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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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IN RE: ROUNDUP PRODUCTS) MDL No. 02741
LIABILITY LITIGATION)
THIS DOCUMENT RELATES TO)
ALL ACTIONS)

-----x
C O N F I D E N T I A L
PURSUANT TO PROTECTIVE ORDER
VIDEOTAPED DEPOSITION OF
ROGER O. McCLELLAN, DVM, MMS, DSc (Honorary)

February 6, 2019
8:30 a.m.
500 4th Street NW, Suite #1000
Albuquerque, NM 87102

This deposition was taken by:
MICHAEL L. BAUM, ESQ.
ATTORNEY FOR PLAINTIFFS

REPORTED BY: DANA N. SREBRENICK, CRR, CLR
NM CCR #513

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A P P E A R A N C E S

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1 A P P E A R A N C E S (Continued.)

2 ALSO PRESENT:

3 LEEMON MCHENRY

4 JIM LOPEZ (Videographer)

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1 THE VIDEOGRAPHER: We are now on the
2 record. My name is Jim Lopez. I'm a
3 videographer for Golkow Litigation Services.
4 Today's date is February 6, 2019, and the time
5 is approximately 8:42 a.m.

6 This video deposition is being held
7 in Albuquerque, New Mexico in the matter of In
8 Re: Roundup Products Liability Litigation, MDL
9 No. 02741, for the United States District
10 Court, for the Northern District of California,
11 San Francisco Division. The deponent is Roger
12 McClellan.

13 Counsel will be noted on the
14 stenographic record.

15 Counsel, will you please identify
16 yourselves?

17 MR. BAUM: Michael Baum for
18 plaintiffs.

19 He's not counsel.

20 MR. LASKER: We should have him noted.
21 He's here.

22 MR. MCHENRY: Leemon McHenry for the
23 plaintiffs.

24 MR. LASKER: Eric Lasker for Monsanto.

25 MR. THOMPSON: R. E. Thompson for

1 Roger McClellan.

2 ROGER O. McCLELLAN, DVM, MMS, DSc
3 (Honorary), after having been first duly sworn
4 under oath, was questioned and testified as
5 follows:

6 EXAMINATION BY MR. BAUM:

7 Q. Good morning, Dr. McClellan.

8 A. Good morning.

9 Q. I'm Michael Baum, and I represent the
10 plaintiffs in this action. I'm going to go
11 through a deposition and ask you some questions
12 and go over some documents today.

13 A. Understood.

14 Q. Good. So can you please state and
15 spell your full name for the record?

16 A. Yes. My name is Roger Orville
17 McClellan, R-O-G-E-R, O-R-V-I-L-L-E, M-C
18 capital C-L-E-L-L-A-N.

19 Q. What is your current address?

20 A. I live at [REDACTED]
21 [REDACTED] Albuquerque, New Mexico [REDACTED]

22 Q. Are you represented by counsel today?

23 A. Yes, I am. My counsel is R. E.
24 Thompson of the Modrall Law Firm.

25 Q. Did you seek counsel when you were

1 originally served with the subpoena?

2 A. When I received the subpoena, I
3 immediately recognized when I read it that I
4 would need some very senior legal counsel. I
5 had some exploratory conversations with legal
6 counsel that I'm acquainted with and decided
7 that I would engage R. E. Thompson, the Modrall
8 Firm, and that I would engage as supporting to
9 that two gentlemen with the Crowell & Moring
10 firm in Washington D.C.

11 Q. Are your legal fees being paid by
12 Monsanto?

13 A. Absolutely not. My legal fees, I
14 understand I'm ultimately responsible for them
15 in a very complicated matter like this, but I
16 hope that I have an appropriate arrangement
17 such that Taylor & Francis, the publisher of
18 the journal, Critical Reviews in Toxicology,
19 will pay the fees.

20 Although the subpoena was served on me
21 in terms of my name, it's clear the subpoena is
22 to me in my role as editor in chief for
23 Critical Reviews in Toxicology.

24 Q. And you're right about that.

25 So have you been deposed before?

1 A. Yes, I have.

2 Q. How many times?

3 A. Oh, I don't know. Hard for me to
4 recall.

5 Q. More than five times?

6 A. Perhaps -- perhaps a dozen times.

7 Q. In connection with what topics?

8 A. Areas of my expertise, which I was
9 trained originally in veterinary medicine.
10 I've had a long history of experience in
11 toxicology and risk assessment and comparative
12 medicine in aerosol science. Most of the
13 matters that I've been deposed on relate to
14 issues of air quality and potential adverse
15 health effects.

16 Q. Were you hired as an expert in those
17 cases?

18 A. As best I can recall --

19 Q. Or a fact witness maybe regarding
20 those topics?

21 A. I was -- please repeat the question.

22 Q. Were you called as an expert or a fact
23 witness in those depositions?

24 A. As I recall, in various of those
25 cases, I was as an expert witness. I'm a

1 little uncertain of the distinction going way
2 back in time. I may have appeared on behalf of
3 the U.S. Government in -- in a fact witness
4 role. I'm a little uncertain of that.

5 Q. Do you recall who you were hired by?

6 A. A range of different entities. I've
7 appeared in legal matters for the U.S. --
8 United States Government. I've appeared in
9 other matters where I was engaged by a private
10 entity.

11 Q. Which one?

12 A. Gee, I don't -- I have to recall
13 distinctions sometimes between purely
14 scientific issues versus matters in which I
15 ultimately was called as an expert witness.
16 I'm --

17 Q. Okay. Well, when you met with your
18 attorney, did you get a chance to go over the
19 ground rules for a deposition?

20 A. We discussed general rules.

21 Q. Okay. So there's a court reporter
22 here, and she's taking down everything you say
23 and I say. And sometime after this deposition
24 is completed, she'll create a transcript which
25 you'll have an opportunity to review, and we

1 like to have the transcript have a nice, clean
2 set of questions and answers. And it's
3 difficult for her to record two of us talking
4 at the same time. So we try to make it so we
5 don't interrupt each other.

6 And when I'm finished asking you a
7 question, give it a beat to let your counsel
8 object or -- and then give an answer. And I'll
9 try not to step on your answers, and if
10 possible, try not to step on my questions.

11 Does that make sense?

12 A. Yes. If I may, I'd like to --

13 (Whereupon, counsel and client
14 confer.)

15 BY MR. BAUM:

16 Q. One thing you probably should know is
17 you can talk to your counsel and take breaks.
18 There's no -- you're not required to sit there
19 the whole time if you need to go to the
20 bathroom or something like that, but if I've
21 asked a question, there's a question pending,
22 you should answer that question and then get
23 the break.

24 Does that make sense?

25 A. I understand.

1 Q. Okay. Now, when the transcript is
2 made, you'll get a chance to review it and make
3 any changes to it if you think some of your
4 answers need to be corrected, but if that's the
5 case, I'll be able to comment on the fact that
6 you made those changes. And so what I want you
7 to do, if possible, is to give us your best
8 answers you can today.

9 Can you do that?

10 A. I understand.

11 Q. One of the rules is that you give oral
12 answers. Things like uh-huh or uh-uh are hard
13 to record, and shaking your head or nodding
14 your head are hard to record, so it's important
15 to give oral answers.

16 Does that make sense?

17 A. Yes. I'll try to suppress my
18 Scandinavian heritage and limit the ahs and try
19 to be yes, no.

20 Q. Great. Thanks.

21 I'm entitled to your best estimate on
22 things. If I ask you questions, like, for an
23 approximate time or an approximate amount of
24 money or something like that, I -- if you don't
25 know the exact answer, give me the best

1 estimate you can. And you don't have to guess,
2 but if you can give me something close to or
3 ballpark an answer that's your best estimate, I
4 would like that.

5 Does that make sense?

6 A. I understand.

7 Q. Is there anything that prevents you
8 from giving your best testimony today, any
9 medical conditions or drugs or things like
10 that?

11 A. No.

12 Q. Have you had any contact with
13 Monsanto's attorneys about this deposition
14 today?

15 A. No.

16 Q. Did you meet with your attorney in
17 preparation for this deposition?

18 A. Yes.

19 Q. How many times?

20 A. Perhaps three or four. I did spend
21 some time at the law office here reviewing the
22 material that we were submitting in response to
23 the subpoena.

24 Q. Okay. And how long did you meet with
25 your attorney in those meetings?

1 A. I would guess, in total, that we may
2 have spent on the order of a dozen hours.

3 Q. Okay. So I'm marking now as Exhibit 1
4 the subpoena dated January 7, 2019, and it was
5 -- attached to it is a depo notice, and it's
6 Exhibit A and then an attachment A which is a
7 request for documents.

8 (Exhibit McClellan 1, Subpoena to
9 Testify at a Deposition in a Civil Action,
10 marked for identification.)

11 BY MR. BAUM:

12 Q. Do you recall receiving this subpoena
13 with the notice and request to produce
14 documents?

15 A. Yes, I do.

16 Q. Then look at attachment A. You'll see
17 there's a list of 19 questions that we have
18 towards the next to the last there. There you
19 go.

20 Do you see there's a list of requests
21 to produce documents?

22 A. Yes, I see these.

23 Q. And did you find and send to us all of
24 the requested documents?

25 A. Yes, I did. My attorney did. To the

1 best of my knowledge, we responded to the
2 questions to the best of my ability.

3 Q. Did you find some documents that were
4 not sent to us?

5 A. No. The documents that I -- I sent
6 were the documents that I felt were responsive
7 to the 19 questions or points.

8 Q. Okay. So next I'm going to hand
9 you -- just keep those things handy. We might
10 come back to them -- what we're going to mark
11 as Exhibit 2 --

12 (Exhibit McClellan 2, Plaintiffs'
13 Amended Notice to Take the Videotaped
14 Deposition of Roger McClellan, marked for
15 identification.)

16 BY MR. BAUM:

17 Q. -- which is a -- an amended notice to
18 take a videotaped oral deposition.

19 And do you recall that we changed the
20 date and the time we were going to do the
21 deposition, and this is a notice that relates
22 to that? So we're here today on Wednesday,
23 February 6th at 8 -- we were supposed to start
24 at 8:30 a.m. I'm sorry. We started a little
25 late.

1 Do you recall receiving that?

2 A. Yes, I do.

3 Q. Now, I'm going to hand you what I'm
4 going to mark as Exhibit 3.

5 MR. LASKER: Just for -- just for the
6 record -- I'm sorry -- I don't know if this is
7 on the one that's been marked, but my Exhibit 2
8 has an attachment that has responses through
9 the first five.

10 MR. BAUM: Oh, requests and then
11 documents from the -- let me see your copy.

12 MR. LASKER: From the deposition
13 notice or the document requests.

14 MR. BAUM: That's good. It's
15 getting ready to be the next exhibit.

16 MR. LASKER: I had a feeling it wasn't
17 intended to be part of this one.

18 MR. BAUM: Yeah. Here.

19 (Whereupon, a brief discussion is held
20 off the record.)

21 MR. LASKER: So I'm going to take the
22 last two pages off.

23 MR. BAUM: Yeah.

24 MR. LASKER: For the record, it still
25 has the answers to the first request, but we'll

1 let -- we'll let that go.

2 (Exhibit McClellan 3, Responses to
3 Subpoena Bates numbered RM00001 through
4 RM001196, marked for identification.)

5 BY MR. BAUM:

6 Q. All right. So I'm going to now hand
7 you what I'm going to mark as Exhibit 3, the
8 responses that we received to the questions
9 that are on Exhibit 1, attachment A, and this
10 doesn't have
11 the -- the documents themselves. It just has
12 your written responses.

13 Do you recognize those responses?

14 A. Yes. This appears to be the responses
15 I prepared and were provided by my attorney in
16 response to the subpoena absent the substantial
17 number of attachments that were a part of the
18 response.

19 Q. Good. Did you determine each of your
20 responses on Exhibit 3 were true and correct
21 before those -- before the responses were sent
22 to my office?

23 A. Yes.

24 Q. Some of the responses included
25 documents which you just mentioned, in

1 particular responses to request 5, 8, 13 and
2 15.

3 Do you see that?

4 A. Yes, I recall that.

5 Q. When you produced the documents
6 responding to -- to request 5, 8, 13 and 15,
7 did you consider them to be authentic copies of
8 documents you maintained in your files?

9 A. Let me note that I have no paper files
10 with regard to my role as editor in chief of
11 Critical Reviews in -- in Toxicology. The
12 transactions are all carried out in -- in terms
13 of electronically and rarely telephonically,
14 and so the materials that I provided were
15 reproductions of -- of material that I produced
16 from my electronic file.

17 Q. And those were files you maintained in
18 the course of your business as chief editor for
19 CRT?

20 A. I -- I hesitate to call them files.
21 The -- the real official files are basically
22 the files that are maintained in two electronic
23 systems that I'm provided access to by the
24 publisher, Informa, slash, Taylor & Francis. I
25 make reference to those, I believe, in one of

1 the responses here.

2 Q. But you -- those documents are
3 maintained on a computer, I guess, someplace
4 that you use --

5 A. I have -- I have a -- I'm sorry.
6 Let's repeat the question.

7 Q. Those documents are maintained on a
8 computer that you use for your work as a chief
9 editor for Critical Reviews of Toxicology?

10 A. Those are maintained on -- on my
11 personal computer, and that's a personal
12 computer I use for a wide variety of -- of
13 purposes in terms of my business activities
14 as -- as well as my personal activities.

15 Q. When you -- did you collect up those
16 documents and send them to your attorney to
17 provide to my office in response to your
18 request 5, 8, 13 and 15?

19 A. I made copies of those materials and
20 then reviewed them and assembled them.

21 Q. And then you gave them to your
22 attorney --

23 A. Yes.

24 Q. -- to send to me?

25 And your attorney sent them to me in a

1 Dropbox. Do you know what that -- do you know
2 what that is?

3 A. I believe I do, yes.

4 Q. Okay. When you produced the documents
5 responding to requests 5, 8, 13 and 15, did you
6 consider them to be authentic copies of the
7 documents you maintained in your computer?

8 A. Yes.

9 Q. They were essentially e-mails, CVs and
10 journal articles and other documents you kept
11 as a business -- as business records related to
12 your job as a chief editor for the science
13 journal of Critical Reviews in Toxicology?

14 A. Yes.

15 Q. Do you mind if we refer to Critical
16 Reviews in Toxicology as CRT going forward?

17 A. Yes, that's fine.

18 Q. I want to hand you what I'm marking as
19 Exhibits 4 and 5 that are copies of the
20 documents that your counsel sent to us in
21 Dropbox.

22 MR. BAUM: Each of you got a binder?

23 MR. THOMPSON: Uh-huh.

24 MR. BAUM: All right. So I'm going to
25 -- that's going to be hard for me to deal with,

1 this thing.

2 MR. MCHENRY: Do you want me to take
3 it out?

4 MR. BAUM: Yes. Let's just take it
5 out. You guys have those. You know, it might
6 be, for the purposes of going --

7 MR. THOMPSON: I can give Dr.
8 McClellan this one to use if you want.

9 MR. BAUM: Yeah. That will probably
10 be okay.

11 MR. THOMPSON: Okay.

12 MR. BAUM: But I'm going to mark this
13 one as Exhibit 4 for the exhibits to the
14 deposition itself because you're not going to
15 want a binder, right?

16 THE COURT REPORTER: I don't care,
17 whatever you mark.

18 (Exhibit McClellan 4, Responses to
19 Subpoena Bates numbered RM00001 through
20 RM001195, marked for identification.)

21 BY MR. BAUM:

22 Q. So first off, I'd like you to take --
23 just take a look at these.

24 A. You want me to review these page by
25 page, or how --

1 Q. No, no, just sort of -- just -- just
2 see if they -- familiarize yourself with those
3 to see if they look generally like the
4 documents that you had in your file.

5 MR. BAUM: And while you're doing
6 that, I'd like to move to introduce into
7 evidence Exhibit 3, which is his responses to
8 requests.

9 A. What I have been provided here appears
10 to be the documents with the Bates numbers
11 RM000001 through RM000455 and then skip pages
12 and RM00 -- or, 001193, skip page, 0 --
13 RM0001195.

14 BY MR. BAUM:

15 Q. Do those -- what I did was I made a --
16 a batch which is the responses to 5, 8 and 13,
17 and that's what's in Exhibit 4. And -- and if
18 you look at the Bates numbers on your
19 responses, this -- they correspond to the Bates
20 numbers to the responses 5, 8 and 13.

21 MR. LASKER: Objection. Just for
22 clarification, I think you -- this document has
23 everything other than request 15 in responses
24 because you do have responses to the other
25 requests 1, 2, 3 in this document.

1 Just so the record's clear, I think
2 it's everything but 15, if I'm looking at this
3 correctly.

4 MR. BAUM: Yes, that is correct.

5 MR. LASKER: Okay.

6 MR. BAUM: Yeah, the next one is going
7 to be 15.

8 MR. LASKER: But this has everything
9 but 15?

10 MR. BAUM: Yes, it has everything but
11 15.

12 MR. LASKER: Thank you.

13 BY MR. BAUM:

14 Q. The next one I'm going to hand you is
15 what we're marking as Exhibit 5, which is Bates
16 numbers RM000457 through RM001191, which are
17 the responses to question 15 --

18 (Exhibit McClellan 5, Documents Bates
19 numbered RM00457 through RM001192, marked for
20 identification.)

21 BY MR. BAUM:

22 Q. -- other than there were a bunch of
23 CVs of some of the expert panels that you
24 worked with, and I didn't put those CVs in
25 there, but absent those, it's a set of what

1 your counsel provided as responses to question
2 15.

3 A. May I ask why those were excluded?

4 Q. They took up a lot of space, but it --
5 I -- I didn't plan to go through them in the
6 deposition.

7 A. Okay.

8 Q. The documents that I have given you, a
9 number of them we're going to go to and look at
10 them specifically.

11 A. May I ask that my response to the
12 subpoena be entered in full in the record?

13 Q. Oh, yeah. Your responses are in full
14 in the record. If -- if you would like to have
15 the --

16 A. No, I don't need them in front of me
17 here now. I -- I appreciate the concern for
18 saving trees and the forest, but I -- I just
19 want to make certain I'm understanding that the
20 responses I provided are in the record in -- in
21 full, and you have elected to exclude the
22 curriculum vitae and biographical information
23 in the interest of saving space, and -- and
24 they are there, but you're just not providing
25 them to me now --

1 Q. That's correct?

2 A. -- is that correct?

3 Q. That's correct.

4 MR. LASKER: Michael, what do you want
5 to do? Do you want to just subsequently
6 provide the court reporter with those CVs, and
7 we can make it Exhibit 5-A?

8 MR. BAUM: Yeah, we can do that.

9 MR. LASKER: Okay.

10 (Exhibit McClellan 5-A, Group of
11 Curriculum Vitae, will be marked for
12 identification.)

13 BY MR. BAUM:

14 Q. So the e-mails and memos that are
15 contained in Exhibits 4 and 5, they're copies
16 of what you sent or received in performing your
17 job as a chief editor of CRT, right?

18 A. I believe that's correct.

19 Q. And -- and looking at Exhibit 5, the
20 documents you produced in response to request
21 15 are the communications with Taylor &
22 Francis. Question 15 is all communications
23 with Taylor & Francis regarding the 2017
24 ethical investigation into the public --

25 A. Oh, yes, I see that, Exhibit 5.

1 Q. Yes, Exhibit 5.

2 So that -- that's in response to the
3 question, all communications with Taylor &
4 Francis regarding the 2017 ethical
5 investigation into the publication of the five
6 manuscripts by the Intertek panel.

7 Does this group of documents appear to
8 be the documents you produced in response to
9 request 15?

10 MR. LASKER: Objection to form. You
11 missed the word "expert" in that question.

12 MR. BAUM: Oh.

13 MR. LASKER: It's okay.

14 A. Obviously, I have not had the
15 opportunity to review the -- the details here,
16 but, yes, this appears to be the material I
17 provided in response to inquiry 15.

18 MR. LASKER: And for those questions,
19 Michael, can we just agree that Exhibit 5-A is
20 part of Exhibit 5 when he gives answers like
21 that?

22 MR. BAUM: Oh, sure.

23 MR. LASKER: Okay.

24 BY MR. BAUM:

25 Q. The e-mails and memos contained in

1 Exhibit 5 are copies of what you sent or
2 received in performing your job as chief editor
3 of CRT, right?

4 A. Yes, I believe that's correct.

5 Q. During your preparation for this
6 deposition, did you review the documents you
7 produced in response to request 5, 8, 13 and
8 15? The --

9 A. Yes. I -- I -- I reviewed the
10 material that I provided and that my attorney
11 has provided.

12 MR. BAUM: So I'd like to move into
13 evidence Exhibits 4 and 5.

14 MR. LASKER: Subject to the inclusion
15 of Exhibit 5-A, no objection.

16 BY MR. BAUM:

17 Q. So you understand that you're here
18 today in connection with lawsuits involving
19 Monsanto's Roundup and its active ingredient,
20 glyphosate, right?

21 A. It -- it's my understanding that I'm
22 here today in response to a subpoena that was
23 served on me in -- in my role as editor in
24 chief of Critical Reviews in Toxicology and
25 that I am here as a fact witness related to

1 these matters in response to that subpoena.

2 Q. Good. And do you understand the
3 nature of the lawsuit that the subpoena was
4 served in?

5 A. I have a -- a general understanding of
6 the lawsuit. I've not familiarized myself with
7 the details of -- of that.

8 Q. What is your general understanding?

9 A. My general understanding is that
10 there's a lawsuit -- a collection of lawsuits,
11 as best I understand it, and those lawsuits
12 allege adverse health effects related to
13 exposure to the product, Roundup, containing an
14 active ingredient, glyphosate.

15 Q. So Roundup is a -- a glyphosate-based
16 formulation, a GBF; is that correct?

17 A. That's my understanding, yes.

18 Q. Have you spoken to anyone about your
19 deposition today?

20 A. My attorney.

21 Q. And did you have any communication
22 with Monsanto's attorneys?

23 A. No, I have not.

24 Q. Have you had any communication with
25 any other attorneys besides your counsel

1 sitting beside you?

2 A. I have had a conversation with Taylor
3 & Francis advising them that I have been served
4 a subpoena. I provided them a copy of the
5 subpoena and engaged in conversation requesting
6 that they pay my legal fees for this matter.

7 Q. Other than the responses that you
8 provided in Exhibits 4 and 5 and 5-A, did you
9 review any other documents in preparation for
10 your deposition today?

11 A. I reviewed a legal summary that my
12 legal counsel provided me related to the issue
13 of confidentiality of materials in terms of
14 publications, et cetera.

15 Q. There were some documents you didn't
16 provide. I noticed that there were some peer
17 reviews that we asked for that you didn't
18 provide.

19 Is that what you were referring to,
20 confidentiality of those documents?

21 A. No. I -- what I'm referring to
22 specifically is a document that my counsel
23 provided me that relates to the legal issues
24 associated with confidentiality of
25 communications related to peer review. I did

1 review that document and found it -- found it
2 interesting, recognize it's one of many pieces
3 of information.

4 I also recall that my legal counsel
5 provided me a copy of a document related to
6 exclusions of information. I don't recall the
7 exact details of that, but I remember it was a
8 -- a fairly lengthy document that provided for
9 confidentiality of -- of information.

10 Q. Was there information that you found
11 or documents that you found you considered to
12 be confidential and privileged that you did not
13 provide to us?

14 A. No. I provided to -- in response to
15 the subpoena the information that I had in my
16 possession, including the electronic formats
17 that I felt was responsive to the 19 inquiries.

18 Q. All right. Now, although we're taking
19 this deposition in your attorney's office in
20 this conference room, your testimony today will
21 have the same effect as if you were sitting in
22 a courtroom up in the witness stand in front of
23 a jury and in front of a judge and you're under
24 oath.

25 Do you understand that?

1 A. I understand that.

2 Q. And that we'll end up playing portions
3 of your deposition at any of the upcoming
4 trials regarding the plaintiffs who have
5 lawsuits regarding non-Hodgkin's lymphoma that
6 they allege is induced by Roundup.

7 Do you understand that?

8 A. I understand that. I only make the
9 request that, on any situation in which either
10 a transcript or a visual image of me is
11 presented, that I be notified in advance that
12 that is occurring.

13 Q. Okay.

14 A. And I be provided a copy of the
15 material as presented in the courtroom.

16 Q. Okay. And do you realize that, when
17 this deposition is played as part of a trial,
18 it will become part of the public record that
19 will become available to the scientific
20 community, journalists and regulators?

21 A. I understand.

22 Q. And you realize that this is your
23 opportunity to set the record straight
24 regarding your role in the Monsanto-sponsored
25 publications in CRT?

1 MR. LASKER: Objection to form.

2 A. I'm not certain what you mean by "set
3 the record straight."

4 BY MR. BAUM:

5 Q. To give your best understanding of
6 what actually happened with regard to the
7 investigation you undertook and the remedies
8 you undertook with -- in response to that
9 investigation.

10 A. Yes. I'm prepared to provide a
11 factual accounting of all those matters that
12 relate to the ultimate publication of the five
13 papers that you referred to as well as earlier
14 papers.

15 Q. All right. So we're going to mark as
16 Exhibit 6 your CV.

17 (Exhibit McClellan 6, Curriculum Vitae
18 of Roger O. McClellan, marked for
19 identification.)

20 BY MR. BAUM:

21 Q. This is a CV that we downloaded from
22 online. Do you recognize that?

23 A. I -- I recognize this is a curriculum
24 vitae for me. I'm -- I'm not certain as to the
25 specific date and the source of this. I'd have

1 to go through and see if it is up-to-date, but

2 --

3 Q. It has publications up through 2016.

4 Have you had any publications since then?

5 I'm not going to ask you a lot of
6 questions about it. I'm going to ask just is
7 that -- do you generally recognize that as your
8 more or less recently up-to-date CV?

9 A. Yes. This appears to be a -- a -- a
10 CV that is prepared by me. I'm not certain of
11 the -- of the source of the -- of the CV,
12 whether this is -- could you tell me the source
13 of the CV?

14 Q. I think we pulled it offline on the --
15 off the internet.

16 A. Do you recall the specific source?

17 Q. No. It might have been LinkedIn.

18 A. May have been related to my nomination
19 or appearance in terms of a U.S. Government
20 advisory committee. I do note that -- that
21 the -- it is not complete with regard to some
22 of my recent publications.

23 Q. Well, if you have a more recent one,
24 you can send it to me, and we'll put that in
25 the record.

1 A. Let me just look through it here.

2 Q. The basic thing I want to find out is,
3 are you presently editor in chief of Critical
4 Reviews in Toxicology?

5 A. Yes, I am.

6 Q. And does that mean you have the final
7 say as to what gets published in that journal?

8 MR. LASKER: Object to form.

9 A. That's -- could you -- could you ask a
10 question?

11 BY MR. BAUM:

12 Q. Does that mean that you have -- as --
13 in your role as chief editor of Critical
14 Reviews in Toxicology, does that mean that you
15 have some level of say, the final say, of what
16 gets published in the CRT?

17 A. That's a -- that's a -- really a
18 leading question. Yes, as editor in chief, I
19 have a -- a substantial responsibility as to
20 what's published in -- in that journal.

21 Q. On --

22 A. Let me go back to the previous -- I'll
23 find a copy. I -- I'm -- I do note several
24 items that are more recent on this. I'm very
25 pleased that in 2018 I was named a -- by the

1 American Thoracic Society a fellow. I'm very
2 pleased of that honor which was given to only a
3 few members of that organization in reflection
4 of -- of scientific accomplishments. So I note
5 that was -- was not included here.

6 Q. Congratulations.

7 A. Thank you very much.

8 Q. On page 8 of the CV, there's a -- a
9 listing in 1994, and it says that you were an
10 advisory member of Strategic Planning Advisory
11 Committee for the Monograph Program,
12 International Agency For Research on Cancer,
13 Lyon, France.

14 Do you see that?

15 A. On -- on what page?

16 Q. Page 8, entry for 1994 --

17 A. Oh.

18 Q. -- the middle of the page.

19 A. Yes.

20 Q. That's IARC, right?

21 A. Yes, that is IARC.

22 Q. What is IARC?

23 A. IARC is the International Agency for
24 Research on Cancer, an entity that is
25 affiliated with the World Health Organization.

1 It came into being in the mid-1960s. I'm very
2 proud -- pleased to say that I was a good
3 friend to the founding director, Dr. John
4 Higginson, and -- when that entity was created
5 and located in Lyon, France, and so I followed
6 these activities with substantial interest.

7 One modest-sized program associated
8 with IARC is the so-called Monograph Program.
9 I had the pleasure of serving as a member of
10 that Advisory Committee for Strategic Planning.
11 It says, "1994." It may have been '94/'95, but
12 I was certainly a member of that. Pleased to
13 have served that role.

14 Q. IARC attempts to provide evaluations
15 that are independent of an industry regarding
16 cancer; is that right?

17 A. IARC -- the IARC program came into
18 being early in the early days of the agency
19 championed primarily by Dr. Tomatis, who was an
20 associate director of IARC. And he thought it
21 would be useful to provide a listing of agents
22 that -- with respect to their potential for
23 causing cancer.

24 They very soon reached the conclusion
25 that simply providing a listing was not quite

1 sufficient, and from that evolved the program
2 as it exists today, which consists of meetings
3 held periodically to review a group of agents,
4 and then the ultimate goal, to provide a
5 categorization of the cancer hazard of -- of
6 those agents.

7 It's done by -- by a group of
8 scientific consultants. The -- in your
9 question, you implied exclusive -- or,
10 excluding industry. I think that the Monograph
11 Program was -- from the beginning had
12 scientific individuals involved in the re --
13 review process. The issue of whether those
14 individuals came from industry, academic
15 institutions, governmental agencies, whatever,
16 was not really a consideration. It was a
17 scientific talents of the individual.

18 If one were to review earlier in my
19 CV, you'll note that I participated in the
20 review, I think, in 1988 or about then on
21 vehicle emissions. At that time, I was a
22 president and director of the Lovelace
23 Biomedical Research Institute in Albuquerque,
24 New Mexico, an organization that was funded by
25 the U.S. Government agencies and -- and private

1 industry, but I want to emphasize that I -- I
2 served on that committee in -- in terms of a --
3 based on my scientific credentials.

4 Q. It's to some degree an honor to be
5 selected to work on an IARC Monograph?

6 A. An honor and an invitation to do a lot
7 of hard work if you're going to do it well.

8 Q. Is IARC an internationally-respected
9 scientific organization?

10 MR. LASKER: Objection to form.

11 A. I -- IARC is certainly well-recognized
12 in terms of the cancer hazard classification
13 work that it does. I'll have to say that IARC
14 is becoming increasingly controversial in
15 recent years with regard to some of its
16 categorizations.

17 BY MR. BAUM:

18 Q. Have you ever been a consultant for
19 the agrochemical industry?

20 A. I have to ask you what you view as the
21 agrochemical industry.

22 Q. Companies that produce herbicides or
23 pesticides.

24 A. I do not recall any consulting
25 activities in terms of companies that -- with

1 regard to activities of -- that involved
2 herbicides. I want to emphasize for the record
3 that I was the president and chief executive
4 officer of the Chemical Industry Institute of
5 Toxicology located in Research Triangle Park,
6 North Carolina. I'm proud to say that I served
7 as the third president of that organization.

8 That organization received funding
9 from multiple entities in terms of the
10 chemical, petrochemical business, including
11 companies that did manufacture various
12 agrochemicals, and that included Monsanto. And
13 they -- organization was created as an
14 independent body to conduct research, educate
15 personnel in the fields of toxicology.

16 I'm proud to say that we were
17 well-recognized for our independence, and I
18 think the fact that I served on the -- as a
19 member of that strategic planning committee for
20 IARC, 1994, gave me a testimonial to my role in
21 -- in CIT, but I want to make that clear as a
22 matter of record.

23 Q. Have you ever been a consultant for
24 Monsanto?

25 A. No, I have not.

1 Q. Have you been a consultant for the
2 Glyphosate Task Force?

3 A. No, I have not.

4 Q. Crop Life America?

5 A. No, I have not.

6 Q. ACSH?

7 A. I have to ask, who is ACH?

8 Q. I forget the acronym. It's an advisor
9 for the chemical industry.

10 MR. LASKER: Objection to form.
11 Objection to form.

12 BY MR. BAUM:

13 Q. I'll -- I'll get you -- I'll have to
14 get --

15 A. Yeah. I can't -- I can't base --
16 we've got so many acronyms --

17 Q. Yeah, I understand.

18 A. -- that it's a challenge to -- I'd
19 hesitate to give you a speculative answer.

20 Q. That's what modern phones are for.
21 American Council of Science and Health.

22 A. I'm familiar with American Council of
23 Science and Health. I think, in fact, I may
24 even have given them a financial contribution,
25 and I may be listed as an advisory member.

1 They are basically a science -- one of numerous
2 science communication entities out there.

3 Q. Have you been a consultant for them?

4 A. No, I have not been a consultant to
5 them.

6 Q. Have you been a consultant for
7 Intertek?

8 A. No, I have not.

9 Q. Cantox?

10 A. No, I have not.

11 Q. Exponent?

12 A. I don't know if I've -- I'd have to
13 review the detailed records to see if I had any
14 associations with Exponent in terms of
15 coauthoring of manuscripts. Whatever I --

16 Q. You're familiar with Exponent?

17 A. I am.

18 Q. Have you ever been paid for any
19 services by Monsanto or a third-party engaged
20 by Monsanto?

21 A. No, I have not.

22 Q. Have you ever been --

23 A. Let me -- let me -- I want to make
24 very clear as a record. I served for some 11
25 years as the third president of the Chemical

1 Industries of Toxicology. That organization
2 was supported primarily by the chemical and
3 petrochemical industry through dues payments.
4 And Monsanto was a dues-paying company during
5 the time period I was the president of the
6 organization at a high degree of independence
7 in terms of its activities.

8 We did not conduct research on any
9 proprietary products. We conducted research
10 that was going to enable better conduct of
11 scientific research in terms of the safety and
12 hazards of -- of chemicals.

13 The research program of the institute
14 ultimately was approved and under the direction
15 of the president without veto rights by
16 individual member companies. All publications
17 were released over the authority of the
18 president without prior review by the member
19 companies.

20 I want to emphasize again Monsanto
21 Company was -- was an active and dues-paying
22 member. I have no specific knowledge as to the
23 amount of dues they paid, but I can assure you
24 that there was no relationship between our
25 activities and what they did with any specific

1 proprietary product.

2 Q. Okay. Have you ever been paid for any
3 services by the Glyphosate Task Force?

4 A. No, I have not.

5 Q. Crop Life America?

6 A. No, I have not.

7 Q. ACSH?

8 A. Let's -- again, I think we've gone
9 through that. American Council of Science and
10 Health?

11 Q. Yes.

12 A. No, I have not.

13 Q. Okay. Intertek?

14 A. No.

15 Q. Cantox?

16 A. No.

17 Q. Exponent?

18 A. No.

19 Q. Have you ever done any consulting that
20 involved providing any kind of review or
21 evaluation of glyphosate or -- or Roundup?

22 A. No, I have not.

23 Q. You're a scientist, right?

24 A. Yes, I am.

25 Q. Would you agree that protecting the

1 integrity of science from the profit load in
2 the industry is important?

3 A. That -- that's a very sweeping
4 statement. I'm a strong believer in the
5 importance of science and the role of science
6 in making decisions, including decisions
7 related to occupational and public health. And
8 let me just say, I -- I think that's important.

9 The -- the question of profit motive,
10 I think, is -- complicates your question. I --
11 I don't really understand that. I will
12 emphatically state I'm a strong supporter and
13 have devoted my career to developing the
14 science base that will inform decisions on
15 occupational and public health.

16 Q. So you're in favor of accuracy and
17 integrity in science?

18 A. Yes.

19 Q. Have you ever heard the term "product
20 champion" as it applies to scientists who are
21 engaged to defend or promote the products of
22 industry?

23 A. I don't -- that -- that's not a term
24 that's in my typical vocabulary.

25 Q. Would you consider yourself to be a

1 product champion for Monsanto?

2 MR. LASKER: Object to form.

3 A. I -- I'm -- restate the question, so
4 you can be very specific.

5 BY MR. BAUM:

6 Q. Do you consider yourself to be a
7 person that helps promote the -- the welfare
8 and benefit of Monsanto and its products?

9 MR. LASKER: Object to form.

10 A. No. I --

11 BY MR. BAUM:

12 Q. Are you aware that Monsanto regards
13 Critical Reviews in Toxicology as a target
14 journal in their publication planning for the
15 defense of Roundup and glyphosate?

16 MR. LASKER: Object to form.

17 A. I'm not aware of that.

18 BY MR. BAUM:

19 Q. Would it surprise you to hear Monsanto
20 regarded Critical Reviews in Toxicology as a
21 target journal in their publication planning
22 for their defense of Roundup and glyphosate?

23 MR. LASKER: Object to form and
24 foundation.

25 A. You're asking me to speculate on the

1 views of others which I simply can't do.

2 BY MR. BAUM:

3 Q. I'll show you a document about that
4 later, so...

5 Would you agree that, if scientific
6 journals were corrupted by the profit motive of
7 industry, it would have a negative effect on
8 scientific integrity?

9 A. Read the question again.

10 Q. Would you agree that, if scientific
11 journals were corrupted by the profit motive of
12 industry, it would have a negative effect on
13 scientific integrity?

14 A. I think I'm going to have to ask for a
15 private conversation with my legal counsel.
16 I'm not certain -- the nature of these
17 questions seem to be asking me to offer
18 speculation, and they're laced with value
19 judgments that are outside the field of
20 science.

21 I'm prepared to testify to --
22 truthfully and honestly to the best of my
23 ability on scientific matters. You're asking
24 me to offer speculative comments, and so let --
25 let me take a private conversation with my

1 legal counsel if I may.

2 MR. BAUM: It's probably a good time
3 to take a break anyway. We've been going about
4 an hour.

5 THE VIDEOGRAPHER: With the approval
6 of counsel, we're going off the record. The
7 time is approximately 9:42 a.m.

8 (Whereupon, a brief recess is taken
9 from 9:42 a.m. to 9:52 a.m.)

