



20908374

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

**FILED**  
ALAMEDA COUNTY

MAR 19 2019

CLERK OF THE SUPERIOR COURT

By *CWSB* Deputy

ALVA AND ALBERTA PILLIOD,

Plaintiffs,

v.

MONSANTO COMPANY; WILBUR-ELLIS  
COMPANY, LLC; and WILBUR-ELLIS  
FEED, LLC,

Defendants.

Case No. RG17-862702

ORDER ON MOTIONS IN  
LIMINE

DATE 3/18/19

TIME 9:00 AM

DEPT 21

PLAINTIFFS' MOTIONS

1. PLAINTIFFS' MOTION IN LIMINE NO. 1 TO EXCLUDE ANY TESTIMONY AND EVIDENCE ON THE BENEFITS AND EFFICACY OF GLYPHOSATE

Denied without prejudice. The motion does not address specific evidence. The court will rule on the relevance and admissibility of evidence relating to the properties of glyphosate at the time of trial. The court suggests that relevant evidence about glyphosate (positive or negative) would relate directly to causation.

2. PLAINTIFFS' MOTION IN LIMINE NO. 2 TO EXCLUDE EVIDENCE, TESTIMONY AND ARGUMENT REGARDING FOREIGN REGULATORY ACTIONS AND DECISIONS BY GOVERNMENTAL AGENCIES IN FOREIGN COUNTRIES

Denied without prejudice. The motion does not address specific evidence. At trial, evidence of or references to foreign regulatory actions and decisions will be limited to those regulatory actions taken during the plaintiffs' exposure period as they relate to the expert opinion presented and to the question of punitive

damages. The Court will ask the parties to discuss the evidence the parties anticipate offering on this topic.

3. PLAINTIFFS' MOTION IN LIMINE NO. 3 TO EXCLUDE EVIDENCE OF HEALTH INSURANCE POLICIES

Granted. This is evidence of a collateral source.

4. PLAINTIFFS' MOTION IN LIMINE NO. 4 TO EXCLUDE EVIDENCE, TESTIMONY AND ARGUMENT REGARDING ATTORNEY RETENTION AND ADVERTISING

Granted as to information protected by the attorney-client privilege. Denied as to public advertisements. Counsel may want to ask jurors in voir dire whether they have seen advertisements about litigation involving Roundup. At this time, the court does not see the relevance of attorney advertisement to the merits of the litigation.

5. PLAINTIFFS' MOTION IN LIMINE NO. 5 TO EXCLUDE EVIDENCE OF SMOKING, AND DRUG USAGE

The motion to exclude evidence of "drug usage" (presumably Mr. Pilliod's use of marijuana) is granted. There is no reference in any expert opinion that incidental use of marijuana is a risk factor for NHL. To the extent that cigarette smoking is reference is the literature or in the opinions of experts as a possible risk factor or confounder for NHL, it may be discussed.

6. PLAINTIFFS' MOTION IN LIMINE NO. 6 TO EXCLUDE EVIDENCE OF EXPERT'S FINANCES AND PERSONAL ASSETS UNRELATED TO CURRENT LITIGATION

Granted, in part. Denied, in part. Dr. Sawyer may be questioned about his fees for this and any other litigation he is involved in related to Roundup. He may not be questioned about specific assets, i. e. his boat.

7. PLAINTIFFS' MOTION IN LIMINE NO. 7 TO EXCLUDE EVIDENCE AND ARGUMENT REGARDING UNRELATED MEDICAL HISTORY

Denied without prejudice. This motion does not address specific evidence. The plaintiff's medical histories are at issue and it is not possible to determine which specific facts will be relevant until evidence is presented.

8. PLAINTIFF'S MOTION IN LIMINE NO. 8 TO EXCLUDE ANY ARGUMENT AND TESTIMONY THAT EPA REGISTRATION PRECLUDED MONSANTO FROM WARNING OF THE RISK OF NONHODGKIN'S LYMPHOMA

Granted.

9. PLAINTIFFS' MOTION IN LIMINE NO. 9 TO EXCLUDE CERTAIN U.S. EPA DOCUMENTS RELATING TO GLYPHOSATE'S CARCINOGENICITY

The Court will issue a separate order on this motion.

10. PLAINTIFFS' MOTION IN LIMINE NO. 10 TO EXCLUDE SPECULATIVE TESTIMONY AND OPINIONS REGARDING POSSIBLE ALTERNATIVE CAUSES OF PLAINTIFFS' CANCER

Denied. The experts will be allowed to discuss the risk factors and basis for causation they considered in arriving at their opinions.

11. PLAINTIFFS' MOTION IN LIMINE NO. 11 TO BAR ANY REFERENCE OR TESTIMONY REGARDING PAST SEXUAL CONDUCT

Denied. Mr. Pilliod's extra-marital affair/ sexual conduct may be relevant to Mrs. Pilliod's claim for loss of consortium.

