Volume 20

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

EDWARD HARDEMAN,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	**NO. C 16-00525 VC**
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	
	)	

San Francisco, California
Tuesday, March 26, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

ANDRUS WAGSTAFF PC
7171 W. Alaska Drive
Lakewood, Colorado 80226
BY: AIMEE H. WAGSTAFF, ATTORNEY AT LAW
DAVID J. WOOL, ATTORNEY AT LAW

MOORE LAW GROUP
1473 South 4th Street
Louisville, Kentucky 40208
BY: JENNIFER MOORE, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Marla F. Knox, RPR, CRR
Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporters

APPEARANCES: (CONTINUED)

For Defendant:

WILKINSON WALSH ESKOVITZ LLP
2001 M Street, NW - 10th Floor
Washington, D.C. 20036
BY: BRIAN L. STEKLOFF, ATTORNEY AT LAW
RAKESH N. KILARU, ATTORNEY AT LAW
TAMARRA MATTHEWS JOHNSON, ATTORNEY AT LAW
JULIE RUBENSTEIN, ATTORNEY AT LAW
CALI COPE-KASTEN, ATTORNEY AT LAW

I N D E X

Tuesday, March 26, 2019 - Volume 20

Tuesday - March 26, 2019 **8:03 a.m.**

P R O C E E D I N G S

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(Proceedings were heard out of presence of the jury:)

THE COURT: Good morning. I have -- on the jury instructions, the two changes that I made from last night in response to your filings from last night were calling it non-Hodgkin's lymphoma in the first instruction.

MS. MOORE: Thank you, Your Honor.

THE COURT: And second was on the damages instruction, we made both changes that were suggested. The Plaintiffs suggested a change; Monsanto suggested a change, and we made both of those changes.

MS. MOORE: Okay. Thank you, Your Honor.

THE COURT: We kept the amount on the verdict form. I don't think it is suggestive. I think the instructions are very clear. I think it will be very clear from the argument, and I don't want to run the risk of creating any problems with this trial that are -- that we could otherwise avoid. So those are the changes that were made.

The rest of the objections were -- you know, I disagreed with. So those will be the final instructions. We will file a final version of the instructions shortly.

MS. MOORE: So the verdict form is the same as what we had yesterday?

THE COURT: There is one minor change to the verdict form?

THE CLERK: Yes. So the way that it worked out when it was printed, it was two pages. And then this little instruction at the top of page Number 2 it says "all of the above" if you answered no. We changed it to "If you answered no to 1 through 3."

MS. MOORE: Oh, that makes sense, yeah.

THE COURT: Okay. So I have been through the Plaintiff's slides. I will go through Monsanto's slides shortly.

I only had one fairly minor concern about the Plaintiff's slides, and that was the use of the 1.5 billion R&D figure. I know that testimony came in --

MS. MOORE: It did.

THE COURT: -- on that. I guess there were two -- two issues.

Again, I think these are pretty minor, but one issue is that you -- at a couple -- on a couple different slides you refer to it as a $1.5 billion annual budget, and my vague recollection of the testimony was -- and how it came in was that you were talking about one particular year. But I -- I may be misremembering that.

MS. MOORE: I don't think so, Your Honor, but I will find that.

THE COURT: But the other question is, you know, we went through and discussed the numbers -- I can't remember where we left our discussion about all the numbers and how they would be used for -- as they relate to punitive damages, and you ended up -- you know, you ended up stipulating to certain numbers.

MS. MOORE: Right.

THE COURT: You got this $1.5 billion number through -- in through the testimony of -- was it Grant?

MS. MOORE: I believe so, Your Honor.

THE COURT: And then so the question is having gotten that number in, can you use that number in your punitive damages argument? Maybe it's -- I think probably it's okay, but I just wanted to make sure that I wasn't misremembering any aspect of our discussion about the numbers from a week or so ago.

MS. MOORE: I mean, it's in evidence, Your Honor. So I would think I could use it.

MR. STEKLOFF: I would agree that it is in evidence, Your Honor, but I think one of the issues is that that 1.5 research and development goes to a much broader scope of things. It goes to agricultural science and trying to develop agricultural science and improve agricultural science and products that have nothing to do with Roundup. Some may and some may not.

So I think then to argue where we have been precluded -- I mean, we have been precluded from presenting the agricultural benefits story. I think to then use that as something to tee off of for punitive damages seems both unnecessary, given the other numbers they have, but also I think a little misleading and an incomplete story because we haven't been able to present why that number is so large, how it is being used, how it is being used appropriately, and how the company is advancing agricultural science.

MS. MOORE: I mean, he can make an argument about that. I mean, the point is that that is their research and development budget; and then they choose to spend the money however they want, but what we know is they didn't choose to spend it on testing Roundup. That's where I'm going.

THE COURT: I think it is permissible. The only question I have is just when you say 1.5 billion annually, is that consistent with how the testimony came in or was he talking about a particular year?

MS. MOORE: I will check that, Your Honor. I think it was just in general, but I am going to double-check that.

THE COURT: Okay. So that's all I had.

Does anybody else have anything?

MS. MOORE: I think Ms. Wagstaff does, Your Honor. Just a second.

MS. WAGSTAFF: Your Honor, just one small thing.

Last night when we were cutting that video for Dr. Portier, we were watching it. It is about a minute and a half to two minutes. And it became clear to us, and we would just ask you to reconsider allowing that. The testimony -- basically what happens is they had him -- they ask him if he is aware of a letter. He says, No, I'm not aware of this letter. They hand him a letter, and then the attorney reads something and says, Did I read that correctly; and that's the end of it.

So it is basically an attorney testifying to something that our expert doesn't even know about. We think it is the wrong way to get this information in.

THE COURT: So you want the letter to come in?

MS. WAGSTAFF: No, we don't want the letter to come in. We want them to bring a witness if they want to present testimony on this.

THE COURT: Okay. My ruling stands.

MS. WAGSTAFF: Thank you, Your Honor.

THE COURT: Okay. Anything else?

MR. STEKLOFF: Not from the Defense.

THE COURT: Okay. So let me go back -- I will go back and review the Monsanto slides. We will file the final jury instructions, and we will see you out here at 8:30.

Nobody had a problem with the way I'm planning on reading the instructions to the jury?

MR. STEKLOFF: We did not, Your Honor.

THE COURT: Okay.

MS. MOORE: That's fine, Your Honor. Sorry.

THE COURT: Okay.

THE CLERK: Court is in recess.

(Recess taken at 8:15 a.m.)

(Proceedings resumed at 8:32 a.m.)

(Proceedings were heard out of presence of the jury:)

THE COURT: Go ahead and bring in the jury.

I forgot one very minor thing on your slides.

MR. STEKLOFF: Yes, Your Honor.

THE COURT: Which is Slide Number -- I think it is Number 27 or it might be 39 -- I can't remember. I wrote both numbers down, but I only had an issue with one of them. The EPA letter -- you put a picture of the EPA letter on the slide that is not coming in, so I think the quote is okay but probably not the picture of the EPA letter. It is a minor thing.

MR. STEKLOFF: Oh, in the background?

THE COURT: Yeah.

MR. STEKLOFF: So we can just delete the page from the background.

THE COURT: Yeah. Sorry about that.

Go ahead. Bring them in.

(Proceedings were heard in the presence of the jury:)

THE COURT: Okay. Welcome. Thank you for arriving on

time again. We are ready to -- we are ready to proceed.

Oh, there is going to be a little bit more evidence presented to you, and then we will proceed with the Plaintiff's closing argument. And then there will be a little break, and then Monsanto's closing argument, and then rebuttal from the Plaintiff and then the case will be yours.

So no more witnesses from the Plaintiff; is that correct?

MS. WAGSTAFF: Your Honor, Mr. Hardeman rests.

THE COURT: Okay.

MR. STEKLOFF: We preserve our motion. And we recall Dr. Portier for a very brief clip.

THE COURT: Okay. Go ahead.

(Video was played but not reported.)

THE COURT: Okay. Anything further from Monsanto?

MR. STEKLOFF: No, Your Honor. Monsanto rests.

THE COURT: Nothing further from the Plaintiff?

MS. WAGSTAFF: No rebuttal, Your Honor.

FINAL JURY INSTRUCTIONS

THE COURT: Okay. So now we are ready for closing arguments. I will first read you the instructions for Phase Two. And as with Phase One, you will each have a copy set of these instructions back in the room with you; but I will read them to you to help shed light on the closing arguments that you will hear.

In the first phase of the trial you determined that

Roundup was a substantial factor in causing Mr. Hardeman's non-Hodgkin's lymphoma. You are now being asked to determine whether Monsanto is legally responsible for the harm caused to Mr. Hardeman by Roundup; and if so, what damages should be awarded.

Specifically, Mr. Hardeman has three substantive claims. He claims, number one, that Roundup's design was defective; number two, that Roundup lacked sufficient warning of potential risks; and number three, that Monsanto was negligent by not using reasonable care to warn about the risks posed by Roundup.

Mr. Hardeman has the burden of proving his claims. And Monsanto denies the claims.

It is your duty to find the facts from all the evidence in this case. You may consider the evidence from both phases in deciding the claims in Phase -- and deciding the facts in Phase Two. To those facts, you will apply the law as I give it to you. You must follow the law as I give it to you -- whether you agree with it or not -- and you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathies. You will recall that you took an oath to do so.

You must follow all of these instructions and not single out some and ignore others. They are all important. Please do not read into these instructions or anything that I may say or do or may have said or done as suggesting that I have an opinion regarding the evidence or what your verdict should be.

Now, it is true that all of the instructions are equally important, but a number of these instructions I have already read to you once; and you have already considered them and read them back in the jury room during your deliberations during Phase One, so I'm not going to read some of these entire instructions again. I'm just going to remind you that they are there, and the full instructions will be there in writing back in the jury room.

For example, I gave you an instruction about what is evidence. That will apply -- that still applies, of course in Phase Two.

I gave you an instruction about what is not evidence. The highlight from that instruction is that lawyer statements and questions and arguments are not evidence, and you will have that instruction back there.

Direct and circumstantial evidence, I gave you an instruction about that. You may remember long ago I gave you the example of raining at night, and if you -- how you -- if you actually see it raining or hear it raining, that is direct evidence that it rained at night. If you see the ground wet when you wake up the next morning, that is circumstantial evidence that it rained. You will have that instruction.

Requests for admission. Evidence was presented to you in the form of admissions to the truth of certain facts. These admissions were given in writing before trial in response to

requests that were submitted under established court procedures. You must treat these facts as having been proved.

I gave you the instruction, and you will have the instruction, on fair treatment for corporations and partnerships.

There is an instruction that applies, again, on credibility of witnesses.

There is an instruction, again, on expert opinions that applies.

Burden of proof. I will read that to you again. So this is the preponderance of the evidence burden of proof that you are familiar with. With the exception of punitive damages, Mr. Hardeman has -- Mr. Hardeman's burden of proof for all his claims is called a preponderance of the evidence. When a party has the burden of proving a claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true. Mr. Hardeman has a higher burden of proof for his punitive damages claim, which I will discuss with you later.

Okay. Now, onto the three substantive legal claims that Mr. Hardeman is making. First is the design defect claim. To establish his design defect claim, Mr. Hardeman must prove all of the following:

One, that Monsanto manufactured, distributed or sold Roundup; two, that Roundup in the context of the facts and

circumstances of this particular case is a product about which an ordinary consumer can form reasonable minimum safety expectations; three, that the Roundup used by Mr. Hardeman did not perform as safely as an ordinary consumer would have expected it to perform when used or misused in an intended or reasonably foreseeable way; four, that Roundup's failure to perform safely was a substantial factor in causing Mr. Hardeman's harm.

Second, failure to warn, strict liability. Mr. Hardeman also claims that Roundup lacked sufficient warnings of the risk of NHL. To establish this strict liability failure-to-warn claim, Mr. Hardeman must prove all of the following: One -- and there are six things -- one, that Monsanto manufactured, distributed or sold Roundup; two, that Roundup's NHL risk was known or knowable in light of the scientific and medical knowledge that was generally accepted in the scientific community at the time that Mr. Hardeman was using Roundup; three, the risk of NHL -- that the risk of NHL presented a substantial danger when Roundup was used or misused in an intended or reasonably foreseeable way and that is a substantial danger of NHL; four, that ordinary consumers would not have recognized the risk of NHL; five, that Monsanto failed to adequately warn of the risk of NHL; and six, that Monsanto's failure to warn about the risk of NHL was a substantial factor in causing Mr. Hardeman's harm.

And then third, the negligence claim which also relates to failure to warn. Mr. Hardeman also claims that Monsanto was negligent by not using reasonable care to warn about Roundup's NHL risk. To establish this claim, Mr. Hardeman must prove all of the following. And, again, there are six elements: One, that Monsanto manufactured, distributed or sold Roundup; two, that Monsanto knew or reasonably should have known that Roundup posed a risk of NHL when used or misused in a reasonably foreseeable manner; three, that Monsanto knew or reasonably should have known that users would not realize the risk of NHL; four, that Monsanto failed to adequately warn of the risk; five, that a reasonable manufacturer, distributor or seller under the same or similar circumstances would have warned of the risk; and six, that Monsanto's failure to warn about the risk of NHL was a substantial factor in causing Mr. Hardeman's harm.

You have an instruction about the EPA, European regulators and IARC. In Phase One you were instructed not to substitute the judgment of the EPA, various European regulatory bodies or the International Agency for Research of Cancer, or IARC, for your own independent assessment of the evidence. That remains true in Phase Two. However, the conclusions of these entities are relevant to the issues you are considering in Phase Two.

Now, moving onto damages. There are two types of damages being sought in this case: Compensatory damages and punitive

damages. And now I will instruct you on compensatory damages.

If you decide that Monsanto is legally responsible for the harm Roundup caused Mr. Hardeman, you must decide how much money will reasonably compensate him for that harm. This compensation is called "compensatory damages."

Mr. Hardeman seeks damages from Monsanto under more than one legal theory. However, each item of damages may be awarded only once, regardless of the number of legal theories allowed and presented to you. The compensatory damages claimed by Mr. Hardeman for the harm caused by Monsanto fall into two categories called economic damages and noneconomic damages.

If you find for Mr. Hardeman, the parties have stipulated that the amount of economic damages is $200,967.10. You will be asked to determine what amount of noneconomic damages should be awarded. The amount of damages must include an award for each item of harm that was caused by Monsanto's wrongful conduct, even if the particular harm could not have been anticipated.

Mr. Hardeman does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

The following are specific items of noneconomic damages claimed by Mr. Hardeman: Physical pain, mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation and emotional distress. No fixed

standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and on your common sense.

To recover for future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress, Mr. Hardeman must prove that he is reasonably certain to suffer that harm. For future noneconomic damages, determine the amount in current dollars paid at the time of judgment that will compensate Mr. Hardeman for these future noneconomic damages.

So that's compensatory damages, and now we are turning to punitive damages. As I mentioned, there is a higher standard of proof for punitive damages. So I will first instruct you on that standard of proof; that is the clear and convincing standard.

Mr. Hardeman must prove punitive damages by clear and convincing evidence, which is a higher burden of proof than the preponderance of the evidence standard. Under the clear and convincing evidence standard, a party attempting to prove a fact must persuade you that it is highly probable that the fact is true.

So now punitive damages. If you decide that Monsanto is legally liable for the harm that Roundup caused Mr. Hardeman, you must then decide whether Monsanto's conduct justifies an award of punitive damages. The purposes of punitive damages

are to punish a wrongdoer for the conduct that harmed the Plaintiff and to discourage similar conduct in the future. You may award punitive damages against Monsanto only if Mr. Hardeman proves that Monsanto engaged in conduct with malice or oppression.

