

WILKINSON WALSH + ESKOVITZ LLP

Brian L. Stekloff (*pro hac vice*)
(bstekloff@wilkinsonwalsh.com)
Tamarra Matthews Johnson (*pro hac vice*)
(tmatthewsjohnson@wilkinsonwalsh.com)
Rakesh Kilaru (*pro hac vice*)
(rkilaru@wilkinsonwalsh.com)
2001 M St. NW, 10th Floor
Washington, DC 20036
Tel: (202) 847-4030
Fax: (202) 847-4005

**ARNOLD & PORTER KAYE SCHOLER
LLP**

Pamela Yates (CA Bar No. 137440)
(Pamela.Yates@arnoldporter.com)
777 South Figueroa St., 44th Floor
Los Angeles, CA 90017
Tel: (213) 243-4178
Fax: (213) 243-4199

HOLLINGSWORTH LLP

Eric G. Lasker (*pro hac vice*)
(elasker@hollingsworthllp.com)
1350 I St. NW
Washington, DC 20005
Tel: (202) 898-5843
Fax: (202) 682-1639

COVINGTON & BURLING LLP

Michael X. Imbroscio (*pro hac vice*)
(mimbroscio@cov.com)
One City Center
850 10th St. NW
Washington, DC 20001
Tel: (202) 662-6000

*Attorneys for Defendant
MONSANTO COMPANY*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

)
) MDL No. 2741
)
) Case No. 3:16-md-02741-VC
)

This document relates to:

Hardeman v. Monsanto Co., et al.,
3:16-cv-0525-VC

) **MONSANTO COMPANY'S MOTION**
) **TO SUPPLEMENT THE RECORD IN**
) **CONNECTION WITH ITS MOTIONS**
) **FOR JUDGMENT AS A MATTER OF**
) **LAW OR, IN THE ALTERNATIVE, FOR**
) **A NEW TRIAL**

MEMORANDUM OF POINTS AND AUTHORITIES

Monsanto respectfully requests that the Court supplement the record on its post-trial motions with a letter submitted to the Court by one of the jurors at trial (attached as Exhibit 1). *See, e.g., Siskiyou Reg'l Educ. Project v. Goodman*, 219 F. App'x 692, 694 (9th Cir. 2007) (granting motions to supplement record where additional information "provide[d] a better understanding" to the court of pertinent facts); *M.M. v. Lafayette Sch. Dist.*, No. C 09-04624 SI, 2011 WL 5085077, at *1 (N.D. Cal. Oct. 25, 2011) (granting motion to supplement record "for good cause shown").

On Thursday, July 4, 2019, the juror who ended up as Juror #5 at the time of the verdict submitted a letter to the Court asking the Court to leave in place the jury's award of \$2 million in future noneconomic damages and \$75 million in punitive damages, and deny Monsanto's motion for post-trial relief from those awards. The letter echoed arguments made by Plaintiffs' counsel at the July 2, 2019 hearing on Monsanto's post-trial motions, including that "SCOTUS allows for higher ratios of punitive to compensatory damages in extraordinary cases," Ex. 1 at 1; *see* 7/2/2019 Hr'g Tr. at 58:2-59:22 (similar argument by Plaintiff's counsel); and that the \$2 million dollar future noneconomic damages award represents "the reasonable and deserved dollar amount per year going forward," accounting for the fact that Mr. Hardeman's "chances of living a longer life are much higher" in light of "his clean bill of health," Ex. 1 at 1; *see* 7/2/2019 Hr'g Tr. at 20:19-21:10 (similar argument by Plaintiff's counsel). As the Court may know, Juror #5 submitted that letter to the Court after attending the July 2, 2019 hearing. During breaks in that hearing, Juror #5 conversed with Plaintiff's counsel, as well as a juror from the *Johnson v. Monsanto* trial who now posts recaps of trials and hearings in the Roundup litigation on an anti-Monsanto advocacy blog, and who wrote a similar letter to the trial judge in *Johnson*, Judge Bolanos, urging her not to disturb that jury's verdict. *See* Stekloff Decl. ¶¶ 3, 6. Juror #5 also hugged and conversed with Mr. and Mrs. Hardeman at the hearing. *See* Stekloff Decl. ¶ 3.

The letter of course has no bearing on the issues being considered by the Court based on Monsanto's post-trial motions. Thus, Monsanto's position is that the Court should not consider

1 this letter in resolving its legal arguments in favor of judgment notwithstanding the verdict and
2 a new trial, including its challenges to the damages awards addressed in Juror #5's letter. But,
3 despite the soundness of that position, Monsanto respectfully submits that the Court should add
4 this letter to the record in this case for two reasons.

