

1 be recorded by our court reporter.

2 **THE WITNESS:** Okay.

3 **THE COURT:** Mr. Frazer, when you're ready.

4 **MR. FRAZER:** May it please the Court,
5 counsel. Good afternoon again, ladies and gentlemen
6 of the jury.

7 (The jury responds in unison.)

8 **DIRECT EXAMINATION**

9 **BY MR. FRAZER:**

10 Q. Mr. Guard, if you would state your full name
11 for the record.

12 A. James Steven Guard.

13 Q. Are you still employed at Monsanto?

14 A. Monsanto/Bayer, yes.

15 Q. Are you still the head of global Lawn and
16 Garden?

17 A. I have those responsibilities, yes.

18 Q. Is that Monsanto or is that Bayer?

19 A. I work for Bayer Crop Science.

20 Q. Bayer Crop Sciences?

21 A. That's correct.

22 Q. You were in that same position up to the
23 2018 stock buyout of Bayer of Monsanto, right? You
24 were in that position at Monsanto?

25 A. Yes.

1 Q. Right. And we've met before, right?

2 A. Yes, we have.

3 Q. Good to see you again.

4 A. Yes. Good to see you.

5 Q. You are in this -- you are in the St. Louis
6 office out in Chesterfield?

7 A. Creve Coeur.

8 Q. I get those confused. Two offices. One in
9 Chesterfield and one in Creve Coeur?

10 A. In the St. Louis area, yes.

11 Q. I want to make sure I have your title down.
12 What is your current title? What is on your business
13 card?

14 A. Vice president commercial lead, Lawn and
15 Garden.

16 Q. Lawn and garden is just what it says it is,
17 right? It is for -- Roundup for lawn and garden use?

18 A. That's right. If you go into a Home Depot
19 or Lowe's and buy Roundup, that is what we are talking
20 about, those types of products.

21 Q. Or Ace Hardware?

22 A. Ace Hardware as well, yes.

23 Q. Those are what are typically called Roundup
24 Ready-to-Use, they are pump and go products, right?

25 A. We sell Roundup pump and go products, yes.

1 Q. Yeah. And that also includes different
2 formulations of those products, right?

3 A. Yes.

4 Q. Some of them have different names. What are
5 some of their names?

6 A. Roundup Concentrate Plus, Roundup Super
7 Concentrate, Roundup Extended Control.

8 Q. There have been others in the past during
9 your tenure with the company, right?

10 A. Yes.

11 Q. What year did you come to Monsanto?

12 A. I joined in '09.

13 Q. 2009?

14 A. Yeah.

15 Q. Prior to that you were at Spectracide in
16 St. Louis, right?

17 A. I did work for Spectrum Brands, which has
18 Spectracide as a brand, yes.

19 Q. Spectrum Brands. And the lawn and garden
20 product that competes with Roundup is called
21 Spectracide?

22 A. That's one of them, yes.

23 Q. What color is that bottle?

24 A. I haven't been there in a long time, but it
25 is white, I think, and gray. They've used those

1 colors over the years.

2 Q. And Spectracide is a product that is a pump
3 and go product designed to kill weeds, right?

4 A. Spectracide does have a liquid weedkiller
5 product, yes.

6 Q. And Spectracide does not contain any
7 glyphosate, right?

8 A. Not the brand Spectracide, but when I was
9 there we had products that we sold with glyphosate.

10 Q. Understand that. But the brand Spectracide
11 and a different Spectracide, you know, pluses or
12 whatever they are, concentrates, none of those have
13 glyphosate in them, right?

14 A. I don't know if any of them have glyphosate
15 in them today or not. I'm not sure.

16 Q. They didn't have them in there when you
17 worked there, right?

18 A. I think we had one time we used glyphosate
19 in a product in Walmart, if I recall.

20 Q. But not named Spectracide?

21 A. I think it was named Spectracide, yeah.

22 Q. All right.

23 A. Again, I'm going back a ways, so I could be
24 wrong.

25 Q. And when you were at Spectracide, would it

1 be fair to say you believed the company's products,
2 Spectrum Brands, Spectracide, were effective at
3 killing weeds?

4 A. Yes.

5 Q. Okay. Would it be fair while you were at
6 Spectracide to say that Spectracide was a competitive
7 product to Roundup Ready-to-Use?

8 A. It was a competitor of Roundup, yes.

9 Q. All right. I just want to get that out of
10 the way.

11 Now, in the United States of America you
12 have an exclusive arrangement with a company called
13 Scotts Miracle-Gro to be your distributor, retailer,
14 placement partner in stores across America, right?

15 A. So what we have is an agency agreement with
16 them, and they are our exclusive sales and marketing
17 partner. So they have the exclusive rights in the
18 United States. Scotts Miracle-Gro, yes.

19 Q. Are you familiar with the agency agreements?

20 A. Yes.

21 Q. All right. Hand you one we marked as
22 Plaintiff's 1564. You will see that that one is dated
23 September 30, 1998, sir; is that right?

24 A. Yes.

25 Q. And is that one that was in effect before

1 the one you have now is in effect?

2 A. This is not the current agency agreement.

3 Q. Not the current one?

4 A. No.

5 Q. But do you recognize that as the Scotts
6 agreement that was in effect at some time at Monsanto?

7 A. Yes, I do.

8 **MR. FRAZER:** Okay. Now I move that into
9 evidence, Your Honor.

10 **THE COURT:** Any objection?

11 **MS. COOK:** Relevance.

12 **THE COURT:** What is the relevance,
13 Mr. Frazer?

14 **MR. FRAZER:** This is the only way they can
15 sell it in stores in America, Your Honor. It's
16 directly relevant to how the product is sold and its
17 size and what the rights between the parties are in
18 terms of marketing, advertising, product placement,
19 posturing. Everything that goes into retail point of
20 sell, Your Honor.

21 **THE COURT:** Want to respond?

22 **MS. COOK:** There's no evidence that any
23 advertising had any impact on Mr. Durnell.

24 **THE COURT:** I'll admit the exhibit.

25 And, Mr. Frazer, you can ask questions about

1 it.

2 **MR. FRAZER:** Thank you, Your Honor.

3 Q. (By Mr. Frazer) Mr. Guard, I'm going to
4 hand you a document that has been marked as
5 Plaintiff's Exhibit 2215. You are familiar with that
6 one. That went into existence after you joined the
7 company, no?

8 A. Yeah. I don't know that this is the final
9 version that we would have. This is not signed.

10 Q. Okay. You see it has been produced as an
11 official Monsanto document in this litigation?

12 A. I don't know that to be the case.

13 Q. You don't know that that number down there
14 in the bottom, right-hand corner, that's what that
15 means?

16 **THE COURT:** Mr. Frazer, there isn't one.

17 **MR. FRAZER:** There isn't. Let me see.
18 Maybe I gave you the wrong one. That wouldn't be the
19 first time I gave somebody the wrong document, Your
20 Honor.

21 Q. (By Mr. Frazer) You don't know if this is
22 in effect?

23 A. I don't know if that is the final version or
24 not. I don't know. It is not signed or dated.

25 Q. Did the relationship change much between the

1 two companies in terms of marketing, advertising,
2 product placement in retail stores over the years
3 you've been the head of Lawn and Garden?

4 **MS. COOK:** Objection. Vague. Compound.

5 **THE COURT:** If he can answer the question,
6 I'll let Mr. Guard answer it. If you need
7 clarification, please ask for it.

8 **THE WITNESS:** If you don't mind, please
9 reask the question.

10 Q. (By Mr. Frazer) I said is the relationship
11 in general with Scotts during the time you joined the
12 company to the present day --

13 A. I'm sorry. I can't hear you when you turn.

14 Q. You must be an old rock and roll music guy
15 like me.

16 A. I do like rock and roll.

17 Q. Same here. We've got that in common.

18 That's good, right?

19 A. Yes.

20 Q. The relationship between Scotts and Monsanto
21 during the time you've been with the company, has it
22 been pretty much the same in terms of marketing,
23 product placement, retail positioning, advertising for
24 the product Roundup Ready-to-Use?

25 A. All those things have evolved over time

1 during our relationship.

2 Q. Can you think of anything that has
3 dramatically changed during the time that you've been
4 there?

5 A. Product assortment has changed. The stores
6 that you can find it in have changed. Our advertising
7 has changed.

8 Q. Scotts can't -- they can't do any
9 advertising that Monsanto does not approve, right?

10 A. That's correct.

11 Q. Okay. We'll just keep this one marked as ID
12 purposes, Your Honor, if that is okay.

13 **THE COURT:** Mark it that way.

