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I N D E X

Wednesday, February 27, 2019 - Volume 5

PLAINTIFF'S WITNESSESPAGE VOL.PORTIER, CHRISTOPHER

By Video Testimony (not reported)

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## PROCEEDINGS

1 Wednesday - February 27, 2019

8:18 a.m.

2 P R O C E E D I N G S

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

5 **THE COURT:** Hi, everybody. I heard you have a couple  
6 of items for me. But before we get to those, I know the last  
7 couple of days have been -- have had a lot of high drama.  
8 Unfortunately, I have one more item of drama related to a juror  
9 that I need to discuss with you at sidebar.

10 (Pages 788 through 795 were placed under seal by Order of  
11 the Court and bound separately.)

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## PROCEEDINGS

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[REDACTED] [REDACTED]  
(The following proceedings were heard in open court:)

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

**THE COURT:** Welcome back, everybody. We are prepared to begin this morning.

And Ms. Wagstaff or Ms. Moore, do you want to call your next witness?

**MS. MOORE:** Thank you, Your Honor. Plaintiff's call Dr. Chris Portier. And this will all be by video deposition by -- and it was taken by our colleague Mr. Brent Wisner and so -- Your Honor, as far as the deposition instruction that you gave yesterday, I don't know if we need to redo that or if that's --

**THE COURT:** No. I think that's okay. I'm sure they remember.

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

**MR. STEKLOFF:** Your Honor, we might move chairs around.

**THE COURT:** Feel free.

**MS. MOORE:** And, Your Honor, because of the length of the direct examination, at what point, if you just want to let us know, that we should take a break, Mr. Wool then can stop the video and we will take a break; but I will leave it up to the Court's discretion.

**THE COURT:** Will do.

## PROCEEDINGS

1           **MS. MOORE:** Thank you.

2                   **(Video was played but not reported.)**

3                   **(Video stopped.)**

4           **THE COURT:** Next sensible point to pause, let's take a  
5 five-minute break.

6           **MR. WISNER:** There is a section right at the end of  
7 the Wood study that is perfect. I will let them know.

8           **THE COURT:** Great. Thanks.

9                   **(Video was played but not reported.)**

10           **THE COURT:** Why don't we take a short morning break.  
11 We will take a couple of breaks this morning to make sure  
12 everybody remains alert. We will resume at ten minutes to the  
13 hour.

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

15           **THE COURT:** I want to make a brief comment to the  
16 gallery before everybody leaves. I mentioned this yesterday,  
17 but I want to mention it again in case somebody is here who  
18 wasn't here yesterday. I want to remind everybody that jurors  
19 are walking around in this building, particularly during the  
20 lunch hour and occasionally during the breaks. Everybody who  
21 is watching this trial, particularly news media, need to be  
22 very careful what they say about the case when they are walking  
23 around in the building or when they are in the elevators. It  
24 is very important that a juror not overhear anything that  
25 anybody says. So one of the measures I'm going to take to

## PROCEEDINGS

1 minimize the risk of a juror inadvertently hearing something is  
2 that I'm going to require anybody in the gallery to remain in  
3 the gallery five minutes after the jury leaves for its lunch  
4 break so that the jury can head down in the elevator and get to  
5 the cafeteria or get to wherever they are going and minimize  
6 the risk that they are sharing an elevator with somebody in the  
7 gallery who might make the very big mistake of talking about  
8 the case in front of people who they don't know. So that will  
9 be the rule, and I just want to remind everybody that you  
10 are -- you are all under orders to not speak about the case in  
11 the building in a way that you can be overheard. We will be  
12 back in a few minutes.

13 (Recess taken at 9:47 a.m.)

14 (Proceedings resumed at 9:54 a.m.)

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

16 **THE COURT:** I have one quick question before we bring  
17 the jury back in. I think you-all said this morning that there  
18 is like three and a half hours of Portier testimony cut; is  
19 that right?

20 **MS. WAGSTAFF:** Yeah, I believe it is like 3 hours, 45  
21 minutes, something like that.

22 **THE COURT:** The idea -- what is the plan after that?  
23 I got the rest of the Portier testimony late last night, and I  
24 haven't looked at it yet. So what is -- what is your plan for  
25 me in terms of when I should look at that and what is your plan

## PROCEEDINGS

1 for when the current cut of the Portier deposition is done?

2 **MS. WAGSTAFF:** Our plan would be that we play -- I  
3 think there is a little bit left of the direct so what we have  
4 today is day 1.

5 **THE COURT:** Okay.

6 **MS. WAGSTAFF:** His testimony was three days, and it  
7 was day -- but it was short days -- day 2 Mr. Wisner finished  
8 the direct and Monsanto finished their cross.

9 **THE COURT:** Okay.

10 **MS. WAGSTAFF:** So that would complete sort of the  
11 package and day 3 was what both parties consider to be either  
12 rebuttal or Phase Two testimony. So our request to you would  
13 be that if you could -- if you had time to look at and rule on  
14 the first two objections.

15 **THE COURT:** The first two objections in what?

16 **MS. WAGSTAFF:** I will pass to Mr. Wisner.

17 **MR. WISNER:** If you can rule on the first two  
18 objections to get us through the completion of direct over  
19 lunch -- just two objections -- then we can finish the direct  
20 today. That will take us four hours.

21 **THE COURT:** Do you have any other testimony you want  
22 to play if we have a little extra time, one of the treating  
23 doctors or something like that?

24 **MS. WAGSTAFF:** We could play one of the treating  
25 doctors. I would presume you-all would want to do your cross

## PROCEEDINGS

1 before we play anyone else.

2 **MR. STEKLOFF:** Can I think about it?

3 **THE COURT:** Yeah. I mean, I will tell you that I  
4 don't think -- I think it is more important to use our time  
5 wisely; and I don't think there is any problem with taking that  
6 out of order, particularly if it is a short clip from a  
7 treating doctor or something like that; get that out of the  
8 way.

9 **MR. WISNER:** I think we have that ready to go, so I  
10 will talk to Jennifer and she will --

11 **MS. WAGSTAFF:** She is right behind you.

12 **THE COURT:** Remember, there were a couple changes that  
13 were made to, I think, the oncologist testimony.

14 **MR. STEKLOFF:** We are working through -- well, first  
15 of all the age as a risk factor but also --

16 **THE COURT:** -- the remission issue?

17 **MR. STEKLOFF:** Yes, and I will say we have flagged --  
18 I don't know their position yet -- that we also think -- given  
19 that remission is coming up, we also think chemotherapy  
20 testimony should come out. There is some chemotherapy  
21 testimony that talks about hepatitis C and hepatitis B testing,  
22 and we tried to leave that in.

23 **THE COURT:** I don't really recall anyone laying it on  
24 thick on the chemo testimony.

25 **MS. MOORE:** They don't, Your Honor.

## PROCEEDINGS

1           **THE COURT:** If you want to re-raise that with me,  
2 that's fine.

3           **MR. STEKLOFF:** There are short portions. I don't know  
4 that I would describe it as laying on thick. It clearly goes  
5 more to pain and suffering than causation for sure.

6           **THE COURT:** Okay.

7           **MR. STEKLOFF:** We have tried to be limited in pulling  
8 that out.

9           **THE COURT:** Okay.

10          **MR. STEKLOFF:** I have one issue on Dr. Portier.

11          **MS. MOORE:** Before you go there, we did get revised  
12 transcripts late last night -- I'm looking at those -- on the  
13 doctors. We are trying to work those issues out. I want to  
14 make sure we have an opportunity to do that if there is any  
15 issue we need to raise with the Court. I'm on that.