To do this, Mr. Hardeman must prove one of the following by clear and convincing evidence: One, that the conduct constituting malice or oppression was committed by one or more officers, directors or managing agents of Monsanto who acted on behalf of Monsanto; or two, that the conduct constituting malice or oppression was authorized by one or more officers, directors or managing agents of Monsanto; or three, that one or more officers, directors or managing agents of Monsanto knew of the conduct constituting malice or oppression and adopted or approved that conduct after it occurred.

Malice means that Monsanto acted with intent to cause injury or that Monsanto's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another.

A person acts with knowing disregard when he or she is aware of the probable consequences of his or her conduct and deliberately fails to avoid those consequences.

Oppression means that Monsanto's conduct was despicable and subjected Mr. Hardeman to cruel and unjust hardship in knowing disregard of his rights.

Despicable conduct is conduct that is so vile based or contemptible that it would be looked down on or despised by reasonable people.

An employee is a managing agent if he or she exercises substantial independent authority and judgment in his or her corporate decision-making, such that his or her decisions ultimately determine corporate policy.

There is no fixed formula for determining the amount of punitive damages. And you are not required to award any punitive damages.

If you decide to award punitive damages, you should consider all of the following factors in determining the amount: A, how reprehensible was Monsanto's conduct. In deciding how reprehensible Monsanto's conduct was, you may consider, among other factors, whether the conduct caused physical harm, whether Monsanto disregarded the health or safety of others, whether Mr. Hardeman was financially weak or vulnerable and Monsanto knew that Mr. Hardeman was financially weak or vulnerable and took advantage of him, whether Monsanto's conduct involved a pattern or practice, and whether Monsanto acted with trickery or deceit.

B, is there a reasonable relationship between the amount of punitive damages and Mr. Hardeman's harm or between the amount of punitive damages and potential harm to Mr. Hardeman that Monsanto knew was likely to occur because of its conduct.

C, in view of Monsanto's financial condition, what amount is necessary to punish it and discourage future wrongful conduct.

You may not increase the punitive damage award above the amount that is otherwise appropriate merely because Monsanto has substantial financial resources.

When deciding whether to award punitive damages, you should only consider Monsanto's conduct through summer 2012, which is when Mr. Hardeman stopped using Roundup. However, any evidence you heard -- any evidence you may have heard regarding events that occurred after 2012 can be considered in determining the amount of punitive damages.

Punitive damages are not intended to compensate Mr. Hardeman. If you awarded compensatory damages to Mr. Hardeman, your award will have fully compensated him for any loss, harm or damage that he has incurred or may in the future incur as a result of Monsanto's conduct.

Accordingly, you must not include in an award of punitive damages any amount intended as compensation for loss, harm or damage that Mr. Hardeman has incurred or may incur. In addition, punitive damages may not be used to punish Monsanto for the impact of its alleged misconduct on people other than Mr. Hardeman.

In determining the amount of punitive damages, if any, you should take into consideration any mitigating evidence.

Mitigating evidence is evidence that may demonstrate that there is no need for punitive damages or that a reduced amount of punitive damages should be imposed against Monsanto.

This next instruction I gave you at Phase One, but I will give it to you again.

Before you begin your deliberations, elect one member of the jury as your presiding juror. If you want the past election to control, that's fine too. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

You must diligently strive to reach agreement with all of the other jurors, if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors and listened to their views. It is important that you attempt to reach a unanimous verdict, but, of course, only if each of you can do so after having made your own conscientious decision.

Do not be unwilling to change your opinion if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Conduct of the jury. I have read you -- given you this

instruction so many times. I'm not going to give you the whole instruction again. But the instruction is in there. You should read it. And I will just remind you of the high points, which is that you should not -- cannot be conducting any of your own independent research. You cannot be communicating with anybody else about the case or the people involved in it. You -- and if -- you cannot expose yourself to any media reports about the case. And if any of these things happen to you or you believe that any of these things have happened to another juror, you should bring it to the attention of Kristen or me immediately.

These instructions are very important, and if these instructions are not followed, it could result in a mistrial that would require the entire process to start over again.

The same instruction regarding a transcript -- regarding a transcript of the trial applies. You won't have a transcript back there. You can request a read back of certain testimony if you wish. If you request part of a witness' testimony, I may order that you hear more of it for context. I may determine that it is not appropriate to have read back. I will discuss that with the lawyers in advance, but you do have that available to you if you need it.

Again, I gave you this instruction last time; but I will give it to you again. If it becomes necessary during your deliberations to communicate with me, you may send a note

through the courtroom deputy signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed note. I will not communicate with any member of the jury on anything concerning the case, except in writing or here in open court.

If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question.

And remember that you are not to tell anyone, including me or the courtroom deputy, how the jury stands, whether in terms of vote count or otherwise until after you have reached a unanimous verdict or been discharged.

A verdict form has been prepared for you. After you have reached a unanimous agreement on a verdict, your presiding juror should complete the verdict form according to your deliberations, sign and date it, and advise the courtroom deputy you are ready to return to the courtroom.

So those are your instructions. As I said, a written copy set will be provided for each of you during your deliberations.

Now we will begin with closing arguments. We will start with the Plaintiff. And after Ms. Moore gives her closing argument, we will take a break. Then we will hear from Monsanto. And then we will hear a short rebuttal from the Plaintiff. And then it will be time for you to deliberate.

So you can proceed, Ms. Moore.

MS. MOORE: Thank you, Your Honor.

CLOSING ARGUMENT

May it please the Court, Counsel, Ladies and Gentlemen of the Jury. We are here. A month later we have finally made it to this day, and Mr. Hardeman has asked me to simply say to you Thank you. Thank you from the bottom of his heart, from Mrs. Hardeman as well for your commitment, your devotion and for your attention over the last month. We recognize that it is a huge sacrifice on each of your parts, and we thank you for that.

Now, this is kind of the hard part as a lawyer because I now have to stand up here and turn the case over to you. And it is a case that we have worked on for a long time. You heard Mr. Hardeman say he filed this lawsuit in February 2016. And we have worked on this case. We have looked at thousands of documents, and Ms. Wagstaff and I have fought every day to make sure Mr. Hardeman has his day in court, and one of the largest companies in the world, and here we are. And now we are here on behalf of the entire team to thank you for your service and to say It's in your hands.

So let's get started.

Phase One, you-all made the decision that Roundup was a substantial factor in causing Mr. Hardeman's non-Hodgkin's lymphoma, and now we are in Phase Two. After you made that

decision in Phase One that Roundup caused his non-Hodgkin's lymphoma, you heard throughout this trial, Phase Two, Monsanto continued to say there is no evidence Roundup causes non-Hodgkin's lymphoma.

So when you go back in that jury room -- and the judge just gave you these instructions, and he told you about -- it is the same -- similar instructions that you had before about electing a presiding juror. And then, same thing as last time, we need each of you -- all six of you -- to reach a decision for Mr. Hardeman. We have to count on each one of you to vote for Mr. Hardeman.

And when you see this verdict form, Ladies and Gentlemen, it is three questions on the front page, three questions. And what we ask for you to do is check yes, yes, and yes. Because we believe that we have tipped those scales, not just a little bit -- not that feather -- but that we have tipped those scales.

And what I'm going to do now is give you some tools so that when you are back there in that jury room -- just like you spent almost a week before back there -- that you have these tools. And you know the exhibits because you will have the exhibits again, but there are a lot more exhibits now.

And I wanted to point out to you, so when you have someone -- everyone -- you should listen to everyone's opinion, you should hear what everyone has to say, but if there is a

disagreement or someone is like, I don't know about this, then you can say, Hold on a second. Remember, the Judge said we are to follow the law; listen to what the evidence is. And this is what I want to point out to you.

So Phase Two, this is about Monsanto. It is about their bad conduct since they put Roundup on the market in 1975. And what the evidence has shown, Ladies and Gentlemen, is that Monsanto knew or should have known the entire time Mr. Hardeman was spraying Roundup that Roundup causes non-Hodgkin's lymphoma. That's all that evidence that you saw in Phase One and how you-all reached your decision that Roundup causes NHL, they knew all of that. They knew all of that long, long before Mr. Hardeman stopped spraying Roundup. They knew it.

Another fact. Monsanto admits -- remember those requests for admissions? And the Judge pointed out to you that you will see this when you go back there, Instruction Number 6 explains requests for admissions to you -- and that you must treat these facts as having been proved. And one of those requests for admissions is that Monsanto says -- they admit, they have never warned that Roundup causes cancer. It's not on the label, Ladies and Gentlemen.

Remember what Mr. Hardeman said on the stand is that if they had warned that it causes cancer, he wouldn't have used the product. We wouldn't be here today if they had taken the time and told the truth and warned that it causes cancer.

And then the last fact that we are going to spend some time on this morning is that Monsanto acted recklessly and with conscious disregard for safety. And that is the exact opposite of what a company should be doing.

A responsible company -- a responsible company would test its product. A responsible company would tell consumers if they knew that it caused cancer. And Monsanto didn't do either of those things.

So what is Monsanto's knowledge? Now, I know as soon as I put the epidemiology up here, everyone is going to have flashbacks of Phase One. I'm not going to go through all the epi studies. But what I do want to show is this is what they knew from 1975, when Roundup went on the market, through 2012. Remember Mr. Hardeman sprayed from 1986 to 2012.

So what did they know in that time period?

This is undisputable. This is not about what someone testified in a deposition about, what Monsanto's employees say now. This is what did they know then. And that's a really critical difference.

When you are back in that jury room, think about what do the documents say? What do the internal documents say from Monsanto? Not what they say in a deposition with the comfort of their own attorney, but what did they say back in 1999? What did they say back in 2003? What did they say back in the 1980s that they knew? That's what I want you to look at is

these documents.

Because, remember, after you made a finding in Phase One that Roundup causes non-Hodgkin's lymphoma, did you see one person from Monsanto, other than their attorneys, come here and say that's not right. We stand by our product. Did anyone come in this courtroom from Monsanto and defend the safety of Roundup? No. They didn't call any single live witness to stand up here and tell you ladies and gentlemen that you are wrong and all the science is wrong.

So here is the science.

Remember *Hardell* 1999, *McDuffie* 2001, *Hardell* 2002, *De Roos* 2003, and *Eriksson* 2008. All of these epi studies all showed an association between Roundup and non-Hodgkin's lymphoma, Roundup and non-Hodgkin's lymphoma. They knew about every single one of these studies. And meanwhile, what is happening in that time period? Mr. Hardeman is spraying Roundup. All right. That's the epi.

Let's go to the animal. We heard -- remember Dr. Portier testified in Phase One about the mice and rats? The first one, *Knezevich & Hogan*, 1983 -- this is before Mr. Hardeman ever started spraying Roundup -- when that study came out originally in 1983, if Monsanto had done the right thing and put a warning on the label, we wouldn't be here. We wouldn't be here. Instead, they didn't.

1993, '97, '99, 2001, 2009. And they remember the *George*

study in 2010. That *George* study was the one where they actually used Roundup, and they put it on the mice skin. And what did Dr. Portier tell you yesterday? Every single one of these mice studies showed malignant lymphomas, just like what Mr. Hardeman has. This is what they knew -- Monsanto knew about all of these mice studies.

Oxidative stress, remember we talked about that in Phase One? That comes up in 2005, 2009, 2010. All three of these publications Monsanto knew about.

Genotoxicity. Remember we had all that testimony about Roundup being genotoxic? First one, 1980 -- again, before Mr. Hardeman started spraying -- 1993, '97, '98, '98. And those four, Ladies and Gentlemen, is what forms the basis of the *Parry* report that you heard about in Phase Two, but they keep going.

Of course, here is the Parry. And Parry is, of course, the professor they hired to tell them whether it is genotoxic. And when they told him that I think it could be genotoxic, what do they do? They don't do what he says. And they don't share it with the EPA. They don't share it with anyone.

Keeps going. More genotoxic. 2004, 2005, 2007, *Paz-y-Mino*. You will remember that is the aerial spraying study.

2009, the second Bolognesi, which is also the aerial spraying study.

2009 again, 2009 again, 2012. These are all the genotox studies all showing Roundup or glyphosate having a genotoxic effect. This is everything Monsanto knew from 1975 to 2012. This is undisputed, Ladies and Gentlemen. That is what they knew.

And 1985 they also knew that the EPA categorized glyphosate as a Class C oncogen, meaning it is capable of causing cancer. What did they do in 1985? We are going to talk about this. What they did not do is they didn't take it off the shelf, and they didn't put a warning on it; the year before Mr. Hardeman started spraying.

So after hearing all of this and you-all reached your decision in Phase One, what does Monsanto come in here and say to you? And this is Dr. Reeves who was designated by Monsanto to speak on its behalf on behalf of the company.

(**V**ideo played.)

MS. MOORE: No evidence across the board. No evidence across the board? Are you kidding me? That, Ladies and Gentlemen, is reckless. That is a reckless thing to say. And frankly, it is offensive. It is offensive after you-all made your finding. It is offensive when you see all the information they had for 60 days ago, in January, for their spokesperson, for their designated representative to come to this court and say, No evidence across the board, it is just flat-out untrue.

I'm going to move that slide -- I went ahead and put this

up here, which is just so I can keep referring to it, because this is important. This is the knowledge.

So let's look at Monsanto's conscious disregard of all of this information. First thing, you heard testimony from Dr. Portier yesterday about the IBT scandal. So 19 -- in the 1970s when Monsanto submitted for approval to the EPA, the initial approval to the EPA, it was based on a study conducted by IBT labs.

1983 the EPA found that study to be invalid. So from 1975 to 1983, the approval from the carcinogenicity standpoint for glyphosate was based on one study from IBT, a mouse study that was then held to be invalid. What did the company do when they were told it was invalid? Let's look at the document.

So remember you saw this. It was called out. And it says Glyphosate, and then the first column is Oncogenicity and zero. You see down at the bottom, Ladies and Gentlemen, where it says zero equals IBT. That is the IBT Labs. It is saying that the oncogenicity study was done by IBT.

And then if you look over to the right-hand column, it says Data Column. And Dr. Portier explained that when the EPA put something like that in, that means they are asking for more data from the company, okay.

And then you look at the next sheet -- I will call this out -- this is Glyphosate, Monsanto, the carcinogenicity study. It is a mouse study. And the "I" Dr. Portier testified to

meant invalid. So the study where they got the original EPA approval was determined to be invalid. And that was a mouse study.

So there was no valid study from 1975 to 1983, and you are going to hear in a few minutes -- when Monsanto's attorney stands up here, you are going to hear a lot about the EPA, a lot about the EPA. But I want you to think about let's look at the history of Monsanto and the EPA. And we got to go all the way back to -- gosh, a long time, 1983 -- 35 years ago, 36 years ago -- and look at when they determined that the initial study was invalid. And what did Monsanto do when they found this out that the study was invalid? They didn't take it off the market and they didn't warn.

Now, let's go to what happened in 1983, '85. So remember that first mouse study was *Knezevich & Hogan*. And you-all have heard all about this study that I'm going to write up here because these are some trial exhibits that I think are important, and I'm just going to put K&H for that.

And 1983 the *Knezevich & Hogan* study was done and they found lymphoma. 1985 the EPA determines that glyphosate is a Class C oncogen. In accordance with EPA for post-guidelines, the panel has classified glyphosate as a Category C oncogen. That is the finding in 1985.

