

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
The Honorable Timothy J. Boyer

JOHN L. DURNELL,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. 1922-CC00221
)	
MONSANTO COMPANY,)	
)	
Defendant.)	

TRIAL TRANSCRIPT

Thursday, October 19, 2023

Volume 12A

1 designer and manufacturer would use under the same
2 or similar circumstances.

3 Instruction No. 15: You must not award
4 plaintiff John Durnell an additional amount as
5 punitive damages under Instruction No. 14 unless
6 you believe that, first, defendant Monsanto failed
7 to design Roundup to be reasonably safe or
8 adequately warn of the risk of harm that Roundup is
9 carcinogenic and, second, defendant Monsanto knew
10 or had information from which defendant Monsanto,
11 in the exercise of ordinary care, should have known
12 than such conduct created a high degree of
13 probability of injury and, third, defendant
14 Monsanto thereby showed complete indifference to or
15 a conscious disregard for the safety of others.

16 The phrase "ordinary care" means that degree
17 of care that an ordinarily careful product designer
18 and manufacturer would use under the same or
19 similar circumstances.

20 **PLAINTIFF'S CLOSING ARGUMENT**

21 THE COURT: Mr. Frazer, closing argument on
22 behalf of Mr. John Durnell.

23 MR. FRAZER: Your Honor, I understand we have
24 an hour and 45 minutes each?

25 THE COURT: That's correct.

1 MR. FRAZER: I just wanted to give the jury a
2 warning. And I split my argument up. Some of my
3 argument will come now and some will come after
4 Mr. Brown's.

5 THE COURT: Understood.

6 MR. FRAZER: Okay.

7 Good morning. Good morning. Good morning.

8 This is the last time I'm probably going to
9 get to say good morning to you unless I see you on
10 the street someday. And the first thing I want to
11 say is I want to thank every one of you for your
12 service. It takes a lot to come here every day and
13 serve as a juror.

14 I've tried so many cases in my lifetime, I've
15 been doing this for almost 39 years, and I'm always
16 encouraged by what I see in a jury, that you all
17 came here, you didn't know each other, you listened
18 intently through the entire proof. And some of it
19 was hard. No question. And you took notes.

20 And then we kind of noticed as the trial went
21 on, you actually became friends with each other.
22 It's a beautiful thing to see in our civil justice
23 system, and I just want to thank you so much on
24 behalf of my client, John Durnell. He wants to
25 thank you. He can't say that. I'm saying it for

1 him.

2 You remember in my opening I talked about
3 symbols of justice. The courtroom has the scales
4 of justice. I just heard the judge tell you what
5 the burden of proof is in this case. It's more
6 likely than not.

7 So in looking back at that scale over the door
8 back there that you guys never get to go out of,
9 the scales just have to tip in our favor.

10 Now, do I believe they're just tipping by a
11 feather or a piece of paper or a cup of coffee?
12 No. I think they're tipping if you put an anchor
13 on one side. That's what I think the proof has
14 been in this case. I think that's what you're
15 going to find.

16 As the judge just told you -- and he gave you
17 the instructions of law. I told you in my opening
18 the judge is the judge of the law. You've seen him
19 judge the law the whole time. Every time a lawyer
20 objects, he makes a ruling on it. And he just took
21 the law of the State of Missouri and instructed you
22 on what the law is.

23 But he also just told you that you are the
24 exclusive finders of fact in this case. Not me.
25 Not Monsanto. Not the defense lawyers. Not

1 anybody outside this jury box. It's all up to
2 y'all.

3 And I told you in my opening John Durnell was
4 willing to put his life into your hands, and he
5 still is in that same position.

6 So what else? The beads of justice. We
7 talked about that. The beads around this courtroom
8 call for bountiful justice. We'll get to that in a
9 little while.

10 There are symbols of justice when you walk
11 into this building. You've seen them all as you
12 walk in every day. You seen them up there carved.
13 Give justice. No matter what happens, no matter in
14 the heavens fall one of the sayings say, you are to
15 give justice. Treat brothers like the same.

16 And John Durnell wants you to do that. He
17 wants you to treat Monsanto just as you would treat
18 him. That's a fundamental rule of fairness in our
19 civil justice system.

20 So I told you in my opening that this case is
21 about choice and freedom. Choice and freedom.
22 John Durnell. Monsanto. John Durnell is entitled
23 to an informed choice. John Durnell is entitled to
24 freedom to live. You heard that Monsanto made a
25 choice.

1 You heard from Kirk Azevedo by video. Do you
2 remember that? That was about three weeks ago. He
3 said he came and he met with the -- Brett Begemann
4 who said the choice here is all about making money.
5 They put profits over people. That's what's going
6 on here. Profits over people.

7 And the profits are massive. We'll look at
8 stipulation. You had it read in to you earlier.
9 But they're massive.

10 And witnesses like Donna Farmer and Jim Guard
11 got stock options whenever the company was sold to
12 Bayer. Even their own witnesses are motivated by
13 profits, their own scientists. So keep that in
14 mind.

15 The judge instructed you on negligence, on
16 product defect, on cause or contributed to cause.
17 Remember I told you in my opening we didn't have to
18 prove to you that the sole cause, the only cause
19 the one and only cause of John Durnell's
20 non-Hodgkin's lymphoma was his exposure to Roundup,
21 the formulated product. That's not our legal
22 burden. It can be a cause or contribute to cause.

23 The judge just instructed you on it.

24 Now, you heard Dr. Spaeth say it was a
25 substantial cause, a significant cause. Dr. Spaeth

1 being the only witness who came in this courtroom
2 whose job it is every day in New York City to
3 diagnose what somebody's cause of cancer or a
4 disease is. That's his job. Nobody else did that.
5 Dr. Matasar, he's an oncologist. He treated, he
6 treated people. Dr. Tomasetti, he's a math guy.
7 Dr. Tarone, I don't know what he was other than an
8 angry man. You saw him on the video. Y'all be the
9 judge of that.

10 But Dr. Spaeth is the only one who came into
11 this courtroom and said significantly and
12 substantially caused or contributed to John
13 Durnell's non-Hodgkin's lymphoma. That's what he
14 does. He does that for the 9/11 commission. He
15 does that for the New York workers' compensation
16 board. That's what he does.

17 So cause or contributed to. Always think of
18 Dr. Spaeth.

19 More likely than not. We talked about that.
20 The scale of justice. You can have doubt. You can
21 even have reasonable doubt, because this is not a
22 criminal case. That's our system. That's what the
23 judge just instructed you on. It's more likely
24 than not. It's not beyond all reasonable doubt in
25 a criminal case.

1 You can see the proof in this case is -- over
2 a 50-year period of a product being on a market is
3 a gargantuan task.

4 More likely than not.

5 John Durnell, he's -- back to this, he's -- he
6 and Richard have been together for 48 years.
7 They've been married nine years, because they had
8 to wait until it was almost legal for them to get
9 married in Missouri. They got sued by the attorney
10 general. They won that lawsuit and they're legally
11 married in the State of Missouri.