10 THE VIDEOGRAPHER: With the approval
11 of counsel, back on the record. The time is
12 approximately 9:52 a.m. This marks recording
13 media 2.

14 BY MR. BAUM:

15 Q. Okay. Did you have a chance to
16 consult with your counsel about how you wanted
17 to respond to that question, that last
18 question?

19 A. Let -- let's read the question again.

20 Q. Would you agree that, if scientific
21 journals were corrupted by the profit motive of
22 industry, it would have a negative effect on
23 scientific integrity?

24 A. In my opinion, science plays a
25 critical role in society and societal decisions

1 made by all types of entities, whether they be
2 government agencies, organization of various
3 levels or the private sector. I am an
4 outspoken proponent of using the best possible
5 science to inform decisions made in all sectors
6 of society.

7 Q. As editor in chief of CRT, have you --
8 have you strived to maintain CRT's scientific
9 integrity?

10 A. Yes, I have, fully recognizing that
11 the arena we operate in is science at the
12 interface of policy and -- and regulations and
13 frequently involve -- involves matters that are
14 contentious in nature.

15 Q. Do you have any conflicts of interest
16 with Monsanto?

17 MR. LASKER: Objection to form.

18 A. I -- I'm not certain what -- the
19 nature of your question, I have conflicts of
20 interest with Monsanto. I -- I'm not an
21 employee of Monsanto. I'm not a consultant to
22 Monsanto.

23 Any stockholdings I have in terms of
24 Monsanto are buried deep within the Teachers
25 Insurance and Annuity Association. I

1 periodically review their investments, and
2 Monsanto may be there, but I have no financial
3 relationships with Monsanto.

4 BY MR. BAUM:

5 Q. Do you recall working with Monsanto's
6 Dr. David Saltmiras?

7 A. I -- yes, I have communicated with
8 Dr. Saltmiras.

9 Q. Do you believe that Dr. Saltmiras has
10 been honest and forthright in his dealings with
11 you?

12 A. You're asking me to speculate on
13 broad, sweeping matters. I -- I start with the
14 assumption that many people that I have
15 associations with in terms of scientifically that
16 we're going to deal in an honest and
17 straightforward manner.

18 Q. Have you discovered circumstances that
19 lead you to believe he has not been honest and
20 forthright with you?

21 A. No, I have not.

22 Q. Same question with regard to Sam
23 Cohen.

24 A. Sam Cohen is a -- a good friend, a
25 scientific colleague of mine, well-known

1 pathologist, M.D. pathologist, experimental
2 pathologist. I have no reason to think that
3 any interactions that I've had with Dr. Cohen
4 have been honest and straightforward.

5 Q. Same question, John Acquavella.

6 A. I believe that Dr. Acquavella is a
7 well-respected scientist, epidemiologist. I
8 have known him in a scientific professional
9 manner for a number of years.

10 Q. Has his dealings with you been honest
11 and forthright?

12 A. To the best of my knowledge, they have
13 been.

14 Q. Including the declaration of interest
15 that he did for the expert panel?

16 A. The -- in -- in my opinion, the -- let
17 me -- let me come right to the -- to the
18 central issue. I knew very early on that
19 Monsanto had an interest in sponsoring an
20 expert panel and publication of manuscripts.
21 That was never a secret, absolutely never a
22 secret.

23 I have literally thousands of
24 conversations with individuals with regard to
25 prospective papers to be published in Critical

1 Reviews in Toxicology, literally thousands of
2 those over the years, and those conversations
3 frequently very quickly lead to identification
4 of a sponsor, an international agency, a
5 government agency, a national government agency
6 or a private sector or trade associations.

7 I've always fully anticipated and
8 understood that the conversations I had around
9 the issue of publication of papers on
10 glyphosate were sponsored by Monsanto.

11 Q. Was John Acquavella honest with you
12 with respect to his declaration of interest
13 with respect to the expert panel?

14 A. Well, I have to review that in detail.
15 If there are specific questions you have on it,
16 I'll be pleased to address them.

17 Q. Well, that -- that's not actually an
18 answer to my question. Do you believe that he
19 was honest and forthright with you with regard
20 to his declaration of interest on the expert
21 panel that you worked on?

22 MR. LASKER: Objection. Asked and
23 answered.

24 A. I provided the answer, and if -- if
25 you wish to go through the specifics of it --

1 for me to comment on his honesty, you're asking
2 me to offer speculation that I'm not prepared
3 to provide.

4 BY MR. BAUM:

5 Q. It's speculation in your mind whether
6 or not the declaration of interest that he
7 provided to you didn't require a correction --
8 correction or a corrigenda?

9 MR. LASKER: Objection to form.

10 A. A corrigenda provided for the
11 Acquavella paper provided details with re --
12 that we thought useful to have published.
13 There was never any question with regard to
14 John Acquavella previously being an employee of
15 the Monsanto Company. He participated as one
16 of 16 members of a scientific panel. I'm
17 confident that every member of that panel was
18 aware of his association with the Monsanto
19 Company.

20 BY MR. BAUM:

21 Q. Was --

22 THE COURT REPORTER: Hold on. I don't
23 have the question.

24 MR. LASKER: The witness was in the
25 middle of an answer.

1 BY MR. BAUM:

2 Q. I thought you'd answered my question.

3 A. I'm sorry.

4 Q. Were -- were you done answering my
5 question before?

6 A. Yes.

7 Q. Okay. Do you believe that he was
8 accurate and honest with respect to his
9 declaration of interest for the expert panel?

10 MR. LASKER: Objection to form.

11 A. I think the original declaration of
12 interest could have been more complete with
13 regard to his details of a consulting
14 relationship with Monsanto.

15 BY MR. BAUM:

16 Q. Okay. Same question with respect to
17 Larry Kier.

18 A. I have known Larry Kier for many
19 years. I have a high degree of respect for him
20 as a genotoxicologist. His association in
21 terms of the 16-member expert panel is clearly
22 laid out in the corrigenda.

23 Q. Do you believe that Larry Kier -- is
24 that the right way to pronounce that, Larry
25 Kier?

1 A. Kier.

2 Q. -- was honest and forthright in his
3 dealings with you with respect to the
4 declaration of interest in the expert panel?

5 A. Yes, I believe that he was.

6 Q. But his original declaration of
7 interest was inaccurate?

8 A. The original declaration of interest
9 lacked some specific details that were outlined
10 in the corrigenda.

11 Q. Same with respect to David Kirkland.

12 A. Yes, I believe that's correct.

13 Q. Do you believe that Ashley Roberts has
14 been honest and forthright in his dealings with
15 you?

16 A. My only association with Ashley
17 Roberts occurred in conjunction with his
18 serving as the principal in terms of the
19 advisory panel that was assembled. I felt that
20 he dealt with me in a -- a very direct manner.
21 I had no knowledge of the details of his
22 relationship with Monsanto, nor did I think
23 that appropriate that I have detailed knowledge
24 of his workings with a sponsor.

25 Q. So my question is whether or not he

1 had been honest and forthright in his dealings
2 with you with respect to the expert panel.

3 A. I think the -- as best as I can
4 ascertain, he was honest and forthright. I
5 think that the complicated manner of the
6 preparation of the declaration of interest
7 resulted in he or the principal author of each
8 of those papers in question was not as complete
9 as it should have been.

10 Q. Do you believe that Monsanto has been
11 honest and forthright in its dealings with you?

12 MR. LASKER: Objection to form.

13 A. I've had no dealings with Monsanto, as
14 I've said.

15 BY MR. BAUM:

16 Q. Have you ever asked Dr. David
17 Saltmiras to peer review a manuscript for
18 Critical Reviews in Toxicology?

19 A. I really -- I don't recall. Over my
20 tenure as editor in chief, I've had several
21 thousand manuscripts submitted. I -- I do not
22 recall whether he has ever been asked to review
23 a manuscript or not.

24 Q. Have you ever asked anyone at Monsanto
25 or a former employee of Monsanto to peer review

1 a manuscript for Critical Reviews in
2 Toxicology?

3 MR. LASKER: Objection to form.

4 A. I -- I have no specific recollection,
5 but I would be, quite frankly, surprised.
6 Monsanto has had a large scientific staff in
7 the past, many accomplished scientists working
8 for them. I don't make a determination in
9 terms of reviewers based on whether they are or
10 are not employed by a particular company.

11 BY MR. BAUM:

12 Q. Have you ever worked with Taylor &
13 Francis to publicize or promote articles
14 published in Critical Reviews in Toxicology on
15 the safety of Roundup or glyphosate?

16 A. I have had conversations --
17 interaction with Taylor & Francis on a number
18 of occasions with regard to publication, making
19 known manuscripts that are being published, and
20 there were conversations around the five
21 glyphosate papers.

22 Q. How does Critical Reviews in
23 Toxicology make money?

24 A. You're asking me a -- a speculative
25 question. I'm not the owner. I'm not the

1 business manager. Taylor & Francis, so their
2 details, their revenue streams with regard to
3 Critical Reviews in Toxicology are not a matter
4 that's known to me.

5 Q. Well, do people buy subscriptions to
6 it, for instance?

7 A. It -- it is a subscription-based
8 journal. It also has revenue from the sale of
9 access. As best I can determine from my
10 vantage seat, having been in the scientific
11 publication field for over 40 years, it's an
12 extraordinarily complex business these days
13 with multiple revenue -- revenue streams, but
14 I'm not privy to it as editor in chief. I'm
15 responsible for the scientific content of the
16 journal. The business matters are a matter for
17 Taylor & Francis to handle.

18 Q. Well, do companies like Monsanto pay
19 for pub -- papers to be published in CRT?

20 A. They -- any paper published in CRT and
21 I believe a number of other journals published
22 by Taylor & Francis, during production process,
23 authors are given the opportunity to purchase
24 open access for manuscripts, and for a payment
25 of a modest fee, that open access is provided

1 so that you or anybody else who wanted to read
2 could gain access and download the -- the --

3 In the case of -- of supplemental
4 issues, Taylor & Francis does negotiate with
5 the sponsor or representative sponsor to
6 determine -- make a determination as to a -- as
7 to a fee. I have no knowledge of specific
8 details of the relationship between Taylor &
9 Francis and Monsanto with regard to the special
10 supplement published.

11 Q. Do you know how much money Taylor &
12 Francis charged for the publication of the
13 Monsanto-sponsored articles in Critical Reviews
14 in Toxicology --

15 A. No, I do not.

16 MR. LASKER: Objection to form. Lacks
17 foundation.

18 BY MR. BAUM:

19 Q. The articles published in Critical
20 Reviews in Toxicology entitled, "An Independent
21 Review of the Carcinogenic Potential of
22 Glyphosate" were open access, right?

23 A. Yes.

24 Q. Do you know who paid to have the
25 articles be open access?

1 A. I have no detailed knowledge of that.
2 I assumed it was a payment made by Intertek
3 and/or Monsanto.

4 Q. Did you put Monsanto's David Saltmiras
5 in touch with Taylor & Francis to make payments
6 for open access of CRT articles?

7 A. I -- I may well have indicated that he
8 should make contact with them in terms of open
9 access. I -- I regularly make that
10 recommendation to authors and/or sponsors
11 because it is my impression that open access
12 provides a higher degree of -- of access than
13 journals that are -- than papers that are not
14 published on -- on open access.

15 In the case of the glyphosate papers
16 or lead papers, summary paper, I think it's
17 been one of the most highly accessed papers
18 that we have published over the years in
19 Critical Reviews in Toxicology.

20 Q. So I'm handing you what I'm marking as
21 Exhibit 7 --

22 (Exhibit McClellan 7, Document Bates
23 numbered MONGLY06987082 with attachment, marked
24 for identification.)

25 BY MR. BAUM:

1 Q. -- which is an issues management,
2 regulatory affairs, scientific affairs
3 PowerPoint by Eric Sachs dated March 6, 2006.

4 And it has the Bates number
5 MONGLY06987082, and I'm producing with it the
6 metadata because, the way it was produced to
7 us, it comes in a picture format like this
8 without the Bates number attached to it. This
9 is the cover for the -- what was produced to
10 us.

11 So I'm identifying this for Mr.
12 Lasker's benefit, so he can determine where it
13 came from, but this is the PowerPoint itself,
14 and this is the metadata for it. Those --
15 those should be attached together. I'll put it
16 on the back of it.

17 MR. LASKER: For the record, Mr.
18 Lasker is not going to be able to understand
19 the metadata, but you can ask your questions.

20 BY MR. BAUM:

21 Q. Have you seen that document before?

22 A. It does not appear to be a document
23 that I've seen before. Could you tell me who
24 Mr. Eric Sachs is?

25 Q. He's an employee of Monsanto that

1 works on -- on what they call their issues
2 management team.

3 A. I see. And GCRST, what that is?

4 Q. I don't think I know what that is.

5 A. Okay.

6 Q. So I'd like you to turn to page 2.

7 A. That's the page that has issues
8 management team?

9 Q. Right. And do you see that Eric Sachs
10 is identified as a member of the issues
11 management team?

12 A. Yes.

13 Q. And the third bullet point reads,
14 "Complementary to the chemical and toxicology
15 issues management team," right?

16 MR. LASKER: I'm going to object to
17 form. Lacks foundation. You haven't -- you
18 asked the question whether he ever saw the
19 document before. You never got an answer to
20 that.

21 BY MR. BAUM:

22 Q. Oh, have you ever seen that document?

23 A. No, I have never seen this document
24 before.

25 MR. LASKER: I'm going to object.

1 Lack of foundation for the questioning on this
2 document. Calls for speculation.

3 BY MR. BAUM:

4 Q. Okay. So I'd like you to turn to the
5 third page which says, "IMT" in bold at the
6 top.

7 A. Yes, I see that page.

8 Q. And it says, "IMT Role: Rapidly
9 respond to emergent global scientific and
10 technology challenges to Monsanto, our products
11 and the use of biotechnology in agriculture to
12 minimize any negative impacts to our business."

13 Did I read that correctly?

14 MR. LASKER: Object to form. Lacks
15 foundation.

16 A. Yeah, I see that on that page.

17 BY MR. BAUM:

18 Q. And under Deliverables, do you see the
19 fourth item down says, "Third-party support"?

20 MR. LASKER: Objection to form.

21 A. I -- I read that.

22 BY MR. BAUM:

23 Q. When you published Monsanto-sponsored
24 articles in CRT, were you aware that Monsanto's
25 strategy -- strategy was to use third-party

1 support for rapid response to emergent global
2 scientific and technology challenges?

3 MR. LASKER: Objection to the form.
4 Lacks foundation.

5 A. I have -- I have no idea as to the
6 internal operations of Monsanto, and you're
7 asking me to make a speculation that I'm just
8 not prepared to do.

9 BY MR. BAUM:

10 Q. Have you heard of the term "freedom to
11 operate"?

12 MR. LASKER: Objection to form.

13 A. Ask the question again.

14 BY MR. BAUM:

15 Q. Have you heard of the term "freedom to
16 operate"?

17 A. I'm generally familiar with that term
18 from my experience in the world of business.

19 Q. What does it mean to you?

20 A. It -- it means that an organization --
21 well, let me -- let me back up.

22 I think I first became aware of that
23 term when I was involved in -- say, a student
24 in the executive program at the Anderson School
25 of Management, University of New Mexico in

1 1970s. As I understand freedom of operate --
2 freedom to operate is sort of a broad, blanket
3 term related to a -- a commercial entity's
4 activities, what it can do, what it should do.

5 Q. Within the confines of what regulatory
6 agencies want them to do or require them to do?

7 MR. LASKER: Objection to form.

8 A. I -- I don't understand your question
9 at all.

10 BY MR. BAUM:

11 Q. Does it include the concept of having
12 a freedom to operate within the -- under the
13 direction and rules and regulations of entities
14 like EPA or IPSA or any of those entities?

15 MR. LASKER: Objection to form.

16 A. Quite frankly, Mr. Baum, I don't
17 understand your question.

18 BY MR. BAUM:

19 Q. Do you understand freedom to operate
20 to be limited by the regulations that a company
21 is obligated to honor and follow?

22 MR. LASKER: Objection to form.

23 A. I'm -- I'm -- I'm -- quite frankly, I
24 don't follow the line of your questioning, and
25 you're asking me to offer speculation on

1 Monsanto Company's business operations I have
2 no knowledge of.

3 BY MR. BAUM:

4 Q. Well, I'm just asking of -- your
5 understanding of what freedom to operate means
6 in the context of businesses that you've been
7 familiar with and in your education and
8 training.

9 MR. LASKER: Objection to form.

10 A. Ask the question again concisely.

11 BY MR. BAUM:

12 Q. Does the term "freedom to operate"
13 include recognition of the regulations and
14 obligations that a company has with regard to
15 regulatory agencies?

16 MR. LASKER: Objection to form.

17 A. Yes. That would come under my general
18 interpretation of freedom to operate.

19 BY MR. BAUM:

20 Q. And at page 4 of this PowerPoint, it
21 says, "Issues management process."

22 Do you see that?

23 A. Yes.

24 Q. And it says to "Identify potential or
25 emergent" -- "or emergent issues that could

1 negatively impact FTO."

2 Do you see that?

3 MR. LASKER: Objection to form.

4 A. I -- I see that.

5 BY MR. BAUM:

6 Q. And it also -- at the third bullet
7 point, it says, "Engage and enroll independent
8 experts."

9 Do you see that?

10 A. I read that, yes.

11 MR. LASKER: For the -- for the court
12 reporter's benefit, I'll have a standing
13 objection to all questions in this document,
14 particularly as you're just reading words from
15 a page that he's never seen it before and
16 asking if you're reading it correctly.

17 We'll stipulate to the words being on
18 the page and presumably your ability to read
19 them correctly.

20 BY MR. BAUM:

21 Q. And you also see the second bullet
22 point says, "Leverage functional expertise and
23 external relationships to preempt issues or
24 reduce issues impacts."

25 Do you see that?

1 A. I read that, yes.

2 Q. Then let's go to the eighth page,
3 which is -- has, "Engagement by third-parties
4 lessons controversies."

5 Do you see that?

6 A. No. I'm not at that page yet. My
7 pages aren't numbered here, so I'm a little bit
8 handicapped.

9 Q. Oh, it's this page here.

10 A. Yes, I see that page.

11 Q. And it says, "Third-Parties, including
12 regulatory authorities, scientists and industry
13 groups are usually the best sources for
14 addressing alarmist claims."

15 Do you see that?

16 A. Yes, I see that.

17 Q. And the next one -- bullet point says
18 a "Monsanto engagement can be like pouring fuel
19 on a fire. It's just what biotech critics and
20 the media want."

21 Do you see that?

22 A. Yes, I see that.

23 Q. Do you know whether or not Monsanto
24 has a credibility problem?

25 MR. LASKER: Objection to form. Lacks

1 foundation.

2 A. I -- I have no -- you're -- you're
3 asking me to speculate on something I have not
4 really given any thought to.

5 BY MR. BAUM:

6 Q. You don't know whether or not Monsanto
7 has a reputation issue?

8 MR. LASKER: Same objection.

9 A. You're -- you're -- you're again
10 asking me to offer speculation on extremely
11 complex matters. I'm not prepared to do it.

12 BY MR. BAUM:

13 Q. Were you aware that Monsanto was using
14 CRT to publish Pro Glyphosate papers through
15 third-parties in order to avoid the effect of
16 Monsanto not being viewed as credible, i.e.,
17 the Monsanto engagement can be like pouring
18 fuel on a fire?

19 MR. LASKER: Objection to form. Lacks
20 foundation.

21 A. I'm not prepared to -- you -- your
22 question -- I can assure you that any
23 manuscript that was published on glyphosate in
24 Critical Reviews in Toxicology was handled in
25 exactly the same manner as every other

1 manuscript. It was given critical review.
2 Review comments helped inform the decision of
3 me as the editor as to whether to accept or
4 reject the manuscript or request revision, and
5 most importantly, to improve the quality of the
6 scientific manuscript.

7 Indeed, in the case of the five glypho
8 -- glyphosate papers, they were subjected to
9 extraordinary review by 27 external reviewers,
10 36 sets of review comments, and it was very
11 well-known that those manuscripts were
12 published -- were sponsored by the Monsanto
13 Company.

14 BY MR. BAUM:

15 Q. So just as an aside here, I appreciate
16 your answer, and you're trying to be complete,
17 but I -- I have a lot of questions in the
18 documents we're going to run through, and I'm
19 limited to seven hours. And I may have to make
20 a motion to extend the hours because some of
21 your answers to my questions are kind of long
22 and provide interesting information, but aren't
23 direct answers to my questions.

24 And they're -- you know, if you just
25 answer the question asked as it's provided to

1 you, if you understand it, we'll get through
2 this a lot faster.

3 Does that make sense?

4 A. I appreciate your viewpoint. If you
5 do have documents to provide me, I'd appreciate
6 your providing them to me, and I'd take a brief
7 recess, review them. This document I've never
8 seen before.

9 Q. Okay.

10 A. Any comments I offer are -- would be
11 highly speculative.

12 Q. Okay. So my question is --

13 MR. LASKER: And for the record -- for
14 the record -- let me just make my comment on
15 the record. With respect to the time of this
16 deposition, you've just shown the witness a
17 document that he testified he's never seen
18 before, and you spent time reading words from
19 the page that he's never seen before and asking
20 him questions about issues that he has made
21 clear he has no knowledge of.

22 To the extent you want to use your
23 time that way, that, of course, is your
24 prerogative, but we will oppose any requests to
25 extend the deposition given your choice to

1 spend time on things that this -- he clearly
2 has no ability to answer and that he's told you
3 repeatedly that he has no ability to answer.

4 BY MR. BAUM:

5 Q. Okay. So the question I asked you --
6 and it's just a yes or no question -- is, were
7 you aware that Monsanto was using CRT to
8 publish Pro Glyphosate papers through
9 third-parties in order to avoid the effect of
10 Monsanto not being viewed as credible, i.e.,
11 Monsanto's engagement can be like pouring fuel
12 on a fire?

13 MR. LASKER: Objection to form.

14 BY MR. BAUM:

15 Q. Were you aware of that or not?

16 MR. LASKER: Objection to form. Lacks
17 foundation. The attorney is misstating the
18 document.

19 A. I recognize that's a statement you
20 have read. I do not have the ability to offer
21 you a response to that. You've expressed your
22 opinion. I'm not in a position to agree or
23 disagree with that statement that's derived
24 from a document I've never seen before today.

25

1 BY MR. BAUM:

2 Q. Okay. Let's move on to Exhibit 8.
3 Let's staple that.

4 A. Was this entered into the record?

5 Q. Yeah, and that piece of paper behind
6 it there. That's computer lingo for showing
7 how it came out of the database with a Bates
8 number.

9 Do you see that Bates number there?

10 MR. MCHENRY: Exhibit 7?

11 MR. BAUM: 8.

12 (Exhibit McClellan 8, Review on
13 Genotoxicity Studies of Glyphosate and
14 Glyphosate-based Formulations, marked for
15 identification.)

16 BY MR. BAUM:

17 Q. So I'm handing you what we're marking
18 as Exhibit 8, an article that was produced in
19 Critical Reviews in Toxicology entitled,
20 "Review of genotoxicity studies of glyphosate
21 and glyphosate-based formulations," by Larry
22 Kier and David Kirkland.

23 Do you see that?

24 A. Yes, I do.

25 Q. Do you recognize this publication?

1 A. Yes, I do.

2 Q. Were you the editor of CRT at the time
3 the manuscript for this publication underwent
4 peer review and was ultimately published?

5 A. Yes.

6 Q. Please turn to the -- to the
7 acknowledgments.

8 MR. THOMPSON: Do you want to give us
9 a page number?

10 MR. BAUM: It's like the -- it's Bates
11 ending number 1690. It starts on the bottom
12 right column.

13 MR. THOMPSON: Okay.

14 MR. BAUM: The Bates number for the
15 document, by the way, is MONGLY07671663.

16 BY MR. BAUM:

17 Q. Okay. And looking at the
18 acknowledgments, have you found it there?

19 A. Yes, I see that.

20 Q. Do you see the reference to Monsanto's
21 Dr. David Saltmiras and other members of the
22 Glyphosate Task Force?

23 A. Yes, I do.

24 Q. And as far as you knew at the time,
25 the extent of Dr. Saltmiras and the Glyphosate

1 Task Force members was providing the authors
2 with regulatory studies and thoughtful review
3 plus Saltmiras providing coordination with the
4 various Glyphosate Task Force members, right?

5 MR. LASKER: Objection to form. You
6 have been --

7 A. Yes.

8 THE COURT REPORTER: One at a time,
9 please, sir.

10 MR. LASKER: Objection -- objection to
11 form. I don't think you read the e-mail
12 correctly.

13 BY MR. BAUM:

14 Q. And Drs. Kier and Kirkland were paid
15 consultants for Monsanto and the Glyphosate
16 Task Force, right?

17 A. That's what is stated, and that was my
18 understanding.

19 Q. Were you under the impression that
20 Drs. Kier and Kirkland had sole responsibility
21 for the writing and content of this paper?

22 A. That's -- the authors have stated the
23 authors had sole responsibility for the writing
24 content of the paper, and the interpretations,
25 opinions expressed in the paper and those of

1 the -- the authors may not necessarily be those
2 of -- that is what they testified to. And
3 earlier they have stated in the acknowledgments
4 a number of individuals who appeared to have
5 reviewed the document.

6 Q. But that sentence regarding the sole
7 responsibility for the writing and content of
8 the paper and the declarations of interest
9 section means that the paper was not
10 ghostwritten, right?

11 MR. LASKER: Objection to form.

12 A. I'm -- please provide me your
13 definition of ghostwriting.

14 BY MR. BAUM:

15 Q. Having a content written by someone
16 else other than the noted authors.

17 MR. LASKER: Objection to form.

18 A. The authors have testified here in
19 writing that they had the sole responsibility
20 for writing the content of the paper, and the
21 interpretations and opinions expressed are
22 those of the authors.

23 BY MR. BAUM:

24 Q. Did you know that Monsanto's David
25 Saltmiras contributed to this manuscript as

1 well?

2 MR. LASKER: Objection to form.

3 A. The acknowledgments section clearly
4 states that there was a -- a role of
5 Dr. Saltmiras in terms of the preparation of
6 the paper.

7 BY MR. BAUM:

8 Q. Does it indicate that he wrote
9 sections of the paper?

10 A. I can only read what is here, and that
11 is -- what is stated is that there was
12 thoughtful review. There's no -- no further
13 commentary is -- is shown there.

14 Q. It does not say he wrote sections of
15 the paper, correct?

16 MR. LASKER: Objection to form.

17 A. That's not -- not revealed there if
18 that's the case.

19 BY MR. BAUM:

20 Q. Did you approve the declaration of
21 interest when you accepted this paper for
22 publication?

23 A. Yes, I did. Let me relate that the
24 acknowledgments and declaration of interest
25 sections of the paper are a -- a continuum of

1 the text of the paper, and they are the
2 responsibility of the authors of the paper
3 to -- to prepare.

4 In my role as editor in chief, I
5 frequently find it necessary to admonish
6 authors to provide more extensive
7 acknowledgments and declaration of interest
8 than they're used to providing for other
9 journals. Many of those journals essentially
10 have very limited information on -- on these
11 topics.

12 Q. Are you --

13 A. I consistently requested that the
14 authors provide information that is as complete
15 and accurate as possible.

16 Q. Are you aware that the acknowledgment
17 and declaration of interest for this paper are
18 false relative to Dr. Saltmiras's contributions
19 to the Kier and Kirkland 2013 paper published
20 in CRT?

21 MR. LASKER: Objection to form. Lacks
22 foundation.

23 A. I'm not aware of who's made the
24 accusation of something being false or
25 incomplete. I'm not aware of that.

1 BY MR. BAUM:

2 Q. Are you aware -- I'm just asking you
3 if you are aware that it's false.

4 MR. LASKER: Objection.

5 BY MR. BAUM:

6 Q. As far as you know, you think it's
7 true?

8 MR. LASKER: Objection to form.

9 A. This is the acknowledgments and
10 declaration of interest provided by the
11 authors, and as editor in chief, I made the
12 assumption that these were complete and
13 accurate statements.

14 BY MR. BAUM:

15 Q. In your present state of mind, do you
16 know whether or not that -- the declaration of
17 interest and the acknowledgment for this paper
18 are accurate?

19 A. To the best of my knowledge, I have
20 no -- I have no knowledge that these statements
21 are not accurate.

22 Q. Okay. So let's go to Exhibit 9 --

23 (Exhibit McClellan 9, E-mail string
24 Bates numbered MONGLY02145917 through
25 MONGLY02145930, marked for identification.)

1 BY MR. BAUM:

2 Q. -- which is a series of e-mails in the
3 time frame of July 19, 2012 through it --
4 through July 12, 2012. The Bates number for
5 this series starts -- is -- starts at
6 MONGLY02145917.

7 Have you seen this document before?

8 A. Please allow me time to read it.

9 Q. I'm actually going to walk you through
10 a few pages and show particular sections to
11 you, and we'll read those in particular.

12 A. If -- if you'd like, I'm a strong
13 believer in context, and so I'd like the
14 opportunity to read the document before you've
15 taken me to a sentence. I appreciate your
16 willingness to do that.

17 MR. LASKER: Also, let me object to
18 the record with respect to this document and,
19 in particular, only in response to the question
20 of putting things in context because this is
21 obviously one set of e-mails that plaintiffs'
22 counsel has put together to show the witness
23 and not the full record of communications.

24 BY MR. BAUM:

25 Q. It might be helpful if you start from

1 the back and go forward because it starts --

2 A. Thank you. That would be very
3 helpful.

4 Q. The page you're looking at there, the
5 page 13, where -- where David Kirkland is
6 writing to Monsanto's David Saltmiras on July
7 12th, do you see that?

8 A. Right.

9 Q. It says what his daily rate is.
10 "Daily rate is equivalent to eight hours,
11 namely, GBP 14,000 per day"?

12 A. Right.

13 Q. "I estimate a maximum of ten days
14 (i.e., GBP 14,000), but unless I have to delve
15 very deeply into a lot of the reports and
16 papers that Larry includes, it should be
17 less"...

18 Do you see that?

19 MR. LASKER: Objection to form. Lacks
20 foundation. You still haven't asked the
21 witness whether he's -- or, gotten an answer at
22 least to the question whether the witness has
23 ever seen this document before.

24 A. Yes, I've reviewed the document.

25

1 BY MR. BAUM:

2 Q. Okay. So looking at the -- you saw
3 the reference on the page Bates ending 29 --

4 A. Which -- which page are we talking --

5 Q. It's the next to the last page. And
6 there's an -- an e-mail from David Kirkland --

7 A. Is it 928?

8 Q. 929, the very --

9 A. Okay. 929.

10 Q. Ends 929.

11 A. I see that.

12 Q. And there's an e-mail dated July 12th
13 from David Kirkland to David Saltmiras.

14 Do you see that?

15 A. Yes, I do.

16 Q. And he states what his daily rate is
17 in British pounds essentially?

18 A. Yes.

19 Q. And then, if you --

20 MR. LASKER: Let me just have a
21 standing objection to all questions on this
22 document. Lacks foundation.

23 Again, you still have not asked the
24 witness whether he's ever seen the document
25 before, and without that foundation, any

1 questions and answers would be speculative and
2 not admissible.

3 BY MR. BAUM:

4 Q. And then, moving over to the next page
5 that ends in Bates ending 928, it says "We
6 (Monsanto) have a signed master contract with
7 David Kirkland."

8 Do you see that?

9 A. Yes, I do.

10 Q. And "This will enable him to coauthor
11 the genotoxicity review paper with Larry Kier
12 as well as engaging him on any other projects
13 which may come up. It may be necessary to have
14 an EU-based expert in genotoxicity on hand if
15 issues arise during the regulatory review."

16 Do you see that?

17 A. Yes, I see that, the document.

18 Q. David Kirkland is not actually an
19 employee of Monsanto; is that correct, as far
20 as you know?

21 MR. LASKER: Objection to form.

22 A. I -- I have no knowledge of what it
23 says there. I -- I can read on the one page
24 that he has a signed master contract.

25

1 BY MR. BAUM:

2 Q. Is he a third party to Monsanto?

3 MR. LASKER: Objection to form.

4 A. I'm -- I'm not certain how you'd
5 define third party.

6 BY MR. BAUM:

7 Q. Someone that's not an employee of
8 Monsanto.

9 MR. LASKER: Objection to form. Asked
10 and answered.

11 A. I -- I -- all I can do is read what I
12 have here, and it says that, "We (Monsanto)
13 have a signed a master contract with David
14 Kirkland." It sounds like he's a consultant to
15 the company.

16 BY MR. BAUM:

17 Q. As an editor of Critical Reviews in
18 Toxicology, does it concern you that Monsanto's
19 master contract with David Kirkland enabled him
20 to become a coauthor on a paper published in
21 your journal?

22 MR. LASKER: Objection. Lacks
23 foundation.

24 A. The fact that he has a master contract
25 with Monsanto doesn't have any bearing on the

1 issue of his authorship. The question of his
2 authorship is did he contribute in a meaningful
3 way to the scientific content of the paper and
4 the analysis and the opinions presented.

5 BY MR. BAUM:

6 Q. If you go to the Bates number -- the
7 page with the Bates number ending 926.

8 A. I see that.

9 Q. And the second paragraph, it says,
10 "David Kirkland's expertise comes at a premium.
11 I believe Larry Kier significantly undercharges
12 for his services, but his combined cost
13 estimate for project 1 and project 2 is
14 \$22,195. David Kirkland believes his efforts
15 will be less than ten days at 1400 pounds a day
16 (equivalent to \$21,780 with the current
17 exchange rate), so we are effectively doubling
18 the cost of the combined projects, but reaping
19 significant value" credibility from -- "slash
20 credibility from David Kirkland's involvement."

21 MR. LASKER: Objection to form.

22 BY MR. BAUM:

23 Q. "Given the growing number of
24 questionable genotoxicity publications, in my
25 mind, this is worth the addition" --

1 "additional cost."

2 Do you see that?

3 A. I do.

4 MR. LASKER: Objection to form. These
5 are improper questions. The attorney is just
6 reading the document that the witness has --
7 has testified or has not been asked if he's
8 ever seen before.

9 BY MR. BAUM:

10 Q. Does this paragraph make it clear that
11 David Kirkland joins the project to add
12 significant value with credibility?

13 MR. LASKER: Objection to form. Lacks
14 foundation.

15 A. I'm -- I'm -- I'm not certain where
16 you're going with this -- what it is. David
17 Kirkland is a -- a well-recognized
18 genotoxicologist. I've known of his work for
19 many years. He was an employee of Covance, a
20 well-respected individual.

21 I -- I -- as an editor, I can assure
22 you -- I don't want to get cost -- caught in
23 the weeds of the internal business affairs of
24 their company, whether they got good value for
25 their money or not by engaging a particular

1 consultant.

2 As an editor, I look at this, and I
3 see that David Kirkland is a coauthor with
4 Larry Kier. I think he -- I have to assume
5 that he put scientific effort into production
6 of the paper since he is listed as a coauthor,
7 and that is all that I'm concerned about as
8 a -- as an editor.

9 I'm -- I'm not concerned with the
10 behind the scenes, who paid who. I think it's
11 clearly disclosed in terms of his affiliation
12 and that he was compensated.

13 BY MR. BAUM:

14 Q. Does it appear to you that David
15 Kirkland was added to add significant value and
16 credibility to the paper?

17 MR. LASKER: Objection. Lacks
18 foundation.

19 A. I -- I've read through the document --
20 I've read through the documentation you've
21 provided. It's a lengthy series of e-mails of
22 a bureaucratic nature internal to the company.
23 The decision was made -- apparently made to add
24 Dr. Kirkland as a coauthor in the preparation
25 of the paper and the submission. I think he

1 does add credibility to the paper.

2 BY MR. BAUM:

3 Q. Okay. Let's go to the next exhibit.

4 (Exhibit McClellan 10, String of
5 e-mails Bates numbered KIERPROD00023872 through
6 KIERPROD00023877, marked for identification.)

7 MR. BAUM: This is Bates number
8 KIERPROD0023872. Mark this as Exhibit 10. And
9 this is a string of e-mails from the Larry Kier
10 production dated August 28 through August 30,
11 2012 regarding the drafts of glyphosate
12 manuscript, tables and figures.

13 BY MR. BAUM:

14 Q. I'd like you to take a look at page 1.

15 A. Please give me the opportunity to
16 quickly scan the document.

17 Q. Just for your edification, I'm only
18 going to ask you about the one e-mail on the
19 front, the very front.

20 A. Okay.

21 Q. And the first page there is Bates
22 ending number 872.

23 A. Yes.

24 Q. There's an e-mail from Larry Kier to
25 David Saltmiras of Monsanto dated August 30,

1 2012.

2 Do you see that?

3 A. Yes. This is the -- from Larry Kier,
4 Thursday, August 30, 2012, 1:12 p.m. That's
5 right.

6 MR. LASKER: Objection to this line of
7 questioning. Lack of foundation. The witness
8 has not testified that he's ever seen the
9 document before.

10 BY MR. BAUM:

11 Q. And he says, "My main personal concern
12 is not letting Monsanto or the companies down."

13 Do you see that?

14 A. I see that.

15 Q. And then, "If we have a best"
16 estimate -- "a best time estimate for Roger
17 McClellan that you and the GTF TWG think is
18 reasonably solid, I can communicate that to him
19 and talk about a revised timeline. I think he
20 and I are on fairly good terms, and I think he
21 (or anyone) might get somewhat annoyed being
22 pressed for a timeline, getting feedback,
23 et cetera and then being presented with a
24 string of new delayed timelines."

25 Did I read that correctly?

1 A. Yes, you accurately read the --

2 Q. And Larry Kier is a consultant for
3 Monsanto, right?

4 A. Yes.

5 MR. LASKER: Objection to form.

6 BY MR. BAUM:

7 Q. Does it concern you that as a named
8 author on a manuscript being submitted to your
9 journal Dr. Kier says, "My main personal
10 concern is not letting Monsanto or the
11 companies down"?

