continued to be
2 working as the litigation has gone forward. So we have experts
3 who have expanded what they have looked at and in many cases,
4 been deposed on additional issues.

5 If I could ask one of my colleagues to stand up about
6 that.

7 **THE COURT:** Sure.

8 **MR. LASKER:** Thank you.

9 **MR. STEKLOFF:** Thank you, Your Honor. Brian Stekloff.

10 I don't think there's much to add beyond what Mr. Lasker
11 said, other than it might come up in the context of
12 supplementing an expert's reliance list. For example, if
13 there's additional epidemiology or other scientific literature
14 they wanted to rely upon.

15 We would, of course, give the other side notice of that.
16 I think that's different than adding a new general causation
17 expert and having --

18 **THE COURT:** Yeah, I was assuming -- I mean, if anybody
19 has any disagreement with this, you can let me know, but I was
20 assuming, just by the nature of this topic, there would have to
21 be additional reliance on new materials, either materials that
22 played a key role in the state court trial, that maybe didn't
23 play a key role in our *Daubert* hearings, or in something that
24 is newly published, or something like that, and that experts
25 would supplement their disclosures.

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1 Honor.

2 **THE COURT:** You won't be saying that if I do it to
3 you.

4 (Laughter)

5 **MR. WISNER:** I won't misstate the facts, Your Honor.

6 **THE COURT:** One of the things I'm going to do is I'm
7 going to read the transcript of closing arguments in the state
8 court case in an effort to help set some ground rules about the
9 closing arguments in this case.

10 **MR. WISNER:** If Your Honor would like, we can even get
11 you a video of it. It was videotaped.

12 **THE COURT:** How long were they?

13 **MR. WISNER:** I believe we had a cap of two hours each.
14 My original closing was an hour and a half followed by a 15-,
15 20-minute rebuttal.

16 **THE COURT:** Yes, why don't you get us the videotapes.
17 I'd appreciate that. And the transcripts. We probably don't
18 have the transcripts right now, so why don't you submit the
19 transcripts as well.

20 **MR. WISNER:** Sure. I can even attach the PowerPoints
21 if you want to take a look.

22 **THE COURT:** Sure.

23 **MS. WAGSTAFF:** Do you want to just do it right now?

24 (Laughter)

25 **THE COURT:** On the issue of jury selection, I mean, I

1 will make a general comment, which is: Monsanto appears to
 2 want to proceed with jury selection as if this is a death
 3 penalty case. And we're not going to proceed with jury
 4 selection as if this is a death penalty criminal case.
 5 What I would propose, subject to -- I mean, I'll see what
 6 you-all think of this, but normally in criminal -- normally, in
 7 criminal cases I use a written questionnaire. And, normally,
 8 in civil cases I do not use a written questionnaire. The jury
 9 pool just comes and sits, and we all have a nice conversation,
 10 and then we pick a jury.
 11 In this case I was assuming that, at a minimum, we would
 12 prequalify the jury for time availability; right? That we
 13 would send out a communication to prospective jurors in
 14 advance, to make sure that they are available, you know, in the
 15 month of March for a trial.
 16 Now, how long did the trial last in -- how long did the
 17 Johnson trial last?
 18 **MR. WISNER:** We have the hours and we have the days.
 19 **THE COURT:** Okay.
 20 **MR. WISNER:** So they were pretty short trial days. We
 21 had basically an hour and a half lunch, ended at 4:30 sharp.
 22 **THE COURT:** When did you start?
 23 **MR. WISNER:** 9:30.
 24 **THE COURT:** So 9:30 to 4:30, with an hour and a half
 25 lunch.

1 know if that will happen this time.
 2 If they modify experts, that simplifies things, I think.
 3 **THE COURT:** How many experts total testified?
 4 **MR. WISNER:** We had five. They had four.
 5 **MR. STEKLOFF:** I'm relying on Mr. Wisner. I was
 6 not --
 7 **MR. WISNER:** Yeah, if I'm wrong, I'm sorry.
 8 **MR. GRIFFIS:** That sounds correct.
 9 **MR. WISNER:** Mr. Griffis was there.
 10 **THE COURT:** Okay. We will time qualify them. Our
 11 trial days, as you probably know, we go from 8:30 to between
 12 2:00 and 2:30, with a 45-minute lunch break. And we go -- we
 13 run things very efficiently. We start right at 8:30. We're
 14 always going between 2:00 and 2:30.
 15 And I was sort of envisioning a four-week trial on that
 16 schedule. So I was sort of envisioning that we would be done
 17 by, you know, the end of March.
 18 We can have further discussions about that as we get
 19 closer. It's not necessary to decide that firmly right now.
 20 But --
 21 **MR. WISNER:** Is there a dark day as well, Your Honor,
 22 or no?
 23 **THE COURT:** Well, that's a good question. In this
 24 trial that just ended today, we did not have a dark day last
 25 week. We went all five days. I would think, since we're going

1 **MR. WISNER:** And we usually started at 10:00 because
 2 we were arguing about stuff.
 3 **THE COURT:** That's not going to happen in this trial,
 4 I assure you.
 5 **MR. WISNER:** I'm very good with that, Your Honor. It
 6 was usually not us raising stuff, for what it's worth.
 7 So days, it stretched out about six weeks. And there was
 8 even a week-long break after the jury was selected before we
 9 actually started taking testimony.
 10 **THE COURT:** So the six weeks includes the week of jury
 11 selection and the week-long break?
 12 **MR. WISNER:** No. If you do that, it's about seven
 13 weeks. Six weeks of jury selection and trial. There was a
 14 break though during the July 4th break because we knew we'd
 15 have too many hardships for that; people's vacations and
 16 whatnot.
 17 **THE COURT:** So a five-week-long trial, basically?
 18 **MR. WISNER:** Yes, Your Honor. And that was much
 19 shorter, I think, than both sides anticipated.
 20 We didn't call quite a few witnesses that we were ready to
 21 call, and defendants also did not call quite a few witnesses,
 22 expert witnesses.
 23 I think part of it was that we had an agreement with the
 24 jury, essentially, that we would have them out of there by
 25 August 10th, so we were just sort of making it work. I don't

1 a month, or if we're going a month or longer or only a little
 2 bit less, we would want to consider having --
 3 I think we'd probably have to have dark days, right,
 4 Kristen? We'd have to have Thursday be dark. Probably move
 5 our case management conferences to Thursdays, as well, so we
 6 don't have them on Tuesday afternoon.
 7 **MR. WISNER:** I think it also helps, Your Honor, with
 8 jury hardships as well. They know there's a day they can go
 9 back to work to answer emails or whatnot.
 10 **THE COURT:** Yeah. So, anyway, we can talk more about
 11 how long we anticipate the trial to be later on, but I was --
 12 as I was saying before I got sidetracked -- or before I
 13 sidetracked myself, was that we -- you know, we should
 14 definitely prequalify them for time availability.
 15 I would also be open to -- I have some concerns about it,
 16 but I would be open to doing a questionnaire that they fill out
 17 in advance from home or -- or having them come in, you know,
 18 several weeks in advance and fill out the questionnaire.
 19 That's another -- that's maybe better.
 20 You're both nodding your heads to that. So maybe we could
 21 prequalify people for availability, have them come in and fill
 22 out a questionnaire like a couple of weeks in advance. I'm
 23 just thinking out loud here at this point. Okay.
 24 And then decide how many people we want to have fill out
 25 the questionnaires, go through them, figure out who we can

1 disqualify.

2 But then, at that point, after we've gone through the
3 questionnaires and figured out who should be disqualified, I
4 would propose to just have people in and do jury selection as
5 we normally do jury selection, which is that I -- you know, for
6 whoever is the prospective juror who is in the courtroom, I ask
7 them to stand and -- or I don't know if we ask them to stand,
8 actually, but we ask them to just answer a few questions about
9 themselves out loud so we can start to get a feel for them.

10 Speaking out loud, just like ten basic biographical
11 questions. Those are on my website. And then we go through.
12 They ask questions, sometimes I interrupt and ask follow-up
13 questions. And then -- and then I do some raise-your-hand
14 questions usually. Maybe I wouldn't do it in this case because
15 we already have the benefit of the questionnaire.

16 Then I turn it over to the lawyers and let you do voir
17 dire for a time, and that's it. It's not clear to me why we
18 would need -- those are already very -- sort of extra
19 procedures for jury selection in a civil case that we don't do
20 in your typical civil case.

21 I understand why we might need to, given who the defendant
22 is and given the subject matter, but -- and that's fine, but
23 all this business of individually voir diring jurors, I
24 don't -- I would be -- I have a pretty strong reaction against
25 that. Nor do I think that it will take longer than a day to

1 pick a jury. So those are my thoughts.

2 I'm happy to hear from either of you, get your reaction on
3 those thoughts.

4 **MR. STEKLOFF:** If I may, Your Honor. We would like a
5 questionnaire because we think there is a level of bias and
6 hostility toward Monsanto that is unique given this litigation,
7 given the company, given the jurisdiction.

8 I think the parties did see that in the Johnson
9 litigation. They had a questionnaire there and then had some
10 level of individual voir dire.

11 I also think what's unique --

12 **THE COURT:** I'd like to see at some point, doesn't
13 have to be anytime soon, but I would like to see the
14 questionnaire that was used in the state court trial.

15 I would think we would keep it relatively simple and
16 short, I mean, that we could craft six or seven questions that
17 we could ask them. But, anyway.

18 **MR. STEKLOFF:** I think our concern, beyond just having
19 a questionnaire that might expose some hostility or biases in
20 either direction, but maybe more likely toward Monsanto, is
21 that if you --

22 **THE COURT:** Oh, I think definitely towards Monsanto.

23 **MR. STEKLOFF:** If you proceed with group voir dire,
24 especially given the verdict and the amount of publicity that
25 has occurred in the jurisdiction regarding the verdict, if a

1 juror starts to talk in the group -- in front of the group
2 about the verdict or even about his or her hostility toward
3 Monsanto, it can taint and pollute the entire venire.

4 **THE COURT:** Let me just stop you for a second.
5 Putting aside the verdict and just talking about hostility
6 toward Monsanto, I mean, we pick juries every day in courtrooms
7 across America where people express hostility toward the
8 police, in a criminal case where somebody's liberty is at
9 stake.

10 We don't do individual voir dire just because somebody has
11 hostility towards the police. The hostility they have towards
12 the police might be rational, it might be irrational. It might
13 be based on personal experience, it might be based on what
14 they're reading in the paper.

15 None of that is ever thought, typically -- unless it's a
16 death penalty case or something, none of that has ever been
17 thought typically to require one-on-one questioning of
18 prospective jurors.