12 You just heard the judge instruct you. You're
13 not supposed to hold anything against them because
14 they're a gay couple. You would violate your oath
15 as jurors, you would violate the law that the judge
16 has given you if you do such a thing. I don't
17 think you will, but I have to say that because I
18 have to zealously represent this man.

19 You all heard him from the witness stand. You
20 heard Richard Eaton from the witness stand. You be
21 the judge of that.

22 Is this thing working?

23 You saw this earlier in the case, the area
24 where John Durnell sprayed. The whole Soulard
25 neighborhood, every park, every corner, every crack

1 on every sidewalk, driveway, and every playground
2 on those parks. That's where he sprayed Roundup
3 for a very long period of time. There's been
4 absolutely no contradiction in this case that John
5 Durnell sprayed Roundup over a very long period of
6 time.

7 He told you, he testified he went to Ace
8 Hardware all the time to buy Roundup. He actually
9 still had a few Roundup bottles in here that
10 Richard Eaton said they did not use for decoration.

11 Y'all remember that. He used them. They made
12 a big deal about Richard Eaton not ever seeing him
13 spray Roundup, which seemed kind of odd to me, but
14 they made a big deal out of that. Because look at
15 the bottles. They're going to come up and make a
16 big deal out of how old these bottles are. But
17 remember when he said he quit spraying.

18 He sprayed all over the neighborhood, sprayed
19 all over Soulard, and he did it because he was a
20 volunteer. There are very few people these days
21 that volunteer as much as the time as this man has
22 volunteered to that neighborhood with the singular
23 purpose of improving the life of everybody that
24 came to live there.

25 Not selfishly. Not just focused on himself.

1 He was focused on the beautification of the whole
2 neighborhood. So was his husband Richard Eaton.

3 Talk a little bit what you're already heard.
4 I'll try to get through this quickly.

5 We know now, you know, as I told you in my
6 opening, you're a jury, you've seen documents,
7 you've heard testimony that no other jury has ever
8 heard about Roundup.

9 And what the evidence shows is that Monsanto
10 did not even have a clear scientific basis to
11 expose people to Roundup and concealed it from the
12 public since 1974. That's a long time ago.

13 And you remember Donna Farmer testifying about
14 a laboratory called IBT. Do you remember that?
15 She talked about that. She knew a little bit about
16 it, didn't know all about it, but she talked about
17 it.

18 And you learned that in -- in the 1980s, the
19 IBT study that allowed Roundup to go on the market,
20 the mouse study for carcinogenicity was ruled out
21 by the EPA because of IBT's laboratory.

22 You've heard a lot of evidence in this case
23 that John Durnell has suffered through a cancer,
24 non-Hodgkin's lymphoma, as a cause or contributing
25 cause of Monsanto's conduct. That's pretty clear.

1 Roundup exposure caused or contributed to cause
2 John Durnell's non-Hodgkin's lymphoma cancer.

3 Now, everybody believes that except for Dr.
4 Tomasetti, the mathematician, the guy who, if you'd
5 try to take him on on a math equation, he would
6 take your lunch money from you, every time. All
7 right.

8 He's got some math equation that he says says
9 less than 5 percent of people get non-Hodgkin's
10 lymphoma due to anything other than random
11 replication errors and bad luck. That was his
12 testimony. That was his testimony.

13 You heard Dr. Matasar say that Dr. Tomasetti's
14 article in 2015, the two articles in 2015 and 2017
15 who Dr. Tomasetti on direct testified were probably
16 the greatest thing since Einstein's theory of
17 relatively, that Dr. Matasar didn't even know about
18 him until he got contacted by lawyers for Monsanto
19 when he negotiated his deal.

20 Do you remember how hard it was for me to even
21 get him to tell me what the word "negotiate" was
22 yet he had it on his letter that he signed, the
23 retention letter?

24 And he was a pretty good negotiator. Remember
25 the retention letter? It said \$3,000 for a day.

1 And he told you from the witness stand he got
2 \$5,000. Pretty good negotiator.

3 Monsanto's glyphosate team. We've talked
4 about them in opening. The CEO, Mr. Hugh Grant.
5 Donna Farmer's ultimate boss, Dr. Koch,
6 Dr. Heydens, Brett Begemann, John Aquavella, David
7 Saltmiras, Dr. Martins, Dr. Goldstein, and two
8 people that you actually heard from, Jim Guard and
9 Donna Farmer.

10 You saw a lot of emails from those other
11 people, but you didn't see them come into the
12 courtroom.

13 In fact, John Durnell is the one that brought
14 Donna Farmer in here to testify, not Monsanto. We
15 brought her in here. John Durnell is the one that
16 brought Jim Guard and put him on the witness stand.
17 Not Monsanto. Monsanto didn't bring a single
18 company witness. They didn't bring in the CEO. He
19 didn't have time to show up. This guy, Dr. Koch,
20 Dr. Heydens, Mr. Begemann, Dr. Acquavella,
21 Dr. Saltmiras, Dr. Martins, Dr. Goldstein, none of
22 them. And none of the other names you saw on all
23 those emails.

24 You can probably guess why they didn't.
25 Because they don't want us asking any questions of

1 them.

2 We can't call everybody. We can't bring every
3 witness in here because this trial would go on for
4 six years. We try to be respectful of your time,
5 even though I know I went on a lot some times. I
6 apologize for that. I know my voice dropped and
7 the witness couldn't hear me or I turned my back to
8 them. I apologized for that.

9 I know that I got going sometimes and the
10 judge had to stop me. I apologize for that. The
11 key thing I want you to know, don't hold that
12 against John Durnell. Please. Please don't hold
13 anything that you thought I did wrong or messed up
14 or didn't talk loud enough, don't hold that against
15 John Durnell. Hold it against me. Hold it against
16 me.

17 But so we bring these two people in. You know
18 what their testimony was, and we'll talk about a
19 little bit more about it later, but this is who
20 they are.

21 And you remember, Mr. Azevedo was talking
22 about that guy right there, Brett Begemann who was
23 the guy that said, hey, we're all about making
24 money. That guy became the CEO and president of
25 the company.

1 Don't forget this document. Donna Farmer's
2 own words: "For example, you cannot say that
3 Roundup is not a carcinogen. We have not done the
4 necessary studies."

5 She didn't take that back. She said she had
6 other stuff to say about it, but she never did.

7 That's what Monsanto says. Do you see why
8 they have to go get a mathematician in Los Angeles
9 and an oncologist all the way in New York instead
10 somebody here from Wash U. to testify about this?
11 Because they cannot bring people in the courtroom
12 when they have a document, internal document by
13 their own scientist saying, "For example, you
14 cannot say that Roundup is not a carcinogen. We
15 haven't done the necessary studies."

16 This is not a document we created. This is an
17 internal secret email that nobody has -- at the
18 EPA's ever seen. Nobody in New Zealand has seen
19 it. Nobody in Australia has seen it. Nobody in
20 Canada has seen it at the regulatory authorities.