And these are Trial Exhibits 503 and 505. You will have those in the back with you.

And they base that -- that glyphosate was oncogenic, in male mice causing renal tubule adenomas -- adenomas -- I never can say it right -- a rare tumor in a dose-related manner. Remember all the dose response information? That's what they found.

And then what is Monsanto's plan? What is Monsanto's response when they are told that it is -- it is a Category C oncogen? A responsible company would first say, Should we take this off the market? Or should we test it? Or should we put a warning on it that it is an oncogen? It is going to cause cancer. They don't do anything.

Here is their response. Short of a new study or finding tumors in the control group, what can we do to get this thing off of Group C? That's their response.

And this is 506. And you can see that one for yourself. And so what they are saying is, All right, EPA. You are saying it is a Class C oncogen now. I guess the only way we can get it out of there is to find a tumor in the control group.

And, lo and behold, what do they do? Here is first, zero in the control group, zero low, one in the medium, and three in the high. What do they do? They hire someone to look at the study again; and lo and behold, they find that magic tumor, the one tumor in the control group. And why does that matter? Because it changes everything in 1985 to '86. It is no longer highly significant.

Now, the EPA looked at it again. Other pathologists looked at it again. The only pathologist who ever said there was a tumor in the control group was the one Monsanto hired.

They reviewed -- the EPA reviews the kidney slides and does not find a tumor. They issue a guidance document, and that's 514.

508 and 509, that's where they -- Monsanto sent the slides to Dr. Kuschner. So you will have all that back there too.

So Monsanto's reaction in 1986, the next year, after they told the EPA about this magic tumor, they come back and they say, We agree to repeat a rat study -- now, remember this is about a mouse study -- and we vehemently argue the lack of justification for a repeat mouse study.

Ladies and gentlemen, they have never, never repeated that mouse study. They don't want to repeat that mouse study. And you have to ask why that is. When all the other mouse studies show lymphoma, you have to ask why they don't want to do that.

So they refuse.

And Dr. Reeves testified to it: And, in fact, Monsanto never re-did the mouse study, did it?

His answer: We conducted a rat study.

Question: So Monsanto in response to the glyphosate, the registration document -- that is the EPA document -- specifically said we want a waiver from having to do this mouse study, correct?

That's correct.

And that's 516.

Since that day Monsanto -- to this day Monsanto has not done -- ever done another mouse study with glyphosate, right?

Answer: No, because all the other registrants have for their data package.

It is not about the EPA. It is not about the regulatory agencies. It is about what Monsanto should be doing. It is about whether a responsible company would put a product on the market without warning it causes cancer when they know that it does.

THE COURT: Ms. Moore, can we take a brief sidebar?

MS. MOORE: Oh, sure.

(The following proceedings were heard at the sidebar:)

[redacted]

(The following proceedings were heard in open court:)

MS. MOORE: Then there were a couple others I wanted to write up here about this mouse study. 515 and 512 and 516, and then the last one will be 1178. The reason I put 1178 up there is because 1991 -- and you will hear from the Defense -- that's when EPA changed from a Category C, the oncogen, to a Category E, evidence of non-carcinogenicity. But what is really important about that is what the EPA says -- and you can see this in 1178 -- the EPA says: This should not be interpreted as a definitive conclusion that glyphosate will not -- will not be a carcinogen under any circumstances.

What they are saying is they don't have definitive evidence one way or the other, and that's important.

So that's what happened in the '80s. And Monsanto's response, you know, when the EPA -- when they are coming in here to this courtroom and saying, Ladies and Gentlemen, EPA has approved the product. When the EPA says you need to repeat a mouse study and first you ask for a waiver, and then second you never do it, it is hard to hang your hat on the EPA.

And here is the timeline. '75 is the initial approval based on an invalid study. 1983, EPA found glyphosate to be a Class C oncogen. '85, EPA orders Monsanto to redo the mouse study. '86, Monsanto finds a magic tumor in the control group that nobody else has found. 1986, EPA does not see the magic tumor. And in 1991 the EPA changes it to Class E. Monsanto has never redone that mouse study. That is not what a prudent

company should do.

Parry, 1999. So this is following these four studies, Ladies and Gentlemen, that we talked about in Phase One, the genotox studies in the '90s. And Monsanto knew that there was an issue. They think it is a problem. It is actually scientific information being provided to them.

And what do they do? They hire Dr. Parry. And the first document to look at when they hire Dr. Parry is an internal Monsanto document. And it is talking about someone getting someone to be supportive of glyphosate. And that is 155. And I'm going to write Parry -- I'm trying to group these for you-all, and -- so that is 155.

So Monsanto calls Dr. Parry, I'm looking for someone who is going to be in support of glyphosate. That's what the document says. And then they ask him to look at those four studies. He looks at the four studies -- and you saw this -- here it is. Sorry. Discuss with him his participation in support of glyphosate, glyphosate-based formulation, genotox issues.

And what does Dr. Parry come back and say? You heard from Dr. Portier, because Dr. Parry is no longer with us, that strong evidence that glyphosate may be genotoxic. That's what they knew in 1999. This is their own person they hired telling them this.

And what is their response to this? Their reaction is

they develop this press release -- and this is 156. And in this press release they say, Several genotoxicity studies have been conducted on glyphosate, the surfactants in glyphosate formulations and other closely related surfactants. Studies have also been performed on Roundup herbicide and other glyphosate formulations.

None of these studies have shown any adverse findings. That's a flat-out lie. Remember what the studies showed in Phase One? This is what they decide to do. The development of a positive press release. And then they are asking for comments internally. Meanwhile, Dr. Parry had found that it is capable of being genotoxic, both in vivo and in vitro. And here is their response to Dr. Parry. Let's send out a press release saying there is nothing.

When they find out -- I'm going to put 157 and then 158 and 159 -- because these -- 158 and 159, you will see these. These are internal e-mails after they got the results from Dr. Parry, and some of the things they said is: Has he ever worked with industry before? We may have to help him write all this. Help to produce the definitive report without twisting his arms.

And 158, after they provide more information, what they say is with the hope of, quote, "moving Dr. Parry from his position." Not finding an objective result. They want him to be on their side. They don't want objectivity. They want to

turn his opinion around. That's what they wanted in 1999.

So Parry will say it all again. He looks at more information and he concludes glyphosate is a potential clastogenic *in vitro*. And remember, this is an agent that can induce mutation by disrupting or damaging the chromosomes.

This is Exhibit 160 that you'll have back there. And this is when he comes up with the recommendations, and this is critical because Donna Farmer's deposition was played the other day. Remember Donna Farmer is one of the head toxicologists at Monsanto. She's been there for a number of years. She's a spokesperson for the company. She acts on its behalf. She's one of the decision-makers there, along with Dr. Heydens who you heard from yesterday.

And Monsanto's reaction when they get this back from Dr. Parry, at first it's (reading):

"Roundup is currently very vulnerable in genotox."

Okay. So they admit this. But here is what they say (reading):

"We simply aren't going to do the studies Parry suggests."

That's 161. I want you-all to look at that e-mail. 161 (reading):

"We simply aren't going to do the studies Parry suggests."

Now, when Donna Farmer was deposed in January, she went

through this chart. And you're going to hear from Monsanto's attorney, "Oh, well, you know, we did this study. We did that study." Here's what she said in 1999 (reading):

"We simply aren't going to do the studies."

And the rest of the e-mail says, if you look at that (reading):

"We want to find" -- this is the second sentence in the second paragraph -- "We want to find and develop someone who is comfortable with the genotox profile of glyphosate/Roundup and who can be influential with regulators" -- that's EPA -- "and scientific outreach operations when genotox issues arise. My read is that Parry is not currently such a person and it would take quite some time and money" -- several dollar signs -- "studies to get him there. We simply aren't going to do the studies Parry suggests."

And then he asks Mark Martens (reading):

"Do you think Parry can become a strong advocate without doing this work? If not, we should seriously start looking for one or more other individuals to work with. Even if we think we can eventually bring Parry around close to where we need him, we should be partly looking for a second backup genotox supporter." Again, they don't care what the science actually shows. "We've not made much progress and are currently very vulnerable

in this area."

They knew back in 1999 Roundup was genotoxic. They had the information to make that determination and then chose not to.

So what else do they do? They said "Let's get Dr. Kier." You heard from Dr. Kier yesterday. He worked at Monsanto a number of years and then he retired and was a consultant. And then they say (reading):

"Right now the only person I can think of to dig us out of this," quote, "genotox hole is the good Dr. Kier."

A genotox hole? There is no mention in any of these e-mails, ladies and gentlemen, about "We've got a problem that our product is not safe. We need to have discussions about whether it should be on the shelf. We need to have discussions about telling the public." Nothing. There is nothing about that in the documents. It's all about "How can we get someone on our payroll to put out information that is false, that is wrong, that goes against what the science shows?"

Let me go back. I don't know why that's flashing, but we're going to go away from that.

Let me go back.

MR. WOLFE: Hold on a second.

MS. MOORE: Okay. Thank you. Are you pushing it too? I'll just stop.

MR. WOLFE: No.

(Pause in proceedings.)

THE COURT: If you want to take a five-minute break to get it fixed, that's totally fine.

(Pause in proceedings.)

MS. MOORE: Thank you. Thank you, Mr. Wolfe.

Okay. All right. I'm going to put down the rest of these numbers. There was only one more and that was the genotox hole, and that's 208.

Okay. So they bring in Dr. Farmer in this deposition to say all these things about tests. And I just wanted to remind you-all, I read these requests for admissions into the record, and this was Request for Admission Number 5. And remember it was that we asked Monsanto before trial (reading):

> "Admit that Monsanto has never conducted a long-term animal carcinogenicity study on any glyphosate formulation."

And they admit that. They admit that. That is what is in evidence here.

Okay. Go to the next one. Okay, great.

And then they admit that Monsanto has not conducted a long-term animal carcinogenicity study on glyphosate since 1991. That was a long time ago. That's actually the year I graduated high school so I know it was a long time ago. But they admit that. They haven't done any of those studies on glyphosate. Now, again, that's not on the formulation.

And then they admit that Monsanto has never conducted a long-term animal carcinogenicity study on any surfactant used in a glyphosate-formulated product. They admit that. They admit that.

And then they admit that Monsanto is not precluded by any applicable law, regulation, or ordinance from conducting a long-term animal carcinogenicity study on a glyphosate formulation. They admit there is nothing that precludes them from doing it. They just choose not to do it.

So when you hear Monsanto's attorney argue "Well, we've done some tests and everything," well, what are those tests? Those tests, ladies and gentlemen, remember these charts they showed you in Dr. Farmer's testimony in Phase II? I'm sure they're going to show them to you again in their closing.

They didn't show them to you in Phase I when we were trying to decide whether Roundup caused non-Hodgkin's lymphoma. I thought that was interesting.

Dr. Farmer said --

MR. STEKLOFF: Objection, Your Honor.

THE COURT: The objection is overruled, but I will remind the jury again that attorney argument is not evidence and you should be focusing on the evidence that's presented in the case.

MS. MOORE: And what's important is this one that is marked as 479, ladies and gentlemen, is titled "Surfactants."

This is genotoxicity studies on surfactants, not on Roundup. Okay? So we can put that one to the side.

The other one -- I'll take my little Post-its off -- is on formulated product. Remember Dr. Farmer testified about how there were different tests and one was acute toxicity and that doesn't tell you about cancer, it talks about irritation of the skin? Remember the admissions. They didn't test on glyphosate since 1991, and they have never conducted a long-term animal carcinogenicity study on any glyphosate formulation.

Here's what the lawyer and Dr. Farmer put together (indicating). Formulated products; right? The admission says they've never done this. They have this but if you look at it, it's salmonella, salmonella, mouse bone marrow, bacteria.

In order to get to human lymphocytes, you have to go all the way over to the last two pages. It starts here (indicating) goes to here (indicating), October 2016. Eight months after Mr. Hardeman files a lawsuit do they start testing about human lymphocytes with the formulation. And, lo and behold, guess what the result is? Negative.

All right. Backed up.

So there is this refusal to test after Dr. Parry tells them they need to test, that he recommends testing. In fact, Mark Martens -- and this is 686, I'll put "refusal to test." My handwriting is going to get really bad.

Okay. 686. And in that he says (reading):

"If somebody came to me and said they wanted to test Roundup, I know how I would react -- with serious concern."

"Serious concern." Again, not about, you know, "We've got a problem here. We really should be studying our product." No. It's more about: How are we going to fend this off?

I don't know if they're going to make this argument. I hope they wouldn't make this argument. I just want to raise this. There was nothing, nothing to preclude Monsanto from testing Roundup. They've never done it, and there was nothing to preclude them from doing it.

In fact, this is -- remember Hugh Grant? He's the -- not the actor -- the former CEO of Monsanto (reading):

"Just to be clear, I -- make sure I heard you straight. Monsanto was spending on the order of one and a half billion dollars" -- $1 billion a year -- "in research and development?"

He goes: "More or less, yeah."

And they couldn't do a study on Roundup? They're spending one and a half billion dollars and they couldn't take the time to study a product that they had on the shelf since 1975? Knowing all of this information is out there, knowing that they had to hire someone in 1999, they couldn't have taken a little bit of that one and a half billion dollars and test it?

So what happens after Parry? The Hardell comes out,

Hardell article. And how do they respond to that? Remember they say it's an index of concern. So I'm going to write on the next page -- I think it's 686 -- let's see, let's go to epi just to show you that they knew about all these and how they responded internally.

So this is 86, and they say there's an index of concern for glyphosate and future agricultural epidemiological studies.

And then this was that -- I don't know if you-all remember -- well, you probably -- I'm sure you do -- in Phase I, remember this exhibit in Phase I (indicating)? Now you're going to have Exhibit 220. It's the unredacted version of it. 220.

And here's what they say Monsanto said about Hardell in 1999 Hardell (reading):

> "Just the tip of the iceberg for these types of association epi studies."

"Just the tip of the iceberg." They knew. Don't let them stand up here and try to say that, "We didn't have any reason to believe there was association." Here's what their internal documents in 1999 say.

So what do they do after Parry? What do they do after Hardell comes out and they know it's the tip of the iceberg and know they're in this genotox hole? These are their words, ladies and gentlemen, not mine. They start ghostwriting. And you heard a lot of testimony about the Williams 2000 article,

and I just wanted to point out some of the e-mails.

And this is Dr. Heydens' e-mail to Dr. Farmer, and this is back in 1999. I'm just going to write "ghostwriting" up here (indicating) because I've tried to put all the ghostwriting stories together for you -- or the exhibits, and this one is 314.

And Heydens, who in his deposition acted like, "Oh, I didn't ghostwrite." I mean, if you look at the acknowledgment section in Williams, "It says 'Monsanto' in the acknowledgment. So, you know, everybody knew that we were acknowledged." That's not being an author on a paper.

And what does he say? (reading)

> "And Dougie" -- this is someone -- a grown man named Doug, Douglas -- "thinks I would actually leave the final editing to him unsupervised."

That's 314.

301. This is the e-mail 15 years later where Dr. Heydens says (reading):

> "A less expensive, more palatable approach might be to involve experts only for the areas of contention, epidemiology and possibly MOA, and we ghostwrite" -- "we ghostwrite" -- "the exposure tox and genotox sections."

So, you know, all that testimony about "I don't know what ghostwriting is" or "I don't know this definition. It has many definitions," again, I want you to go back to the documents.

301. It says (reading):

"An option would be to add Greim and Kier or Kirkland to have their names on the publication, but we would be keeping the cost down by us doing the writing and they would just edit and sign their names so to speak. Recall that is how we handled Williams, Kroes, and Munro in 2000."

