

**IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI, AT KANSAS CITY**

ALLAN SHELTON, et al.,)	
)	
Plaintiffs,)	Case No. 1816-CV17026
)	
v.)	Div. 13
)	
MONSANTO COMPANY, et al.,)	
)	
Defendants.)	
)	

**MONSANTO COMPANY’S MOTION *IN LIMINE* NO. 16 TO EXCLUDE ANY
EVIDENCE, ARGUMENT, OR REFERENCE TO BAYER’S DECISION TO
DISCONTINUE GLYPHOSATE-BASED ROUNDUP SALES**

I. INTRODUCTION

Defendant Monsanto Company (“Monsanto”) respectfully submits this motion *in limine* to exclude evidence, argument, or reference to Bayer’s recent decision to discontinue sales of glyphosate-based Roundup in U.S. Lawn and Garden markets beginning in 2023 in order to manage the litigation risk imposed by lawyer-driven lawsuits. That decision is irrelevant to the merits of this case and any reference to it by Plaintiff would be prejudicial and risk juror confusion. *See Moon v. Hy-Vee, Inc.*, 351 S.W.3d 279, 285 (Mo. App. W.D. 2011).

II. ARGUMENT

Monsanto’s decision to partially discontinue glyphosate-based Roundup sales is irrelevant to whether Roundup caused Plaintiff’s NHL for numerous reasons, including because that business decision was not made based on any safety concerns about the product. On its face, Bayer’s press release expressly states that the removal decision “was made exclusively to manage litigation risk and not because of any safety concerns.” Ex. A, Jul. 29, 2021 Bayer Press Release. In fact, the product will remain on the market in U.S. professional and agricultural markets, where there have

been far fewer litigation claims made. *Id.*; see also Ex. B, *Stephens v. Monsanto*, No. CIVSB2104801 (Super. Ct. Cal.) (9/27/2021 Proceeding Tr.) at 137:20-138:8 (“Q: . . . Is it your understanding that the company plans to phaseout (sic) sales of Roundup? A. No. Q. Well, is any part of Roundup sales going to be phased out, lawn and garden, for example, or agricultural? A. Yes, the glyphosate -- the lawn and garden product with glyphosate in it, will be gone from lawn and garden market. Q. Okay. Does that mean that some Roundup users are still going to be able to purchase the product? A. Yes. Q. Who is that? A. Farmers, professional applicators, people like that.”). Plaintiff has no evidence that the decision to partially discontinue glyphosate-based Roundup sales is being made for any other reason because there is none.

Second, allowing evidence of the decision to partially discontinue glyphosate-based Roundup sales also would be misleading and prejudicial because it might mislead the jury to think that the decision was made due to safety concerns or pressure from regulators. See *Moon*, 351 S.W.3d at 285. But that also is not the case. To the contrary, EPA and regulators around the world continue to approve Roundup as a safe product.

Third, moreover, if Plaintiff is allowed to reference this decision, Monsanto would be required to introduce evidence putting that decision in context, creating an unnecessary and distracting mini-trial on the issue. *Id.* Among other things, Monsanto would need to explain how plaintiffs’ attorneys have used advertising to recruit plaintiffs to file thousands of lawsuits, the fact that the filing of a lawsuit says nothing about its merits, and the financial pressure that such litigation can impose on a company even when those lawsuits lack merit. Introduction of this evidence would waste the jury’s time and risk potential confusion—the risk of which is particularly unjustified given how irrelevant this business decision is to the merits of the case.

III. CONCLUSION

For these reasons, Monsanto respectfully requests this Court preclude evidence, argument, or reference to Bayer's decision to discontinue glyphosate-based product sales in the U.S. Lawn and Garden Market.

DATED: December 17, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2021, the foregoing was electronically filed with the Clerk of the Court for Jackson County, Missouri using Missouri Case Net which sent notification of such filing to all persons listed in the Court's electronic notification system.

/s/ Timothy J. Hasken _____