21 That's what she said.

22 And do you remember what Dr. Tomasetti said,
23 the last a couple of questions I asked him? I
24 said, "Does a negative times a negative equal a
25 positive in math?"

1 Do you remember what he said? He said yes.
2 Two negatives make a positive.

3 Here's what you have. You've got Donna Farmer
4 saying you cannot say that Roundup is not a
5 carcinogen. If you take Dr. Tomasetti's math
6 formula and you apply it to that statement, it
7 would read, "For example, you can say that Roundup
8 is a carcinogen."

9 Maybe that's a stretch, I don't know, but this
10 is how they talk. This is her statement. She
11 affirmed it under oath and to this day, that is
12 what the company says. They didn't bring anybody
13 else in here to say, "We don't say that anymore."

14 You saw other documents about testing.
15 Plaintiff's Exhibit 2582, a 2010 document with
16 regards to carcinogenicity of our formulations,
17 remember that. This is not an optical illusion.
18 "We don't have such testing on them directly."

19 The company that makes this, that's 2010, it's
20 been on the mark since 1975. They're making the
21 statement in 2010.

22 We don't have -- and they can't show you any
23 test they've done since 2010 to correct this
24 either. They had an opportunity with Donna Farmer
25 on the stand, and they didn't do it.

1 And then what do we read about in their own
2 company code of business conduct? Integrity. It's
3 the foundation for all that we do. It includes
4 honesty, decency, consistency, and courage.

5 But the most interesting thing is, you know,
6 they come in this courtroom and say, hey, look the
7 EPA did everything, and they -- they're the --
8 they're trying to tell you that's the decision you
9 need to make. Just follow the EPA. Well, what do
10 they say in their own code of conduct? It says:

11 "We, we comply with all relevant international
12 and national and local laws and regulations. We
13 conduct rigorous assessments to establish the
14 safety of our products in addition by meeting or
15 exceeding all regulatory requirements. We assure
16 our customers, growers and consumers that we've
17 established the safety of all our products and when
18 required have satisfied rigorous reviews by
19 appropriate regulatory authorities to assure the
20 freedom to use our products."

21 And Monsanto's own -- maybe they made this up.
22 Maybe they're just joking. Internally, they're
23 saying we exceed whatever the regulations are. We
24 don't try to just meet them. We exceed them.
25 That's their code of conduct.

1 For years Monsanto sold Roundup without a
2 valid cancer study. We talked about IBT.

3 Then they came along in 1983. We've said it a
4 bunch of times, the Knezevich and Hogan study. I
5 even talked about it with Dr. Matasar. Do you
6 remember that? It showed a 640 percent increase in
7 kidney tumors in mice.

8 Now, this is a Monsanto study. This is not a
9 free study like Donna Farmer talked about. Do you
10 remember she talked about free studies, stuff we
11 don't pay for, we just get them, read them, follow
12 them?

13 This is a Monsanto study. They paid for it.
14 They commissioned it. They got it. And they turn
15 it into the EPA and the EPA said, wait. Whoa,
16 whoa, whoa. Not so fast. We're seeing a 640
17 percent greater than normal or random increase in
18 kidney tumors in mice.

19 I asked Dr. Matasar yesterday, and I felt
20 sympathy for him. I represent cancer victims -- in
21 almost everything I do I'm representing cancer
22 victims. And I asked him. I had sympathy for him.
23 I hope I showed that. I asked him, I said, "You
24 had a kidney tumor. Do you know about this study?"

25 "No."

1 "You sprayed Roundup as a child?"

2 "Yes."

3 I don't know if it's related, but that's what
4 Monsanto knew back in 1983. Not 5 percent. Not
5 less than 5 percent. 640 percent greater.

6 And, in fact, when the EPA got the study, what
7 did they do? They declared glyphosate in 1985, the
8 EPA, the Environmental Protection Agency of the
9 United States of America declared glyphosate a
10 Class C carcinogen.

11 That's important in two respects because you
12 heard Dr. Tomasetti and Dr. Matasar saying the EPA
13 never classified glyphosate as a carcinogen. Well,
14 here it is. This is a government document. I
15 didn't make this thing up. A Class C carcinogen.

16 It's also important to know, ladies and
17 gentlemen, what most every regulatory authority
18 they put on the board, what did they -- what were
19 they regulating? There's not a single regulatory
20 authority that's regulating formulated Roundup.
21 They're regulating glyphosate.

22 That Agricultural Health Study that they like
23 to parade around looked at glyphosate-based
24 herbicides. It didn't even account for other
25 company formulations. It didn't look at formulated

1 Roundup.

2 And the EPA itself, their decision's on
3 glyphosate. It's not on the other things that we
4 see in Roundup, which we'll cover in just a minute.

5 There it is, Category C oncogen. That's a
6 carcinogen.

7 What did -- what was Monsanto's response?
8 Kind of like what they've done with Dr. Tomasetti.
9 Okay. Hey, the only way we can get out of this now
10 is to do some gymnastics and find somebody in the
11 United States who will say that the tumor, that
12 there was a tumor in the control group of those
13 mice. Because if we can put a tumor in the control
14 group, on one of those, now we can say it's not a
15 640 percent increase.

16 So they go around and start searching for a
17 scientist. What can we do to get this thing off of
18 Group C.

19 They find this guy named Dr. Kushner. This
20 is Plaintiff's Exhibit 318, April 1985. And before
21 Dr. Kushner even gets the tissue slides so he can
22 find this tumor in the control group, Monsanto
23 predicts he's going to go ahead and do that. They
24 already knew what was in the box. They were on
25 Let's Make a Deal. They don't ever not know what's

1 going to be in that box when they pick a box, when
2 they pick a scientist. You've all seen that time
3 and time again.

4 Kuschner didn't even get the tissue slides
5 until eleven days after Monsanto predicted he was
6 going to help us.

7 Back in the old days you have to sign for a
8 FedEx receipt, so we know the date that Dr.
9 Kuschner got the slides. He signed for them on
10 4/14/85. The date of that memo before was April 3,
11 1985.

12 Yeah, Dr. Kuschner did it. He confirmed the
13 presence of a tumor in the -- in the control group
14 mice. They took that back to the EPA, and the EPA
15 said: We don't see it.

16 And the EPA asked them to make another study
17 of it and they never did. Monsanto to this day has
18 never done another chronic toxicity or
19 carcinogenicity mouse study on glyphosate.

20 And we know for a fact it's never done one,
21 ever with anybody, Knezevich and Hogan or IBT, on
22 formulated Roundup, the product they sold to John
23 Durnell and other people.

24 In fact, Donna Farmer writes in August of
25 1999. That's a long time ago too. That's over 24

1 years ago, I think. I had hair back then.

2 Donna Farmer writes, "I will not support doing
3 any studies on glyphosate formulations or other
4 surfactant ingredients at this time."