14 Q. (By Mr. Frazer) All right. You can set
15 that one aside, sir. I'm sorry.

16 A. Okay.

17 Q. I want to hand you what has been marked as
18 Plaintiff's Exhibit No. 817, sir. This one does have
19 one of those document identifying numbers down in the
20 right-hand corner. Do you see that?

21 A. If you are talking about the MON number, I
22 do see that at the bottom.

23 **MS. COOK:** Your Honor, may we approach.

24 (Counsel approached the bench and the
25 following proceedings were held:)

1 **MS. COOK:** We object to this document. It
2 is in violation in the motion in limine related to
3 unrelated injury. If you see reference to autism in
4 here, that's the only reason he wants to show this.
5 Object to the admittance of this document.

6 **THE COURT:** Response to that, Mr. Frazer.

7 **MR. FRAZER:** I'll redact the word.

8 **THE COURT:** That's mentioned twice, so get
9 it redacted twice. Do you have an objection if it is
10 redacted?

11 **MS. COOK:** I have an objection to keeping
12 this entire line in with -- if you redact the entire
13 line that has to do with it.

14 **MR. FRAZER:** It says mainly around autism.
15 Doesn't say exclusively around autism.

16 **THE COURT:** Admit it. Redact autism claims.
17 Redact the part -- this entire parenthetical.

18 **MR. FRAZER:** Show this to the jury.

19 **THE COURT:** Admit it with those redactions.
20 Leave the first part in.

21 **MS. COOK:** Honestly, that makes it
22 prejudicial without the context. That is definitely
23 403.

24 **THE COURT:** I'm going to admit it with those
25 redactions.

1 **MR. FRAZER:** Thank you, Your Honor.

2 (The proceedings returned to open court.)

3 Q. (By Mr. Frazer) Mr. Guard, the Court has
4 allowed in Exhibit 817 in a redacted version. I'm
5 going to be very careful about what I ask you about
6 this document. Is that fair?

7 A. That seems fair.

8 Q. I'm not intentionally leaving anything out
9 is what I want you to understand.

10 A. Okay.

11 Q. All right. This is an email chain that you
12 are on, right, sir?

13 A. Yes, it is.

14 Q. It is dated at the top last email. These
15 things go in reverse chronological order dated
16 August 10, 2015, right?

17 A. Yes, it is.

18 Q. And you get an email from somebody named
19 Melissa Duncan. Who is Melissa Duncan back in 2015?
20 What was her job?

21 A. She was an attorney with Monsanto.

22 Q. An attorney with Monsanto?

23 A. Yes.

24 Q. Okay. And you had written Tom Wilson and
25 Melissa Duncan about a Scotts glyphosate visit; is

1 that right?

2 A. Yes.

3 Q. You had written in your email that Scotts
4 would like to meet with Monsanto to have a review and
5 discussion session around the issues of glyphosate
6 (IARC) Roundup and Monsanto, correct?

7 A. Yes.

8 Q. And then you listed some of the key
9 pressures. Home Depot is getting pressure to delist
10 Roundup, correct?

11 A. Yes.

12 Q. Costco is threatening complete delisting of
13 Roundup, parenthesis, IARC, correct?

14 A. Yes.

15 Q. Scotts itself would like to take Monsanto
16 off the back of all Roundup packages, correct?

17 A. Yes.

18 Q. You wrote that?

19 A. Yes.

20 Q. And then you write that approximately
21 20 percent of EU, that's European Union, right?

22 A. Yes.

23 Q. Retailers have delisted Roundup,
24 parenthesis, IARC, correct?

25 A. Correct.

1 Q. So this was an email you wrote to
2 Ms. Duncan. Who is Mr. Wilson? Is he a lawyer, also?

3 A. No. Mr. Wilson is a marketing person.

4 Q. Marketing person, okay.

5 That was written, you know, after IARC had
6 come out with its decision, correct?

7 A. Yes.

8 Q. Thank you, sir. You can set that aside.

9 **MR. FRAZER:** You have admitted this?

10 **THE COURT:** I admitted it subject to the
11 discussion we had at sidebar.

12 **MR. FRAZER:** Yes, Your Honor.

13 Q. (By Mr. Frazer) Mr. Guard, I'm going to
14 hand you the next exhibit, which is Plaintiff's
15 Exhibit 1024. This is another email that you are
16 involved in; is that right, sir?

17 A. Yes.

18 Q. And you are getting an email from a
19 gentleman -- a lady by the name of Jill Webb. Do you
20 see that?

21 A. Yes.

22 Q. And it is dated September 14, 2015, correct?

23 A. Yes.

24 Q. And Ms. Webb tells you that they are the
25 second --

1 **MR. FRAZER:** Your Honor, move 1024 in.

2 **THE COURT:** Objection?

3 **MS. COOK:** No, Your Honor.

4 **THE COURT:** It will be admitted.

5 **MR. FRAZER:** Pull 1024 up, please, Ed.

6 First page.

7 Q. (By Mr. Frazer) On this September 14, 2015,
8 email Ms. Jill Webb writes you, second sentence
9 says -- or third sentence says, [As read]: I've
10 attached a copy of the draft agenda for your 8:00 a.m.
11 meeting to review the topics Scotts, Monsanto, IARC,
12 social pressures and FTO.

13 Do you see that?

14 A. I do.

15 Q. FTO is a Monsanto acronym for Freedom To
16 Operate, right?

17 A. It's an industry acronym.

18 Q. Well, it is something Monsanto uses, right?
19 That's what -- this is an internal Monsanto document,
20 right?

21 A. Right. That's right.

22 Q. It is not talking about anybody's freedom to
23 operate other than Scotts and Monsanto there, correct?

24 A. Yes. That's correct.

25 Q. All right. Now, if we look at the second

1 page, we see the attachment that you received,
2 correct?

3 A. Yes.

4 Q. And just some of the names. I'm not going
5 to go through all of them, but you are right there
6 under Donna Farmer, correct?

7 A. Yes.

8 Q. Looks like an alphabetical listing, doesn't
9 it?

10 A. Yes. It is an alphabetical list.

11 Q. There is people from the board of directors
12 at Scotts Miracle-Gro at this meeting. Do you see
13 that?

14 A. That's correct. One person, Adam Hanva
15 [ph].

16 Q. Everybody under that heading "Scotts
17 Attendees" are all Scotts employees or board members;
18 is that correct?

19 A. Yes.

20 Q. Everybody on the right side with you and
21 Ms. Farmer, Dr. Farmer, Dr. Heydens and others are all
22 Monsanto employees, correct?

23 A. The only one I'm not sure about is -- yeah,
24 I think so. Yes, all employees in Monsanto.

25 Q. And you are listed there as the, quote,

1 global Roundup Lawn and Garden lead, correct?

2 A. Yes.

3 Q. And it means global, right, the whole globe
4 of the earth, right?

5 A. That's right.

6 Q. All right. And if we look at the agenda,
7 the first thing listed there under when Scotts gets to
8 the meeting is, quote, overview of global social
9 pressures on glyphosate, Roundup and Monsanto,
10 correct?

11 A. Yes. But I do want to know if this is --
12 was a draft, so that's the first version of the draft,
13 but yes, which is what it says at the top.

14 Q. Do you have another version of this draft
15 anywhere handy?

16 A. I don't remember what the additional
17 versions were.

18 Q. Okay. All right. And part of this agenda
19 is stakeholder outreach efforts. Do you see that?

20 A. Yes. I see that.

21 Q. Okay. Set that aside.

22 You said in the past, sir, that consumers
23 decide what they want to buy, right?

24 A. Right.

25 Q. And for a consumer to make an intelligent

1 decision what they want to buy, they are entitled to
2 information, right?

3 A. Right. They are entitled to the truthful
4 information about the product.

5 Q. Truthful information about the product.

6 That's correct. I agree.

7 And your marketing that you do with Scotts
8 is all around to get consumers like John Durnell to
9 make a purchase decision to pick Roundup Ready-to-Use
10 at the lawn and garden store versus say Spectracide,
11 right?

12 A. Yeah. Our job in advertising is to
13 communicate the benefits of our product so the
14 consumer can make a decision.

15 Q. You are trying to get them to pick your
16 product over someone else's product?

17 A. That's right.

18 Q. If they get into that store to make that
19 decision, right?

20 A. Yes. That's the premise of advertising.

21 Q. Then you've got other advertising and
22 marketing that encourages people to come to the store
23 and buy your product, right?

24 A. Right. We do advertise our products, yes.

25 Q. So you've got general advertising and you've

1 got what is called point of sale advertising, correct?

2 A. Well, we have television advertising, which
3 I guess would be called general advertising, and then
4 there will be signs in the store at point of purchase.