12 MR. LASKER: Objection to form. Lacks
13 foundation. Lacks context.

14 A. I'm not at all concerned -- not at all
15 surprised by the statement. I've known
16 Dr. Larry Kier for a number of -- a number of
17 years. He's an extraordinarily thoughtful
18 individual. I think his statement there is
19 fully consisted with his personality. I would
20 suggest not reading too much into it.

21 BY MR. BAUM:

22 Q. Would you know if a paper such as this
23 one, the Kier and Kirkland paper that was
24 published in 2013 in the CRT, would you know if
25 that paper submitted for publication, the names

1 of Kier and Kirkland, was ghostwritten in whole
2 or in part by an employee of Monsanto?

3 MR. LASKER: Objection to form.

4 A. As the editor in chief, all I can go
5 on in terms of a manuscript is what is
6 submitted to me and the critical review I
7 provide, the input that provides to me to make
8 a decision on the acceptance, revision,
9 retraction or rejection and the use -- the
10 utility of the review comments to the authors.

11 I have no basis for making any
12 decisions beyond what the authors have provided
13 me in terms of the acknowledgments and
14 declaration of interest.

15 BY MR. BAUM:

16 Q. What would be your reaction to finding
17 out that some of this paper were written or
18 ghostwritten by Larry -- David Saltmiras?

19 MR. LASKER: Objection to form. Lacks
20 foundation.

21 A. I -- I -- you're asking me to
22 speculate on -- on matters that go well beyond
23 what we have here at hand. I have no -- no
24 knowledge as to the extent of the comments that
25 were offered by Saltmiras in terms of the

1 document as a reviewer or a potential author.

2 BY MR. BAUM:

3 Q. Do you recall asking Larry Kier and
4 David Kirkland for potential peer reviewers for
5 their article?

6 A. I -- I have no recollection of that.
7 I may well have.

8 Q. Is it your usual practice to ask
9 consultants to industry named as authors on
10 manuscripts submitted to you to make
11 suggestions for peer reviewers?

12 MR. LASKER: Objection to form.

13 A. You're -- you're offering a very
14 speculative question. I cannot respond to that
15 question. I will tell you that we select the
16 reviewers with careful consideration as to
17 their scientific expertise.

18 BY MR. BAUM:

19 Q. I'm going to hand you what we're going
20 to mark as Exhibit 11 --

21 (Exhibit McClellan 11, E-mail string
22 Bates numbered KIERPROD00023007 through
23 KIERPROD00023009, marked for identification.)

24 BY MR. BAUM:

25 Q. -- which is an e-mail string between

1 David Saltmiras, Larry Kier, Christian Strupp
2 and others dated May 10, 2012 to October 8,
3 2012, Re: Genotoxic Review Manuscript, and the
4 Bates number is Kier production 00023007.

5 And I'd like to direct your attention
6 in particular to the second page with the -- on
7 the e-mail between David Saltmiras and Andrew
8 Bond, et cetera.

9 MR. LASKER: And I'll object to
10 questions on this document as far as lack of
11 foundation unless counsel can establish that
12 the witness has ever seen this document before.

13 A. I've received Exhibit 11 and request
14 time to very quickly scan the document.

15 I -- I've finished my reading of the
16 document.

17 BY MR. BAUM:

18 Q. Good. So let's take a look at the
19 second page. And it's an e-mail between David
20 Saltmiras to Andrew Bond, et al., dated May 10,
21 2012, and -- and you'll see it says, "As you
22 complete your final reviews of the glyphosate
23 genetox review manuscript, please consider
24 suggestions for reviewers. Roger McClellan
25 (editor in chief at CRT) made a request for

1 suggestions from Larry Kier and David Kirkland.
2 Below is their combined list of possible
3 manuscript reviewers. Please let me know
4 whether you have any opinions or other
5 suggestions."

6 Did I read that correctly?

7 A. Yes, you did.

8 Q. Does that refresh your recollection as
9 to your possibly asking for peer reviewers from
10 Larry Kier and David Kirkland?

11 A. Yes. I think I earlier said that
12 that's a frequent practice to request
13 nominations. The final decision as to the
14 selection of reviewers is made by the editor in
15 chief.

16 Q. Does asking consultants to industry
17 named as authors on manuscripts submitted to
18 you to make suggestions for peer reviewers
19 strike you as a potential conflict of interest?

20 MR. LASKER: Objection to form.

21 A. The paramount consideration in the
22 selection of a reviewer for any manuscript is a
23 scientific expertise of the potential reviewer.
24 I always try to take into consideration whether
25 there may be other factors that would influence

1 the individual's ability to give a -- a useful
2 review.

3 I strongly resent the suggestion that
4 because an individual is a private consultant,
5 a consultant of private industry, somehow
6 disqualifies them as a scientific reviewer.

7 BY MR. BAUM:

8 Q. Well, do you think there is a
9 potential conflict of interest when a peer
10 reviewer is actually involved with the product
11 that the article is addressing?

12 A. You're asking a very simple question
13 that is very, very convoluted. I can't
14 offer -- you're asking me to offer speculation
15 on -- on generalities.

16 Q. So you don't consider it a conflict of
17 interest to have Glyphosate Task Force members
18 reviewing a paper involving glyphosate and its
19 genotoxicity?

20 MR. LASKER: Objection to form.

21 A. As I related before, what we have
22 before us are a set of nominations. I'm not
23 prepared today to indicate whether any -- if
24 any of these nominations were ultimately
25 selected by me to provide a review comment.

1 BY MR. BAUM:

2 Q. Well, would you ask Monsanto for their
3 advice as to who would evaluate -- who should
4 evaluate and peer review their own manuscripts
5 reporting on their own products?

6 MR. LASKER: Objection to form.

7 A. I gave Larry Kier, as the principal
8 author, the opportunity to provide nominations
9 in terms of reviewers. That's one set of
10 factors that I use as editor in chief in making
11 a decision as to who I will request review
12 comments from.

13 BY MR. BAUM:

14 Q. Okay. So my question is, would you
15 ask Monsanto for their advice as to who should
16 evaluate and peer review their own manuscripts
17 reporting on their own products?

18 Do you think that's a good idea?

19 A. If their individuals were authors,
20 they would be given an opportunity -- may be
21 given an opportunity. I want to emphasize
22 again the ultimate decision as to the selection
23 of reviewers is that of the editor in chief.

24 Q. Well, having a -- a company like
25 Monsanto or a member of the Glyphosate Task

1 Force review a Roundup-related product is kind
2 of like asking a fox for his advice to guard
3 the henhouse; isn't it?

4 MR. LASKER: Objection to form.

5 A. I appreciate your opinion.

6 BY MR. BAUM:

7 Q. Did you play a role in whether or not
8 David Saltmiras was named as an author on the
9 Kier and Kirkland 2013 publication in CRT?

10 A. I don't recall if that was the topic
11 of discussion between me and the senior author,
12 Dr. Larry Kier.

13 Q. Do you recall whether there was any
14 concern that a Monsanto employee -- employee
15 named as an author on the published Kier and
16 Kirkland article would jeopardize the
17 credibility of the information conveyed in the
18 article?

19 A. No. In fact, a -- a key issue in
20 terms of this manuscript is the material that
21 was reviewed, and you will see in the previous
22 correspondence that I emphasize the importance,
23 the breadth of that -- that information and
24 access to it.

25 There are -- are situations in which

1 having an employee of a company or a consultant
2 of a company such as Larry Kier as the author
3 enables access to information that is extremely
4 valuable to have in the public domain.

5 Q. But if they contribute any of the
6 language or the writing of the article, they
7 should be named as an author, correct?

8 MR. LASKER: Objection to form. Lacks
9 foundation. Incomplete hypothetical.

10 A. You -- you've offered your opinion.
11 As the editor in chief, I can assure you that
12 the issue of authorship on manuscripts becomes
13 an extremely complex matter, and I can give you
14 that view based on my having been a scientist
15 and a scientist manager for over 50 years.

16 Some of the most contentious
17 discussions that I have -- have had involved
18 those of authorship, and they go over a broad
19 scope of issues. I can assure you that it's
20 not a question of did an individual insert a
21 sentence or a paragraph. These are complex
22 matters in the scientific community, and
23 scientists like myself take them extremely
24 seriously.

25

1 BY MR. BAUM:

2 Q. I can tell you do. But I'm going to
3 be asking you questions about documents that
4 related to articles that ended up being
5 published in CRT, and so I just want to -- I --
6 I do recognize that you take an extraordinary
7 effort in your investigation on the Expert
8 Panel Supplement, and I just want to let you
9 know that I appreciate that.

10 A. Thank you.

11 Q. So moving on to the next exhibit,
12 which we'll mark as Exhibit 12, and it's --
13 MONGLY04086537 is the beginning Bates number
14 and is a series of e-mails between David
15 Saltmiras, Larry Kier and David Kirkland, I
16 believe. Yes.

17 (Exhibit McClellan 12, Document Bates
18 numbered MONGLY04086537, marked for
19 identification.)

20 A. Allow me a few minutes to review the
21 series of e-mails here.

22 BY MR. BAUM:

23 Q. And, again, it starts -- the sequence
24 starts in the back beginning with January 25th
25 to January 28, 2013, and the subject line is

1 regarding -- "Re: Adding Author."

2 A. Yes, I finished reading this.

3 Q. Okay. So if you go to the next to the
4 last page with Bates number ending 540.

5 MR. LASKER: I object for the record.
6 Lack of foundation. Counsel has not
7 established that the witness has ever seen this
8 document before or has any basis to testify
9 about any of the statements in the document.

10 BY MR. BAUM:

11 Q. Have you seen this document before?

12 A. No, I don't believe I have.

13 Q. Did you ever read any of the Monsanto
14 papers that were published a couple of years
15 ago?

16 A. I'm sorry?

17 Q. The Monsanto papers that were
18 published a couple of years ago?

19 A. The only one I recall reading there
20 was an e-mail from myself to Robert Ashley. I
21 purposely elected to not read those papers. It
22 looked like a voluminous file. I did not think
23 it appropriate to spend my time reviewing that.

24 Q. Okay. So --

25 MR. LASKER: With that, I have the

1 same objection to questioning on any documents
2 that the witness has not seen, which would
3 include all of the e-mails that counsel has
4 been providing the witness up to this point.

5 BY MR. BAUM:

6 Q. Okay. So on the page that ends Bates
7 number 540, do you see that?

8 A. Yes, I do.

9 Q. Do you see the e-mail at the bottom of
10 the page --

11 A. Yes.

12 Q. -- from Larry Kier to David Kirkland
13 dated January 25th, and it's cc'd to David
14 Saltmiras, and the subject is adding author?

15 Do you see that?

16 A. Yes, I do.

17 Q. And it says, "David, I would like to
18 suggest adding David Saltmiras as an author to
19 the review publication. I think he is very
20 deserving of this recognition, and he was a
21 coauthor on the original literature review
22 manuscript which was a predecessor to this
23 publication. I am checking on whether this is
24 logistically possible, but also want to get
25 your concurrence before proceeding."

1 Do you see that?

2 A. I do.

3 Q. And then, in the next e-mail up, David
4 Kirkland responds, "Larry, As much as I agree
5 with recognizing the effort David S. has put
6 in, I do not think you can start adding an
7 author at this stage. Apart from anything
8 else, it means the authors would no longer be
9 independent. As a journal editor myself, I
10 would not accept this. Sorry, but I don't
11 think it is appropriate from the journal
12 acceptability point of view."

13 Do you see that?

14 A. I see that.

15 Q. So David Kirkland is suggesting that
16 they would lose the status of being independent
17 if they added David Saltmiras --

18 MR. LASKER: Objection.

19 BY MR. BAUM:

20 Q. -- to the authorship, correct?

21 MR. LASKER: Sorry. Objection. Lacks
22 foundation. Calls for speculation.

23 A. No. What I have before me is a series
24 of e-mails. Quite frankly, very typical of
25 what occurs very frequently in the scientific

1 community as to the authorship of my -- of a
2 paper.

3 My opinion, issues of authorship are
4 best discussed at the beginning of the writing
5 process. They should be reviewed again at the
6 conclusion of the writing in the review
7 process, and they became extremely difficult to
8 adjudicate after a manuscript has been
9 submitted.

10 There's nothing unusual here in terms
11 of what -- what went on, and ultimately the
12 authors have the responsibility to determine
13 the authorship of the paper consistent with
14 general scientific publication norms.

15 BY MR. BAUM:

16 Q. Okay. So moving on to the next page
17 of that e-mail, which is Bates ending 539, in
18 the middle of the e-mail at the bottom of the
19 page, it says, "In looking back over the paper
20 with the critical inclusion of literature
21 review and human exposure assessment, I think
22 my contributions on this now two-year project
23 may be considered deserving of recognition and
24 coauthorship. I was prepared to let this
25 slide, but in another candid discussion with

1 senior Monsanto management (several tiers
2 higher than me), I was strongly encouraged to
3 author some peer reviewed" publication --
4 "publications since this is the fifth such
5 glyphosate-related manuscript I have been
6 involved with over the past few years without
7 coauthorship. However, if either you disagree
8 or Roger McClellan is not open to the idea, I
9 will gladly stand by your decision. Regards,
10 David."

11 Do you see that?

12 MR. LASKER: Objection. Lacks
13 completion. Counsel failed to read the first
14 sentence of this e-mail -- the first three
15 sentences for completion, "I do appreciate the
16 candid discussion. I in no way want to rock
17 the boat and be the source of contention. The
18 basis for removing me as an author last year
19 was the inclusion of other GTF member company
20 study reports which required third-party expert
21 review and the need to engage a second
22 independent expert."

23 MR. BAUM: Okay. So thanks, Eric, for
24 using some of my time here.

25 BY MR. BAUM:

1 Q. So since David Saltmiras wrote that
2 e-mail -- in this e-mail that he is -- this is
3 the fifth such glyphosate-related manuscript he
4 has been involved with over the past few years
5 without coauthorship, would you agree he is a
6 ghostwriter by his own admission?

7 MR. LASKER: Objection to form. Lacks
8 foundation.

9 A. You -- you're asking me for a highly
10 speculative comment reaction based on -- on
11 this. What I see is a -- a situation in which
12 there are multiple participants in the
13 production of a manuscript, and there's ongoing
14 dialogue between these individuals as to what
15 the final authorship should be.

16 BY MR. BAUM:

17 Q. Have you seen any documents in which
18 David Saltmiras explicitly says he ghostwrote
19 any papers for Monsanto?

20 A. I'm not aware of seeing such
21 documentation.

22 Q. Are there any established guidelines
23 or codes of ethics for editors of scientific or
24 medical journals for genuine authorship and a
25 prohibition of ghostwriting?

1 MR. LASKER: Objection to form.

2 A. You're asking me to comment on
3 ghostwriting. My familiarity with ghostwriting
4 comes largely from the public media. It's not
5 a term that I'm familiar with in terms of the
6 leadership I provided to two scientific
7 organizations over a period of some 35 years in
8 my 50 years of scientific involvement.

9 I have reviewed, participated in the
10 management of the writing of literally hundreds
11 of manuscripts for a wide variety of
12 organizations, and the question of how those
13 are assembled, each one in a sense is unique,
14 and ultimately the responsibility for assigning
15 authorship is that of the authors on the paper.

16 BY MR. BAUM:

17 Q. As the editor in chief of CRT, do you
18 follow any guidelines or codes of ethics for
19 authorship?

20 A. I -- I am aware of the general
21 guidelines provided by the Council on
22 Publication Ethics, and I'm certainly familiar
23 as a scientist for the general ethics of the
24 field.

25 Q. Does Critical Reviews in Toxicology

1 follow the International Committee of Medical
2 Journal Editors for defining the roles of
3 authors and contributors?

4 A. I'm -- you'll have to give me the
5 specific reference and citation. I'm generally
6 familiar with the organization and the
7 author -- the offering of -- of comments.

8 Q. But you're also familiar with the COPE
9 guidelines too?

10 A. I am.

11 Q. Okay. Is making a substantial
12 contribution to the drafting of a manuscript
13 one of the guidelines for authorship?

14 MR. LASKER: Objection to form.

15 A. I believe it may be one of the factors
16 that involves a large amount of judgment as to
17 substantial.

18 BY MR. BAUM:

19 Q. Okay. Let's look at --

20 A. Let me -- before we leave this, let me
21 call attention to the paper --

22 Q. Just --

23 A. -- senior author by Brusick.

24 Q. Again, I'd like to be informed by you
25 as much as possible.

1 A. Thank you.

2 Q. We can talk, you know, during breaks
3 and stuff --

4 A. Sure.

5 Q. -- but on the record, I -- I need you
6 to answer my questions because I have a limited
7 -- limited amount of time.

8 A. With all due respect, I ask that you
9 ask your questions in as direct line of
10 questioning as possible --

11 Q. I'm doing the best I can.

12 A. -- avoiding speculation, avoiding
13 leading questions.

14 Q. Okay. So let's take a look at page 2
15 of this string of e-mails. And there's an
16 e-mail from a Larry Kier dated January 26, 2013
17 to David Saltmiras regarding adding author.

18 Do you see that?

19 A. I see that.

20 Q. And it says, "David and David, Roger
21 McClellan admittedly wasn't too happy, but I
22 definitely think he would consider this and
23 even coached me on how to approach him with a
24 communication."

25 Do you see that?

1 A. I do.

2 Q. Do you recall having coached Larry
3 Kier with regard to how to approach the
4 authorship of David Saltmiras's participation?

5 A. I take great pride in my activities
6 over more than 50 years in the field of
7 scientific publication. I've had the
8 opportunity to coach thousands of individuals.
9 When he's using the word "coach," I think he's
10 using that in the context of my possibly
11 discussing the addition of an author.

12 The addition of an author after a
13 manuscript has been submitted is a very serious
14 matter, and it is one in which I would like to
15 have clear communication and agreement from the
16 authors as to the basis for the change in
17 authorship, and I'm quite confident, when Dr.
18 Kier used the word "coached," that I -- he is
19 referring to what I told him, This isn't a
20 matter of a telephone call. We want to make a
21 change. You have to provide a written
22 communication with a basis for the change.

23 Q. Okay. And then the next paragraph
24 says, "I acknowledge that this should have been
25 done earlier, and I believe that David K.'s

1 concerns definitely have merit. However, even
2 at this late date, I do support David S. being
3 added as a coauthor. David S. was a coauthor
4 on the unpublished literature review manuscript
5 which was the first phase of this project which
6 I think qualifies him as a valid contributor to
7 the manuscript."

8 Do you see that?

9 A. I see that.

10 Q. So here, Dr. Kier is recommending that
11 David S. be added as an author, correct?

12 A. What I'm reading is what I'm calling
13 internal communication amongst the authors.
14 It's addressed to David and David, and they're
15 trying to reach an agreement on -- on a
16 contentious matter as to a request to come
17 forward.

18 That's borne out in the next
19 paragraph. "I believe that a request to Roger
20 McClellan should only be made if supported by
21 both authors. After that, it would be up to
22 Roger McClellan to determine if that would be
23 permissible."

24 Q. Did you have an objection to
25 Saltmiras's coauthorship on the Kier and

1 Kirkland manuscript that --

2 A. I don't believe that I ever received a
3 request for a change in the authorship that
4 would have included Dr. Saltmiras.

5 Q. Given what you've reviewed in these
6 e-mails and Dr. Kier's assessment, Monsanto's
7 Dr. Saltmiras was actually an unnamed coauthor
8 to the Kier and Kirkland paper, right?

9 MR. LASKER: Objection to form. Lacks
10 foundation.

11 A. The response to your question
12 concerning the manuscript review of
13 genotoxicity studies of glyphosate and
14 glyphosate-based formulation, Larry D. Kier,
15 David J. Kirkland as the authors, the issue at
16 hand is whether the individual, David
17 Saltmiras, which they generously acknowledge,
18 identify in terms of the acknowledgements,
19 should or should not have been included as an
20 author.

21 In my opinion, that is a matter that
22 the authors should have considered, and it was
23 their position if they desired to make a change
24 to make a formal request to me with a basis for
25 that. To the best of my knowledge, I never

1 received such a request.

2 BY MR. BAUM:

3 Q. So my question was, is -- was he an
4 unnamed coauthor?

5 MR. LASKER: Objection to form.

6 BY MR. BAUM:

7 Q. That's just a yes or a no.

8 MR. LASKER: Objection to form.

9 A. No.

10 BY MR. BAUM:

11 Q. Okay.

12 A. He was a reviewer of the manuscript.

13 Q. Okay.

14 A. And if you review a manuscript, you
15 may provide substantial comments, and there may
16 be a train of -- of manuscripts in which
17 individuals are involved. And hopefully, the
18 responsibility for the authorship is that of
19 the authors.

20 Q. And the authors thought by omitting
21 Saltmiras it would improve the credibility of
22 the paper by just having Kier and Kirkland
23 names, right?

24 MR. LASKER: I'll object to form. You
25 can answer.

1 A. I can't offer an opinion on your
2 opinion.

3 BY MR. BAUM:

4 Q. Well, that's what these e-mails
5 suggest; isn't it?

6 MR. LASKER: Objection to form. Lacks
7 foundation.

8 A. I appreciate that's the conclusion
9 you've drawn. That is not the conclusion I
10 drew. I stated very clearly, the decision as
11 to the authorship of the paper was the
12 responsibility of the authors as was the
13 responsibility for preparing a complete and
14 accurate acknowledgments and declaration of
15 interest.

16 MR. BAUM: Okay. Let's go off the
17 record for another break.

18 THE VIDEOGRAPHER: With approval of
19 counsel, going off the record. The time is
20 approximately 11:26 a.m. This marks the end of
21 recording media 2.

22 (Whereupon, a brief recess is taken
23 from 11:26 a.m. to 11:37 a.m.)

24 THE VIDEOGRAPHER: With the approval
25 of counsel, back on the record. The time is

1 approximately 11:37 a.m. This marks the
2 recording of recording media 3.

3 (Exhibit McClellan 13, E-mail string
4 Bates numbered KIERPROD00002850 through
5 KIERPROD00002852, marked for identification.)

6 BY MR. BAUM:

7 Q. So I'm handing you what's marked as
8 Exhibit 13. Kier production 00002850 is the
9 beginning Bates number, and it's an e-mail
10 string between you, Bridget Sheppard, Larry
11 Kier dated January 24th through January 28,
12 2013 regarding Critical Reviews in Toxicology
13 decision on manuscript, and it gives an
14 identification number for it.

15 Do you recall that document?

16 A. Let me -- let me finish going over it.

17 MR. LASKER: Objection to form.

18 A. Yes. I'm familiar with this document,
19 the one that I authored.

20 BY MR. BAUM:

21 Q. You also received several of these on
22 this chain too, correct? You were cc'd or --

23 A. Yeah. I think this -- this chain
24 starts with my decision letter on the
25 manuscript.

1 Q. Does it appear to have been produced
2 in the ordinary business of your operation and
3 activities as the chief editor for Critical
4 Reviews in Toxicology?

5 MR. LASKER: Objection to form. This
6 is part of Dr. Kier's -- Dr. Kier's production.

7 A. The decision letter is a letter that
8 was generated by me out of Manuscript
9 Central/Scholar 1, the manuscript management
10 system provided by Taylor & Francis.

11 BY MR. BAUM:

12 Q. That's the Kier and Kirkland article
13 we've been talking about?

14 A. Yes.

15 Q. And Bridget Sheppard is the managing
16 editor for Informa Healthcare; is that right?

17 A. No.

18 Q. What -- what is her role?

19 A. I'd have to think back in time in
20 2013. Bridget -- Bridget Sheppard may have
21 been the production editor. I -- I -- I cannot
22 say definitively without -- at this point in
23 time. We had a number of people involved at
24 that point in time. As best I can recall,
25 Critical Reviews in Toxicology was being

1 handled under a -- an entity called Informa
2 Healthcare.

3 Q. Is Informa Healthcare related to
4 Taylor & Francis?

5 A. It's my understanding that the parent
6 umbrella organization is Informa PLC. Taylor &
7 Francis is a long-standing publishing
8 trademark, if you will.

9 Q. And CRT is -- has a relationship with
10 Taylor & Francis as well?

11 A. It is -- it is published under that
12 Informa umbrella, and as I said, there was a
13 period of time that Critical Reviews in
14 Toxicology was handled along with a small set
15 of other journals by an entity called Informa
16 Healthcare.

17 They shared some of the same
18 management tools, and somewhere in about this
19 time period -- I think it was 2015 -- Critical
20 Reviews in Toxicology -- the entity called
21 Informa Healthcare was discontinued, and
22 Critical Reviews in Toxicology was moved into
23 the main Taylor & Francis portfolio, which is
24 some 2,000 plus scientific journals.

25 Q. If you turn to the third page with

1 Bates ending 2852, it's a --

2 A. Yes.

3 Q. -- an -- an e-mail between --

4 A. Yes.

5 Q. -- from you --

6 A. Yes.

7 Q. -- to Larry Kier and Mildred Morgan of
8 Hargray.com?

9 A. Yes.

10 Q. Who is Mildred Morgan?

11 A. She is my technical assistant.

12 Q. And what is Hargray?

13 A. That happens to be the internet
14 provider where she lives and works in South
15 Carolina.

16 Q. And there's, "Dear Dr. Kier:
17 Reference: Review of Genotoxicity Studies of
18 Glyphosate and Glyphosate-Based Formulations."

19 Do you see that?

20 A. I see that, yeah.

21 Q. And in the first paragraph, you go on
22 to inform them that you've reviewed their --
23 you received their revised manuscript, and as a
24 result of their careful attention given to the
25 reviewer's comments, in your opinion, that the

1 revised manuscript is improved and will be
2 viewed as the definitive review on the
3 genotoxicity of the -- the important compound.

4 Does this refresh your memory that you
5 made the decision to accept the 2013 Kier and
6 Kirkland article for publication?

7 A. Yes.

8 Q. And then it goes on to state, "During
9 the production process, you will be given the
10 opportunity to purchase open access for your
11 paper. I urge you to take advantage of this
12 opportunity. With open access available you
13 too will be able to call the paper to the
14 attention of your colleagues and other
15 interested parties, and they can download the
16 article at no cost to them. The availability
17 of open access typically increases readership
18 and future reference to the paper."

19 Did I read that correctly?

20 A. Yes, you did, including the typo.

21 Q. Yeah. And --

22 A. That was my hunt and peck.

23 Q. We'll forgive you.

24 Do you know who paid for the open
25 access of the Kier and Kirkland article?

1 A. I have -- I have no -- no knowledge of
2 that. Those business activities are all
3 conducted by Taylor & Francis.

4 Q. You are aware that it is open access,
5 though, correct?

6 A. I don't know if they did purchase it
7 or not. I -- I think they did. I strongly
8 encouraged them to purchase the open access.

9 Q. When you wrote the -- this paragraph
10 about getting the open access, did you realize
11 that Monsanto would use this paper and numerous
12 communications to the public to defend
13 glyphosate and Roundup?

14 A. I have no knowledge of how a paper
15 will be used once it's published. I found this
16 paper to be a scientifically credible paper and
17 was pleased to have it published in the
18 journal, and I was certainly desirous of seeing
19 it as widely read as -- as possible.

20 Q. Do you consider yourself sort of a
21 product champion for Monsanto's glyphosate?

22 MR. LASKER: Objection to form. Asked
23 and answered. Lacks foundation.

24 A. What do you view as a -- I -- I -- I
25 don't know what a product champion is.

1 BY MR. BAUM:

2 Q. Well, let me revise that then.

3 Do you consider yourself to be a
4 person who promotes the safety of Monsanto's
5 Roundup?

6 A. As the editor in chief of Critical
7 Reviews in Toxicology, I actively solicit
8 manuscripts on important scientific topics,
9 including widely-used chemicals such as
10 glyphosate. I am eager to see that scientific
11 information disseminated to the widest possible
12 audience and used to inform decisions, whether
13 those decisions are made by private entities,
14 national or international entities.

15 Q. Are you neutral as to whether or not
16 Roundup is safe for people to be exposed to on
17 their skin or inhalation?

18 MR. LASKER: Objection to form.

19 A. You're asking me to offer you an
20 expert opinion. I'm here as a fact witness
21 today with regard to the publication of the
22 paper in Critical Reviews in Toxicology. Any
23 decision with regard to a matter of safety of
24 the material has to be made in a contextual
25 setting. That includes the particular time

1 period, what the guidance is with regard to --
2 to safety, whether it's in -- within the
3 guidelines of a national organization or an
4 international organization or whether we're
5 looking at a population or an individual.

6 It's very important to think of that
7 in a time period because the science is
8 constantly changing. I have not had the
9 opportunity to review the current literature
10 and form an opinion with regard to safety of
11 glyphosate as used in the product, Roundup.

12 BY MR. BAUM:

13 Q. Would you say that, with respect to
14 Roundup safety, your -- you don't have a bias
15 one way or the other, that you're neutral, and
16 you let the science say what it says?

17 A. I would urge that all of the
18 scientific information be used to make a
19 contextual decision with regard to the safety
20 of the material.

21 Q. Let's go to the next exhibit.

22 (Whereupon, a brief discussion is held
23 off the record.)

24 (Exhibit McClellan 14, Monsanto
25 Manuscript Clearance Form Global Regulatory,

1 marked for identification.)

2 BY MR. BAUM:

3 Q. I'm handing you what we're marking as
4 Exhibit 14, a Monsanto Manuscript Clearance
5 Form, dated February 29, 2012.

6 A. Let me take the opportunity to briefly
7 review this.

8 Yes, I've reviewed this.

9 Q. So if you look under the title, it
10 says, "Review of Genotoxicity of Glyphosate and
11 Glyphosate-Based Formulations."

12 Do you see that?

13 A. I see that.

14 MR. LASKER: I'm going to object to
15 any questioning on this document or any of the
16 answers unless a foundation has been laid that
17 the witness has previously seen this document
18 and has any understanding of what the document
19 is from his independent knowledge.

20 BY MR. BAUM:

21 Q. And it says that this -- this
22 manuscript reviews glyphosate genotoxicity
23 publications since the Williams, et al. 2000
24 review.

25 Do you see that?

1 A. I see that, yes.

2 Q. Does that seem to be an accurate
3 summary of the 2013 paper that was published in
4 CRT by Kier and Kirkland?

5 MR. LASKER: Objection to form. Lacks
6 foundation. Incomplete hypothetical. I will
7 note, again, this document is dated February
8 29, 2012. Misstating the record.

9 A. I'd have to go back to the Kier and
10 Kirkland article.

11 BY MR. BAUM:

12 Q. You have it there in your hand if you
13 look at the title, "Review of Genotoxicity
14 Studies of Glyphosate and Glyphosate-Based
15 Formulations." It's Exhibit 8.

16 A. Yes.

17 Q. And then you see that the authors
18 named here are David Saltmiras and Larry Kier,
19 consultant?

20 A. I see that.

21 Q. And then the lead author's comments,
22 "This manuscript provide a" -- "a comprehensive
23 quality check on the large number of
24 genotoxicity publications on glyphosate since
25 the Williams, et al. 2000 glyphosate toxicology

1 review manuscript. This work falls under the
2 scope of the EU Glyphosate Task Force and will
3 be a valuable resource in" -- "in future
4 product defense against claims that glyphosate
5 is mutagenic or genotoxic."

6 Do you see that?

7 A. I do.

8 Q. Does this clarify for you whether
9 Monsanto regarded the Kier and Kirkland article
10 published in your journal as a valuable
11 resource -- as a valuable resource in future
12 product defense?

13 MR. LASKER: Objection to form.
14 Misstates the record. Misstates what this
15 document is.

16 A. I -- I have no basis for either
17 accepting or -- or rejecting. That is what it
18 says.
19 this -- this work falls under the scope to be a
20 valuable resource.

21 BY MR. BAUM:

22 Q. For future product defense?

23 A. Yeah. I -- that's what -- that's what
24 it said here.

25 Q. Okay. So let's go to the next

1 exhibit.

2 (Exhibit McClellan 15, Documents Bates
3 numbered MONGLY02788071 through MONGLY02788076,
4 marked for identification.)

5 BY MR. BAUM:

6 Q. And this is Exhibit 15,
7 MONGLY02788071. This is an e-mail string
8 between David Saltmiras, Larry Kier and David
9 Kirkland dated September 17 to 18, 2012, "Re:
10 Manuscript Moving Onward."

11 Have you seen this document before?

12 A. Let -- let me take the opportunity to
13 review it here before I comment.

14 Yeah, I -- yes, I have reviewed the
15 communication you provided me, Exhibit 15.

16 Q. Have you seen it before?

17 A. No, I have not.

18 Q. On page 2, there's an e-mail between
19 David Saltmiras -- it's from David Saltmiras to
20 David Kirkland and Larry Kier dated September
21 18, 2012 regarding manuscript moving forward.

22 Do you see that?

23 A. I see that.

24 MR. LASKER: Objection to form on all
25 questions regarding this document, lack of

1 foundation.

2 BY MR. BAUM:

3 Q. So this is an e-mail from David
4 Saltmiras to Larry Kier, and it says, "Thank
5 you both again for your continued energy in
6 bringing this manuscript submission to near
7 completion. I will work on Larry's request
8 for an" -- "for an environmental exposures
9 paragraph later today and circulate back to
10 Larry for his blessing."

11 Do you see that?

12 A. I see that, yeah.

13 Q. It says, "Given this is a Glyphosate
14 Task Force project, all individual companies
15 must approve this version prior to submission
16 to CRT, so now we" have -- we -- "we may be in
17 a holding pattern for a couple of weeks while
18 the larger companies grind through their
19 respective internal bureaucracies. For this
20 necessary evil, I apologize."

21 Did I read that correctly?

22 A. Yes. I think you read it accurately,
23 what's there.

24 Q. Then going to the first page of the
25 e-mail, up at the top there's an e-mail from

1 David Saltmiras to Larry Kier -- Kier, and he
2 says, "Larry, I have been tied up most of this
3 afternoon and am planning to work on the
4 environmental paragraph tomorrow."

5 Do you see that?

6 A. I see that, yeah.

7 Q. So does it appear here that David
8 Saltmiras is writing portions of the manuscript
9 that was submitted to you as a Kier and
10 Kirkland publication?

11 MR. LASKER: Objection to form.

12 A. It says that he's prepared an
13 environmental paragraph. That -- that would
14 need to be reviewed within the context of
15 the -- the entire manuscript as to what is
16 contained there, whether that's a significant
17 contribution to the paper or not.

18 BY MR. BAUM:

19 Q. Okay. So have you seen any Monsanto
20 papers, documents, where the Monsanto employees
21 are asked to peer review manuscripts on
22 glyphosate and the manuscripts under review
23 were sent to other Monsanto employees to
24 ghostwrite the peer review reports?

25 MR. LASKER: Objection to form.

1 BY MR. BAUM:

2 Q. That's yes or no, have you seen them
3 or not?

4 MR. LASKER: That's not -- object to
5 form.

6 A. It -- with all due respect, your
7 question contains the word "ghostwriting." Do
8 you want to describe again what you mean by
9 ghostwriting?

10 BY MR. BAUM:

11 Q. I'm referring to the term that was
12 used in -- in e-mails and memos from Monsanto
13 employees that have been declassified and
14 published.

15 They -- they used the term "ghostwrite."

16 A. I see.

17 MR. LASKER: Objection.

18 BY MR. BAUM:

19 Q. I'm asking, have you seen those?

20 MR. LASKER: Objection to form.

21 A. The word -- --

22 MR. LASKER: Objection to form.

23 MR. THOMPSON: Let him --

24 A. The term "ghostwriting" is not a part
25 of my normal vocabulary. I have no idea how

1 the employees of Monsanto have used that term.

2 BY MR. BAUM:

3 Q. So my -- my question is a lot simpler.
4 Have you seen any documents that say that they
5 were involved with ghostwriting peer review
6 reports?

7 MR. LASKER: Objection to form.

8 A. I have seen media reports that, quote,
9 allude to ghostwriting. Those are media
10 reports, and as I've said, the term
11 "ghostwriting" is not a part of my normal
12 scientific vocabulary.

13 BY MR. BAUM:

14 Q. You're aware that those documents are
15 available for public review, right?

16 MR. LASKER: Objection to form.

17 BY MR. BAUM:

18 Q. They are on the internet?

19 A. I'm -- I'm aware that there is a set
20 of documents called the Monsanto papers that's
21 available on the Baum, Hedlund law firm
22 website.

23 Q. Have you looked at them?

24 A. As I said, I've treated those as
25 basically hearsay information that are no

1 particular interest to me other than one that
2 was identified as being authored by me, an
3 e-mail from me to actually Roberts that was
4 forwarded to the Monsanto Company --

5 Q. That's the only --

6 A. -- without my knowledge.

7 Q. That's the only Monsanto paper
8 document you've read?

9 A. If I read other documents, they were
10 in some other setting. I'm not aware of having
11 gone through -- I purposely did not review the
12 Monsanto papers.

13 Q. Okay. So we're going to take a look
14 back at Exhibit 3, which is your responses to
15 the request for production.

16 A. Yes.

17 Q. And take a look at --

18 A. Exhibit 3?

19 Q. Yes. And if you look at the response
20 to request 5, it's RM pages 006 to 7.

21 A. Okay.

22 Q. And you include in an excerpt from the
23 Manuscript Central/Scholar 1 instructions to
24 reviewers emphasizing the confidentiality of
25 the peer review process.

1 Do you see that?

2 A. Yes, I do.

3 Q. And it says, "Agreeing to review an
4 article for this journal implies that you, as a
5 reviewer, will adhere to the accepted ethical
6 standards of scientific medical and academic
7 publishing. Materials submitted for peer
8 review is a privileged communication that
9 should be treated in confidence. Material
10 under review should not be shared or discussed
11 with anyone outside the designated review
12 process unless approved by the editor. All
13 communications relating to the" -- peer review
14 -- "the paper in review should also be treated
15 in confidence. Any breach of confidentiality
16 under review process is taken seriously by the
17 journal and will be investigated according to
18 the advice of COPE."