5 So the lead toxicologist, the woman that knows
6 more about glyphosate inside the company and more
7 about Roundup inside the company than anybody else,
8 because if somebody else does, they didn't bring
9 them here, we brought her, she's saying let's don't
10 any studies on the formulated product. You have to
11 ask yourself, well, why not? Why wouldn't they?

12 I mean, most products we buy, they get tested,
13 the whole product. You don't buy a car and they
14 just tested the seat belt without it being in the
15 car, for instance.

16 And her topic in this email was Roundup, not
17 glyphosate, mutagenicity. So here you have
18 Monsanto in their own internal documents talking
19 about Roundup mutagenicity, and they bring a
20 mathematician here from Los Angeles at \$900 an hour
21 to tell you there's nothing mutagenic about
22 Roundup. Now, you can see why they don't bring
23 their own scientists in here.

24 We've seen that study after study after study
25 of glyphosate, formulated Roundup caused DNA

1 damage. To human beings. They cause oxidative
2 damage. You heard even Dr. Tomasetti and Matasar
3 admit that it causes oxidative stress in your
4 cellular system that can lead to cancer mutations.
5 They admitted that on cross-examination.

6 And if you look at the independent free
7 studies which, by the way, are the ones that IARC
8 looked at. They sure the heck didn't look at any
9 internal Monsanto documents. They probably would
10 have found it a Class 1 carcinogen had they done
11 that, not a 2A.

12 But they viewed these new studies coming out
13 as the tip of the iceberg. They started coming out
14 in 1999. Donna Farmer writes it's just the tip of
15 the iceberg. We heard from Hardell. We know what
16 the tip of an iceberg is. Most of the iceberg
17 underground. Underwater. More of it is coming.
18 That's what an iceberg is.

19 So what did they do? Gosh, we got all these
20 studies coming out, showing glyphosate is causing
21 DNA damage, oxidative stress, cellular damage.
22 What are we going to do about it? Well, let's hire
23 this geneticist named Dr. Parry. Dr. Parry is the
24 first guy they hired and the last guy they hired
25 where they didn't know what was in the box. He was

1 one of the world's top geneticist.

2 One of your questions is why would Monsanto
3 hire a geneticist instead of a mathematician? They
4 wanted to hire the top guy. Dr. Parry. He's over
5 in England. Went all the way over to England to
6 get this guy. And he gave advice to Monsanto, and
7 they never followed it.

8 Leading up to that, Donna Farmer writes, "If
9 Larry" -- that's Larry Kier. That's the good Dr.
10 Kier. Do you remember me asking about that? "He's
11 the only one that can pull us out of this genotox
12 hole."

13 Genotoxicity hole. I didn't use that term.
14 That's a term they're using.

15 Do you remember they -- Dr. Tomasetti said he
16 hadn't seen a single internal Monsanto document,
17 and so did Dr. Matasar. Hadn't seen a single one.

18 Dr. Parry said they gave him these four
19 studies, you heard that testimony from Dr. Farmer.
20 They gave him four to test him to see if he would
21 agree with Monsanto. And he did read them, and he
22 said he concluded that the overall data provided by
23 the four publications provide evidence to support a
24 model that glyphosate is capable of producing
25 genotoxicity both in vivo, in lives, and in vitro,

1 in cells, by a mechanism based upon the production
2 of oxidative damage.

3 That's what Dr. Parry told him back in 1999.

4 Then he suggested, you know what you really
5 ought to do, you need to assess the formulated
6 product, cause they're acting -- they might be
7 acting synergistically to increase the potential
8 genotoxicity of glyphosate. Such studies could be
9 designed to investigate a panel of mixtures,
10 leaving out one component of the mix for each
11 individual experiment.

12 So what he's saying there is let's take
13 formulated Roundup and do a test on it. Then let's
14 don't have 1,4-dioxane in it this time and see if
15 there's any difference. Let's put 1,4-dioxane back
16 in and this time let's take out formaldehyde. Next
17 time take out arsenic. Next time take out NNG.
18 Next time take out whatever we can find in that
19 bottle and then we can see what's really causing
20 that effect on it.

21 Did Monsanto do what Dr. Parry told them to do
22 back in 1999? Of course not. Because Dr. Farmer
23 had already said we can't do that. I won't support
24 that.

25 What did they do then? Well, he's given his

1 opinion. The cat's out of the bag. What do we do
2 now? Let's see if we can see things our way.
3 Let's try one more time with Dr. Parry. Because he
4 is the top geneticist in the whole wide world. And
5 if we can get him to say something good for us,
6 then all the studies coming out, we don't have to
7 worry about them anymore.

8 So he did. He came back with a second report.
9 And this one was really bad for Monsanto.
10 Remember, they're paying this guy. Not a free
11 study. It's a cost study.

12 Dr. Parry stays firm. He concludes glyphosate
13 is carcinogenic, that it causes mutations, damages
14 and disruptions of chromosomes in human DNA.

15 Nobody outside of Monsanto has seen this
16 document. Not Dr. Parry -- not Dr. Tomasetti, not
17 Dr. Matasar. Donna Farmer had. Remember? She
18 testified about it.

19 He pleaded with Monsanto: "If the genotoxic
20 activity of glyphosate and its formulations is
21 confirmed, it would be advisable to determine
22 whether there are exposed individuals and groups
23 within the human population. If such individuals
24 can be identified, then, the extent of exposure
25 should be determined and their lymphocytes analyzed

1 for the presence of chromosome aberrations."

2 That's what he told them. Dr. Tomasetti's
3 never seen this because this doesn't work into his
4 math equations. Truth, facts, Monsanto's own
5 internal documents don't fit into his math
6 equations.

7 What did they do? They shut him down. He's
8 out of here. Don't ever do that again. Don't ever
9 get an expert without knowing what he's going to
10 say.

11 EPA's never seen his reports. The public has
12 never seen Dr. Parry's reports. And sadly to say,
13 neither has Dr. Tomasetti.

14 So they got to do something. They decide.
15 Okay. Let's hire some people to write a paper.
16 That's a good idea.

17 And, again, we don't use this word called
18 "ghostwriting." Monsanto used it in their
19 documents. Usually I get called down by a Court if
20 I use something like ghostwriting if I can't find
21 it in a document. Even though I can show, they
22 gave them this manuscript and it changed right
23 here. Monsanto admits to it.

24 It's right here. Dr. Heydens, Dr. Farmer,
25 Dr. Koch, Dr. Saltmiras: Manuscript to be

1 initiated by Monsanto as ghostwriters. It was
2 noted this would be more powerful if authored by
3 non Monsanto scientists, e.g., Kirkland, Kier,
4 Williams.

5 What's that last name? Greim. Do you
6 remember Dr. Tarone's entire testimony was based
7 upon an article made by Dr. Greim? That's what he
8 talked about for an hour, a mouse study that
9 Dr. Greim wrote about.