5 Q. Today there is social media advertising,
6 correct?

7 A. Sure. Yes.

8 Q. Internet ads, click ads, that kind of stuff?

9 A. It's everywhere.

10 Q. Okay. That's all part of the marketing of
11 Roundup?

12 A. That would be under the umbrella of
13 marketing, yes. I don't know if we necessarily use
14 all those things, but yes.

15 Q. Okay. Now -- and I think you told me before
16 that the annual advertising marketing budget at
17 Monsanto for Roundup Ready-to-Use Lawn and Garden
18 products is somewhere between \$9 and \$12 million a
19 year?

20 A. Yeah. I think I told you wrong. It is a
21 little bit more than that.

22 Q. So what is it?

23 A. 15 to 18. Somewhere around there.

24 Q. So you are spending \$15 to \$18 million a
25 year in these different sort of marketing?

1 A. That's right.

2 Q. That's all I wanted to know.

3 Now, post IARC we looked at an email just a
4 while ago after IARC, but in 2017 Roundup -- Monsanto
5 actually introduced a product called Roundup For
6 Lawns, right?

7 A. Scotts did, yes.

8 Q. But it was a Roundup branded product,
9 correct?

10 A. Correct. Scotts had the license, the rights
11 to do that, yes.

12 Q. They had the rights to take a Monsanto
13 branded Roundup product and put your Roundup logo on
14 there, right?

15 A. No. That's not correct.

16 Q. No?

17 A. So they have the right to use the Roundup
18 trademark on a product that did not -- that was not a
19 non-selective herbicide, which is what
20 glyphosate-based Roundup products are.

21 Q. The Roundup trademark you are talking about
22 is the word Roundup with that little trademark sign,
23 right?

24 A. Yes. That's right.

25 Q. And they only had the right to do that

1 because you allow them to do it under those agency
2 agreements, correct?

3 A. That was not under the agency agreement.
4 That was under a different agreement.

5 Q. Side agreement?

6 A. Well, it was a different agreement. It was
7 a trademark licensing agreement.

8 Q. Roundup -- that was the name of it, Roundup
9 For Lawns, right?

10 A. Yes.

11 Q. Roundup For Lawns did not contain any
12 glyphosate, right?

13 A. That's right, it does not. It is what we
14 call a selective herbicide. It has a different use
15 than regular Roundup. Regular Roundup would kill all
16 vegetation. Roundup For Lawns, you would spray on
17 your lawn if you just want to kill broadleaf weeds in
18 your lawn, but not kill the grass.

19 Q. Got it. Understand. It is a weedkiller,
20 right?

21 A. It is what we call a selective herbicide,
22 selective weedkiller.

23 Q. It's similar to a product called Weed B-Gon,
24 right?

25 A. Yes. Weed B-Gon is a similar formula.

1 Q. Now, back to freedom to operate. Freedom to
2 operate is a concept within the company that Monsanto
3 wanted to make sure that it could do what it needed to
4 do to further its business interest wherever it wanted
5 to do business; is that a fair statement?

6 A. Freedom to operate is a pretty broad
7 statement. It makes sure you've got legal rights to
8 do that. You make sure you haven't contracted
9 something with another company and make sure the law
10 would allow that. So it is a pretty broad term when
11 we say freedom to operate.

12 Q. Okay. Let's see if I have this document.
13 Mr. Guard, I'm going to hand you what has been marked
14 as Plaintiff's Trial Exhibit 1095. Have you ever seen
15 this document before?

16 A. I'm not sure if I have or not. I don't
17 recall.

18 Q. Did you go to that meeting in Antwerp in
19 2014 on how to secure our FTO with those Roundup
20 products list -- listed there, Lawn and Garden
21 products?

22 A. I don't recall.

23 Q. You don't remember if you were in Antwerp?
24 That's in the Netherlands, right?

25 A. That's in Belgium.

1 Q. Belgium. I'm terrible with geography, too.

2 You don't remember if you were in Antwerp,

3 Belgium in March of 2014?

4 A. I don't recall if I was or not.

5 Q. Okay. They -- they're -- they're talking

6 about Roundup Lawn and Garden, correct?

7 A. Yes, it appears that's what's on this

8 document.

9 Q. You were in charge of this, right?

10 A. That was an area under my responsibility,

11 yes.

12 **MR. FRAZER:** Your Honor, I move to enter

13 this as the next exhibit, Plaintiffs 1095.

14 **MS. COOK:** Your Honor, lacks foundation.

15 This witness has no personal knowledge about this.

16 **THE COURT:** I'll treat it like we've treated

17 all the exhibits. This is -- it has a Monsanto

18 number, so I'll allow it to be admitted, but if he

19 hasn't seen it, I'm not going to let him testify about

20 it.

21 Q. (By Mr. Frazer) Well, you've seen -- let --

22 let's just look at the second slide.

23 You've seen every product on there before,

24 haven't you?

25 A. Most of them I have, yes.

1 Q. Most of them. Most of these were -- they
2 are -- they're Roundup Lawn and Garden -- garden
3 products, correct?

4 A. Yeah. Yes, they are.

5 Q. And -- and you know that they fall into
6 three categories: General purpose, tough weeds and
7 path and driveway. Right?

8 A. I know that's how we used to -- how we
9 categorized the products.

10 Q. Okay. So you know about that page.

11 Let's look at the next page. The next page
12 shows the percentage of your business in these
13 different products.

14 You are familiar with that, aren't you, sir?

15 **MS. COOK:** Your Honor, I object to the
16 questioning of this document.

17 **THE COURT:** Well, I'll -- I'll say this.
18 The witness is free to say that he doesn't know about
19 it; and if he doesn't, that's it.

20 So Mr. Guard, I'm not telling you you are
21 stuck with any answer. If you know what you are being
22 asked, say it; and if not, please tell us you don't.

23 **THE WITNESS:** Okay. Can you repeat the
24 question?

25 Q. (By Mr. Frazer) You -- you -- you are

1 familiar with the information on the next page --
2 past, present, future business -- aren't you, sir?

3 A. I -- you know, I don't know if these numbers
4 are correct or not.

5 Q. You just told the jury you were head of
6 global Roundup Ready-to-Use.

7 This document has to deal with freedom to
8 operate, Roundup Ready-to-Use and you're now telling
9 the jury that you are not familiar with what's in the
10 document? Were there people over in Antwerp meeting
11 and making sure you didn't know what was going on?

12 **THE COURT:** All right. I'm going to sustain
13 the objection she is about to make on that question.

14 Mr. Frazer, he said he doesn't know the
15 numbers in there are right. You are stuck with that
16 answer.

17 Q. (By Mr. Frazer) Okay. Let's go to the next
18 page.

19 Are you familiar with that information [as
20 read]: Where do Gardeners use Roundup?

21 A. So, again, I -- I am not familiar with this
22 document. I don't even know if this document was ever
23 used, and so I don't know whether these numbers are
24 correct or not.

25 Q. That wasn't my question.

1 My question is simply: Are you familiar
2 with the information that's conveyed on the page with
3 title [as read]: Where do Gardeners use Roundup?

4 A. I'm assuming this came from the marketing
5 firm below. I've never heard of that firm below. I
6 don't know where this came from. I can't tell you.

7 Q. I understand that. But that wasn't my
8 question about where did the document come from.

9 My question was: Are you familiar with the
10 information that's on this page with the heading [as
11 read]: Where do Gardeners use Roundup?

12 A. And I -- again, I'm not familiar with this
13 report that you handed me. I don't know whether this
14 information is accurate or not.

15 Q. Okay. Let's go to the next page.

16 It is entitled [as read]: Knowledge Gap.
17 Perception and Fact.

18 Are you familiar with this information?

19 A. Again, I'm not familiar with this document.

20 Q. That wasn't my question.

21 Are you familiar with the information that
22 is contained on this page, in whole or in part?

23 A. Again, I'm -- I'm not directly familiar with
24 this. I didn't create this. I don't even know if
25 this document was used.

1 Q. Okay. Let's go to the next page.

2 Are you familiar with [as read]: Objectives
3 for Regulators, question mark, for Roundup Lawn and
4 Garden?

5 A. I see the words on the page, but, again, I
6 didn't create this document. I'm not familiar with
7 it.

8 **THE COURT:** Mr. Frazer, I think we got the
9 point and I'd ask you to move on from this document.
10 He obviously doesn't know this ad company or anything
11 about it.

12 Q. (By Mr. Frazer) Well, you do know that post
13 IARC, that there -- we saw a document earlier that
14 says 20 percent of European countries are delisting
15 Roundup Ready-to-Use, right?

16 A. Which document are you referring to?

17 Q. One of ones we looked at earlier.

18 **MS. COOK:** Your Honor, that -- that is a
19 misstatement of the document.