5 *First*, Juror #5 is the same juror who brought to the Courtroom Deputy's attention the
6 allegedly improper comments made by Juror #4 that ultimately resulted in Juror #4's excusal,
7 which Monsanto challenges in its post-trial motion. As Monsanto has previously noted, Juror #5
8 stated, on her initial juror questionnaire, that she was "potentially" entering the trial with
9 preconceived feelings about Monsanto, *see* Trial Tr. vol. 2, 241:17-21; raised her hand during
10 voir dire in response to a question from Plaintiff's counsel regarding whether anyone had an
11 "issue that they don't think they can set those opinions aside and be fair in this case," *id.* 214:13-
12 17; and was challenged for cause by Monsanto following voir dire, *see id.* 271:5-18. Juror #5's
13 post-trial actions further underscore her potential for bias, the necessity for the Court to have
14 conducted an investigation to verify her allegations about another juror, and the serious risk that
15 Monsanto was deprived of its right to a fair trial.

16 *Second*, there have now been two hearings on post-trial motions challenging verdicts
17 against Monsanto in connection with Roundup's alleged carcinogenicity. In the *Johnson* case,
18 Judge Bolanos issued a tentative ruling granting judgment notwithstanding the verdict and a
19 new trial to Monsanto on punitive damages, and then conducted a hearing on Monsanto's
20 motions. Several jurors attended that hearing and then wrote highly publicized letters and emails
21 to Judge Bolanos urging her to keep the verdict in place. A similar pattern of events has
22 transpired here: At the July 2 hearing, the Court suggested it may remit part of the jury's verdict,
23 and the juror who attended that hearing submitted a letter urging otherwise. The fact that jurors
24 from both trials wrote letters in support of constitutionally impermissible verdicts is highly
25 unusual, and generates further anti-Monsanto bias in the Bay Area that will infect future
26 Roundup trials.

1 Accordingly, Monsanto requests that the Court supplement the record with Juror #5’s
2 post-hearing letter. Furthermore, if the Court intends to rely on the letter in any manner in
3 determining the noneconomic compensatory or punitive damages, Monsanto requests an
4 opportunity to further be heard regarding the irrelevance of the letter to those issues.
5

6 DATED: July 8, 2019

7 Respectfully submitted,

8 /s/ Brian L. Stekloff

9 Brian L. Stekloff (*pro hac vice*)
10 (bstekloff@wilkinsonwalsh.com)
11 Tamarra Matthews Johnson (*pro hac vice*)
12 (tmatthewsjohnson@wilkinsonwalsh.com)
13 Rakesh Kilaru (*pro hac vice*)
14 (rkilaru@wilkinsonwalsh.com)
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24 Los Angeles, CA 90017
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(mimbroscio@cov.com)
COVINGTON & BURLING LLP
One City Center

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Attorneys for Defendant
MONSANTO COMPANY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July 2019, a copy of the foregoing was filed with the Clerk of the Court through the CM/ECF system which sent notice of the filing to all appearing parties of record.

/s/ Brian L. Stekloff

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

)
) MDL No. 2741
)
) Case No. 3:16-md-02741-VC

Hardeman v. Monsanto Co., et al.,
3:16-cv-0525-VC

) **DECLARATION OF BRIAN L.**
) **STEKLOFF IN SUPPORT OF**
) **MONSANTO COMPANY'S MOTION**
) **TO SUPPLEMENT THE RECORD IN**
) **CONNECTION WITH ITS MOTIONS**
) **FOR JUDGMENT AS A MATTER OF**
) **LAW OR, IN THE ALTERNATIVE, FOR**
) **A NEW TRIAL**

1 I, Brian L. Stekloff, declare and state as follows:

2 1. I am a partner at the law firm of Wilkinson Walsh + Eskovitz, LLP, counsel for
3 defendant Monsanto Company (“Monsanto”). I make this declaration in support of Monsanto’s
4 motion to supplement the record in connection with its motion for judgment as a matter of law
5 or, in the alternative, for a new trial. I make this declaration based on my personal knowledge
6 and, if called as a witness, I would and could testify competently to these matters.

7 2. At the July 2, 2019 post-trial hearing in this case, I observed that Juror #5 was in
8 attendance for the entire hearing.

9 3. Prior to the hearing and during the recess in the hearing, I or my co-counsel
10 observed the following:

- 11 a. Juror #5 conversed with Plaintiff’s counsel.
- 12 b. Juror #5 conversed with Mr. and Mrs. Hardeman.
- 13 c. Juror #5 hugged Mr. and Mrs. Hardeman.
- 14 d. Juror #5 sat near and conversed with a person who I understand to have
15 served as a juror in the *Johnson v. Monsanto* trial (“the *Johnson* juror”).