19 And so I understand this case is very important to you,
20 but every case is important to everybody who's involved in
21 trying it. And I don't see why this case should be different.

22 **MR. STEKLOFF:** I agree with the premise. I was an
23 assistant public defender for four years, so those people, I
24 wish that they -- they usually were excused by the government.

25 I think the difference is that people come in to court,

1 everyone has a view on police officers that they come in with
2 naturally. And no one is going to tell something about a
3 police officer, the general profession, that someone hasn't
4 thought of.

5 I mean, they may talk about one incident that has made
6 them particularly biased, for example, against police officers,
7 or the opposite. They may be a spouse of a police officer
8 or -- and then have biases in favor that they would believe the
9 police officers. But it's just sort of a natural part of life.

10 **THE COURT:** But I just did an employment
11 discrimination case, and it was a case involving a transgender
12 male. The plaintiff was a transgender male. We had a very
13 nice, productive discussion in open court with the prospective
14 jurors about -- and some had very strong preconceived notion
15 about -- notions about gender reassignment one way or the
16 other.

17 Most people didn't have any strong preconceived notions
18 about it. People shared their opinions. Some people had
19 strong preconceived notions about employees taking advantage of
20 their, you know, disadvantaged status to get more stuff from
21 their employer. Others had strong feelings that employers
22 systematically discriminate against disadvantaged groups.

23 I mean, what's the difference here?

24 **MR. STEKLOFF:** I think the difference is that here
25 people -- there may be jurors who come in with -- I mean, we

1 would say misconceptions, but preconceived notions about
2 Monsanto, about things like GMOs, about Roundup, and about
3 science or what they think is science.

4 There is a lot of false publicity or false information out
5 there about Monsanto. And then you could have --

6 **THE COURT:** No, no, sorry. Go ahead.

7 **MR. STEKLOFF:** I was going to say then you could have
8 jurors providing, with a lot of emotion, misinformation to
9 other jurors about the company and about those --

10 **THE COURT:** I understand your point, but I actually
11 wonder if this -- it might be more effective to deal with this
12 problem that you are identifying by having regular open court
13 jury selection, because, you know, I'm pretty good about
14 cutting people off when they start going on a rant about
15 something that is not relevant to, you know, the -- you know,
16 is not relevant to the trial and might be prejudicial to a
17 party.

18 And I'm pretty good about explaining to people that, you
19 know, you have to -- the question is not whether your views are
20 correct or not. Everybody has different views. People are
21 right, people are wrong about stuff. But the issue is, can you
22 put you aside any information you may believe is true, that
23 you've learned previously, and decide the case on the evidence
24 that comes in the four walls of this courtroom?

25 And by me saying that and having that group discussion

1 trial.

2 And I -- and then I think there could be a balance where
3 at least bringing some jurors up sidebar, if they expressed
4 hostility in the questionnaire or raise their hand to one of
5 your yes-or-no-type questions, I think there's at least a
6 combination of things that can be done, both individually and
7 through group voir dire, that --

8 **THE COURT:** Why couldn't I just --

9 **MR. STEKLOFF:** -- federal courts and certainly state
10 court.

11 **THE COURT:** Why couldn't I just say, look, some of you
12 may have heard about the prior litigation involving this issue.
13 The prior litigation involving this issue is not relevant to
14 this case. It is not for your consideration.

15 And, therefore -- first of all, we can ask them in the
16 questionnaire whether they've heard about prior litigation
17 involving this issue, so we know who knows about it and who
18 doesn't.

19 I actually have another question about that, that I'll get
20 to in a second, but why can't I just say during jury selection,
21 you know, there has been prior litigation involving this issue
22 and that is not relevant and it should not be -- anything you
23 know about, that should not be discussed in open court.

24 **MR. STEKLOFF:** Because -- well, if some -- I guess the
25 concern is that if there are people -- I think it depends on

1 with people, I feel like sort of the gravity of that sort of
2 comes across better, potentially, than the process you're
3 describing.

4 **MR. STEKLOFF:** I think there's a place for individual
5 voir dire and group voir dire, but I think there are some
6 things that could be so prejudicial that, by the very nature of
7 them coming out -- and I would put the Johnson verdict, the
8 post trial publicity about -- these are just -- just the
9 factual -- the facts; that jurors have written letters that
10 people may have reviewed, jurors have been on the news.
11 There's been a lot of publicity about the tentative ruling, a
12 lot of publicity about the final ruling, and someone stating
13 those things publicly, whether you -- and I understand that
14 people --

15 **THE COURT:** Anybody friends with Neil Young and Daryl
16 Hannah?

17 **MR. WISNER:** I am now. It's pretty cool, Your Honor.

18 **MR. STEKLOFF:** They may be here watching, Your Honor.
19 And I think that someone talking about those types of events --
20 I mean the numbers, the dollars associated with the verdict,
21 and I think some of the other scientific things, if it comes
22 out before Your Honor can sort of explain that that's not part
23 of the trial and that's not relevant, can have such an impact
24 on other jurors and can bias them toward -- I mean, they should
25 not know about the verdict or what happened in this other

1 the details.

2 If we know about who knows about it in the jury
3 questionnaire, and those people are not struck, for example,
4 ahead of time, I think we would have to question them
5 individually, not in front of the group, about what they know
6 and whether they could be fair in light of what they know.

7 If there are people who say that they don't know about it,
8 I'm not sure that that would be -- we would probably oppose an
9 instruction to tell them that there's other litigation because,
10 I mean, it depends which way it goes.

11 Often we deal with this issue in mass tort cases of not
12 trying to talk about the overall scope of the case and having
13 the jury focus on the single plaintiff and the single trial.

14 **THE COURT:** Okay. Do you want to briefly give me your
15 view on this?

16 **MR. WISNER:** Yeah, Your Honor. I'll be very quick.

17 Regarding the questionnaire, I don't think we have a
18 problem with that principle whatsoever, as we stated in our
19 papers. That was very effective in the Johnson case.

20 We didn't need 500 jurors. We had 120. Twenty-seven of
21 them were struck for cause because when you asked them, "Can
22 you be impartial towards Monsanto?" they said, "I couldn't."

23 **THE COURT:** Are you saying that there were 120 jury
24 questionnaires?

25 **MR. WISNER:** That's correct.

1 **THE COURT:** 120 people filled out their
2 questionnaires, and you said 20-some people were struck on the
3 basis of their questionnaire responses alone?

4 **MR. WISNER:** No. It was based on that with a
5 combination of open-air questioning and a handful, probably
6 maybe 7 or 8, back chambers ones. And those ones were
7 situations where they said on their questionnaire stuff like
8 Monsanto is evil, or, I gave a presentation about Monsanto's
9 agricultural practices in college.

10 **THE COURT:** I would think that both sides would
11 consent to those people being excused based on the
12 questionnaire response. I would think that we wouldn't even
13 drag them into the courtroom.

14 **MR. WISNER:** Well, the first one, yes. Evil, right,
15 that's clearly bias. If they gave a presentation, I think we
16 want to know what that presentation was about; right?

17 If it was a presentation about the economics of the
18 agricultural industry, that might not be so bad. If it was a
19 presentation about Monsanto being evil, okay, that's another
20 conversation.

21 So I think that's where the --

22 **THE COURT:** I suppose in your mind there would be no
23 difference between those two things.

24 (Laughter)

25 **MR. WISNER:** I try to eat organic, but I'm not

1 perfect.

2 I guess what I'm trying to say is, I think that I sort
3 of -- a rule set in stone that we're going to have a two-phase
4 voir dire would be needless. Ferreting out the obvious biased
5 people, I think, can be done through a questionnaire.

6 And I actually think you're right about open air
7 questioning about these issues. I think it actually -- it
8 actually gives Monsanto a chance to fix any misstatements made
9 by a juror or explore --

10 **THE COURT:** Or it gives me a chance.

11 **MR. WISNER:** Yeah, that's correct.

12 **THE COURT:** And I'll tell you again, I mean, you know,
13 I'm not sure anyone is an expert on this topic. I've done the
14 trials that I've done in the last five years. Every time, I go
15 sit in my chambers with the jurors afterwards and I talk to
16 them.

17 And this jury today, all they talked about was how they --
18 you know, yeah, my own personal experience and bias starts to
19 creep in, and I had to tell myself not to allow that, and I did
20 a really good job at it, and we all did a really good job at
21 it, and we were all very careful to listen to your instructions
22 that you told us over and over and over again that you've got
23 to limit your consideration to the evidence that comes in in
24 the trial.

25 **MR. WISNER:** I agree, Your Honor. Actually, I have

1 picked a jury with Mr. Stekloff before for trial in Virginia,
2 which I lost. My first trial ever. And, you know, we picked a
3 jury in a morning. And that was a pharmaceutical case which
4 had a bunch of biases.

5 There was actually a juror who was impaneled who had
6 previously represented the defendant 30 years prior, and I
7 couldn't get him off for cause.

8 So I think, you know, there's biases that go both ways,
9 and you have to deal with that as part of trial work. So
10 that's our position.

11 And, obviously, our last issue, the gag order didn't come
12 up. We strongly oppose that.

13 **THE COURT:** I'm not issuing any gag orders.

14 But that relates to, sort of, a question I have for
15 you-all about jury selection. And that is, I'm not sure I've
16 really had a trial before where, you know, a significant
17 portion of the jury pool is going to come -- you know, is going
18 to potentially have read about the issue or potentially have
19 some familiarity with the issue through media exposure and the
20 like.

21 When I read about other cases that have that, I always --
22 so, my sense -- this is not really something I've really
23 studied, so what I'm saying may be incorrect now, but my sense
24 is that, oftentimes, if the person has been exposed to any --
25 any information at all in the media about a particular -- that

1 particular issue, that, like, disqualifies them; right?

2 So if somebody were to say -- as applied to this case, if
3 somebody were to say, you know, oh, yeah, I remember reading an
4 article about how the World Health Organization thinks that
5 glyphosate causes cancer and that the Environmental Protection
6 Agency thinks that it doesn't -- let's just say as an
7 example -- I mean, you know, it's not obvious to me that that
8 person should be disqualified from being on the jury for the
9 reasons that I just articulated, that you -- you follow up and
10 you ask them, well, okay, you read that.

11 You know, there are things that are accurate in the news
12 and there are things that are inaccurate in the news. And, you
13 know, you -- the point is, to have a fair trial, you need to be
14 able to put aside whatever sort of media coverage you've been
15 exposed to and consider the case based on the evidence that
16 comes in.

17 Or even, potentially, there was another verdict in this
18 case, you know, and -- but anything you know about the prior
19 verdict in this case, you should not give that any
20 consideration. You've got to decide the case based on the
21 evidence.