12. PLAINTIFFS' MOTION IN LIMINE NO. 12 TO BAR ANY REFERENCE OR TESTIMONY WHICH COMPARES THE AMOUNT OF ROUNDUP USE TO NHL INCIDENCE OVER TIME AS A BASIS FOR OPINING NO CAUSATION BETWEEN EXPOSURE TO GBFS AND NHL

Denied. This is a proper subject of expert testimony.

13. PLAINTIFFS' MOTION IN LIMINE NO. 13 TO EXCLUDE ANY ARGUMENT AND TESTIMONY THAT THE EPA WOULD HAVE REJECTED A LABELING CHANGE TO WARN OF THE RISK OF NON-HODGKIN'S LYMPHOMA

Granted.

14. PLAINTIFFS' MOTION IN LIMINE NO. 14 TO EXCLUDE THE AGRICULTURAL HEALTH STUDY WEBSITE

Granted. The AHS website is not relevant evidence in this case and displaying it to the jury might result in unauthorized research. This ruling is not a limitation on discussion about AHS research.

15. PLAINTIFFS' MOTION IN LIMINE NO. 15 TO EXCLUDE USE OF CERTAIN DEPOSITION TESTIMONY IN DEFENDANT'S OPENING ARGUMENT

Denied without prejudice. The parties will meet and confer on excerpts proposed for opening statements. The court will rule on objections to specific excerpts.

16. PLAINTIFFS' MOTION IN LIMINE NO. 16 TO EXCLUDE ANY ARGUMENT AND TESTIMONY THAT THERE ARE MORE THAN 800 SCIENTIFIC STUDIES SUPPORTING THE SAFETY OF GLYPHOSATE

Denied.

17. PLAINTIFFS MOTION TO EXLUCE TESTIMONY OF DR. ROBERT PHELAN

Granted in part, denied in part. Dr. Phelan will be permitted to offer his opinion about the Pilliods' systemic dose to the EPA's Chronic Reference Dose. He may not offer his opinion Proposition 65 or OEHHA's No Significant Risk Level.

DEFENDANT'S MOTIONS

1. MONSANTO'S MOTION IN LIMINE NO. 1 TO EXCLUDE EVIDENCE RELATING TO PROPOSITION 65

Granted. The standards for addition to the Prop 65 list are significantly different from the standards for causation in this case

2. MONSANTO'S MOTION IN LIMINE NO. 2 TO EXCLUDE REFERENCE TO OR TESTIMONY FROM KIRK AZEVEDO

Granted. The deposition testimony of Mr. Azevedo would be permitted under CCP 1291. Monsanto was a party to the action and had a similar interest and motive in the case. The testimony of Mr. Azevedo is excluded because it is prejudicial and not probative. His testimony the "one of the vice presidents" made a statement about Monsanto's financial motives does not establish corporate conduct for purposes of punitive damages.

3. MONSANTO'S MOTION IN LIMINE NO. 3 TO EXCLUDE EVIDENCE ARGUMENT OR TESTIMONY RE POST-NHL ONSET CORPORATE CONDUCT

Denied. Corporate conduct during the period the Pilliods used Roundup is relevant.

4. MONSANTO'S MOTION IN LIMINE NO. 4 TO EXCLUDE EVIDENCE ARGUMENT AND REFERENCE TO LOBBYING ACTIVITY AND GENERATION OF SUPPORT FOR REGISTRATION OF GLYPHOSATE

Denied. The lobbying activities of Monsanto may be relevant to punitive damages. The *Noerr-Pennington* doctrine is not an evidentiary bar and Monsanto's first amendment rights are not implicated here.

5. MONSANTO'S MOTION IN LIMINE NO. 5 TO EXCLUDE ARGUMENT OR REFERENCE TO GHOSTWRITING

Denied. Evidence of ghostwriting may be relevant to expert discussion of the integrity of the science underlying glyphosate safety and punitive damages.

6. MONSANTO'S MOTION IN LIMINE NO. 6 TO EXCLUDE EMAIL AUTHORED BY NON-EMPLOYEE AND FORWARDED BY MONSANTO SALES ACCOUNT MANAGER STEVE GOULD

Granted. The e mail is highly prejudicial with little or no probative value. If it is established that Mr. Gould is a managing agent, the court may reconsider this ruling.

7. MONSANTO'S MOTION IN LIMINE NO. 7 TO EXCLUDE EMAIL FROM DONNA FARMER

Denied. The email, if properly authenticated, may be relevant to Monsanto's decision about carcinogenetic testing of Roundup.

