

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

- - -

IN RE: PARAQUAT PRODUCTS	:	
LIABILITY LITIGATION,	:	
MAY TERM, 2022 NO. 559	:	
-----	:	
BILL MERTENS,	:	FEBRUARY TERM, 2022
Plaintiff	:	
VS.	:	
SYNGENTA CROP	:	
PROTECTION, LLC, et al.	:	
Defendants.	:	NO. 00931

- - -

MOTIONS & DEPO DESIGNATIONS

- - -

January 21, 2026

- - -

Courtroom 443, City Hall
Philadelphia, Pennsylvania

- - -

BEFORE: THE HONORABLE CRAIG R. LEVIN, J

- - -

REPORTED BY: Judith J. Hall, C.R.R., R.M.R.
Official Court Reporter

JUDITH J. HALL, C.R.R., R.M.R.

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1 (Court in Session Wednesday,
2 January 21, 2026 at 9:24 a.m..)

3 - - -

4 THE COURT: I was with Judge Roberts
5 discussing the weather.

6 I think the Court is hoping to make a
7 decision by Friday, but it's looking more and
8 more likely that we may have a snow day on
9 Monday and I am changing my flights to try to
10 get back early Sunday, but we'll see what's
11 going on. But it looks like we're not going to
12 have court Monday, but we probably will know
13 for sure by Friday.

14 Okay.

15 Any issues come up overnight before we
16 get started?

17 MS. MCDEVITT HAGAN: Your Honor, I
18 just have wanted to flag for you. Tracey
19 McDevitt Hagan on behalf of Syngenta.

20 We submitted our proposed supplemental
21 voir dire pursuant to your court order this
22 morning.

23 THE COURT: I saw it.

24 MS. MCDEVITT HAGAN: I understand from
25 past cases with Your Honor that you want the

1 Word version. I did want to flag that we added
2 two witnesses to be flagged just because they
3 came up since we officially submitted Mr.
4 Mertens and Mr. Dempsey.

5 THE COURT: So I'm going to during
6 voir dire I'm going to have you --

7 MS. MCDEVITT HAGAN: Oh, that makes it
8 easy.

9 THE COURT: So you can say whatever
10 witnesses. If they get called, they get
11 called; if they don't, they don't.

12 MS. MCDEVITT HAGAN: And there was one
13 other, and I just haven't done my homework yet.
14 I apologize for coming here unprepared, but one
15 voir dire question that I think is probably in
16 someone's paper is just whether there's any
17 jurors that know each other. I heard the story
18 about the two juror that knew each other in
19 deliberations and I thought maybe that would be
20 something all parties might want to know.

21 THE COURT: I will be happy to ask
22 that.

23 MS. MCDEVITT HAGAN: I don't know that
24 could be, but I would like to ask that if Your
25 Honor doesn't mind asking that question.

1 THE COURT: I will try to remember
2 that, but if I forget, please feel free to
3 remind me.

4 MS. MCDEVITT HAGAN: Will do.

5 THE COURT: I don't take offense to
6 that.

7 MS. MCDEVITT HAGAN: Thank you.

8 THE COURT: Yes.

9 MS. WAGSTAFF: Your Honor, I don't
10 think there was an issue, but I just wanted to
11 flag it for the Court. Yesterday during
12 argument we had talked about how the parties
13 perhaps could come to an agreement on a motion
14 in limine, I think it was ten relating to big
15 tobacco and Roundup. Defense has sent us over
16 stipulations. Quite honestly we didn't have
17 time to get to the end of that negotiation so
18 if we have to bring it up later, we will, but I
19 wanted to let you know we're working on that
20 but we haven't reached total agreement yet.

21 THE COURT: That's fine as long as
22 you're working on it we'll get to the bottom of
23 it.

24 All right, the motion for summary
25 judgment. The order hasn't been issued yet but

1 in talking to Judge Roberts this morning, he is
2 going to grant the motion. All right.
3 Silence. So expect that order to come through.
4 So that will affect one of those motions in
5 limine. It will now become moot. I won't have
6 to decide it.

7 I will leave any questions on that for
8 Judge Roberts. I wasn't involved in that.

9 All right. Deposition designations.
10 I have a couple of questions before we get
11 started. Are these witnesses not available?
12 This is not a great way to kind of try this
13 case, and in going through, if I sustain
14 certain objections, you won't have the ability
15 to re-ask that question.