22 And then you ask them questions designed to discern
23 whether they are capable of doing that and they think they're
24 capable of doing that.

25 My gut reaction is that somebody like that should remain

1 on the jury if they answer those questions to your
2 satisfaction.

3 So I wanted to let you know that, A, that's my gut
4 reaction; B, it is not an issue that I've studied; C, my sense
5 is that in other high-profile trials perhaps judges do it
6 differently and are more quick to excuse people.

7 So I wanted to invite you to submit briefing on that
8 issue, briefing on, you know, the extent to which exposure to
9 media coverage of the issue of Roundup causing or not causing
10 cancer would automatically disqualify somebody from being on a
11 jury.

12 **MR. GRIFFIS:** Your Honor, may I say one thing that
13 doesn't answer the question you just asked?

14 **THE COURT:** That's always a good way to introduce a
15 comment.

16 **MR. GRIFFIS:** I'm one of the lawyers who tried the
17 case for Monsanto, and I just stood up to make one point in
18 clarification of something Mr. Wisner said. He said 120 jurors
19 were put into the venire and then we picked a jury from that.

20 That was the first venire. We had 120 jurors, and Judge
21 Bolanos's thought was we would successfully impanel a jury from
22 those 120, and we did not. She had to bring another 100-plus.
23 I don't remember if it was 100, 110 or 120, but at least a
24 hundred more jurors in order for to us get to a jury. And
25 there's been a lot more publicity since then. That's the

1 reason for the number. That's all I wanted to say.

2 **THE COURT:** Thank you.

3 **MR. STEKLOFF:** And, Your Honor, may I respond to your
4 hypothetical?

5 **THE COURT:** Sure.

6 **MR. STEKLOFF:** I think there's a difference -- and I
7 don't want to concede that a juror's heard about, using your
8 hypothetical, IRARC and World Health Organization and EPA.

9 There's a difference between that because I would feel
10 confident that within, you know, five minutes of the case
11 starting in opening that there will be talk on the plaintiffs'
12 side about what the World Health Organization found and
13 probably on the defense side about the EPA.

14 So that seems different than the other example --

15 **THE COURT:** Although that may be -- I mean, I touched
16 on that issue in my *Daubert* ruling.

17 **MR. STEKLOFF:** Yes.

18 **THE COURT:** We may have further discussions about
19 that. But, anyway, go ahead.

20 **MR. STEKLOFF:** I agree. And I'm not conceding that
21 they should be allowed to talk about the World Health
22 Organization and IARC. We'll where that goes. But it's a
23 little bit different, I guess, is my point, than something that
24 is totally irrelevant to the jury's consideration, that they've
25 been exposed to, which is that a group of jurors viewing what

1 they will assume is similar evidence to what they are seeing,
2 whether it will be similar evidence or not, based on that
3 evidence, came to a unanimous decision that Monsanto, one,
4 caused someone's cancer to the amount of, I think, \$29 million
5 in compensatory damages; and, two, engaged in such malice and
6 oppressive conduct -- I guess it was \$39 million --

7 **MR. WISNER:** 20.

8 **MR. STEKLOFF:** -- add a \$250 million punitive verdict.
9 And so that is just completely irrelevant to what is going to
10 happen in the courtroom and will never be explained to them one
11 way or another.

12 **THE COURT:** I understand what you're saying, and I
13 would like to get briefing on this topic. But, I guess, my gut
14 reaction is, people are exposed to irrelevant information
15 outside the courtroom with some regularity, and we tell them
16 not to consider it. And so where is the line?

17 I mean, maybe the line is with the verdict. Maybe you
18 draw the line at the verdict and you say, well, if they've been
19 exposed to other information, maybe that's okay, maybe they can
20 be rehabilitated, or maybe we can ask them questions about
21 whether they can decide the case fairly. Maybe if they know
22 about the verdict, maybe they can't. You know, maybe that's
23 too much.

24 I don't know. I'm just saying that I don't know where the
25 line is. And my gut is that my instinctual reaction -- my

1 sense is that my instinctual reaction about where the line
2 should be is maybe different from other judges' reaction about
3 where the line should be and, therefore, I want to understand
4 the scope of my authority on this issue, on -- on that topic.

5 **MR. STEKLOFF:** Thank you.

6 **THE COURT:** Does that make sense?

7 **MR. STEKLOFF:** Absolutely. And that's helpful, and we
8 can brief that.

9 **THE COURT:** When should you file those briefs?

10 **MR. STEKLOFF:** We can be flexible.

11 **MR. WISNER:** Your Honor, would you like concurrent
12 briefing or would you like sequenced briefing?

13 **THE COURT:** In this case you can just each file a
14 brief, I think, and no replies or anything like that.

15 **MR. WISNER:** Two weeks works for me. I don't know
16 what your -- this is not a rushed thing. We have some time
17 before February.

18 **THE COURT:** Why don't we just say -- what if I told
19 you -- why don't you get through the discovery cutoff and stuff
20 and why don't you file it on -- why don't you file it on
21 November 30th. How about that? Friday, November 30th.

22 **MR. STEKLOFF:** That's acceptable, Your Honor.

23 **THE COURT:** Okay.

24 **MR. WISNER:** I would also point out, Your Honor, I
25 think this is important, and you'll see it in our brief,

1 although it really won't address the issue you just raised,⁶⁵
 2 which is the scope of your authority.
 3 For example, excluding anybody who's read the news
 4 essentially creates its own bias.
 5 **THE COURT:** Well, that's the difficulty I have with
 6 this issue. That's kind of my concern.
 7 **MR. WISNER:** Okay.
 8 **THE COURT:** Yeah. Okay. So what I would like to do
 9 is maybe take a short break.
 10 And then I think that the only things remaining on the
 11 list that I rattled off at the beginning -- the only thing
 12 remaining is the Defendant Fact Sheet and then any other
 13 discovery on the defendant.
 14 I have different thoughts about different subjects that
 15 you-all raised within that, so I may have to take a little bit
 16 more time; hopefully, not too long.
 17 So why don't we take a break and come back at ten to 4:00.
 18 (Recess taken at 3:39 p.m.)
 19 (Proceedings resumed at 3:54 p.m.)
 20 **THE COURT:** Before I forget, should we schedule
 21 another case management -- I know we earlier today scheduled a
 22 telephonic CMC for the Bailey case, but should we schedule
 23 another case management conference for a longer multi-issue
 24 discussion like the one we're having now? And if so, when
 25 should that be?

1 brief on -- briefs on jury selection on -- well, you know what?⁶⁷
 2 Sorry. Scratch that.
 3 So we have jury selection on the 5th in a case that's
 4 definitely going to go. What about -- oh, what's this
 5 evidentiary hearing on the 6th?
 6 (The Court and courtroom deputy confer off the record.)
 7 **THE COURT:** Give me just one second here. Let's do
 8 Wednesday afternoon, at about 2 o'clock, because we'll have
 9 that jury picked by lunchtime.
 10 **MR. BRAKE:** I'm sorry. Your Honor, what day?
 11 **THE COURT:** Sorry. December 5th. Let's say 1:30,
 12 actually.
 13 And so why don't you file a case management statement on
 14 the 30th, along with your briefs that are due on the -- on the
 15 jury selection issue. Why don't you also file proposed
 16 questions for a jury questionnaire, because that will help us
 17 inform the discussion.
 18 So on the 30th, file questions that you would propose. I
 19 would try to keep it light, if you could. But file questions
 20 for the proposed jury questionnaire. And then, obviously, in
 21 the case management statement you can tee up whatever else you
 22 want to tee up.
 23 Okay. So that's good. Now, fact sheet. Let me pull
 24 those papers up.
 25 **MS. WAGSTAFF:** Your Honor, while you're pulling that

1 **MS. WAGSTAFF:** Your Honor, that's probably a good⁶⁶
 2 idea. And we would propose the week after Thanksgiving. Maybe
 3 the 28th, 29th, or 30th.
 4 **MR. LASKER:** Just a second, Your Honor.
 5 **THE COURT:** Sure. Take your time.
 6 (Discussions held off the record.)
 7 **MR. STEKLOFF:** Your Honor, only because we're going to
 8 submit those jury selection briefs on November 30th we thought
 9 maybe the following week might be better, after you've had a
 10 chance to review those, so we can potentially continue to have
 11 discussion about jury selection. So we were going to throw out
 12 the 3rd or 4th, which is the following week.
 13 **THE COURT:** In terms of when I would most likely --
 14 when it would most likely -- when I could be most helpful to
 15 you, does that sound like an appropriate time?
 16 **MR. STEKLOFF:** I think sometime in early to mid
 17 December makes the most sense because it will give us enough
 18 notice before trial on those types of issues. Doesn't have to
 19 be the 3rd or 4th.
 20 **MS. WAGSTAFF:** Yeah, if it turns out that we don't
 21 have anything substantive, we can request it be telephonic or
 22 request it be cancelled altogether.
 23 **THE COURT:** I guess, you know, my preference would
 24 be -- my preference actually would be to do it on the 28th,
 25 just for our schedule. And you could file your -- file your

1 up, I just wanted to bring to your attention something that I⁶⁸
 2 will be filing in the next week, which is a -- one of my
 3 client's, Richard Giglio, his case number is 3:15-cv-02279, in
 4 the Southern District of California, he's actually the second
 5 oldest federal complaint. He's dying, and so we're going to be
 6 filing a motion for a preferential trial date. That will
 7 probably come in the next week or so. I haven't had time to
 8 confer with Monsanto yet, but I just wanted to give you a
 9 heads-up that we will be filing that.
 10 **THE COURT:** Okay. And so what are you going to be
 11 requesting, that he kind of go into Group 1 or something?
 12 **MS. WAGSTAFF:** I don't think that he could be ready
 13 by -- well, maybe he could. We're kind of working out --
 14 **THE COURT:** He would have to be tried down in the
 15 Southern District then, under the current circumstances anyway?
 16 **MS. WAGSTAFF:** Yeah.
 17 **THE COURT:** Okay.
 18 **MS. WAGSTAFF:** And Judge Moscowitz is the judge that
 19 he was assigned.
 20 **THE COURT:** Okay. So I assume that what that will
 21 mean is that you will want to -- we'll want to work up any
 22 summary judgment motions on that case on an expedited basis
 23 even though it's not in Group 1?
 24 **MS. WAGSTAFF:** That's right, Your Honor. We'll be
 25 asking for something like that, pretty much a CMO for a trial

1 date and remand. And it's been Your Honor's communication to
2 us that you want him to be trial ready before remand, so we
3 would be asking that his case be released from the stay and get
4 trial ready.