8. MONSANTO'S MOTION IN LIMINE NO. 8 TO EXCLUDE ARGUMENT OR REFERENCE TO THE TOBACCO INDUSTRY

Parties to appear. The moving papers seek to exclude references to tobacco litigation and responding papers reference discussions of smoking as a risk factor for NHL. The Court would like to discuss exactly what is at issue in this motion.

9. MONSANTO'S MOTION IN LIMINE NO. 9 TO EXCLUDE REFERENCES TO GLYPHOSATE AS BANNED

Denied.

10. MONSANTO'S MOTION IN LIMINE NO. 10 TO EXCLUDE ARGUMENT THAT UNIVERSITY OF WASHINGTON STUDY REFLECTS EPA POSITION REGARDING GHYPHOSATE OR THAT EPAS POSITION REGARDING GHYPHOSATE CARCINOGENICITY HAS CHANGED

The motion is moot. Plaintiffs respond that they will not argue that the Washington Study reflects the EPA's position. The plaintiffs will not be prevented from stating the credentials of the authors or their affiliation with the EPA of the study but should be warned not to suggest that an affiliation with the EPA implies that the EPA endorses the findings in the study when it has not done so.

11. MONSANTO'S MOTION IN LIMINE NO. 11 TO EXCLUDE REFERENCE TO PRIOR ENFORCEMENT ACTIONS AND SUBSEQUENT SETTLEMENT AGREEMENTS

Granted. It does not appear that the action against Monsanto 20 years ago has any bearing on Monsanto's liability in California today. Delving into the circumstances of the agreement would require an undue consumption of time and has no probative value.

12. MONSANTO'S MOTION IN LIMINE NO. 12 TO EXCLUDE LABELS WARNINGS AND ADVERTISING PLAINTIFFS DID NOT SEE HEAR OR RELY ON

Denied without prejudice. This motion does not identify specific warnings, labels or advertising Monsanto seeks to exclude. The court will consider objections to specific evidence at trial.

13. MONSANTO'S MOTION IN LIMINE NO. 13 TO EXCLUDE EVIDENCE ARGUMENT OR TESTIMONY REGARDING OTHER LITIGATION

Granted in part, denied in part.

14. MONSANTO'S MOTION IN LIMINE NO. 14 TO EXCLUDE EVIDENCE ARGUMENT OR TESTIMONY REGARDING GHYPHOSATE IN BREAST MILK FOOD OR OTHER UNRELATED SOURCES

Granted. References to exposure to glyphosate will be limited to those on which experts base their opinions. Opening the door to all possible exposures would be time consuming and confusing to the jury.

15. MONSANTO'S MOTION IN LIMINE NO. 15 TO EXCLUDE EVIDENCE ARGUMENT OR REFERENCE TO INDUSTRIAL BIO-TEST OR CRAVEN LABORATORIES

Granted as unopposed regarding references to Craven laboratories. Granted in part and denied in part regarding Bio-Test. The history of the Bio-Test research may be relevant, however, testimony about criminal prosecution of Bio-Test employees or testimony suggesting that

16. MONSANTO'S MOTION IN LIMINE NO. 16 TO EXCLUDE LETTER FROM MARION COPLEY

Granted. Unless the letter can be properly authenticated it is hearsay which does not fall under any exception. Based upon plaintiffs' response, Mr. Rowland denied receiving the letter and the argument the letter is self-authenticated is no persuasive.

17. MONSANTO'S MOTION IN LIMINE NO. 17 TO EXCLUDE EVIDENCE  
ARGUMENT OR TESTIMONY REGARDING ADVERSE EVENTS.

Granted in part, denied in part. Evidence that adverse event reports were filed and the number of reports is relevant to the issue of notice to Monsanto that consumers had concerns about Roundup. The Adverse Event reports and/or summaries are excluded. Delving into the facts of adverse event reports would be too time consuming.

18. MONSANTO'S MOTION IN LIMINE NO. 18 TO EXCLUDE INTRODUCTION  
ARGUMENT OR REFERENCE TO THE SERALINI STUDY AND ANY  
INFORMATION THEREIN

Granted. The study is excluded. The study does not appear to have been considered by any expert in arriving at his or her expert opinion. The study was widely rejected by the scientific community as poorly planned and executed. There is no evidence that the study was scientifically significant in any way. Allowing evidence that the study was notice to Monsanto it should have conducted a carcinogenicity study on formulated Roundup would mislead the jury, consume an undue amount of time and would not be probative evidence of the issues before the court.

19. MONSANTO'S MOTION IN LIMINE NO. 19 TO EXCLUDE REFERENCES TO  
ROUND READY CROPS AND OTHER BIOTECHNOLOGY

Granted. GMOs are not at issue or relevant to the claims in this case.

20. MONSANTO'S MOTION IN LIMINE NO. 20 TO EXCLUDE EVIDENCE  
ARGUMENT OR REFERENCE TO OTHER INGREDIENTS IN ROUNDUP  
PRODUCTS

Denied. Roundup will be discussed as a formulated product and experts will discuss how the elements of the product related to carcinogenicity and liability.