16 4. As my co-counsel and I prepared to leave the Courtroom, we noticed Juror #5
17 leaving the Courtroom with Plaintiffs’ counsel, Mr. and Mrs. Hardeman, and the *Johnson*
18 juror.

19 5. When my co-counsel and I were leaving the Courthouse, we observed Juror #5
20 leaving the Courthouse with Mr. and Mrs. Hardeman and the *Johnson* juror.

21 6. It is my understanding that the *Johnson* juror attended the post-trial hearing in
22 that case and wrote a letter to the trial judge, Judge Bolanos, urging her not to disturb that
23 jury’s verdict. I further understand several other *Johnson* jurors also attended the post-trial
24 hearing in that case and wrote letters and emails to Judge Bolanos to similar effect.

25 7. Further, since the trial in that case, the *Johnson* juror has been posting recaps of
26 trials and hearings in the Roundup litigation on an anti-Monsanto advocacy blog,
27 www.glyphosategirl.com.

28

1 8. On July 4, 2019, I was copied on a letter from Juror #5 to the Court. Plaintiff's
2 counsel was also copied. That letter is attached hereto as Exhibit 1.

3 I hereby declare under penalty of perjury that the facts set forth herein are true and
4 correct.

5
6 DATED: July 8, 2019

7 Respectfully submitted,

8 /s/ Brian L. Stekloff

9 Brian L. Stekloff (*pro hac vice*)
10 (bstekloff@wilkinsonwalsh.com)
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/s/ Brian L. Stekloff_____

Exhibit 1

Thursday, July 4, 2019



Honorable Judge Vince Chhabria
Judge of the United States District Court for the Northern District of California
San Francisco Courthouse, Courtroom 4 - 17th Floor
450 Golden Gate Avenue, San Francisco, CA 94102

Re: Hardeman v. Monsanto Company et al Verdict, 3:16-cv-00525-VC

Dear Judge Chhabria,

As a juror on the Hardeman v. Monsanto Company et al case, I could not think of a better way to spend my Independence Day than writing this letter to you to implore you not to reduce our verdict of \$2 million in future noneconomic damages or the \$75 million in punitive damages. In fact, I feel it is my duty as a citizen of the United States to see this case through by kindly demanding proper damages be awarded for the reprehensible acts of Monsanto.

On the punitive damages, I believe SCOTUS allows for higher ratios of punitive to compensatory damages in extraordinary cases, and I believe this is indeed an extraordinary case. Based on the evidence provided, "reprehensible" is much too kind a word to describe the actions of the Monsanto employees responsible for putting Round Up on the shelves of stores without a cancer warning on the label, while knowing that there is a chance it may cause cancer.

As to the future compensatory damages, it is a true gift that Mr. Hardeman's cancer is now in remission. Given his clean bill of health, his chances of living a longer life are much higher. This means that for more years of his life now, he will have to undergo the stress of wondering if his cancer will return. The price per year henceforth is much lower than the price per year he suffered for those four prior years. That was what the \$2 million in future noneconomic damages was based on: the reasonable and deserved dollar amount per year going forward. Your Honor, for the record, I know plaintiff's counsel argued this point at Tuesday's hearing, but this was, in fact, exactly how our jury looked at these numbers.

Every single decision the six of us came to in the deliberation room were some of the toughest decisions we have ever made; the meticulous planning of this outcome was far from careless. Through following the clear instructions your Honor provided to us and wanting to uphold the United States law as best we could, we all took our collective backgrounds and applied it to the deliberation process with the utmost seriousness. We represented a wide range of educational levels, race, age, socioeconomic backgrounds, and geographic upbringing allowing for every nook and cranny of the evidence to be analyzed six different ways. Sleep was lost, lives were put on hold, and even health was jeopardized because it was our duty to do so. Every single decimal in those numbers is the result of conscious collaboration and calculated, deliberate efforts by all six of us.

Your Honor, I heard you express your support for jury verdicts at Tuesday's hearing and can attest to the fact that this jury would not disappoint you. This jury was extremely well-informed and methodical during every single moment of the deliberation. There were times I myself wanted to throw in the towel, but given the raw attentiveness that this group exhibited, we kept going - day after day, picking apart every little detail of the evidence presented to us.

The future noneconomic damages of \$2 million and the punitive damages of \$75 million were no accident and I respectfully request that the verdict be left as is.

Sincerely,



BCC: Brian Stekloff
Jennifer Moore
Aimee Wagstaff