19 It gives a BJTP public --
20 publicationethics.org. "Any conflict of
21 interest, suspicion of duplicate publication,
22 fabrication of data, plagiarism or other
23 ethical concerns must immediately be reported
24 to the editor. By agreeing to review this
25 manuscript, you are stating that you are the

1 person completing this review. If you wish to
2 collaborate with a colleague and/or trainee to
3 perform this review or wish to assign this
4 review to a trainee for completion under your
5 guidance, please contact the editor for
6 permission before sharing the manuscript. If
7 the editor agrees, please provide the name,
8 affiliation and e-mail address for the
9 trainee/colleague so he or she may be assigned
10 as a reviewer directly. If you have any
11 conflict of interest, for example, collaborate
12 with the authors or are currently working on a
13 similar study, please decline to review this
14 manuscript, and, if possible, suggest
15 appropriate alternative reviewers."

16 Did I read that correctly?

17 A. Yes, you did.

18 Q. Do you agree with these peer review
19 guidelines?

20 A. Yes.

21 Q. Peer review guidelines like these help
22 preserve the integrity of scientific journals,
23 right?

24 A. Yes. They certainly are an important
25 element.

1 Q. And failure to follow these guidelines
2 would undermine scientific journals' integrity,
3 right?

4 MR. LASKER: Objection to form.

5 A. I -- I'm sorry. Ask the question
6 again, please.

7 BY MR. BAUM:

8 Q. Failure to follow these guidelines
9 would undermine scientific journals' integrity,
10 right?

11 A. Yes.

12 Q. You follow these guidelines, right?

13 A. I intend to.

14 Q. Let's take a look at Exhibit 18.

15 (Exhibit McClellan 18, Documents Bates
16 numbered MONGLY02286842 through MONGLY02286843,
17 marked for identification.)

18 BY MR. BAUM:

19 Q. This is MONGLY02286842. It's an
20 e-mail chain and a couple of e-mails between
21 Charles Healy and David Saltmiras and Donna
22 Farmer.

23 MR. LASKER: Objection to form.

24 There's the -- there's two e-mails on here.

25 There's another -- the main e-mail is from

1 somebody else.

2 A. I -- I have reviewed Exhibit 18.

3 BY MR. BAUM:

4 Q. Okay. Do you know Dr. Charles Healy?

5 A. I don't believe I do.

6 Q. Do you know he's an employee of
7 Monsanto?

8 A. Not -- I -- I don't know.

9 Q. Can you tell from his e-mail address
10 there, that AG 1000 --

11 A. Usually -- that's usually a Monsanto
12 e-mail address.

13 Q. Okay. And so -- and there's an e-mail
14 that Dr. Charles Healy is asked -- stating that
15 he's been asked to review the manuscript,
16 "Cytotoxicity of herbicide Roundup and its
17 active ingredient, glyphosate, in rats" for
18 cell biology and toxicology.

19 Do you see that?

20 A. I do.

21 MR. LASKER: I have a continuing
22 objection to all questions regarding this
23 document unless it's established that the
24 witness has previously seen this document and
25 has independent factual knowledge about the

1 information contained therein.

2 BY MR. BAUM:

3 Q. Are you familiar with cell biology and
4 toxicology?

5 A. I'm aware of the journal. It's not a
6 journal I regularly review --

7 Q. Okay.

8 A. -- read.

9 Q. Do you think it is appropriate for a
10 journal editor to be requesting peer review of
11 a Monsanto employee by a -- a Monsanto employee
12 on a manuscript addressing the cytotoxicity of
13 Roundup, a product that Monsanto manufacturers?

14 A. Mr. Baum, with due respect, I'm
15 prepared to answer questions as related to the
16 subpoena you provided me and my
17 responsibilities as the editor of a scientific
18 journal. I do not think it would be
19 appropriate for me to offer commentary with
20 regard to another scientific journal and its
21 operations, a journal with which I have no
22 association.

23 Q. Okay. So in that top e-mail, it says,
24 "Donna and David, as we discussed: David, as
25 per my voice message. Donna, please see below

1 an article I have been asked to review. You
2 two would be the reviewers in fact, and I would
3 then collate your comments and be the reviewer
4 of record."

5 Did I read that correctly?

6 A. Yes. That's what's stated here.

7 Q. That's an invitation to ghostwrite --
8 ghostwrite a peer review; isn't it?

9 MR. LASKER: Objection to form. Lacks
10 foundation. Lacks context.

11 A. Mr. Baum, I've previously given you
12 comments with regard to the issue of
13 ghostwriting. I don't see any comment here
14 with regard to ghostwriting. I've already
15 expressed to you my view. It would be
16 inappropriate for me to offer comments on the
17 activities of this journal with which I have no
18 association.

19 BY MR. BAUM:

20 Q. Referring back to the COPE guidelines
21 for peer review that we just read into the
22 record a couple of minutes ago from Exhibit 3,
23 do you recall that?

24 A. Yes.

25 Q. Was this interchange between Charles

1 Healy, Donna Farmer and David Saltmiras
2 consistent with those guidelines?

3 MR. LASKER: Objection. Lack of
4 foundation. Incomplete record. It's a single
5 e-mail.

6 A. I previously expressed to you the view
7 that it would be inappropriate for me to offer
8 comments with regard to the operation of the
9 Journal of Cell Biology and Toxicology with
10 which I have no association.

11 BY MR. BAUM:

12 Q. Would you agree to do something like
13 that for CRT?

14 MR. LASKER: Objection to form, lacks
15 foundation, what something like this is.

16 A. What you have provided to me here in
17 Exhibit 18 is -- relates to the request for a
18 review by the editor of another scientific
19 journal. I have no association with that
20 journal. I'm not prepared to offer any
21 comments on that.

22 BY MR. BAUM:

23 Q. With respect to CRT, would you
24 consider it inappropriate to have peer
25 reviewers share the manuscript under review,

1 get comments from employees of a related
2 manufacturer and then have the peer review
3 issued under his name, not the people he sent
4 it to?

5 MR. LASKER: Objection. Lacks
6 foundation. Assumes facts not in evidence.

7 A. You're -- you're offering -- you're
8 asking me to offer a -- a very general and
9 speculative response. I can assure you that
10 every manuscript that is received by Critical
11 Reviews in Toxicology, the matter of peer
12 review -- reviewers is given very careful
13 attention, and we follow the guidelines that
14 you read earlier, and those are provided as
15 instructions to the -- to the reviewer.

16 We expect the reviewer to follow
17 those, or if they desire to deviate from them,
18 to make that deviation known to the editor in
19 chief before they proceed with the review.
20 That is our usual customary practice.

21 BY MR. BAUM:

22 Q. I'm going to hand you what we're going
23 to mark as Exhibit 19, which is a follow-up
24 e-mail from Charles Healy to David Saltmiras
25 and Donna Farmer dated October 6, 2009.

1 (Exhibit McClellan 19, Document Bates
2 numbered MONGLY03086147, marked for
3 identification.)

4 A. Yes, I've read Exhibit 19.

5 BY MR. BAUM:

6 Q. And it says, "All told, I" -- at the
7 bottom, it says, "I believe our efforts (mostly
8 David's)" David Saltmiras, "helped keep one
9 shoddy paper out of the press in 2008 and
10 perhaps will do so for a second. Joel and I
11 visited briefly today about whether we should
12 stay in the business of reviewing journal
13 articles when asked. These are two examples
14 where it seems to have been worthwhile."

15 Do you see that?

16 MR. LASKER: Objection. Lacks
17 foundation. No evidence that the witness has
18 ever seen this document before or has any
19 knowledge of the facts addressed in the
20 document or the statements in the document.

21 A. All I can testify is the fact that
22 I've read Exhibit 19, and Exhibit 19 relates to
23 another journal with which I have no
24 association.

25

1 BY MR. BAUM:

2 Q. But the journal you do have an
3 association with, you would not consider this
4 to be appropriate activity, correct?

5 MR. LASKER: Objection to form. Lacks
6 foundation. Incomplete hypothetical. Calls
7 for speculation.

8 A. You're -- you're asking me to
9 speculate in terms of motivations and internal
10 operations
11 of -- of a private entity of which I have no
12 knowledge. I'm not prepared to offer comments
13 on this practice by another journal and these
14 particular reviewers.

15 BY MR. BAUM:

16 Q. Okay. And without looking at that
17 document -- you can set it down -- would you
18 consider it appropriate that a peer reviewer
19 for CRT would hand the peer review manuscript
20 off to employees of a company and have
21 employees of that company write the peer review
22 and then he sends it back to you?

23 MR. LASKER: Objection. Lacks
24 foundation. Misstates the record.

25 A. If you have a specific instance you'd

1 like for me to comment on, I'd be happy to do
2 so. I cannot offer comments in
3 generalizations.

4 BY MR. BAUM:

5 Q. Well, that's -- what I just described
6 is in contradiction of the COPE guidelines we
7 read, correct?

8 MR. LASKER: Objection to form.
9 Incomplete hypothetical. Lacks foundation.

10 A. You -- you've asked me to review two
11 exhibits, 18 and 19, and place them in the
12 context of the COPE guidelines. These are
13 fragmentary information, not -- not a basis in
14 which I can provide a -- an informed expert
15 opinion.

16 BY MR. BAUM:

17 Q. But relative to CRT, without regard
18 for these two exhibits, would you consider it
19 appropriate for a peer reviewer that you picked
20 and had -- and requested to conduct a peer
21 review to hand it off to a couple of employees
22 of a company and hand it back to you without
23 your knowing that the -- that the actual review
24 was written by employees of a company involved
25 with the product under review?

1 MR. LASKER: Objection to form.
2 Misstates the evidence. Lack of foundation.
3 Incomplete hypothetical.

4 A. With all due respect, you've got a
5 long train of interconnected, disjointed
6 comments. If you have a specific question with
7 regard to CRT and a specific review, I will be
8 happy to attempt to respond to it.

9 BY MR. BAUM:

10 Q. Okay. Let's go to the next exhibit.
11 This is a performance -- business performance
12 dated for year 2013. The employee under review
13 is David Saltmiras. The Bates number is
14 MONGLY01045298, and it has some business goals
15 and business performance descriptions.

16 (Exhibit McClellan 20, Documents Bates
17 numbered Bates number is MONGLY01045298 through
18 MONGLY01045306, marked for identification.)

19 MR. LASKER: I'm going to object to
20 form to this document. This again is a
21 document that, while you can ask the witness
22 from his prior testimony, the witness would
23 never have seen and would have no independent
24 knowledge of.

25 And, Mr. Baum, again, you can use

1 your seven hours however you see fit, but none
2 of this testimony could possibly be admissible.
3 These are not documents the witness has any
4 knowledge of.

5 A. I very quickly, yes, scanned Exhibit
6 20. It appears to be a performance -- internal
7 performance appraisal conducted on -- on an
8 employee.

9 BY MR. BAUM:

10 Q. That's --

11 A. There are particular documents like
12 this within our organization that I've managed
13 in the past that are treated with a high degree
14 of confidentiality and would not be released to
15 external parties.

16 Q. Okay. So --

17 MR. LASKER: And I have --

18 A. So I have to really say that, while
19 I've surveyed the document, I respectfully ask,
20 unless there's some subsequent question, that
21 this be withdrawn, that I have not seen this
22 document. I have no -- no desire to be
23 critiquing secondarily the performance of David
24 Anthony Saltmiras.

25 MR. LASKER: Let me -- that reminds me

1 that I'll designate the entire deposition,
2 particularly as you're going through internal
3 documents, as confidential and subject to the
4 Protective Order in this litigation and if the
5 reporter can just note that at the beginning of
6 the transcript. Thank you.

7 BY MR. BAUM:

8 Q. All right. So I'm just going to ask
9 you a couple of questions again off of it. It
10 says on page 2 is -- a goal is to promote
11 glyphosate freedom to operate through proactive
12 engagement of experts, technical publications
13 and responses to third-party allegations.

14 Do you see that?

15 MR. LASKER: Objection to form.

16 A. As I've said, I view the review of
17 performance of employees an extremely important
18 matter. Over my career in managing two major
19 scientific organizations, I championed a
20 performance review process, and I did so with
21 the understanding that the information at hand
22 was confidential and remained within the
23 company never to be released to another party.

24 I have asked that you withdraw the
25 exhibit. I have not seen the exhibit. I am

1 not prepared to offer any comments on the
2 performance of Dr. Saltmiras.

3 BY MR. BAUM:

4 Q. Okay. So we'll set that aside.
5 Are -- were you under the impression in your
6 dealings with David Saltmiras that he viewed
7 his interaction with CRT and you as part of the
8 business goals of Monsanto to expand its
9 freedom to operate?

10 MR. LASKER: Objection to form and
11 lacks foundation. Incomplete hypothetical.
12 Misstates the record.

13 BY MR. BAUM:

14 Q. We have a question pending. You have
15 to answer that.

16 A. Let me give you the answer.

17 I assume any individual that I'm
18 dealing with in terms of issues related to
19 publication of science, dissemination of
20 information, offering of advice, that, when
21 they're employed in an organization, that
22 organization has certain standards and
23 expectations of the performance of the
24 employee. Those are not a matter of concern to
25 me in dealing with that individual as a

1 scientist. I am dealing with him as a
2 scientist on a particular matter.

3 I fully expect that the organization
4 that is paying the salary of the individual,
5 whether it's a government employee, a private
6 sector employee, a consulting firm employee, a
7 law firm employee, that there are certain
8 standards and expectations. Those are not a
9 matter of concern to me in dealing with a
10 particular scientific issue or question.

11 Q. So did you know whether or not David
12 Saltmiras considered you and your publication
13 to be part of his expanding --

14 A. I have no basis --

15 Q. -- Monsanto's freedom to operate with
16 respect to Roundup?

17 MR. LASKER: Objection to form.

18 A. I think I have tried to respond --
19 that I be responsive. I have no particular
20 knowledge of the Monsanto expectations of any
21 of their employees other than I would be
22 surprised if they did not have a set of
23 expectations.

24 MR. BAUM: Okay. Would you like to
25 take lunch now, or do you want to go for a

1 little bit longer?

2 MR. THOMPSON: It's 12:26 or '7. So

3 let's do it now --

4 MR. BAUM: Okay.

5 MR. THOMPSON: -- for an hour.

6 MR. BAUM: Okay. Do you want to come

7 back at 1:30?

8 MR. THOMPSON: Yes.

9 MR. BAUM: Okay.

10 THE VIDEOGRAPHER: With the approval

11 of counsel, we're going off the record. The

12 time is approximately 12:26 p.m. This marks

13 the end of recording media 3.

14 (Whereupon, a luncheon recess is taken

15 from 12:26 p.m. to 1:35 p.m.)

16 THE VIDEOGRAPHER: With the approval

17 of counsel, back on the record. The time is

18 approximately 1:34 p.m. This marks the

19 beginning of the recording of media number 4.

20 BY MR. BAUM:

21 Q. Okay. So, I'm going to hand you an

22 e-mail exchange between Monsanto's Bill Hayden,

23 Donna Farmer and David Saltmiras dated February

24 17, 2015. Re: IARC planning. I'm going to

25 mark that as Exhibit 21.

1 (Exhibit McClellan 21, E-Mail exchange
2 between Monsanto's Bill Hayden, Donna Farmer
3 and David Saltmiras dated February 17, 2015.
4 Re: IARC Planning, Bates Numbered
5 MONGLY02078597 through MONGLY02078599, marked
6 for identification.)

7 A. Okay. I've read this and surveyed it.

8 Q. Okay. Have you seen this document
9 before? It's been published.

10 A. No, I do recall seeing this document.

11 Q. Okay. So if you turn to the second
12 page, the middle of the page, it starts with,
13 "For the overall plausibility." Do you see
14 that?

15 A. Yes.

16 MR. LASKER: Objection to any
17 questioning on this document, lacks foundation,
18 calls for speculation. It takes documents out
19 of context.

20 BY MR. BAUM:

21 Q. Okay. So, "For the overall
22 plausibility paper that we discussed with John
23 where he gave the butadiene example, I'm still
24 having a little trouble wrapping my mind around
25 that. If we went full-bore involving experts

1 from all the major areas, Epi, Tox, Genotox,
2 MOA, Exposure, I'm not sure who we'd get. We
3 could be pushing 250K or" more -- "or even
4 more. A less expensive/more palatable approach
5 might be to involve experts only for the areas
6 of contention, epidemiology and possibly MOA"
7 -- that's mechanism of action -- "depending on
8 what comes out of the IARC meeting and we
9 ghostwrote the Exposure Tox and Genotox
10 sections. An option would be to add Greim and
11 Kier or Kirkland to have their names on the
12 publication, but we would be keeping the costs
13 down by us doing the writing and they would
14 just edit and sign their names, so to speak.
15 Recall, that is how we handled Williams, Kroes
16 and Munro 2000."

17 Did I read that correctly?

18 A. Yes, that seems to be a correct
19 reading of that paragraph.

20 Q. And this is from an e-mail dated
21 February 19, 2015. Do you see that?

22 A. Yes.

23 Q. And that's, if you recall, before the
24 IARC meeting on glyphosate in March of 2015?

25 A. Yes, it would have been just before

1 that.

2 Q. Okay. So Greim, Kier and Kirkland are
3 all names on the Monsanto-sponsored supplement
4 article that you published in 2016, right?

5 MR. LASKER: Objection to form.

6 A. I believe they are, yes.

7 Q. And then you see Dr. William Heydens
8 is suggesting that, "Since you have published
9 articles in the names of Saltmiras, Greims,
10 Kier and Kirkland in your journal, CRT, you
11 might be amenable to publishing more articles
12 in the names of these third-parties defending
13 glyphosate against the IARC classification of
14 glyphosate as probably carcinogenic in humans."

15 Do you see that?

16 MR. LASKER: Objection to form.

17 A. I'm sorry. I'm not -- I'm missing
18 that part here.

19 BY MR. BAUM:

20 Q. Where are you reading from, which
21 paragraph? Oh, next paragraph. "One thing we
22 can do now is to contact Roger McClellan at C"
23 -- they have it "CRC"; would be CRT -- "and see
24 if they would be amenable to putting this
25 publication in Critical Reviews in Toxicology.

1 John said he knew that Roger had done such a
2 publication in the past. David, since you have
3 worked with Roger on the other papers, would
4 you be willing to contact him to judge his
5 willingness to publish such a paper?"

6 Sorry, I should have read that to you
7 first.

8 So from this e-mail, does it appear
9 that they were planning to contact you to have
10 one of these expert panel papers prepared for
11 CRT?

12 MR. LASKER: Objection to form.

13 A. Well, I have no knowledge of this
14 particular memo. I will in terms of the
15 reference to CRC there, the original --
16 originally Critical Reviews in Toxicology was
17 created and published by CRC Press, scientists
18 who are maybe familiar with a handbook classic
19 in the field. And so the early years, it was
20 published by CRC Press and that's kind of stuck
21 with people, so they frequently refer to that.

22 I -- I -- I have no basis commenting
23 on this other than somewhere in that time
24 period, I may have had a call from David; may
25 have been others alerting me to what I already

1 knew. IARC would be doing a review of
2 herbicides and Roundup glyphosate would be one
3 of those, and I emphasized that I would
4 certainly give consideration to the publication
5 of -- of a supplement in terms of something
6 that might involve several papers.

7 I would prefer because of page
8 limitations -- at that point in time we had
9 about 920 pages a year allocated. I said if we
10 do it, you know, it will need to be a special
11 supplement and any costs associated to that,
12 you'll need to talk with Charles Whalley, the
13 managing editor. I have nothing to do with the
14 -- the business side.

15 I might note parenthetically that
16 prior to 2014, we had an arrangement in which
17 if we published supplements, I would receive a
18 special compensation. We decided in 2014 that
19 that would be a practice that people might have
20 concern that I was receiving a fee for
21 publishing. And so I quite willingly was a
22 participant in agreeing to remove that. So I
23 received no special compensation for
24 publication of a special supplement such as the
25 supplement that contained the five glyphosate

1 papers.

2 THE COURT REPORTER: One at a time.

3 BY MR. BAUM:

4 Q. So if you thought I was implying that,
5 I didn't mean to. So I just want to, again,
6 sort of move through my questions. You'll get
7 the drift.

8 When William Heydens writes that they
9 would just edit and sign their names, so to
10 speak, he's referring to articles planned for
11 publication in your journal, correct?

12 MR. LASKER: Object to form.

13 A. I have no idea. I -- to the best of
14 my knowledge, I've never met William F.
15 Heydens, never had any conversations with him,
16 as best as I can recall, and I am -- I'm not
17 privy to any internal interactions with regard
18 to the preparation of the papers.

19 I can assure you that when I spoke --
20 I think it may have been David Saltmiras, I
21 suggested that a special supplement -- if it
22 were prepared -- would be most useful if it
23 very closely mirrored the IARC document and it
24 could be prepared as a -- as a single extensive
25 paper or in the interest of breaking up the

1 authorship, it could be a series of papers.

2 Q. Would that have been part of that
3 discussion that's referenced in the first page
4 there? It says, "From David Saltmiras to
5 William Heydens and Donna Farmer."

6 It says, "I had an extended chat with
7 Roger this afternoon. As is the custom, he
8 said that Critical Reviews" was -- has already
9 dedicated some significant space to the
10 glyphosate topic, especially the pending issue
11 number 3 with both the CARC paper and Kier
12 paper. However, to the contrary, he did say
13 he'd consider something along the lines of the
14 1, 3-butadiene" -- is it butadiene? How do you
15 pronounce that?

16 A. Butadiene.

17 Q. -- "butadiene, I think we would have
18 to prepare a very compelling story."

19 So were you just referring to that
20 conversation that's summarized here?

21 A. Right. I think that -- that would
22 mirror my conversation in which I said I used
23 the 1, 3-butadiene issue. As I recall it was
24 about a hundred pages as being an example of
25 the authoritative review that I thought could

1 be useful and we would consider for
2 publication.

3 Q. Mr. Heydens came up in the context of
4 your investigation of the ethical issues
5 related to the expert panel, correct?

6 A. Heydens, I became aware of some role
7 for Heydens when an e-mail I had written to
8 actually Roberts concerning the publications
9 and the need for a complete and accurate
10 acknowledgments and declaration of interest and
11 that was a doc -- an e-mail that I had sent to
12 Ashley Roberts and it was called to my
13 attention that that e-mail had been forwarded
14 to Monsanto.

15 Q. Through Bill Heydens?

16 A. Yes, I guess.

17 Q. Okay. So it says, "An option would
18 be" -- I'm back on page 2 -- "An option would
19 be to add Greim and Kier or Kirkland to have
20 their names on the publication, but we would be
21 keeping the costs down. By us doing the
22 writing, they would just edit and sign their
23 names, so to speak. Recall, that is how we
24 handled Williams, Kroes and Munro 2000."

25 Are you familiar with the Williams,

1 Kroes and Munro article that was published in
2 2000?

3 A. Only in a vague recollection. That's
4 a long time ago. I did know Kroes and I think
5 they are -- this came up in terms of part of a
6 consideration of the completeness of the
7 declaration of interest and the -- and the
8 corrigenda in that Munro was associated with
9 CanTox, which became Intertek.

10 Q. And now were you aware that Monsanto
11 had the perception that they had ghostwritten
12 Williams Kroes and Munro?

13 MR. LASKER: Objection, lacks
14 foundation, calls for speculation.

15 A. I have no knowledge of that and --

16 Q. Were -- now, this Williams, Kroes,
17 Munro paper was sort of a prelude and to some
18 degree the Kier and Kirkland article that you
19 published was meant to be an update of the
20 Williams, Kroes, Munro; is that correct?

21 MR. LASKER: Objection to form, lacks
22 foundation.

23 A. I -- I don't know. The -- the
24 discussions I had in that time period with
25 regard to the publication was the option of a

1 very large paper or a series of papers that
2 would address the issue of the human
3 carcinogenicity, potential human
4 carcinogenicity of glyphosate.

5 BY MR. BAUM:

6 Q. Does it disturb you at all as an
7 editor that they were considering keeping the
8 costs down by us doing the writing and they
9 would just edit and sign their names, so to
10 speak?

11 MR. LASKER: Objection, lacks
12 foundation, misstates the record and calls for
13 speculation.

14 A. I -- I have no -- no basis of really
15 evaluating this except I would say
16 gratuitously, if -- if I had a dollar to
17 contribute for a nice dinner for every time the
18 issue of keeping costs down is raised in
19 discussions with governmental agencies or
20 private industry, you and I -- I could treat
21 you to a wonderful, wonderful New Mexico
22 dinner.

23 BY MR. BAUM:

24 Q. But this proposal actually violates
25 the COPE guidelines, correct?

1 MR. LASKER: Objection to form, lacks
2 foundation, calls for speculation, misstates
3 the record.

4 BY MR. BAUM:

5 Q. It's not something that you would
6 agree to; is it?

7 MR. LASKER: Same objection, lacks
8 foundation, calls for speculation, misstates
9 the record.

10 A. I expect every paper that is published
11 and submitted to Critical Reviews in Toxicology
12 will be authored by the individuals identified
13 as the authors and that any assistance in
14 preparation of the manuscript will be clearly
15 spelled out in the acknowledgments and further
16 considerations documented in the declaration of
17 interest.

18 BY MR. BAUM:

19 Q. And with respect to the expert panel
20 glyphosate supplement, you determined that that
21 wasn't exactly what happened, correct?

22 MR. LASKER: Objection to form.

23 A. It's a leading question. What I
24 determined with regard to the five papers
25 published authored by 16 individuals that the

1 original acknowledgments, declaration of
2 interests were not as complete and as accurate
3 as I would have liked and that with the
4 corrigenda, the -- those errors and procedure
5 were corrected.

6 It is important to recognize that
7 there were no issues raised with regard to the
8 scientific substance of any of the five papers.
9 The issues raised were procedural and a central
10 issue is the question of sponsorship by
11 Monsanto.

12 BY MR. BAUM:

13 Q. You saw --

14 A. There was clear evidence from the
15 beginning that this expert panel was going to
16 be sponsored and funded by Monsanto,
17 absolutely. The first discussions I had was
18 clear. This isn't some extraneous group of
19 people. This is a group that's going to be
20 sponsored by Monsanto.

21 Q. All right. So are you stating that
22 there were no criticisms of the expert panel's
23 scientific findings that you saw in any
24 published literature or any publications or any
25 letters to you?

1 MR. LASKER: Objection to form.

2 A. We received two communications with
3 regard to retraction of the papers. One came
4 from IARC. It was very straightforward,
5 basically said these conclusions differ from
6 ours and asked for retraction.

7 The other came from Nathan Donley and
8 representing several environmental groups. And
9 those called attention to what I call
10 deficiencies in the acknowledgments and
11 declaration of interest. They did not take
12 exception in terms of how the literature was
13 reviewed, the scientific content. If I had
14 received that kind of communication, I would
15 have been happy to ask the author to prepare a
16 letter to the editor which I would consider and
17 in considering the letter to the editor dealing
18 with the scientific content, I would have made
19 known that that letter would be shared with the
20 authors and they'd be provided an opportunity
21 to respond.

22 Q. Did you --

23 A. We have done that in the past. I
24 would have been very willing to have done that
25 with regard to any or all of these five papers.

1 BY MR. BAUM:

2 Q. Okay. Did you -- did you or somebody
3 working in conjunction with you in your
4 investigation look into whether or not the
5 science was sound? Did you review any critical
6 reviews or comments regarding this -- the
7 science being cited?

8 MR. LASKER: Objection to form.

9 A. The five papers were sent out to, as I
10 recall, 27 reviewers. There were 36 sets of
11 review comments provided and each paper was
12 reviewed by five to ten individuals. Those
13 reviews addressed issues of the science in
14 terms of the papers. Those I felt were
15 generally laudatory but offer very useful
16 comments which were conveyed to the authors and
17 the authors were asked to develop a revised
18 manuscript, which would then be considered for
19 publication. I considered the revised
20 manuscripts and accepted the five.

21 Q. Did you review any of the epidemiology
22 or toxicology or mechanisms of action studies
23 that IARC relied upon?

24 MR. LASKER: Objection to form.

25 A. I -- in reviewing the papers, I re --

1 I reviewed the papers. I personally reviewed
2 each of the papers as well as I depended, as I
3 said, on 27 external reviewers. I asked the
4 authors of the papers, to the extent it was
5 feasible, to provide a relationship to the IARC
6 review. I did not think it necessary for me to
7 review any of those papers. My -- I had at
8 that point in time, when it was available,
9 reviewed the IARC Monograph and so I was aware
10 of the substantial bibliography there including
11 papers that had been published in the CRT, but
12 I -- I did not feel it necessary as an editor
13 to do a check by check to see if there was 90
14 percent congruence or 80 percent.

15 BY MR. BAUM:

16 Q. All right. So returning back to this
17 Exhibit 21, and on the first page, it --
18 there's this conversation -- reference to a
19 conversation that you and David Saltmiras had
20 back in February of 2015; is that correct?

21 A. Yeah.

22 Q. And you recall having that
23 conversation?

24 A. In -- in general, this is a kind of
25 conversation I have very regularly with people

1 who are considering publication in the journal.
2 I've offered the opportunity to provide these
3 kind of extended reviews to a number of -- of
4 individuals. Some come to fruition, some of
5 them don't, and so this particular one did.

6 Q. Did David Saltmiras tell you that
7 Monsanto planned to write parts of the articles
8 that would be published in your journal?

9 MR. LASKER: Objection to form, lacks
10 foundation.

11 A. To the best of my recollection, we had
12 no detailed discussions with regard to the
13 individuals who would be authoring the papers
14 other than consideration was apparently being
15 given to organizing a panel of experts who had
16 prepared the papers.

17 BY MR. BAUM:

18 Q. Okay. Now we're going to go to
19 Exhibit 23.

20 (Exhibit McClellan 23, Document Bates
21 numbered MONGLY01228576, marked for
22 identification.)

23 BY MR. BAUM:

24 Q. So this is an e-mail from William
25 Heydens to Michael Coch, Donna Farmer, Kimberly

1 Hodge-Bell, David Saltmiras dated May 11, 2015,
2 "Re: Post IARC activities to support
3 glyphosate." And then attached to it is a
4 PowerPoint.

5 Okay. So --

6 A. One moment, please. Okay I -- I've
7 reviewed the document.

8 Q. Okay. Was David Saltmiras the first
9 person from Monsanto to approach you about
10 publishing an expert panel supplementing
11 glyphosate?

12 A. He -- he is the only individual who
13 comes to mind. As I said, I get many, many
14 inquiries as to preparation of papers,
15 collections of papers. I -- I do have a
16 recollection that Saltmiras -- Saltmiras
17 contacted me in terms of the matter.

18 Q. Okay. So there was a PowerPoint
19 attached here regarding a meeting that he
20 describes which are the results -- this
21 attachment reflects the results of
22 conversations Donna and I had with various
23 stakeholders (e.g., Law, CE, RPSA)."

24 Do you see that?

25 A. Yes.

1 MR. LASKER: Objection to form,
2 objection, lacks foundation. Counsel has not
3 established that this witness has ever seen
4 this document before or has any independent
5 knowledge of any of the facts or statements
6 contained therein.

7 BY MR. BAUM:

8 Q. Okay. So this is also a published
9 document. Have you ever seen it before?

10 MR. LASKER: Objection to form to the
11 term "published."

12 A. No, I -- I --

13 MR. LASKER: You can answer.

14 MR. THOMPSON: You can answer.

15 A. No, I've never seen this document.

16 This -- I wouldn't call this a published
17 document. This -- maybe in the legal jargon,
18 it's a published document available to public,
19 but when I -- when I talk about published
20 papers, I'm talking about materials that are in
21 the typically peer-reviewed scientific journals
22 or a manuscript like the IARC Monograph.

23 Q. Would it be better if I referred to
24 this document as this is availably publically?

25 A. Yeah, yeah. Well, I have never seen

1 it before. I'm not prepared to speculate on,
2 you know, Monsanto's management practices or
3 what their strategies were in -- in dealing
4 with IARC and questions of potential litigation
5 concerning glyphosate.

6 Q. Okay. So on this PowerPoint itself is
7 there's one that's headed, "Why do more?" Do
8 you see that? There it is.

9 A. Yes, I do.

10 Q. And it says, "Severe stigma attached
11 to Group 2A classification." Do you see that?

12 A. I do.

13 Q. Do you know what that means?

14 MR. LASKER: Objection to form, lacks
15 foundation, calls for speculation.

16 BY MR. BAUM:

17 Q. With respect to an IARC classification
18 as 2A?

19 MR. LASKER: Objection to form. Now I
20 don't know what your question means.

21 A. Ask me the question again.

22 BY MR. BAUM:

23 Q. Do you know what is being referred to
24 there as, "Severe stigma attached to group 2A
25 classification relative to IARC"?

1 MR. LASKER: Objection to form.

2 A. Yes.

3 MR. LASKER: Objection to form, lacks
4 foundation, calls for speculation.

5 BY MR. BAUM:

6 Q. Go ahead.

7 A. In order to provide you an answer, I
8 can give you a broader background.

9 Q. Well --

10 A. The process that IARC involved is --
11 is involved in is what we call hazard
12 identification. It's the first step in a
13 multi-step process of what has come to be known
14 as risk analysis and the determinations that
15 are made by IARC and various other
16 organizations with regard to identification of
17 a carcinogen frequently carry with them an
18 alpha or a numeric or an alphanumeric
19 characterization and that's shorthand so IARC
20 uses that. A group 1 is a human carcinogen.
21 Group 2A is a probable human carcinogen. Group
22 2B is a possible human carcinogen.

23 Q. We don't have to go through all this.

24 So would you agree that a Group 2A
25 probable human carcinogen classification would

1 be a serious threat to Monsanto's business
2 interests?

3 MR. LASKER: Objection.

4 A. You're asking me to speculate on
5 matters that go beyond what I have reviewed and
6 what I'm prepared to address --

7 BY MR. BAUM:

8 Q. Okay. So let's go to --

9 A. -- as a fact witness today.

10 Q. Let's go to the Overall WOE, Weight of
11 Evidence Possibility Publication Possibly via
12 Expert Panel Concept. Do you see that?

13 A. Yes, I see that.

14 Q. It says, "Project description" -- oh,
15 what is WOE?

16 A. Weight of evidence.

17 Q. What does that mean?

18 A. That means a -- an approach that has
19 part of what's evolved in the field of risk
20 assessment to weigh essentially all of the
21 evidence related to the potential hypothesis
22 that X, Y, Z is capable of causing cancer.

23 Q. Is that a novel methodology?

24 MR. LASKER: Objection to form.

25 A. As I said, weight of evidence is a

1 concept that's emerged in the field of risk
2 analysis over the last couple of decades.

3 BY MR. BAUM:

4 Q. Okay. And do you see that there's a
5 discussion to publish comprehensive evaluation
6 of carcinogenic potential by credible
7 scientists. Do you see that?

8 A. I see that.

9 Q. And then the next one down says,
10 "Possible panelist authors." Do you see that?

11 A. I see that.

12 MR. LASKER: Same objection and
13 reading the document and asking the witness if
14 he's seen it, lacks foundation. The witness
15 has testified he's never seen this document
16 before.

17 Q. And then it identifies, "Solomon?
18 (Exposure), Sorahan (epidemiology), Greim?
19 (Animal bioassay), G. Williams, Kirkland?
20 (Genetox/MOA), Sir Colin Barry, Jerry Rice
21 (ex-IARC head)."

22 Each of those people were -- that are
23 identified here ended up being authors on the
24 expert panel for the Glyphosate Supplement
25 published in CRT, correct?

1 A. Yes, they are. These are all
2 internationally recognized experts in their
3 particular fields.

4 Q. And does it appear to you that
5 Monsanto was deciding who would be the authors
6 on the papers published in your journal?

7 MR. LASKER: Objection to form, lacks
8 foundation.

9 A. I'd -- I'd have to be speculated on
10 this. Internal document with regard to their
11 strategy for what's going on, I --

12 Q. Then it goes, "Costs 200 to 250K" --
13 that's 200- to \$250,000 -- "depending on who
14 and how many scientists we include."

15 Do you see that?

16 A. I see that.

17 Q. "And how much writing can be done by
18 Monsanto scientists to help keep costs down."

19 Do you see that?

20 A. I see that.

21 Q. Then go back to the next to last page,
22 which says, "Feedback." Under the heading,
23 "Published WOE Plausibility Paper," do you see
24 that?

25 A. "Feedback." Is this -- are we on page

1 9 down at the corner?

2 Q. 10.

3 A. Okay.

4 Q. Do you see the, "Published WOE
5 Plausibility Paper"?

6 A. Yes.

7 Q. Okay. And it says, "Legal, appealing
8 best if used big names; better if sponsored by
9 some group."

10 Do you see that?

11 A. Yeah, I see that. I have no basis for
12 understanding what this is. I have no -- I've
13 never seen the document. I have no contextual
14 basis for it. I -- I'd be totally speculating
15 as to legal. I have no idea what "RPSA" is or
16 "CE" or "Brussels RA." Those -- those are all
17 internal jargon apparently, but they have no
18 particular meaning to me.

19 Q. Okay. But the one that says, "CE, if
20 done, real value in having third-party manage
21 process. Add a couple MDs."

22 Do you see that?

23 A. I see that, yes.

24 Q. And essentially having a third-party
25 and having some big names on a panel is what

1 ended up happening with Intertek and the expert
2 panel that was published, the Expert Panel
3 Supplement that was published in CRT, correct?

4 MR. LASKER: Objection to form.

5 A. That's -- that's your opinion, Mr.
6 Baum. I did not give that opinion.

7 BY MR. BAUM:

8 Q. Well, do you think Intertek was just a
9 front for Monsanto to create the appearance of
10 an independent third-party review of the IARC
11 Monograph?

12 A. I have no idea the internal
13 discussions and strategy and why and how they
14 selected Intertek.

15 Q. Well, in your investigation, did you
16 not find that Monsanto had been able to conceal
17 their behind-the-scenes organization of -- for
18 the members of IARC -- contact with the members
19 of -- I mean, of the expert panel, contact with
20 the members of the expert panel and payments
21 that were made to a couple of the expert panel
22 directly from Monsanto?

23 A. With all due respect, Mr. Baum --

24 THE COURT REPORTER: Hold on a second.

25 MR. LASKER: Objection to form. Go

1 ahead.