5 **THE COURT:** Consider whether you want to put it on the
6 same schedule -- I was proposing that you set a schedule for
7 Bailey, you know, to be ready to try in May. Consider whether
8 you want to put this case on the same schedule and the same
9 discovery schedule, the same summary judgment schedule, with
10 the idea that it would, I guess, be transferred after that.

11 Of course, Monsanto may oppose this motion, and I'll --

12 **MS. WAGSTAFF:** Yes.

13 **THE COURT:** -- obviously consider that.

14 **MS. WAGSTAFF:** To be fair, this is the first time
15 they've heard about it.

16 **THE COURT:** All right. Let's see here.

17 Pull up your case management statement. Okay. So here
18 is -- let me give you my kind of tentative view on each of
19 these topics that you have flagged for a Defendant Fact Sheet.

20 **MR. LASKER:** If I could, Your Honor, there are some
21 issues that I think as in further looking at this may inform
22 your thinking, that I think will be useful, because we've been
23 trying also to get our hands around what would be the most
24 efficient way of addressing some of these issues.

25 And one of the big problems we have comes out, as well, in

1 given us, we wouldn't be able to get that information either. 71

2 Now, we do, for individual plaintiffs, based upon their
3 Plaintiff Fact Sheet, we have produced already to the
4 plaintiffs all the labels we have -- those were produced a long
5 time ago -- for our products. We have also produced the
6 formulation sheets for all of the products. That was produced
7 a long time ago.

8 **THE COURT:** On the labels, you produced all the labels
9 you've used. Does it come with any explanation of where and
10 when these labels appeared?

11 **MR. LASKER:** Right. That's what I'm going to get
12 into, because what we think is the most efficient way of doing
13 this is some summary document as opposed to trying to do this
14 plaintiff by plaintiff, which we can't do anyway.

15 And we're looking at -- I know in our case management
16 statement we were trying to figure out a way of doing this, but
17 the problem that we're seeing is that it still relies upon the
18 plaintiffs to have information they can give us that's actually
19 accurate.

20 So there are a number of formulations that have been
21 marketed in the United States. It's actually fairly lengthy.
22 Probably about 50 different formulations of products that have
23 been marketed in the United States.

24 And what we would propose doing is to be able to provide
25 information with respect to those products in a summary fashion

1 the Plaintiff Fact Sheets that we've received for the first 70
2 three plaintiffs, is that the Plaintiff Fact Sheets don't
3 actually identify information that would even allow us in any
4 theoretical world to provide information that plaintiffs are
5 requesting. In part because plaintiffs don't identify the
6 product they used accurately.

7 I mean, for example, Mr. Hardeman identifies having used
8 Roundup concentrate. There is no product named Roundup
9 concentrate. And we don't -- so we can't respond with respect
10 to that particular product.

11 And, similarly, we have an issue of -- we don't have
12 identification, and maybe this is something that we could have
13 done differently in Plaintiff Fact Sheet, but we don't know
14 where they purchased the product.

15 We know sometimes there was a town where they used it or
16 where they claim they were exposed, but there are three, for
17 example, different markets entirely. There is a residential
18 market, there is an IT&O market, and there's an agricultural
19 market.

20 And it's possible, certainly with the IT&O and the
21 residential, depending on which store you go to, they may be
22 parts of different markets.

23 I'm not sure if there's agricultural co-ops, those would
24 also be something a person would go and get a product. I don't
25 know. But we don't know -- based on the information they've

1 so that each individual plaintiff, to the extent they can 72
2 identify the product -- or if not, it doesn't, I guess,
3 matter -- we will have that information provided to the
4 plaintiffs so that that would sort of cover the universe.

5 We would not have to respond plaintiff by plaintiff in a
6 way that is not going to work anyway.

7 **THE COURT:** So what information would come with the
8 list of the 50 products?

9 **MR. LASKER:** Okay. So it would be the formulation,
10 the statement of formulation, which is what they are
11 requesting. We already have produced those, so we would be, I
12 think, pointing plaintiffs to where those are in the -- in the
13 document production we already have.

14 And I think --

15 **THE COURT:** You were saying, We want to provide all
16 this information in one place. And so you're going to provide
17 all this information in one place whether they have it already
18 or not. And you're going to -- you're going to identify the
19 product, each product.

20 **MR. LASKER:** Correct.

21 **THE COURT:** You're going to identify each formulation
22 for each product.

23 **MR. LASKER:** Well, we can -- I mean, there's two ways,
24 I suppose, we can do this. And I haven't really thought it
25 through.

1 We have produced documents that actually have the
 2 formulation on them. So, as opposed to us writing a
 3 interrogatory response, we would either identify where that is
 4 in the production set for them or --
 5 **THE COURT:** Okay. So forgetting, for the moment,
 6 about the format the information comes in, the information that
 7 you're -- is there a tapestry that you're proposing to provide
 8 to the defendants -- I mean, the plaintiffs?
 9 The product, the formulation. What else?
 10 **MR. LASKER:** The labels. Again, we have a document
 11 production --
 12 **THE COURT:** Forgetting, for a moment, about whether
 13 you have a document production --
 14 **MR. LASKER:** Right.
 15 **THE COURT:** -- or not, just the information that we
 16 want to make sure is conveyed to the plaintiffs in some form.
 17 Product, formulation, labels.
 18 **MR. LASKER:** Right.
 19 **THE COURT:** What else?
 20 **MR. LASKER:** I think with respect to the --
 21 **THE COURT:** The formulation, that includes what
 22 surfactant was used.
 23 **MR. LASKER:** Yes.
 24 **THE COURT:** All right. What about where it was
 25 available and when it was available?

1 the plaintiffs zero in on the particular products that a
 2 particular plaintiff might have been likely to be exposed to?
 3 **MR. LASKER:** Not that I'm aware of, Your Honor.
 4 **MS. WAGSTAFF:** So, Your Honor, the other things that
 5 we asked for in our -- and this is just -- sounds like what you
 6 all are talking about right now is Capital A on page 2 of our
 7 proposed DFS.
 8 **THE COURT:** Seems like it, yeah.
 9 **MS. WAGSTAFF:** Yeah. And so the other things that we
 10 asked for would be the source of the surfactant, if Monsanto
 11 could provide that, and the percentage of concentration.
 12 And I'm not -- I guess I'm just not familiar enough with
 13 the date on the label, but --
 14 **THE COURT:** I mean, I assumed that the word
 15 "formulation" would have included percentage of --
 16 **MS. WAGSTAFF:** Okay.
 17 **THE COURT:** -- the surfactant. Is that right?
 18 **MR. LASKER:** It is, Your Honor.
 19 **THE COURT:** Okay.
 20 **MS. WAGSTAFF:** Okay. And we want to know not just
 21 when they became available but when they were no longer
 22 available.
 23 **THE COURT:** I was assuming that that was included.
 24 **MR. LASKER:** I'm not sure we'll be able to pinpoint
 25 all of those dates. That -- I don't know that we have a date

1 **MR. LASKER:** Well, I'm not sure that we have products
 2 that were only available in certain locations. I'm not exactly
 3 sure of the answer to that. The statement of formulation, the
 4 labels have dates on them, so those dates will be provided with
 5 those documents.
 6 **THE COURT:** So we know when certain formulations were
 7 available on the market, you're saying; right?
 8 **MR. LASKER:** Right.
 9 **THE COURT:** Is that right? Okay. So when available.
 10 So the product, the formulation, the labels that came with
 11 that product, when that product was available. What else?
 12 You don't have any information about where certain
 13 products were available and not available?
 14 **MR. LASKER:** I don't believe we would have that
 15 information. It's generally marketed. I don't know that we
 16 would know --
 17 **THE COURT:** If something was available in Northern
 18 California but not in North Carolina or vice versa
 19 **MR. LASKER:** I have to admit I don't even know whether
 20 that type of market segmentation happened. I have to go back.
 21 And I'm not prepared on that issue. I don't believe we would
 22 have that information, but I don't know specifically.
 23 **THE COURT:** Okay. What else?
 24 Is there any other information that could be provided on a
 25 product-wide basis that would be helpful to sort of -- to help

1 that it was no longer available on the market. That's based
 2 upon -- I don't think -- I don't think we track that
 3 information.
 4 **THE COURT:** Surely you have dates about when a
 5 product -- a particular product or formulation was
 6 discontinued.
 7 **MR. LASKER:** We have dates upon which new products
 8 were -- formulations became available on the market. But to be
 9 able to say as of this date this product was no longer sold, I
 10 don't think we retained any of that information, no, Your
 11 Honor.
 12 Again, the issue here is we have -- and it depends, I
 13 guess, upon how you define the product and how -- because we
 14 have the same formulation that might have slight labeling
 15 changes, and so those new labels would go out. Might be
 16 renamed, so you would have the new name of the product that
 17 goes out.
 18 **THE COURT:** Right.
 19 **MR. LASKER:** And that would be authorized as of a
 20 certain date. When that -- whether that's exclusive or when
 21 the other product is no longer, under that name, available we
 22 wouldn't have that information. We have EPA approvals to
 23 market the new product.
 24 **THE COURT:** Right. But I guess I would be surprised
 25 to learn that a company like this doesn't have information

1 about when it stopped producing a particular formulation of ⁷⁷
2 this product.

3 Why wouldn't they have that information?

4 **MR. LASKER:** Your Honor, there is -- I mean, the way
5 this market works with different formulations and different
6 changes in the labeling, as long as the product was approved
7 for sale by the EPA, if there was a market that wanted that,
8 the product might be available.

9 We -- under the regulatory scheme that is imposed, we need
10 to get authorization to be able to sell products and to sell
11 new products. But it's not like when you have a prescription
12 drug case where you have one drug and then it ends off the
13 market and it's sort of a clear situation. That's not the way
14 this market works. That's all I can tell you.

15 We have looked to see what information we have. We have
16 this information on labels and formulations. Obviously, to the
17 extent that there is a dispute if a plaintiff says that they
18 used it, we're not going to be able to say they didn't by
19 saying, No, we stopped. That's an issue for us.

20 **THE COURT:** You don't -- it sounds like you're saying
21 you haven't really investigated yet whether one particular
22 product or one particular formulation might have been available
23 in North Carolina but not in Northern California.

24 **MR. LASKER:** I'm going to have to speak for myself. I
25 don't know the answer to that. I'll have to go back and talk

1 to other folks.

2 As far as -- I mean, there are certain products that, by
3 their nature, are specific to certain types of -- particularly
4 in the agricultural space, but even in the potentially IT&O
5 space where there are formulations that are designed for
6 certain times of crops or certain types of weeds, then, by the
7 nature of the products, they may be more -- you know, more of a
8 demand in certain areas than in others. But beyond that, we
9 wouldn't have any information, Your Honor.