16          **THE COURT:** Okay.

17          **MR. STEKLOFF:** Our view -- in planning purposes our  
18 view -- subject to them weighing in -- is in Dr. Turley, who  
19 was the ENT, which I think is 15 to 20 minutes.

20          **MS. MOORE:** 19 minutes.

21          **MR. STEKLOFF:** There was nothing that needed to be  
22 changed, and so that might be a good example of something that  
23 could be played today.

24          **THE COURT:** Okay.

25          **MR. STEKLOFF:** Dr. Portier -- I mean, I think we are

## PROCEEDINGS

1 now at the time -- maybe not this second -- where we have to  
2 decide this opening the door issue. I think he is the  
3 witness -- if the door has been opened through a combination of  
4 Plaintiff's opening -- I think maybe some of the testimony we  
5 heard today, and I will specifically flag the bottom of page 44  
6 where he talked about why he does this, his 36 years evaluating  
7 animal and human cancer data. Then he went on to say that is  
8 sort of the primary thing my career has been aimed at, and I  
9 feel that having looked at the way that these agencies -- this  
10 is after he was shown the union letter, he is also talking  
11 extensively about EPA there looked at the particular pesticide.  
12 They have missed all the rules that are in place that they  
13 should have followed in doing the evaluation.

14 **THE COURT:** Do I recall correctly that I flagged that  
15 as an especially tentative ruling? There was one that I  
16 flagged as extra tentative.

17 **MR. WISNER:** No. That was related to the EFSA letter  
18 on showing the authors. That's what I understood.

19 **THE COURT:** Okay. But let me -- and I don't remember  
20 as I sit here, let me ask you this more practical question -- I  
21 mean, I understand what you are saying; but should we really be  
22 talking about this now with the jury waiting to come back in?

23 **MR. STEKLOFF:** We can push it. I guess my point is  
24 there might be things we need to pull out from Phase Two that  
25 we think now have opened the door. I just want to be planning.

## PORTIER - VIDEO TESTIMONY

1           **THE COURT:** It seems like maybe lunch hour is the best  
2 time to talk about that.

3           **MS. MOORE:** I think that goes both ways, Your Honor.  
4 I think we will be prepared to talk about what should come in  
5 too.

6           **THE COURT:** Okay. Bring in the jury.

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

8           **THE COURT:** You can resume.

9           **(Video was played but not reported.)**

10          **THE COURT:** Before we do that, why don't we take  
11 another five-minute break. We will resume at a quarter to.

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

13          **THE COURT:** The reason I called a slightly premature  
14 break is that it seems to me -- I mean, I don't have  
15 Dr. Portier's deposition -- designations in front of me. It  
16 seems to me that some of the testimony that has come in is  
17 inconsistent with my rulings on the designations on the  
18 objections, so I'm trying to figure out what is going on. The  
19 issue in particular is that that I have noticed a couple of  
20 times the reference to the EPA guidelines and I -- you know,  
21 I'm looking back at my ruling, and I know that there was an  
22 objection that was made at page 80 to a bunch of Portier  
23 testimony; and I said that it was sustained to the extent that  
24 it was couched in the EPA guidelines, but you can use the  
25 testimony without if you remove references to the EPA

## PORTIER - VIDEO TESTIMONY

1 guidelines. I'm not sure if that particular testimony that I  
2 ruled on was the testimony that I heard referencing the EPA  
3 guidelines or if that was some other testimony referencing the  
4 EPA guidelines that Monsanto had not objected to or at least an  
5 objection was not noted from Monsanto in the document that was  
6 delivered to me. But it seems like we may have a little bit of  
7 an issue with the way the testimony has been cut.

8 **MR. WISNER:** Sure. I can walk you through exactly  
9 what happened. The portion that the Court sustained was  
10 removed, and I actually met and conferred with counsel last  
11 night, and we agreed on how it would be played.

12 The other references to EPA guidelines, Monsanto never  
13 objected to and, in fact, last night they actually were  
14 e-mailing me about different portions that referenced EPA  
15 guidelines asking me to remove them. I said sure, sure, sure.  
16 We agreed to remove all of them. We also gave them a copy of  
17 the video which they sent us an e-mail about at 2:30 last night  
18 saying change this, change that. Otherwise, it is fine.

19 We weren't trying to do anything. We followed the Court's  
20 order a hundred percent, and I didn't know they were in there  
21 to be honest. I wasn't looking at that. Monsanto didn't  
22 object. We followed the Court's order completely and we were  
23 up pretty late last night working on it.

24 **THE COURT:** The issue is whatever the document that  
25 was delivered to me containing Portier's testimony had a

## PORTIER - VIDEO TESTIMONY

1 list -- had flagged -- the objections were flagged, and you are  
2 saying the portions of the testimony that came in referencing  
3 the IARC guidelines were -- there was no objection in the  
4 document that was given to me?

5 **MR. WISNER:** That's correct. Now, notwithstanding  
6 that, in light of your ruling on page 80, Monsanto flagged  
7 other portions where EPA guidelines were discussed and asked us  
8 to remove them last night; and we agreed to. The ones that got  
9 through are ones that Monsanto didn't flag for us, and we  
10 weren't -- I mean, I didn't go through it and anticipate  
11 objections that Monsanto might make in light of your rulings  
12 and flag it to their attention. I mean, that's -- I didn't  
13 have -- I mean, I just didn't do that. So these were -- to the  
14 extent that these are being played, it is being done with the  
15 consent of Monsanto having reviewed the transcripts and the  
16 video itself.

17 **MR. STEKLOFF:** I think consent is a strong word. I  
18 wasn't part of the process, I will concede, Your Honor, but I  
19 have noticed like Your Honor several references to EPA  
20 guidelines. I have already when -- when it started, it perked  
21 my ears up. I flagged another one that looks like it is coming  
22 up -- or at least a different variation -- so when you are  
23 trying to answer that bigger question, there are things like in  
24 the EPA evaluation you would like to see in talking about some  
25 of the tumor that he is going to be describing. So I will

## PORTIER - VIDEO TESTIMONY

1 concede that I do not know exactly what was flagged for them or  
2 not last night. I am concerned about the testimony. I  
3 think -- I think it does play into whether the door has been  
4 opened given that the direct has come in this way with other  
5 things as well.

6 **THE COURT:** Well, there will -- there is always --  
7 given the direct has come in -- I mean, you don't -- there is  
8 no obligation to object to testimony coming in. You may decide  
9 not to object to certain testimony coming in because you want  
10 the door to be opened, right. So I think in that respect we  
11 treat this testimony like any other testimony; and if Monsanto  
12 didn't specifically flag these aspects of the testimony, and  
13 object to them -- you know, I, of course, didn't read the  
14 entire testimony. I only went through the objections and ruled  
15 on the objections and, you know -- I think this testimony  
16 should continued to be played as it has been cut. But the  
17 question whether these references to the EPA guidelines opens  
18 the door to anything is a separate question. I think we will  
19 treat that question as we would any other testimony that came  
20 in on direct. Of course, we don't need to discuss that now;  
21 but we will need to discuss that soon I assume.

22 **MR. WISNER:** Sure. I think our concern is that, you  
23 know, a lot of the stuff that was removed talking about the  
24 EPA, we did in light of the Court's ruling.

25 **THE COURT:** Right, and if it -- if that were to open

## PORTIER - VIDEO TESTIMONY

1 the door to something that wouldn't otherwise come in, then  
2 presumably you would be able to re-designate some of that  
3 testimony on redirect.

