

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

CORNELIUS KILGORE and LABOMMIE
KILGORE,

Plaintiffs,

v.

MONSANTO COMPANY, et al.,

Defendants.

C.A. No. 22CV-21-138

**DEFENDANT MONSANTO COMPANY’S MOTION FOR RECONSIDERATION OR,
IN THE ALTERNATIVE, APPLICATION OF HAGUE CONVENTION PROCEDURES**

Defendant Monsanto Company (“Monsanto”), by and through its undersigned counsel, for its Motion for Reconsideration or, in the Alternative, Application of Hague Convention Procedures, submits the following:

1. On April 27, 2022, Plaintiffs served a notice of deposition on Monsanto for the deposition of Mr. Werner Baumann, the Chief Executive Officer (CEO) and highest-ranking employee of non-party Bayer AG. On May 17, 2022, Defendant Monsanto Company filed a motion for protective order seeking to strike the notice and prevent the deposition. A hearing occurred July 26, 2022, at the conclusion of which the Court determined Mr. Baumann’s deposition must proceed. On August 19, 2022, the Court entered an order denying Monsanto’s motion and directing Mr. Baumann to give his deposition within ninety days of the date of the order.

2. Monsanto respectfully asks the Court to reconsider its prior order and to strike the notice of deposition of Mr. Baumann. In the alternative, should the Court require that the

deposition go forward, Monsanto asks the Court to modify its order to require the Plaintiffs to conduct the deposition in accordance with the Hague Convention.

3. Rule 60(a) of the Arkansas Rules of Civil Procedure affords the Court broad discretion to reconsider prior orders to correct mistakes or generally to “prevent the miscarriage of justice.” Ark. R. Civ. P. 60(a); *Fritsinger v. Beene*, 80 Ark. App. 416, 421, 97 S.W. 3d 440, 442 (2003).

4. Respectfully, the Court should reconsider its order to correct mistakes and to prevent the miscarriage of justice for several reasons. First, in applying the “wait and see approach” to the apex doctrine/Rule 26(c), the Court did not determine whether the discovery already produced to Plaintiffs included the information Plaintiffs seek from Mr. Baumann or whether less burdensome avenues of discovery were available, instead reasoning that Mr. Baumann’s deposition was likely inevitable given the number of depositions taken in other Roundup litigations in state and federal courts. This reasoning overlooks the important reality that the document and deposition discovery already generated in other Roundup cases across the country—which has been produced to the Plaintiffs in this case—already includes the information Plaintiffs seek from Mr. Baumann. As demonstrated herein, nearly all the topics included in Mr. Baumann’s deposition notice have been covered by materials Monsanto has produced to Plaintiffs and has been testified to by witnesses who, unlike Mr. Baumann, have specific knowledge of the issues in the case.

5. Second, compelling Mr. Baumann’s deposition as noticed violates German law, principles of comity between the United States and Germany, and Mr. Baumann’s rights as a German citizen. In its ruling, the Court did not analyze whether its finding that Mr. Baumann was a proper “managing agent” under Rule 30(b)(1) of the Arkansas Rules of Civil Procedure also

conferred the Court with jurisdiction to order Mr. Baumann's deposition pursuant to Rule 30, as opposed to the procedures of the Hague Convention. As detailed herein, Plaintiffs' notice of deposition does not conform to the Hague Convention and German law, and the deposition should not go forward. At minimum, if the Court requires the deposition to proceed, it should require the Plaintiffs to comply with the Hague Convention and German law.

6. Accordingly, Monsanto respectfully prays that the Court (1) modify its order, grant Monsanto's request for a protective order, and strike Plaintiffs' notice of deposition of Mr. Baumann, or (2) in the alternative, the Court should modify its order to require Plaintiffs to proceed in accordance with the requirements of the Hague Convention and in conformity with German law.

7. In support of this motion, Monsanto submits a brief, exhibits, and attachments thereto, each of which is incorporated herein as if set forth verbatim.

WHEREFORE, for the foregoing reasons, Defendant Monsanto Company respectfully prays that the Court grant Monsanto's Motion for Reconsideration, for relief sought herein, and for all other just and proper relief to which it may be entitled.

Dated: August 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lyn P. Pruitt, hereby certify that on August 25, 2022, the foregoing pleading was filed with the Court's electronic filing system which shall cause notification to be sent to all counsel of record:

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