2 A. With all due respect, you're offering
3 your opinions and ready to put them in my
4 mouth.

5 Q. Well, what did you find?

6 A. What is the question?

7 Q. What did you find in your
8 investigation of the ethics issues related to
9 the Expert Panel's Glyphosate Supplement
10 relative to Monsanto's involvement in the
11 selection of the panel members, payments to the
12 panel members, contact with the panel members,
13 exchange of the manuscripts with Monsanto?

14 MR. LASKER: Objection to form.

15 THE WITNESS: Would you read the
16 question again, the statement?

17 (Whereupon, the question is read back
18 by the court reporter.)

19 A. That's quite a mouthful statement.
20 Maybe we can break it down if you'd like to do
21 that. Ask the first part of the question.

22 BY MR. BAUM:

23 Q. What did you find with respect to
24 Monsanto's -- in your investigation, what did
25 you find with respect to Monsanto's involvement

1 of the selection of the panel members?

2 A. We investigated the issue of --
3 subsequent to the request for retraction. We
4 confirmed that the papers were prepared by a
5 panel that was sponsored and paid for by the
6 Monsanto company.

7 If one reads my forward to those five
8 papers, that forward makes clear that this --
9 this -- this panel was assembled and the
10 funding was provided by the Monsanto Company.
11 So we determined, reaffirmed, reaffirmed, this
12 was paid for by Monsanto.

13 We further determined that two
14 individuals received compensation, not from
15 Intertek Consulting, but had existing contracts
16 with Monsanto and they were compensated by
17 those vehicles. That was John Acquavella and
18 Larry Kier, but it was, again, clear that the
19 panel's work was paid for by the Monsanto
20 Company.

21 Q. So the question I was asking is, did
22 you in your investigation determine whether
23 Monsanto had a hand in selecting the members of
24 the panel?

25 A. It was assumed that Monsanto approved

1 of the -- the panel members that -- that were
2 engaged by Intertek.

3 Q. That's a little different than what
4 the disclosure of interest statements state.

5 A. I think the corrigendum are accurate
6 and complete, to the best of my knowledge.
7 They were prepared by the authors of the paper
8 and in addition to what is clearly stated in
9 the corrigenda that the authors independently
10 certified that these work products were their
11 work products.

12 Q. I'm not asking that question yet.
13 I'm asking the question of who
14 recruited them? According to the decelerations
15 of interest they were recruited by Intertek.
16 Did you determine that was not true?

17 MR. LASKER: Objection to form.

18 A. As I have related, it was determined
19 that 14 of the 16 authors -- scientist authors
20 received their compensation via Intertek. Two
21 individuals were apparently already under
22 contract and -- Dr. Acquavella and Dr. Kier and
23 they received that compensation.

24 It would be speculative on my part to
25 say that those 16 individuals were selected

1 exclusively by Intertek or by Intertek in
2 collaboration with Monsanto.

3 In my experience, it is not unusual
4 for a sponsor to have some interaction with an
5 organizing entity in the selection of the panel
6 members.

7 BY MR. BAUM:

8 Q. Okay. So did you determine that
9 Monsanto had contacted some of the expert panel
10 members directly as part of the recruitment
11 process for their becoming members of the
12 expert panel?

13 A. You're bringing in the question of
14 recruitment. I have no knowledge of the
15 recruitment process. It would be totally
16 speculative on my part.

17 Q. Were John Acquavella and Larry Kier
18 already under contract with Monsanto to work on
19 the expert panel before the expert panel was
20 convened?

21 A. I am not aware of the contractual
22 details related to the contracts between
23 Monsanto Company and Dr. Acquavella or
24 Dr. Kier.

25 I am aware that Dr. Kier was

1 originally contracted to serve as a consultant
2 to the genotoxicity panel. And that was
3 desirable because he had detailed knowledge of
4 the genotoxicity work carried out by Monsanto
5 and its -- its subcontractors.

6 It is my understanding and it is
7 stated in the corrigenda in the Genotox paper
8 that he had that role and as the paper came to
9 fruition, the other panel members determined
10 that his contribution was such that it would
11 not be sufficient to list him as merely a
12 consultant or to acknowledge his services, he
13 should be included as an author. And there is
14 certification that that decision was made
15 unanimously by the other members of the
16 genotoxicity panel.

17 Q. Okay. So I'm asking a different
18 question. And the time you use in not
19 answering my questions make it so I can't get
20 to the stuff I know you want to talk about.
21 And these are just laying the foundation --

22 A. Dr. Baum -- Mr. Baum, you're asking
23 leading questions that cause me to consider
24 speculative answers that would be irresponsible
25 on my part as a scientist and a scientific

1 editor.

2 Q. Okay. So --

3 A. If you keep your questions very
4 specifically, I'll do my best to answer them as
5 succinctly as I can.

6 Q. So the answer --

7 THE COURT REPORTER: One at a time.
8 Hold on.

9 MR. LASKER: I'll just state for the
10 record as I noted two or three hours ago that
11 Mr. Baum has been asking the witness questions
12 about internal Monsanto documents that the
13 witness has made clear from the beginning he
14 has never seen and has no knowledge of and
15 cannot provide any meaningful testimony about.
16 And Mr. Baum has insisted on continuing to
17 press those questions for the last three hours
18 despite the fact that the witness has made very
19 clear he cannot answer those questions because
20 he does not have a basis to do so.

21 BY MR. BAUM:

22 Q. Okay. So the last questions I'm going
23 to ask you are directly related to what's
24 stated in the Expert Panel Supplement
25 Declaration of Interest and what you found in

1 your investigation of the ethical issues
2 related to those. And it's a very simple
3 question. I want you to answer that question.
4 It's really -- it's not too hard. And if you
5 don't know the answer, you can -- you can say
6 you don't know.

7 But in your investigation of the
8 ethical issues related to the Glyphosate
9 Supplement Expert Panel, did you determine that
10 Monsanto had a role in recruiting members of
11 the expert panel?

12 MR. LASKER: Are you done? Objection,
13 asked and answered.

14 A. I have no knowledge as to the role of
15 Monsanto Company in the recruitment of the
16 panel that was assembled by Intertek.

17 BY MR. BAUM:

18 Q. Okay. Next, did you -- in your
19 investigation, did you determine that there was
20 contact directly between Monsanto employees and
21 members of the panel during the panel's
22 creation of their papers?

23 MR. LASKER: Objection to form.

24 A. The basic conclusions of our
25 investigation are reflected in the revised

1 acknowledgments and declaration of interest for
2 each paper and stated as succinctly as possible
3 within the corrigenda for each paper. The
4 investigation revealed what we do from the
5 beginning these and the work in the panels was
6 sponsored by Monsanto.

7 We did further determine that the
8 papers or paper had been shared with Monsanto
9 and certain information had been provided of a
10 background nature as the papers were being
11 finalized. I think that is clearly stated in
12 the corrigenda for the summary paper.

13 Q. And that was inconsistent with the
14 decelerations of interest and acknowledgments
15 in the original supplement, correct?

16 A. That's why we published the
17 corrigenda --

18 Q. Good.

19 A. -- a Latin term for correction.

20 Q. So in your investigation of the
21 ethical issues related to the publication of
22 the glyphosate supplement by the expert panel,
23 did you determine that any of the papers had
24 portions of them written by Monsanto employees?

25 A. I refer you to the corrigenda for the

1 summary paper which has an accurate statement
2 of what apparently occurred with regard to
3 portions of that paper.

4 Q. And what is that? I'm asking --

5 A. Let's pull it out.

6 Q. It's -- we're coming up to it in a
7 second.

8 Did you author the corrigenda?

9 A. Absolutely not. As I have stated
10 previously, the declaration -- the
11 acknowledgment -- the acknowledgment sections
12 and the declaration of interest sections of
13 papers are a part of the papers and are the
14 responsibility of the authors. I provided
15 guidance to the authors with regard to their
16 preparation, but it's important that it be
17 understood that the corrigenda, i.e., the
18 correction of the acknowledgment and
19 declaration of interest are statements of the
20 authors of the paper.

21 Q. And did you draft the corrigenda?

22 A. I provided guidance in terms of the
23 content to help facilitate the authors's
24 preparation, but they had the ultimate
25 responsibility for the material.

1 Q. Who drafted them?

2 A. I have no idea. I assume the senior
3 author at the primary role. I saw
4 communication between authors and the senior
5 author in terms of the -- what was presented.

6 Q. Neither you nor Charles Whalley
7 drafted the corrigenda?

8 A. To the best of my knowledge, I did not
9 draft corrigenda. If there was corrigenda, it
10 was reflection of -- of material they provided.
11 We tried to provide the best possible guidance
12 to the authors in terms of the preparation of
13 the acknowledgments of declarations of
14 interest.

15 Q. You're saying --

16 A. You should be aware -- you should be
17 aware that these deceleration of interest and
18 acknowledgments are substantially greater than
19 what one will find in any typical scientific
20 paper. And it was necessary to assist the
21 authors in trying to assure their completeness
22 and accuracy.

23 Q. You're saying under oath now that you
24 did not have a role in the drafting of the
25 corrigenda; is that correct?

1 MR. LASKER: Objection to form, lacks
2 foundation, misstates testimony.

3 A. To the best of my knowledge, I
4 provided guidance to the authors including
5 Dr. Ashley Roberts as to the preparation of the
6 declaration of interest and the
7 acknowledgments.

8 BY MR. BAUM:

9 Q. I don't want to trap you here or -- I
10 just want to know, did you write the draft for
11 the corrigenda?

12 MR. LASKER: Objection to form.

13 A. I've answered the question to the best
14 of my knowledge.

15 BY MR. BAUM:

16 Q. Okay. Did Charles Whalley write the
17 draft?

18 A. I -- I am not aware that -- of
19 Mr. Whalley's specific activities with regard
20 to the corrigenda and -- and the declaration of
21 interest and the acknowledgment. He and I were
22 on the same page in terms of proceeding to
23 achieve the best possible reflection of the
24 facts in -- in this matter.

25 Q. Did any CRT or Taylor & Francis

1 employee write the drafts of the corrigenda
2 that were published regarding the expert panel
3 of glyphosate supplement?

4 A. The -- I want to make certain that we
5 understand the distinction between the
6 corrigenda and the expression of concern.

7 Q. I'm getting there.

8 A. Okay. The expression of concern --

9 Q. Just answer my question. We'll go
10 back to the concern in a minute.

11 A. As best I recall, there were
12 substantial interactions between myself, Mr.
13 Whalley and the authors of the paper beginning
14 in the fall of 2017, and those exchanges back
15 and forth as we tried to bring this matter to
16 closure reach a decision as to what had been
17 done and an appropriate course of action.

18 I -- my recollection -- I have no
19 detailed recollections of that in terms of my
20 recollection is that I gave general guidance to
21 them. If I suggested words, that -- that's
22 quite possible, but ultimately, the corrigenda
23 acknowledgment and declaration of interests are
24 the responsibilities of the authors of the
25 paper.

1 Q. And they were written by the authors
2 of the paper?

3 MR. LASKER: Objection to form, asked
4 and answered.

5 A. I responded to the best of my
6 knowledge, Mr. Baum.

7 BY MR. BAUM:

8 Q. So is that a yes?

9 A. I said I have responded to the best of
10 my knowledge.

11 Q. No. That's not an answer to my
12 question.

13 MR. LASKER: Respectfully --

14 BY MR. BAUM:

15 Q. Did the authors write the corrigenda?

16 MR. LASKER: Respectfully, he has
17 answered your question repeatedly. If you have
18 a document to show him, you can.

19 A. Do you have a question?

20 BY MR. BAUM:

21 Q. Yeah.

22 A. Please ask the question.

23 Q. Did the authors on the expert panel
24 write the corrigenda?

25 A. To the best of my knowledge, the

1 authors of the papers stand by the corrigenda
2 that were published, including the detailed
3 declaration of interest and the
4 acknowledgments.

5 Q. I didn't ask you if they stand by
6 them. I asked you who wrote them. Did they
7 write them?

8 A. I have no detailed recollection of the
9 step-by-step process by which they arrived at
10 the final published corrigenda.

11 Q. Were drafts sent to them by either
12 Taylor & Francis or CRT for them to agree to
13 and sign on?

14 A. If draft material were provided to
15 them, it was a regurgitation of material that
16 they had provided.

17 Q. Who wrote the drafts?

18 MR. LASKER: Objection to form, asked
19 and answered.

20 A. I -- I responded as best I can, Mr.
21 Baum. If you take exception to them --

22 BY MR. BAUM:

23 Q. I don't -- actually, I really admire
24 the steps you took and I'm not trying to --

25 A. Thank you for that compliment.

1 Q. -- and I just want to get at who wrote
2 them, and it doesn't matter to me who wrote
3 them. I just want to know who it is.

4 A. If I could go off the record.

5 MR. LASKER: Dr. McClellan, just --

6 MR. THOMPSON: He's answered your
7 question multiple times as best he can.

8 MR. LASKER: Objection. Counsel's now
9 harassing the witness.

10 BY MR. BAUM:

11 Q. Okay. So I don't know that I got an
12 answer to the question of who wrote the drafts.

13 MR. LASKER: Objection. You've gotten
14 the answer multiple times. If you don't like
15 the answer, that's your problem. It's on the
16 record.

17 BY MR. BAUM:

18 Q. Do you not know who wrote the drafts?

19 MR. LASKER: Objection to form,
20 argumentative. Counsel is badgering the
21 witness, asked and answered multiple times.

22 BY MR. BAUM:

23 Q. Can you answer the question?

24 MR. THOMPSON: He's answered it
25 multiple times for you.

1 MR. BAUM: Okay.

2 BY MR. BAUM:

3 Q. Are you trying to remember who wrote
4 it?

5 A. No, I'd really like to give you a
6 little lecture on scientific publishing, but I
7 can't.

8 Q. So I'm just -- did the authors write
9 the drafts or did someone for Taylor &
10 Francis --

11 A. I've given you the response to the
12 best of my ability, Mr. Baum.

13 MR. BAUM: Why don't we take a break?

14 THE VIDEOGRAPHER: With the approval
15 of counsel, we're going off the record. The
16 time is approximately 2:35 p.m.

17 (Exhibit McClellan 24, Document
18 entitled Critical Reviews in Toxicology
19 Correction, marked for identification.)

20 THE VIDEOGRAPHER: With the approval
21 of counsel, back on the record. The time is
22 approximately 2:45 p.m. This marks the
23 beginning of the recording of media five.

24 BY MR. BAUM:

25 Q. So I've handed you what we marked as

1 Exhibit 24, which is a group of documents that
2 include a correction, a couple of statements of
3 concern and some corrigenda related to the CRT
4 Glyphosate Expert Panel Supplement; is that
5 correct?

6 A. That's what I see here, yes.

7 Q. And you participated in creating and
8 publishing these documents; is that correct?

9 MR. LASKER: Objection to form.

10 A. Yes, I did.

11 Q. Do you consider these documents to be
12 true and accurate?

13 A. The -- this is material that has been
14 published online and in reviewing this
15 material, the expression of concern that are
16 shown at the end of Exhibit 24 should -- to be
17 completely accurately, show at the
18 right-hand -- lower right-hand side -- or you
19 can do it either way as a matter of format --

20 Q. I see it, go ahead.

21 A. -- but they should have my name Roger
22 O. McClellan, editor in chief, and Charles
23 Whalley managing editor. The "we" in terms of
24 these in the correction of concern, we, the
25 editor in chief and publisher should be

1 appropriately identified in the "we" jointly
2 authored these expressions of concern.

3 Q. Right. You say it right there in the
4 upper left-hand column. Does that help any?
5 Is that what you were referring to?

6 A. Yes, to be absolutely clear, I think
7 that should be noted that the -- so there would
8 be no question in terms of the authorship.

9 Q. And these were produced in the
10 ordinary course of your business in your role
11 as a chief editor of CRT, Critical Reviews in
12 Toxicology?

13 A. Are you referring to the expression of
14 concern?

15 Q. The -- this group of documents were
16 produced as part of CRT's ordinary course of
17 business, correct?

18 A. Well, I'll correct that and say, no,
19 this is hardly in the normal course of our
20 business. I had been the editor of Critical
21 Reviews in Toxicology for over 30 years and, to
22 the best of my knowledge, this is the only
23 occasion in which we've had a situation like
24 this, so...

25 But I participated with Mr. Charles

1 Whalley in terms of connecting the
2 investigation that concluded with these
3 materials.

4 Q. Let me rephrase that a little easier.

5 These were created and published as
6 part of your activities and work as a chief
7 editor for Critical Reviews in Toxicology --

8 A. Yes.

9 Q. -- is that correct?

10 MR. BAUM: So I'd like to move these
11 into evidence.

12 MR. LASKER: We'll deal with those
13 objections.

14 MR. BAUM: Say that again.

15 MR. LASKER: We'll deal with all those
16 objections later.

17 MR. BAUM: Okay.

18 BY MR. BAUM:

19 Q. This is a true and correct copy of
20 what was published, correct?

21 A. I have not had the opportunity to
22 review these in detail, but I have no reason to
23 think these are not an accurate reproduction of
24 what was published online.

25 Q. Now, why did you publish these

1 corrigenda and statements of concern and
2 correction?

3 A. They were published because questions
4 were -- were raised with regard to the
5 preparation of the manuscripts, which appeared
6 in the special supplement and at the conclusion
7 of that investigation, a decision was jointly
8 made by myself and the managing editor and
9 senior officials at Taylor & Francis that the
10 best way to conclude that investigation would
11 be to publish the expression of concern and the
12 five corrigenda.

13 Q. And that was because there was some
14 ethical conduct you thought needed to be
15 corrected?

16 MR. LASKER: Objection to form.

17 A. It was our determination that the
18 original acknowledgments and declaration of
19 interest were not as complete and accurate as
20 they should have been and, thus, publication of
21 these corrigendum corrected those procedural
22 errors and deficiencies.

23 Q. And the authors apologized for those
24 errors, correct?

25 A. Let me look and see. I -- I think

1 they did, but I want to -- I don't want to be
2 too hasty.

3 Q. If you look at the bottom of each of
4 the corrigenda, I think -- and corrections --
5 if you look at the bottom of each of the
6 letters of correction or corrigenda they say,
7 "The authors apologize for these errors."

8 A. Yes, they -- that's correct.

9 Q. Did you encourage them to apologize?

10 A. I don't recall that I suggested any
11 apologies or have no recollection of that.

12 Q. Okay. Who drafted the expressions of
13 concern?

14 A. It was jointly by Mr. Whalley and I
15 and reviewed by Taylor & Francis -- Informa,
16 Taylor & Francis, legal counsel.

17 Q. Who wrote the first draft?

18 A. First draft I think was prepared by
19 Mr. Whalley, our -- it was provided to me on
20 August 9th when we had a meeting in England to
21 discuss this matter and discuss the conclusion.

22 Q. That was August of 2017 -- 2017 --
23 2018?

24 A. 2018.

25 Q. And I see that there are two

1 expressions of concern. One was dated
2 September, I guess, of 2018 and one was in
3 November of 2018. Why are there two?

4 A. It simply took some time post the
5 August 9th meeting to get matters wrapped up
6 and material reviewed by the appropriate
7 personnel at Taylor & Francis/Informa.

8 Q. Well, wasn't it true that a couple of
9 the authors did not provide their corrigenda to
10 you in time for what you wanted to have
11 published?

12 A. Yes. We turned in a detail history.
13 As I recall, there was a draft corrigenda in
14 hand in terms of August 9th or had been for
15 some time and then we proceeded to have these
16 published and -- and we wanted to make
17 absolutely certain that those corrigenda were
18 accurate, complete. And I recall two of the --
19 two of the senior authors were not available.
20 I believe they were traveling at the time and
21 the decision was made by the production editor
22 and Mr. Whalley to proceed with a publication
23 of the expression of concern, which says, "To
24 date we have" received only -- "only received
25 corrigenda for three of the five articles."

1 And thus, that was published and then the other
2 corrigenda were published and then I believe a
3 second expression of concern, which is not
4 remarkably different from the first.

5 Q. Who were the tardy authors?

6 A. I'm sorry?

7 Q. Who were the tardy authors?

8 A. I think we can probably identify that.

9 I think one was -- I -- I'd have to check.

10 I -- I don't want to --

11 Q. Does Ashley Roberts ring a bell?

12 A. What?

13 Q. Does Ashley Roberts ring a bell?

14 Do you recall an e-mail interchange
15 with him where he hadn't turned his in and you
16 were encouraging him to hurry up, that he
17 didn't get it to you in time and by the time he
18 did give you something, you had already -- the
19 corrigenda had already been in the process of
20 being published. Does that ring a bell?

21 A. No, it doesn't ring a bell in that the
22 ultimate key author, the ultimate key author
23 for each of the corrigendum is the senior or
24 corresponding author of the papers; that is
25 Gary Williams, Keith Solomon, John Acquavella,

1 Gary Williams, David Brusick.

2 Usually a paper will have -- the first
3 author is -- is always clear. That's nothing
4 in dispute. Sometimes there will be a
5 corresponding author identified. I think we
6 wanted to make certain -- I know we wanted to
7 make certain that these corrigenda
8 raised represented the views of all of the
9 individuals that were authors on that
10 particular paper. That was very easy for the
11 Solomon paper because he's the sole author.
12 And there was -- there were some discussion as
13 to when -- when is the time period for these?
14 Some authors apparently raise the question --
15 not with me -- but I heard it secondhand as to
16 whether anything that happened after the papers
17 were published needed to be included and
18 that -- that clearly would not be -- be
19 appropriate. These are the declarations of
20 interest and acknowledgments as existed for the
21 papers when they were published.

22 Q. Okay. So your response to question 15
23 included -- the request for production of
24 documents in the subpoena, original subpoena
25 requested documents related to your

1 investigation of the ethical issues related to
2 the publication of the Expert Panel Glyphosate
3 Supplement, correct?

4 A. Yes.

5 MR. LASKER: Objection to form.

6 BY MR. BAUM:

7 Q. Would those documents be a good record
8 of the sequence of events that went into the
9 investigation including in particular the memos
10 that you wrote, the one on August 5th --

11 MR. LASKER: Objection to form.

12 BY MR. BAUM:

13 Q. -- in 2018?

14 MR. LASKER: You have a document to
15 show him?

16 MR. BAUM: Exhibit 5.

17 BY MR. BAUM:

18 Q. Do you want to look at 15 there? I
19 see a response to 15.

20 A. 15 is, "All communications with Taylor
21 & Francis regarding the 2017 ethical
22 investigation of the publication of the five
23 manuscripts by the Intertek expert panel."

24 I provided to the best of my ability
25 the copies of the communications I had at hand

1 related to that matter.

2 Q. When you wrote the e-mails that are
3 contained in Exhibit 5, which is the response
4 to Exhibit -- to request 15, you were trying to
5 be truthful and honest while you wrote those
6 e-mails, correct?

7 MR. LASKER: Objection to form.

8 BY MR. BAUM:

9 Q. You can take a look at Exhibit 5 if
10 you'd like.

11 MR. LASKER: There are like 500 pages
12 of documents I think in response to request 15.

13 BY MR. BAUM:

14 Q. Exhibit 5 is one of these two guys.

15 A. Exhibit 5 is -- what --

16 Q. That one?

17 A. Oh, okay. All communications -- no,
18 it's the information I provided in Exhibit 5,
19 which is response to the inquiry 15, "All
20 communications with Taylor & Francis regarding
21 the 2017 ethical investigation of the
22 publication of the five manuscripts by the
23 Intertek expert panel."

24 My response there in the materials I
25 provided were provided to the best of my

1 ability to respond to that -- to that inquiry.

2 Q. The question I was asking was there's
3 some e-mails and memos that you wrote. At the
4 time that you wrote them, were you trying to be
5 truthful at the time that you wrote those
6 e-mails and memos?

7 MR. LASKER: Objection to form.

8 A. Absolutely.

9 BY MR. BAUM:

10 Q. Good. So back to the core -- the
11 expressions of concern, there's a sentence here
12 that says, "We have not received an adequate
13 explanation as to why the necessary level of
14 transparency was not met on the first
15 submission."

16 If you go to the last page, there you
17 go, and it's the right -- next to the last
18 paragraph on the right column.

19 A. Yes. That paragraph --

20 Q. Before you -- before you answer, I'm
21 just going to answer -- ask a question about
22 it.

23 A. Okay.

24 Q. First we were identifying that you
25 said that. Now I want to know, what did you

1 mean when you said that?

2 A. Let me respond to your -- your
3 question.

4 That particular paragraph, two
5 sentences, was additionally drafted by Charles
6 Whalley. We had considerable discussion about
7 it and as a coauthor of the expression of
8 concern, I stand by the statement. I do not
9 know why, despite my strong admonishments to
10 the authors, and specifically to Ashley
11 Roberts, that details were not initially
12 provided with regard to the acknowledgments and
13 the declaration of interest. That's basically
14 what we're trying to say. So I -- I -- I don't
15 know.

16 I participated in many advisory panels
17 like this. I know how confusing things get and
18 especially the role of a coordinating
19 individual, all I can say is, you know, we did
20 not receive a detailed explanation that we
21 decided to move on. And so we say, "We regret
22 these corrections were necessary and thank
23 those who brought this matter to our
24 attention."

25 Q. As far as you know now, these

1 corrigenda that you received are truthful and
2 accurate?

3 A. I want to emphasize, the authors of
4 the articles have the ultimate responsibility
5 for the content of the corrigendum. To the
6 best of my knowledge of what they have provided
7 are accurate and truthful.

8 Q. Good. All right.

9 So what I'm going to do is I'm going
10 to skip ahead and we may come back to these
11 intervening exhibits, but I'm going to skip
12 ahead to Exhibit 30.

13 (Exhibit McClellan 30, Document Bates
14 numbered MONGLY2844211 through MONGLY02844228,
15 marked for identification.)

16 BY MR. BAUM:

17 Q. So what I'm handing you is an e-mail
18 from William Heydens dated August 28, 2015, to
19 Donna Farmer and David Saltmiras, Manuscript
20 Expert Panel and this is -- with an attachment.
21 And the subject is, "Draft Sample Glyphosate
22 Manuscript."

23 Do you see that?

24 A. Let me -- let me review this material.

25 Yes, I have, after I've taken a quick

1 look at this.

2 Q. Have you seen that document before?

3 A. To the best of my knowledge, I have
4 never seen this document before.

5 Q. What has been your understanding of
6 who wrote the summary for the glyphosate
7 supplement?

8 A. It is -- it is my understanding that
9 the summary was prepared collectively by the --
10 the individuals listed as authors of that
11 report. I've only thumbed through this, but,
12 you know, what is here is a little more than an
13 outline of -- of the activities. And it
14 does -- I don't know when this was prepared
15 relative to my request that the documents
16 provide a clear statement, the manuscripts
17 provide a clear statement of the conclusions
18 of -- of IARC. It's kind of boilerplate
19 information --

20 Q. Take a look at the date, the cover
21 e-mail.

22 A. Well, the manuscript, the abstract --
23 this material is not dated so I don't know when
24 it was -- when it was prepared.

25 Q. And so the cover e-mail says,

1 "8/28/2015." Do you see that in the upper
2 left --

3 A. Yes, I see that.

4 Q. And the subject is, "Draft Sample
5 Glyphosate Manuscript." Do you see that?

6 MR. LASKER: And I'm going to object
7 to form to questioning about this document.
8 The witness has stated he has never seen the
9 document. He didn't have any independent basis
10 to testify as to the facts contained or
11 statements contained in this document.

12 A. I -- I recognize the e-mail, what the
13 e-mail says. I've never seen the e-mail
14 before. I never saw the accompanying material.
15 The point I want to make is that the
16 accompanying material, it is not dated. So
17 I -- I'm not prepared to speculate that it was
18 prepared on August 28th or if it was, you know,
19 prepared sometime previously. I've learned to
20 be very careful in terms of review of
21 materials. So I'm not prepared to jump to that
22 conclusion.

23 Q. Okay.

24 A. I can tell you I've seen -- I never
25 saw it, either of these. I do find some of

1 this interesting boilerplate in terms of
2 background information.

3 Q. Okay. Do you see that the August 28,
4 2015 e-mail has an attachment, "Manuscript
5 Expert Panel." Do you see that?

6 MR. LASKER: Objection to form, lacks
7 foundation.

8 A. What I see is it says -- yeah, "Here's
9 my first shot."

10 Q. Just above that it says,
11 "Attachments."

12 Do you see that?

13 A. Oh, yeah, I see what you're talking
14 about.

15 Q. And then in the text of the e-mail he
16 says, "Here is my first shot. It's starting
17 the manuscript for the" report -- "the panel
18 report."

19 Do you see that?

20 A. Yeah, I see that.

21 Q. Okay. So if you -- and it says, "The
22 intro is a little long, but I'm trying to do
23 two things; first show that IARC is in stark
24 contrast to everybody else; second, since IARC
25 made such a big deal of the mouse kidney story,

1 I thought it was important to tell the whole
2 real story of how many people looked at this
3 and came to the conclusion that it's opposite
4 of IARC's conclusion."

5 Do you see that?

6 A. I see that.

7 Q. Okay. So turning over to the next
8 page of the attachment, it says, "Expert Panel
9 Report on the Carcinogenic Potential of
10 Glyphosate."

11 Do you see that?

12 A. I see that, yes.

13 Q. And then you see the list of authors
14 there?

15 A. I do.

16 Q. And is that the same set of authors
17 who ended up being authors for the
18 supplement -- supplement summary?

19 MR. LASKER: While the witness is
20 looking through that, just a standing objection
21 to the questions on this document, again, just
22 reading the document to the witness who's never
23 seen it before.

24 A. No --

25 BY MR. BAUM:

1 Q. Do you recognize those authors?

2 A. Yes, I recognize those authors and --

3 Q. So I'm going to -- I'm going to -- I'm
4 going to hand you the published supplement and
5 you can compare the authors against it. How's
6 that?

7 MR. BAUM: We'll mark this one as 33
8 and we'll come back to some others.

9 (Exhibit McClellan 33, Document
10 entitled Evaluating the Potential Carcinogenic
11 Hazard of Glyphosate, marked for
12 identification.)

13 BY MR. BAUM:

14 Q. So I'm handing you the -- the forward
15 and the articles that were published as part of
16 the glyphosate supplement by an expert panel in
17 CRT.

18 MR. LASKER: This is all five -- I'm
19 confused. This is all five of the
20 communications?

21 MR. BAUM: Yes.

22 MR. LASKER: What number are we?

23 MR. THOMPSON: 33.

24 MR. LASKER: This is 33?

25 MR. BAUM: Yes.

1 MR. LASKER: Sorry.

2 BY MR. BAUM:

3 Q. Do you recognize that document?

4 A. Yes, I do.

5 Q. Is that the set of papers including
6 your forward and a summary, four scientific
7 papers published in CRT as the -- what we call
8 the Expert Panel Supplement for glyphosate?

9 A. Yes.

10 Q. The immediate question I had asked you
11 was comparing the authors on a review of
12 carcinogenic potential of glyphosate for four
13 independent expert panels and comparison to the
14 IARC assessment, that -- that particular paper
15 served as sort of a summary of the other four
16 papers; is that correct?

17 A. This -- this paper that we're talking
18 about here --

19 Q. The published paper?

20 A. Yes.

21 Q. And if you look at the authors on that
22 paper and compare them against this draft paper
23 that was -- appears to have been written in
24 August 28th of 2015, do you see a correlation
25 between the authors?

1 A. Well, there's two authors that are
2 clearly missing in terms of -- after you go
3 past the first author. The authors are listed
4 in -- in alphabetical order and so John
5 Acquavella is not listed on this draft material
6 and Larry Kier is not listed.

7 Q. But Gary Williams is listed, correct?

8 A. Yes, he is.

9 Q. Keith Solomon?

10 A. Yes.

11 Q. Tom Sorahan?

12 A. Yes.

13 Q. Sir Colin Berry?

14 A. Yes.

15 Q. David Brusick?

16 A. Yes.

17 Q. Helmut Greim?

18 A. Yes.

19 Q. Marilyn Ar -- how do you pronounce her
20 name?

21 A. Aardema.

22 Q. Aardema, Marilyn Aardema?

23 A. Yes.

24 Q. Michelle Burns?

25 A. Yes.

1 Q. Would you say Dr. Carmargo?

2 A. Yes.

3 Q. David Garabrant?

4 A. Yes.

5 Q. David Kirkland?

6 A. Yes.

7 Q. David Marsh?

8 A. Yes.

9 Q. Douglas Weed?

10 A. Yes.

11 Q. And Ashley Roberts?

12 A. Yes.

13 Q. So that's a pretty close correlation
14 between the two; is that correct?

15 A. Yeah, I would -- I wouldn't use the
16 word "correlation". There's two names missing
17 on -- two names on the final published paper,
18 which was submitted to the journal on April 8,
19 2016, and from the list of materials --
20 individuals that are listed in terms of the
21 manuscript that was attached to the August 28,
22 2015.

23 Q. 14 of the 16 authors that were part of
24 the expert panel that was published in CRT are
25 referenced on this summary in Exhibit 30,

1 correct?

2 THE WITNESS: Could you read back? I
3 think you made a mistake, but I want it to be
4 in there.

5 MR. BAUM: I can repeat the question.

6 THE WITNESS: Just ask her to read it
7 back for the record.

8 MR. BAUM: Can you read it back?

9 (Whereupon, the question is read back
10 by the reporter.)

11 A. Okay. I wanted to make certain we
12 were talking the same, yeah.

13 The final manuscript includes John
14 Acquavella and Larry Kier.

15 Q. So the question I'm asking you is, is
16 14 of the 16 authors of the expert panel are
17 identified in Exhibit 30 as authors of this
18 summary -- this draft summary, correct?

19 MR. LASKER: Objection to form.

20 A. I -- I have -- as I have repeatedly
21 said, I've never seen this document before.
22 And to see now it, you're asking me sort of the
23 obvious question. Yes, there is a difference
24 here. I have no basis -- no knowledge as to
25 why that comes about, whatever.

1 BY MR. BAUM:

2 Q. Okay. So I'm not asking you any of
3 that.

4 I'm saying that 14 of the 16 authors
5 that are on the panel are identified here on
6 this summary in Exhibit 30, correct?

7 MR. LASKER: Objection to form.

8 A. Let me restate. Exhibit 33, that's --

9 BY MR. BAUM:

10 Q. No. I'm asking about Exhibit 30.

11 A. I have no knowledge of Exhibit 30.
12 This is the first time I saw it.

13 Q. Okay. Look at -- look at the expert
14 panel page -- I mean, look at the summary --

15 A. I have repeated --

16 Q. -- are 14 of the authors that are
17 authors on the expert panel publication in CRT
18 identified on this draft, that's Exhibit 30?

19 A. I think I related to you that the
20 final report as published in CRT includes two
21 names that are not on that other communication.
22 Those two names are John Acquavella and Larry
23 Kier.

24 Q. Okay. Are 14 of the 16 identified on
25 Exhibit 30? That's my question. Yes or no?

1 A. Yes.

2 Q. Thank you.

3 Now, who do you think drafted the
4 summary?

5 MR. LASKER: Objection to form.

6 A. I have no idea other than what the
7 authors have stated. The authors in various
8 forms have indicated that that material is
9 their original contribution. They stand by it
10 and --

11 BY MR. BAUM:

12 Q. Now, this predates -- this August 28,
13 2015 document, it predates the expert panel's
14 submissions to you, correct?

15 A. Yes, it does.

16 Q. Would it surprise you to learn that
17 some of the language in this document is also
18 in what you published?

19 A. I have not had the opportunity
20 obviously to review the language in the e-mail
21 communication with the actual paper, so I can't
22 comment on that.

23 Q. Well, in any case, William Heydens is
24 not listed as an author on either of these two
25 documents, correct?

1 MR. LASKER: Objection to form.

2 A. The only document that I view as a
3 paper that I can speak authoritatively to is
4 the paper that appeared in Critical Reviews in
5 Toxicology. His name is not on that author
6 list.

7 BY MR. BAUM:

8 Q. Okay. And take a look at -- back at
9 Exhibit 30, look at the -- at the draft
10 summary, the first page. Do you see William
11 Heydens's name in the list of proposed authors?

12 A. No.

13 Q. Okay. So you have never been informed
14 that William Heydens wrote drafts of the
15 summary for the publication of the Expert Panel
16 Glyphosate Supplement; is that correct?

17 MR. LASKER: Objection to form,
18 misstates the record. Is this at any time?
19 Objection to form.

20 BY MR. BAUM:

21 Q. Did you understand the question?

22 A. You'll have to repeat the question.

23 MR. BAUM: Can you read the question
24 back to him?

25 (Whereupon, the question is read back

1 by the reporter.)

2 A. I think I've stated this before, but
3 my knowledge of the content of the summary
4 paper authored by 16 individuals begins when I
5 received the article on April 8th, 2016 by
6 Manuscript Central. I have no detailed
7 knowledge -- I have no general knowledge of
8 activities that preceded that.

9 Q. And when you con -- when you conducted
10 your investigation into some of the ethical
11 issues related to the publication of the
12 glyphosate supplement in CRT, did any of the
13 authors ever tell you that they had seen or
14 reviewed a first draft authored by William
15 Heydens?

16 MR. LASKER: Objection to form.

17 A. I think I responded previously that
18 the authors testified that the materials that
19 were submitted represented their work product.
20 The corrigendum is labeled correction for the
21 Williams, et al., article states that, "William
22 Heydens of Monsanto reviewed a draft of this
23 overview paper and suggested wording changes
24 but did not comment on the opinions and
25 conclusions of the expert panel. The opinions

1 expressed in the final conclusions set out in
2 this overview paper were those of the listed
3 authors and no one else."

4 Q. So writing a draft and sharing it with
5 one or more of the authors is different than
6 commenting on a draft, correct?

7 MR. LASKER: Objection to form,
8 misstates the record.

9 A. I have stated --

10 THE WITNESS: Go ahead.

11 BY MR. BAUM:

12 Q. Go ahead.

13 A. I have read for you the record as I
14 understand it and that is in terms of the
15 declaration of interest and -- and, you know, I
16 can read the -- the sentence here again. The
17 statement is in the declaration of interest in
18 the paper by Williams, et al., goes, "William
19 Heydens of Monsanto reviewed a draft of the
20 overview paper and suggested wording changes"
21 -- that did not -- "but did not comment on the
22 opinions and conclusions of the expert panel.
23 The opinions expressed in final conclusions set
24 out in this overview paper were those of the
25 listed authors and no one else."