4 **MR. WISNER:** Precisely. And that's exactly what I'm  
5 concerned about. If they want to do that, we can go down that  
6 hole. I would also say, Your Honor, I think from a substantive  
7 perspective, I think there has been no testimony from  
8 Dr. Portier that the EPA was wrong or that they didn't apply  
9 their guidelines, which I thought was the heart and soul of the  
10 issue.

11 **THE COURT:** I think -- in other words, what you are  
12 saying is in the grand scheme of his testimony these occasional  
13 references to the EPA guidelines are relatively minor. I think  
14 I probably agree with you about that. We can have a discussion  
15 later about the extent to which it opened the door and what it  
16 may have opened the door to.

17 **MR. WISNER:** Sure.

18 **THE COURT:** All right. Sounds good. Does anybody --  
19 should we just call the jury back in or do you want to take a  
20 couple minutes?

21 **MS. WAGSTAFF:** We can call the jury back in.

22 **THE COURT:** Although they might not be quite ready. I  
23 told them five minutes; right. Why don't we take two more  
24 minutes.

25 **MS. MOORE:** Thank you, Your Honor.

## PROCEEDINGS

1           **THE CLERK:** Court is in recess.

2                           (Recess taken at 10:45 a.m.)

3                           (Proceedings resumed at 10:50 a.m.)

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

5           **THE COURT:** Okay. Go ahead and bring the jury back  
6 in.

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

8           **THE CLERK:** Please be seated.

9           **THE COURT:** Okay. Welcome back. You can resume.

10                           (Video was played but not reported.)

11           **THE COURT:** Okay. Good time for a break?

12           **MS. MOORE:** Yes.

13           **THE COURT:** All right. Thank you.

14           So we will go ahead and take our lunch break. I'll remind  
15 everybody a couple of things.

16           Do not talk to one another about the case. Don't talk to  
17 anybody else about the case. And, you know, try, to the extent  
18 possible, when you're walking around the building and whatnot,  
19 to keep away from people who you think might be talking about  
20 the case.

21           So with that, we'll resume at 12:30 and have a good lunch.

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

23           **THE COURT:** Okay. And some people in the courtroom  
24 right now may not have been in the courtroom when I said this,  
25 but there will be a rule in this trial that everybody who's in

## PROCEEDINGS

1 the courtroom at the start of the lunch break has to stay in  
2 the courtroom for five minutes while we give the jurors a  
3 chance to use the elevator, get downstairs, just to minimize  
4 the chances of any juror overhearing something inadvertently.

5 So why don't we use these five minutes to talk. I forgot  
6 to bring the Portier testimony out with me so one thing we  
7 could do, I could run back and get it real quick and we could  
8 talk through those two additional objections you wanted me to  
9 rule on real quick.

10 **MR. STEKLOFF:** Sure. My colleague is going to handle  
11 the two additional objections.

12 On the issue I raised before, Your Honor, I sort of  
13 conferred over the break about opening the door. I want to  
14 reflag testimony that is at the bottom of page 44 and page 45.

15 **THE COURT:** Well, let me go grab his testimony.

16 **MR. STEKLOFF:** No problem.

17 **THE COURT:** Oh, okay. Jordan's getting it.

18 (Pause in proceedings.)

19 **THE COURT:** I was also curious where we were on the  
20 magic tumor, the evidence that was going to come in on that. I  
21 thought the way we left it is that you-all were working out  
22 sort of a way to deal with that consistent with my ruling.

23 **MS. MOORE:** Yes, Your Honor. We haven't finished that  
24 yet.

25 **THE COURT:** Okay.

## PROCEEDINGS

1           **MR. WISNER:** It won't come up in Dr. Portier's  
2 testimony.

3           **THE COURT:** I was going to say -- that was going to be  
4 my next question. Would it come up in Reeves? Is that where  
5 it would come up?

6           **MR. WISNER:** Yes, primarily. It does -- we did cover  
7 it in the rebuttal for Dr. Portier. So if it's opened up, we  
8 might designate that for later; but as of right now, for what  
9 we have before the Court, it's not in.

10           **THE COURT:** Okay.

11           **MR. STEKLOFF:** Day one or day two, Your Honor?

12           **THE COURT:** Oh, yeah, I have day one. So we can talk  
13 about the issue.

14           **MR. STEKLOFF:** Right.

15           So all I want to flag for Your Honor -- and to be clear,  
16 because Mr. Wisner asked, I'm not saying this should not have  
17 been played, I am just saying that at the bottom of page 44 and  
18 the top of page 45 --

19           **THE COURT:** Okay.

20           **MR. STEKLOFF:** -- there was a question, "Why are you  
21 doing it then?" This was after Mr. Wisner had walked through  
22 the -- in part walked through that letter that he sent to the  
23 European authorities and then flagged -- this is where you --  
24 I'm now saying prior to page 44 is right when you said you had  
25 your tentative ruling that was very tentative, and that's where

## PROCEEDINGS

1 the De Roos issue came up.

2 And then he's asked, "Why are you doing it then?" And  
3 part of that answer says -- you know, he goes on to say, "That  
4 is sort of the primary thing my career has been aimed at." And  
5 the part that I think opens the door in part is "and I feel  
6 that having looked at the way these agencies looked at this  
7 particular pesticide" -- so he's talking particularly about  
8 Roundup -- "it missed all the rules that are in place that they  
9 should have followed in doing the evaluation."

10 Now, I will flag that the remedy we are asking for is  
11 actually not to sort of bring in a bunch of things that the  
12 parties examined Dr. Portier on in what we consider Phase II.  
13 So I think the --

14 **THE COURT:** One question I have about this. So I  
15 sustained the objection to this portion of the testimony that  
16 was played to the jury today.

17 **MR. WISNER:** So, Your Honor, let me clarify exactly  
18 what occurred because I think there's some confusion because  
19 Mr. Stekloff wasn't involved.

20 They originally objected to that entire question and  
21 answer, and then yesterday morning before I brought to the  
22 Court the objections, they actually withdrew their objections  
23 up until starting on page 45, line 2 through 5.

24 **THE COURT:** Right. But I -- didn't that -- and I  
25 sustained the objection to that and I thought that came in. I

## PROCEEDINGS

1 thought I heard that.

2 **MR. WISNER:** No.

3 **THE COURT:** No?

4 **MR. WISNER:** We cut out the last paragraph.

5 **THE COURT:** Okay. Okay.

6 **MR. STEKLOFF:** Yeah, I don't think lines 2 through 5  
7 were played to the jury. I would agree with that, Your Honor.

8 **THE COURT:** Okay.

9 **MR. STEKLOFF:** But the remedy we're asking for is  
10 actually just that -- we are not going to change what we are  
11 seeking to admit, which was submitted last night in the  
12 cross-examination that occurred on the second day of  
13 Dr. Portier's examination in Australia. I think -- we -- I was  
14 not there, but --

15 **THE COURT:** We got -- so I'm guessing that we got --  
16 it was filed last night at, like, 11:00 o'clock but we have not  
17 received a hard copy of that yet is my understanding.

18 **MR. WISNER:** It's right here.

19 **THE COURT:** Okay.

20 **MR. STEKLOFF:** And I will hand that up.

21 We think everything in that, to be clear, was, of course,  
22 already in line with your guidance that we received in the  
23 *motions in limine* both on that European authorities could come  
24 in through their response to Dr. Portier's letter.

25 I also recall -- or it's my understanding that the parties

## PROCEEDINGS

1 made a call to you from Australia talking about EPA response to  
2 Dr. Portier. You gave some guidance on you could ask a few  
3 questions but don't go too far.

