

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

KYLE CHAPLICK, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 19SL-CC04115
)	
MONSANTO COMPANY,)	Division 1
)	
Defendant.)	

**DEFENDANT MONSANTO COMPANY’S
MOTION FOR PLAINTIFF TRIAL SELECTION PROCEDURE**

In accordance with this Court’s Order dated June 4, 2019, Defendant Monsanto Company (“Monsanto”) submits its Motion for Plaintiff Trial Selection Procedure (“Motion”).¹

This case involves the claims of thirteen plaintiffs, who are residents and citizens of three states – Missouri (one plaintiff), Georgia (four plaintiffs), and Florida (eight plaintiffs). Plaintiffs’ counsel has argued in favor of a multi-plaintiff trial – either a 13-plaintiff trial or two trials with multiple plaintiffs each. *See* 10/3/19 Plfs’ Mo. at 7. But here, a single-plaintiff trial will alleviate the risks of juror confusion, lack of fundamental fairness, and due process concerns which a multi-plaintiff trial would create.

Assuming the Court conducts a single plaintiff trial (which it should) Monsanto should choose the trial plaintiff. Plaintiffs’ counsel has or will select the trial plaintiff in the cases *Adams v. Monsanto Company*, No. 17SL-CC02721 (Mo. Cir. Ct. St. Louis Cnty.) and *Drevyanko*

¹ Based on the Standing Order, the parties would not file their Motions for Trial Selection Procedure until the Court sets a trial date. In this case, Plaintiffs have sought *both* a trial date and a trial selection in the same motion (*see* 10/3/19 Plfs.’ Mo.) with a hearing on November 8, 2019. Thus, in the event this Court is inclined to consider this issue during the hearing, Monsanto here files its own Motions for Trial Selection Procedure.

v. Monsanto Company, No. 18SL-CC00988 (Mo. Cir. Ct. St. Louis Cnty.)² – the only previously-set single plaintiff Roundup[®] trials in this Circuit. Alternating selections is the most efficient and fair methodology for handling trials in this and other Roundup[®] cases.

ARGUMENT

I. In The Interest of Fairness, This Court Should Allow Monsanto To Pick The Single Trial Plaintiff In Half Of The Trials, Including this One.

The selection of trial plaintiff in a series of single-plaintiff trials should be as fair and representative of the broader pool of plaintiffs as possible. Therefore, Monsanto requests that the Court implement a process that will ensure both sides have input into the trial plaintiff selection process. Because plaintiff has selected the trial plaintiff both the *Adams* and *Drevyanko* cases, the first two single-plaintiff trials in this Circuit, Monsanto should select the trial plaintiff in this case, one of the next single plaintiff cases set for trial. See **Exhibit 3** (listing the current cases that have been set for trial in this Circuit).

Ensuring that each side has the ability to select trial plaintiffs is the only fair way to proceed. Otherwise Plaintiffs' counsel will pick their strongest cases while keeping weaker cases at the back of the line. Such a one-sided procedure would not provide an accurate view of the strengths and weaknesses of these cases as a whole, and therefore ultimately would not advance the litigation.

Although Monsanto believes the only fair approach for picking trial plaintiffs is for alternating selections, it does not believe there is a single method to achieve such fairness. Monsanto is thus amenable to three different methods described below:

² See Order, *Adams v. Monsanto Co.*, No. 17SL-CC02721 (Mo. Cir. Ct. St. Louis Cnty. June 12, 2018) (**Exhibit 1**). See Order, *Drevyanko v. Monsanto Co.*, No. 18SL-CC00988 (Mo. Cir. Ct. St. Louis Cnty. August 8, 2019) (**Exhibit 2**).

(1) Alternate based on trial dates of all Roundup[®] cases pending in this Circuit. *See Exhibit 3* (listing cases set for trial in this Circuit).

(2) Alternate separately for the trials set under the dockets of Judges May and Ribaud (see 12/18/18 Order assigning cases according to assigned divisions). Thus, for each judge, the trial order of their assigned cases would dictate what party selects the next trial plaintiff. Under this method, as the *Adams* case in which Plaintiffs chose the trial plaintiff is before Your Honor, Monsanto should choose the trial Plaintiff in this case. *See Exhibit 3*.

(3) Alternate for groups of cases handled by the same lead plaintiffs' firm. Here, Weitz & Luxenberg, PC does not have any cases set for trial in this Circuit. In light of the fact that Monsanto has not had the opportunity to choose any trial plaintiffs yet, Monsanto should have the first selection in *Chaplick* with plaintiffs having the next pick per the alternating order suggested above. *See Exhibit 3*.

II. The Court Should Adopt A Single-Plaintiff Trial Framework Because A Multi-Plaintiff Trial Is Prejudicial, Inefficient and Violates Monsanto's Due Process Rights.

Monsanto opposes multi-plaintiff trials for several reasons, as set forth in Monsanto's Opposition to Plaintiffs' Motion for a Multiple Plaintiff Trial Setting, contemporaneously filed with this motion. Monsanto incorporates by reference the arguments and legal authority set forth within that Opposition and will not repeat itself here.

Overall, a multi-plaintiff trial presents due process and fundamental fairness concerns, and is virtually certain to result in juror confusion to the benefit of plaintiffs and their counsel. And, no real efficiency will be gained by having multi-plaintiff trials.³ Put simply, the notion

³ Notwithstanding the considerable legal and factual support for single plaintiff trials, if this court is inclined to order multi-plaintiff trials, Monsanto requests that these trials be limited to two plaintiffs, with each party to select one.

that adding a few individuals to a single trial will alleviate this Circuit's burden – which consists of many thousands of plaintiffs – is absurd. Rather, efficiency would be better served with a series of single-plaintiff trials designed to represent the larger plaintiff pool – the resolution of which might provide a realistic assessment of those claims.

CONCLUSION

WHEREFORE, for the reasons stated above, Monsanto respectfully requests that the Court **adopt a single-plaintiff trial framework** for this case, that allows each party (starting with Monsanto) an alternating right to select a trial plaintiff.

DATED: November 4, 2019

Respectfully submitted,

By: /s/ Gregory J. Minana

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2019, the foregoing was electronically filed with the Clerk of the Court of St. Louis County, Missouri using Missouri Case.Net which sent notification of such filing to all persons listed in the Court's electronic notification system.

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