10 **THE COURT:** Okay.

11 **MS. WAGSTAFF:** So with respect to, again, just talking
12 about one, and we talked about marketing as well, but just the
13 concept of what Mr. Lasker is talking about, I think plaintiffs
14 would be okay with -- the way I'm kind of thinking about it in
15 my mind is a big chart where a plaintiff who used a
16 particular -- you know, in three years could come in and point
17 and say, Here I am on this chart.

18 Mr. Lasker is saying that he's given us a lot of this
19 information. I'm not sure if that's true or not, but you told
20 to us put that aside. And I just want to make it clear that
21 the labels don't always say the surfactants in the formulation,
22 so I want to make sure you're going beyond --

23 **THE COURT:** Well, I --

24 **MS. WAGSTAFF:** -- different documents. Okay.

25 **THE COURT:** I think that this situation calls for

1 Monsanto to put together the kind of chart -- you referred to ⁷⁹
2 it as kind of an interrogatory response. I think this
3 situation calls for that.

4 **MS. WAGSTAFF:** Okay.

5 **THE COURT:** So even if Monsanto has -- even if the
6 information could be gleaned from the millions of documents
7 that Monsanto has been asked for in this case, I think Monsanto
8 needs to put together this information so it's all in one place
9 and the plaintiffs can do what you're describing.

10 **MR. LASKER:** And that was our proposal.

11 **THE COURT:** Okay.

12 **MS. WAGSTAFF:** Okay. And so then going on -- and this
13 is, again, just going on --

14 **THE COURT:** Hold on.

15 **MS. WAGSTAFF:** Oh, sorry.

16 **THE COURT:** Were you going on to the like sales rep
17 and distributor info?

18 **MS. WAGSTAFF:** No. I was on page 3, now, of our
19 proposed DFS number 4. We captured marketing along with the
20 labeling, so the labeling was 1 and formulation was 2.

21 3, we had asked for --

22 **THE COURT:** I actually haven't -- you'll have to
23 forgive me. The one thing I forgot to look at -- I read your
24 discussion in the case management statement about the different
25 topics, but I actually haven't looked at the proposed

1 Defendant's Fact Sheet. I think I looked at it back at the ⁸⁰
2 last one.

3 **MS. WAGSTAFF:** It's the same one, yeah.

4 **THE COURT:** But I haven't looked at it anew.

5 **MS. WAGSTAFF:** So in the chart that we're all
6 contemplating, we've talked about numbers 1 and 2. So A1 and
7 A2. That's a hard copy of it.

8 And then the next topic would be marketing material for
9 each of these products.

10 **THE COURT:** Right. And I would think that the same --
11 that that needs to be included as part of this package.

12 **MS. WAGSTAFF:** Yeah.

13 **THE COURT:** Something that can be readily accessed,
14 that allows the plaintiffs to link a particular product to
15 particular marketing materials.

16 **MR. LASKER:** Yeah. So, Your Honor, on that issue,
17 again, we have different markets. With respect to -- I guess
18 there's two points to this. There are -- there was questions
19 about sales representatives and those materials.

20 So for the residential products, those have been, since
21 19- --

22 **THE COURT:** Well, let's put aside sales reps for a
23 minute. It sounds like a slightly different discussion talking
24 about sales reps as opposed to advertising materials.

25 Or are you saying sales reps carried with them marketing

1 materials? 81

2 **MR. LASKER:** The distinction then comes in marketing
3 and advertising and not necessarily in Monsanto speaking the
4 same as you're envisioning. So let me just sort of lay out
5 what our issues are and how we think we can go about this.

6 So with respect to the residential -- or consumer, I
7 guess, residential market, since 1998, that has been handled by
8 Scotts. They have been in contract with Monsanto to handle all
9 of the marketing of those materials. We don't have --

10 **THE COURT:** Scotts?

11 **MR. LASKER:** Scotts, like the Scotts Home-Gro. So we
12 don't have that in house. That's been handled by Scotts. We
13 don't have any information pre-1998. That's 20 years ago. We
14 just don't have that information retained.

15 There has been discovery already with respect to -- from
16 Monsanto with respect to that relationship. The contract has
17 been produced. There's been lots of documents that have
18 already been pulled into the document production. But that
19 should cover the residential home user market.

20 With respect to the IT&O market, there are regional sales
21 managers. And, in fact, for California, that is a Pool [sic]
22 who's already been deposed and whose documents has already been
23 produced.

24 There are two others, Tim Ford and -- I'm blanking on the
25 last name, I'm sorry -- Jack Conway, whose documents have

1 managers, which is the same thing. 83

2 **THE COURT:** Okay.

3 **MR. LASKER:** And we can produce some information. We
4 have -- let me take that back. I'm going through my notes
5 here.

6 We have a current version of the map for various
7 territories, and the chemistry account managers in those areas
8 we can produce.

9 We do not have historical maps that lay out that
10 information to be able to identify those people, but we do have
11 a current map that we can produce to the plaintiffs.

12 Again, that's not going to affect the current trials we
13 have lined up here. None of them were agricultural, but going
14 into the future, something down the road, if we have -- I'm not
15 even sure in Group 2, but if we have Group 3 and we have
16 plaintiffs in other parts of the country, although I assume we
17 have some agricultural in California as well.

18 **THE COURT:** But, again, I do think that in -- perhaps
19 in this area, too -- when you're talking about sales reps and,
20 I guess, distributor materials, you know, it should all be kind
21 of in one place where the actual plaintiffs can look and try
22 and figure out where they fall on that.

23 **MR. LASKER:** Okay. So the way that -- and this is --
24 as you'll recall, when we went through this for discovery in
25 phase 1, Monsanto didn't have central files as such. These are

1 already been produced, who already have -- plaintiffs already 82
2 have their depositions as well.

3 **THE COURT:** Which market is this? Sorry.

4 **MR. LASKER:** This is for the IT&O, which is
5 landscapers. Industrial turf and ornamental is what that
6 stands for.

7 We do have territory maps going back to 2004, so we've
8 looked at that to identify who had responsibilities for which
9 regions in the country. We can produce those maps, and I'll
10 have the names of those individuals.

11 Again, with respect to the cases that will be tried here,
12 Your Honor, for the IT&O market, that's Steve Gould, whose
13 documents were already produced. And he was deposed in
14 connection with the D. Johnson case. So that discovery has
15 been had. Again, that's IT&O.

16 I don't know that any of the plaintiffs in your Group 1
17 trials, the first three are all residential, so those would all
18 be covered by Scotts. I don't know if the other two will have
19 any IT&O component to them.

20 The final category is the agricultural products. And,
21 again, we have territory maps that we can provide that I think
22 also go back to 2004. Those are much more complicated.

23 **THE COURT:** You're talking about territory maps for
24 sales reps now? Is that what you're talking about?

25 **MR. LASKER:** Yeah. They would be chemistry account

1 custodial-based files. 84

2 That's why, for example, with the D. Johnson case, Steve
3 Gould was made available, all the documents were made
4 available, and the deposition made available of the IT&O
5 manager in this part of the country.

6 We -- you know, to be able to -- and I think, as I said,
7 for IT&O we've already done that for three of the people who
8 cover large parts. We also have the midwest because we have
9 cases out there. That's already been handled.

10 For the residential side, Scotts' documents have already
11 been produced. And there's a number of, through custodian,
12 records again, because we've had discovery that's been ongoing
13 and not as quite -- quite as clear from the case management
14 statements as it could be, Your Honor.

15 We have been continuing to produce documents at our
16 ongoing production of documents. Through meet-and-confer we've
17 had with some of the same plaintiffs' counsel in the St. Louis,
18 Missouri litigation, we just produced 400,000 documents, I
19 think, at the end of October.

20 And we have another production with respect to maybe
21 400,000 pages, six custodians. We have another four custodians
22 whose documents we are producing at the end of November or
23 sometime in the next -- sometime in November.

24 So we've been doing that same sort of approach in getting
25 those documents out. And so that is the way -- you know, we

1 would propose we have those identified, the people who would
2 have the information.

3 **THE COURT:** I'm left with a very abstract
4 understanding of what you're -- that description leaves me with
5 a very abstract picture of what's being provided to the
6 plaintiff.

7 So I'll ask you: What do you think you need that you
8 don't have that you can't readily cull from the stuff that you
9 already have?

10 **MS. WAGSTAFF:** Yeah, I was completely on board
11 following it until he started talking about the sales rep
12 stuff.

13 Just going back to the marketing material, what I would
14 like to include in the chart is -- he says he has 50
15 formulations. I'd like to look at the chart and say product 43
16 had these marketing materials associated with it, these TV
17 commercials, these pamphlets, these newspaper ads, whatever it
18 was that they marketed for this period of time.

19 If it's localized by region -- which it may be in the
20 marketing, maybe not with the formulations, but by region, you
21 know, they probably target their ads differently in San
22 Francisco than they do in New York City or wherever -- that's
23 what we would want.

24 And to the extent that Scotts has them, I would think
25 that's in Monsanto's control. I think they could probably get

1 One of the things I was going to propose for this is
2 perhaps -- I don't know if this is the right answer, but
3 perhaps taking a different approach to the Group 1 plaintiffs
4 and the remaining plaintiffs.

5 **MR. LASKER:** Okay.

6 **THE COURT:** Okay. Now, for the Group 1 plaintiffs,
7 first of all, let me just say that, on a couple of the issues
8 that the plaintiffs have flagged, adverse event reports and
9 communications with healthcare providers, I don't think that is
10 the subject of a -- of a Defendant Fact Sheet.

11 I don't see what -- those seem like both -- probably it's
12 very unlikely that in most situations either of those two
13 things are going to be hits. And you can ask questions in
14 discovery about them as to specific plaintiffs if you want to.

15 It's also information the adverse event report issue,
16 that's something that should be in the plaintiffs' -- plaintiff
17 should possess some -- you know, if they called the emergency
18 hotline or whatever, they'll probably remember that.

19 So that's number one, is I didn't think those should be
20 part of Defendant's Fact Sheets. Those two issues.

21 So then that would leave us with, I think, pretty much all
22 the stuff we have at least started talking about, right?

23 Product labels, formulations, surfactants, advertising, sales
24 reps, distributor information.

25 That stuff, I wonder if it would be better to zero in on

1 those from Scotts. Or if they've been produced -- or if we
2 need to get them from Scotts because Monsanto doesn't have
3 control over them, I guess we would do that.