4 So I think that has been designated by us on day two. I  
5 think the plaintiffs have maintained objections to that, and we  
6 just think that -- I think, as you go through that portion,  
7 this -- what I'm flagging for you on page 44 and 45, in  
8 addition to what was said in opening, and maybe to a lesser  
9 extent the various references we've now heard to the EPA  
10 Guidelines can factor into how you rule on the objections.

11 **THE COURT:** Okay.

12 **MR. STEKLOFF:** But we're not trying to --

13 **THE COURT:** But the upshot of what you're saying is  
14 that my general ruling applies, which in your view my pretrial  
15 ruling applies about this, which is that the Plaintiffs' *Motion*  
16 *in Limine* Number 4 to exclude decisions by foreign regulators  
17 is granted for Phase I subject to the limited exception that  
18 Monsanto may briefly cross-examine Dr. Portier on his efforts  
19 to convince European regulators to ban Roundup in a way that  
20 reveals that his efforts have thus far been unsuccessful.

21 **MR. STEKLOFF:** Yes. And what I would say --

22 **THE COURT:** I don't know that that means -- I mean,  
23 you made reference to documents from the European regulators  
24 coming in. I don't know that that means that documents from  
25 the European regulators are going to be able to come in. I

## PROCEEDINGS

1 will, however, take a look at the testimony that you've  
2 designated. And same concept for EPA.

3 **MR. STEKLOFF:** And I'm fine with that, but what I  
4 would say, Your Honor, is now Dr. Portier's letter, just as an  
5 example, was shown to the jury.

6 **THE COURT:** Okay.

7 **MR. STEKLOFF:** It was highlighted. It was --

8 **THE COURT:** And that was not -- was that a subject of  
9 objection? Did you object to that?

10 **MR. STEKLOFF:** No, we didn't object to that, but I  
11 think that that is relevant to whether the European response to  
12 that specific letter, that it was -- brought out the number of  
13 scientists who signed onto the letter. It was brought out that  
14 Dr. De Roos was part of it. It was brought out that --

15 **THE COURT:** Yeah.

16 **MR. STEKLOFF:** -- I believe it was a Dr. Lynch,  
17 although I might get the name wrong --

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

19 **MR. STEKLOFF:** -- was also part of it. And that is  
20 all relevant to whether we can, therefore, show the documents  
21 that we showed Dr. Portier in response.

22 But, again, that was -- what was done at the deposition is  
23 still consistent with the ruling -- the *motion in limine* ruling  
24 that you just read.

25 **THE COURT:** Okay.

## PROCEEDINGS

1           **MR. WISNER:** Your Honor, two very quick comments  
2 simply because I think this is a really important fact.

3           You're going to be looking at the objections when you read  
4 through this. Our objection to the testimony that they're  
5 offering about the documents doesn't include an objection to  
6 the first part where they go "They disagreed with you; right?"  
7 And he goes "Yes."

8           Our objection is when they then take the document and they  
9 read portions of it and ask Dr. Portier, "Did I read that  
10 correctly?" And if you read our objection, we make it clear  
11 that we don't object to that they disagree, but we think this  
12 crosses the line that the Court drew.

13           **THE COURT:** I understand.

14           **MR. WISNER:** Okay.

15           **THE COURT:** And it may be affected by the presentation  
16 during direct of the paper that Dr. Portier and his hundred  
17 and -- how many colleagues?

18           **MR. WISNER:** 95 or 96.

19           **THE COURT:** -- submitted to the regulators, but I'll  
20 take a look at that.

21           **MR. WISNER:** Fair enough.

22           I also think there's a procedural point here and, you  
23 know, we have the luxury of being able to spend many hours  
24 going through these documents, this testimony, and making  
25 objections; and if they didn't make an objection, I believe

## PROCEEDINGS

1 their right for a remedy is waived by procedure.

2 **THE COURT:** Why? I mean, again, you can make a choice  
3 not to object to something when it's coming in because you  
4 would prefer that it come in and that it open the door to  
5 something else; right?

6 **MR. WISNER:** I don't believe that -- if they thought  
7 it was a violation of a *motion in limine*, which they're now  
8 saying it was, they have to say something; and if they don't,  
9 they waive that argument on appeal and at trial. And they  
10 didn't object. In fact, they withdrew the objection after they  
11 made it. I mean, that seems particularly disingenuous if  
12 they're trying to sneak a backdoor in.

13 **THE COURT:** I'm not really sure I understand that  
14 because I, you know, remember the last trial I did as a lawyer,  
15 it was a police case, and the plaintiff's lawyer -- there was a  
16 *motion in limine* and the plaintiff's lawyer brought in some  
17 evidence that was contrary to the *motion in limine*, and we had  
18 a little debate amongst ourselves at counsel table, and we  
19 decided not to object because it opened the door to some great  
20 evidence for us.

21 **MR. WISNER:** Sure.

22 **THE COURT:** So why is this not the same thing?

23 **MR. WISNER:** Because that's different than what  
24 happened here. So what happened in trial is a different story.  
25 You have an immediate ruling from the Court. You have an

## PROCEEDINGS

1 immediate opportunity to reflect problems that you think might  
2 exist or you have a right to open that door.

3 In the deposition we sat for many hours and we removed  
4 testimony because they said that violated the *motion in limine*;  
5 right? And we agreed. That's through this meet-and-confer  
6 process.

7 And then they say, "Okay. This one's fine." So  
8 assumption is they don't think it's opening a door; and if  
9 they're saying, "Oh, it did now," I mean, that's -- I mean,  
10 come on.

11 **THE COURT:** I get that point.

12 **MR. WISNER:** Okay. So that's all I'm concerned about.

13 **THE COURT:** I think I understand everybody's views on  
14 that, and I'll look at it with an eye towards that.

15 But were there a couple of -- on day two there are a  
16 couple of quick rulings that you want? Can I do them right  
17 now?

18 **MR. WISNER:** Yeah.

19 **THE COURT:** Can we do them together?

20 **MR. WISNER:** I think that would be great, Your Honor.

21 **MR. STEKLOFF:** Yeah. Your Honor, I'm just going to  
22 introduce my colleague Cali Cope-Kasten, who I don't think has  
23 appeared yet before Your Honor, but she is going to argue these  
24 objections.

25 **THE COURT:** Great. Hello.

## PROCEEDINGS

1           **MS. COPE-KASTEN:** Good morning, Your Honor.

2           **THE COURT:** So what page should I go to?

3           **MS. COPE-KASTEN:** The first page is 283, line 21,  
4 through 284, line 22.

5           **THE COURT:** Okay. Let me read it.

6                           (Pause in proceedings.)

7           **THE COURT:** Okay. So I understand your objection on  
8 this but, you know, pursuant to the framework that we have  
9 developed on this yesterday -- and I'm increasingly convinced  
10 the more I think about it that it's the correct framework --  
11 this would come in; that is to say, you know, experts can  
12 testify, as experts do, about particular studies and the  
13 numbers emanating from particular studies in the context of  
14 general causation; but in the context of specific causation, I  
15 think that all of the experts should be limited to -- again,  
16 unless the door is opened -- all of the experts should be  
17 limited to saying that there's a dose-response and refer back  
18 to the general causation opinions for that.

19           So I would overrule this objection.

20           What's the next one?

21           **MS. COPE-KASTEN:** Page 288, line 22, through page 289,  
22 line 19.

23                           (Pause in proceedings.)

24           **THE COURT:** I mean, did you have -- let me just make  
25 sure. On the last one, do you have some other objection that I

## PROCEEDINGS

1 didn't anticipate in my comments?