He admits it.

And here is why this is significant, ladies and gentlemen, and this is 464. The reason it's significant is that they consider Williams, the publication by independent experts, which again no one knew it was actually Monsanto (reading):

"The most exhaustive and detailed scientific assessment ever written on glyphosate," it says, "was due to the perseverance, hard work, and dedication of the following group of folks. They deserve significant credit for the stewardship result here."

It says (reading):

"This human health publication of Roundup herbicide and its companion publication," it goes on, "will be undoubtedly regarded as the reference on Roundup and glyphosate safety."

That's Monsanto. That's their plan. They want Williams to be the reference on Roundup, not any of this other stuff.

And they go on, this is still in 464 (reading):

"Now the hard work by public affairs" -- so their Communications Department -- "begins in utilizing these reference documents to the fullest. This is where public affairs strategy begins to kick in globally."

"Globally." They want everyone in the world to know about the Williams article, just not that they wrote the whole thing.

And what does their CEO say? He ratifies it. He says (reading):

"This is very good work. Well done to the team. Please keep me in the loop as you build the PR info to go with it. Thanks again."

This starts at the top and works its way down at Monsanto. He's ratifying their ghostwriting.

And then what does Dr. Saltmiras say? This is 312. This is a PowerPoint slide that you're going to have back there with you. So 312. He says (reading):

"Williams is an invaluable asset."

And, look, "Regulator reviews," that's EPA; "FTO," the freedom to operate. It's all about their freedom to operate, not about safety.

And what does Heydens say? "It's a very important paper." In fact, he said it three times during his testimony.

And then Saltmiras, again back to the PowerPoint, he says (reading):

"Williams, et al., has served us well in toxicology

over the last decade. We need a stronger arsenal of robust scientific papers to support the safe use of our products as we face the next set of chemistry registration reviews..."

They're getting ready for reapproval and they want to get a stronger arsenal together.

And here's an example of how Williams served them well. This is the De Roos 2003 publication. You'll remember this. And in there there was one publication. Remember? That De Roos 2003 said "even though one review concluded that the active ingredient is noncarcinogenic and nongenotoxic." One, and it's Footnote 50.

And guess what that one paper was. Williams. That's the only one that De Roos found in 2003 that was against all of the other information in the scientific community written by Monsanto.

So this is a pattern of ghostwriting by Monsanto. And this is, again, Dr. Farmer and she's doing another epi review, and she says she offered suggested edits. She adds (reading):

"It was concluded that glyphosate is unlikely to pose a carcinogenic risk to humans."

And guess what she cites? Williams.

She adds to the paper (reading):

"Glyphosate is widely considered by regulator authorities and scientific bodies to have no carcinogenic

potential."

And she's not listed on the final paper.

Another one, she's redlined out as the author, not listed on the final paper. This is a pattern at this company of ghostwriting.

What else did they do? McDuffie. You heard about the McDuffie abstract. McDuffie had found that in 2001, there was statistically significant doubling of the risk, the dose-response; the more you use, the more likely it is you're going to get non-Hodgkin's lymphoma.

And so what did they do? They set out and they said (reading):

> "I don't know yet what it says in the small print, but the fact that glyphosate is no longer mentioned in the abstract is a huge step forward. It removes it from being picked up by the abstract searches."

They're celebrating that they got glyphosate out of the abstract. Remember, that's the summary at the beginning of the publication. Glyphosate not mentioned in the abstract.

And so they say (reading):

> "I understand the situation correctly, even though reference to glyphosate wasn't removed entirely, there was a substantial reduction in emphasis, including, but not limited to, removal from the abstract."

And Dr. Acquavella, their toxicologist, says -- I'm

sorry -- their epidemiologist, says (reading):

"Right. It's a good result, but not everything we wanted." And he put in parentheses, "invalid result." Could be cited as a second glyphosate/NHL finding." A second one. They knew it. This is in 2001. "However, it will not be picked up by most of the usual suspects because it's not mentioned in the abstract."

Let me make sure I've written these down here for you. 314. I'm going to write 461 is another example of ghostwriting. And 462 is another one.

And then you've got 315 is another one that you need to look at. And then 464 is what Hugh Grant, the CEO, ratified.

And then on McDuffie, it is 448. And I'm going to kind of write a little fast because I've got to move on here. And that's 448.

And when De Roos came out in 2003, they said it added fuel to the Hardell fire. They knew. Don't let them tell you there's no evidence across the board. They knew it. So look at 254 as well.

They said in their admission Monsanto has never conducted an epidemiological study to study the association between glyphosate-containing formulations and NHL. They admit that.

So what's a responsible corporation to do? This is what Hugh Grant said in his deposition (reading):

"Q. Mr. Grant, did you have a view about whether the

company should communicate with the public about the safety of glyphosate?

"A. It's not just should. I think there's a responsibility for companies like Monsanto. There's a responsibility to communicate the science, to communicate what the products do when used as advised. So I don't think that's a should. I think, frankly, that's a responsibility."

He thinks, the CEO thinks, it's a responsibility. So were they responsible? Absolutely not. Exhibit 317, look at this one, ladies and gentlemen. They write in there (reading):

"It's the good 'ol Monsanto way. Let's hire some more scientists. Let's pick up our people to talk about and defend Roundup."

Let's deceive. Let's ghostwrite. Let's manipulate the data, and let's refuse to test and, frankly, let's lie to the public about Roundup causing cancer.

So let's look at that document, this very important document. It is 426. And I'm just going to write it here and circle it because I would ask all of you to look at it when you go back. This is an e-mail from Donna Farmer.

And 245. I'm going to start with 245. So 245 and 426 are e-mails from Donna Farmer.

In 245 it says -- 245, it's in response to an article that came out and -- for Monsanto Australia, and they're asking how

do we respond to these articles. And she says (reading):

"First, you cannot say that Roundup does not cause cancer. We have not done carcinogenicity studies with Roundup."

She admits that in 1999.

And then the very next line, the bullet point for press (reading):

"Will Roundup harm my family or me?"

Her answer (reading):

"Based on the results of short-term and long-term testing, it can be concluded that Roundup poses no danger to human health."

What? She says internally "You can't say it does not cause cancer. We haven't done the tests." Externally to the public when they're asked will it harm my family and me, "Well, based on the results of short-term/long-term testing, it can be concluded that Roundup poses no danger." That's lying to the public, ladies and gentlemen.

And, again, 426, she continues on that. I'm going to run through these.

EPA. You're going to hear about the EPA from the defense. Just remember that that was built on an invalid study, they rely on information provided by Monsanto, and Monsanto had a cozy relationship. You heard Dr. Reeves testify that "We have conversations with EPA representatives." (reading)

"**Q.** You guys shared text messages; correct?

"**A.** There are instances where EPA officials and Monsanto employees have texted each other."

Texting?

And then Dr. Portier. Dr. Portier testified that -- and, remember, he's worked for government for 30 years, and he said that because -- (reading)

"Because they've inappropriately applied the science time after time after time to reach that conclusion, it's an inappropriate conclusion for this particular compound," meaning glyphosate.

And he was asked (reading):

"When you see something like that, what's your reaction?"

And he says (reading):

"I feel as if EPA has let down the American public."

And then Dr. Kier says, you know, about whether you should -- whether it causes cancer (reading):

"I think they wanted to have information sufficient for them and the regulatories."

Again, nothing about safety.

I'm going to run through this.

And, remember, Monsanto has never warned.

So let's look at these jury instructions, ladies and gentlemen. So on the verdict form the first question you have

to answer is: Did Mr. Hardeman prove by a preponderance of the evidence -- the tipping of the scales -- that his claim that Roundup's design was defective? And we ask that you check "yes."

Number 2: Did Mr. Hardeman prove by a preponderance of the evidence his claim that Roundup lacked sufficient warnings of the risk of NHL? Again, they admit they didn't warn. We ask that you check "yes."

And then Number 3: Did Mr. Hardeman prove by a preponderance of the evidence his claim that Monsanto was negligent by not using reasonable care to warn about Roundup NHL risk? And, again, we ask that you check "yes."

We ask that you check "yes" to all three of these.

And then you'll turn the page and you will then decide about damages. And as the judge instructed you, the parties have agreed on the amount of the past medical expenses. So if you find for Mr. Hardeman, that amount is already written there. That's the medical expenses that have been charged to Mr. Hardeman.

Noneconomic loss. It's really important that you look at the jury instructions on this. And let's flip back over to -- remember Dr. Nabhan testified and Mr. Hardeman testified about his harms and what this experience of having cancer has been like.

And when you look at the compensatory damages instruction,

and that is Instruction Number 15, it talks about noneconomic damages; and right below that, at the end of that page, it outlines for you what noneconomic damages are, and that's what I have here on the screen. It's for that pain, for that bone pain that Mr. Hardeman experienced where they talked about it's like electric waves going through his body.

It's the nausea. You know, when Mary -- Ms. Hardeman said, you know, they had to carry a bucket in the car from all of his vomiting.

It's the chemo brain that he went through where he's forgetting things. The confusion. His loss of appetite.

The swelling. Remember Mrs. Hardeman said that the next morning she couldn't even recognize him when he got out of bed because he was so swollen?

And then his white blood cells, the count dropping and dropping where he had to get daily shots seven days in a row, and that's what caused the bone pain.

And then him losing his hair. The fatigue, the loss of strength.

And then remember what Dr. Nabhan said. In the future, yes, you're going to hear Monsanto's attorney, and it's a great thing, that his last scans have been clear, that he's in remission.

But I asked Mr. Hardeman what that meant to him, and he talked about it was a temporary place for him because he has to

get repeat scans. He has one next month, and he has that anxiety coming up before that scan as to whether this is going to be the scan that they come back and say, "Mr. Hardeman, I'm sorry to tell you, but your cancer is back."

And he has to live with that. He has to live with that for the rest of his life because Dr. Nabhan testified that he has an increased risk of other cancers because of the chemotherapy.

And, remember, they didn't ask Dr. Nabhan one question. They didn't ask anything about Mr. Hardeman's harms because that's not in dispute, ladies and gentlemen. The suffering this man has gone through is not in dispute. The anxiety, the anguish, the emotional distress that he's going to have to face for the rest of his life, that's not in dispute. The worry about whether he's going to have a repeat scan and they're going to tell him he has cancer, that's not in dispute.

So when you look at the instructions, you have to decide, then, on the noneconomic loss; and I will tell you that's something that, you know, people struggle with. Under the law, it's your job to compensate Mr. Hardeman for these harms, for all of these harms, and for the anxiety and the mental anguish.

And he's had that since 2014, and we don't know if he's going to live another 25 years, 20 years, 15 years. We don't know that, but I would submit to you that the number that you should put on the jury instruction is a million dollars a year

for every year that he has suffered in the past for the last almost four years and for the next 15 years.

It is up to you-all to decide the amount to put on those lines on the verdict form, but I would submit to you that that is a fair number given what he has gone through, and that would be the past noneconomic loss for the suffering and the future noneconomic loss for the suffering.

And then the last thing is on punitive damages. Now, you'll see in the instructions, ladies and gentlemen, that punitive damages -- you'll see at the very beginning (reading):

> "The purpose of punitive damages is to punish a wrongdoer for the conduct that harmed the plaintiff and discourage similar conduct in the future."

It's not about Mr. Hardeman. It's not about any kind of thoughts or feelings or harms. We don't want any sympathy for him about this. This is about Monsanto. It is about this company for the last 40 years manipulating the science, manipulating the public opinion.

And you look at the documents. Here it is. You heard the stipulation. Monsanto was bought last year for $63 billion by Bayer. That's what Bayer thought this company was worth last year. Right before Bayer bought the company, Monsanto had a net worth of $7.8 billion. They had cash on hand -- cash on hand -- of $2.4 billion. Cash.

And then we talked about a few minutes ago they had

1.5 billion in their annual budget for research and development. Now, how did they spend all that money? Zero on epidemiology. Zero on *in vivo* human genotoxicology studies; zero on *in vivo* oxidative stress studies; zero on long-term rodent carcinogenicity studies on Roundup formulation; and zero, absolutely zero dollars spent on warning the public that Roundup causes cancer. All that money and they don't spend a dime telling the public that Roundup can cause cancer. That, ladies and gentlemen, is offensive.

And Roundup, make no mistake about it, is key to Monsanto. Look at 788. This is an exhibit that came into evidence yesterday, and Roundup -- this is an internal Monsanto document. They say (reading):

> Roundup is key to Monsanto in many aspects. It's the number one weed killer all over the world. It's a fantastic brand. Close to 100 percent awareness amongst farmers around the globe. It's an outstanding contributor to Monsanto's earnings, and Roundup FTO" -- free to operate -- "needs a champion."
>
> "Needs a champion."

So let's look at Roundup. Here's what Roundup has done for Monsanto. Back in 1996 before that spike in Roundup sales that you heard about, Roundup was bringing in about $130 million a year for Monsanto. By 2000 after the spike started, it had grown to over $210 million in one year alone.

One year alone the company brought in $210 million on Roundup.

And then you'll remember this slide from Phase I that was Monsanto's. Remember what happened after 2000, that the sales -- the blue line is the sales -- just kept going up. So this graph would keep going up. 2000 is 210 million. When Mr. Hardeman's still, still spraying Roundup, they're bringing in $210 million in one year.

So, ladies and gentlemen, when you look at this punitive damages instruction and you go over -- and it's Instruction 17 -- we have to show that Monsanto acted with malice and oppression -- or oppression that their officers -- so Hugh Grant -- their managing agents -- Donna Farmer, Bill Heydens, Mark Martens, Jim Guard -- all these people that you've heard from; and malice, that's kind of an old term, but what it means as defined in the instructions "acting with intent to cause injury or that Monsanto's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another."

When you put a product on the market and from 1975 to 2012 when you know that that product causes cancer and you do it anyway and you don't give a consumer like Mr. Hardeman a choice -- they deprived him of any choice to make as to whether to buy this product. He could have made a choice and he told you his choice. He wouldn't have bought it if he was warned about cancer. But when you knowingly do that, that is malice.

Oppression means Monsanto's conduct was despicable and subjected Mr. Hardeman to cruel and unjust hardship. It gave him cancer. Nothing can be more cruel and unjust than to give someone cancer, and that's what this company did by putting this on the market.

So you go through here and then number A, this is on the second part of the instruction: How reprehensible was Monsanto's conduct? All you have to remember is what they knew for all of these years, 1975 to 2012, and despite knowing all of that, they still conducted a pattern and practice of deceit over and over again to the American public, to Mr. Hardeman.

And then when you're determining the amount, in view of Monsanto's financial condition, those sales from -- oh, thank you -- the $63 billion -- that's fine -- the $63 billion, the 7.8 billion, the 2.4 billion, and the 1 and a half billion spent on research and development. In view of that financial condition, what amount is necessary to punish it -- to punish Monsanto and discourage future wrongful conduct? That is a decision that you have to make as a jury.

All I can tell you is that this company after all of this time, after all of this information, after everyone in the scientific community telling them that Roundup causes cancer, they still come to this courtroom and they tell you there's no evidence across the board. They still come to this courtroom and they say it doesn't cause cancer. It's still on the shelf,

ladies and gentlemen. They're still selling this product. They're still denying that it causes cancer.

After IARC came out in 2015, the International Agency on Research and Cancer, and says it's a problem with carcinogens in humans, what did they do? They didn't take it off the shelves. They didn't warn it caused cancer. They didn't tell anyone of their consumers it causes cancer. They just kept selling Roundup and kept making money off of it because that is the bottom line for Monsanto.