4 But to complete that chart and this Capital A that was in
5 our DFS, that's sort of what we would be thinking that we
6 wanted, was just, you know, a chart where it said, you know, in
7 these particular years this brochure was in circulation. Very
8 simple.

9 **THE COURT:** And here's where.

10 **MS. WAGSTAFF:** And here's where, yeah.

11 **MR. LASKER:** And just to be clear, Your Honor,
12 Monsanto does not have those types of records, and that's not
13 the way the product marketing was handled.

14 There was advertising agencies who did have the
15 responsibility. It was contracted with advertising agencies
16 who we've identified for plaintiffs.

17 One of them is in the course of producing documents right
18 now. That's Osborn & Barr.

19 **THE COURT:** In the course of producing documents what?

20 **MR. LASKER:** I'm sorry, the name of the advertising
21 agency is Osborn & Barr. And so plaintiffs have requested
22 discovery on Osborn & Barr, and that production is underway, I
23 believe.

24 **THE COURT:** Okay. Let me just cut this off for a
25 second and ask you a question.

1 these three plaintiffs, or potentially four plaintiffs if you
2 include Bailey, right, and you say, okay, Monsanto, you need to
3 identify -- like, based on the information you have about these
4 three plaintiffs or these four plaintiffs, you need to identify
5 the products they may have been exposed to and, based on the
6 information they've given about when they were exposed, where
7 they were exposed, where they got the stuff, et cetera, et
8 cetera, okay, you need to give us information on, you know, the
9 products they were potentially exposed to, the labels attached
10 to those products, the formulations -- the different
11 formulations that those products might have had, any sales reps
12 who were involved in distributing that information, any
13 materials that were given to the sales reps, any material that
14 the sales reps may have given to sellers, any advertisements
15 that were associated with those products. Just for those three
16 or four, all of that information just comprehensively and
17 clearly provided to the plaintiffs in one document or
18 understandable set of documents in the form of an interrogatory
19 response or something like that, whatever you think makes the
20 most sense. Charts, whatever. Okay. And then we could have
21 further discussion about what's the best way to present this
22 comprehensively in a way that can be used by the remaining
23 plaintiffs.

24 So let me ask first, does that make sense? Because I'm
25 focused, again, primarily on getting these three or four cases

1 ready for trial in short order.

2 **MR. LASKER:** And I think that does make sense, Your
3 Honor. We will need to get, though, more information from the
4 plaintiffs because -- and I'm not exactly sure what we'll do.

5 As I said, Mr. Hardeman, in his PFS, stated he was exposed
6 to Roundup Concentrate. We don't have a product named Roundup
7 Concentrate.

8 **THE COURT:** Right. But that's an easy --

9 **MR. LASKER:** There are numerous other products that --
10 (Unreportable simultaneous colloquy.)

11 **THE COURT:** But you know where Hardeman was exposed,
12 you know when he was exposed. So at that point, based on -- so
13 what I'm saying -- and I may not have made this clear --

14 **MR. LASKER:** Right.

15 **THE COURT:** -- it's not going to be on the defendant
16 to remember precisely what Roundup or what glyphosate product
17 or Roundup product -- pardon me, it's not going to be on the
18 plaintiff to know precisely what Roundup product he was exposed
19 to back in 1997.

20 It's going to be on Monsanto to figure out what are the
21 likely products that the plaintiff was exposed to back in 1997.
22 And any information that you need from the plaintiffs to get a
23 clue about that, did you get it -- you know, how did you
24 acquire this stuff, where did you use it, when did you use it,
25 any questions that we need to ask of the plaintiffs to allow

1 Monsanto to provide that information, obviously we can ask the
2 plaintiffs those questions.

3 **MR. LASKER:** Sure.

4 **THE COURT:** But the plaintiffs are going to provide
5 that general information, information that we could reasonably
6 expect to be in their possession. And then Monsanto is going
7 to figure out what products were available to that plaintiff,
8 and here is all the information about advertising,
9 formulations, et cetera, et cetera, labels, about these
10 products that were available -- we could reasonably expect to
11 have been available to the plaintiff at that time.

12 **MR. LASKER:** Yeah.

13 **THE COURT:** So that's how that's going to go.

14 **MR. LASKER:** That makes sense, Your Honor. And I'll
15 need to find out -- I think -- obviously, we have a very fast
16 time frame, so we'll need to get to the plaintiffs very quickly
17 about the specific questions we need beyond what we have in the
18 Plaintiff Fact Sheets right now to be able to --

19 **THE COURT:** Okay. So as to those three plaintiffs --

20 **MR. LASKER:** Yes.

21 **THE COURT:** -- any additional information you need,
22 you must -- you must tell them about it by Wednesday of this
23 week. And they must respond to you with that information by
24 Friday of this week.

25 And then Monsanto can get to work on providing -- whether

1 you want to call it a fact sheet or a interrogatory response or
2 summary or a chart, I don't care what you call it. All that
3 information that we have just discussed needs to be provided in
4 a readily available and readable and understandable format to
5 the plaintiffs.

6 **MR. LASKER:** That makes sense, Your Honor.

7 **MS. WAGSTAFF:** So, Your Honor, I think that works for
8 those three, but I -- I want to take us back to our last CMC
9 when plaintiffs were requesting that a PFS not be on every
10 single plaintiff. And I believe it was Your Honor's position
11 that the information in the PFS helped Monsanto to pick
12 bellwether cases. This information obviously will help us pick
13 bellwether cases, which --

14 **THE COURT:** I'm not saying to put off --

15 **MS. WAGSTAFF:** Okay.

16 **THE COURT:** -- figuring out how to get Monsanto to
17 provide you the other information you need.

18 **MS. WAGSTAFF:** Okay.

19 **THE COURT:** To me, the most important thing is I want
20 it done for these three plaintiffs very quickly. Okay.

21 So now we can turn back to the discussion of the format in
22 which all this other information is provided. And it sounds
23 like we were making some progress on there.

24 We've sort of knocked out adverse event reports and
25 communications with healthcare providers, and the remaining

1 information. The question is whether all of that
2 information -- I mean, I guess, basically -- are we talking
3 about Group 2 here or are we talking about everybody?

4 **MS. WAGSTAFF:** So, you know, the way we proposed this
5 was that Monsanto would respond to every plaintiff when they
6 filed the Plaintiff Fact Sheet.

7 **THE COURT:** Right.

8 **MS. WAGSTAFF:** And so that's obviously our preferred
9 method. I do see the --

10 **THE COURT:** It doesn't seem that practical.

11 **MS. WAGSTAFF:** I do see that the -- the benefits of
12 doing a big chart. So it would be for every plaintiff, it
13 wouldn't just be for Group 2 plaintiffs just like we're doing
14 PFS for every plaintiff.

15 **THE COURT:** Well, one thing I was curious about,
16 Group 2, we were originally trying to zero in on people who
17 were likely exposed in California; right?

18 And, again, that is somewhat artificial now, based on what
19 I've told you, that I'm not comfortable, at least at this
20 point, pursuing the approach that I was considering pursuing
21 with respect to Group 2.

22 But perhaps a solution is just -- like, that would be
23 useful to virtually every Group 2 plaintiff, would be to focus
24 on California and just say, all right, Monsanto, we're going to
25 make you focus on California.

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1 And for every Monsanto product that was available in
 2 California from this time to that time, or maybe all time, I
 3 don't know, you know, identify the label, identify the
 4 formulation, identify the surfactants -- I guess that's part of
 5 identifying the formulation.

6 Tell us -- you know, tell us where these products were
 7 available, if not everywhere. Tell us when they were available
 8 in California. Give us information about where they -- where
 9 in California they were available, if they were available in
 10 some part of California but not other part of California. Give
 11 us all the sales reps who were involved. Give us all the, you
 12 know, marketing material or distributor material that they had
 13 and all the advertising associated with all the products sold
 14 in California.

15 **MS. WAGSTAFF:** So if the purpose --

16 **THE COURT:** And when those ads ran, if you have that
 17 information.

18 **MS. WAGSTAFF:** So if the purpose of these information
 19 exchange is to pick bellwethers, which I think it is, and we're
 20 only going to focus on California with a defense fact sheet,
 21 then I would request that nonCalifornia plaintiffs don't have
 22 to do the Plaintiff Fact Sheet.

23 **THE COURT:** We're not going to go back and revisit
 24 whether -- all the plaintiffs have to do the fact sheet, okay.
 25 And my question for you is not whether we should go back and

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1 point sort of agreeing that we have come up with a concept or
 2 agree that I'm forcing upon you a concept that, you know,
 3 for -- that there is going to be this comprehensive response
 4 from Monsanto on these topics that gives the plaintiffs the
 5 ability to figure out what products the plaintiffs were exposed
 6 to and advertising and labeling and sales reps and all that
 7 stuff maybe for California, and then have you all work together
 8 on precisely what format that's going to take and discuss it at
 9 the next case management conference, which we're having, I
 10 think, in early December? Does that make sense?

11 And in the meantime you can kind of pilot it, if you will,
 12 with these three and possibly four plaintiffs who are in
 13 Group 1.

14 **MR. LASKER:** That's fine. Just for clarification,
 15 this deadline for Wednesday and Friday would just be for the
 16 three. We only have the three Plaintiff Fact Sheets.

17 **THE COURT:** Correct, because we don't know yet if
 18 Bailey's going to be in the group.

19 **MS. WAGSTAFF:** And, Your Honor, that works for
 20 plaintiffs. You gave us a deadline of Wednesday, Friday. And
 21 then what's the deadline for Monsanto to give us the
 22 information?

23 **THE COURT:** That's a good question. What's the
 24 deadline for Monsanto to give them the information?

25 **MS. WAGSTAFF:** And I'll tell you that Mr. Hardeman has

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1 revisit what the plaintiffs have to do. The plaintiffs have to
 2 do what they have to do.

3 The question is: Does it make sense right now to limit it
 4 to California? Does that make it more manageable for Monsanto?
 5 Or is there really no difference between doing that for, you
 6 know, people who we can assume were exposed in California as
 7 opposed to other parts of the country?

8 **MR. LASKER:** Yeah, I believe it would be more
 9 manageable, they'll that in phases.

10 **THE COURT:** I mean, you're going to have to do it for
 11 every --

12 **MR. LASKER:** I know. I mean, it really is just a
 13 timing issue and doing this as efficiently as possible, because
 14 certainly, we are, over the course of this litigation, going to
 15 provide that discovery. We have already been providing
 16 discovery along those lines in other jurisdictions as well.

17 Frankly, it's in our interest to be able to do this and be
 18 done. And so I think what Your Honor is proposing as a way of
 19 doing this more efficiently in stages makes sense. I -- I --
 20 so I'm going to say yes.