20 Q. (By Mr. Frazer) You --

21 **THE COURT:** Let's go. I'll -- I'll direct
22 the witness to 817 so we can get the quote right
23 because I do believe it was misstated by Mr. Frazer.

24 Q. (By Mr. Frazer) The word that is used in
25 the email is "delist," isn't it, sir?

1 A. Yes, I did use the word "delist."

2 Q. And you know for a fact that since that
3 email was written -- what's the date of that email?

4 A. August 10, 2015.

5 Q. You know for a fact since that day, little
6 by little, Monsanto Roundup Lawn and Garden
7 Ready-to-Use products are not sold in the European
8 Union countries, correct?

9 A. No, that's not correct. That's not what
10 this says.

11 Q. I'm asking is that a -- I didn't ask you
12 what that said.

13 I'm asking you isn't that true?

14 A. It -- I'm confused. Is what true?

15 Q. You can't buy Roundup Ready-to-Use Lawn and
16 Garden products in a European Union country, today?

17 A. That's not correct.

18 Q. That's what you told me under oath one time
19 before.

20 Do you remember that?

21 **MS. COOK:** Your Honor, I object to the
22 improper impeachment.

23 **THE COURT:** Let's ask another question,
24 Mr. Frazer.

25 Q. (By Mr. Frazer) So what -- what European

1 country right now can you go in and buy a bottle of
2 Roundup Ready-to-Use?

3 A. Well, a good many of them. United Kingdom.

4 Q. Scotland?

5 A. Well, part of the United Kingdom, I think.

6 Q. Scotland?

7 A. Scotland, yes.

8 Q. France?

9 A. I don't know all the specifics of all the
10 countries of which countries you can and cannot go in
11 and buy a specific product.

12 I -- we sold that business in 2018. We sell
13 glyphosate to a company called Evergreen. They, in
14 turn, produce the products and sell and distribute
15 within Europe.

16 Q. All right. I need to ask my question in a
17 little different way.

18 Monsanto/Bayer does not sell
19 glyphosate-based herbicide named Roundup in any
20 European Union country today, correct?

21 A. Not correct. We do sell --

22 Q. In -- okay. Let's go through some of them.
23 Luxembourg?

24 A. Again, I don't know the specifics of what
25 all countries sell Roundup. I couldn't tell you that

1 now.

2 Q. You're -- you're in charge of global --

3 **MS. COOK:** Your Honor, I'm not sure the
4 witness is finished with his answer.

5 **THE COURT:** Are you done with your answer,
6 Mr. Guard?

7 **THE WITNESS:** No, I'm not.

8 So I -- we sell this product -- we sell
9 glyphosate to Evergreen, as we talked about. And
10 Evergreen then makes the product and distributes it.

11 We also sell agricultural products. We sell
12 professional products all throughout the good -- all
13 throughout the world, in a good many countries in the
14 world, including Europe.

15 Q. (By Mr. Frazer) Have you had any media
16 training?

17 A. No.

18 Q. I didn't ask you about agricultural
19 products. Okay? I understand you sell agricultural
20 products over there, but you are the -- you are the
21 global head of Lawn and Garden products for
22 Monsanto/Bayer worldwide, right?

23 A. Right. In -- but what I said is: In 2018,
24 we sold that business.

25 Q. So if you sold --

1 A. So I --

2 Q. So if you sold the business, that means you
3 are out of that business, right?

4 A. So, no. We sell glyphosate to a company
5 call Evergreen that, in turn, makes -- makes -- they
6 also have a Roundup trademark license. They take that
7 and they produce their own products and sell them in
8 Europe.

9 Q. I didn't ask about Evergreen. I'm talking
10 about you today, Jim Guard, as the global Lawn and
11 Garden head of Monsanto/Bayer worldwide, since 2018,
12 not sold any Monsanto Roundup, your company, in Europe
13 since you sold that to Evergreen, right?

14 A. So since -- so we do sell ag products,
15 but -- but we sold the lawn and garden business to
16 this company called Evergreen. And Evergreen then in,
17 it turn, produces the products that are sold within a
18 whole host of countries.

19 Q. Yeah. So it's not -- it's not Monsanto.
20 You are not managing that business anymore, right?

21 A. Correct.

22 Q. Okay. In fact, the only lawn and garden
23 business that you -- you manage globally for
24 Monsanto/Bayer Crop Science is the United States,
25 Canada, New Zealand, Australia?

1 A. New Zealand and Australia was included in
2 the sale to Evergreen.

3 Q. So you don't even do that in New -- New
4 Zealand and Australia on the Roundup Ready-to-Use
5 products?

6 A. On Roundup Lawn and Garden products, that
7 business was sold to Evergreen in 2018.

8 Q. So the only two countries in the world right
9 now that you, as the global Lawn and Garden guy, are
10 in charge of are Canada and United States?

11 A. Correct, plus the business of selling the
12 glyphosate to Evergreen.

13 Q. But it's not -- it's not Roundup. It is
14 glyphosate technical, right?

15 A. Yes, it is not the final formula Evergreen.

16 Q. Yeah.

17 A. But -- but part of -- also part of my
18 responsibility is to sell other active ingredients
19 that Bayer/Monsanto has to companies like Evergreen
20 and other companies that are in the lawn and garden
21 space, like a company called SPM.

22 Q. So does the Scotts agreement cover Canada
23 also?

24 A. Yes, it does.

25 Q. Does it cover any other country?

1 A. It covers all countries in North and
2 South America.

3 Q. North and South America.

4 Can you buy Roundup Ready-to-Use sold by
5 Monsanto in Brazil?

6 A. You can buy agricultural products, not lawn
7 and garden.

8 Q. Not lawn and garden?

9 A. Right.

10 We don't -- we never had business there.

11 Q. And you don't have any lawn and garden
12 business in the entire continent of South America,
13 correct?

14 A. Correct.

15 Q. You don't have any in Central America,
16 correct?

17 A. Correct.

18 Q. You don't have any in Africa, correct?

19 A. Well, Africa would be outside of North and
20 South America, so...

21 Q. Well, I -- I know that. I'm not that bad at
22 geography. But you don't sell any Monsanto --
23 Monsanto doesn't sell lawn and garden products,
24 Roundup Ready-to-Use, in any country on the continent
25 of Africa?

1 A. Right. We sold that business in 2018.

2 Q. Same is true for Southeast Asia, correct?

3 A. Correct.

4 Q. Same is true for the Caribbean, correct?

5 A. The Caribbean is part of North and
6 South America territory. So that is not part of the
7 Evergreen agreement that would fall within our area.

8 There may be some countries that carry
9 Roundup. I'm not really sure.

10 Q. Not sure.

11 A. If it did, it would be really small.

12 Q. Okay. All right. The -- you know there is
13 a difference between warnings that go on the label
14 that a lawn and garden buyer gets -- a lawn and garden
15 buyer gets like John Durnell versus an agricultural
16 product buyer, correct?

17 A. You're talking about the label on the
18 product?

19 Q. Yes, sir.

20 A. Yes. There is a difference.

21 Q. Yes. The agricultural products of Roundup
22 that are sold in the United States, they have on the
23 label don't eat, drink, or smoke around Roundup while
24 you are using it, right?

25 A. Is there a specific product you want me to

1 look at or --

2 Q. You know that, don't you?

3 A. I do know -- well, I'm not completely
4 familiar with all the things that are on an
5 agricultural label. As I answered your prior
6 question, there is additional language on there
7 because the EPA requires additional language.

8 Q. Okay. Farmers, agricultural buyers, or
9 agricultural companies that buy big amounts of Roundup
10 from Monsanto/Bayer, they have on their warning wear
11 gloves when you are using this product, right?

12 A. So every product has what is called an EPA
13 approved label. If an EPA approved product is going
14 to be used in a workplace, there is a separate
15 statute, separate requirements for products that are
16 used in the workplace versus products that are used
17 say in a residential setting.

18 Q. Those aren't EPA's laws, those are
19 Occupational Safety Health Administration laws, right?

20 A. It is in the EPA review manual. It is
21 clearly spelled out by the EPA. The source of the
22 legislation, I couldn't tell you where that came from.

23 Q. So if a worker -- say a guy that is just
24 running his own landscape business and he is going to
25 Lowe's every day to buy Roundup Ready-to-Use in his

1 business, he gets a different warning on his label
2 than a professional farmer applicator guy, right?