And so you've got to decide: Is it a year of their sales of Roundup? Is it that $210 million? Is that what's going to send a message to this company? Is it the fact they have $2.4 billion in cash? Is that what's going to send a message to this company? That's for you to decide.

But what I can tell you is that if you don't send a message and a loud message, because nothing else over all these years, all the data from the scientific community, IARC telling them it's a probable carcinogenic -- carcinogen, nothing has stopped this company, and that's because the only thing that matters to them is their greed. The only thing that matters is that bottom line, the profit. Remember they want this all over the world.

And so it's your power, it's your job to say "No more, Monsanto. No more. It stops today. It stops today. The lying, the ghostwriting, the manipulation, it stops today. Own

up to it. Test your product. Put a warning on it. Let the consumer know. Give the consumer that choice whether to spray weeds and risk getting cancer." No ordinary consumer would do that.

But send that message loud and clear because I guarantee you, ladies and gentlemen, if you don't send that message loud and clear to Monsanto, when their team of lawyers leave this courtroom, they're going to make a phone call to a boardroom in St. Louis --

THE COURT: Okay. You've gone significantly over your time.

MS. MOORE: I'm sorry.

THE COURT: So I'm going to ask you to sit down now.

MS. MOORE: Okay. All right. Thank you, Your Honor.

THE COURT: Thank you.

Okay. We'll take a break and we'll be back in about ten minutes. Why don't we plan on resuming at 20 after the hour.

Thank you.

MS. MOORE: Thank you, Your Honor.

(Proceedings were heard out of the presence of the jury:)

THE COURT: Okay. So given how far over your time you went, we're going to use the timer for rebuttal.

MS. MOORE: I am so sorry, Your Honor.

THE COURT: That's okay.

MS. MOORE: I had no idea. I don't even have a watch

on.

THE COURT: Don't worry about it, but we're going to use the timer for rebuttal. It will be 15 minutes.

MS. MOORE: That's fine, Your Honor.

THE COURT: The buzzer will go off and you'll be asked to sit down.

MS. MOORE: It will be helpful, Your Honor. I just didn't have any clue so I'm sorry. Thank you.

THE COURT: All right. So we'll resume -- anything to discuss?

MR. STEKLOFF: No, Your Honor.

THE COURT: All right. We'll resume at 20 after.

MS. MOORE: All right. Thank you, Your Honor.

(Recess taken at 10:12 a.m.)

(Proceedings resumed at 10:27 a.m.)

(Proceedings were heard out of the presence of the jury:)

THE COURT: Just real quick, Mr. Stekloff, do you have a rough estimate of how long your closing is?

MR. STEKLOFF: I think --

THE COURT: I'm not going to hold you to it.

MR. STEKLOFF: No, I understand. I think between an hour and an hour and a half, and I'm hoping it's much closer to an hour.

THE COURT: Okay. So we'll decide after that whether to take a break before the rebuttal or not. I think we might

take a little break. It just depends how long it goes.

MR. STEKLOFF: Okay.

THE COURT: Okay. You can bring in the jury.

(Proceedings were heard in the presence of the jury:)

THE COURT: Okay. Mr. Stekloff.

MR. STEKLOFF: Thank you, Your Honor.

CLOSING ARGUMENT

MR. STEKLOFF: Counsel, good morning, everyone.

As you can probably tell, there weren't too many things that the parties agreed on in the month that you have sat and listened to us; but one thing that I think we agree on and, frankly, everyone in this courtroom agrees on is how attentive and responsible you have been as a jury. You have listened to all of the evidence. You have paid attention. You have paid attention to the videos. You obviously took Phase I and the deliberation process extremely seriously, and everyone here is grateful for that.

And as I turn to the evidence and what the evidence showed in Phase II, I want to walk you through what I have said from the beginning. We are going to present the full evidence to you. We're not going to tell half stories. We're not going to only present part of the story. We want you to consider all of the evidence that you have heard, particularly in Phase II but, as the Court said, you are allowed to consider the Phase I evidence as we walk through the evidence today.

And in Phase II, what I'm going to present to you are the three key questions that I think answer everything you have to answer on that verdict form. The first question is: Did Monsanto fail to use reasonable care to warn about the risks of Roundup?

You've heard in the instructions today there are three claims. You'll see all three claims on the verdict form when you have to walk through it, but all three claims ask the same thing.

The first is design defect, and what they are saying is that an ordinary consumer who used Roundup like Mr. Hardeman did would not have thought there was cancer associated with it so there should have been a warning. It is: Did Monsanto use reasonable care to warn about the risks of Roundup?

And the second two are failure to warn. Did Monsanto use reasonable care to warn about the risks of Roundup? I mean, the words are a little bit a difference. One asks you to focus on what was known or knowable at the time. So did Monsanto act reasonably based on the science? And the other has the word "reasonably" right in it. Did Monsanto act reasonably?

That is the question that you are here to answer. That is the evidence I am going to present to you today. I will then talk about what did the plaintiff prove about the Roundup label, and did the plaintiff prove he is entitled to damages, which only is relevant if you decide that Monsanto acted

unreasonably. You only get to damages if you first find liability.

So let's talk about the first question and what the evidence shows. You heard evidence about Monsanto's extensive testing of Roundup. You heard it from multiple witnesses. Monsanto has conducted hundreds of tests on glyphosate, surfactants, and the formulated Roundup product. Those tests have occurred over 40 years from before the first approval in 1975 all the way up through today in 2019.

And you heard that in conducting their tests, Monsanto followed good laboratory practices, which you heard is a term of art. It's a term that the EPA uses, that companies use, that scientists use about how tests are being conducted, and you saw that evidence as well.

This was a report that the EPA prepared in 1996 where they actually went to Monsanto's laboratory, the Environmental Health Laboratory that you heard about, the EHL, and assessed are they using good laboratory practices, and the answer was yes.

You can see here they went to the laboratory, and then they concluded (reading):

> "The GLP inspection found that the procedures followed by the Monsanto EHL at the time of the inspection were in accord with the FIFRA" -- that's the law that applies here -- "GLP regulations. The data audits" --

So they looked at all of the data in these tests that Monsanto was running -- the genotoxicity tests, the animal studies -- the data found no discrepancies between the raw data and the reports submitted to EPA.

And what does that mean? Because I want to stop there for a minute. When you run these tests, you produce pages and pages and pages and pages of data with the results from the tests. Then Monsanto, pursuant to the laws required by the EPA, produces reports. The EPA checked those reports and found no discrepancies. What was in the data is what was reported to the EPA.

And what is the result of all of this testing that Monsanto conducted for decades? You heard from Dr. Koch yesterday, and this is part of what he testified. He said (reading):

> "I made reference to the regulatory dataset for glyphosate because it's an unusually large dataset. It has both the Monsanto safety data as well as safety data from other registrants of glyphosate."

So this is now the EPA's safety data on glyphosate. Because, remember, you heard that Roundup went off patent and then there were other companies that were manufacturing products using glyphosate. They had to do their own tests, Monsanto wasn't involved, and they had to submit those tests to the EPA and to other regulators.

He explained this (reading):

"Since glyphosate went off patent, many other chemical manufacturers have begun manufacturing glyphosate as well, and they have generated safety data in addition to what Monsanto has so it has a larger safety dataset than usual."

He was asked (reading):

"What kind of data is in the regulatory safety data?

"So there's an extensive toxicology database. There's acute, there's repeat dose, there's developmental and reproductive toxicology, there's genotoxicity, there's carcinogenicity, and quite a few other studies. In addition to human safety studies, there's ecotox studies, residue studies, and just a considerable amount of data."

That is the testing that Monsanto was involved in. That is the reasonableness of Monsanto testing this product over 40 years and submitting the data to EPA.

And when Monsanto tested the product, they tested the product in many different ways. They tested glyphosate. So the active ingredient that you've heard about both in Phase I and Phase II. They tested the surfactants, that soapy substance that combines with glyphosate to make it stick on plants. And they tested the formulated product, the combination of the two, glyphosate and surfactants.

They did it in multiple ways. They tested genotoxicity.

They tested animal studies. They tested human exposure. They did long-term tests. They did short-term tests. They performed all the tests required by regulators, and then they conducted additional tests that were not required.

I mean, this is quite an allegation to stand up here and say how awful and basically criminal Monsanto's behavior was when they did this level of testing for 40 years beginning in the 1970s and then continuing through today and then turned over all of the data with no discrepancies to EPA.

So what did Dr. Farmer testify about the testing? She was asked (reading):

"Give us first an overview of the substances that Monsanto tested over the years as they related to glyphosate and glyphosate products."

And she testified to what I just showed you (reading):

"So we have done glyphosate, the active -- what we call the active ingredient. Again, we talked about the next one is the surfactant. We've done testing on the surfactants." That's the testing, by the way, that wasn't required but they did it anyway. "And then when those two are put together in the glyphosate products, the formulation what we call it, we then test the formulation."

And what did the testing show? How did it -- again, you don't have to take it from me. You heard it from the

witnesses. She was asked (reading):

"Now when -- over what period of time have the tests that Monsanto has done -- either in the lab that it owned back in the 1980s and 1990s or third-party labs that you've described -- over what period of time have these tests been done?"

And her answer was (reading):

"They have been ongoing for all this time, many, many years.

"Did it start before you" -- Dr. Farmer -- "arrived at Monsanto in the 1990s?

"Yes.

"Does it continue today?" When she was just deposed in 2019.

"Yes."

And I am going to show you these charts that she helped prepare, so that's one place we do agree. I want to be clear, these charts are not all the tests that Monsanto ran. There are -- I could bring in boxes that would fill the gallery with all the data and all the tests that Monsanto ran because, as you've heard, they ran tests on glyphosate. They ran genotoxicity tests on glyphosate. They ran animal studies.

But Because of these requests for admission where they keep saying they won't test the formulated product, they won't test surfactants, they won't do certain long-term studies,

Dr. Farmer prepared these charts to show all the testing that occurred in those two areas.

So the first chart that she prepared was a genotoxicity testing on the formulated product. You can see that the testing on this chart started in 1992. She listed the author or the study director, the year, the title, the test organism, the description of the product or test substance, and whether the result was positive or negative.

And I think one of the things that I heard this morning was that they ran salmonella tests as if that was a bad thing. Well, salmonella test, that's called the AIMS test. The AIMS test is one of the most fundamental. It is called the gold standard of genotoxicity tests.

So when you heard this morning some allegation that by running the salmonella tests they weren't doing their job, that is the gold standard in the petri dishes for determining whether there's genotoxicity. And so that chart -- this chart demonstrates how responsible Monsanto was with respect to its testing.

And you can see here, this first page shows 1992 to 1999 on the formulated product, the combination of glyphosate and surfactants. Every result was negative.

1999 to 1999. Look how many tests they did in 1999 alone. All negative.

1999 to 2008. All negative.

2008 to 2009. All negative.

2010 to 2016. All negative.

More in 2016 all the way up until 2018. All negative.

They ran all these tests. They didn't stop; they ran the tests.

And then she prepared a similar chart on the surfactants. So this was just testing the surfactant. Again, tests that were not required by the regulators, but they did them anyway to understand the surfactants that were being used in the product.

1981 to 2000 on this table with the same information, all negative; and then 2009, negative.

Monsanto ran those tests and it learned from them and it shared the results. It evaluated the results of its tests. It provided all of the data, the underlying data, and the reports to the regulators. It continued to conduct new tests. It didn't stop. And it published the key studies in peer-reviewed journals.

So we're going to talk about some of the allegations that we've heard, like the Parry report. Well, when they did further tests based on what Dr. Parry asked them to do, they published it in the peer-reviewed journals so that the world could see it and so scientists could see and review what they did in those tests.

And you heard from Mr. Grant, the CEO. So we heard today

at the top (reading):

"And what did Mr. Grant tell you about the importance of science at Monsanto? Was getting the science right important to Monsanto during your tenure there?"

Remember, he was there for 15 years.

"It absolutely was.

"Why?

"Because it was everything that we stood for, and sound science was the bedrock, it was the platform that we operated on."

That is the message that was being sent from the top, sound science. They did the testing. Now, that doesn't mean that everyone has to agree, like, in 2015 IARC came out with this decision; but to say that they didn't believe in their science, of course they believed in their science. They did the tests, they provided it to regulators, they stood behind what they did, and they acted reasonably based on all of the science.

You heard about Dr. Farmer. I think you heard criticisms of Dr. Farmer this morning, but Dr. Farmer in e-mails demonstrated what her intentions were about science.

And let me make a comment. Are there dumb e-mails in this case? When you have produced millions of pages from years and decades of multiple employees working at a company, are there dumb e-mails? The answer is yes; but the overall record -- I

mean, they can pick 10 e-mails, or whatever she wrote on the chart, 20 documents, 30 documents, out of millions of pages and say that there are some bad language that they don't agree with. The overall record demonstrates that this was a company committed to testing and committed to science.

And she explained, Dr. Farmer, in detail, not only in the writing but in her testimony, what she meant in this e-mail. She explained her four-part strategy for the stewardship program for glyphosate, which included publishing relevant toxicologic, ecotoxicological and human information, reviewing the literature regularly for glyphosate findings and respond when appropriate.

I mean, we heard today somehow that they -- as if Monsanto is not paying attention to the science, as if they think there's no science out there. She is telling you "We are reviewing the science." Now, if we disagree, if we think there are limitations of a study or problems with a study, we're going to respond when appropriate, but of course they're reviewing the science and that's part of the reason that they were doing more testing.

And she said (reading):

"We are going to establish a scientific network of prestigious scientists in key world areas and provide them the latest information about glyphosate. We have epi, tox, environmental exposure, reproductive development, and

clinical toxicological experts. And then we are going to assess data gaps and fund appropriate research."

That means they are identifying data gaps and they are funding research. That is not ignoring. That is not deceit. That is not lying. That is not hiding. That is a stewardship program based on exactly what the message was from the top from Mr. Grant: We stood for sound science, which was the bedrock.

And let's just talk about what we saw -- we've seen it now throughout this trial. I think we saw it in Phase I. We definitely saw it in Phase II. They played you the testimony this morning from Dr. Reeves where he says "across the board," but what did he mean by that?

Because the allegation is that Monsanto is standing in here saying "There's no science. There's no science." That is not what he said. This is his testimony that they didn't play for you this morning (reading):

"It's still Monsanto's position that there's no evidence across the board; right?"

That's what the plaintiff's lawyer asked him. This was his full answer (reading):

"Yes, our -- our position is that, when you take all this data into account" -- again, he is considering all of the data, he is not ignoring on behalf of the company the data -- "you have a very large body of evidence saying we fully understand the carcinogenic potential of glyphosate

and Roundup-based herbicides, or glyphosate and glyphosate-based herbicides, indicating there is no carcinogenic potential. There are additional studies that may purport to have findings one way or the other; but when you look at those in particular, they often have some sort of methodological flaw that prevents either a conclusive outcome or a reliable source of or from them being a reliable source of information."

Now, again, people can disagree with that, but the accusation that they are not considering the science or saying there is no science, they are considering all the science and they acted reasonably in doing so.

More evidence that Monsanto believed in the science. Mr. Grant (reading):

"What did you learn about the safety profile of glyphosate and Roundup over the course of your tenure at Monsanto?

"Both from the work scientists within the company and from the regulatory agencies around the world, that it was unrivaled in its safety position."