21 I know there's a knowledge basis here I don't have in my
 22 head right now, but I do think that would be a useful way of
 23 structuring this. And --

24 **THE COURT:** So can this be -- can we -- could we
 25 agree, at this point, that -- or could we walk away at this

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1 already asked for this information in an interrogatory about
 2 two weeks ago.

3 **MR. LASKER:** Well, yeah.

4 **MS. WAGSTAFF:** Or a week ago.

5 **MR. LASKER:** So, two things. First of all, I'm
 6 assuming we'll have the information for Mr. Hardeman to be able
 7 to answer it.

8 I would say that we should be able to get that in, I would
 9 think, for the -- I'm going to put the advertising to one side
 10 for a moment. For the rest of it, I would think within a
 11 couple of weeks we should be able to get -- at least, I'm
 12 saying that because I don't -- so I'd say two weeks from this
 13 Friday.

14 For the advertising, these are all going to be, as I
 15 understand it, residential. So there's going to be Scotts that
 16 handles the marketing of that. So we'll have to talk about --
 17 I think we've already produced a lot of Scotts materials.

18 So I'm just going to have to figure out how we're going to
 19 identify for plaintiffs -- to the extent that that is an issue,
 20 I don't know that it is, but if it's all residential, then --
 21 we've produced documents from Scotts already.

22 **THE COURT:** Okay. What you're going to put
 23 together --

24 **MR. LASKER:** Is what those are.

25 **THE COURT:** -- is here are the advertising materials

1 that the plaintiffs may have been exposed to based on what we
2 know about where they were and what they were using and when
3 they were using it.

4 **MR. LASKER:** Right. The only reason I have any
5 hesitancy here is Monsanto didn't handle that. Scotts handles
6 that. So that's been that way since 1998. So I'm a little bit
7 at a disadvantage to be able to say how Scotts has got those
8 documents already.

9 **THE COURT:** Okay. Well, what the order is going to be
10 is that Monsanto provide all of that information to the
11 plaintiffs by November 16th

12 **MR. LASKER:** Okay.

13 **THE COURT:** Including the advertising information as
14 it relates to the three plaintiffs in Group 1. So that's an
15 order you can take back to Scott and your clients -- Scotts and
16 your clients.

17 **MR. BRAKE:** Your Honor, may I interject one moment if
18 I may? Our expert -- the plaintiffs' experts are due on
19 November 20th. And I imagine that a lot of the information
20 that you're requiring Monsanto to produce is going to be
21 relevant to their opinions, perhaps to specific causation.

22 **MR. LASKER:** I think, with respect to formulation, we
23 can get it to you earlier, actually. So that's an issue of
24 the -- what's in the product.

25 **MR. BRAKE:** Yes. I'm just saying if we were not to

1 get that specific formulation information until the 16th,
2 that's going to be really hard to have our experts incorporate
3 that into the reports by the 20th.

4 **THE COURT:** Shall we accelerate the formulation
5 information?

6 **MR. LASKER:** Yeah, I think we can probably do that,
7 because all we're going to do that for that -- it really is as
8 soon as we get the actual product names. We already have it,
9 and it's searchable. As soon as we get exact names, we can do
10 that more quickly. It's already been produced

11 **THE COURT:** So how about the formulation information
12 by November 9th?

13 **MR. LASKER:** That's fine.

14 **THE COURT:** And the remaining information by
15 November 16th? Is that what I said, November 16th?

16 **MR. BRAKE:** Yes, sir.

17 **MR. LASKER:** Yes, Your Honor.

18 **MR. BRAKE:** Thank you, Your Honor.

19 Your Honor, I didn't mean to interject, but I thought that
20 was an important point.

21 **THE COURT:** Fine. Okay.

22 So is that -- have we made sufficient progress today on
23 the Defendant's Fact Sheet?

24 **MS. WAGSTAFF:** We have. And it's my understanding
25 that the CMC statement for next time, we will include a

1 proposal for the California plaintiffs. 99

2 **THE COURT:** Or if you determine that -- if you
3 determine that it doesn't make sense to limit it to the
4 California plaintiffs for whatever reason, if we should include
5 the Hawaii plaintiff, that's fine. Or the -- you know,
6 whatever.

7 **MR. LASKER:** Right.

8 **THE COURT:** But the point is that Monsanto is going to
9 need to sort of collect and provide all of this information.
10 And whether it has already included the information at
11 different points in different cases or the same cases, I don't
12 care about any of that.

13 **MR. LASKER:** Right.

14 **THE COURT:** You just need to put that information
15 together.

16 **MR. LASKER:** Right.

17 **THE COURT:** And that's what you were proposing as
18 well, and so that's what you need to work on, is the format and
19 the precise content of the information and stuff, and so you
20 need to work on that for the next case management conference.

21 **MR. LASKER:** Very good, Your Honor.

22 **MS. WAGSTAFF:** Thank you, Your Honor.

23 **THE COURT:** Okay. Is there anything else for us to
24 discuss right now?

25 I had on my notes the issue of other discovery on

1 Monsanto, but I don't -- I no longer remember why I have that 100
2 on my notes.

3 **MR. LASKER:** We are in the process and we've been
4 discussing with Mr. Wisner because we're coordinating through
5 different litigations. So as I stated previously in the
6 St. Louis litigation, we had through meet-and-confer agreed to
7 ten documents. Those are documents we are producing pursuant
8 to certain search terms. And we are doing that. And we
9 produced, I think, 400,000 pages at the end of last month. We
10 have four more custodians who are geared up for this month. We
11 have been engaged in a similar meet-and-confer process with
12 Mr. Wisner, which I agree has been on for a long period of time
13 for a variety of reasons on both sides.

14 We've been moving in the right direction in fits and
15 starts, I think it's fair to say.

16 Where we are right now, as I understand it, is we've made
17 a lot of progress. We have -- the real situation we have and
18 it was somewhat similar to a situation we had in phase 1, is
19 the issue of the number of custodians and the extent to which
20 some of those are potentially duplicative.

21 And as Your Honor recalled, in phase 1 of the MDL we ended
22 up actually going through a process of plaintiffs proposing
23 certain custodians, and we walked through which custodians Your
24 Honor believed we should produce.

25 **THE COURT:** I remember that with great fondness.

1 **MR. LASKER:** And I think, Your Honor, and the hope,
2 Your Honor, is that we don't have to go through that process
3 again with you. Although I'm sure you're willing to offer your
4 services. But we have been going through that process to try
5 and do the same thing here and, as I said, we've been making
6 progress, but we're not there yet.

7 And I -- Mr. Wisner will tell you where he is now. I know
8 there was a conversation, I think last week, on this. I think
9 we're waiting for Mr. Wisner's responses, I think here now.

10 **MR. WISNER:** Well, Your Honor, it's not so much a
11 response as much as here's where we stand. Monsanto believes
12 we've made a lot of progress because it's essentially been me
13 agreeing to things for several months.

14 What happened is, as part of the JCP proceeding, I have
15 gone through all of the search terms and all the custodians
16 that were ever done. And I found some pretty big gaps in
17 document production. Search terms that I think -- I don't
18 think anybody would dispute would probably hit on relevant
19 documents.

20 And I put together a sort of comprehensive search --
21 additional search of the same custodians plus a couple of extra
22 that we've come to know about over time. And each person I can
23 actually speak to intelligently. These aren't just willy-nilly
24 decisions. And the search terms were pretty extensive. And in
25 trying to work through that in the JCP, to sort of supplement

1 general -- not just general causation but general liability
2 discovery across the company.

3 So it does involve causation, but it also involves
4 liability issues. For example, the AHS was never searched in
5 these custodial files. That obviously was relevant since it
6 was an important part of the trial.

7 So what I did, I proposed this list and I said, listen,
8 before we can talk intelligently about removing things or not,
9 I need you to tell me what's causing the problem. You know, is
10 there some search term that's causing a crazy number of hits
11 that we really don't need?

12 And we've run through that process. That's taken a long
13 time. I've systematically gone through it, and I've kind of
14 boiled it down to what I thought were the ones that were
15 hitting on the most important stuff. And that was going to
16 yield a production of about a million new documents. Not
17 repeats. These are new documents hitting on what I believe are
18 fairly relevant search terms.

19 Monsanto has told me that there is just no humanly
20 possible way for them to get us those documents before trial in
21 February. And I said, Okay, what is your threshold? And they
22 said 125,000 documents. That's reasonably what we could do.

23 So I went back again and I tried to short -- you know, I
24 did the hard choices and it's down to about 350. And I'm at a
25 place where I really don't know how much more I can negotiate

1 against myself on documents production. 103

2 And so that's why I wanted to bring it to the Court's
3 attention, because last time we sort of reached this impasse
4 you said, well, make it happen. And then they made it happen
5 in the original production.

6 And so I don't know if I'm sort of haphazardly doing that
7 here, but I sort of am. And so that's the situation I'm in.
8 And I'm in a bit of a bind because I do want to complete this
9 document production before the first trial.

10 And I'm sort of the document sleuth as part of this
11 litigation, so it's really something that's important, I think,
12 for trial. It's really what the Johnson case was about, was
13 about the documents and testimony.

14 So that's where we're at. And I don't really know what to
15 do beyond, say, you know, I've tightened my belt as much as I
16 think I can.

17 **THE COURT:** So it sounds like, at least from your
18 standpoint, what you're saying is we are at the point where we
19 have a ripe discovery dispute

20 **MR. WISNER:** That's correct.

21 **THE COURT:** That we have -- that Monsanto is saying
22 this is not doable and you are saying, I need it to be done.
23 And you need to articulate why it is that you need it. You've
24 done it a little bit in your case management statement.

25 **MR. WISNER:** Sure.

1 **THE COURT:** But you need to tee it up as a discovery 104
2 dispute and articulate in your letter why it is that these new
3 documents are documents that are likely to be important. And,
4 you know, you need -- Monsanto needs to articulate why they're
5 not likely to be important or why it would be too difficult to
6 produce them.

7 And it sounds like, based on what you're saying, you
8 should tee that up sooner rather than later.

9 **MR. WISNER:** Yeah.

10 **THE COURT:** And so why don't you tee it up, why don't
11 you all submit a discovery letter by Friday.

12 **MR. WISNER:** Not a problem, Your Honor.

13 **MR. LASKER:** That's fine, Your Honor.

14 **THE COURT:** Okay.

15 **MR. LASKER:** And as part of that same process, put
16 that in the same discovery letter, we have --

17 **THE COURT:** I mean, unless you feel you've adequately
18 set forth the issue in the case management statement, and I'm
19 just not remembering.