2 **MS. COPE-KASTEN:** The objection would be to leading,  
3 Your Honor. In this case, for example, the number for the  
4 McDuffie study has not been given, and so the objection would  
5 be to Mr. Wisner saying at line 24, "So in McDuffie we have  
6 between zero and two days per year and the risk ratio is 1.  
7 What does that mean?"

8 Obviously we don't have a concern about "what does that  
9 mean" with respect to leading, but just the lawyer testimony  
10 about what the McDuffie study shows we believe is  
11 inappropriate.

12 **THE COURT:** Okay. I understand that. That's  
13 overruled.

14 And then the next one you said was on page?

15 **MS. COPE-KASTEN:** Page 288, line 22.

16 **THE COURT:** Okay.

17 (Pause in proceedings.)

18 **THE COURT:** Okay. And the objection here is just that  
19 it's a leading question?

20 **MS. COPE-KASTEN:** Correct, Your Honor.

21 **THE COURT:** Okay.

22 **MR. WISNER:** And, Your Honor, in the context we're  
23 looking at a diagram that shows what I'm saying. So it's not  
24 like I'm just making stuff up.

25 (Pause in proceedings.)



## PROCEEDINGS

1 control studies here that looked at various other -- the  
2 endpoints and other diseases for glyphosate and really saw  
3 nothing"?

4 **MR. WISNER:** Sure. There's been plenty of  
5 epidemiological studies that have looked at other types of  
6 cancer.

7 **THE COURT:** But which -- so which ones? Of the ones  
8 we've been looking at, which ones?

9 **MR. WISNER:** Oh, gosh. They're in his report and  
10 they're discussed very briefly in sort of tangential  
11 references, but it's not something we discussed because it's  
12 not about NHL so we haven't spent time talking about them with  
13 the Court in *Daubert*, for example.

14 **THE COURT:** I see. So these studies that he's talking  
15 about are studies that are not on the plot.

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

17 **THE COURT:** But he's answering your question that way.

18 **MR. WISNER:** That's correct. And then --

19 **THE COURT:** Is there any testimony anywhere about --  
20 anywhere else about the other glyphosate studies that have  
21 asked about other diseases?

22 **MR. WISNER:** Well, it comes up in the specificity  
23 prong of the *Bradford Hill* analysis and that there's two types  
24 of specificity.

25 **THE COURT:** Right. But Dr. Ritz didn't testify about

## PROCEEDINGS

1 that at all.

2 **MR. WISNER:** Oh. Portier went on at length about  
3 specificity in *Bradford Hill*.

4 **THE COURT:** And he talks about the fact that there's  
5 these other studies of glyphosate that inquire into other  
6 diseases and they come out?

7 **MR. WISNER:** Not at length, but he says that the  
8 studies don't show other cancers. They're just showing NHL,  
9 and that's a specificity point.

10 **THE COURT:** Okay. I understand that objection. It's  
11 overruled.

12 So the rest of it, it looks --

13 **MR. WISNER:** It's mostly cross, Your Honor.

14 **THE COURT:** Is there nothing else on -- so --

15 **MR. WISNER:** For his direct, there's no more  
16 objections.

17 **THE COURT:** But I'm looking through this testimony and  
18 I'm not seeing any actual objections flagged on this document.

19 **MR. WISNER:** So that takes -- well, I'll let defense  
20 counsel explain.

21 **MS. COPE-KASTEN:** Your Honor, we had a discussion  
22 yesterday about attempting to get these to the Court as quickly  
23 as possible. In talking with our tech folks about what it  
24 would involve to actually have the objections printed, they  
25 said "We can't get it to the Court tonight with those in here."

## PROCEEDINGS

1 And so we have what we submitted to the Court of this  
2 objections chart. And if Your Honor does not have a copy, I  
3 can hand you up one.

4 **THE COURT:** I may or may not, but why don't you hand  
5 me up one.

6 **MR. WISNER:** Your Honor, if you would like, we could  
7 take your copy and just put stickers on all the objections.  
8 Would that be helpful?

9 **THE COURT:** Let me see the chart. I mean, part of it  
10 is some of the charts you have been giving me have been  
11 basically unreadable, but it's probably -- this is not a big  
12 deal. This seems like a readable chart.

13 So if there's something blank, if there's no objection and  
14 no response, it just means that that particular testimony has  
15 been designated but there's no objection to it?

16 **MR. WISNER:** Exactly.

17 **MS. COPE-KASTEN:** That's correct, Your Honor.

18 **THE COURT:** Okay. I can work with that.

19 **MS. COPE-KASTEN:** And in the transcript that you'll  
20 look at, anything that's highlighted in red corresponds to  
21 something that has been objected to. So if you see something  
22 that's in red, that would be an indication to look at the chart  
23 for that page and line and see what the objection is.

24 **THE COURT:** Okay.

25 **MS. COPE-KASTEN:** So you have the same color scheme in

## PROCEEDINGS

1 terms of the highlighting that you had with the other  
2 transcripts.

3 **THE COURT:** Oh. So I can just flip through the  
4 transcript --

5 **MS. COPE-KASTEN:** And just look for red.

6 **THE COURT:** -- and don't stop until I get to red?

7 **MS. COPE-KASTEN:** Exactly.

8 **THE COURT:** All right. That's easy. That, I can do.  
9 Okay. So anything else to discuss before we take our --

10 **MR. STEKLOFF:** Can we quickly approach sidebar?

11 **THE COURT:** Yes.

12 **MS. MOORE:** Your Honor, before we do that, I do have  
13 one issue on the Turley deposition transcript that I want to  
14 raise with the Court --

15 **THE COURT:** Sure.

16 **MS. MOORE:** -- just so we'll have this ready to go in  
17 case we don't have the cross ready to go.

18 **THE COURT:** Okay.

19 **MS. MOORE:** And this goes back to, Your Honor, your  
20 rulings on -- oh. Sorry.

21 **MR. STEKLOFF:** I'm just trying to see.

22 **MS. MOORE:** No, that's fine. It's fine. It's fine.  
23 You can look. I don't care.

24 Your Honor, this goes back to there was a line of  
25 questioning by the defense about causation with respect to

## PROCEEDINGS

1 Dr. Turley's testimony, and on page 18, lines 23 through 25,  
2 Dr. Turley is asked (reading):

3 "Do you ever try to determine the cause of somebody's  
4 NHL?"

5 And his answer was "No."

6 **THE COURT:** Right.

7 **MS. MOORE:** And that's in, but if you go over to  
8 page 32, lines 2 through 4, even though he's already said his  
9 job is not to determine cause, he's the ENT, he's asked  
10 (reading):

11 "Do you have any opinion on the cause of  
12 Mr. Hardeman's NHL?"

13 And he answers, "No."

14 And then it continues by saying (reading):

15 "Do you have an opinion on any factors that may have  
16 contributed to Mr. Hardeman contracting NHL?"

17 The answer is "No."

18 And then later it says (reading):

19 "And so in Mr. Hardeman's case, there's no way you  
20 would have been able to determine the cause of his NHL  
21 within the scope of your practice?"

22 Page 39 (reading):

23 "Not in mine, and I'm not -- I'd have to defer to the  
24 oncologist, the medical oncologist, if they think there's  
25 something they can, you know, determine because, again,

## PROCEEDINGS

1 that's outside of what I do."

2 And then at the very end on page 40 --

3 **THE COURT:** And that was allowed in as well?

4 **MS. MOORE:** That was all allowed in.

5 **THE COURT:** Right.

