

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

ALLAN SHELTON,

Plaintiff,

v.

MONSANTO COMPANY,

Defendants.

Case No. 1816-CV17026

Division No. 13

**PLAINTIFF'S RESPONSE TO DEFENDANT 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**

COMES NOW Plaintiff Allan Shelton, by and through his undersigned counsel, and for his Response to Defendant 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 states:

Monsanto has acknowledged the risk that Roundup is a defective product that poses health risks to residential and consumer users by unilaterally withdrawing it from the U.S. market beginning in 2023, while under no regulatory pressure to do so. This unilateral act by Monsanto should be admissible at trial as evidence that the Company could withdraw the product from whichever markets and/or uses it wanted to and whenever it wanted to do that. Monsanto, as is typical for its entire conduct around decades of Roundup sales and marketing, has publicly created a subterfuge for the withdrawal by blaming civil litigation in the U.S. brought by tens of thousands of cancer victims for their diagnoses and sufferings from non-Hodgkins lymphoma.

For Monsanto to make such public statements and then to seek to prohibit those excuses

from being used against it is improper and is not the basis for a proper motion *in limine*. If such a decision were actually made due to the litigation and the statement references the litigation, Monsanto has placed this issue squarely into play and should not be allowed to run or benefit from it.

Furthermore, the details of 2023 withdrawal are evidence that Bayer/Monsanto could have chosen to withdraw Roundup as a product in the U.S. at any time in the history of Roundup sales, even temporarily, and that no regulatory or governmental approval of any kind was or is required for Monsanto to exercise its good discretion in so doing. In fact, Brett Begemann, in his deposition, acknowledged that Roundup could have been withdrawn at any time and that this was purely an internal decision. **Exhibit 1**, Begemann depo. at pp. 16 and 133-141.

Defendant complains that if its public statements are allowed to be brought into the trial that it would need to explain those statements and that this would somehow waste the jury's time and risk potential confusion. That is not a valid defense for why a corporation should not have its public statements referenced in trial and in no way unfairly prejudices Defendant. To the contrary, the Plaintiff suspects that Monsanto cannot defend its made-up excuses for deciding to shelve Roundup in the household marketplace. It also shows that the tepid warnings provided to consumers do not work, are ineffective, and incapable of being remedied. Granting of the motion, however, would certainly be unfairly prejudicial to Plaintiffs.

Use of such statements and decisions is appropriate and will not confuse the jury or unfairly prejudice Monsanto. Based on the forgoing, Plaintiff respectfully requests the Court enter an Order denying this motion *in limine* No. 16 in its entirety.

DATED: January 7, 2022

Respectfully submitted,

/s/W. Wylie Blair

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been served by means of electronic filing and served upon all counsel of record on this 7<sup>th</sup> day of January, 2022.

*/s/ W. Wylie Blair* \_\_\_\_\_