20 **MR. LASKER:** I don't think we have, Your Honor. I
21 think you're right on that.

22 **THE COURT:** Okay.

23 **MR. LASKER:** The other issue -- and we can tee this up
24 in the discovery letter as well -- is we have been receiving
25 separate document requests by plaintiff that are general.

1 They're not -- I mean, certainly not as opposed to
2 documents that are specific to Mr. Hardeman or documents that
3 are specific to Mr. Stevick.

4 But we received general documents. Last time some were
5 received before, some of which are overlapping. We would want
6 to be able to get discovery, sufficiently have this all
7 coordinated so we can talk --

8 **THE COURT:** Are these plaintiffs represented by people
9 in leadership?

10 **MR. LASKER:** This is for Mr. Hardeman and Stevick.
11 These are the case -- I think it's those two cases.

12 **THE COURT:** Okay.

13 **MR. LASKER:** So we can include that in the same
14 discovery dispute, so Your Honor can address that as well.

15 **THE COURT:** Okay.

16 **MR. LASKER:** Thank you, Your Honor.

17 **THE COURT:** Great. Anything else anybody needs to
18 discuss right now before we say good-bye?

19 No? All right.

20 **MR. LASKER:** Thank you, Your Honor.

21 **THE COURT:** Thank you.

22 (Counsel thank the Court.)

23 (At 4:54 p.m. the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Wednesday, October 31, 2018

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter

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<p>V very [20] 1:8/6 1:33/9 1:46/5 1:47/13 1:49/18 1:51/19 1:52/12 1:52/14 1:54/6 1:56/16 1:56/19 1:58/21 1:85/3 1:85/5 1:86/7 1:87/12 1:90/15 1:90/16 1:91/20 1:99/21 vice [1] 1:74/18 video [1] 1:44/11 videotaped [1] 1:44/11 videotapes [1] 1:44/16 view [3] 1:52/1 1:56/15 1:69/18 viewing [1] 1:62/25 views [3] 1:9/8 1:53/19 1:53/20 VINCE [1] 1:1/4 Virginia [2] 1:1/20 1:59/1 virtually [1] 1:92/23 voir [9] 1:49/16 1:49/23 1:50/10 1:50/23 1:51/10 1:54/5 1:54/5 1:55/7 1:58/4</p>	<p>1:48/24 1:56/14 1:57/16 1:62/7 1:64/9 1:67/22 1:68/21 1:68/21 1:69/2 1:69/5 1:69/8 1:72/15 1:73/16 1:75/20 1:78/20 1:78/22 1:85/23 1:87/14 1:91/1 1:91/8 1:91/19 1:103/8 1:105/5 wanted [12] 1:8/6 1:10/22 1:16/2 1:42/14 1:61/3 1:61/7 1:62/1 1:68/1 1:68/8 1:77/7 1:86/6 1:103/2 wanting [1] 1:17/5 wants [1] 1:31/6 was [132] Washington [3] 1:2/14 1:2/17 1:2/23 wasn't [1] 1:5/8 watching [2] 1:43/18 1:54/18 way [30] 1:7/16 1:9/6 1:10/12 1:10/17 1:13/12 1:20/11 1:22/11 1:24/25 1:29/10 1:52/15 1:56/10 1:61/14 1:63/11 1:69/24 1:71/12 1:71/16 1:72/6 1:77/4 1:77/13 1:78/14 1:83/23 1:84/25 1:86/13 1:88/21 1:88/22 1:92/4 1:94/18 1:94/22 1:97/6 1:102/20 ways [2] 1:59/8 1:72/23 we [377] we'd [3] 1:46/14 1:48/3 1:48/4 we'll [16] 1:6/18 1:8/8 1:10/4 1:16/21 1:16/24 1:32/14 1:32/16 1:62/22 1:67/8 1:68/21 1:68/24 1:75/24 1:89/4 1:90/16 1:96/6 1:96/16 we're [33] 1:5/11 1:6/23 1:13/12 1:15/6 1:19/12 1:29/11 1:31/17 1:35/8 1:35/24 1:45/3 1:47/13 1:47/25 1:48/1 1:58/3 1:65/24 1:66/7 1:68/5 1:68/13 1:71/15 1:71/17 1:77/18 1:80/5 1:92/13 1:92/24 1:93/19 1:93/23 1:95/9 1:96/18 1:98/7 1:100/4 1:101/6</p>	<p>1:101/9 1:103/14 we've [28] 1:7/14 1:8/16 1:8/25 1:17/17 1:35/21 1:36/11 1:37/7 1:41/17 1:49/2 1:69/22 1:70/1 1:80/6 1:82/7 1:84/7 1:84/12 1:84/16 1:84/24 1:86/16 1:91/24 1:96/17 1:96/21 1:100/3 1:100/14 1:100/16 1:101/5 1:101/12 1:101/22 1:102/12 website [1] 1:49/11 Wednesday [6] 1:37/8 1:67/8 1:90/22 1:95/15 1:95/20 1:106/7 weeds [1] 1:78/6 week [19] 1:36/8 1:36/11 1:36/22 1:38/15 1:46/8 1:46/10 1:46/11 1:46/17 1:47/15 1:47/25 1:66/2 1:66/9 1:66/12 1:68/2 1:68/7 1:90/23 1:90/24 1:96/4 1:101/8 week-long [2] 1:46/8 1:46/11 weeks [14] 1:14/7 1:14/8 1:15/16 1:35/15 1:46/7 1:46/10 1:46/13 1:46/13 1:48/18 1:48/22 1:64/15 1:96/2 1:96/11 1:96/12 WEITZ [1] 1:1/11 Welcome [1] 1:3/15 well [51] 1:8/13 1:9/5 1:11/9 1:11/20 1:12/21 1:19/3 1:21/12 1:25/2 1:25/6 1:25/7 1:26/11 1:27/3 1:29/7 1:31/1 1:33/2 1:33/4 1:33/10 1:34/5 1:37/2 1:38/18 1:43/24 1:43/25 1:44/19 1:47/21 1:47/23 1:48/5 1:48/8 1:55/24 1:57/14 1:60/10 1:63/18 1:65/5 1:67/1 1:68/13 1:69/25 1:72/23 1:74/1 1:78/12 1:78/23 1:80/22 1:82/2 1:83/17 1:92/15 1:94/16 1:96/3 1:97/9 1:99/18 1:101/10 1:103/4 1:104/24 1:105/14 went [3] 1:47/25 1:83/24 1:102/23</p>	<p>were [73] 1:4/23 1:5/12 1:8/20 1:17/19 1:11/20 1:21/16 1:21/16 1:21/20 1:22/5 1:25/15 1:27/10 1:27/10 1:27/14 1:27/15 1:30/14 1:44/12 1:45/20 1:46/2 1:46/20 1:46/25 1:51/24 1:56/21 1:56/23 1:57/2 1:57/6 1:58/21 1:60/2 1:60/3 1:61/19 1:66/11 1:70/16 1:71/4 1:71/16 1:72/15 1:74/2 1:74/6 1:74/13 1:75/21 1:76/8 1:79/16 1:82/13 1:83/13 1:84/3 1:88/6 1:88/7 1:88/9 1:88/12 1:88/13 1:88/15 1:90/7 1:90/10 1:91/9 1:91/23 1:92/16 1:92/17 1:93/6 1:93/7 1:93/9 1:93/9 1:93/11 1:94/6 1:95/5 1:97/2 1:97/2 1:97/3 1:97/25 1:99/17 1:101/16 1:101/24 1:102/14 1:102/14 1:105/4 1:105/23 West [1] 1:1/14 what [125] what's [15] 1:13/23 1:13/25 1:21/3 1:28/7 1:28/10 1:31/12 1:50/11 1:52/23 1:67/4 1:85/5 1:88/21 1:95/21 1:95/23 1:97/24 1:102/9 whatever [12] 1:17/11 1:17/12 1:17/16 1:38/8 1:60/14 1:67/21 1:85/17 1:87/18 1:88/19 1:88/20 1:99/4 1:99/6 whatnot [3] 1:10/1 1:46/16 1:48/9 whatsoever [1] 1:56/18 when [46] 1:6/23 1:8/5 1:16/4 1:16/9 1:16/9 1:16/15 1:16/21 1:22/15 1:23/4 1:35/11 1:36/13 1:36/20 1:36/21 1:37/12 1:37/25 1:45/22 1:53/14 1:56/21 1:59/21 1:64/9 1:65/24 1:66/13 1:66/14 1:66/14 1:71/10 1:73/25</p>	<p>1:74/6 1:74/9 1:74/11 1:75/21 1:75/21 1:76/4 1:76/20 1:76/20 1:77/1 1:77/11 1:83/19 1:83/24 1:88/6 1:89/12 1:89/24 1:91/9 1:92/5 1:93/7 1:93/16 1:97/2 where [49] 1:8/5 1:8/22 1:10/4 1:13/21 1:23/16 1:25/22 1:39/16 1:39/21 1:51/7 1:51/8 1:55/2 1:57/7 1:57/21 1:59/16 1:62/22 1:63/16 1:63/24 1:64/1 1:64/3 1:70/14 1:70/15 1:70/16 1:71/9 1:72/12 1:73/3 1:73/24 1:74/12 1:77/12 1:78/5 1:78/15 1:83/21 1:83/22 1:86/6 1:86/9 1:86/10 1:88/6 1:88/7 1:89/11 1:89/24 1:93/6 1:93/8 1:93/8 1:97/2 1:100/16 1:101/7 1:101/11 1:102/25 1:103/14 1:103/18 wherever [1] 1:85/22 whether [32] 1:7/2 1:8/2 1:8/3 1:9/3 1:17/22 1:21/16 1:21/20 1:22/4 1:22/20 1:26/11 1:36/9 1:38/14 1:40/7 1:53/19 1:54/13 1:55/16 1:56/6 1:60/23 1:63/2 1:63/21 1:69/5 1:69/7 1:72/17 1:73/12 1:74/19 1:76/20 1:77/21 1:90/25 1:92/1 1:93/24 1:93/25 1:99/10 which [44] 1:5/5 1:7/15 1:15/20 1:25/14 1:25/15 1:27/11 1:31/8 1:33/5 1:33/6 1:35/4 1:36/18 1:36/18 1:36/19 1:37/13 1:38/1 1:38/23 1:40/24 1:45/1 1:49/5 1:56/10 1:59/2 1:59/3 1:61/8 1:62/25 1:65/2 1:66/12 1:68/2 1:70/21 1:71/14 1:72/10 1:76/7 1:82/3 1:82/4 1:82/8 1:83/1 1:85/19 1:91/13 1:91/22 1:93/19</p>
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