And not only did they stand behind the science in their testing, in their review of the science that's out there, which is more than you see on this chart or more than you see, to be clear, even in Phase I -- and we understand your verdict in Phase I -- but there is more science that is out there,

including the science that the EPA reviews from Monsanto, from other glyphosate manufacturers.

These employees stand behind Roundup, and one of the reasons you know that is because they use Roundup in their own yards with their children, with their pets. They do not think it causes cancer or they wouldn't be using it in their -- themselves at their homes.

So what does the plaintiff argue? Well, first of all, the plaintiff shows you these requests for admission, which you've heard an instruction from the Court. Yes, when we were asked, we admitted that certain things didn't occur, but let's talk about why those things didn't occur. Let's put them in context. Again, what is the full evidence?

So the first one is that Monsanto never conducted a long-term animal carcinogenicity study on any glyphosate formulation. So the formulated product.

And the second really goes along with it: Admit that Monsanto never conducted a long-term animal carcinogenicity study on any surfactant used in a glyphosate-formulated product.

So this is -- they are now saying despite all the testing that occurred, they are complaining because we didn't run a two-year test on a certain rat or a certain mouse with the formulated product or a surfactant, but you heard multiple witnesses explain why that didn't happen.

First of all, all of the other animal testing demonstrated to them that there was no carcinogenicity and that it wasn't necessary.

But, second of all, it's just basic. If you feed mice or rats as much soap as you can, because all of the surfactants, whether it's in the formulated product or by itself, if you feed them as much soap as you can for two years, first of all, they probably can't survive; and even if they do, you can't read the results. It's not because it's causing cancer, to be clear. It's because it's interfering with the mice and the rats, with their systems.

And so that is the reason why these studies were never conducted along with all of the other studies that were conducted that showed no carcinogenicity or genotoxicity.

Then there is: Admit that Monsanto has not conducted a long-term animal carcinogenicity study on glyphosate since 1991. Well, Monsanto conducted three studies before 1991. The EPA reviewed those studies and the EPA has repeatedly -- and I'm going to talk to you about the EPA -- repeatedly found no carcinogenicity time and time and time again.

And then what's the last allegation that we heard? And we heard this morning, "Well, they should spend the money. They should spend the money." Admit that Monsanto has never conducted an epidemiological study to study the association between glyphosate-containing formulations and non-Hodgkin's

lymphoma. That is true.

But let's just acknowledge what would have happened if Monsanto had conducted such a study, like a 20-year study, like the Agricultural Health Study by the National Cancer Institute. They would stand up here and say anything we did was invalid. They did it this morning. They showed you articles and how they were cited, like the Williams article, and they say, "It's invalid. You shouldn't consider it because Monsanto was involved."

So what's Monsanto supposed to do? If we do a study and it shows no carcinogenicity, we're at fault. We should have done more. If we don't do a study, we're at fault.

Well, that is not a proper allegation about being unreasonable. Monsanto was reasonable in every single respect in its testing.

And what is the evidence about regulators? Because you heard from Mr. Grant and others that I just showed you that it wasn't -- Monsanto stood behind its science, but Monsanto also learned from what the regulators were saying about all of the science that was out there.

From 1975 to 2012 -- and here I'm stopping at 2012 because you've heard 1986 to 2012 is the key time period, that's when Mr. Hardeman was using Roundup -- the EPA who had these powers did not suspend the product, did not remove the product, did not require a warning about non-Hodgkin's lymphoma or cancer.

It could have done any of those things and based on the science, the EPA did not do so across multiple administrations. No matter the politics, it did not do so.

And when we hear about this IBT allegation, again, the EPA didn't come and say "You need to pull the product." This IBT, I think we heard it was a -- I forgot the exact word, but some sort of conspiracy today or something. I mean, Monsanto was one of numerous companies that were defrauded by a third party who was conducting tests; and when Monsanto learned about it, Monsanto ran more tests and those tests showed no carcinogenicity, just like all of the tests that I showed you before.

So as of 2012, that important time period, no one in the outside world said glyphosate caused cancer, not a single regulatory body anywhere in the world. So not just the EPA, but Europe, Canada, Australia, anywhere else.

And no health organization. Not the National Institutes of Health, not even the World Health Organization, no one said, based on that science that's on that chart that you were shown repeatedly this morning, that glyphosate caused cancer or that Roundup caused cancer.

And that you are allowed to consider in Phase II because it goes directly to Monsanto's state of mind and whether they acted reasonably based on the science.

So who are the world regulators and what did they do when

they looked at the science? And I've listed here some of the world regulators that you've heard about from witnesses, Monsanto witnesses, who reviewed that extensive glyphosate database, all of the testing, and made determinations. The EPA; EFSA and ECHA, which are the two European organizations; Health Canada in Canada; Australia; Japan.

They all had teams of highly qualified experts. I mean, they're -- let's be clear, you didn't hear from them but there are real doctors and real scientists who care about the safety of the public working at all of these organizations around the world. They have diverse experience. So they have epidemiologists. They have toxicologists. They have biochemists. They have everything who are reviewing this data.

They examined Monsanto's data; but if -- maybe they say "We don't want Monsanto's data." Well, they reviewed the data from other manufacturers that Monsanto had nothing to do with. So the non-Monsanto data. And then they reviewed independent data that had nothing to do with any company that was just run by people who conducted some of the studies that you heard in Phase I. And from 1975 when the product was first on the market through today, they have consistently said that Roundup or glyphosate is not carcinogenic.

Who works at the EPA? Because you heard this as well, and I just mentioned it. Toxicologists, chemists, pathologists, epidemiologists, biologists, other scientific experts who are

involved in these reviews. And to be clear, not just at the EPA, but in Europe, in Health Canada, in Australia, in Japan.

Here is the 1993 reregistration eligibility team when they were looking at 1975 to make sure in 1993 what the science said, and you can see all the different branches. It's hard to see because it's little on the left, but it even names all the different doctors who were involved in this review. You can read it. Special Review and Reregistration Team, Health Effects Team, Biological and Economic Analysis Division, Pesticides and Toxic Substances Division.

These are real scientists who are looking at the safety of glyphosate and telling Monsanto "We have looked at the data and we do not think there is carcinogenicity."

So you have seen a series of documents. I have shown them to you in opening here in Phase Two. I won't belabor them. But in 1993, in that reregistration eligibility decision, which was sometimes referred to as RED, the Agency classified glyphosate as a Group E carcinogen, non-carcinogenicity to humans.

And I say that Monsanto was informed by the reviews. Well, here is the testimony to show that they were reasonable based on the science. When you say the EPA's reregistration decision helped inform Monsanto's views that glyphosate and glyphosate products did not cause cancer, how did it do that? Explain that.

In here -- and she is talking about the documents I just showed you. In here they talk about their decision on the carcinogenicity evaluation of glyphosate.

And did they have scientists who reviewed the same tests that Monsanto had performed?

Yes.

Did they come to the conclusion that glyphosate is not genotoxic?

Yes.

Did they -- what else did they conclude with respect to glyphosate as it relates to whether or not it causes cancer?

They put it into Group E, which is evidence of non-carcinogenicity.

In 1998 the EPA came to the same conclusion. It was a Group E pesticide, no evidence for carcinogenicity in two acceptable species, which was based on both mice studies and rat studies. And as I have said, it wasn't just the EPA here in the United States.

Europe, no evidence of carcinogenicity.

The World Health Organization and a division of the United Nations, glyphosate is unlikely to be genotoxic. In view of the absence of a carcinogenic potential in animals and the lack of genotoxicity in standard tests, the Meeting concluded that glyphosate is unlikely to pose a carcinogenic risk to humans.

This is in 2004, based on all of the science.

And even Dr. Portier had to admit that he, himself -- he was working at the National Toxicology Program for the United States government -- he was responsible as a group -- as part of a group of scientists for finding the causes of cancer. And while he was there, before he was a paid Plaintiff's expert, he never said that Roundup or glyphosate caused cancer.

And he admitted that the same statement would be accurate as to 2013. That as of 2013, agencies you know of that have reviewed glyphosate prior to 2013 -- again, that key period is 1986 to 2012 -- their findings were not carcinogenic.

Yes.

So this is their expert admitting that no agency in the world based on all of the science before 2012 thought Roundup was carcinogenic, and yet the allegation here is that Monsanto was basically involved in criminal behavior for not warning that Roundup cause -- is carcinogenic.

Then Dr. Portier, once he was an expert, once IARC came out, he went out and tried to petition organizations -- regulators around the world that his opinions, which you heard in Phase One, are right and they are wrong. But what did they say? This is from Phase One. EFSA, the European Food Safety Authority, they reviewed all of his arguments, even more arguments than he made on the video that you saw.

They said glyphosate is unlikely to be genotoxic.

And then they wrote back and they say EFSA considers that

the arguments brought forward in the open letter -- the open letter he wrote to them with all of his concerns -- do not have an impact on the EFSA conclusion on glyphosate.

And he testified this was true of the EPA too. He tried to petition them. They reviewed all of his criticisms, and they said glyphosate is not carcinogenic.

And then you saw this morning, we played for you a two-minute clip of Dr. Portier once again. But the date here is key. In December of 2018 -- so, what, three months ago -- the EPA once again -- now IARC has occurred. Now there is a lot of attention on Roundup and glyphosate. And the EPA is reviewing the science, and this is what the EPA said just three months ago: EPA is confident in its conclusions that glyphosate is not likely to be carcinogenic to humans. They are confident in their conclusion.

Again, how did the worldwide regulators impact Monsanto, and was Monsanto -- and I said this in opening. Monsanto takes responsibility. Monsanto is not hiding behind EPA. Monsanto is not hiding behind regulators, but it is still relevant what regulators who were also independently looking at the science and have a duty to the public, what are they telling Monsanto.

And this is what Mr. Grant told you yesterday. It is our conclusion that Roundup does not cause cancer. But more importantly, in the regulatory jurisdictions around the world, in the U.S., in Canada, in Japan, in Europe, with the German

rapporteurs, it has been their conclusion for the last 40 years -- and that's the point I was trying to make earlier -- it's -- this is a conclusion that's validated by scientific evaluation.

So we are a science-based company, and the regulators are looking at the science at that time, and that is their conclusion also. So what was known and knowable to the company and to the regulators shows that Monsanto was acting reasonably.

And Monsanto and the regulators were informed by the science. So I'm not here to re-litigate Phase One. Again, no one has any questions about how seriously you took Phase One. But at the same time, they are looking at the science time and time and time again.

And these two pie charts, to be clear, are not in dispute. This is what the AHS showed. Maybe AHS in your opinion had flaws, but the AHS showed that the NHL rates -- the rates of non-Hodgkin's lymphoma in people who were -- the 44,000 people who were using glyphosate as compared to just the regular general population, were exactly the same: 1 percent. And it is data like this that was informing Monsanto, and it was the data like this, along with everything else, that was informing the regulators.

So up to today has any evidence been brought to you that a single regulator, anywhere in the world -- maybe you don't like

the EPA, but what about Health Canada? What about Europe? What about Australia? What about Japan? What about anywhere else in the world? Has any regulator said glyphosate or Roundup is carcinogenic? No. Because there is no evidence. The answer to that question is no, no regulator has said that.

Has any regulator in the world said that Roundup should be sold in their country with a cancer warning? No. Nowhere in the world has that occurred. And that is what demonstrates the reasonableness of Monsanto.

So this is what you heard was going to occur in opening. In opening we are supposed to present to you what the evidence will show, and the Plaintiff, who has the burden, said this to you -- this is a direct quote from opening -- you are going to learn that Monsanto had a cozy relationship with a couple of people, long-term EPA employees. You are going to hear testimony about that.

You heard no testimony about that. I think there was a reference this morning to text messages. There was no evidence whatsoever of a cozy relationship with a couple of long-term employees at the EPA because that evidence is not there.

And I talked to you at the outset this morning. And I hope you know that from Phase One and Phase Two we have presented the full stories for you today. Sorry, for a month, not just today.

But these are the four things that the Plaintiffs continue

to rely on -- really the first three. We will talk about the fourth. They walked through all of these things today, and now I want to walk through what they presented in this trial and what the rest of the story was.

So let's start with the Knezevich tumor, this magic tumor that you supposedly heard about today. Here is what they presented to you when they presented the evidence. They told you that Monsanto submitted a mouse study to EPA. They told you that the EPA panel considered making it a Group C classification. They told you that the EPA asked for more information. They told you that Monsanto hired Dr. Kuschner to review the slides.

Here is what we had to present to you. They didn't present this. We presented it. EPA held more discussion and held a public meeting. Monsanto conducted a new study on rats; and based on that study, EPA determined that glyphosate was not carcinogenic.

Here is the document -- that they didn't present to you that we had to present to you -- in 1990 that shows that -- where the EPA was considering the study that Monsanto conducted using certain types of rats for two years, and the Agency concluded that these adenomas -- so these tumors -- were not treatment related and glyphosate was not considered to be carcinogenic in this study.

And here was the EPA's ultimate conclusion in 1991:

Glyphosate should be classified as a Group E, evidence of non-carcinogenicity for humans, based on lack of convincing carcinogenicity evidence. That is the full story about the *Knezevich* study.

What about Dr. Parry's recommendations? Because we heard half the story again today. This is the story that they presented to you in this trial. This is the story that they presented to you today. Dr. Parry reviewed the genotoxicity studies, four genotoxicity studies. He found possible genotoxicity. He made recommendations.

Well, what is the story that we had to present to you so that you had all of the evidence? Monsanto, based on Dr. Parry's recommendations, conducted further tests. Monsanto shared the results with Dr. Parry. Monsanto published the results of its tests in a peer-reviewed journal. And Dr. Parry agreed, based on those tests, that Roundup or glyphosate was not carcinogenic. We had to present that to you. They had the burden.

Here, you will recall this document. I think they said, I might show you this document. I'm going to show you this document. Let's walk through the recommendations that Dr. Parry made and then Dr. Farmer testified what happened in response to each document.

I think today they showed you something that said there was a dumb e-mail that said, We are not going to run the tests.

Well, guess what? Despite that e-mail in 1999, they responded to every single one of Dr. Parry's recommendations. This was A and B, about providing more data.

They provided the data, you will recall, that showed -- Dr. Farmer showed you this -- all of the tests they provided to Dr. Parry so he could evaluate everything, and you will even recall that Dr. Parry was happy because Monsanto had already started some of the tests, unbeknownst to him, before his recommendations.

Here, he recommended evaluating oxidative damage. They showed him the studies that evaluated oxidative damage. Here he said to perform an in vivo bone marrow micronuclei assay. They showed him the study where that occurred.

In this one, the next one, he made no recommendations. He raised some issues but there was no recommendation, so there was nothing for them to do.

In this one you remember there was testimony about the comet assay, and Dr. Farmer walked you through this. In response to this recommendation, exactly what they provided to Dr. Parry, including, you will see down here, Heydens and Holtz -- so the third bullet and the fifth bullet and actually the fourth bullet -- those were Monsanto's studies that they conducted and then provided the data about genotoxicity to Dr. Parry.

And then this next recommendation, G, he said, I do not

recommend any transgenic point mutation assays at this time. There was nothing to do there.

H, he didn't recommend any studies of DNA.

Adduct induction, there was nothing to do there.

And then he wanted to be provided with comprehensive in vitro data on the surfactants, so they gave him the in vitro data and the in vivo data. That, you can see all showed negative for genotoxicity.

And after Dr. Parry looked at Monsanto's responses to all of his recommendations, what did he say? Well, first of all, here is another promise that was made to you in opening statement by the Plaintiff with the burden. This is what you were told you would hear in Phase Two.