1 Q. And that corrigenda or that group of
2 corrigenda, that one in particular, did not
3 state that Heydens had written drafts of the
4 summary that that corrigenda was related to,
5 correct?

6 MR. LASKER: Objection to form and,
7 Michael, I know that you're not trying to
8 mislead the witness because obviously there's a
9 statement in the acknowledgement of the
10 corrigenda as well.

11 A. I've read to you the corrigendum. You
12 have it in front of you. And this is the
13 corrigendum which the authors provided to
14 correct the record.

15 BY MR. BAUM:

16 Q. But none of the authors identified or
17 expressed or acknowledged to you that William
18 Heydens had written drafts of the summary paper
19 for the glyphosate supplement, correct?

20 MR. LASKER: Objection to form,
21 misstates the record, misstates the corrigenda.

22 A. I -- I understand your statement for
23 the record, Mr. Baum, and I respect it.

24 BY MR. BAUM:

25 Q. Well, that's a little different than

1 did anyone tell you that they had -- are aware
2 that William Heydens had written drafts?

3 MR. LASKER: Objection to form.

4 A. No one made me aware of any -- the
5 detailed nature of proceedings of the panel.

6 BY MR. BAUM:

7 Q. Did Ashley Roberts ever tell you that
8 he had actually reviewed these -- this draft or
9 another draft of -- with Mr. Heydens --

10 MR. LASKER: Objection to form.

11 BY MR. BAUM:

12 Q. -- that Mr. Heydens had written?

13 MR. LASKER: Objection to form, lacks
14 foundation.

15 A. I do not recall any conversations or
16 communications with Dr. Ashley Roberts at
17 Intertek in which he made specific reference to
18 any individuals at the sponsoring organization
19 including Mr. Heydens.

20 Q. That includes Mr. Heydens having
21 written drafts of the summary of the
22 supplement?

23 MR. LASKER: Objection to form, lacks
24 foundation, misstates the record.

25 A. I gave you a truthful and complete

1 answer. Please read it.

2 Q. What's -- what's not clear to me is
3 from your answer, did that include a specific
4 reference to Mr. Heydens having written drafts
5 of the summary?

6 MR. LASKER: Objection to form, lacks
7 foundation, misstates the record, calls for
8 speculation.

9 MR. THOMPSON: I think -- let's get
10 the court reporter to read it back. I think he
11 answered your question straight all.

12 MR. BAUM: Well, I'm asking a
13 follow-up question.

14 BY MR. BAUM:

15 Q. Did that include reference to the --
16 Heydens having written --

17 A. Mr. Baum --

18 Q. -- drafts --

19 A. -- I responded truthfully and to the
20 best of my knowledge. I cannot testify to that
21 which I do not know.

22 Q. Well, you do know whether or not
23 someone told you whether or not Heydens wrote
24 first drafts, right?

25 MR. LASKER: Objection.

1 A. If you'll read the answer to my
2 question, I think it is complete and accurate
3 and addresses what you've asked.

4 MR. BAUM: Okay. Let's hear the
5 answer.

6 MR. LASKER: Objection to form,
7 objection to the question, lacks foundation,
8 calls for speculation, misstates the record.

9 THE COURT REPORTER: Do you want me to
10 read something back?

11 MR. BAUM: Yes, please.

12 BY MR. BAUM:

13 Q. You wanted to hear your answer back?

14 A. Yeah. Perhaps you want to hear it.

15 (Whereupon, the answer is read back by
16 the reporter.)

17 MR. BAUM: It's been about an hour.
18 Let's take another break.

19 THE VIDEOGRAPHER: With the approval
20 of counsel, we're going off the record. The
21 time is approximately 3:34. This marks the end
22 of media recording 5.

23 (Whereupon, a brief recess is taken
24 from 3:34 p.m. to 3:44 p.m.)

25 THE VIDEOGRAPHER: With the approval

1 of counsel, back on the record. The time is
2 approximately 3:44 p.m.

3 BY MR. BAUM:

4 Q. Okay. So I'd like you to put Exhibits
5 30 and 33 in front of you. We're going to
6 compare a couple of spots. Did you find it?

7 A. I have 33.

8 Q. It looks like that.

9 A. Yes, I have 30.

10 Q. Okay. So set that side by side with
11 Exhibit 33 and I'd like you to turn to in
12 Exhibit 30 Bates number ending 4217.

13 A. I see that.

14 Q. And then in Exhibit 33, I'd like you
15 to turn to page 5, the numbers are in the upper
16 right and look at the bottom right paragraph
17 under, "Expert panel critique of the IARC
18 assessment and review of relative data."

19 MR. LASKER: I'm sorry. Where are we
20 at?

21 MR. BAUM: We're at page 5, bottom
22 right --

23 MR. LASKER: Okay.

24 MR. BAUM: -- under, "Expert critique
25 of the" -- "Expert panel critique of the IARC

1 assessment."

2 MR. LASKER: Thank you.

3 MR. BAUM: Okay.

4 BY MR. BAUM:

5 Q. So what I'd like you to do is compare
6 the paragraph on Exhibit 30 ending in 4217
7 beginning with, "Because these conclusions are
8 in such stark contrast," do you see that? Do
9 you see that paragraph?

10 A. Yes, I do.

11 Q. And compare that paragraph with the
12 paragraph in Exhibit 33, the final publication
13 supplement it says, "Since the IARC conclusions
14 were found to be in such contrast to those from
15 all other assessments."

16 Do you see that?

17 A. I see that.

18 Q. And if you read through that sentence
19 and then to the next sentence, "Toward that
20 end, Intertek Scientific and Regulatory
21 Consultant Services were commissioned by
22 Monsanto Company."

23 A. Yes, I see that.

24 Q. Do you see that these two paragraphs
25 are virtually identical?

1 A. Yes.

2 Q. Okay. Then let's go to -- turn the
3 page over to the next page, the draft. And
4 then turn the page over in Exhibit 33, the
5 final publication and you'll see halfway down
6 the left-hand column, page 6 of the final, it
7 starts with, "Prior to the meeting."

8 Do you see that?

9 A. I see that.

10 Q. And then if you look on Bates number
11 4218 --

12 A. Right.

13 Q. -- of Exhibit 30, do you see, "Prior
14 to the meeting"?

15 A. I do.

16 Q. Do you see that these two paragraphs
17 are virtually identical?

18 A. I do.

19 MR. LASKER: Objection to form.

20 BY MR. BAUM:

21 Q. So does that suggest to you that the
22 language of the draft was somehow conveyed to
23 someone involved in writing the final and that
24 there's a direct correlation between the two?

25 A. Well, these are virtually identical.

1 This is boilerplate background information and,
2 yes, interesting note that this is virtually
3 same, as they say, boilerplate information with
4 regard to the formation of the panel. And this
5 is very important information to have about --
6 for the -- for the reader of the manuscript,
7 but the substantive material in the manuscript
8 relates to the -- to the evaluative information
9 that follows and to the conclusions that are --
10 that are offered.

11 Q. They're not too far different; are
12 they?

13 MR. LASKER: Objection to form.

14 A. I don't know what you mean "too far
15 different." What do you mean?

16 BY MR. BAUM:

17 Q. Strike that question.

18 So would you like to have known about
19 this first draft while you were doing your
20 investigation?

21 MR. LASKER: Objection to form, lacks
22 foundation, misstates the corrigendum that was
23 provided to and published by the journal.

24 A. I don't think that was -- would have
25 been particularly useful. We might well have

1 had 16 drafts to look at. As an editor in
2 chief, I'm not really concerned with all of
3 that background, give and take between the
4 individual members of the panel. I put great
5 confidence in the statement of the authors that
6 the conclusions drawn here represented the
7 conclusions of the 16 scientist authors.

8 Q. So part of the disclosure --
9 declaration of interests for this supplement
10 were statements that there ought to have been
11 no contact of -- between the authors and
12 Monsanto in the drafting of the panel's
13 supplement articles, correct?

14 MR. LASKER: Objection to form. Which
15 corrigenda are you talking about now?

16 MR. BAUM: I wasn't talking about the
17 corrigenda. I was talking about the
18 declaration of interest.

19 MR. LASKER: There's a declaration of
20 interest in the corrigenda you were just
21 talking about and an acknowledgment.

22 A. I believe we testified earlier that
23 the original declaration of interest and
24 acknowledgments were not as accurate and
25 complete as they should have been and, thus, it

1 was necessary to publish a corrigendum.

2 Q. And I agree with you and that -- and I
3 agree with your having done that.

4 In the declaration of interest for the
5 summary, it says, "Neither any Monsanto Company
6 employees or any attorneys reviewed any of the
7 expert panel's manuscripts prior to the
8 submission to the journal."

9 Do you see that?

10 MR. LASKER: And just for the record,
11 are you talking about the original declaration
12 of interest?

13 MR. BAUM: I'm reading it from the
14 published article of the summary, the
15 declaration of interest.

16 MR. BAUM: Quit confusing. I'm
17 talking about this document.

18 MR. LASKER: So this document is
19 Exhibit 30 -- is Exhibit 33? You just have --
20 there's two declarations of interests.

21 MR. BAUM: We're talking about Exhibit
22 33.

23 MR. LASKER: 33, that's fine. You
24 just have to state it for the record.

25 MR. BAUM: Okay.

1 BY MR. BAUM:

2 Q. We're talking about the declaration of
3 interest in Exhibit 33 which states, "Neither
4 any Monsanto Company employees nor any
5 attorneys reviewed any of the expert panel's
6 manuscripts prior to the submission to the
7 journal?"

8 Did I read that correctly?

9 A. Yes, you did. That is from the
10 original declaration of interest which we
11 determined to be inaccurate and incomplete and
12 now is replaced by the corrigenda for that
13 paper.

14 Q. And this correlation between this
15 draft and the final shows that there was some
16 violation of this declaration of interest,
17 correct --

18 MR. LASKER: Objection to form.

19 BY MR. BAUM:

20 Q. -- in Exhibit 33?

21 A. I think I've already testified that we
22 found the original acknowledgments and
23 declaration of interests for the five papers to
24 be incomplete and in some cases inaccurate and,
25 thus, it was necessary to publish a corrigendum

1 with corrected acknowledgments and corrected
2 declaration of interests.

3 Q. And Exhibit 30 is some evidence of why
4 that was necessary, correct?

5 MR. LASKER: Objection to form.

6 A. I don't know what credence to give to
7 the 30. I have no knowledge whether that ever
8 reached the panel members and the sections that
9 we just reviewed word for word are basically
10 boilerplate. They do not go to the real
11 substance of the paper.

12 Q. They are virtually word for word
13 though, correct?

14 A. Mr. Baum, I don't know how I can state
15 it anymore accurately. Yes, they are very
16 similar.

17 Q. Okay.

18 MR. BAUM: Can we go off the record
19 for a brief moment?

20 THE VIDEOGRAPHER: Off the record.

21 The time is approximately 3:55 p.m.

22 (Whereupon, a brief recess is taken
23 from 3:55 p.m. to 4:01 p.m.)

24 THE VIDEOGRAPHER: With the approval
25 of counsel, back on the record. The time is

1 approximately 4:05 p.m. This marks the
2 beginning of recorded media 7.

3 BY MR. BAUM:

4 Q. So looking back at Exhibit 24, which
5 is the corrigenda group, and if you flip to the
6 page that relates to the summary article by
7 Williams.

8 A. Yes, I see that.

9 Q. And you see in the acknowledgment
10 there's a reference to Mr. Heydens of Monsanto
11 in the middle of the acknowledgments.

12 Do you see that?

13 A. Yes, I see that.

14 Q. Then down in the declaration of
15 interest about -- in -- about an inch and a
16 half up from the bottom of the page, it says,
17 "William Heydens of Monsanto reviewed a draft
18 of this overview paper and suggested wording
19 changes but did not comment on the opinions and
20 conclusions of the expert panel."

21 Do you see that?

22 A. Yes, I see that.

23 Q. And it says, "The opinions expressed
24 and final conclusions set out in this overview
25 paper were those of the listed authors and no

1 one else."

2 Do you see that?

3 A. I see that.

4 Q. Now, in light of what I showed you of
5 the correlation between that first draft and
6 the final, is this statement -- these two
7 statements regarding William Heydens and the
8 corrigenda in this correction adequately
9 accurate?

10 MR. LASKER: Objection to form.

11 A. I believe it is. I call your
12 attention to the document that I've just
13 received today and when it comes to the --
14 referring now to Exhibit 30, an e-mail from
15 William Heydens and a, quote, "Manuscript
16 Expert Panel document," I would refer to page
17 ending 4223.

18 Q. I have that.

19 A. And you see what it states there,
20 "Results and conclusions"?

21 Q. Yes.

22 A. "Studies of cancer in humans"?

23 Q. Yes.

24 A. Nothing.

25 Q. Okay.

1 A. "Studies of cancer in experimental
2 animals," nothing. "Mechanistic and other
3 relevant data," nothing. "Discussion and
4 overall conclusions," nothing.

5 It is apparent that the draft material
6 that was attached to the e-mail of William
7 Heydens provides no results and conclusions, so
8 there can be no contradiction between, quote,
9 nothing and what is presented in the summary
10 paper by Williams, et al.

11 Q. Well, my point here was that -- that
12 they state here that he reviewed the draft and
13 suggested wording changes but did not comment
14 on the opinions and conclusions. These two
15 paragraphs are more than wording changes; are
16 they not?

17 MR. LASKER: Objection to form. If
18 you're going to refer to the two statements for
19 the completion of the record, the first
20 statement in the correction in the
21 acknowledgments states that, "The authors thank
22 William Heydens of Monsanto for providing" --

23 MR. BAUM: Okay. Mr. Lasker, I did
24 read those things into the record.

25 MR. LASKER: You did not read --

1 MR. BAUM: Yes, I did.

2 MR. LASKER: You did not read that
3 statement into the record at all and it is
4 directly contrary to the questions you've been
5 asking. The correction clearly states in the
6 acknowledgements that, "William Heydens of
7 Monsanto," they thank him for, "providing a
8 regulatory history overview for use by the
9 authors in the preparation of this overview
10 paper and his review of a preliminary draft of
11 the overview manuscript and the final
12 manuscript. The authors welcome the
13 opportunity to correct the omission and the
14 contributions of Barry Lunch, Intertek, and
15 William Heydens, Monsanto in the original
16 acknowledgments. These individuals were not
17 considered for authorship because they did not
18 participate in the deliberations of the panel
19 and did not contribute to the conclusions drawn
20 by the panel."

21 That is the second statement in the
22 corrected acknowledgments.

23 MR. BAUM: Okay. Thanks, Eric.

24 BY MR. BAUM:

25 Q. So in your opinion, Dr. McClellan, the

1 acknowledgments covers the interaction or this
2 first draft correlation between the first draft
3 and the final, correct?

4 MR. LASKER: Objection to form.

5 A. Mr. Baum, with all due respect, you're
6 asking leading questions, absolutely leading
7 questions. That's not what I said at all.
8 It's not a question. You're stating your
9 conclusions and trying to put them into my
10 mouth. I'm unwilling to do that. I've had a
11 long and distinguished career as a scientist
12 and I do not want to be badgered.

13 Q. Okay.

14 A. I apologize for raising my voice, but
15 I've answered it to the best of my ability. I
16 would not -- I hesitate to call this a first
17 draft of the paper. It's some material. It's
18 background material. As I said, it's basically
19 boilerplate and as I have just read to you, it
20 is absent any conclusions. I read again from
21 page 4223, "Results and conclusions" --

22 Q. We've already gone over that.

23 A. Well, I want to make sure it's in the
24 record.

25 Q. I know it's in the record.

1 My question to you is that just
2 simply, do those two paragraphs that were
3 pretty identical from in your mind, they are
4 adequately covered by the correction in the
5 corrigenda and --

6 A. Absolutely. They're trivial
7 background information that was probably
8 helpful to the panel; had no influence on the
9 conclusions drawn.

10 Q. Okay. Thank you.

11 (Exhibit McClellan 32, E-mail string
12 Bates numbered MONGLY01000676 through
13 MONGLY01000679 with attachment, marked for
14 identification.)

15 BY MR. BAUM:

16 Q. Now we're going to go to what we're
17 going to mark as Exhibit 32, which is an e-mail
18 chain between William Heydens and Ashley
19 Roberts and John Acquavella, which includes a
20 draft of the summary with some editorial
21 comments. It's a color copy to make it easier
22 to see the redline changes.

23 MR. LASKER: If you can just hold up a
24 minute. I don't have a copy yet.

25 MR. BAUM: Oh.

1 A. I have just been given Exhibit 32 and
2 I'm just beginning to review it. I can only
3 judge it to be perhaps 40 pages in length.

4 BY MR. BAUM:

5 Q. Would you like to --

6 A. Since I've never seen it before, it
7 will take me a little time to review it.

8 Q. Okay. We can go off the record and
9 take a look at it.

10 MR. BAUM: Go off the record.

11 THE VIDEOGRAPHER: With the approval
12 of counsel, we're going off the record. The
13 time is approximately 4:13 p.m.

14 (Whereupon, a brief recess is taken
15 from 4:13 p.m. to 4:19 p.m.)

16 THE VIDEOGRAPHER: With the approval
17 of counsel, back on the record. The time is
18 approximately 4:19 p.m. This marks the
19 recording of media tape 8.

20 BY MR. BAUM:

21 Q. And so we're looking at Exhibit 32,
22 which is an e-mail dated February 9, 2016 from
23 William Heydens to Ashley Roberts and it's an
24 e-mail string that runs for a -- from February
25 8th to February 9, 2016, including John

1 Acquavella in interaction with Ashley Roberts.

2 Do you see that?

3 A. Yes, I do. As I said, this is a very
4 voluminous document I just received a few
5 minutes ago, so any comments I offer on it
6 are -- have to be taken as very preliminary.

7 Q. Okay. That's understood.

8 A. I do -- have ascertained that WH is
9 William Heydens, who I understand is Monsanto,
10 and JA is John Acquavella and those -- those
11 comments are in the text and as well as in the
12 sidebar, substantial number of comments on this
13 draft which is some 49 pages in length.

14 Q. Okay. So let's start --

15 THE COURT REPORTER: Hold on a second.

16 MR. LASKER: Sorry. Just object on
17 the record, although I just want to note on the
18 record, I guess, the attachment does not have
19 MONGLY numbers. I will accept counsel's
20 representation that this was a document that
21 was originally attached, but I don't know that.
22 We can confirm that later.

23 MR. BAUM: I have a copy with the
24 MONGLY numbers that's black and white.

25 MR. LASKER: Okay.

1 MR. BAUM: And this one is colored so
2 I thought it would be easier.

3 MR. LASKER: Okay. This is --
4 that's --

5 MR. BAUM: And we got --

6 THE COURT REPORTER: One at a time,
7 please, guys.

8 MR. LASKER: You've got it all? Well
9 --

10 We'll deal with this off the record.
11 I preserve my objection on those grounds and,
12 otherwise, I'll object to questioning on this
13 document for lack of foundation. This is a
14 document that the witness has never seen before
15 and the witness does not have any independent
16 factual knowledge about the statements or any
17 of the information disclosed therein.

18 BY MR. BAUM:

19 Q. So -- so number one, you have not seen
20 this -- the e-mail or the attachment before
21 today; is that correct?

22 A. No, I have not.

23 Q. Okay. And then on the first e-mail
24 from -- on the first page from -- from Heydens
25 to Ashley Roberts, it says, "Ashley, okay I've

1 gone through the entire document and indicated
2 what I think should stay, what can go and then
3 a couple of spots I did a little editing. I
4 took a crack at adding a little text on page 10
5 to address John's comments about toxicologist
6 use on Hill's criteria. See what you think.
7 It made sense to me, but I'm not sure if it
8 will to others. Please feel free to further
9 modify" -- or run -- "and/or run by Gary."

10 Do you see that?

11 A. Yes.

12 Q. Does this appear to you -- oh, and
13 then if you look at the attachment, which is
14 the summary management draft 20 Feb 2016
15 referenced in the e-mail, you'll see that there
16 are --

17 A. I'm sorry, excuse me. I don't see
18 where you're saying 2016.

19 Q. It's -- it's up here in the e-mail
20 itself. Look at the e-mail. It says,
21 "Attachment Summary Manuscript Draft, 20 Feb."

22 A. I see that, yes.

23 Q. Actually, it says, "Summary Manuscript
24 Draft 2" -- maybe 0 -- "Feb 5, 2016," sorry.
25 Thanks for clarifying that.

1 Do you see that?

2 A. I do.

3 Q. Okay. And then you see that there's
4 an attachment with a redlined version of the
5 draft summary for the supplement.

6 Do you see that?

7 A. Yes, that's the document that's 49
8 pages in length. The document itself is not
9 identified as to date.

10 Q. And --

11 A. And it's not identified by authors
12 other than the stream of authors. So it's not
13 clear to me, as I say, when this was prepared
14 and -- and the corresponding author on it, if
15 you will. Presumably that's Gary Williams.

16 Q. Do you see that there are redline
17 edits throughout the draft manuscript that's
18 attached?

19 A. Yes, I do.

20 Q. Okay. And then going back to the
21 e-mail, there's an e-mail from Ashley
22 Roberts -- I mean, from John Acquavella to
23 Ashley Roberts starting on page 2 of the
24 document. It's dated February 8, 2016?

25 A. I see that.

1 Q. That's the subject is the summary
2 article?

3 A. I see that, yes.

4 Q. So he -- so John Acquavella is
5 conveying to Ashley his comments about the
6 inflammatory issues regarding IARC. Do you see
7 that?

8 MR. LASKER: Objection to form,
9 standing objection --

10 A. I see the first paragraph.

11 Let me start by saying I share your
12 goal of having complete expert panel authorship
13 in the summary article. I've had some initial
14 correspondence from the panelists about the
15 summary article and the consensus is there will
16 not be authors on an article that has
17 inflammatory comments about IARC. Assuming
18 those inflammatory comments were carried over
19 from the animal carcinogenicity and
20 genotoxicity articles, I'm sure the epi
21 panelists would not want to be associated with
22 those articles either.

23 MR. BAUM: Okay.

24 MR. LASKER: Let me just have a
25 standing objection to questioning on this

1 document, the questioning on this document for
2 lack of foundation.

3 BY MR. BAUM:

4 Q. Okay. So then in the document
5 itself -- well, were you under the impression
6 while you were operating as the chief editor
7 for this Expert Panel Supplement that the draft
8 of this particular manuscript was being
9 reviewed and edited by a Monsanto employee
10 William Heydens?

11 MR. LASKER: Objection to form.

12 A. Let me -- let me start with an
13 overarching statement. Review manuscripts,
14 including manuscripts prepared by advisory
15 panels, are always extraordinarily complex to
16 reach conclusions and that's certainly the case
17 with 16 very distinguished scientist authors in
18 terms of this manuscript.

19 I would further say that it's most
20 frequently the case that such -- that draft
21 manuscripts, as they start to reach
22 conclusions, are very frequently reviewed by
23 sponsors, very frequently reviewed by sponsors
24 in -- in the finalization process.

25 What is important is the question of

1 the conclusions that are reached in particular
2 and, as I said, have said repeatedly, the 16
3 authors of these five reports have clearly
4 stated that this is their work product and the
5 conclusions drawn are theirs. And so I give
6 substantial credence to that and recognition in
7 terms of the stature and capabilities of these
8 panel members.

9 Q. Okay. Excuse me. You're not
10 answering my questions. We're running out of
11 time.

12 Were you aware that William Heydens
13 was getting this manuscript and making comments
14 on it while you were the chief editor for this
15 particular manuscript?

16 MR. LASKER: Objection to form.

17 A. I was made known -- it was made known
18 to me when I read the revised declaration of
19 interest and acknowledgments that William
20 Heydens did have a role in the review of the
21 manuscripts. That is stated, I think, clearly
22 in the corrigendum.

23 BY MR. BAUM:

24 Q. Thank you.

25 But at the time that you were

1 reviewing it before the corrigendum, were you
2 aware of it then?

3 A. I had no specific knowledge of
4 Mr. Heydens or other personnel at Monsanto's
5 review -- participation in the delivery process
6 or review of material.

7 Q. Okay. So-- and I'd like to direct
8 your attention to one or more of these
9 corrections that he made. If you go to page 18
10 and look at comment 34, it's WH-34, William
11 Heydens 34.

12 "Again, I would keep this in. It is
13 not inflammatory, and it notes that IARC did
14 not include an important consideration."

15 Do you see that?

16 A. If I'm understanding this, the draft
17 material had a statement, "IARC did not
18 consider the chemical structure of glyphosate
19 in its mechanistic section."

20 Q. And so that is -- looks -- appears to
21 have been stricken in blue, correct?

22 A. It is stricken in blue. I'm uncertain
23 as to who the preparer is that is responding in
24 blue.

25 Q. If you look at --

1 A. As I see to the side, it says,
2 "Comment WH-34." I assume that's Heydens.

3 Q. Yes.

4 A. He says, "Again, I would keep this in.
5 It is not inflammatory and it notes that IARC
6 did not include important consideration."

7 Q. Okay. So --

8 A. Seems like a very appropriate comment.

9 Q. Okay. And looking back at some of the
10 earlier pages, you'll see some of the comments
11 by JA-4. Do you see any of those?

12 A. No, I'm not certain where. Give me --
13 which page do you want me to look at?

14 Q. Go to page 9.

15 A. If I'm understanding correctly, it
16 states, "Based on current RFDs" -- that would
17 be reference doses -- "and major exposures,
18 there is an extremely large margin of
19 safety" -- it's not clear to me what the word
20 safety -- "no hazard from exposure to
21 glyphosate."

22 Q. The question I'm only asking and the
23 thing I'm trying to point out to you is that
24 Dr. Acquavella's comments are in blue. Do you
25 see that his comments on the right, "JA," and

1 the comment regarding this are in blue?

2 A. Yeah, I think JA says, "Rather than
3 say no hazard, perhaps say there is an
4 extremely large margin of safety."

5 Q. Okay. And we're turning to page 18 --

6 A. If I were editing the paper, I would
7 concur with the comment of Dr. Acquavella.

8 Q. Okay. And then returning to page 18,
9 do you see that there's a line stricken in blue
10 indicating that it was John Acquavella's
11 strike, "IARC did not consider the chemical
12 structure of glyphosate in its mechanistic
13 section."

14 Do you see that?

15 A. I do.

16 Q. And Mr. Heydens -- Dr. Heydens says
17 that he would keep this in.

18 Do you see that?

19 A. I do.

20 Q. Okay. Now let's take a look at
21 Exhibit 33, the final publication at page 13.

22 A. Which page?

23 Q. Page 13.

24 A. I see it.

25 Q. And on the left-hand column, third

1 paragraph down, it starts, "IARC did not."

2 Do you see that?

3 A. I see that.

4 Q. And it says, "IARC did not consider
5 the chemical structure of glyphosate in its
6 mechanistic section."

7 Do you see that?

8 A. Right.

9 Q. So the strike by John Acquavella was
10 overwritten by William Heydens and that line
11 ended up appearing in the final --

12 A. That's a bold statement.

13 MR. THOMPSON: Objection.

14 A. I have basis for saying that.

15 MR. LASKER: Dr. --

16 A. In terms of there are probably many
17 changes that were made in the manuscript as it
18 proceeded to finalization. I can assure you as
19 the editor and as a scientist reading this,
20 I -- I would have probably made note of the
21 fact that this -- this sentence, I think it's
22 an important sentence and an important
23 conclusion. However, it got into the document,
24 I'm pleased that it's there.

25 Q. Okay. So my only point is --

1 MR. LASKER: Objection to form to the
2 prior question. Thank you.

3 BY MR. BAUM:

4 Q. So my only point there -- and there
5 are many of these, I could walk you through and
6 I'm not going to do it now, but there are --
7 you can see that there are a number of edits
8 throughout. I just want to show you an example
9 where there's a recommendation by Mr. Heydens
10 ended up being implemented in the final, okay?
11 And then if you look at --

12 A. Do you want me to comment on that?

13 Q. No, I was pointing out to you
14 that's --

15 If you look at page 11 --

16 MR. LASKER: Of which?

17 MR. BAUM: Of the edited redlined
18 draft.

19 BY MR. BAUM:

20 Q. -- you'll see that there's language in
21 purple that's related to comments by Mr.
22 Heydens and language in blue. And in the
23 comments --

24 A. I don't follow where you're showing --
25 where you're trying to lead me.

1 Q. At page 11.

2 A. I'm at 11.

3 Q. Page 11?

4 A. I see that.

5 Q. Do you see that there's blue?

6 A. I see it. There are a number of
7 comments.

8 Q. There's blue text and there's blue
9 comments and there's a sort of purple or
10 magenta comments and sort of magenta text.

11 Do you see that?

12 A. I'm a little bit colorblind, so even
13 though I do some pathology, but I -- I don't
14 see any reds and blues and maroons, whatever.

15 Let's talk about the specifics. You
16 want to give me a specific example, WH-15 or --

17 Q. Okay, WH-15. So it's -- there's, you
18 know, Dr. Heydens is recommending language be
19 added at that spot. Do you see that?

20 A. I see that, yeah.

21 Q. And -- let's go to, like, page 21, for
22 instance.

23 MR. LASKER: I'm sorry. Where are we?

24 MR. BAUM: Page 21 of the redlined
25 draft.

1 MR. LASKER: Oh, I'm sorry. So we're
2 moving on from page 11?

3 MR. BAUM: Yeah.

4 BY MR. BAUM:

5 Q. Just like looking at the comments, you
6 can see that Mr. Heydens is making suggested
7 edits. Do you agree?

8 A. With all due respect, Mr. Baum, I have
9 edited thousands of manuscripts. The kind of
10 comments that I see here are the kind of
11 comments that authors generally find very
12 helpful and useful. Wherever they came from,
13 my cursory review is that they strengthen the
14 manuscript. I have not seen anything that
15 leads me to the conclusion that the conclusions
16 were inappropriately altered in response to the
17 edits that were made here, whether those edits
18 were made by John Acquavella or by William
19 Heydens.

20 I would note that the manuscript
21 again, the auth -- the individual who had the
22 ultimate responsibility was the senior author
23 of this paper, Gary Williams. And so the
24 question is, how they took account of these.

25 As a -- as an editor in chief, I do

1 not request -- it would be inappropriate for me
2 to ask to see numerous drafts of papers. I
3 have had drafts of my own papers that my typist
4 has said we're at revision 12, can we stop
5 soon?

6 Q. Okay. So these edits by Williams
7 Heydens are part of the basis for there being a
8 corrigenda for the summary article --

9 MR. LASKER: Objection to form.

10 BY MR. BAUM:

11 Q. -- is that correct?

12 A. It -- it was the more -- yes.

13 Q. Okay.

14 A. More complete com --

15 Q. That's good.

16 A. That statement is fine.

17 Q. That's good. We've got other
18 questions.

19 So I'd like to take another break for
20 a couple of minutes before we move onto another
21 topic.

22 THE VIDEOGRAPHER: Off the record.

23 The time is approximately 4:40 p.m. This marks
24 the end of recorded media 8.

25 (Whereupon, a brief recess is taken

1 from 4:40 p.m. to 4:56 p.m.)

2 THE VIDEOGRAPHER: With the approval
3 of counsel, back on the record. The time is
4 approximately 4:56 p.m. This begins recording
5 media number 9.

6 BY MR. BAUM:

7 Q. So we're going to be looking at
8 Exhibit 5, which is your response to request 15
9 that has a string of e-mails and some memos
10 between you and Charles Whalley or other
11 members of Taylor & Francis and address your
12 investigation into the ethical issues related
13 to the expert panel publication; is that
14 correct?

15 MR. LASKER: Objection to form.

16 A. Yes, exhibit 5 is my response to your
17 question 15.

18 Q. Okay. It's -- at some point after the
19 supplements publication, did you become aware
20 of the publication of a number of internal
21 Monsanto e-mails regarding Monsanto's planning
22 and involvement with creating CRT's glyphosate
23 supplement?

24 MR. LASKER: Objection to the form.

25 Objection to the term "publication."

1 A. I became aware via media reports very
2 soon after the, quote, Monsanto papers were
3 released that those papers existed. And one of
4 them was an e-mail that I had prepared to
5 Ashley Roberts and he forwarded it to the
6 Monsanto Company and, thus, it was within the
7 Monsanto papers.

8 BY MR. BAUM:

9 Q. Okay. Do you recall in -- receiving a
10 communication from a Warren Cornwall at Science
11 Magazine?

12 A. Could you give me the --

13 Q. Yeah. Let's take a look at the Bates
14 numbers ending 458 to -60.

15 MR. LASKER: And for the record, I
16 object to you -- I'm waiting for him to be able
17 to hear me -- for the record, I object to you
18 asking the witness questions about individual
19 documents within Exhibit 5 and use Exhibit 5 as
20 sort of an aggregate because obviously, there's
21 hundreds of different communications and
22 perhaps I haven't encountered them within
23 Exhibit 5.

24 MR. BAUM: Right.

25 BY MR. BAUM:

1 Q. So let's take a look at the e-mail
2 exchange beginning on Bates number 458 through
3 460 with Warren Cornwall at Science Magazine.

4 A. Yes, I see that.

5 Q. Okay. Do you recall having some
6 interaction with -- with Mr. Cornwall?

7 A. I recall receiving this communication,
8 which as I recall, I referred to Taylor &
9 Francis.

10 Q. And here he starts off with
11 referencing you to some unsealed documents from
12 some litigation occurring in California?

13 A. I see that, yes.

14 Q. Was this the first time you became
15 aware that there was some e-mails and internal
16 discussions within Monsanto that related to the
17 expert panel publication?

18 MR. LASKER: Objection to form.

19 A. I've never drawn out a total timeline,
20 so I can't recall, but perhaps you can refresh
21 my memory when those Monsanto papers were
22 posted on the Baum, Hedlund law firm website.

23 BY MR. BAUM:

24 Q. Prob -- these were first posted on the
25 court docket in March of 2018 in San Francisco.

1 MR. LASKER: Objection to form.

2 BY MR. BAUM:

3 Q. I mean, in 2017 in San Francisco.

4 MR. LASKER: Objection to form.

5 BY MR. BAUM:

6 Q. Do you see that first e-mail?

7 A. Yeah, yeah. That may have been --
8 that may have been a first alert other than --
9 other than what I just saw in popular media.

10 Q. Okay. There are quotes from some of
11 the -- one of the e-mails that actually came
12 from one of the documents I showed you earlier
13 that -- about a less expensive valuable
14 approach might be to involve experts only in
15 the areas of contention and that an option
16 would be to add Greim and Kier or Kirkland and
17 to have the -- their names. Do you
18 recognize -- do you see that language in the
19 e-mail?

20 A. Yes, I see that in the e-mail from
21 Warren Cornwall to me.

22 Q. And do you recall our having gone
23 through the documents that had that language
24 earlier this afternoon?

25 A. Yes, I do.

1 Q. Okay. Here it says in the middle
2 of -- on the March 16th e-mail you sent to
3 Charles Whalley, it says, "Charles, when it
4 rains, it pours. Let's discuss."

5 Do you know what you meant by --
6 excuse me -- by, "When it rains, it pours"?

7 A. I think Charles was already aware from
8 the popular media. This may have taken place
9 soon after he returned to the UK having
10 participated in the meeting of Society of
11 Toxicology and a meeting of our editorial
12 advisory board.

13 I'm not -- I'm not certain the terms
14 of -- of -- this, I think it relates to the
15 fact that there were -- there were a number of
16 media reports calling attention to the Monsanto
17 papers and I simply made that known and said,
18 "When it rains, it pours. Let's discuss."

19 Q. Okay. Is Science Magazine a reputable
20 scientific journal?

21 MR. LASKER: Objection.

22 A. Yes, I'm a proud member of the
23 American Association for Advancement of
24 Science, 50-year member. I'm a fellow of the
25 AAAS and I regularly read Science Magazine.

1 I think it's important to distinguish
2 between the scientific content portion versus
3 the news and media portion. I'm not familiar
4 with Warren Cornwall as a scientist and he may
5 be a writer in that news and commentary
6 portion, which they've recently emphasized as
7 distinctly separate from the scientific content
8 of the Science Magazine.

9 Q. Did you and Charles Whalley refer this
10 off to Taylor & Francis's legal department?

11 A. I'm sorry?

12 Q. Did you and Charles Whalley refer this
13 inquiry off to Taylor & Francis's legal
14 department?

15 A. I have no knowledge of what Charles
16 Whalley did. I had no communications with the
17 Taylor & Francis or informally those
18 departments until quite recently, until I
19 received this subpoena.

20 I may have been made aware in the
21 summer of 2018 that there was discussion within
22 Taylor & Francis's legal counsel, but I was not
23 privy to those.

24 Q. Do you recall whether at this point
25 you decided to conduct the investigation or was

1 it later?

2 A. I think the decision -- I'd have to go
3 through and determine when we received a
4 communication from Katherine Guyton at IARC and
5 a communication from Nathan Donley. I'm a
6 little uncertain as to when those
7 communications came in. It was soon after that
8 that we initiated our -- our investigation.

9 Q. Okay.

10 (Exhibit McClellan 42, Letter to the
11 Editors of Critical Reviews in Toxicology,
12 marked for identification.)

13 BY MR. BAUM:

14 Q. I'm handing you what we're going to
15 mark as --

16 MR. BAUM: What's the next number?

17 THE COURT REPORTER: There's no next
18 number because you're --

19 MR. BAUM: I keep jumping around?

20 THE COURT REPORTER: Yeah.

21 MR. BAUM: I'm going to call it 42.

22 This is an e-mail from Nathan Donley.

23 MR. LASKER: Let me just object for
24 the record.

25 First of all, I'm not sure what I have

1 if this is even in the form of an e-mail, but
2 there's no Bates stamps and I don't know where
3 this document came from.