10 Here's the good Dr. Greim with the good Dr.
11 Kier. They're on team Monsanto. This is what
12 Donna Farmer got awards for is finding these
13 scientists to say that they wrote those and let
14 Monsanto initiate them as ghostwriters. She got an
15 award from company for doing that.

16 I can't make this up. The internal document
17 from John Acquavella, the only epidemiologist ever
18 hired by Monsanto, he said, hey, these articles,
19 one more study could just add fuel to the fire.

20 So what did they do? Do you remember? They
21 had -- they had Donna, they had -- they tried to
22 contact some authors and push them into certain
23 positions, and Donna Farmer wrote back being very
24 happy about what they accomplished, saying they
25 don't know what's in the small print, but the fact

1 that the McDuffie article doesn't mention
2 glyphosate in the abstract, that's a win for us.

3 Because if you're searching abstracts as a
4 medical researcher and you're looking for the word
5 "glyphosate" and you're just looking at abstracts
6 because that's a quicker way to find stuff, you
7 don't even find this article. So they're
8 celebrating. They accomplished something.

9 Eriksson came out with a study, 202 percent
10 increased risk of non-Hodgkin's lymphoma. 236
11 percent increased risk if you use it more than ten
12 days.

13 Schinasi and Leon, 100 percent increased risk
14 of non-Hodgkin's lymphoma. Donna Farmer's response
15 was not we need to tell people that there's a
16 chance they might get something called
17 non-Hodgkin's lymphoma if they use our product, we
18 need to tell people that, because we got folks like
19 John Durnell out there using it.

20 That wasn't her response. Her response was,
21 how do we combat this? We got to go to combat.

22 Again, I'm not saying this. But it fits with
23 what you heard from Dr. Tarone by video. He said
24 his fight -- he said fight about 20 times. He said
25 his fight was with IARC. That what he said.

1 Donna Farmer's saying we got to combat it.
2 Let's go find some fighters like Robert Tarone.

3 Then Monsanto finds out that the International
4 Agency for the Research on Cancer is going to
5 convene a meeting to analyze all the independent
6 published scientific studies on glyphosate.

7 I'm not aware of a single attack by Monsanto
8 on IARC, if I were I would bring it to you that
9 happened before glyphosate. And Monsanto makes a
10 lot of chemicals. Never heard of them attack one
11 time.

12 You heard what Dr. Tomasetti said. He said
13 IARC was the gold standard. Because it is. That's
14 why they call it the International Agency for the
15 Research on Cancer. The World Health Organization
16 funded by the United States government.

17 Y'all saw who was on that. Do you remember
18 who was on that committee? Two people from the
19 United States Environmental Protection Agency.
20 They had people from the U.S. government. Aaron
21 Blair was with the National Institutes of Health.
22 He was the chair. They had somebody from the
23 European Chemicals Agency, which they like to
24 parade out in front of you, who was on the panel.

25 They had a guy who was a computational

1 toxicologist who not only could do math but he was
2 also a toxicologist, unlike Dr. Tomasetti.

3 They had that kind of a quality panel. And
4 even these people on the EPA with the U.S.
5 government all voted unanimously that glyphosate
6 was a probable human carcinogen. Not a possible
7 one. Not a more likely than not one. A probable
8 human carcinogen.

9 And I would argue to you, ladies and
10 gentlemen, if they'd seen the documents you'd seen,
11 they would have said it was a known human
12 carcinogen, which is the Category 1. Category 2A.

13 Do you remember seeing the documents where
14 they said, hey, maybe we get this in 2B? That's
15 when they were planning the orchestration of outcry
16 over. Do you remember that? Maybe get it to 2B.
17 It ended up 2A, a probable human carcinogen.

18 Three pillars. Three pillars of proof.
19 Epidemiology for carcinogenicity. Except if you're
20 Dr. Tomasetti. Every scientist agrees
21 epidemiology, you look at the epidemiology, you
22 look at the animal studies, number two, and you
23 look at the cell and mechanistic studies number
24 three.

25 Every scientist in the world calls that the

1 three pillars of determining whether or not a
2 substance that's suspected of causing cancer
3 actually causes cancer. That's what IARC does.
4 They look at -- they don't look at every substance
5 in the world. They don't look at, you know,
6 whether holding this clicker in my hand causes me
7 cancer.

8 They look at substances that there's some
9 evidence already out in the literature or in the
10 field, i.e., people working in a particular
11 industry like coal miners and black lung, and
12 saying is that exposure carcinogenic. Let's look
13 at all the literature. Let's make a decision and
14 let's decide that.

15 And then here with glyphosate, remember they
16 didn't look at formulated Roundup. They said
17 glyphosate is a probable human carcinogen.

18 Monsanto said, Dr. Farmer's copied on this,
19 IARC evaluation of glyphosate, "While we have
20 vulnerability in the area of epidemiology, we also
21 have potential vulnerabilities in other areas that
22 IARC will consider, namely exposure, genotox, and
23 mode of action." That's your cellular mechanistic
24 pillar.

25 So, you know, again, I'm not saying that they

1 had vulnerabilities. They're saying that they had
2 vulnerabilities. They knew this going into IARC.

3 So what did they do? They said, Let's get a
4 plan. Let's orchestrate outcry. And that's what
5 they've done ever since. It's what they did in the
6 courtroom for three weeks. They orchestrated
7 outcry. Like a conductor: Dr. Tomasetti.

8 They were orchestrating outcry. They started
9 this back before IARC even met. They knew, they
10 knew once the world looked at glyphosate, once the
11 top scientists in the world looked at glyphosate,
12 they were in trouble. They knew that. That's why
13 they set this whole big committee up that Donna
14 Farmer was on.

15 And their goal was to actively tell our story,
16 build the right relationship, y'all know what that
17 means, let nothing go, nothing, and discomfort our
18 opposition.

19 Now, discomforting an opposition is anything
20 from saying something to them bad or beating them
21 over the head with something. I don't think they
22 beat anybody over the head, but they put some
23 discomfort on IARC. They orchestrated outcry.
24 They started it before IARC met, and they continued
25 it after they met.

1 But you know what's really weird is Monsanto
2 had its own representative there, not as like a
3 spectator, not up in the stands at Busch Stadium.
4 He wasn't on the last row. He was right there.
5 Now, he didn't vote, but you saw his emails. Do
6 you remember that? His little weekly report, daily
7 report for the time he was over there at the IARC,
8 saying all the little progress he's been able to
9 make.

10 He was like -- he was saying, hey, everything
11 here, I'm following it for you. I'm making sure it
12 gets pushed in the right direction, et cetera, et
13 cetera. He was over there for Monsanto.

14 Despite his efforts, IARC unanimously decided
15 to list glyphosate as a Class 2A carcinogen, a
16 probable human carcinogen. That's International
17 Agency for the Research on Cancer. The gold
18 standard. We talked about that.

19 After IARC, what happened? Additional and --
20 additional independent studies started coming out.
21 Do you remember we looked at the 96 scientists
22 letter where 96 scientists wrote in and said we
23 agree with IARC's conclusion, 96 of the top
24 scientists in the world?