However, in the second paper where Dr. Parry concludes that glyphosate is a potential clastogenic in vitro, and that means it is an agent that can induce mutation by disrupting or damaging chromosomes. So he didn't change his position.

Well, he did change his position because you heard testimony about this document that we presented. We presented it.

In 2001 Dr. Parry accepted that glyphosate is not genotoxic. And in 2001 he said he no longer required any studies on the final formulation. That's the full story about Dr. Parry.

These are two of the things that we probably heard about,

the mouse study and the Parry -- and the Parry data for 30 minutes this morning to argue why not only is Monsanto liable but should be penalized for punitive damages. They didn't present to you the full story. We did.

THE COURT: Mr. Stekloff, can I ask -- I want to take a quick break just to make sure -- there is an issue I want to discuss with the parties outside the presence of the jury. Why don't we take a five-minute break. We will be back at about 15 after the hour.

(Proceedings were heard out of presence of the jury:)

THE COURT: So the issue I want to discuss is -- I meant to bring this up after the opening -- after the closing arguments in Phase One and I forgot to. I want to warn Plaintiff's counsel to be careful not to act -- not to react with theatrical facial expressions in response to arguments that Mr. Stekloff is making.

MS. MOORE: Okay.

THE COURT: That happened a lot during closing arguments in Phase One, and it was not appropriate; and it is not appropriate now.

MS. MOORE: Okay. I apologize, Your Honor.

THE COURT: Why don't we come back in a couple minutes. Okay.

MS. MOORE: Thank you, Your Honor.

THE CLERK: Court is in recess.

(Recess taken at 11:11 a.m.)

(Proceedings resumed at 11:15 a.m.)

THE COURT: Okay. Bring the jury back in.

(Proceedings were heard in the presence of the jury:)

THE COURT: Okay. Sorry about that interruption. Mr. Stekloff, you can resume.

MR. STEKLOFF: Thank you, Your Honor.

So we were walking through what we spent, I think, the majority of this morning on: The magic tumor, the Knezevich tumor, and then Dr. Parry's recommendations. But then we also heard about ghostwriting. So that's what the Plaintiff told you. Again, half the story. Well, what was the full story?

First of all, in the *Williams* 2000 paper, Monsanto's role was disclosed. And, again, what is the purpose behind disclosing Monsanto's role or not disclosing it in a paper? It is so people who are reading the paper can say This is what I think. I don't really trust it because Monsanto is involved, or maybe I do trust it because Monsanto is involved. It is their product.

But here it makes very clear that the toxicologists and other scientists at Monsanto made significant contributions to the development of exposure assessments and through many other discussions related to the paper. And then it laid out people, including Dr. Heydens and Dr. Farmer, who were involved in those discussions.

Now, there was another paper, the Mink paper, that, again, you were shown. It was written on the paper. You should consider this study. Well, I agree. Go back and look at the Mink paper. Go back and look at that exhibit, Exhibit -- well, this is an e-mail, Exhibit 466. Go back and look at what was done in the Mink paper.

First of all, Dr. Farmer testified about this. The question was: I don't really want to get into that substance. I just want to validate that you wrote these things. You wrote that paragraph under the introduction glyphosate acid is typically -- you see that?

And her answer was: Again, I think it's important that we do take the context because Dr. Williams and Dr. DeSesso are not familiar with the constituents of the product, so the minor edits that I did was to help give a little bit of context to the formulated product.

And when you look at that paper -- when you look at that exhibit -- papers are laid out. There is an introduction. Then there is often the methods that the scientists use to conduct whatever study they were conducting. And then there is a discussion of their results, and then there oftentimes is some sort of conclusion. That's how papers are typically laid out.

Well, if you look at that paper -- and it is a long paper -- after the introduction where she gave the context that

she explained, there was no edit from Dr. Farmer to the method section that the scientists choose. There was no edit to the result section that discussed the results of their study. There were no edits to the author's discussion of the science that they were reporting.

She moved words around in the introduction, and she provided context and information for the introduction because, as she said, they don't have all of the context about Roundup-formulated products because they don't -- those scientists who wrote that paper don't work at Monsanto.

So what was the last thing -- we actually didn't hear about this morning, but there was a big focus on it at trial. You might remember that there was an e-mail from Dr. Farmer where she -- you can see the e-mail, says: Here is their bottom line. How do we combat this?

Do you have to love the word combat? No. But she provided context for exactly what she meant when she was combating this statement to avoid carcinogenic herbicides in foods by supporting organic agriculture and on lawns by using nontoxic land care strategies that rely on soil health, not toxic herbicides.

What you may remember from the trial is that this e-mail where Plaintiffs were presenting their evidence was shown to Dr. Reeves. And Dr. Reeves was asked: Do you agree with what characterization here? What do you think about this word

combat? What do you think about it?

Well, what you need to know is that we showed you the testimony from Dr. Farmer about this. I don't know if it was always clear who was showing you what in the depositions when they were shown consecutively. They weren't going to show you what Dr. Farmer said about the e-mail she wrote. We had to play that for you, so you had the full story.

And here is what she testified when asked. They didn't want you to hear this: Why would you want to combat that sentence?

Well, first of all, in relationship to glyphosate, it was not a carcinogen. And I think that's really important that people understand that herbicides -- dose makes the poison -- that's what you heard from Dr. Ritz -- so you have to look at this, that glyphosate was not carcinogenic. I don't want people to be misled that all these herbicides are carcinogenics and that everything that is used out there is organic is nontoxic.

You can agree or disagree with that, but we presented the full story to you about what she meant in this e-mail, and that's what you should demand, is that the full story is given.

And here is another example because it happened to him this morning. This e-mail is taken out of context. This is in 2003. She writes, For example, you cannot say that Roundup is not a carcinogen.

But I showed you this in opening. This is actually what a responsible scientist does. She was saying you can't say Roundup is not a carcinogen based on all of the testing. We can make that statement about glyphosate and can infer that there is no reason to believe that Roundup would cause cancer.

This is the full e-mail, not just some snippet that is cherrypicked that is trying to mislead you into Monsanto's behavior or whether they were reasonable. And I actually want to show you something that happened -- I don't have a slide on it because I didn't expect it to happen, but it happened this morning.

Ms. Melen, can I please have the ELMO?

This is one of the e-mails that you were shown that was written on the chart that you should consider. It was an e-mail from Dr. Heydens. And hopefully you recall this.

What I want to show you is The good 'ol Monsanto way of doing things. Give people --

Now, when you were shown this on one of the slides in Plaintiff's closing this morning, just an hour ago, it said the good 'ol Monsanto way of doing things. It was a little image on the top left of a slide. Give people, and it had four dollar signs. That is what you were shown to try to convince you why you should find Monsanto liable. This is what the e-mail actually says.

Monsanto people who are responsible for dissemination and

coordination of scientific information within and outside of Monsanto. This was part of his elements of a network plan include but not are not necessarily limited to by Dr. Heydens, 1999. They will also play a role in establishing and managing relationships with outside experts. Some of these will be full-time dedicated headcount and some will be part-time. The good 'ol Monsanto way of doing things, give people an extra job. Not money, an extra job.

Initially Jerry talked about adding four full-time people to Europe for this role and one in St. Louis. I don't know if this has changed. It is my understanding that Ariane Redding will have an overall coordination role for Western Europe.

I think we heard the word "offensive." It is offensive to misquote and put on a slide The good 'ol Monsanto way of doing things, give people money, when this is what the document says. That is offensive.

Can I please turn back? Thank you.

Monsanto acted reasonably. Mr. Hardeman used the product from 1986 to 2012, but from 1975 to today the EPA has never required a warning based on all of the science. Every other regulator in the world from 1975 to today, the same is true. They have not required a warning. And this is the evidence that answers the questions about whether there was a design defect or whether Monsanto failed to warn.

So what is the second question that I want to talk about?

What did Plaintiff prove about the label? Because, then again, there is no dispute the Plaintiff has the burden.

What are some of the questions that the Plaintiff never answered for you in Phase Two? What did the Roundup label say? The Roundup label that was on the product that Mr. Hardeman was using from 1986 to 2012, what did it say? What should the label have said?

They are saying there should have been a cancer warning, but what should it have said? Because, as you know, the science changes. The science evolves. The science is complicated.

Again, not challenging in any way the decision you made in Phase One, but that doesn't mean that they can just come in and say there should have been a cancer warning.

When should Monsanto have added that warning? He used it from 1986 to 2012. They haven't presented any evidence to you about when a warning should have been added.

And it was the EPA who was responsible ultimately to say whether something should go into any warning on the Roundup label. Monsanto is responsible for putting it in, but the EPA has to approve it. Would the EPA have approved whatever it is, hypothetically, that they say should have gone on the label? They presented no evidence to you on this. Literally zero. And they brought you no expert to talk about this.

They have the burden.

And then I just briefly want to talk about whether Mr. Hardeman would have even read a different label if it had taken place because this is what the evidence showed about Mr. Hardeman reading the label.

When he first testified in his deposition -- and I had to confront him with this, you might recall -- this is what he said about reading the label under oath: I don't know -- I -- I believe at one time when I -- and didn't every time I bought a thing of Roundup, I didn't read. I don't know if they updated it or not. I mean, when I originally got the -- you know, the product in the -- earlier, I may have read it once.

So since 1986 he may have read it once.

So I didn't -- so I knew it so I didn't need to reread it again at any point after 1986 so I don't know.

Now, later in his deposition under oath, he did say this: So you read the label the first time in 1986, but you didn't read it after that? And your answer was --

And he said: I may have looked at it again in West Side. I -- quickly I don't know.

That's 1988 when he moves to that 56-acre property.

He says: I may have looked at it again. I don't know. It is possible I looked at it again in West Side, you know, after that time.

So you would have looked at it, so just so --

Maybe one other time. I mean, it's been -- it's been --

there is no need for me to keep looking at it again. You know, you know, your whatever and -- you know the conditions and the whatever you need to spray it under, and I was familiar with that and that's how I, you know, used it.

And in every claim that you have to find the elements, one of the elements is that a different label would have been a factor in Mr. Hardeman developing cancer, and that is directly what this goes to because there is no evidence that he would have read the warning. Even if one had occurred, even if you think one was necessary, even if you think the company was unreasonable, who knows what it would have said, who knows what it would have been -- when it would have been put on. They didn't present any evidence of that. But they also can't get around this testimony from Mr. Hardeman.

And I asked Mr. Hardeman about other labels because we heard he used other products that a reasonable person would have maybe wanted to look at the labels and see what they said, and his testimony was he didn't know what the labels said for these other products: Ant spray, wasp spray, gasoline, paint. That was his testimony.

So I want to stop there because if you say no to the first three questions, that they didn't prove that Monsanto was unreasonable, that they didn't prove that Monsanto should have warned based on all of the science, based on what every regulator and what every health agency was saying between 1986

and 2012, and frankly up until today, then you are done. You only get to damages if you answer yes to one of those three questions.

So I want to talk to you briefly about damages because there are two types of damages. There are compensatory damages that you heard about from His Honor during the instructions and there are punitive damages.

I think I heard today They didn't cross-examine Dr. Nabhan. They didn't challenge compensatory damages. That's right, we didn't cross Dr. Nabhan. I told you in the opening for Phase Two we weren't going to challenge how difficult and unfortunate it was that Mr. Hardeman suffered from non-Hodgkin's lymphoma and what he went through. I'm not standing here challenging that this morning.

We stipulated to the amount of his medical records. We agreed that his medical costs up through, I think, late 2018 when we had the records, were approximately $200,000. It is in the instructions. It is on the verdict form.

But you only give that if you find that Monsanto acted unreasonable.

And one of the instructions that His Honor read to you -- one of the first ones -- Instruction Number 1 reads in part: You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathies. You

will recall that you took an oath to do so.

And that's important because all of us feel sympathy for Mr. Hardeman. And I told you in opening this is not a popularity contest.

But you need to make your decision based on the evidence, based on the full story, based on all of the evidence. And if someone in that room says, Look, I feel sympathetic for Mr. Hardeman and we have a huge company over there, the rest of you need to say, That's not what we are here to discuss. We are here to discuss did Mr. Hardeman prove that Monsanto acted unreasonably. Did they meet their burden to prove that Monsanto should have warned, based on all of the science, based on what they were hearing from the regulators?

All of you -- some of you when we were in jury selection, we discussed, could go back and vote -- tell your colleagues, tell your friends you voted for Monsanto. You don't have to like Monsanto. You don't have to think that every single thing in every single e-mail was perfectly written. You can think there were things that were just dumb, but that doesn't mean they have met their burden.

And all of you said, when I asked you whether you could vote for Monsanto if they didn't meet their burden, every single one of you -- and I'm grateful for it -- raised your hand and said yes.

So let's talk for a moment about punitive damages.

First of all, the standard for punitive damages is higher. It is not that -- I'm not going to go over the burden thing again, but they started here regardless. It is not a feather. But the standard for punitive damages is not preponderance of the evidence. It is clear and convincing.

So there is beyond a reasonable doubt in criminal cases, clear and convincing -- which is right below it -- and then preponderance of the evidence, which is what applies to the claims, except for punitive damages. And they have to prove punitive damages by clear and convincing evidence, and you will have the definition of that.

You will also have the definition of what punitive damages are. I think you are going to read that there had to be malice and oppression and basically despicable conduct. So what is it -- and we heard it this morning, based on Parry, based on the magic tumor, based on ghostwriting -- was despicable? They are -- you heard from ten Monsanto employees. They said we didn't bring anyone in here.

These people all sat and were asked any question that they wanted to ask for days and days and hours and hours upon hours of depositions. They all came in here and they testified. That testimony by video you can consider the exact same way as a person sitting on -- live. The Judge has instructed you that.

Well, what are they really asking you to believe about the

employees of Monsanto when they ask for punitive damages? They are asking you to believe that these people who work in St. Louis, in their homes, eat breakfast, feed their kids, take them to school, and then drive to Monsanto and say, You know what, we are going to engage in a conspiracy to give people cancer. We are going to go into Monsanto and cause people to get cancer. That's what they are asking you to believe, and that's outrageous.

These people believe in the safety of Roundup. These people believe in the safety of glyphosate. These people have done the testing; provided the data to the regulators, and the regulators and Monsanto have said that Roundup and glyphosate are not carcinogenic. And for them to stand up here and say the things that they said about these people is offensive.

These people are highly credentialed. You heard their backgrounds. We had to play that for you too. We had to play their education for them. We had to play where they worked before. We had to play how long and how seriously they took their responsibilities at Monsanto.

And it is not just -- it is Monsanto that is on trial, but to really believe punitive damages, to believe what they are telling you here, you have to believe that every one of these organizations is also just out there lying about glyphosate and Roundup.

The EPA, Health Canada, Australia, Japan, the European

Union, the National Cancer Institute -- when they do the Agricultural Health Study -- the National Institutes of Health that supports that Agricultural Health Study, the United Nations, and the World Health Organization, you have to believe that all of these people are lying to the public about the safety and the non-carcinogenicity of Roundup and glyphosate. And that is just not the case.

Punitive damages, which you shouldn't even get to, but punitive damages are not warranted here.

And how do you know that? Again, it is the testing. It is what the company did. For years and decades of so many different types of testing. This is the evidence before 2012, which you will look in the instructions is the key period you need to look at.

1991, 1993, 1998 EPA, noncarcinogenic, noncarcinogenic, no evidence of non-carcinogenicity.

Europe, no evidence of carcinogenicity in 2002.

World Health Organization and United Nations in 2004, unlikely to pose a carcinogenic risk to humans.

And did it stop there, even after IARC made the determination it made? No. You have seen this evidence as well.