21. MONSANTO'S MOTION IN LIMINE NO. 21 TO EXCLUDE EVIDENCE  
ARGUMENT OR TESTIMONY REGARDING PRODUCTS OTHER THAN  
ROUNDUP

Granted. Evidence that Monsanto manufactured Agent Orange during the Vietnam War is not relevant and would be prejudicial.

22. MONSANTO'S MOTION IN LIMINE NO. 22 TO EXCLUDE EVIDENCE  
ARGUMENT OR REFERENCE TO CAREY GILLAMS BOOK AND ALL OTHER  
NEWSPAPER BROADCASTS AND OTHER MEDIA PUBLICATIONS AND  
PRODUCTIONS

Denied as moot. Plaintiffs agreed that they would not reference the Carey Gillams' book. The motion did not identify specific articles, broadcasts or publications. The parties agreed to meet and confer on this evidence. The court will entertain objections to specific evidence.

23. MONSANTO'S MOTION IN LIMINE NO. 23 TO EXCLUDE EVIDENCE  
ARGUMENT OR REFERENCE TO ENDOCRINE DISRUPTION OR EFFORTS ON  
GUT BACTERIA

Plaintiff acknowledges that this evidence would be relevant on rebuttal. The Court will entertain this motion if plaintiff argues defendant has opened the door for the court to consider its relevance and admissibility.

24. MONSANTO'S MOTION IN LIMINE NO. 24 TO EXCLUDE REFERENCE TO A  
MAGIC TUMOR

Granted in part. Dr. Benbrook or any other expert referring to tumors may not use the word "magic". This ruling does not prohibit testimony about the 1983 Bio/dynamic mouse study.

25. MONSANTO'S MOTION IN LIMINE NO. 25 TO EXCLUDE EVIDENCE OR  
ARGUMENT ALLEGING THAT MONSANTO DECEIVED THE EPA

Denied. Monsanto relationship with the EPA, specifically what it did and did not tell the agency during the time the Pilliods' were using Roundup may be relevant to the failure to warn and punitive damages claims. The Court has already ruled that no expert may opine on whether Monsanto deceived the EPA.

26. MONSANTO'S MOTION IN LIMINE NO. 26 TO EXCLUDE EVIDENCE  
ARGUMENT OR REFERENCE TO MONSANTOS FINANCIAL CIRCUMSTANCES  
REVENUE OR PROFITS OR THE RELATIVE WEALTH OF THE PARTIES

Denied.

27. MONSANTO'S MOTION IN LIMINE NO. 27 TO EXCLUDE REPTILE THEORY  
AND GOLDEN RULE ARGUMENTS

This is not a proper MIL but will be the subject of discussions about appropriate argument to the jury.

28. MONSANTO'S MOTION IN LIMINE NO. 28 TO EXCLUDE EVIDENCE AND  
ARGUMENT REGARDING THE PARTIES PUBLIC RELATIONS ACTIVITIES

Denied. Monsanto's public relations activities may be relevant to the claims in this case, in particular punitive damages. The *Noerr-Pennington* doctrine is not an evidentiary bar and Monsanto's first amendment rights are not implicated here.



29. MONSANTO'S MOTION IN LIMINE NO. 29 TO EXCLUDE EVIDENCE  
ARGUMENT OR TESTIMONY REGARDING BAYER COMPANY HISTORY OR  
ACQUISITION OF MONSANTO

Granted. The acquisition of Monsanto by Bayer occurred after the Pilliods stopped using Roundup. Additionally, Bayer's history during WWII is not relevant to any issues in this case.

30. MONSANTO'S MOTION IN LIMINE NO. 30 TO EXCLUDE DR. WILLIAM  
SAWYERS OPINIONS REGARDING MRS PILLIODS USE OF SKIN SO SOFT

Denied. Plaintiffs may argue that the use of Skin So Soft may have increased dermal absorption of Roundup. Monsanto can cross examine Dr. Sawyer or otherwise rebut this argument.

31. MONSANTO'S MOTION IN LIMINE NO. 31 TO EXCLUDE CERTAIN EVIDENCE  
REGARDING PLAINTIFFS ALLEGED MEDICAL EXPENSES

Denied as moot. Plaintiff's acknowledge that any evidence of medical expenses must be consistent with *Howell v. Hamilton Meat & Provisions* (2011) 53 Cal. 4<sup>th</sup> 541. The Court's Sargon order permits the testimony of James Miller on Mrs. Pilliod's future medical expenses for the drug Revlimid. If there are any concerns beyond these two issues, the court will discuss them at the hearings on these motions.

Date March 19, 2019

  
Superior Court Judge