3 A. If a professional applicator would -- first
4 of all, highly unlikely they would buy Ready-to-Use
5 because that does not make good business sense.
6 They'd likely buy a concentrate. They'd likely buy a
7 concentrate that was designed for a professional
8 application. And yes, they -- because the product is
9 used in the workplace and because of this additional
10 law, statute, for your protection language that is
11 required, EPA requires that, there would be a
12 different set of warnings on there triggered because
13 it is a product that is for the workplace, for a
14 worker using the product.

15 Q. The average guy on the street that goes into
16 an Ace Hardware unlike a farmer does not get a warning
17 to wash their clothes immediately after they use
18 Roundup, correct?

19 A. So the --

20 Q. Just answer my question and then you can
21 explain.

22 A. Okay.

23 Q. They don't get that warning, do they?

24 A. So the warning they get, the information
25 they get, is determined by the data that accompanies

1 that product. That then determines what warning, what
2 language goes on that label. It all starts with the
3 data.

4 I'm happy to walk through what that data is.
5 But then once that data is created, given to the EPA,
6 based on review, based on the results of that data,
7 that determines what goes onto that label.

8 Q. I don't know if you answered my question.
9 But a farmer gets a warning to immediately wash his or
10 her clothes after they use Roundup, and a consumer
11 buying it at Ace Hardware does not get that same
12 warning, true or not?

13 A. So a farmer --

14 Q. True or not? If it's not true, tell me.

15 A. So farmers' warnings are going to be
16 different than a homeowner's because the farmer is
17 using --

18 Q. That's where I'm trying -- that's the point
19 I'm trying to make.

20 A. The farmer is using it in the workplace. So
21 they are subject -- that label is subject to workplace
22 requirements, the workers safety standards, and that
23 triggers a bunch of different language that has to go
24 on there that is different than what a residential
25 label would have. So to answer your question, yes,

1 there is a difference.

2 Q. So basically the most sophisticated users of
3 the Roundup products get the most stringent warnings,
4 right?

5 A. Those workers get an additional warning
6 triggered because the product is a product used by a
7 worker. It is just automatic.

8 Q. Professional applicators get a better
9 warning than a consumer going into Ace Hardware like
10 John Durnell, right?

11 A. So the EPA has the warning requirements. It
12 is first directed by what is this, is this a
13 residential or homeowner product, then you follow
14 these sets of rules. If this is a worker, then you
15 follow these sets of rules.

16 Q. If it is concentrate it is the same product,
17 right, whether you are selling it on the farm side or
18 you're selling it in the lawn and garden store, right?

19 A. The concentration can vary by product.

20 Q. Yeah. But it is your -- it's Monsanto's
21 position it doesn't matter how much glyphosate or
22 anything else is in the bottle, no matter how
23 concentrated the bottle is, that that makes no
24 difference at all, right?

25 **MS. COOK:** Objection, Your Honor. This

1 witness is not here as a Monsanto witness, subpoenaed
2 on an individual basis.

3 **THE COURT:** I guess --

4 **MS. COOK:** I guess foundation is my
5 objection.

6 **THE COURT:** If you know the company's
7 position and want to share it, go ahead. If not,
8 don't share it.

9 **THE WITNESS:** Repeat your question.

10 **MR. FRAZER:** Would you read it back to him,
11 please? I like the way I phrased it, I think.

12 (Whereupon, the record was read by the court
13 reporter.)

14 **THE WITNESS:** I'm not sure what you mean by
15 that question.

16 **THE COURT:** I don't think I understand it
17 either.

18 **MR. FRAZER:** Don't know what I mean.

19 Q. (By Mr. Frazer) Who would you call to find
20 out the answer to that question at Monsanto right now?

21 A. I don't even understand your question.

22 Q. Okay. Farmers and professionals get a
23 warning to wash their hands thoroughly after they
24 spray Roundup and consumers with lawn and garden
25 products do not get that warning, right?

1 A. Again, the warnings are driven by the data
2 and by the law that the EPA follows. Again, if it is
3 a product that is used in the workplace, a product
4 that is used by a worker, it is subject to a different
5 set of guidelines and requirements.

6 It all starts with the data, the acute
7 toxicity data. It has to go to the EPA, and then that
8 determines the appropriate -- what you are talking
9 about is PPE, Personal Protection Equipment.

10 Q. Your own employees at your manufacturing
11 facilities in Luling, Louisiana, and Muscatine, Iowa,
12 get PPE warnings, correct?

13 A. So never been to Muscatine. Only been to
14 Luling once. I don't know what PPE they wear, but I
15 do know if they work in a -- they are workers. So
16 they get warnings just like any worker would get.

17 Q. All right. Well, you are aware there have
18 been TV ads and -- showing lawn and garden users
19 wearing short pants and short sleeves and spraying
20 Roundup, right?

21 A. Right. So our TV advertising starts with
22 the EPA label. So once that EPA label has been
23 approved, again, based on the data, that determines
24 the appropriate clothing that the user should wear and
25 then our advertising would follow what that clothing

1 requirements are.

2 Q. All right. You know that users in New
3 Zealand and Australia get different warnings -- lawn
4 and garden users there get different warnings than
5 lawn and garden users in the United States, right?

6 **MS. COOK:** Objection. Foundation.

7 **THE COURT:** I'll overrule it. If he knows
8 the answer, he can answer it.

9 **THE WITNESS:** I think when you are facing
10 that way --

11 **MR. FRAZER:** I'm sorry. I apologize.

12 **THE WITNESS:** -- with the fan over here it
13 is hard to hear.

14 Q. (By Mr. Frazer) You know that lawn and
15 garden users in Australia before you sell it to
16 Evergreen --

17 A. Go ahead. I know what?

18 Q. -- get different warnings than lawn and
19 garden users in the United States, right, sir?

20 A. I don't know what the warnings were in that
21 country. I couldn't tell you.

22 Q. Wasn't that part of your responsibility?

23 A. Many years ago, yes.

24 Q. 2018 is when you sold the business, right?

25 A. That's right.

1 Q. That's five years ago, right?

2 A. Yes.

3 Q. Do you know that the Roundup Ready-to-Use
4 bottle had the word "poison" on the front of it in New
5 Zealand and Australia?

6 **MS. COOK:** Your Honor, objection. Lacks
7 foundation. This is counsel testifying.

8 **THE COURT:** Understood. If he knows the
9 answer, I'll let him answer.

10 The jury will be guided by the answers and
11 the facts that they hear, not the questions.

12 **THE WITNESS:** I don't recall what warning
13 messages that New Zealand may or may not have
14 required. What I do know is that we have -- at the
15 time had a regulatory department that was responsible
16 for ensuring that our products complied with each of
17 the country's laws.

18 Q. (By Mr. Frazer) I'll hand you what has been
19 marked as Plaintiff's Exhibit 800. You've seen these
20 products before?

21 A. I mean, they look like our international
22 Roundup products back in --

23 **MR. FRAZER:** Your Honor, we offer 800 into
24 evidence.

25 **MS. COOK:** Objection. There has been no

1 testimony that he's seen the document before. There
2 is no Bates stamp or anything.

3 **THE COURT:** Ask another question to lay the
4 foundation for this witness.

5 Q. (By Mr. Frazer) That picture fairly and
6 accurately depicts Roundup Ready-to-Use products in
7 New Zealand or Australia, right?

8 A. I don't know. I don't know where this
9 picture came from.

10 Q. You don't?

11 A. I don't.

12 Q. You don't recognizes the bottle has a
13 Roundup label on it and a picture, pretty picture, and
14 you were in charge of Australia and New Zealand?

15 A. Yes. It is a nice picture, but again, I
16 don't know where this picture came from or where it
17 was used or if it was ever used.

18 **MR. FRAZER:** I'd like to hear his answer to
19 my question, Your Honor, before the objection. I'd
20 like for the court reporter to pull that up for me to
21 see it real quickly, if that's okay?

22 **THE COURT:** What are you asking, Mr. Frazer?

23 **MR. FRAZER:** I want to see what his answer
24 was when I handed him this because I can't remember
25 what it was. I want to be accurate. Got a guy on the

1 stand with a picture in front of him of his product
2 and he doesn't know what it is. I want to see what he
3 said before the objection was lodged.

4 **THE COURT:** Can you pull that up, Sherry?

5 (Whereupon, the court reporter read back the
6 requested testimony.)

7 Q. (By Mr. Frazer) You said -- before the
8 objection you said this looks like our international
9 products, right?

10 A. I'm talking about the trigger sprayer and
11 Roundup logo on there have -- is what we used in our
12 international products.

13 Q. So this picture fairly and accurately
14 depicts that, right?

15 A. I don't know where this picture came from.

16 Q. That was not my question, sir.

17 **THE COURT:** Do you have an objection,
18 Ms. Cook?

19 **MS. COOK:** Yes, Your Honor. Asked and
20 answered and becoming argumentative.