2016, Europe, unlikely to be genotoxic, does not support a classification of carcinogenicity for glyphosate.

December 2018, EPA is confident in its conclusion that

glyphosate is not likely to be carcinogenic to humans.

There is one more instruction that I want to read for you. And, again, there is no one in this courtroom who doubts how seriously -- based on the deliberations -- we don't know what was said back there, but the length and the seriousness of your deliberations that you took in Phase One.

The Judge informed you, of course you need to listen to each other. Do not be unwilling to change your opinion if the discussion persuades you that you should. But also this is the law: Do not come to a decision simply because other jurors think it is right or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

We know that when you go back to discuss the evidence, the full story, that is what you will do. So the last thing I want to talk to you about -- and I thank you. You have heard a lot from me over the last month -- this is the last you are going to hear from me.

As I said before, this is really hard for lawyers not to have the last word, but Ms. Moore gets the last word because they have the burden. They have the burden to tell you the full story.

But what are the things that they want you to ignore? You should demand answers to these things.

They want you to ignore the decades of Monsanto testing on the glyphosate, surfactants, the formulated product, animal

studies, genotoxicity studies, human exposure studies. I mean, again, that is quite a conspiracy to run all of those tests if you are trying to hide something that you believe causes cancer.

They want you to ignore that worldwide regulators -- not just the EPA, but every regulator around the world has -- that has looked at this issue has confirmed that Roundup is not carcinogenic, from 1975 through today.

They want you to ignore that those same worldwide regulators have not required a warning.

They want you to ignore that they presented to you no evidence of when a warning should have been added.

They want you to ignore that they didn't bring you an expert on when a warning should have been given or what the warning should have said. They have the burden. Their experts didn't talk about these things. They could have brought you such an expert.

And they want you to ignore those Monsanto employees, they are claiming, believe that Roundup causes cancer and are trying to -- and they are trying to give cancer to people, that those same employees believe that but yet use Roundup at their home with their families. It is not the case.

So the fact that you have come to a determination on Phase One does not answer the question on Phase Two. What all of the evidence shows, when you don't cherrypick evidence, when

you don't mislead about evidence, is that Monsanto was reasonable. Monsanto believed in the science. Monsanto followed the regulators. Monsanto took responsibility and did the testing. And so those questions to 1, 2 and 3 are no.

So, again, I cannot thank you enough for the attention you have given and the seriousness you have given. And so I now leave it in your hands.

Thank you.

THE COURT: Okay. Ms. Moore.

MS. MOORE: Thank you, Your Honor. Do you mind if I just put my phone on so I will watch my time myself?

THE COURT: Sure.

MS. MOORE: Thank you.

REBUTTAL ARGUMENT

THE COURT: You have 15 minutes.

MS. MOORE: Thank you, Your Honor.

Ladies and gentlemen, I want to respond to a few things that Mr. Stekloff mentioned, and I want to kind of work backwards. He spent a lot of time on his closing argument on EPA and the regulatory bodies, and I want to be really clear about this: EPA's decision is about glyphosate. Regulatories look at glyphosate, not Roundup, not the formulated product. That is a key difference.

We saw in the e-mails -- it is Exhibits 245 and 426 -- Donna Farmer says: We cannot say Roundup -- Roundup -- is not

a carcinogen. We have not done the testing.

That is what she said in the internal documents. These are not documents that they turn over to the EPA, just like the *Parry* report. They didn't give the *Parry* report to the EPA when Parry said that it is genotoxic.

She said: We cannot say it is not a carcinogen. They haven't done the testing.

Now, he talked about there was all these tests, hundreds of tests. We have to look at what those tests actually were.

Those tests, Ladies and Gentlemen -- if I can find my thing here -- those tests Dr. Farmer was asked about them. Are these acute toxicology tests? Well, first of all, do they test for cancer?

Answer: No.

That's what she said on the stand.

Question: Potential cancer causing of any substance?

Answer: No.

They answered the request for admissions. You saw them. They admitted that they didn't test the formulated product. So for him to stand up here and say, Oh, there are hundreds of tests, that's not what they admitted to. That's not what the Defendant admitted to.

Now, conspiracy. I never said the word "conspiracy," and you know that. But I will say that their behavior since 1975 has been reckless, time and time and time again.

Going back to the EPA when it was first approved, you had the IBT scandal. When that study was held invalid, they didn't do the right thing. They didn't take it off the market. They didn't put a warning on it. When the EPA said it was a Class C oncogen, what did they -- how did they respond to it? They didn't say, Let's warn it is a Class C oncogen. They said, We have to find a tumor in the control group. And, lo and behold, they did; and that changed the history, their relationship with the EPA because the EPA changed their categorization after that.

Now, this labeling issue, make no mistake about it. It is the Defendant's responsibility. It is Monsanto's responsibility on the label. It is their responsibility to warn that their product causes cancer. They cannot hide behind the EPA as a shield like they are doing in front of you now.

The instructions. Let's look at the instructions because he made an issue about what would this label even say. When would this label have gone on the product? Well, the label should have gone on the product when they first knew or should have known that it caused cancer. Remember, one of the first studies was 1980. The first mouse study showing lymphoma was 1983, well before Mr. Hardeman ever sprayed.

So Mr. Hardeman, I asked him: If the bottle had said Warning, it causes cancer, would you have bought it?

He said: No.

So on the instructions -- and you have to kind of look at the instructions and the verdict form together. The verdict form is what you fill out and then return, but the instruction gives you guidance. So the first question -- and you remember what we asked is that all six of you -- all six of you -- vote yes to all three questions.

Number 1 goes back to Number 11 in the instructions. All right. It says it right here for you, but that's strict liability design defect. And it says very clearly -- and this is why we believe that the answer is yes, Ladies and Gentlemen: To establish its design defect claim, Mr. Hardeman must prove all of the following: Monsanto manufactured, distributed or sold Roundup.

That is not in dispute, okay. It's their product. So that's Number 1.

Number 2, Roundup, in the context of the facts and circumstances of this particular case, is a product about which an ordinary consumer can form reasonable minimum safety expectations.

You can buy it off the shelf at your local hardware store. Your minimum safety expectation is it wouldn't cause cancer.

That Roundup used by Mr. Hardeman did not perform as safely as an ordinary consumer would have expected.

I asked him: Did you expect cancer? Did you think it was dangerous?

No.

And that Roundup's failure to perform safely was a substantial factor in causing his harm.

You already found that Roundup caused his harm, and the fact that it failed to perform safely, and that's in Exhibit 442. It talks about it is not glyphosate. It is the actual formulation that does the damage. The formulation does the damage. The formulation is Roundup. And that's why we ask that you check yes to Question Number 1. It is a defective design. It does not work as an ordinary consumer would expect it to work.

All right. Number 12, let me take my cheat sheets off here -- Number 12, that goes with Question Number 2 on the verdict form. And this is about failure to warn.

Number 1, Monsanto manufactured, distributed or sold Roundup.

That is a yes.

Roundup's NHL risk was known or knowable in light of the scientific medical knowledge.

Remember that's the blow-up. The scientific knowledge. It was generally accepted in the scientific community at the time Mr. Hardeman was using it? From 1975 to 2012? There is your scientific community. That's what they knew.

And that the risk of NHL presented a substantial danger when it was used in an intended or reasonably foreseeable way.

Remember Dr. Reeves testified that they intended people to use it to kill poison oak. That is exactly how Mr. Hardeman used this product for over 26 years.

Ordinary consumers would not have recognized the risk of NHL. People like Mr. Hardeman, they are not going to know that a weed killer causes cancer. That is the Defendant's responsibility to tell them, to warn them.

And they have admitted, Ladies and Gentlemen, Number 5, Monsanto failed to adequately warn of the risk of NHL. They admitted they never warned. And when we talk about punitive damages, to this day, they don't warn.

Even after IARC says it is a probable carcinogen in 2015, they didn't change their label. They do not warn that it causes cancer. In fact, they have come to this courtroom and they tell you it doesn't.

We don't want to disagree with what you say in Phase One, but they do. They say it doesn't cause cancer.

And not one person from Monsanto, not one corporate officer, not one representative of that company came and sat with their attorneys at any point in this trial. Not one of them came here to defend the safety of Roundup, not one of them.

Back to the instruction, failure to warn. And then it says that that failure to warn was a substantial factor in causing Mr. Hardeman's harm.

I have to watch my clock. All right.

Number 13, and this goes to the last question -- actually kind of lines up 1, 11; 1, 12 -- 3, 13.

So that is negligent failure to warn. And, again, they have admitted they did not warn. This is why we think you should answer yes, because they made the product. They sold it. They knew or reasonably should have known that Roundup posed a risk of NHL when used or misused in a reasonably foreseeable manner, and that Monsanto knew or reasonably should have known that users would not realize the risk. They failed to adequately warn. And that a reasonable manufacturer under the same or similar circumstances would have warned.

Absolutely. If you know that your product causes cancer, you should tell the public. You shouldn't do what Donna Farmer says and say, Well, just tell them it doesn't do any damage. That is in her e-mail. That is despicable. That is why -- that is one of the reasons why punitive damages is warranted in this case because they have never told the public, and they continue to this day to deny it to the public. But internally, internally, in those internal e-mails -- and he may call them "dumb" only once, but that is what is on the page. And that is what she said. And it is not dumb. It is offensive. It is offensive for her to say, On the one hand we can't say it is not a carcinogen because we haven't tested it, but on the other hand to say, Tell the public it doesn't do any damage. That is

offensive.

And that is why, when you look at this one, Instruction Number 13, Monsanto's failure to warn about the risk of NHL was a substantial factor.

And, Ladies and Gentlemen, when you go through these instructions and you turn to that verdict form, that is why we ask you to check yes. Every single one of you, we need all six of you to check yes for Mr. Hardeman because he has had to sit here and listen to them say, It doesn't cause cancer. There is no evidence. There is no evidence.

I mean, are you kidding me? After all this, after everything that has happened since 1975 and everything we have talked about in this trial, that is still their position?

Now, I want to talk about this -- the label. I got to say something about that too. And he talked about Mr. Hardeman's deposition. And do you remember that when I came back I asked Mr. Hardeman -- because there were certain pages of his deposition read and there were certain pages not read, and we asked for more pages to be read. This was an eight-hour deposition.

And they are standing here today and saying, Well, when did he read the label? When did he not read the label?

Ladies and Gentlemen, they have already admitted they didn't put a warning on the label. He testified that he looked at the label. He read the label. You know why? One of the

reasons he looked at the label is because he had to know how to use the product. This was concentrate. Remember, he was mixing it. He told you on the stand he absolutely looked at the label.

Now, they are going to nit-pick him and say, Well, did you look at in 1988? Did you look at in 2000? Did you look at in 2005? Did you look at it -- I mean, come on. Mr. Hardeman testified he read the label. And they have admitted they didn't warn him.

And they can ask him over and over and over again in an eight-hour deposition Was it one time? Was it two times? Was it four times? But Mr. Hardeman testified he read it.

And most importantly he testified if they had put on the label that it causes cancer, that they had warned about that risk, he wouldn't have used it and we wouldn't be here today.

Ladies and Gentlemen, I ask that on behalf of Mr. Hardeman that when you go back there and you consider the damages in this case and you consider what he has been through and how it was completely unnecessary if they had just told the public it causes cancer, we ask you to consider that when you make your decision about the damages, about his past suffering, his future suffering, because Mr. Hardeman is going to have to live with this for the rest of his life.

This trial will end. This trial will end. But Mr. Hardeman's anxiety, his anguish, his worry about if he will

get cancer, that will not end. That will not end for the rest of his life. And we ask you to compensate him for that.

And we ask you to tell this company -- and you send this message loud and clear because they have not heard it from anyone so far -- that you send a message loud and clear that no more. You have to be responsible. You have to say, If you are going to put a product on the shelf, you have got to tell people that it causes cancer when you know or should have known. You have got to warn. No more business as usual at Monsanto.

You need to send that message loud and clear, Ladies and Gentlemen.

Thank you, Your Honor.

THE COURT: Ms. Moore.

Okay. Ladies and gentlemen of the jury, the case is yours. We will send you back to the jury room, and you can begin your deliberations. Thank you very much.

(Jury beginning deliberations at 11:56 a.m.)

(Proceedings were heard out of presence of the jury:)

THE COURT: Okay. My understanding is that the jury will not be given lunch in the jury room today. So they may be going down to the cafeteria so I'm going to apply the usual rule right now of requiring everybody to stay in the courtroom. Feel free to take a seat, but please stay in the courtroom for five minutes.

And is there anything to discuss?

MR. STEKLOFF: Not from us, Your Honor.

THE COURT: Okay.

MS. MOORE: I don't think so, Your Honor.

THE COURT: So everybody is a prisoner -- you're all prisoners for five minutes and stay in the building.

MS. WAGSTAFF: I have a question, Your Honor.

THE COURT: Yes.

MS. WAGSTAFF: What's the -- are the time limits for deliberations the same as in Phase I, they're going to stay till 4:00 p.m. and deliberate and then you've given them the option on Thursday or --

THE COURT: Oh, I don't know. Yeah, it's whatever they --

MS. WAGSTAFF: The same as --

THE COURT: It's whatever they would want.

MS. WAGSTAFF: Okay.

THE COURT: So presumably they will be back there discussing that and deciding how long they want to deliberate. If they pass anything along to Kristen, we'll let you know.

MS. WAGSTAFF: Okay.

MS. MOORE: Thank you, Your Honor.

MS. WAGSTAFF: That will be great. Thank you.

THE COURT: But while they're deliberating, stay in the building.

MS. MOORE: Right. We understand. Thank you, Your Honor.

MR. BRAKE: And, Your Honor, I know the last thing that you want to think about right now is doing this all over again.

THE COURT: Oh, no. We decided -- you want a trial date?

MR. BRAKE: Yes, sir.

THE COURT: We decided -- I mean, I will say that I want to have -- now is not necessarily the time to do it, but I do want to have a conversation with all the parties, including you, about whether after this trial, given that we had, you know, the trial last year and we have the trial going on in Alameda and we've had this trial, I do want all of us to have a discussion about whether the focus should shift to mediation or something like that.

MR. BRAKE: Understood.

THE COURT: But assuming we go forward with your trial, we came up with a date. I think it was May 20th; is that right?

MR. BRAKE: Well, that's the reason I'm persisting in this, is that I don't really have anything firm on my calendar that I feel --

THE COURT: Sorry?

MR. BRAKE: I don't have anything on my calendar that

I feel comfortable with.

THE COURT: May 20th. May 20th.

MR. BRAKE: May 20th?

THE COURT: Yes.

MR. BRAKE: Okay. So that's going to be subject to further discussion?

THE COURT: Yeah. You should operate on the assumption now that you're going to trial on May 20th; but, yeah, I want to have a further discussion with the parties about that after this case is entirely over.

MR. BRAKE: Great. Thank you.

THE COURT: Thank you.

MS. WAGSTAFF: Thank you, Your Honor.

(Luncheon recess taken at 11:59 a.m.)

(Jury left for the day at 3:06 p.m.)

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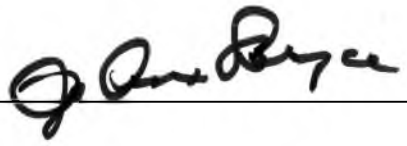
CERTIFICATE OF REPORTERS

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

DATE: Tuesday, March 26, 2019



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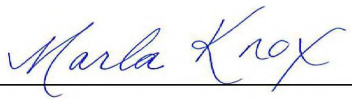

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