6 **MS. MOORE:** And then at the very end defense asked  
7 (reading):

8 "And you've never" -- this is page 40 -- "you've  
9 never asked Mr. Hardeman in your interaction with him  
10 whether he'd ever been exposed to Roundup; correct?"

11 "I don't recall ever asking that.

12 "It wouldn't have been relevant to your care and  
13 treatment of Mr. Hardeman; right?"

14 "That's not something I routinely ask, no."

15 Our concern, the reason we had objected to this to begin  
16 with is that, one, Dr. Turley is not an expert. He clearly  
17 states that his job is not to determine cause.

18 **THE COURT:** And my recollection is that I allowed  
19 testimony from Dr. Ye on that topic; right?

20 **MS. MOORE:** That's correct. And so I think this is  
21 cumulative, Your Honor, and a waste of time. We're trying  
22 to -- but, more importantly, he's not an expert. He  
23 specifically states he doesn't ever determine cause, and then  
24 there's a series of questions about whether he can say what  
25 caused Mr. Hardeman's NHL. I don't think there's foundation

## PROCEEDINGS

1 for him to be able to express that type of opinion.

2 **THE COURT:** So what are you asking to be excluded that  
3 I previously allowed in?

4 **MS. MOORE:** We would ask that each of those questions  
5 regarding causation. So page 18:23 through 25, and then --  
6 well, and then 19:1 through 19:10, which is the follow-up about  
7 "Have you heard of Roundup? Have you ever done research on  
8 your own?" And then continuing page 20, line 1; page 20,  
9 lines 2 through 6; page 20:9 through 11; page 20, lines 13  
10 through 16.

11 **THE COURT:** So the first passage that you read to me,  
12 you're not asking for that to be excluded and that's on page  
13 what? Or are you?

14 **MS. MOORE:** Well, I would, Your Honor, if everything  
15 else is excluded. What I'm saying is it starts with page 18,  
16 lines 23 through 25, is the question (reading):

17 "Do you ever try to determine the cause of somebody's  
18 NHL?"

19 And his answer is "No."

20 **THE COURT:** Right. It seems to me that that plus just  
21 maybe some additional testimony to clarify that he is not  
22 offering -- he doesn't have an opinion one way or another as to  
23 Mr. Hardeman's cancer --

24 **MS. MOORE:** That's fine. If you start -- just to be  
25 clear, Your Honor, if you start at 18:23 with that question,

## PROCEEDINGS

1 the next section is 19:1 through 10 where he's asked about "Do  
2 you know about Roundup? Do you know about glyphosate?" He  
3 basically says, "I've heard of Roundup." And then "Have you  
4 ever done any research?" He says, "No." Those are all fine to  
5 set that foundation. That's fine.

6 But then when you get over to page -- it's toward the  
7 end -- then when you get over to page 32, lines 2 through 4,  
8 that's where they're asking him specific questions on  
9 Mr. Hardeman and the cause of Mr. Hardeman's NHL.

10 And so we would ask that page 32, lines 2 through 4;  
11 page 32, lines 7 through 10; and page 39, lines 9 through 17;  
12 and page 40, lines 21 through 41:2, be removed based on the  
13 fact he does not determine cause.

14 **THE COURT:** Okay. I gather that 31 -- I don't have it  
15 in front of me, but 31:2-4, I assume that's a question: You  
16 don't have an opinion on whether Hardeman has got his -- how  
17 Hardeman got his NHL?

18 **MS. MOORE:** Yeah. Page 32, lines 2 through 4, states  
19 (reading):

20 "Do you have any opinion on the cause of  
21 Mr. Hardeman's NHL?"

22 And the answer is "No."

23 **THE COURT:** Okay. That's fine. As I previously  
24 ruled, that's admissible.

25 **MS. MOORE:** I'm sorry. That is admissible?

## PROCEEDINGS

1           **THE COURT:** Is admissible.

2           **MS. MOORE:** Okay.

3           **THE COURT:** What's 32, 7 through 10, again?

4           **MS. MOORE:** (reading)

5           "Do you have any opinion on any factors that may have  
6           contributed to Mr. Hardeman contracting NHL?"

7           And his answer is "No."

8           **THE COURT:** I think that probably can come out. What  
9           are the next two?

10          **MS. MOORE:** Page 39, lines 9 through 17 (reading):

11          "And so in Mr. Hardeman's case, there is no way you  
12          would have been able to determine the cause of his NHL  
13          within the scope of your practice; right?"

14          He says: "Not in mine."

15          **THE COURT:** I would think you would want that in --

16          **MS. MOORE:** Yeah.

17          **THE COURT:** -- but I think if you want that out, I  
18          think that probably makes sense.

19          **MS. MOORE:** Okay. We'll consider that.

20          And then the last --

21          **THE COURT:** You're still having a chance to respond,  
22          but I would think that 32 -- the one on 32, it might be okay to  
23          take that out. The one on 39, if you want it out, it might be  
24          okay to take that out; and then 40 -- thank you -- 40 --

25          page 40.

## PROCEEDINGS

1           **MS. MOORE:** Yes, Your Honor. Those are the questions  
2 "And you never asked Mr. Hardeman" -- it's line 21, Your Honor.

3           **THE COURT:** Sorry. Which -- is this Turk or Turley?

4           **MS. MOORE:** Turley.

5           **THE COURT:** Which page?

6           **MS. MOORE:** Page 40, line 21.

7           **THE COURT:** I mean, again, I sort of think it may help  
8 you, but probably given the testimony that I allowed in for Ye,  
9 I think it would probably be fine to take that out.

10           So, anyway, my tentative view is it might be okay to take  
11 out the one on 32, 39, and 40.

12           What's Monsanto's response?

13           **MR. STEKLOFF:** If I can make one response, then  
14 Ms. Rubenstein will follow-up, Your Honor.

15           Part of my concern is that you ruled -- my recollection is  
16 you ruled on these designations prior to opening, and so in  
17 opening I made statements about what the jury would hear from  
18 the doctors based on what you ruled, and I did make statements  
19 that were across Dr. Turk, Dr. Turley, and Dr. Ye. I focused  
20 mostly on Dr. Ye, but I did talk about Dr. Turk and Turley.

21           And now to take out, you know, what we view as things that  
22 Dr. Turley said that we believe were relevant to his care and  
23 treatment of Mr. Hardeman I think would be prejudicial to my  
24 opening.

25           I also think, I mean, to the extent the argument is

## PROCEEDINGS

1 cumulative, this is a 15-minute clip, we are talking about  
2 15-second clips.

3 **THE COURT:** And I think that on reflection, I mean,  
4 because he does such a good job in his answers of stating that  
5 that's outside the scope of what he would do, I think it's not  
6 problematic for these to come in.

7 **MS. MOORE:** My --

8 **THE COURT:** So my prior ruling stands.

9 **MS. MOORE:** Okay. And my only concern, Your Honor, is  
10 that the references he made to his opening statement,  
11 Mr. Stekloff, is that my concern is in closing that he'll argue  
12 that, you know, Dr. Turley could not determine the cause of  
13 Mr. Hardeman's NHL to argue idiopathic, and I don't think  
14 that's the foundation.

15 **THE COURT:** Well, if he does that, then that will be a  
16 misstatement of the evidence --

17 **MS. MOORE:** Okay.

18 **THE COURT:** -- and I suspect you will be able to do a  
19 great job of pointing that out. First of all, I suspect he  
20 will not misstate the evidence; but if he does, I suspect you  
21 will do a very good job of pointing it out on rebuttal.

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

23 **MR. STEKLOFF:** Your Honor, maybe after lunch, so  
24 everyone can eat, is it possible to just go sidebar very  
25 quickly before the jury comes in? I just have one quick

## PROCEEDINGS

1 question for Your Honor.