21 **THE COURT:** I believe his answer is clear,
22 that he doesn't know that this is the product in the
23 picture. And I'll ask you to move on, Mr. Frazer.

24 Q. (By Mr. Frazer) You've never seen a picture
25 of Roundup, huh? Is that what you're saying?

1 A. I've seen --

2 **MS. COOK:** Misstates testimony, Your Honor.

3 **MR. FRAZER:** I'll withdraw that question.

4 903, please.

5 **THE WITNESS:** I can't hear you.

6 Q. (By Mr. Frazer) Hand you what has been
7 marked as Plaintiff's Exhibit 903. Do you recognize
8 this as a New Zealand warning on a bottle of Roundup
9 Ready-to-Use?

10 A. I don't know. I don't know if it is or not.

11 Q. Well, that's my question. Is it? Read it.
12 Look at it. It says Roundup weedkiller, right, with a
13 trademark?

14 **MS. COOK:** Asked and answered, Your Honor.

15 **THE COURT:** That wasn't asked and answered,
16 so I'll let him ask that.

17 **THE WITNESS:** I do see the word "Roundup" on
18 there. I see Evergreen written at the bottom.

19 Q. (By Mr. Frazer) So is this a warning that's
20 on an Evergreen bottle in New Zealand? It says
21 Evergreen Garden Care New Zealand Limited, doesn't it?

22 A. I see those words on there.

23 Q. This is a warning?

24 A. Again, this is something that they must have
25 created. I've never seen this before.

1 **MR. FRAZER:** Marked for identification, Your
2 Honor. I move this into evidence.

3 **MS. COOK:** Your Honor, no foundation for
4 this document, and it is not a Monsanto Bates stamp.

5 **THE COURT:** I'm not going to admit it at
6 this time. We can take it up again later.

7 Q. (By Mr. Frazer) Let's look at 910. Let's
8 look at Exhibit P910. You see that this is an
9 Evergreen Garden Care UK Limited Survey in England
10 Fast Action Roundup Ready-to-Use weedkiller document?

11 A. I see the words "Evergreen" on there. I've
12 never seen this document before, though.

13 Q. Never seen this?

14 A. That's correct.

15 Q. Or any of the pictures that are on here?

16 A. Correct.

17 Q. You are head of lawn and garden globally?

18 A. This is a different company. This is
19 Evergreen. This is after we sold it. I've never seen
20 this document before since we --

21 Q. Now, this is all on Evergreen then, right?

22 A. This is a document that's got the words
23 Evergreen on it and I've never seen it before.

24 Q. We can see at the bottom it says Roundup is
25 a registered trademark and used under license, right?

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JAMES GUARD,

having been previously sworn, testifies:

REDIRECT EXAMINATION

BY MR. FRAZER:

Q We left off yesterday talking about what's been marked as Plaintiff's Exhibit 754A.

Do you remember that?

A I do, yes.

Q Did you do anything after you left the courtroom yesterday to educate yourself on that document at all?

1 A No, I did not.

2 Q All right.

3 MS. COOK: Your Honor, I actually couldn't
4 hear the exhibit number.

5 MR. FRAZER: It's 754A.

6 THE COURT: It's the pullout from the big
7 stack yesterday.

8 BY MR. FRAZER:

9 Q Do you recall that you gave a deposition back
10 on September 13, 2018, in a case here in St. Louis City
11 styled Earl Neal and others v. Monsanto Company?

12 A What year was the deposition?

13 Q September 13, 2018.

14 A Yes, I recall doing a deposition then.

15 Q Do you recall being asked about that
16 particular document in that deposition?

17 A I do, yes.

18 Q Would you like to see what you said then as
19 opposed to what you said yesterday?

20 MS. COOK: Your Honor, I don't think this is
21 proper use of a deposition.

22 THE COURT: Let's present him with the
23 deposition.

24 MS. COOK: May I also have a copy?

25 MR. FRAZER: I don't have an extra copy.

1 MS. COOK: You don't have a copy?

2 MR. FRAZER: I have my copy. It's not an
3 exhibit.

4 I have one for the witness, your Honor.

5 THE COURT: Do me a favor and at least show
6 Ms. Cook what you're referring to before --

7 MR. FRAZER: Okay. It's marked as Plaintiff's
8 Exhibit 1602, so they have it.

9 MS. COOK: Your Honor, may I see the page that
10 counsel's referring to?

11 MR. FRAZER: I haven't gotten there yet, your
12 Honor.

13 THE COURT: Let's go to sidebar.

14 (Counsel approached the bench and the
15 following proceedings were had:)

16 MS. COOK: I object to the foundation on the
17 document. There's no indication that he's seen it
18 before. So it goes, it goes back to here. They
19 marked it as an exhibit. He doesn't know him.
20 Doesn't know who it is. There's objections to
21 foundation throughout, and they're just reading the
22 document in a deposition just like he was trying to
23 do yesterday and there's still no foundation.

24 MR. FRAZER: He's testifying as the official
25 company representative on this document, your

1 Honor.

2 MS. COOK: No. It's outside the scope
3 foundation objections in this, and he's not here
4 as --

5 THE COURT: I'm going to let him read the
6 limited portions that he's highlighted to the
7 testimony, and we'll move on. That's going to end
8 this line of questioning about this document.
9 Okay?

10 MR. FRAZER: Correct.

11 (Proceedings resumed in open court.)

12 BY MR. FRAZER:

13 Q At page 164, if you want to look at your copy
14 there, you may, but I have it right up here.

15 You were asked by Mr. Jerry Kristal:

16 "QUESTION: And you have no basis to disagree
17 with Mr. Wratten's statement that the
18 proportion of label statements that are
19 mandatory and based on regulatory data
20 requirements is small, perhaps 5 percent or
21 less of the label text; correct?"

22 You were asked that question?

23 A Yes, I see that on there. I recall that.

24 Q And your answer was:

25 "ANSWER: I have no reason to agree or

1 disagree with that statement."

2 Correct?

3 A Yes.

4 Q Is that true today?

5 A Yeah, today after, you know, we had the
6 conversation, you and I had that conversation about a
7 year and a half ago, I did look and it -- and I don't
8 know that that number is right, but I couldn't give you
9 a better number.

10 Q Can't give us a better number. Okay. 5
11 percent or less.

12 Then you were asked on the very next page --

13 MS. COOK: Your Honor, out of optional
14 completeness, can we read the Q and A after that
15 one?

16 THE COURT: Do you have a problem reading the
17 Q and A in between, Mr. Frazer?

18 MR. FRAZER: Your Honor, I think that's for
19 her on direct, but we can do that. I don't care.
20 Here. Read the whole thing. I'm not going to
21 state it. I'll show it to the jury. I'm not
22 hiding anything.

23 MS. COOK: Your Honor, the one I was, "You
24 have no basis to disagree?"

25 "I have no reason to believe it or not believe

1 it." That was the only one I was --

2 THE COURT: Okay. Then let's move on to the
3 next page, Mr. Frazer.

4 MR. FRAZER: I thought she said the whole
5 page.

6 THE COURT: She seems satisfied with what
7 we've done.

8 BY MR. FRAZER:

9 Q On the very next page in the same examination,
10 it said:

11 "QUESTION: You're more than welcome to read
12 the whole letter obviously, but I want to
13 focus your attention on the last paragraph of
14 the first page. Mr. Wratten writes to the EPA
15 on Monsanto letterhead the following, quote,
16 The proportion of label statements that are
17 mandatory and based on regulatory data
18 requirements is small, perhaps 5 percent or
19 less of the label text, end quote. Do you see
20 that?"

21 And your answer was, "Yes"; correct?

22 A Yes.

23 Q And we know that, looking at Plaintiff's
24 Exhibit 754A at that time, Mr. Wratten was the manager
25 of all regulations at Monsanto; correct?

1 A I don't know who he is, so I don't know what
2 title he had.

3 MR. FRAZER: Your Honor, we move 754A into
4 evidence.

5 MS. COOK: Same objection.

6 THE COURT: I'll admit it over the objection.

7 MR. FRAZER: Thank you, your Honor.

8 BY MR. FRAZER:

9 Q You can set that aside, sir.

10 You talked yesterday about label requirements.

11 Do you remember that?

12 A I do.

13 Q And we did the highlighting and all that sort
14 of thing.

15 Do you remember that?

16 A Yes, I remember.

17 Q And the -- what I want to do right now is look
18 at some labels, and I want to go to Plaintiff's 1340.
19 Here it is.