25 More studies kept coming out. More studies

1 kept showing that glyphosate is not only a probable
2 human carcinogen but scientists started looking at
3 formulated Roundup as even more toxic.

4 From 2018 to 2023, and we looked at some 2023
5 studies, if y'all remember, 40 consistent
6 independent scientific studies do not dispute
7 IARC's determination.

8 What's in your bottle? You know we -- we made
9 a lot of efforts to find out what's in a bottle of
10 Roundup because, if you look at it -- by the way,
11 you can see Mr. Durnell, John used extended control
12 Roundup, he used Roundup Super Concentrate. Do you
13 see that? It's got more glyphosate in it, 50.2
14 percent glyphosate. Other ingredients, 49.8
15 percent, the other ingredients.

16 He used this concentrate plus. It had 18
17 percent glyphosate in it, 81.27 percent other
18 ingredients. Nonlisted by the way. You can take
19 these back and look at them if you want to when
20 you're deliberating.

21 And then he used some Roundup Ready-to-Use,
22 which is already -- it's all premixed, ready to go.
23 You just pull the wand out and spray it. He
24 demonstrated that to you.

25 But we had to dig and dig and dig to find out

1 what was in the bottle of Roundup. You know, we
2 suspected that there's got to be something more to
3 other ingredients. Because it's got a smell to it.
4 It feels a little funny. I washed my hands
5 vigorously after that, but I wanted to learn about
6 the product. There's got to be something else in
7 here besides just water and glyphosate.

8 And so what do we find out? We found a lot of
9 stuff in there. In Monsanto's own documents. We
10 couldn't afford to take this stuff to a lab and
11 say, hey, tell us everything that's in there. We
12 had to get Monsanto's own internal documents and
13 figure out what's in the bottle.

14 And shouldn't consumers know what's in
15 something they're using every day? We go to the
16 grocery store and sometimes we look on the label
17 and we see a bunch of chemical names and we decide,
18 hey, I don't think I want that today.

19 Or we see something else we might want to use,
20 maybe it's if you're an auto mechanic, you work on
21 cars, you might pick one particular product over
22 another because one's got a warning on it and the
23 other one doesn't, and you see things in each
24 product like formaldehyde.

25 So we found out formaldehyde was in Roundup.

1 Dr. DeGrandchamp told you it's a carcinogen. We
2 found out that this chemical called 1,4-dioxane, I
3 didn't know that such a chemical existed, was in a
4 bottle of Roundup. Dr. DeGrandchamp said known
5 carcinogen.

6 We found nitrosamines were in a bottle of
7 Roundup, NNG. Dr. DeGrandchamp says that's a
8 carcinogen. We found that arsenic was in a bottle
9 of Roundup. Dr. DeGrandchamp and probably
10 everybody in this courtroom knows that arsenic is a
11 carcinogen. We definitely know it's a poison.
12 It's used to kill people.

13 Now, you heard Dr. Farmer by the way. She
14 just kind of waved it off on formaldehyde. You
15 know, there's some things our body produces
16 naturally, formaldehyde. That's what they want you
17 to think when they put Barbasol shaving cream up
18 here, Dawn detergent, chocolate.

19 It's almost, it's funny what they put up to
20 try to make you think, oh, they're right. A dog
21 should not eat chocolate, so there shouldn't be any
22 animal studies. No scientist in the world believes
23 that. No scientist says you shouldn't do animal
24 studies because they're not like humans.

25 Every company in the world would throw a party

1 if you didn't have to do animal studies to try to
2 figure out if one of their products caused cancer
3 or not. That's a better word to use.

4 We found out that it's got surfactants in it.
5 Three carcinogens, ethylene oxide, POEA, and, of
6 course, we know that glyphosate has been determined
7 by IARC and other scientists to be a probable human
8 carcinogen. That's what's in the bottle. Why
9 don't they just put it on the label? That would so
10 easy for them to do.

11 They're going to try to say, hey, well, the
12 EPA didn't require us to do. Their own code of
13 conduct says we go above and beyond regulations.
14 And don't think the time to go above and beyond all
15 regulations is when you know you've got carcinogens
16 in your bottle and you don't list them on your
17 label? That's the time to do it.

18 No human in his right mind is going to go into
19 a Lowe's or a Home Depot or a Walmart or an Ace
20 Hardware store and pick a weed killer when one says
21 it's got that stuff in it and the other one
22 doesn't. That's why they don't do it. People know
23 what formaldehyde is. It's used to embalm people.
24 You know it's not good for you.

25 Do you remember they said they're -- you know,

1 this is, this is not -- this is not Dr.
2 DeGrandchamp. This is an internal Monsanto
3 document, P263. We've got a low-level presence of
4 formaldehyde, carcinogen by inhalation in Roundup.
5 Notice he used Roundup.

6 We've got a low-level presence of NNG in
7 Roundup. Many N-nitro compounds are carcinogenic.
8 We've got toxic studies for glyphosate at the lab.
9 He mentions IBT. Look at that. The FDA and EPA
10 got to generate fraudulent data back in the '70s.

11 I didn't say that. Dr. Heydens, Donna
12 Farmer's boss, the top toxicologist in the company
13 at the time said IBT did stuff for us that the FDA,
14 the Food and Drug Administration and the EPA, the
15 Environmental Protection Agency of the United
16 States of America, found to generate fraudulent
17 data.

18 So what were they doing about 1,4-dioxane? We
19 saw some of those documents. We saw documents
20 where it was as a high as 350 parts per million
21 when they had internal company spec of one part per
22 million. One and 350 is a big difference. It's
23 not trace at 350. I would argue it's not trace at
24 one. It's just the limit they put in there.

25 They wanted to raise the limit. Look, we got

1 to raise the limit to at least 10 parts per
2 million. That was how they were reacting.

3 Here's a document in evidence to show you what
4 they -- how they made Roundup warnings. How many
5 of us have been at Walmart and we hear something
6 over the PA system that says, "Spill on Aisle 11"?
7 Every one of us have heard that before. That is a
8 warning. And if you're on Aisle 11, it's telling
9 you watch where you're going to walk. There's a
10 risk and a hazard and if you're on Aisle 10 and you
11 get to Aisle 11, by the time you go to Aisle 11,
12 they usually have some orange cones or something
13 around it so you can't walk in it even if you
14 didn't hear the warning. That's what a good
15 warning is.

16 Walmart gives a better warning to people when
17 they have a spill of milk in the store than
18 Monsanto's ever given to a Roundup lawn and garden
19 buyer. You get a better warning from Walmart on a
20 spill on the floor.

21 And you know what warnings boil down to is
22 whose choice is it. Should it be Monsanto's choice
23 about what to tell a consumer so they can make a
24 decision, an intelligent decision, or should it be
25 the consumer's choice?