2           **THE COURT:** You said after lunch but before the jury  
3 comes in?

4           **MR. STEKLOFF:** Yes.

5           **THE COURT:** Okay.

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

7                   (Luncheon recess taken at 12:13 p.m.)

8           **Afternoon Session**

**12:37 p.m.**

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

10                  (Page 834 was placed under seal by Order of the Court and  
11 bound separately:)

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## PROCEEDINGS

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

2 **THE COURT:** Okay. You can resume with Dr. Portier  
3 from Australia.

4 **MS. MOORE:** Thank you, Your Honor.

5 (Video resumed.)

6 (Video stopped.)

7 **MR. WISNER:** Time for a break, Your Honor.

8 **THE COURT:** Why don't we take our afternoon break. We  
9 will take ten minutes and resume at ten after 2:00.

10 (Recess taken at 1:40 p.m.)

11 (Proceedings resumed at 1:52 p.m.)

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

13 **THE COURT:** Before we bring in the jury, I want to  
14 make a quick statement to Ms. Wagstaff.

15 I was reflecting on the OSC hearing last night, and I  
16 wanted to clarify one thing. I gave a list of reasons why I  
17 thought your conduct was intentional, and one of those reasons  
18 was that you seemed to have prepared yourself in advance for --  
19 that you would get a hard time for violating the pretrial  
20 rulings. In explaining that, I used the word "steely," and I  
21 want to make clear what I meant by that.

22 I was using steely as an adjective for steeling yourself,  
23 which is to make yourself ready for something difficult and  
24 unpleasant. My point was that I perceived no surprise on your  
25 part; and since lawyers typically seem surprised when they are

## PORTIER - VIDEO TESTIMONY

1 accused of violating pretrial rulings, that was relevant to me  
2 on the issue of intent. But "steely" has another meaning as  
3 well, which is far more negative. And I want to assure you  
4 that that's not the meaning that I was using nor was I  
5 suggesting anything about your general character traits.

6 So I know you continue to disagree with my ruling and my  
7 findings about intent, but I wanted to make that point very  
8 clear.

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

10 **THE COURT:** All right. Bring in the jury.

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

12 **THE COURT:** We are getting to the end of the movie for  
13 today.

14 You can resume.

15 **MS. MOORE:** Yes, Your Honor. Thank you.

16 (Video resumed.)

17 (Video stopped.)

18 **MR. WISNER:** We are moving onto the second day,  
19 Your Honor.

20 **THE COURT:** Okay.

21 (Video was played but not reported.)

22 **THE COURT:** I think it is probably a good time to wrap  
23 up and move to our day off. So remember, we don't have trial  
24 tomorrow, right? Today is Wednesday, right?

25 **MS. MOORE:** Yes, it is.

## PROCEEDINGS

1           **THE COURT:** So no trial tomorrow. You have the day  
2 off tomorrow, so it is especially important that you remember  
3 all of the admonitions about not doing any research or talking  
4 about the case, including to one another.

5           We will see you on Friday morning, and we will bring you  
6 in here at 8:30 sharp. Thank you for being so attentive  
7 throughout the course of the day.

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

9           **THE COURT:** So I assume that Friday will be the  
10 remainder of Portier's testimony.

11          **MS. MOORE:** That's correct, Your Honor.

12          **THE COURT:** And then how long is that anticipated to  
13 be?

14          **MS. MOORE:** I think it depends somewhat on your  
15 rulings with respect to cross, Your Honor, so I don't have a  
16 time period on that.

17          **THE COURT:** Who will come after Dr. Portier on Friday?

18          **MS. MOORE:** That will be Dr. Reeves.

19          **THE COURT:** Okay.

20          **MS. MOORE:** The corporate representative.

21          **THE COURT:** So that is the deposition designation  
22 transcript that I keep sending back to you because it hasn't  
23 been properly prepared for my review.

24          **MS. MOORE:** I understand that, Your Honor. We are  
25 prepared to address that today. I think both sides have

## PROCEEDINGS

1 discussed that, and we have tried to work something out on  
2 that.

3 One housekeeping matter, though, before, we move on to  
4 that. For the exhibits for Dr. Portier, do you want me to go  
5 ahead and move into evidence now the exhibits that have been  
6 shown so far or wait until the end of the deposition or what  
7 would be your preference for that?

8 **THE COURT:** Well, especially since Kristen is not  
9 here, I think it would be a good idea not to do it now.

10 Here she comes.

11 What is your preference between moving into evidence the  
12 Portier exhibits that have been used so far right now or just  
13 waiting until the end of his testimony?

14 **MS. MOORE:** I mean, I have the list.

15 **THE CLERK:** Doesn't matter to me.

16 **MS. MOORE:** Plaintiffs will move into evidence --

17 **THE COURT:** Is there a stipulation as to which  
18 exhibits can be admitted?

19 **MR. STEKLOFF:** No, Your Honor. I think we might need  
20 to talk about it, especially since there were a lot of  
21 demonstratives. Let's just use the last one as an example.

22 **MS. MOORE:** I'm not moving for that one.

23 **MR. STEKLOFF:** Okay. Without going through them --  
24 hopefully we will move towards a stipulation -- hopefully we  
25 will know which ones since there were so many demonstrative

## PROCEEDINGS

1 ones used.

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

3 **THE CLERK:** Will you just file that stipulation on the  
4 docket then, or is that something you want to put on the record  
5 tomorrow morning -- on Friday?

6 **MR. STEKLOFF:** Either way. I think it just depends on  
7 what we agree to. Whatever you prefer. If you would like  
8 us -- I think we can agree to file it on the docket. We can do  
9 that or we can just tell you on Friday.

10 **THE CLERK:** Since I'm not here Friday, it might be  
11 better to have it on the docket.

12 **MR. STEKLOFF:** Okay. We can do that.

13 **MS. MOORE:** Okay. And Mr. Wool is going to talk about  
14 Dr. Reeves.

15 **THE COURT:** Okay.

16 **MR. WOOL:** With respect to cleaning up the transcript,  
17 I think that is something that is sort of different.

18 What I wanted to address was reconsidering Your Honor's  
19 ruling on whether or not Dr. Reeves is going to be permitted to  
20 testify about the scientific evidence and kind of get  
21 Monsanto's view of that. And while we respect Your Honor's  
22 ruling, I think that what Plaintiffs would contend is that  
23 really any expert testimony evaluating the scientific evidence  
24 is relevant and should come in to Phase One, and Dr. Reeves was  
25 designated by Monsanto as its corporate representative for a

## PROCEEDINGS

1 30(b)(6) deposition on the specific topic of whether or not  
2 Roundup causes non-Hodgkin's lymphoma. And so --

3 **THE COURT:** Yeah, but not designated -- I mean, that's  
4 like -- that is sort of analogous to saying Mr. Hardeman is  
5 going to get up and testify about whether Roundup -- I mean,  
6 they are a company. They have the product. They have studied  
7 it -- probably failed to study it as much as they should -- but  
8 the point is they are a party. They are not an expert witness.

9 **MR. WOOL:** Well, I think there is a very meaningful  
10 distinction, and I think it's a matter of black letter law for  
11 our failure-to-warn claim. Monsanto is held to the standard of  
12 an expert in the field.

13 **THE COURT:** You already stepped in it by talking about  
14 your failure-to-warn claim because we are talking about  
15 Phase One testimony.