20 MS. COOK: Thanks.

21 BY MR. FRAZER:

22 Q My question to you simply, Mr. Guard, is this
23 a Monsanto label, P1340?

24 A Yes. This is a Roundup PowerMAX, which is an
25 agricultural label.

1 MR. FRAZER: Your Honor, I move P1340 into
2 evidence.

3 THE COURT: Ms. Cook?

4 MS. COOK: It's not marked as a Monsanto
5 document, but I have no objection.

6 THE COURT: Then I will admit it.

7 BY MR. FRAZER:

8 Q I'll hand you what's been marked as
9 Plaintiff's Exhibit 816 -- you can set this one aside,
10 sir -- and ask you the same question. Is that a
11 Monsanto warning label?

12 A This is a packaging label.

13 Q For a consumer residential product; correct?

14 A That's correct.

15 MR. FRAZER: Your Honor, I move 816 into
16 evidence.

17 MS. COOK: No objection, your Honor.

18 THE COURT: It will be admitted.

19 BY MR. FRAZER:

20 Q You said yesterday that -- I want to
21 understand this.

22 You'll agree with me that Monsanto can request
23 to make changes to its own labels; right?

24 A Monsanto is the one that initiates changes to
25 its labels.

1 Q Monsanto initiates.

2 So I'm going to hand you what's been marked as
3 Plaintiff's 1335.

4 Do you see that this is a Monsanto Company
5 document?

6 A Yeah, I see this is dated before I joined the
7 company. I see Monsanto's letterhead, but --

8 Q It's on Monsanto letterhead. It's
9 hand-delivered to somebody at the EPA on August 6, 2007;
10 right?

11 A Yeah, but I've never seen this before.

12 Q That's less than a year before you joined
13 company; right?

14 A A couple years before I joined in '09.

15 Q So have you ever seen this document?

16 A I have not.

17 MR. FRAZER: Your Honor, we move to admit
18 1335.

19 MS. COOK: Your Honor, I don't have an
20 objection to the document coming in just the lack
21 of foundation with the witness.

22 THE COURT: Well, I'll admit the document as a
23 Monsanto document.

24 BY MR. FRAZER:

25 Q I'll hand you now, Mr. Guard, what's been

1 marked as Plaintiff's Exhibit 1331.

2 A Do you still need this one?

3 Q No, sir. If I hand you something else, we're
4 done with it.

5 A Fair enough.

6 Q You see this is an old document?

7 A I do. I see this is from 1974.

8 Q This is a label change request by Monsanto;
9 correct?

10 A I don't know. I've never seen this document
11 before.

12 Q Well, you see it's a business record of
13 Monsanto. It's got the MONGLY number down in the bottom
14 right-hand corner?

15 A I see that, but I've never seen this document
16 before.

17 Q Do you see it's produced confidential,
18 produced pursuant to a protective order?

19 A I was in elementary school when this
20 document -- the date on here, so I've never seen it
21 before.

22 Q Yeah, by the way, where were you -- how old
23 were you in '83 on that document you testified about to
24 yesterday?

25 A 19.

1 Q 19. All right.

2 So you just pointed out you were in elementary
3 school then. What you were a first-year college
4 person -- you're a freshman in college in 1983?

5 A I was, yes.

6 Q But you're not able to testify on this
7 document because you were in the 8th grade at the time?

8 A So are you referring to the date on that
9 bottle of the artwork that we saw?

10 Q I'm referring to the dates you went back to
11 1983 on yesterday.

12 A 1983 is when we first launched the
13 concentrated glyphosate for lawn and garden, and that's
14 a letter that I looked up in our files.

15 Q But you didn't look up that document?

16 A I've never seen this document before. I don't
17 even know what this document is.

18 MR. FRAZER: Your Honor, we move Plaintiff's
19 1331 into evidence.

20 MS. COOK: Your Honor, I have no problem with
21 the letter coming in, just that he hasn't seen it.

22 THE COURT: Then I'll admit it as a Monsanto
23 record.

24 BY MR. FRAZER:

25 Q Yesterday you were asked about safety data

1 sheets by Ms. Cook.

2 Do you remember that?

3 A Yes.

4 Q All right. 752. I'll hand you what's been
5 marked as Plaintiff's Trial Exhibit 752. Is that a
6 safety data sheet for Monsanto Company lawn and garden
7 product?

8 A Yes, it is.

9 Q And it's the commercial side of the lawn and
10 garden products; correct?

11 A It's for lawn and garden yes.

12 Q Well, it says commercial product; right?

13 A It does on the top of the safety data sheet.

14 Q And just to refresh the jury's recollection, a
15 safety data sheet goes into a workplace for workers that
16 might be using a product that is covered by a safety
17 data sheet; correct?

18 A It's not for workers that might be using the
19 product. For people that are going to use the products,
20 the EPA label that we've been talking about, that's
21 what -- that's what that document is for, the people
22 that are using it.

23 This is for any situation that might occur in
24 the workplace.

25 Q For the workplace; right?

1 A Right.

2 Q Not for -- this is not at a Lowe's or Ace
3 Hardware store?

4 A Yes, that's the workplace. This product is
5 sold at an Ace Hardware or a Lowe's, so yes, this would
6 be --

7 Q For the workers there?

8 A For any worker at any workplace where this
9 material might be.

10 Q Not consumers or buyers like John Durnell;
11 right?

12 A It's not written for consumers. It's written
13 for -- but consumers can look these up if they'd like.

14 MR. FRAZER: Your Honor, I move Plaintiff's
15 Exhibit 752 into evidence.

16 MS. COOK: Your Honor, may we approach just
17 real quick?

18 (Counsel approached the bench and the
19 following proceedings were had:)

20 THE COURT: Ms. Cook.

21 MS. COOK: So your Honor, I have no problem
22 with this coming into evidence. The only thing I
23 would say is I asked him very briefly is there a
24 different label, what's that called, who regulates
25 that. I didn't get into the document. So can I

1 have an opportunity to question him about new
2 documents beyond the scope?

3 MR. FRAZER: May I respond?

4 THE COURT: I don't think you need to.

5 I believe that both in the direct and the
6 cross the concept of safety data sheets was raised.
7 I'm going to let him ask his questions, and I'm not
8 going to limit you following up on your recross or
9 whatever we're calling it. I think you both
10 talked --

11 MR. FRAZER: But as long as I get a response
12 to that.

13 THE COURT: At some point I'm going to cut it
14 off.

15 MR. FRAZER: I understand.

16 THE COURT: We're not going to go back and
17 forth 20 times.

18 MR. FRAZER: But yesterday she asked him about
19 these kind of documents.

20 THE COURT: And I'm going to give you leeway
21 to ask about it now and she can ask about it in her
22 examination.

23 MS. COOK: Thank you, your Honor.

24 THE COURT: Mr. Frazer.

25 Do you want to preserve your motion in limine?

1 MS. COOK: Yes, I do.

2 THE COURT: Because in the motion in limine I
3 ruled this was admissible, and I want to ask if you
4 want to preserve --

5 MS. COOK: Correct. I do.

6 THE COURT: I'm going to stick with my ruling
7 and rule it's still admissible.

8 MS. COOK: Thanks.

9 (Proceedings resumed in open court.)

10 MR. FRAZER: Your Honor, did we move 752 into
11 evidence?

12 THE COURT: I admitted it at sidebar, I
13 believe. To the extent I didn't, it's admitted
14 now.

15 BY MR. FRAZER:

16 Q Mr. Guard, I'll hand you what's been marked as
17 Plaintiff's Trial Exhibit 2268, sir.

18 Have you ever seen this document before?

19 A I have not.

20 Q Do you see that it's a Muscatine Iowa plant
21 document? Do you see that?

22 A I see the words "Muscatine Iowa." I don't
23 know if that's what this is, though.

24 Q That's a Monsanto manufacturing plant for
25 Roundup; is that right?

1 A For the technical, but for the lawn and garden
2 products, no.

3 Q For the technical, not the lawn and garden
4 products?

5 A Right.

6 Q All the lawn and garden products get put
7 together where?

8 A They're manufactured at the Scott's plant in
9 Fort Madison, Iowa.

10 Q That's today; right?

11 A That's for as long as I can recall.

12 Q You know, as a matter of fact, that the
13 products were manufactured at one time exclusively in
14 Luling, Louisiana; right?

15 A I don't know that to be true. I don't think
16 that's correct.

17 Q You don't know that?

18 A I don't think that's correct. I've never
19 heard that.

20 Q Do you know that they were manufactured at
21 Luling, Louisiana?

22 A No.

23 Q You don't know that?

24 A I don't think they've ever been there. I
25 never heard that, no.

1 Q Okay. But all the technical glyphosate gets
2 shipped to -- all the glyphosate that Monsanto
3 manufactures in Luling or Muscatine today gets shipped
4 to the Scott's plant in Fort Madison, Iowa?