1 Ladies and gentlemen, I argue to you, I would
2 argue to you that most of the companies in America
3 believe it should be the consumer's choice. Most
4 companies in America, will say, you know, we want
5 to let our customers know everything we know about
6 a product. Most companies in America will say we
7 want every customer to know what's in that product.
8 Most companies in America, if they had any cancer
9 information at all, would share it with the public.

10 But what did Monsanto do? Minimize label
11 restrictions, optimize freedom to operate.

12 Again, it's a Monsanto document. Remember, I
13 tried to emphasize to you, very inartfully, it's
14 been a long time since I played basketball, but
15 freedom to operate is basically pivoting with your
16 elbows out, trying to get everybody away from you.
17 Pick up the ball, keep up your dribble, keep it
18 away from everybody.

19 That's what freedom to operate is. And
20 they're optimizing freedom to operate and
21 minimizing label restrictions. That's their
22 corporate mentality. 100 percent different, a
23 180-turn from what they say in their own code of
24 conduct.

25 They give their own employees who work around

1 glyphosate a warning about carcinogenicity and
2 glyphosate right here. It's P1799. They say it's
3 not carcinogenic in rats or mice. Y'all know
4 that's not really true, don't you? They knew it
5 wasn't true.

6 But let's see what else they wrote. Listed as
7 Category 2A by the International Agency for
8 Research on Cancer, IARC, but our expert opinion is
9 that classification as a carcinogen is not
10 warranted.

11 At least they told their own employees this.
12 As incomplete and inaccurate as that is, at least
13 they got it. Consumers like John Durnell at the
14 Ace Hardware store never got a warning like that.

15 Now, they're going to come and say, oh, OSHA
16 makes us do this. We have to do this because of
17 regulatory. Please go above and beyond regulations
18 for once and follow your own code of conduct, your
19 own standard you set for yourself when it comes to
20 health and safety issues of somebody that's going
21 to get cancer.

22 THE COURT: One hour, Mr. Frazer.

23 MR. FRAZER: Thank you, your Honor.

24 At their own plant in Luling, Louisiana, where
25 they make glyphosate, they tell their workers to

1 wear gloves. They tell their workers to wear PPE.
2 They tell their workers don't smoke, drink, or eat
3 in the presence of glyphosate.

4 Wear a white Tyvek -- here's that they tell
5 them: Wear a white Tyvek jacket, chemical gloves,
6 full-face respirator, half-face respirator,
7 whatever you can find for safety sake, wear it.

8 Nowhere on Mr. Guard's label, the lawn and
9 garden guy, nowhere.

10 They could have Monsanto gloves. That would
11 have been nice to just include with a bottle of
12 Roundup, wouldn't it?

13 Here's the irony of all ironies. Monsanto
14 gives the most stringent warnings to the most
15 sophisticated users. Because there are warnings
16 here they give to farmers that were in the
17 Agricultural Health Study. They're all told to
18 wear PPE, told to wear gloves whenever you mix it.
19 If you get it on your clothes, throw them away.
20 Discard them is the word they use.

21 That's what they say to farmers. Farmers are
22 pretty sophisticated people when it comes to
23 applying herbicides and pesticides. That's what
24 they do for a living a lot of time. Especially if
25 they grow the Monsanto genetically modified seeds.

1 So they give the most stringent warnings to
2 the most sophisticated users, but the least
3 sophisticated users like John Durnell get the least
4 stringent warnings. I've never heard of such a
5 thing in my life.

6 Usually every human being gets treated the
7 same when it comes to warnings of a dangerous
8 product. It doesn't matter where you work, who you
9 are, what your race is, how old you are. None of
10 that matters. You get the same warning.

11 Mr. Guard, I had to call him as a witness.
12 You'll see a picture in their slide show. He's got
13 a happy face. This is what he looked like when he
14 was in the courtroom. He had glasses on. Do you
15 remember that?

16 He wants you to believe that EPA controlled
17 the labeling, but then I had to take -- I had to
18 take a highlighter, had to give it to him, and he
19 highlighted almost all the label that he said EPA
20 required saying that the highlighting is what
21 Monsanto put on there. It wasn't required by the
22 EPA. Then I had to give him a document that
23 Stephen Wratten wrote, or I guess written letter,
24 that's P74, that said the proportion of label
25 statements that are mandatory and based on

1 regulatory requirements is small, perhaps 5 percent
2 or less of the label text.

3 Good grief. Less than 5 percent, now you're
4 in Tomasetti's range.

5 He got up here on the stand and said, "We have
6 to do what the" -- remember that? I asked him. I
7 knew what he was going to say. I've taken his
8 deposition. I had him in court before. And I had
9 to go through that long time with him with the
10 highlighter and show him that letter that he did
11 not want to see.

12 And the funny thing is this guy, it took me
13 forever to get him to admit that Roundup lawn and
14 garden products are only sold in a handful of
15 countries in the world. He wanted to try to
16 confuse you with agricultural products. I had to
17 do all kind of gymnastics with him to get him back
18 to what he said under oath previously.

19 And he has told you that in Canada and the
20 U.S., new Zealand and Australia, 1 percent or less
21 of all Monsanto Roundup sales are the lawn and
22 garden market. 99 percent is something else. Most
23 of it's farming. You looked at Defendant's Exhibit
24 25 that I went through with Donna Farmer. Do you
25 remember the big map on it?

1 They wanted you to conflate, confuse,
2 agricultural use with the way John Durnell used
3 Roundup. That was the whole reason for that
4 exercise. And he said it's only 1 percent of the
5 market and we only do it in these few countries.

6 And then we even found this document. What
7 happens when somebody complains about anything from
8 outside the company? They call it whack-a-mole. I
9 can't even make this up.

10 He says, "We've been playing a whack-a-mole
11 for years and calling it just that and joking about
12 it yesterday." That's Plaintiff's Exhibit 228.

13 John Azevedo. What did he say? It was a
14 short video, if you remember. He said, "I was told
15 I could drink this stuff." He said they were
16 trying to get the warning to less of a warning like
17 caution. He said he got no safety training for his
18 job. He said, "We're all about making money, so
19 get it straight." That's what he learned from
20 Brett Begemann.

21 If any company in America woke up one morning,
22 asbestos company, pesticide company, baby powder
23 company, drug company that made a drug that caused
24 problems, if any of those companies woke up one
25 morning and they had evidence that said, look, our

1 products are causing cancer, even if there's a
2 chance, if there's just a teeny-weeny, even if it's
3 a Tomasetti chance, we ought to do something about
4 it. We ought to at least tell people that that is
5 going on. I would say almost every company in
6 America, with the exception of just a few, would do
7 that.

8 One would be the asbestos industry. They knew
9 what would happen there. People found out asbestos
10 caused cancer, the product comes off the market.
11 That's what happened. It took decades to get that
12 evidence out there. And we've seen that with other
13 products. Johnson's Baby Powder. Decades.