4 MR. BAUM: Oh.

5 MR. LASKER: Is this in a document
6 production somewhere?

7 MR. BAUM: I think we pulled it --

8 MR. LASKER: This doesn't have
9 anything.

10 MR. BAUM: We pulled it from offline.

11 (Exhibit McClellan 42, Eight-page
12 letter to Roger McClellan, Charles Whalley and
13 Committee on Publication on 10/12/2017 from
14 Nathan Donley, marked for identification.)

15 BY MR. BAUM:

16 Q. So do you recall -- does this look --
17 does this letter look familiar to you?

18 A. Yes, it does.

19 Q. And you received it somewhere in the
20 neighborhood of October 12, 2017?

21 A. That seems to be correct.

22 Q. And you received it in the ordinary
23 course of your business as a chief editor for
24 the CRT?

25 A. Yes, that's correct.

1 Q. And then you responded to Mr. Donley a
2 few times as well, correct?

3 A. I believe I did.

4 Q. And the e-mail traffic between you and
5 Mr. Donley was part of the ongoing job
6 responsibilities that you had as the chief
7 editor for CRT; is that correct?

8 A. Yes.

9 MR. BAUM: I'm going to move these
10 documents into evidence.

11 BY MR. BAUM:

12 Q. And if you note towards the end of the
13 letter, that there are some end notes.

14 Do you see the end notes?

15 A. Yes.

16 Q. And --

17 A. I was impressed by that. I came to
18 the conclusion that this letter was probably
19 written by an accomplished attorney.

20 Q. Did you review the references in those
21 end notes?

22 MR. LASKER: Let me just interject an
23 objection to the use of this document on
24 hearsay grounds as well.

25 A. No, I did not review those end notes.

1 I simply took note of them.

2 BY MR. BAUM:

3 Q. Did anyone from Taylor & Francis or
4 CRT review those end notes?

5 A. I have no knowledge of whether they
6 were reviewed or not reviewed by individuals at
7 Taylor & Francis in the UK or elsewhere.

8 Q. At some time shortly after this -- and
9 this letter of correspondence from Mr. Donley
10 and Katherine Guyton, did Taylor & Francis and
11 CRT decide to investigate the ethical issues
12 with respect to the -- the Expert Panel
13 Supplement?

14 A. Yes. That's my recollection.

15 Q. Did there come a point where you and
16 Mr. Whalley had a disagreement over whether to
17 retract some of the manuscripts and the expert
18 supplement?

19 A. I would think a more accurate
20 characterization is that Mr. Whalley, in terms
21 of his role as managing editor, and I had
22 substantial interaction back and forth in -- in
23 a collegial manner.

24 My recollection is initially a
25 decision was made to proceed with a publication

1 of corrigendum and -- and at that point in
2 time, there was detailed proposed corrections
3 to the declaration of interest and
4 acknowledgments solicited from the individual
5 authors, and we were proceeding on that
6 pathway. And then March of 2018, we were still
7 proceeding down the pathway on corrigenda and
8 then the pendulum seemed to swing in the
9 direction for potential for retraction.

10 Q. So that's what I want to direct your
11 attention to, an e-mail chain to some degree at
12 RM000731, which is -- has an e-mail at the top,
13 which is dated August 5, 2018, from you to
14 Kathleen McClellan and Melanie Gorkin. And it
15 contains within it an e-mail dated May 2008
16 from Charles Whalley. Do you see that?

17 MR. LASKER: Again, objection to the
18 use of this aggregate exhibit as apposed to
19 pointing out individual documents for
20 questioning.

21 A. I'm -- yes, I see the e-mail that was
22 sent to Charles Whalley -- received from him.
23 The Kathleen McClellan is my wife and this
24 communication is simply a convenience in my
25 computer -- my printer was inoperative at the

1 time I sent it to her so that I could download
2 it.

3 BY MR. BAUM:

4 Q. You were in the process of writing a
5 memo to Taylor & Francis for a meeting you were
6 planning on having on August 9, 2018; is that
7 right?

8 A. Not at the time this was written.

9 Q. Oh, okay. Because I want to just
10 stick with this and we'll follow through.

11 In the second paragraph of the --
12 well, before I go there -- this appears to be a
13 true and correct copy of something that you had
14 in your computer and maintained as part of your
15 records as editor in chief of CRT; is that
16 correct?

17 A. Yeah, this was a communication that I
18 received from -- from Charles Whalley.

19 Q. And it appears to be an authentic copy
20 of -- of what you received from Charles
21 Whalley?

22 A. Yes, it does.

23 MR. BAUM: I move that this be
24 introduced into evidence.

25 BY MR. BAUM:

1 Q. "In reviewing the results of our
2 investigation, how will we communicate this
3 externally and how it relates to our policies?
4 We have decided that the only tenable outcome
5 is to retract three of the articles;
6 specifically, the summary epidemiology and
7 genotoxicity papers. In the investigation,
8 John Acquavella and Larry Kier made us aware
9 they were on contract with Monsanto when the
10 manuscripts were prepared and we were informed
11 that Monsanto staff, either William Heydens or
12 other clerical staff, were involved in drafting
13 or editing the manuscripts in some form. This
14 directly contradicts both parts of the
15 following key statement from the initial
16 declaration of interest. The expert panelists
17 were engaged by and acted as consultants to
18 Intertek and were not directly contracted by
19 the Monsanto Company. Neither any Monsanto
20 Company employees nor any attorneys reviewed
21 any of the expert panel's manuscripts prior to
22 the submission of the journal. In our earlier
23 discussions" --

24 MR. LASKER: I'm going to object to
25 form. Counsel is just reading now, this is two

1 paragraphs and three paragraphs of a document.
2 That's not the proper form of a question. I
3 object to the form of the question. If counsel
4 has a question, he should ask it.

5 BY MR. BAUM:

6 Q. "I had thought that as these concerns
7 are with how the authorship rather than with
8 the content, we would be able to resolve them
9 by publishing corrections. However, in
10 considering what would be consistent with the
11 policies of the journal, the only appropriate
12 responses were retraction. Failing to disclose
13 the contractual status of two of the authors or
14 the involvement of Monsanto staff in drafting
15 the manuscript represents a breach of
16 publishing ethics. The journal would be remiss
17 not to notify its readers of this for which
18 purpose publishing corrigenda would not be
19 sufficient."

20 Okay. Did I read that correctly?

21 A. Yes, you read that accurately.

22 Q. And --

23 A. You have entered this into the
24 record --

25 Q. Yes.

1 A. -- I believe?

2 Q. Yes.

3 And it was Mr. Whalley's position at
4 Taylor & Francis based on his investigation and
5 the investigation that his team had involved --
6 performed that a retraction was appropriate
7 under Taylor & Francis's standards for
8 publishing ethics; is that correct?

9 MR. LASKER: Objection to form, lacks
10 foundation.

11 A. I think the letter speaks for itself.
12 As I said, Mr. Charles Whalley and I engaged in
13 a very collegial review of the submission of
14 these papers, what we understood about their
15 preparation, the review process and
16 publication. And during the course of those
17 collegial discussions, the position moved,
18 swayed back and forth from the issue of
19 potential retraction, the publication of
20 corrigenda.

21 This particular snapshot in time was
22 at a point when there was advocacy of
23 retraction from some parties.

24 Q. At some point did you arrange to have
25 a meeting with Charles Whalley and some of

1 their staff in England around August 9, 2018?

2 A. Yes, specifically on August 9th.

3 Q. And did you write a briefing paper on
4 the issues related to authorship on that day,
5 on August 5th rather --

6 A. Yes, I did.

7 Q. -- in preparation for that meeting?

8 A. Yes.

9 Q. Okay. So I'm going to direct your
10 attention to RM 747. And this is a memo that
11 you wrote; is that correct?

12 A. Yes, I did.

13 Q. And what was the purpose of this memo?

14 A. At that point in time, I was uncertain
15 as to the specific parties at informing Taylor
16 & Francis in England that were interacting with
17 Charles and offering advice and counsel on
18 the -- the disposition of this matter. I
19 thought it very important to summarize what I
20 thought were some of the issues in this so that
21 all parties, Charles Whalley included as well
22 as others at Taylor & Francis, would have a
23 more in-depth understanding of the -- of the
24 matter.

25 Q. And you produced this in the ordinary

1 course of your operations as chief editor of
2 CRT as part of your investigation into the
3 ethical issues for the publication of the
4 Expert Panel Supplement?

5 A. Yes, I did.

6 Q. And it more or less summarizes the
7 interaction and e-mail traffic that you had
8 between Charles Whalley and yourself for the
9 preceding ten months or so from about October
10 12th up to that point?

11 A. Yes. It actually is much more
12 in-depth consideration, but that's a cap --
13 capture statement. I attempted to summarize
14 all of the various matters which I thought
15 needed to be very carefully and thoughtfully
16 considered in this and including the -- as
17 you'll note, the statements from the individual
18 authors. And there is a lengthier state -- set
19 of statements in terms of the individual
20 scientists and authors.

21 Q. Okay. And did you consider what you
22 summarized to be truthful and accurate at the
23 time that you wrote it?

24 A. Absolutely.

25 Q. I want to next direct your attention

1 to RM00767; which is a draft corrigendum for
2 supplement 1.

3 A. 7 --

4 Q. 767.

5 A. 767. That's correct.

6 Q. And do you know who drafted this?

7 A. I think I may have drafted this using
8 material that came from the individual authors.

9 As you'll note, we had been in
10 communication with the individual authors,
11 those 16 individuals as far back as October,
12 whatever, of 2017 and there is extensive
13 material back and forth. So this was -- this
14 was material that I think was an accurate
15 summary of the position that was put forward by
16 those individual authors.

17 Q. And when you made this and drafted
18 this, did you produce it in the -- or create it
19 in the ordinary course of your business at CRT?

20 A. I'm sorry?

21 Q. Did you make this as part of your job
22 at CRT?

23 A. Yes, I viewed this as an accurate
24 statement that in my role as editor in chief of
25 the journal, I had the responsibility to

1 prepare something like this.

2 Q. So this is an accurate copy of what
3 you drafted?

4 A. Yes, it is.

5 MR. BAUM: I'll move this into
6 evidence as well.

7 MR. LASKER: Just for clarification,
8 when you say "this," are you talking about the
9 August 15th memo and its attachments because
10 there is an attachment to that memo, too?

11 MR. BAUM: I'm moving into evidence
12 the documents with Bates numbers RM 747 through
13 780.

14 MR. LASKER: Okay. Then I will just
15 note for the record that I believe there were
16 additional documents attached to this memo. So
17 for completeness, if you're going to move it
18 into evidence, I think you should move in the
19 full memo.

20 MR. BAUM: You're welcome to put that
21 whole document in, but it's a few hundred
22 documents -- few hundred pages of CVs, but for
23 purposes of what I would like to have entered
24 in, it's this group and I'd like to move those
25 into evidence and if you'd like to move to have

1 the other documents attached to that, I would
2 not -- I wouldn't object.

3 MR. LASKER: Well, with respect to
4 completeness of the memo, since the memo has
5 those additional documents as attachments, it's
6 our position that if the memo is introduced
7 into evidence, it should be complete. Those
8 memos I think have been marked provisionally as
9 Exhibit 5-A for the deposition and we'll have
10 to get that to the court reporter later.

11 MR. BAUM: Okay.

12 BY MR. BAUM:

13 Q. So --

14 A. Let me -- I'm sorry. I may not
15 understand the full back and forth
16 communication between the two -- two attorneys.
17 It seemed to me that I -- I produced this
18 briefing paper. If you propose to introduce
19 the briefing paper into evidence, it seems to
20 me it should be produced in its entirety.

21 Q. Okay. During this time frame, there
22 were a number of e-mails and the briefing
23 document itself, you were concerned about
24 getting the resolution of this and the final
25 decision published promptly; is that correct?

1 A. Yes. I felt that sufficient time had
2 gone by. We'd spaded enough earth. We could
3 reach a conclusion in the matter.

4 Q. Do you know why there was such a long
5 delay in getting a decision made?

6 A. I can only speculate.

7 Q. And what was your speculation as an
8 insider?

9 MR. LASKER: Objection to form, calls
10 for speculation, I believe.

11 A. This was an extraordinary matter and
12 Informa/Taylor & Francis is a large and complex
13 organization with lots of people involved.

14 BY MR. BAUM:

15 Q. Okay. I want to direct your attention
16 to RM000725.

17 MR. LASKER: I'm sorry, I missed --

18 MR. BAUM: 7 --

19 MR. LASKER: -- 725?

20 MR. BAUM: 725.

21 MR. LASKER: Thank you.

22 A. Did you say 1 -- I'm sorry.

23 BY MR. BAUM:

24 Q. It's 725.

25 A. Oh, it's backwards. Okay, yes, I have

1 725.

2 Q. And if you look at the e-mail starting
3 at halfway down the page from you dated July
4 27, 2018, to Charles Whalley and Mildred
5 Morgan.

6 Do you see that?

7 A. Where it says, "27 July 2018 03" --

8 Q. Yes.

9 A. Comma, "07"?

10 Q. It looks like a 307, whatever that is.

11 A. Yeah.

12 Q. It's probably a time.

13 Here you are writing to Charles and
14 you say, "In retrospect, we should have never
15 undertaken the investigation without at least a
16 brief written protocol identification of those
17 involved in making the final decision. Ad hoc
18 decisionmaking can be a disaster. It would
19 also have been useful to having had a schedule
20 for regular updates in the process. I think it
21 would be useful for you and I to schedule a
22 periodic update on activities perhaps
23 quarterly."

24 Do you see that?

25 A. I do, yes.

1 Q. Oh. This e-mail interchange between
2 you and Mr. Whalley and cc'ing Mildred Morgan,
3 this is something that you wrote as a part of
4 your duties as chief editor for CRT?

5 A. Yes, that's right. My communication
6 with Charles was the managing editor for this
7 as well as a number of other journals. He
8 resides and place of work was in Abbington,
9 England. I live in Albuquerque, New Mexico.
10 So we have a -- a significant time difference
11 and probably some communications we might
12 normally have taken care of by telephone, but
13 we were -- used the next best in terms of
14 e-mail communications.

15 Q. So -- but at any point, you in any
16 case, were you here, again, expressing your
17 concern for getting an expedited resolution and
18 having a protocol in retrospect that might have
19 done a better job?

20 A. I probably in several -- several
21 places emphasized the utility of a protocol,
22 perhaps coming from my background as a
23 scientist, the use of a -- of a protocol, a
24 standard operating procedures facilitates an
25 orderly conduct of business. So I was

1 frustrated by the fact that we -- we didn't
2 have a clear written protocol. We didn't have
3 clarity of who was involved in making the
4 decision and, as I said, ad hoc decisionmaking
5 can be a disaster.

6 Q. Do you recall writing this --

7 THE COURT REPORTER: I'm sorry?

8 MR. LASKER: I -- just for the record,
9 I appreciate your feedback --

10 THE COURT REPORTER: Can you speak
11 louder, please?

12 MR. LASKER: I appreciate counsel's
13 effort with these documents to lay a
14 foundation. I'm reserving rights with respect
15 to whether we object or not to the
16 admissibility of the documents into the record,
17 but not intervening at each point on that.

18 BY MR. BAUM:

19 Q. So I'd like to -- you recall writing
20 this; is that correct?

21 A. Oh, absolutely.

22 MR. BAUM: So I'd like to move this
23 into evidence as well.

24 BY MR. BAUM:

25 Q. And then looking at the last sentence

1 there, it says, "For now with regard to the
2 special glyphosate issue, I hope we are agreed,
3 it will not be appropriate to announce any
4 decision until after a decision is announced by
5 the court in the Johnson versus Monsanto trial
6 in San Francisco."

7 Do you see that?

8 A. Yes, I see that.

9 MR. LASKER: I do have a specific
10 objection to any discussion of other litigation
11 in the D. Johnson case in connection with this
12 deposition.

13 BY MR. BAUM:

14 Q. Why did you write that?

15 A. I felt that emphasize the importance
16 of bringing this matter to a decision in an
17 orderly fashion. And there had been other
18 communications in terms of Taylor & Francis as
19 to how the decision might be communicated. I
20 wanted to make certain that this was not an ad
21 hoc decision.

22 Q. Well, why did you want to wait until
23 after the Johnson versus Monsanto trial had
24 been decided until the jury had returned a
25 verdict?

1 MR. LASKER: Objection to form.

2 A. Simply my -- my viewpoint that time
3 had come to bring this to an orderly
4 conclusion. We started it in October of 2017.
5 We'd gone back and forth between retraction,
6 publication of corrigendum. We were going to
7 be meeting on August 9th and a part of that
8 meeting was the important -- emphasizing to
9 Taylor & Francis the importance of the whole
10 matter that we were involved in.

11 BY MR. BAUM:

12 Q. Were you concerned that the
13 announcement of a correction or a corrigendum
14 or a retraction would have a negative effect on
15 Monsanto's position at the Johnson trial?

16 MR. LASKER: Objection to form.

17 A. Absolutely not. I had no idea what --
18 how the -- and I'm not sufficiently familiar
19 with the court proceedings to know how any
20 actions in terms of retraction or corrigendum
21 would be entered into and have any impact on
22 that.

23 Q. Okay. So let's look at the next
24 e-mail on the chain up above where Charles
25 Whalley responds to you.

1 It says, "Dear Roger" -- this is on
2 July 27, 2018 -- "was this also produced in the
3 ordinary course of yours and Mr. Whalley's
4 operations as employees of CRT and Taylor &
5 Francis?"

6 A. Let me -- let me correct. I'm not an
7 employee.

8 Q. Oh. As --

9 A. I'm an independent --

10 Q. Let me correct that. My bad.

11 Were these produced, this e-mail
12 chain, produced by -- by Mr. Whalley and by you
13 as part of your jobs working on -- working as
14 chief editor of CRT and his being -- would you
15 call that production?

16 A. He's a managing editor.

17 Q. Managing editor of Taylor & Francis.

18 A. Yeah, this was a part of what I would
19 call a colleg -- collegial interaction. We
20 worked very closely together in terms of this
21 journal for a period of about three and a half
22 years and I would say had very cordial,
23 positive interactions. And he's -- he's --
24 he's basically responding to me. I can't
25 speculate if he was encouraged by legal counsel

1 to write this or whatever the motivation.

2 Q. Do you recall --

3 A. I was pleased that he -- he responded
4 and as he said -- as I said, I'll try to
5 confirm a date for a visit ASAP early next week
6 as well as the ten days of draft agenda.

7 Q. Do you recall receiving this e-mail?

8 A. Yes, I do.

9 MR. BAUM: I'm going to move this into
10 evidence.

11 BY MR. BAUM:

12 Q. And here he says, "Dear Roger, I'm
13 glad you felt our conversation useful. I did
14 too. With legal counsel, we have discussed how
15 the timings of any actions might relate to the
16 ongoing trial and how best to manage that.
17 This element will certainly form part of our
18 discussions when we meet."

19 What was it that you discussed about
20 the timing relative to the trial?

21 MR. LASKER: Objection to form and
22 it's not my privilege to assert, but the
23 question is asking the witness to disclose
24 privileged communications, which I don't think
25 is appropriate.

1 MR. THOMPSON: If you're being asked
2 to disclose communications with your attorney,
3 I'm going to instruct you not to answer.

4 THE WITNESS: Right.

5 MR. THOMPSON: But you --

6 A. I do -- I'm not aware of any -- there
7 was -- to the best of my knowledge, legal
8 counsel was not present at our meeting on
9 August 9th. And then as best I recall, there
10 was actually no discussion of the -- of the
11 matter as he relates here, the timing.

12 The -- the question -- the
13 conversation as we reached the conclusion to
14 proceed with publication of corrigendum and
15 expression of interest was merely how can we do
16 this in an orderly fashion? The responsibility
17 of the authors to prepare, authorize the final
18 corrigendum and to move forward, there was --
19 there was no discussion at that conference that
20 involved consideration of the -- of the trial.

21 BY MR. BAUM:

22 Q. Well, the last paragraph on that page,
23 725 says, "I hope we are agreed, it will not be
24 appropriate to announce any decision until
25 after a decision is announced by the court in

1 the Johnson versus Monsanto trial in San
2 Francisco."

3 So isn't it true that you were trying
4 to avoid having the announcement occur before a
5 decision is announced by the court in the
6 Johnson versus Monsanto trial in San Francisco?

7 MR. LASKER: Objection.

8 A. Let me ask you to ask the question
9 again, please?

10 BY MR. BAUM:

11 Q. Isn't it true that you thought it was
12 not appropriate to announce any decision
13 regarding the investigation into the ethical
14 issues regarding the expert panel supplement
15 publication until after a decision is announced
16 by the court in the Johnson versus Monsanto
17 trial in San Francisco?

18 MR. LASKER: Objection to form,
19 objection to the reference of other litigation.

20 A. My primary concern in preparation for
21 the meeting that was held on August 9th in
22 England was that we move to an orderly
23 conclusion of this matter and it was recognized
24 that that was going to involve a number of
25 individuals and a significant amount of time

1 and effort and the issue of timing became moot
2 in terms of the discussions that took place
3 focused on moving in an orderly way and it was
4 apparent that that at best would not happen
5 until sometime in September. There was no
6 discussion during that conference on when a
7 decision might be reached --

8 Q. Okay.

9 A. -- in terms of Johnson versus
10 Monsanto.

11 Q. So I didn't ask you about August 9th.
12 I asked you about this date on July 27th where
13 you said, "I hope we are agreed, it will not be
14 appropriate to announce any decisions until
15 after a decision is announced by the court in
16 the Johnson versus Monsanto trial in San
17 Francisco."

18 You were right there saying you did
19 not want a decision to occur -- be announced
20 until after the decision in Johnson versus
21 Monsanto trial in San Francisco, right?

22 MR. LASKER: Same objection.

23 A. I think I've responded to your -- your
24 questions. I'll say that throughout the
25 process and in the spring, I emphasized the

1 importance to coming to a conclusion, bringing
2 this process, which involved decisions with
3 regard to retraction versus publication of
4 expressions of concern and corrigendum to an
5 orderly conclusion. We had gone back and forth
6 long enough. It was time to make a decision.
7 I added that to emphasize that I did not want a
8 hasty decision and a hasty announcement of a
9 conclusion without adequate preparation for
10 that announcement.

11 Q. Well, why did you peg it to the
12 decision by the court in the Johnson versus
13 Monsanto trial in San Francisco?

14 MR. LASKER: Same objection.

15 BY MR. BAUM:

16 Q. What does that have to do with the
17 corrigenda --

18 A. I think --

19 Q. -- or retraction?

20 A. I think I answered to the best of my
21 ability.

22 Q. Thank you.

23 MR. BAUM: Let's take a break.

24 MR. THOMPSON: We're -- it's -- I'm
25 sorry. It's 6 -- 5:45 in the evening. You've

1 been about right at seven hours.

2 MR. BAUM: We've got ten minutes to
3 go.

4 MR. THOMPSON: Okay. I'm good with
5 ten minutes.

6 THE VIDEOGRAPHER: With the approval
7 of counsel, going off the record. The time is
8 approximately 5:23 p.m.

9 (Whereupon, a brief recess is taken
10 from 5:23 p.m. to 5:59 p.m.)

11 THE VIDEOGRAPHER: With the approval
12 of counsel, back on the record. The time is
13 approximately 5:59 p.m.

14 BY MR. BAUM:

15 Q. So, Dr. McClellan, I'm referring you
16 to Exhibit 5, Bates number RM 1108, which is an
17 e-mail from Charles Whalley dated August 31,
18 2018, to Ashley Roberts and cc'd to you.

19 A. That's correct.

20 Q. Do you see that?

21 A. Yes.

22 Q. Do you recall receiving this e-mail?

23 A. Yes.

24 Q. And this e-mail you reviewed and it
25 was made in the process of the business that

1 you and Charles Whalley were conducting with
2 respect to the investigation and announcement
3 of the findings of that investigation; is that
4 correct?

5 A. That's -- that's correct. This letter
6 comes from Charles Whalley, but he and I
7 discussed the letter and the course of action
8 that's outlined in the letter. I was in full
9 accord with that.

10 Q. So in the second paragraph, it says,
11 "Our publishing agreement with Intertek for the
12 publication of the supplement included
13 obligations around requiring full disclosure of
14 any relevant conflicting interests to the
15 journal. In particular, the contractual
16 obligation in clause 2.7.1 requiring Intertek
17 to ensure that all content to be published in
18 the supplement provides full disclosure in the
19 form of a declaration of all sources of
20 commercial assistance or financial sponsorship
21 received or any affiliation or organization or
22 entity which is relevant to the content. The
23 corrections required to these articles
24 represent a breach of those -- these
25 obligations on Intertek's part. In light of

1 Intertek's coordinating role in putting the
2 declaration of interest statements together and
3 given that we have not received an adequate
4 explanation from the authors as to why the
5 necessary level of transparency was not met on
6 first submission, we will not be accepting
7 future supplement proposals from Intertek for
8 Critical Reviews in Toxicology."

9 Did I read that correctly?

10 A. Yes, you did.

11 Q. Why was that sent to Ashley Roberts?

12 A. My recollection of the events are
13 that, first of all, the -- the publishing
14 agreement with Intertek, which as I said, I --
15 that was negotiated by -- by Charles Whalley on
16 behalf of -- of Informa/Taylor & Francis.

17 That was a business matter. I had no
18 involvement with that, so I actually don't know
19 the specific clauses. I never saw the
20 agreement, but as we proceeded to try to reach
21 an orderly conclusion to this very long,
22 tedious process, I think it was my -- I may
23 have been the first to suggest it that -- a
24 part of our difficulties associated with
25 difficulties in terms of the coordination of

1 the activities and -- and the disclosure on the
2 part of Dr. Roberts and it was appropriate that
3 we make -- make him -- make him aware, if you
4 will, that we would not be accepting future
5 proposals from him for publications in Critical
6 Reviews in Toxicology.

7 Q. Did you consider making a similar
8 prohibition against Monsanto's publishing in
9 CRT?

10 A. I don't recall that -- that being
11 discussed in -- in --

12 Q. Do you think that would have been
13 appropriate?

14 A. It would have been an option that --
15 that could have been considered.

16 Q. Do you know -- were you going to say
17 more? Go ahead. Just a couple of questions.
18 I'm trying to get there.

19 In your -- several of your e-mails you
20 used the word "bamboozle." What does
21 "bamboozle" mean to you?

22 MR. LASKER: Objection to form, lacks
23 foundation, lacks context.

24 A. You know, another colloquial term
25 might be rolled.

1 Q. Tricked?

2 MR. LASKER: Objection to form.

3 BY MR. BAUM:

4 Q. Tricked?

5 A. Tricked, yeah.

6 Q. Do you feel like you were bamboozled
7 by Ashley Roberts or Monsanto?

8 MR. LASKER: Okay, now objection to
9 form. You're taking this word directly out of
10 context because that's not even where the word
11 appeared in this document or in the document
12 production.

13 A. Ask the question again just to -- I
14 want to make sure I'm giving a complete and
15 accurate answer.

16 BY MR. BAUM:

17 Q. Do you feel like you were bamboozled
18 by Ashley Roberts or Monsanto --

19 MR. LASKER: Objection.

20 BY MR. BAUM:

21 Q. -- with respect to the expert panel
22 publication --

23 MR. LASKER: Objection.

24 BY MR. BAUM:

25 Q. -- and the adherence to the

1 decelerations of interest and acknowledgments?

2 MR. LASKER: Objection to form,

3 compound.

4 A. I -- I don't feel I -- I was tricked.

5 I -- I think that Ashley Roberts probably took

6 on this assignment without fully appreciating

7 the complexities associated with putting

8 together a set of review papers like these with

9 16 distinguished scientists, authors. And I'm

10 not certain if he had ever done that before.

11 BY MR. BAUM:

12 Q. Do you recall --

13 A. That was not a question for me to --

14 to address. That -- that was a question that

15 Monsanto really needed to address with him.

16 Q. Do you recall an e-mail from Charles

17 Whalley in which he stated that he thought this

18 wasn't just an accident; it was a

19 misrepresentation?

20 MR. LASKER: Objection to form, lacks

21 foundation.

22 A. I don't -- I don't recall that.

23 Q. Did you ever discuss with him that it

24 went beyond just an accident --

25 MR. LASKER: Objection to form.

1 BY MR. BAUM:

2 Q. -- to the best of your understanding?

3 A. I don't recall any discussions of that
4 nature.

5 Q. This was an extraordinary event for
6 you in your career as an editor in chief for
7 CRT; is that correct?

8 A. Yes, I would agree with that.

9 THE COURT REPORTER: Did you object?

10 MR. LASKER: Objection to form.

11 BY MR. BAUM:

12 Q. Why did you take the steps to do the
13 statements of concern and the corrigenda?

14 A. I felt that the publication of
15 corrigendum and the overarching expression of
16 concern was an appropriate way to bring an
17 orderly conclusion to this situation. There
18 were missteps that took place and I think those
19 were corrected in the corrigendum.

20 I think the overarching view I had is
21 that these were solid, scientific
22 contributions. It is my responsibility as a
23 scientific editor not to publish material that
24 is necessarily aligned with my own personal
25 views. I need to have an impartial position in

1 terms of the science and its -- its exposition.

2 I felt that at the conclusion of the
3 review that we concluded that the scientific
4 content of the papers was appropriate. The
5 corrigendum informed the readers of additional
6 information that they should consider in terms
7 of the papers. So I felt that was an
8 appropriate conclusion to this very arduous
9 process.

10 Q. Did you look at any science outside of
11 the reviews done on the expert panel
12 publications to determine whether or not the
13 opinions and assertions in the papers were
14 accurate?

15 MR. LASKER: Objection to form.

16 A. No. I reviewed the papers to the
17 standpoint of was there an orderly review of
18 the science? And I thought that at the end of
19 the day and that view was explored by the
20 external reviewers that these were solid,
21 scientific contributions that the scien -- the
22 community -- the scientific community and
23 society at large should have at their disposal.

24 BY MR. BAUM:

25 Q. In order to fix the record, that

1 seemed to be shown by the Monsanto papers being
2 published -- made public?

3 MR. LASKER: Objection to form.

4 A. No --

5 MR. LASKER: Objection to form. Go
6 ahead.

7 A. The Monsanto -- the Monsanto papers I
8 said, I -- I was very careful to not review
9 Monsanto papers. I purposely did not review
10 those. I was lead to believe that several
11 documents you showed me today may have come
12 from the Monsanto papers.

13 I was only aware of the e-mail that I
14 had communicated to Ashley Roberts and which he
15 shared, which I learned, with Monsanto. I
16 think that e-mail made very clear what I
17 desired as a scientific editor in chief;
18 complete and accurate disclosure and I -- I do
19 not feel that was adequate in the first round
20 unless it was necessary to proceed with the
21 corrigendum. I think the expression of concern
22 basically says to the reader, be aware of this
23 when you're reading the papers.

24 BY MR. BAUM:

25 Q. The -- you would never have found out

1 about these problems with the ethics of the
2 publication related to the -- let's -- the
3 Glyphosate Expert Panel Supplement unless the
4 Monsanto papers had disclosed it and you
5 received inquiries from reporters, correct?

6 MR. LASKER: Objection to form, calls
7 for speculation, lacks foundation.

8 A. That -- that would be pure speculation
9 on my part. I would emphasize again, we did
10 not initiate an investigation based on
11 inquiries from reporters. I have very regular
12 communications with reporters of all likes, if
13 you will, on a whole manner of issues. It is
14 part of the business.

15 I -- I add, Charles Whalley, Taylor &
16 Francis, we initiated our investigation in
17 response to the requests for retraction.

18 Q. That were themselves based on the
19 Monsanto papers, correct?

20 MR. LASKER: Objection to form and
21 asked and answered, lacks foundation, and I
22 know you're trying to wrap up.

23 A. I really don't recall all the details
24 in terms of the letter from Katherine Guyton at
25 IARC, and so it would be speculation in terms

1 of her motivation, whether her submission of
2 that letter to me and to the journal was based
3 on the Monsanto papers or was based on other
4 consideration.

5 Q. I noticed it was not in your papers.
6 Is there a reason why?

7 A. I'm sorry?

8 Q. Katherine Guyton's e-mail to --

9 A. I believe I --

10 Q. Can you find that and point it out to
11 me because I didn't find it? It was an
12 attachment on several documents, but I never
13 saw it.

14 MR. THOMPSON: Okay. I just have to
15 look through the 1200 pages or whatever, but I
16 believe I saw it. Maybe -- maybe it was an
17 attachment to something else, but I think I've
18 seen the letter.

19 THE WITNESS: I will attempt to find a
20 copy --

21 MR. BAUM: Thanks.

22 THE WITNESS: -- and provide a copy to
23 you.

24 MR. BAUM: Because I didn't. I can
25 tell, I went through page by page and made

1 notes and I didn't see it.

2 MR. LASKER: For the record, you're
3 over time. I know you're trying to wrap up,
4 but you're passed your seven hours.

5 MR. BAUM: All right. So I had a lot
6 more documents and a lot more things to cover
7 with you. I recognize that I've used up my
8 seven hours here. If it becomes necessary in
9 order to deal with some of these additional
10 documents, I may have to make a motion to the
11 court to get additional time, but I hope to
12 avoid that.

13 Thank you for your patience. I do
14 want you to know that I do admire the steps
15 that you took as I would like -- no, that's
16 all.

17 Thanks.

18 MR. LASKER: And just for the record,
19 we will object to any extension of the
20 deposition.

21 And I've noted at various times during
22 the deposition, Mr. Baum chose to spend at
23 least half, if not more of his time, asking the
24 witness questions about documents that the
25 witness had never seen and that the witness

1 told him he would not be able to provide any
2 testimony about.

3 MR. THOMPSON: For the record,
4 Dr. McClellan would also oppose an extension
5 for allowing Mr. Lasker time in addition to
6 seven hours so we can get this all done today.

7 THE VIDEOGRAPHER: We are going to go
8 off the record. Off the record. The time is
9 approximately 6:15.

10 This is the end of recording media 10.

11 (Whereupon, a brief recess is taken
12 from 6:15 p.m. to 6:23 p.m.)

13 THE VIDEOGRAPHER: With the approval
14 of counsel, back on the record. The time is
15 approximately 6:23 p.m. This marks the
16 beginning of media number 11.

17 EXAMINATION BY MR. LASKER:

18 Q. Good afternoon, or I guess good
19 evening, Dr. McClellan. My name is Eric Lasker
20 and I represent Monsanto and I want to follow
21 up on some of the conversations you had with
22 plaintiffs' counsel, Mr. Baum, if I might.

23 I'd like to start by having you
24 provide us and provide the jury with some
25 background about the journal, Critical Reviews

1 in Toxicology.

2 How long has that journal been in
3 existence?

4 A. We're publishing volume 48 this year
5 and so it's a volume a year, so we can go back
6 from there. The journal was started by the
7 date -- late Dr. Leon Galberg who would
8 ultimately become the first president of the
9 chemical industry in toxicology. He and I were
10 professional colleagues. He asked me to join
11 the editorial advisory board, which I did, and
12 then when he passed away, I was asked to
13 succeed him. So I've now been editor in chief,
14 I think, for 32 years.

15 Q. And as editor in chief, what is your
16 understanding of the mission of Critical
17 Reviews in Toxicology?

18 A. Implied by the name, Critical Reviews,
19 we do not publish original research papers. We
20 publish review manuscripts and if the journal
21 were starting today, it would be renamed; might
22 well have a title like Critical Reviews in
23 Toxicology and Risk Analysis or Safety
24 Evaluation, but our goal is to publish each
25 year some 30 to 40 high-quality papers that

1 address issues in terms of science concerned
2 with toxicology, risk analysis in the public
3 health arena that are the interface between
4 that science, policy and regulation.

5 Q. Are there any objective measures of
6 how scientific journals are considered or
7 respected among scientists in the field?

8 A. Yes, there are. Probably the most
9 popular already and most frequently used is
10 what's called a citation index. I'm very proud
11 to say that for many years, Critical Reviews in
12 Toxicology is that our citation index, that
13 ranked in the top ten percentile of journals in
14 this field.

15 Q. I believe you mentioned the Critical
16 Reviews in Toxicology is a peer-reviewed
17 journal, correct?

18 A. That's correct.

19 Q. What does it mean for a journal to be
20 peer reviewed?

21 A. It means -- there are several
22 different approaches in terms of peer review.
23 We use a single-blind system that is the
24 authorship of the manuscripts is made known to
25 the individuals when they're invited to review

1 a manuscript. However, their comments that
2 come back are treated confidentially and
3 they're identity is not made known to the
4 authors.

5 In our journal -- most journals, and
6 I've been associated with a number of them in
7 different capacities, frequently send a
8 manuscript to two or three reviewers and we'll
9 make a decision based on the comments of two of
10 those. That may be an appropriate approach for
11 original research.

12 In the case of a review journal like
13 ours, we feel that the review comments are
14 important not only to the editor in making a
15 decision as to accept, revise or reject, but to
16 assist the authors in further improving the
17 manuscripts. So it will be improved in quality
18 and -- and strengths of analysis. That was a
19 fervent view of the late Dr. Galberg and I've
20 tried to carry that forward over the years. So
21 I very frequently we will have manuscripts
22 reviewed three, four, five reviewers.

23 Q. Mr. Baum asked you some questions
24 about whether you accept nominations for peer
25 reviewers by the authors of review articles.

1 Do you recall those questions?

2 A. Yes, I do.

3 Q. And your practice in connection with
4 nominations, does that extend to all authors
5 that submit manuscripts to the journal or is
6 that limited to industry-sponsored review
7 articles?

8 A. No, that's -- I treat all manuscripts
9 the same irrespective of their source in terms
10 of academia, government agencies in the U.S. or
11 internationally or industry, or where they come
12 from around the world. We're a global journal
13 in terms of publication. So I extend that
14 courtesy to individuals. In fact, the -- the
15 Manuscript Central System allows individuals
16 the convenience to put that in at the time of
17 submission. They can also -- if there are some
18 individuals they think should not review their
19 manuscript, but I -- that's only one input.