5 A I did not hear the middle part of your
6 sentence because you were looking at the windows.

7 Q So all of the glyphosate that's manufactured
8 in Luling and Muscatine that is used in Fort Madison,
9 Iowa, that's where it comes from; right?

10 A Yes, of course.

11 Q And what happens at Fort Madison, Iowa, is the
12 stuff gets put into a container; right?

13 A Well, the final product gets formulated, which
14 means that all the ingredients get put into the
15 batching, and that batching is bottled or packaged into
16 containers.

17 Q Those ingredients would include glyphosate?

18 A Right.

19 Q Water?

20 A Yes.

21 Q Formaldehyde?

22 A No.

23 Q NNG?

24 A No.

25 Q 1,4-dioxane?

1 A No.

2 Q Surfactant?

3 A Yes.

4 Q Something to give it a fragrance, an aroma?

5 A No.

6 Q Defoaming agent?

7 A Yes.

8 Q So some of them get put in there and some of
9 don't. Is that your testimony?

10 A Depending on the formula. Those are some --
11 the ingredients I said yes to, those are some of
12 ingredients or class of ingredients.

13 Q That's good enough.

14 MR. FRAZER: Your Honor, I move in 2268.

15 MS. COOK: Your Honor, I have a foundation and
16 relevance objection here.

17 THE COURT: Well, I'm going to overrule and
18 note your objection. I'm going to admit it as a
19 Roundup corporate document.

20 MR. FRAZER: Thank you.

21 BY MR. FRAZER:

22 Q Hand you -- sorry. Wrong protocol. It's
23 Friday, so I'm trying to as fast as possible.

24 Hand you what's been marked as Plaintiff's
25 Exhibit 2269. Do you have that, sir?

1 A (No response.)

2 Q Do you have that exhibit in front of you, sir?

3 A I do, yes.

4 Q Is that a Monsanto business document?

5 A I've never seen this document before, so I
6 can't tell you.

7 Q Do you see that it's got a production
8 narrative down at the bottom of the page, where -- what
9 files it comes from. It comes from USB disk, native,
10 MONGLY number so and so, confidential.

11 Do you see that?

12 A I see those words, yes.

13 Q Have you ever seen this before?

14 A I've never seen this document before.

15 MR. FRAZER: Your Honor, I move this in as a
16 business record of Monsanto.

17 THE COURT: Ms. Cook?

18 MS. COOK: Same objections.

19 THE COURT: I'm going to reserve on this one.
20 We'll take it up at our next break.

21 MR. FRAZER: Thank you, your Honor.

22 BY MR. FRAZER:

23 Q I hand you what's been marked as Plaintiff's
24 Exhibit 1895, Mr. Guard.

25 Do you see at the bottom of the second page it

1 says "Monsanto internal," and on the front page it lists
2 a MONGLY, M-O-N-G-L-Y, number?

3 Do you see that?

4 A I see the M-O-N on the front of the first
5 page.

6 Q Do you see that at the top the page it says,
7 "Monsanto, Luling, Plant Safety Manual"?

8 A I see the words "Monsanto Luling".

9 Q Have you ever seen this document before?

10 A No.

11 MR. FRAZER: Your Honor, I move Plaintiff's
12 1859 into evidence.

13 THE COURT: Ms. Cook.

14 MS. COOK: Your Honor, foundation, relevance,
15 and then subject to one of our motions.

16 THE COURT: This one I will admit over
17 objection as a Monsanto document.

18 MR. FRAZER: Just when I said I was trying to
19 move fast I jinxed myself.

20 BY MR. FRAZER:

21 Q I'm going to hand you what's been marked as
22 Plaintiff's Exhibit 1334, sir.

23 Do you see that this is an internal Monsanto
24 Company email?

25 A I see it's an email before I started with the

1 company, but I've never seen this.

2 Q Do you see that it relates to regulatory
3 toxicology and warnings?

4 A I don't know if that's what it is or not.

5 Q Have you ever seen this one?

6 A No. I've never seen this document before.

7 MR. FRAZER: Sorry. Your Honor, plaintiffs
8 move in P1334 as a Monsanto business record.

9 THE COURT: Ms. Cook.

10 MS. COOK: Your Honor, relevance, foundation.
11 This one is beyond the scope. It has to do with
12 California, nothing to do with what I covered with
13 Mr. Guard.

14 THE COURT: I'll admit it as a Monsanto
15 document over objection.

16 MR. FRAZER: Thank you, your Honor.

17 BY MR. FRAZER:

18 Q You'll agree with me that the warnings that go
19 on the label that you talked about with Ms. Cook
20 yesterday are for what's called acute toxicity; right?

21 A That is some of the data that is submitted;
22 correct.

23 Q The signal word for it is acute toxicity;
24 right?

25 A The signal word is determined by looking at

1 all the data, including the acute toxicity data.

2 Q The don't get it in your eyes is for acute
3 toxicity. You don't want to irritate the eyes; correct?

4 A Correct.

5 Q And acute toxicity is what happens short-term
6 to somebody that gets it in their eyes, for instance;
7 right?

8 A Correct. That's what acute means. Correct.

9 Q And "Keep out of reach of children," that's on
10 every pesticide in the United States of America; right?

11 A That's right, yes.

12 Q It's nothing special to Roundup; right?

13 A Correct.

14 Q Okay. You know that if Monsanto on a Roundup
15 label makes a true statement that gives false or
16 misleading impression to a consumer that that would be
17 considered misbranding and illegal; correct?

18 A Right. You cannot put misleading information
19 on a label.

20 Q The whole label is designed not to give any
21 misleading impressions to a consumer who is trying to
22 make a purchase decision; right?

23 A Or using it; correct.

24 Q All right. You'll agree with me that there's
25 no Roundup Ready-to-Use product in the lawn and garden

1 segment that is 100 percent glyphosate?

2 A That's correct. There's no product like that.

3 Q And you'll agree with me there's no Roundup
4 product in the lawn and garden segment that's all
5 glyphosate and all water 100 percent?

6 A No, there's not -- most of it is water,
7 though. You're right.

8 Q All right. You talked with Ms. Cook about the
9 ITO business. That's industrial, turf and ornamental,
10 ornamental?

11 A Correct. Or the -- what we call the
12 professional business.

13 Q Monsanto sold that business off; right?

14 A Monsanto sold -- no. Monsanto never sold that
15 business.

16 Q Still running ITO today?

17 A That's a piece of what -- I have some of that
18 business, yes.

19 Q I'm sorry. I was under the impression that
20 sold. Thank you for that clarification.

21 Have you ever been told by anybody who works
22 in the toxicology department at Monsanto during your
23 entire tenure at Monsanto that you, Jim Guard, or the
24 lawn and garden group cannot say that formulated Roundup
25 is not carcinogenic?

1 A I have never been told that, that it's -- it
2 causes cancer. In fact, they've told me that it does
3 not cause cancer.

4 Q My question was not that. I can see why you
5 wanted to say that.

6 A Sure.

7 Q My question is simply, has anybody in the
8 toxicology department, including Donna Farmer --

9 A Right.

10 Q You know who she is; right?

11 A I do know Donna Farmer.

12 Q Has anybody in that toxicology department,
13 including Donna Farmer, ever told you that you cannot
14 say that Roundup does not cause cancer, the formulated
15 product Roundup?

16 A Correct. And they have -- they have told me
17 that in fact it does not cause cancer.

18 Q You're going to keep putting that in there.
19 Everybody understands why you're doing that.

20 MS. COOK: Your Honor, objection.

21 THE COURT: What are you objecting to,

22 Ms. Cook?

23 MS. COOK: The argument.

24 THE COURT: Let's ask a question, Mr. Frazer.

1 BY MR. FRAZER:

2 Q My question is simply this: You have never
3 been told by anybody at the toxicology department at
4 Monsanto, including Donna Farmer, that you cannot say
5 that formulated Roundup does not cause cancer; correct?

6 A So as I've said before, that's right. They've
7 never told me that, and they have told me in fact that
8 it does not cause cancer. Just the opposite of what
9 you're suggesting.

10 Q You can't go outside to the public today as
11 the head of lawn and garden and make that statement, can
12 you?

13 A I can tell you it doesn't cause cancer.

14 Q You don't put that on the label that it
15 doesn't cause cancer, do you?

16 A No, we do not.

17 MR. FRAZER: No further questions.

18 THE COURT: Ms. Cook?

19 MS. COOK: No questions.

20 THE COURT: All right. Mr. Guard, thank you.

21 You're free to step down.

22 THE WITNESS: Thank you.

23 THE COURT: Are plaintiffs ready to call their
24 next witness?