16 **MR. WOOL:** Right. But if we are going to say that --  
17 that Dr. Reeves is not competent to testify as an expert for  
18 Phase One, then I think that that sort of carries over to  
19 Phase Two.

20 **THE COURT:** I don't think so. For Phase Two it is the  
21 position they took, the bad job they did at being objective  
22 with respect to glyphosate, and, you know, the lack of effort  
23 they made and the attempts they made to influence regulators.

24 **MR. WOOL:** I understand but, I guess, if I understood  
25 Your Honor a moment ago -- and perhaps I didn't -- I think the

## PROCEEDINGS

1 distinction Your Honor was drawing is that Mr. Hardeman is a  
2 lay witness, and Dr. Reeves is testifying on behalf of  
3 Monsanto. And so I think our argument is that because Monsanto  
4 has an affirmative duty to stay abreast of the relevant and  
5 scientific developments and is held to the standard of an  
6 expert, that there is a distinction there; and that distinction  
7 doesn't just disappear at Phase One and Two.

8 If he is an expert for the purposes of Phase Two, then  
9 that should carry over from Phase One. And if Your Honor is --

10 **THE COURT:** I don't think he is an expert for purposes  
11 of Phase Two. I think he is a party representative for  
12 purposes of Phase Two, and he can talk about the company's  
13 state of the knowledge and what the company did and failed to  
14 do and its -- you know, the fact that it -- you know, whatever,  
15 all that stuff that I'm going through right now. It seems like  
16 you can talk about it in Phase Two.

17 **MR. WOOL:** Right. But I guess if he doesn't have the  
18 requisite expertise and he doesn't already have that knowledge  
19 which would permit him to testify in Phase One, then for  
20 Phase Two -- then I think if Monsanto is going to take that  
21 position that he doesn't have that expertise, then I think --  
22 if we get to Phase Two, right, and this is all academic, you  
23 know, because that theoretically could not happen -- but if we  
24 get to Phase Two and then they kind of stand by this argument  
25 here, then I feel like they should be estopped from saying that

## PROCEEDINGS

1 he did keep abreast of -- that Monsanto did keep abreast of --

2 **THE COURT:** I don't agree. It seems like -- so far  
3 from what I can tell, it seems like pretty good testimony for  
4 you on the issue of Monsanto's -- whether Monsanto has been  
5 objective about all of this, and that seems relevant to  
6 Phase Two, but it doesn't seem relevant to Phase One.

7 **MR. WOOL:** Well, I think the testimony we would only  
8 want to admit would be his specific commentary just about the  
9 scientific evidence.

10 **THE COURT:** I understand your argument. My ruling  
11 stands.

12 **MR. WOOL:** Okay. Thank you, Your Honor.

13 **THE COURT:** Anything else to discuss right now?

14 **MR. KILARU:** No. I think just on that, I think in  
15 process we will work out what gets resubmitted in light of your  
16 rulings. I think the mouse study issue, the *Knezevich & Hogan*,  
17 might be one of the things that gets teed up here in the  
18 context of this designation.

19 **THE COURT:** Of course. Plus you preserved your  
20 objection, and Monsanto argues that none of this is relevant  
21 for Phase Two either. And I have rejected that, and they have  
22 preserved -- or they have argued that some of it is irrelevant  
23 for Phase Two, and they have preserved their objection on that.  
24 But that's my ruling.

25 **MR. WOOL:** Okay.

## PROCEEDINGS

1           **THE COURT:** You don't need to submit a transcript  
2 which repeats all the objections that I have just rejected or  
3 all the designations that I just rejected.

4           **MR. WOOL:** Understood, Your Honor. I think that's why  
5 just wanted to sort of bring this up this afternoon just so  
6 that when we do submit the transcript, that it is not a waste  
7 of your time and, you know, we understand what your rulings are  
8 going to be.

9           **THE COURT:** Great. Okay.

10           So Portier and then Blair after that. And then what's  
11 the -- that will presumably take us through Friday?

12           **MS. MOORE:** Dr. Reeves, Your Honor.

13           **THE COURT:** Sorry, Reeves.

14           **MS. MOORE:** That's okay. That's all right.

15           Yes, that will take us through Friday.

16           **THE COURT:** Quite a reaction from the other side.

17           **MS. MOORE:** I was like -- and my reaction was like,  
18 Okay, we will be glad to play Dr. Blair on Friday, Your Honor.

19           That would be the plan. I think the way I calculated it,  
20 that should take us through Friday afternoon. And then as far  
21 as the next depositions, I mean, Dr. Blair would be one.

22           **THE COURT:** Don't budget -- budget somewhere between  
23 zero and very little time for Dr. Blair.

24           **MS. MOORE:** Maybe 10 minutes?

25           **THE COURT:** Somewhere between zero and very little

## PROCEEDINGS

1 time. I'm going to look at it one more time today before I  
2 issue my ruling.

3 **MS. MOORE:** And I would say with respect to Dr. Blair,  
4 Your Honor, is that the beginning of it, it is a few pages of  
5 his background and his credentials. We did leave the  
6 designation. You know, he was the head of the work group,  
7 which I think is fair to leave that and that he was part of the  
8 epidemiological subgroup. And then there is a section there --  
9 and I don't have the page references -- but you will be able to  
10 see it because it goes in this order, Your Honor, where they  
11 ask about the epi studies that they considered, and I  
12 understand that might be a little more controversial.

13 But at least at a minimum, we would like his credentials  
14 -- the fact that he was the head of the work group, that he was  
15 in the subgroup, what the conclusion was that, and that he was  
16 an author of the AHS and that the AHS 2018 publication did not  
17 change his opinion as a member of the IARC group; that is his  
18 personal opinion. He was designated as a non-retained expert.  
19 So those -- those are kind of the points that I think you will  
20 be able to see. It is not terribly much on designation. But I  
21 think you will be able to see that flow in there. I would  
22 agree with some of that would not be relevant to Phase One  
23 based on the Court's rulings.

24 **MR. KILARU:** Your Honor, just on that. I think --

25 **THE COURT:** The only thing I need you to respond on is

## PROCEEDINGS

1 the concept -- and I haven't gone to this part of the  
2 deposition testimony yet -- or if I did, I'm not remembering it  
3 well -- the idea that his view would not be changed by the AHS.

4 **MR. KILARU:** Yes, Your Honor.

5 I think we first have a concern that he actually hasn't  
6 been -- isn't sort of a fairly characterized expert witness  
7 whose views on the 2018 AHS are relevant.

8 And, second, I think individual members of IARC's position  
9 on that I think would get us a little too far afield into what  
10 IARC thought and what their view of the science is, as opposed  
11 what the other studies says. And other experts have already  
12 criticized -- we heard criticism of the 2018 study. So I think  
13 introducing a new witness mostly just for his background, being  
14 part of IARC, and then to voice that is a little too much  
15 IARC-focused and it seems like it might not be --

16 **THE COURT:** Okay. I will consider those points and  
17 review it.

18 One final comment.

19 **MS. MOORE:** Thank you, Your Honor.

20 The only difference with Dr. Blair is that he wasn't  
21 co-author of the AHS, and I think that is a distinction. He  
22 can testify based on 701 from his personal observations.

23 Thank you, Your Honor.

24 **THE COURT:** Got it. Thank you.

25 **MR. KILARU:** Thanks, Your Honor.

PROCEEDINGS

**THE CLERK:** Court is adjourned.

(Proceedings adjourned at 2:28 p.m.)

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CERTIFICATE OF REPORTERS

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

DATE: Wednesday, February 27, 2019



Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
U.S. Court Reporter



Marla F. Knox, RPR, CRR  
U.S. Court Reporter

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