20 The other, I carefully review the
21 manuscript in terms of the reference list and
22 that helps me identify individuals who may have
23 published in the area that should be
24 considered. I carefully use my own databank,
25 if you will. I've worked extensively in the

1 field of toxicology and risk analysis for many
2 years and have a wide circle of scientific
3 acquaintances. And today with electronic
4 systems being what they are, the system
5 automatically will give me the identity of the
6 authors of recent publications on a particular
7 subject matter. So talking all those together,
8 I try to provide a bound slate of reviewers.
9 Plus, I have to be mindful that these manuscripts
10 are substantial. This is not an afternoon or
11 evening exercise over a beer or cup of coffee.
12 You have to invest a substantial amount of time
13 in reviewing these kinds of manuscripts.

14 Q. In 2015, I think you testified about
15 this, your journal was approached about the
16 possibility of publishing a series of review
17 articles regarding the science surrounding
18 glyphosate and cancer, correct?

19 A. Yes, I was.

20 Q. What is -- were you aware and was the
21 journal aware from the outset that this
22 scientific review was to be sponsored by and
23 funded by Monsanto?

24 A. Absolutely.

25 Q. Did you in your role as editor in

1 chief for Critical Reviews in Toxicology
2 believe that a scientific review article
3 regarding the science of glyphosate and cancer
4 would be something of value to the scientific
5 community?

6 A. Absolutely.

7 Q. And why is that?

8 A. Well, the chemical, is a key
9 ingredient in terms of a widely-used
10 agricultural product, probably the most
11 extensively used commercial product around the
12 globe and, thus, it's a lot of interests in
13 terms of different sector of society,
14 scientists, regulators, scientific community
15 and the public at large. So I felt it would be
16 very useful recognizing that IARC was going to
17 make a review. It would be appropriate to have
18 a -- an additional review irrespective of what
19 the outcome of that would be. I had no idea
20 what that might be at the time.

21 Q. Did the review articles -- and you may
22 have answered this in a prior answer -- but did
23 these review articles with respect to
24 glyphosate and cancer involve any -- the con --
25 the conduct of any new scientific studies?

1 A. No. These -- these were scientific
2 review articles and since these reviews
3 involved glyphosate a chemical that at one time
4 was a proprietary product, that complicates the
5 situation with regard to the scientific
6 information available, particularly on original
7 testing protocols. And it was a recognition of
8 that that I wanted to make certain that any
9 review papers are put forward did the best
10 possible job of assembling all of the available
11 scientific information, including study from
12 in-house protocols studies that may have been
13 submitted for regulatory purposes but had not
14 been reported in the typical peer-reviewed
15 literature.

16 Q. To your knowledge, would regulators in
17 the United States or elsewhere in the world
18 have their own copies of the underlying
19 scientific studies that were discussed in the
20 glyphosate review papers?

21 A. They should have had all of those that
22 were published in peer-reviewed journals. In
23 fact, reference had already been made to
24 several papers that originated with Monsanto
25 sponsorship that a special effort was made to

1 make certain those were available, not just
2 IARC, but to other agencies such as U.S. EPA
3 on -- the key -- a key set of data, as I said,
4 are data that -- from in-house studies that may
5 have been submitted for regulatory purposes
6 were of high quality, but had not been reported
7 in the peer-reviewed literature. And very
8 frequently, these may be negative studies.
9 It's very difficult to get negative studies
10 published in the peer-reviewed literature. So
11 to the extent that a review paper can reach
12 back and access that data making certain that
13 the data is -- is publically available, that
14 serves a very useful purpose.

15 Q. And to your knowledge, would
16 regulators in the U.S. and other countries have
17 those regulatory studies, the studies that were
18 submitted for regulatory purposes with respect
19 to a product?

20 A. It depends on the agency, and
21 sometimes they do. Sometimes the agencies are
22 quite compartmentalized.

23 One arm of the agency may have the
24 data. One arm of the agency may view the data
25 as being confidential and another arm of the

1 agency may be involved in a -- in a review
2 process and may not have access to that data.

3 Q. The review articles with respect to
4 glyphosate and cancer were published at the end
5 of September 2016.

6 Does that sound --

7 A. That sounds about right, yeah.

8 Q. To your knowledge, do you recall about
9 how that timing compared to the dates in which
10 regulators in Europe and in the U.S. and in
11 Canada issued their evaluations of glyphosate
12 and cancer following the IARC panel?

13 A. I follow those activities in a general
14 sense, but I don't recall the specific
15 timeline.

16 I do know that these articles were
17 published open access and I followed the access
18 numbers, if you will. And very soon after,
19 they were published online. The numbers
20 started to click up 100, 200, 400, 500, 1,000.
21 Soon I think the summary paper result -- and it
22 still goes up. It's over 16,000 times. So
23 these papers were of wide interest around
24 the -- around the world.

25 I do understand that very recently,

1 Health Canada did a reevaluation of its prior
2 review of glyphosate. I have purposefully not
3 reviewed that document. I know from the media
4 that it was issued and I was struck by the
5 wording in the press release that they, quote,
6 "Left no stone unturned," in terms of their
7 review by an independent panel of Health Canada
8 scientists. So I'm eager to see the document
9 and I'll be disappointed if these five papers
10 are not included in that document.

11 Q. The -- you mentioned that there were
12 five papers, and just so the record is clear
13 because I don't know if they've been
14 identified, can you just briefly identify what
15 the five papers were, what they addressed?

16 A. I'd have to do it off the top of my
17 head here, but the five papers -- perhaps out
18 of pride of authorship I note that the five
19 papers are preceded by a forward which I wrote
20 and I thought would be a useful background to
21 the readers of the -- of the five papers.

22 The five papers, I believe, a -- a
23 summary paper. Gary Williams was the senior
24 author and there are 15 other authors on it; a
25 paper on exposure by Solomon is a single

1 author; a paper on epidemiological evidence,
2 John Acquavella is the senior author; a paper
3 on animal evidence. Gary Williams was a senior
4 author on that; and then a paper on
5 genotoxicity by David Brusick is the senior
6 author.

7 Q. Did these five articles or review
8 papers undergo peer review prior to being
9 selected for publication?

10 A. All five papers were extensively
11 reviewed. I knew that these papers -- their
12 importance and their degree of interest they'd
13 attract. And so I probably put these five
14 through as a collective group, a more
15 extraordinary review than I've ever done for
16 five papers. There were 27 individual
17 scientists that I asked to review them.
18 Several individuals were asked to review more
19 than one paper. So there were a total of 36
20 sets of review comments that were provided to
21 the -- to the authors that included no less
22 than five in terms of one of the papers and as
23 many as ten on others.

24 Q. And what was your purpose in having
25 these papers undergo this extensive peer-review

1 process?

2 A. I knew this was a very important topic
3 and as I've emphasized, I'd look at the review
4 comments to help me in making a decision as
5 to -- to accept, to revise, or reject. In this
6 case, the decisions were all clear except with
7 revisions, but most importantly, I view these
8 independent comments provided to the authors in
9 an anonymous fashion as being helpful to them
10 in revising the paper to strengthen it, their
11 areas that they may not have given adequate
12 attention and consideration. Reviewers are
13 never hesitant to point that out. The review
14 com -- comments were extensive on these papers
15 and I think it was noted that they were helpful
16 in review -- revising the papers.

17 Q. Were the authors of the review papers
18 told the names of any of the peer reviewers?

19 A. No, they were not. In our
20 single-blind system, that -- they are
21 anonymous, confidential and I'm concerned that
22 the release of those linked to the individual
23 comments could be very damaging to the
24 peer-review process in general.

25 I do publish -- Taylor & Francis does

1 at the end of the year, a listing of the -- all
2 of the reviewers who have reviewed papers
3 during that year. And I'm pleased in terms of
4 the list for this past year involved some -- I
5 think about 250 individuals around the world.

6 Q. Does that list indicate which articles
7 were reviewed by which peer reviewers?

8 A. No.

9 Q. Was anyone at Monsanto told the name
10 of any of the peer reviewers for these
11 glyphosate review articles?

12 A. I don't know how they'd have access to
13 that.

14 Q. Without getting into the details, I
15 think you -- of the peer-review comments, I
16 think in your earlier testimony and correct me
17 if I'm wrong, you stated that the peer
18 review -- peer-review comments were laudatory
19 about these articles and I just wanted to get
20 some further information to the extent you feel
21 you can share about that characterization that
22 you made.

23 A. Well, they were generally positive and
24 the comments were comments to -- were directed
25 at strengthening the analysis. I was pleased

1 that comments that I had made throughout this
2 process, these papers should be absolutely as
3 complete as possible, make certain that the
4 literature is referred to, that we've got the
5 scientific peer-reviewed literature there, but
6 if there are other studies, I want to see that
7 identified. And I felt that it's very
8 important since in some sense this was a -- a
9 critique or a counter-discussion, if you will,
10 to some aspects of -- of IARC, they should make
11 very clear what the position was stated in
12 terms of the IARC document and present the
13 evidence, whatever it might be.

14 Q. You're anticipating my first document.
15 Let me mark it as Exhibit 43. It was a
16 document from your production.

17 (Exhibit McClellan 43, Document Bates
18 numbered RM 000322, marked for identification.)

19 BY MR. LASKER:

20 Q. And this is a document bearing Bates
21 stamp RM 000322. I'll give you an opportunity
22 to review the document.

23 A. Yes, this is a communication that I
24 sent to Ashley Roberts and I -- I hoped that
25 he -- I hoped at the time that he would share

1 it with the other participants in the -- in the
2 panel. And, again, I offered this suggestion
3 in terms of organization of the paper because
4 it did paralegal the IARC structure. As it
5 notes, I admonished him to greater clarity in
6 presenting the approach used and the
7 conclusions drawn by IARC and then the
8 comparison and contrasting the approach and
9 conclusions.

10 I think that's a very valuable
11 contribution of these papers. I think the
12 review comments as well as my constant
13 admonishment helped make certain that was done
14 to the best possible extent.

15 Q. Okay. And just to clarify that point
16 you just made, am I correct in my understanding
17 that many of the peer reviewers as well as
18 yourself were suggesting that these review
19 papers very clearly set forth what IARC had
20 decided or what IARC had determined in its
21 review and then compare and contrast with
22 respect to the evaluations that were set forth
23 in the review papers?

24 A. Absolutely. That -- that I think was
25 a major contribution and I've never gone back

1 to see the details as to the number of
2 additional papers, but there were -- there were
3 certainly some additional papers that appeared
4 in these five glyphosate papers that had not
5 been considered in terms of IARC's report to be
6 made clear.

7 Q. Do you believe that the peer-review
8 process worked in connection with the
9 glyphosate review papers?

10 A. Absolutely. I think the papers -- I
11 don't know that I -- it's been many years since
12 I've accepted a paper as submitted. There --
13 it's clear, every paper can benefit for some
14 outside eyes and I always emphasize over and
15 over before you submit the manuscript, please
16 have it reviewed internally by your most
17 substantive critic.

18 We all -- we all know colleagues
19 in-house that can give rigorous reviews. When
20 I was active in the research laboratory and
21 running two organizations, I knew who were the
22 people who you could count on to give you a
23 good review and help you -- when I mean a good
24 review, help you improve the paper. And you
25 knew when somebody said, Great work, Roger."

1 In fact, when I went to the Chemical
2 Industry Institute of Toxicology as president
3 in 1988, I sent my manuscript to my scientific
4 editor and she sent it back with a few meager
5 comments and, "Great job."

6 I sent it back to her and said, "Start
7 the real review tomorrow." She soon learned
8 that we had a lot of respect for peer review
9 internal and then external.

10 Q. With respect to the five papers, you
11 mentioned that there were four expert panel
12 papers and then there was a summary paper,
13 correct?

14 A. Yes.

15 Q. And Mr. Baum asked you a lot of
16 questions about the summary paper and how that
17 was prepared and first I just -- let me
18 provide -- make sure the record is clear.

19 Did the independent evaluation and
20 analyses of the expert panel members, am I
21 correct in my understanding that that analysis
22 was presented in the four panel papers?

23 A. That's -- that's correct.

24 Q. What was the purpose of the summary
25 paper?

1 A. I'm a strong advocate that the best of
2 science comes out when we break down the walls
3 of the silos between different areas. And I'm
4 a strong proponent that if one is going to
5 review the human carcinogenic potential of a
6 material such as glyphosate, one has to take
7 maximum advantage of any epidemiological
8 evidence available. You need to take advantage
9 of all animal bioassays. You need to take a
10 look at the mechanistic data. Frequently that
11 revolves around genotoxicity. I think the data
12 would go beyond that. And then it's useful to
13 do this in the context of human exposures as
14 may have occurred or seen in the future, but
15 it's -- it's when we take those, break down the
16 walls, if you will, between those silos of
17 information, silos in which people work that we
18 get the integrated, synthesized information
19 that really is going to provide us the best
20 scientific evidence, whatever it may be in
21 terms of the human carcinogenic potential of a
22 particular material.

23 Q. Did the summary paper in the --
24 provide -- present any scientific analyses or
25 conclusions regarding glyphosate beyond what

1 was set forth in the four expert panel papers?

2 A. I think the summary paper, as best I
3 recall it, I think did a good job of trying to
4 synthesize and -- and integrate the
5 information. It wasn't just a regurgitation.
6 I think it tried to relate how these fit
7 together. That's a tough job, but it's --
8 it's -- it's what's very important. I think
9 the scientific stature of the individuals on
10 this panel, 16 individuals were such that they
11 could -- they could do a good job of that.

12 Q. Now, you were asked some questions by
13 Mr. Baum about the investigation that you
14 conducted after you received submissions or
15 letters from two individuals. I think one was
16 Katherine Guyton from IARC and the other was
17 someone named Nathan Donley; is that correct?

18 A. Yes. He ostensibly represented a
19 group of environmental organizations, NGOs, if
20 you will.

21 Q. Okay.

22 A. And so those two -- those two letters
23 are what really triggered our investigation.

24 Q. Let me mark as the next -- I guess
25 it's Exhibit 44, another document from your

1 production.

2 (Exhibit McClellan 44, Document Bates
3 numbered RM 000480 through RM 000481, marked
4 for identification.)

5 Q. And this document bears a Bates stamp
6 480 to 481, correct?

7 A. Yes, 480, 481, so on.

8 Q. And was -- there is an e-mail on the
9 top that's to you from -- and I'm going to
10 butcher his name, so I would just say one of --

11 A. Why don't we just say the
12 distinguished Brazilian scientist?

13 Q. Okay. One of the scientists who was
14 an author on the glyphosate review papers,
15 correct?

16 A. Yes.

17 Q. And that in response to a September
18 15, 2017 letter, that also appears on this
19 exhibit because it's an e-mail string, it's --
20 it follows beneath the initial e-mail, correct?

21 A. Yes.

22 Q. And did you prepare this September 15,
23 2017 letter in your role as editor in chief in
24 Critical Reviews in Toxicology?

25 A. Yes, I did.

1 Q. And was this letter written as part of
2 the journal's investigation of the allegations
3 that were raised by Mr. Donley and perhaps by
4 Katherine Guyton?

5 A. Yes. This letter was written by me
6 after consultation with Mr. Whalley as to how
7 best we could proceed to investigate this
8 matter. It was in this that I laid out some of
9 the background of the investigation.

10 Q. And in your September 15, 2017 e-mail,
11 you asked each of the authors of the glyphosate
12 review papers first to explain the extent of
13 any contribution to the drafting of articles
14 from individuals not listed as authors on the
15 paper, correct?

16 A. I did.

17 Q. And you were asking them whether or
18 not the analyses and conclusions reached in
19 those papers were those of the listed authors,
20 correct?

21 A. I did.

22 Q. And you also asked them about the
23 accuracy of the decelerations of the interest
24 that the authors provided with their review
25 papers, correct?

1 A. I did.

2 Q. And we will discuss this perhaps a bit
3 more, in more detail later, but am I correct
4 that Critical Reviews in Toxicology requires
5 its authors to provide significantly more
6 detail than do other journals about potential
7 conflicts or connections they may have with
8 parties that have interest in the subject
9 matter of the review?

10 A. Absolutely. I think we set a very
11 high standard in that regard and simply a
12 review of the declarations of interest and
13 acknowledgments that are regularly published.
14 And very frequently those are not adequate on
15 the first instance and I have to make
16 admonishments to the authors that what may
17 suffice for other journals does not necessarily
18 suffice for Critical Reviews in Toxicology.
19 It's -- it's a challenging area. Many people
20 prefer to take an easy route out and say the
21 authors have no conflicts of interest in your
22 report. That is not sufficient.

23 Q. Does the Critical Reviews in
24 Toxicology have any written guidance to authors
25 with respect to what is to be included in their

1 declarations of interest?

2 A. We -- we have written guidance
3 including references as I make known in this --
4 this e-mail. I -- I have to say that I have a
5 continuing, ongoing dialogue with Taylor &
6 Francis as to the adequacy of that guidance and
7 because the guidance that I really desire is a
8 step over and above that typically provided in
9 terms of other journals that may be published
10 under Taylor & Francis or other journals in
11 the -- in the field. It's -- it's easy to be
12 relatively nonchalant in -- scientists are
13 eager to move on to other work. Sometimes they
14 have to dig a bit in terms of recollections.

15 In fact, over the last couple of
16 years, in part stimulated by my experience with
17 this investigation, I admonished authors in
18 their dec -- in their acknowledgments to make
19 known in-house reviews that may have occurred
20 in their work and identify those individuals.
21 I think that's -- that's helpful.

22 Q. In this case, the original
23 decelerations of interest for all five of the
24 review papers when they were originally
25 published clearly explained that those papers

1 were sponsored by and funded by Monsanto,
2 correct?

3 A. In my opinion, that was very clear and
4 I think my forward to those five papers made --
5 made clear that this -- this work effort was
6 sponsored by the Monsanto Company. I don't
7 know how anyone could reach a conclusion other
8 than that in terms of reading my forward and
9 then the papers that followed.

10 Q. Let me ask you about your
11 investigation into the question of whether or
12 not the review papers were the -- and the
13 scientific evaluations and opinions expressed
14 in those papers were those of the authors of
15 themselves. And let me mark in connection with
16 that as Exhibit 45 --

17 MR. LASKER: Let me mark it and then
18 I'll --

19 (Exhibit McClellan 45, Document Bates
20 numbered RM 000482 through RM 000493, marked
21 for identification.)

22 BY MR. LASKER:

23 Q. I marked as Exhibit 45 a document that
24 was actually part of Exhibit 5 that was
25 introduced into evidence by plaintiffs'

1 counsel, but it is part of Exhibit 5, not the
2 entirety of Exhibit 5, Bates stamped RM 000482
3 through -493.

4 And, Dr. McClellan, can you identify
5 this document, Exhibit 45?

6 A. Yes, this is a complication of
7 material that I pulled together September 20,
8 2017. It was in response to a -- a letter that
9 I had sent asking that these individuals
10 provide this information. I think the
11 information is, to the best of my knowledge, in
12 alphabetical order in terms of the
13 communications that I received from -- at the
14 various participants in the review process.

15 Q. Let me ask you -- I'm going to ask you
16 questions about that so that you can explain
17 the document, but first let me lay a
18 foundation.

19 Is this a document, Exhibit 45, that
20 you prepared in the ordinary course of your
21 work as editor in chief of Critical Reviews in
22 Toxicology as part of your investigation of the
23 allegations that had been made about the
24 authorship of the review articles, glyphosate
25 review articles?

1 A. Yes, it is, although I would hesitate
2 to say in the part of normal conduct. This was
3 an extraordinary investigation that we carried
4 out.

5 Q. And does this document set forth
6 information that you obtained as part of your
7 investigation into or whether or not the auth
8 -- the review articles were the work product
9 and presented a scientific evaluation and the
10 opinions of the authors listed on those
11 articles?

12 A. Yes, it is. And I purposely asked the
13 authors to respond in a -- with their own
14 communication. It was not a box checking
15 exercise. It was not something that would lead
16 you to our particular conclusion.

17 So the -- the comments are quite --
18 quite varied in -- in their specific nature,
19 but I think all of them stand as a -- as a
20 testimony in terms of the role of the
21 individuals in preparation of these five
22 papers.

23 Q. And just so the record is clear, on
24 page 482, you make reference to an attachment
25 letter of April 15, 2017. And let me show

1 you -- to put that -- to make that clear on the
2 record on this, the document I'll mark as
3 Exhibit 46 bearing Bates stamp RM 000508
4 through -512.

5 (Exhibit McClellan 46, Document Bates
6 numbered RM 000508 through RM 000512, marked
7 for identification.)

8 BY MR. LASKER:

9 Q. And, Dr. McClellan, you've been shown
10 this to review this document fully to be able
11 to feel comfortable answering questions, but my
12 sole purpose for this document is to see if it
13 refreshes your recollection as to whether the
14 reference in Exhibit 45 to a letter of April
15 15, 2017 was a typo and was actually a
16 reference to a letter of September 15, 2017?

17 A. Yes, I remember this in the -- and my
18 embarrassment at the -- identifying April 15th,
19 Black Arm Band Day, the day your income tax
20 returns are due. I must have had that on my
21 mind.

22 Q. Just -- just so the record is clear
23 then, in Exhibit 45, on page Bates stamp 482
24 when you reference an attachment a letter of
25 April 15, 2017, that actually is a typo and is

1 referring to a letter of September 15, 2017; is
2 that correct?

3 A. That's correct.

4 Q. And did the Critical Reviews in
5 Toxicology rely upon the information that is
6 then set forth in Exhibit 45 at pages 483
7 through 493 in evaluating how it should respond
8 to the allegations that had been made regarding
9 authorship of the review papers?

10 A. I'll need to look at that.

11 MR. LASKER: And folks, if you can get
12 it, it's Exhibit 45.

13 A. Yes.

14 BY MR. LASKER:

15 Q. Now that you have that in front of
16 you, let me ask the question again.

17 A. Yes.

18 Q. Did the Critical Reviews in Toxicology
19 rely on the information that is set forth at
20 pages RM 483 through 493 in its evaluation of
21 the allegations that had been raised with
22 respect to the authorship of the glyphosate
23 review articles?

24 A. I want to make it certain that I'm
25 looking at the appropriate page.

1 Q. So it's the pages starting with,

2 "Summary of responses from" --

3 A. Right.

4 Q. -- "authors and coauthors."

5 A. Right.

6 Q. So let me ask the question again. Did
7 the Critical Reviews in Toxicology rely on the
8 information set forth at pages RM 483 to RM 493
9 as part of its evaluation in response to
10 allegations that had been made about the
11 authorship of the glyphosate papers?

12 A. Yes. This was information that I
13 relied on. As I said, it was in response to my
14 queries and I allowed the authors to respond in
15 their own language, so they're quite varied,
16 but I think taken in -- in summary, they
17 emphasize that these papers' conclusions were
18 those of the authors.

19 Q. And the pages 483 through 493, those
20 were -- those set forth responses of everyone
21 of the 16 scientists that are listed as authors
22 on the glyphosate review papers, correct?

23 A. Let me go through. Yes, I believe
24 that they are all there.

25 Q. And these same responses were also

1 included in the memorandum, one of the
2 attachments to the memorandum that Mr. Baum
3 showed you and moved into evidence as part of
4 his examination, correct?

5 A. Yes, that's -- you're referring, I
6 believe, to the August 5th, 2018 memorandum,
7 which was a substantial summary and this
8 material, I believe, was included with that.

9 Q. And the information or the statements
10 that are set forth on RM 483 through 493, am I
11 correct that those are cut and paste exact
12 quotations of the information you respond --
13 you received from each of the 16 scientists
14 with respect to the question of whether or not
15 they -- the review papers were the work product
16 of their independent scientific evaluation and
17 conclusions?

18 A. Yes, that's -- that's absolutely
19 correct.

20 Q. And based upon your review of this
21 information, did -- and your investigation in
22 full, did you and did the journal reach any
23 conclusions with respect to whether or not the
24 scientific analyses and conclusions expressed
25 in the four panel review papers and the summary

1 paper were -- reflected the independent
2 scientific evaluation and conclusions of the
3 listed authors?

4 A. These -- these statements,
5 testimonials, if you will, certifications were
6 a very important part of that extensive
7 investigation and were an important part of our
8 reaching a conclusion. And it was appropriate
9 to publish corrigendum for each of the papers
10 and an overall expression of concern.

11 Q. And did the journal, based upon its
12 review and based upon the information it
13 received from each of the 16 scientists who are
14 listed as authors on the glyphosate review
15 papers, reach the conclusion that those papers
16 were reflecting the independent evaluation and
17 opinions reached by the listed authors of those
18 papers?

19 A. Yes, I think in -- in the authors's
20 own words, that's stated. I think I note
21 there's a Sir Colin Barry in his. We went to
22 the second large paragraph in his communication
23 on 000485. He noted, "Our opinion, the
24 resultant document was arrived at in the manner
25 which had been used by many regulatory

1 authorities. As, for example, the WHO/FAO
2 joint panels."

3 I think he summarized the view that
4 was expressed in -- in different ways by each
5 of the authors.

6 I would also note, there's
7 clarification in terms of John Acquavella and a
8 viewpoint. We looked at John Acquavella. His
9 comments begin on 483 and extend to 484. I
10 think this is a very important piece of
11 information here. I think what he is relating
12 at the bottom of the page is that what he felt
13 was important was his fellow colleagues were
14 aware that he was receiving compensation from
15 Mon -- Monsanto, not the -- the contracting or
16 anybody's payment details, but he expresses the
17 view that other authors expressed. Everyone
18 was aware that -- they were all in the same --
19 same boat rowing. And there was equitable
20 compensation of -- of all parties and everyone
21 was aware it was funded by Monsanto.

22 I think the comment in terms of Larry
23 Kier, if I recall right, also noted that --
24 that he was originally hired by Monsanto and
25 served as a consultant to support the

1 Genotoxicity Expert Panel and knowing he was in
2 that capacity, he was in contact with the
3 facility providing the numbers with complete
4 and accurate information, including
5 supplemental information on regulatory genetic
6 toxicology studies.

7 And he went on to note, "Subsequent to
8 the development of the Genotoxicity Expert
9 Panel Manuscript, I agreed to be added as a
10 coauthor subject to the approval of the panel
11 members."

12 And as I recall, the communication
13 from Dr. David Brusick who chaired that
14 subpanel indicated that it was the unanimous
15 opinion of the other panel members that the
16 level of contribution of Dr. Kier rose to a
17 level of his being recognized as a coauthor.

18 Q. Based upon your investigation
19 including your inquiries with each of the 16
20 listed authors on the scientific review papers,
21 is it your -- was it your conclusion that the
22 scientific evaluations and opinions expressed
23 in those papers were based upon the independent
24 work product of the listed authors?

25 A. Yes, I did.

1 Q. Now, I'd like to turn to the second
2 issue that you were investigating which was
3 with respect to some inaccuracies in the
4 decelerations of interest, okay?

5 A. Yes.

6 Q. Your judgment was that the proper
7 response to these inaccuracies was to submit
8 corrected acknowledgments and decelerations of
9 interest, correct?

10 A. That's correct.

11 Q. And that is ultimately what the
12 journal decided to do, correct?

13 A. That was ultimately what was decided
14 jointly by myself and the managing editor,
15 Charles Whalley, and part of the senior
16 officials at -- at Taylor & Francis.

17 Q. Now, during this period when -- after
18 the initial allegations had been brought to
19 your attention but while the journal was
20 undertaking the investigation, the journal was
21 continuing to receive communications
22 specifically from
23 Mr. Donley pressuring the journal to retract
24 the glyphosate review papers, correct?

25 A. They -- there were communications at

1 fairly frequent intervals that, Get on with the
2 job. We want -- we want you to complete it and
3 our expectation is that you will retract the
4 articles.

5 Q. Let me mark as Exhibit 47 -- again,
6 this is part of the composite document Exhibit
7 5 that was marked by plaintiffs' counsel in his
8 questioning.

9 (Exhibit McClellan 47, Document Bates
10 numbered RM 000672 through RM 000677, marked
11 for identification.)

12 BY MR. LASKER:

13 Q. Dr. McClellan, I'm going to give you a
14 chance to review the e-mail correspondence and,
15 again, because it's printed out e-mail
16 correspondence, you might want to start from
17 the last page and work your way forward to have
18 context.

19 A. Yes, I see the communication from
20 Nathan Donley, October 12th, 2017 to Charles
21 Whalley, a retraction request, and I believe
22 the letter I received, communication was -- was
23 identical. It was one that was reproduced
24 earlier in the day. It has extensive end notes
25 associated with it. And then I see we have

1 other communications here.

2 Q. And Exhibit 47 actually includes a
3 series of e-mails that Mr. Donley sent to the
4 journal over time -- with a request by Mr.
5 Donley that the review articles be retracted,
6 correct?

7 A. That's correct.

8 Q. And if I -- and during this process
9 when Mr. Donley also started including other
10 individuals and copying other individuals on
11 his communications to the journal, correct?

12 A. Yes, he did.

13 Q. And I believe it is -- and
14 unfortunately I do not -- I don't have my own
15 copy of this -- I believe it's page 68 -- or on
16 688, there is an e-mail that has -- if I can
17 just for a second to make sure I'm directing
18 you to the right page -- I'm sorry, 674.

19 On Bates stamp 674, RM 674, there's
20 one of the e-mails from Nathan Donley. This is
21 now dated June 25th, 2018 to Charles Whalley.
22 He's the publisher of the journal, correct?

23 A. He is the managing editor.

24 Q. Managing editor, I'm sorry.

25 And he -- and Mr. Donley copies a

1 number of individuals to his communication,
2 correct?

3 A. Yes.

4 Q. One of the individuals that is part of
5 this communication is Leemon McHenry.

6 Do you see that?

7 A. I do.

8 Q. And Leemon McHenry has listed there an
9 e-mail address csun.edu, which by the edu
10 prefix, I believe would have been an academic
11 institution?

12 A. This is California State -- my guess
13 edu.

14 Q. Now, Mr. McHenry actually is in this
15 room and has appeared as part of this
16 deposition as part of the plaintiffs' legal
17 team in its litigation against Monsanto,
18 correct?

19 A. I was not aware of that until
20 midmorning.

21 Q. So Mr. -- Mr. -- at the time that you
22 were receiving these and the journal was
23 receiving these communications from Nathan
24 Donley urging the journal to retract the
25 glyphosate papers, were you aware that Leemon

1 McHenry who was part of these communications
2 was a member of plaintiffs' legal team in their
3 litigation against Monsanto?

4 A. That was not disclosed in any of the
5 information that I received and I, in the memo
6 dated July 6th, admonished Charles to be
7 careful in terms of e-mail -- management of
8 e-mails. It's very easy to pick up a -- a
9 trail. I've done it myself and automatically
10 string this out.

11 I don't see it here, but I think there
12 was a -- a communication -- may have been sent
13 to me. It -- it somehow got into the system
14 from
15 Mr. McHenry, which made reference to, I think,
16 lying, lying, stalling. It -- it was a rather
17 vitriolic letter such that Nathan Donley called
18 attention to it and said we should ignore it.

19 Q. And do you have any knowledge of what
20 role the plaintiffs' legal team, beyond the
21 fact that Mr. McHenry was part of the
22 correspondence urging the journal to retract
23 the glyphosate review papers, do you have any
24 information or understanding of what role
25 plaintiffs' legal team played in the efforts to

1 get the journal to retract the glyphosate
2 review papers?

3 MR. BAUM: Objection, calls for
4 speculation.

5 A. That would be speculative on my part.
6 I have -- I have no independent knowledge of --
7 of that. It would be speculative on my part.

8 Q. Mr. Baum asked you about one of the
9 corrections that was published by the journal
10 and this was publica -- correction in
11 connection with the --

12 THE COURT REPORTER: This is the
13 published correction?

14 MR. LASKER: Yes, I'm sorry.

15 Q. -- in connection with the summary
16 review article.

17 Do you recall that?

18 A. I do.

19 Q. Okay. And that is Exhibit 24. If you
20 can pull that out.

21 MR. BAUM: Excuse me, Counsel, could
22 we go off while he's doing that?

23 MR. LASKER: Yeah, sure.

24 THE VIDEOGRAPHER: Off the record.

25 The time is approximately 7:25 p.m.

1 (Whereupon, a brief recess is taken
2 from 7:25 p.m. to 7:27 p.m.)

3 THE VIDEOGRAPHER: With the approval
4 of counsel, back on the record. The time is
5 approximately 7:27 p.m. This marks media
6 number 12.

7 BY MR. LASKER:

8 Q. So, Dr. McClellan, I put in front of
9 you again Exhibit 24 and specifically referring
10 to the correction to the summary paper that Mr.
11 Baum asked you about in his questioning.

12 And in the acknowledgments, in the
13 corrected acknowledgments, the authors of the
14 papers refer to Dr. Heydens of Monsanto
15 providing a regulatory history overview for use
16 by the authors in the preparation of this
17 overview paper, correct?

18 A. I see that, yes.

19 Q. And Mr. Baum asked you some questions
20 about that regulatory history overview and the
21 fact that some of that document appeared to
22 have been used by the authors in their overview
23 paper.

24 Do you recall that?

25 A. I do.

1 Q. And that fact is disclosed in the
2 correction, correct?

3 A. I believe it is.

4 Q. And in the acknowledgments the authors
5 also note that Dr. Heydens reviewed a
6 preliminary draft of the overview manuscript,
7 the summary document and the final manuscript,
8 correct?

9 A. Yes.

10 Q. And in the declarations of interest,
11 the authors also note that Mr. Heydens -- or
12 Dr. Heydens of Monsanto reviewed a draft of the
13 overview paper and suggested wording changes
14 but did not comment on the opinions and
15 conclusions of the expert panel, correct?

16 A. I see that, yes.

17 Q. And Mr. Baum showed you another
18 document with some redlines in which
19 Dr. Heydens suggested some wording changes,
20 correct?

21 A. Yes, editorial comments.

22 Q. And that is disclosed by the authors
23 in the correction, correct?

24 A. It is.

25 Q. And the authors in this correction

1 also discuss the issue of whether or not given
2 those activities, Dr. Heydens should have been
3 listed as an author on the glyphosate review
4 papers, correct?

5 A. They did.

6 Q. And in the acknowledgments the authors
7 state, "With respect to Dr. Heydens and also
8 with respect to an individual named Barry Lynch
9 at Intertek."

10 Do you know who Barry Lynch is?

11 A. No, I'm not -- not certain, no.

12 Q. Well, with respect to Dr. Heydens, the
13 16 authors of the glyphosate review papers
14 state that he was not considered for authorship
15 because he did not participate in the
16 deliberations of the panel and did not
17 contribute to the conclusions drawn by the
18 panel, correct?

19 A. That is correct.

20 Q. And the 16 authors of the review
21 papers state, the glyphosate review papers
22 state that, "The conclusions were independently
23 formulated by each of the four panel subgroups
24 as detailed by the individual papers," correct?

25 A. That's correct.

1 Q. And also in the declaration of
2 interest, the authors again state, following
3 their discussion with Dr. Heydens, suggested
4 wording changes that, "The opinions expressed
5 in the final conclusions set out in this
6 overview paper were those of the listed authors
7 and no one else," correct?

8 A. That's correct.

9 Q. And those statements are consistent
10 with the conclusion that Critical Reviews in
11 Toxicology reached after its investigation of
12 the allegations that were made by various
13 individuals including Mr. McHenry of the
14 plaintiffs' law firm, correct?

15 A. That's correct.

16 MR. LASKER: I have no further
17 questions.

18 THE VIDEOGRAPHER: Good?

19 All right. With the approval of
20 counsel -- I'm sorry.

21 MR. THOMPSON: He will read and sign.
22 And I want a copy of the transcript and a copy
23 of the tape.

24 THE VIDEOGRAPHER: With the approval
25 of counsel, this concludes today's video

1 deposition. The time is approximately 7:31
2 p.m. We are now off the record.

3 THE COURT REPORTER: Do you also want
4 a rough?

5 MR. BAUM: Yes, send me a rough.

6 (Time noted: 7:31 p.m.)

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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IN RE: ROUNDUP PRODUCTS) MDL No. 02741
LIABILITY LITIGATION)
THIS DOCUMENT RELATES TO)
ALL ACTIONS)
-----x

CERTIFICATE OF COMPLETION OF DEPOSITION

I, DANA N. SREBRENICK, RPR, CLR, CRR, NM CCR
#513, DO HEREBY CERTIFY that on Wednesday,
February 6, 2019, the Deposition of ROGER O.
McCLELLAN, DVM, MMS, DSc (Honorary) was taken
before me at the request of, and sealed
original thereof retained by:

MICHAEL L. BAUM, ESQ.
ATTORNEY FOR PLAINTIFF
10940 Wilshire Boulevard, 17th Floor
Los Angeles, California 90024

I FURTHER CERTIFY that copies of this
Certificate have been mailed or delivered to
all Counsel, and parties to the proceedings not
represented by counsel, appearing at the taking
of the Deposition.

I FURTHER CERTIFY that examination of this
transcript and signature of the witness was
requested by the witness and all parties
present.

On _____, 2019, a letter was mailed or
delivered to R. E. THOMPSON, ESQ., regarding
obtaining signature of the witness, and
corrections, if any, were appended to the
original and each copy of the Deposition.

I FURTHER CERTIFY that the recoverable cost
of the original and one copy of the Deposition,
including exhibits, to MICHAEL BAUM, ESQ., is

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I FURTHER CERTIFY that I did administer the oath to the witness herein prior to the taking of this Deposition; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcript of the proceeding had upon the taking of this Deposition to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with (unless excepted by the rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

DANA N. SREBRENICK, CRR, CLR
NM CCR #513
License Expires: 12/31/2018

1 IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION

2 DEPONENT SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to your
4 Deposition, please indicate them below:

	PAGE	LINE	
4	_____	_____	Change to _____
	_____	_____	Change to _____
5	_____	_____	Change to _____
	_____	_____	Change to _____
6	_____	_____	Change to _____

7 Any other changes to your Deposition are to be listed
8 below with a statement as to the reason for such change:

	PAGE	LINE	CORRECTION	REASON FOR CHANGE
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____

15
16 I, ROGER O. McCLELLAN, DVM, MMS, DSc, do hereby
17 certify that I have read the foregoing pages of my
18 testimony as transcribed, and that the same is a true
19 and correct record of the testimony given by me in this
20 Deposition on February 6, 2019 except for the changes
21 made.

19
20

21 Date Signed	ROGER O. McCLELLAN, DVM, MMS, DSc

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