14 We've seen it with pharmaceutical drugs like
15 fen-phen. We've seen it with diabetic drugs like
16 Rezulin and Actos. That's what responsible
17 companies do. Once something happens they get it
18 off or they put a black box warning there, saying
19 this stuff can cause cancer. It's poison. Be
20 careful about it. Talk to your doctor before you
21 take it, before you use it.

22 Now, John Durnell -- I'm trying to save a
23 little bit of time for after Mr. Brown goes.

24 John Durnell. These are his claims in this
25 case. He would like a cancer-free life. Can't

1 have that anymore. He's in remission. It might
2 come back. You heard what Dr. Hu said.

3 By the way, why didn't they go Dr. Hu? He's
4 right next door to him.

5 Physical pain. Mental suffering. Loss of
6 enjoyment of life. Physical impairment. Grief.
7 Anxiety. Emotional distress. You heard the man
8 testify. You know that's real. He tried to keep
9 from breaking down on the stand. He didn't try to
10 do it for drama. It's what his own body and mind
11 and soul was telling him when he was you there on
12 the witness stand. And you heard Richard Eaton
13 describe what he's gone through.

14 I don't even know what it would be like if I
15 had to wear a port right here because my veins were
16 so messed up they couldn't stick me with a needle
17 to draw blood on my appointment every six months or
18 a year, if I had to wear a port right there.

19 I couldn't imagine what he goes through every
20 day. I couldn't imagine waking up and thinking,
21 hey, I feel anything? Has anything popped up?
22 Yeah, did I just pull my groin or is that another
23 lump there?

24 I mean, every cancer victim who's in remission
25 goes through that mentally. I don't know why the

1 defense has to belittle that. That's what cancer
2 victims go through.

3 And, by the way, I didn't see one ounce of
4 sympathy from Monsanto's lawyers when they were
5 cross-examining John Durnell or Richard Eaton. I
6 saw the opposite. I don't know what y'all saw, but
7 it wasn't sympathy.

8 So if there's any fake emotion going on, it's
9 not coming from John Durnell.

10 Dr. Spaeth told you what his hours of spraying
11 were. There were hundreds of days, hundreds of
12 hours.

13 That's what Kirk Azevedo said that that man
14 right there told him: We're here to make money, so
15 get it straight.

16 You know, I've got this up there. I'm a
17 suffering Predators fan, as you all know, but we've
18 come to the part of case where I have to tell you
19 what a man's life is worth. And I can tell you
20 that's the hardest thing to do ever for me. Ever
21 in any jury trial. And I always have a
22 conversation with my client. My dear client here,
23 Mr. John Durnell.

24 And I had a conversation with him, and I said,
25 "John, I got to ask that jury to bring back a

1 verdict tomorrow for you."

2 And he said, "What do you mean, Roe?"

3 I said, "We've got to put a dollar amount on
4 what you've gone through. I have to be fair to the
5 defense lawyers and I have to put a number on that
6 and not just leave it out there, try to give the
7 jury some roadmap, some way to think of this."

8 He said, "Look, Roe, I don't want to be greedy
9 about this."

10 I said, "I know that, John. I know that. The
11 jury knows that. Don't worry about that. But I
12 have to give them a number. I have to give them a
13 number to compensate you."

14 So a lot of times I talk to juries about, you
15 know, paintings, a valuable painting, if you see a
16 valuable painting like a van go or a Money or an
17 Andy Warhol or a because quite, anything like that
18 and there's a fire and the fireman is going to save
19 the child and let the painting burn. No matter
20 what it's worth.

21 Pilots are taught, our Air Force and Navy
22 pilots are taught, if you're flying those billion
23 dollar planes and something happens and something
24 is going wrong with the plane, even weather, hit
25 the eject button and get out of it. Let the

1 billion dollar plane crash.

2 So we do value human lives in a different way.
3 And John said, "Well, I'm a Blues fan, and the most
4 important thing for me was when the Blues won the
5 Stanley Cup."

6 I said, well, that's kind of cool. And I
7 thought well, how can I tell the jury? I said,
8 that's a valuable trophy. Now, it can be replaced,
9 but if it was in a boat and it was sinking because
10 it hit an iceberg, would the Coast Guard save the
11 Stanley Cup or would they save the person on board?
12 They would always save the person on board.

13 So how do you value that? So I said, look,
14 Jim Guard said that Monsanto's ad budget for lawn
15 and garden products only is 15 to \$18 million a
16 year. That's what he testified to.

17 I said that's a lot of money, but that's not
18 what they spend on -- their ad budget every year,
19 every year. You've seen the stipulation where the
20 company's worth over \$7 billion at the time of the
21 Bayer acquisition. You've seen that. You've seen
22 what his medical bills are.

23 And if you were to award him somewhere between
24 15 and \$18 million, maybe they wouldn't run ads for
25 a year for lawn and garden use. I would hope not.

1 Maybe they get the message.

2 But the amount of money is in your sound
3 discretion, and John is willing to commit it to
4 your sound discretion. He told me, "Do not tell
5 them that's what they have to do."

6 So I'm saying you don't have to do that. You
7 can actually give him more. You could give him
8 less. It's your discretion what is reasonable fair
9 compensation for what he's gone through.

10 Then there are punitive damages. We believe
11 the evidence shows that Monsanto acted in a manner
12 to justify an award of punitive damages, and the
13 judge has instructed you on what's the law you have
14 to follow on that. And it's a different standard
15 than compensatory. It's clear and convincing
16 evidence. Is there clear and convincing evidence
17 that Monsanto did what it did?

18 I think the answer is yes.

19 And if you're a fair jury and you decide to
20 award punitive damages, you just take a multiple.
21 In the Code of Hammurabi, going back like thousands
22 of years, if you killed somebody's ox on a
23 Wednesday, you had to give them seven ox in return.
24 Not just one ox back. You have to do seven if you
25 did it on purpose. If you did something that was

1 grossly negligent.

2 So let that kind of guide your conscience.
3 Don't give anything over ten, please. So whatever
4 you give in compensatory, let's say it's a dollar,
5 don't exceed \$10 in punitive damages.

6 But I'm confident. I've watched you all for
7 three weeks now. Only nine of twelve of you have
8 to come to a verdict. It don't have to be
9 unanimous. I think we've proven it. I think we're
10 going to get a unanimous verdict.

11 You've been following the judge's instruction
12 not to form any conclusions or talk to anybody else
13 about the case. But I believe that you are with
14 John Durnell. I believe that the proof shows that
15 John Durnell and his non-Hodgkin's lymphoma due to
16 use of formulated Roundup was a cause or
17 contributed to cause to his cancer, and I believe
18 that's by a preponderance of the evidence.

19 And in -- what happened to my screen?

20 Don't forget Donna: We can't say it doesn't
21 cause cancer. Don't forget this document from --
22 by a guy at the EPA: If I kill this, I should get
23 a medal, referencing glyphosate IARC question. And
24 don't forget to ring the bell for John Durnell.

25 Thank you, your Honor. Thank you, ladies and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gentlemen.