16 So the first one we were going to go
17 through was Nadel.

18 MS. WAGSTAFF: Is Nadel available? I
19 think he's under their control?

20 MR. NARESH: Mr. Nadel is not
21 available.

22 THE COURT: Is he an employee?

23 MR. NARESH: He is not an employee any
24 longer.

25 THE COURT: Okay. Fair enough.

1 And I guess he is outside our subpoena
2 power.

3 MS. WAGSTAFF: I believe so, Your
4 Honor.

5 THE COURT: Fair enough. That's what
6 I figured. I have seen this with Dr. Reeves.
7 So I understand how these things go. All
8 right.

9 So from what I understand, you
10 agree -- well who was the first witness that
11 you wanted, Bonell (phonetic) or --

12 MS. WAGSTAFF: Your Honor, with
13 respect to Botham -- and we're going to refer
14 to him as volumes; volume 1 and 2 are combined
15 into one cut and we have reached agreement with
16 Syngenta and Chevron and we're ready to press
17 play on that one.

18 THE COURT: Then you're going to play
19 volume 3?

20 MS. WAGSTAFF: We'll play volume 3 at
21 a different time, probably not on Monday or
22 Tuesday; whenever the first day of court is.

23 THE COURT: Right. Okay.

24 MR. NARESH: Your Honor, may I
25 briefly, just so you know, Mr. Nadel is not an

1 employee any longer. Dr. Botham is an employee
2 and we do intend to call him in our case. I
3 didn't want Your Honor to be surprised by that.
4 So he is an employee and he will be coming to
5 trial and we intend to call him in our case.
6 The other thing on Dr. Botham, our take on the
7 deposition designations is that a witness
8 should be played and then we go all the way
9 through that witness. I don't think that we
10 ought to have a witness cut up piecemeal so we
11 hear a little bit of Botham on day 1, a little
12 bit of Botham on day 3, a little bit of Botham
13 on day five, et cetera.

14 THE COURT: I agree with that.

15 MS. WAGSTAFF: Your Honor we would
16 request he come live for our case. These
17 depositions were taken over the course of a
18 couple of years. The first one is 2020. The
19 last one is 2024. And they are very succinct
20 when you read them. They're very succinct in
21 their categories, and I think it's very
22 digestible to cut them up in the way that they
23 are with respect to the conclusion of a day or
24 not. But if he is available and they're
25 bringing him in their case and they've decided

1 that, we would request that he come earlier.
2 We can cross-examine him in our case in chief.

3 THE COURT: Defense.

4 MR. NARESH: Your Honor, in this case,
5 in the Mertens case, there was no notice to
6 attend for Dr. Botham. The plaintiffs did send
7 us one for Mr. Dixon and we are bringing in
8 Mr. Dixon in their case.

9 THE COURT: So you're saying you
10 wouldn't bring him in to testify?

11 MR. NARESH: I am not saying that,
12 Your Honor, we would be fine with Dr. Botham
13 coming in their case, probably should have
14 raised that with us a while ago when he was in
15 England. We would have to get him here. He's
16 got an ill family member. So as long as we can
17 reach an agreement on the date, we have no
18 problem in bringing Dr. Botham in their case.

19 THE COURT: So why don't we see how
20 that goes and if he can't come in or he is not
21 available and you want to play the deposition
22 designations, we'll do that.

23 MS. WAGSTAFF: Great. We will confer
24 with Syngenta after this hearing today.

25 THE COURT: Okay. All right. Are we

1 ready for Mr. Nadel?

2 MR. CARTER: Your Honor, before we
3 move on, Ed Carter for Chevron.

4 Just a note, we don't have to deal
5 with it today, but, counsel for plaintiff is
6 correct, we've reached agreements with respect
7 to the page and line designations. Botham was
8 the first example where I suspect we might have
9 request for a limiting instruction in terms of
10 the evidence being offered, one party versus
11 the other. The parties are still working on
12 that and to see whether we can come up with
13 either a global template or when it would
14 apply. So I just wanted to flag for Your Honor
15 that if we don't resolve that, at some point we
16 may be making a request for limiting
17 instructions. But you don't have to deal with
18 page and line objections at this point.

19 The other thing, as part of our QC,
20 since the parties are working through these,
21 we're of course going to be making sure that
22 the exhibits that are referenced in the
23 designations conform with the Court's rulings
24 and so if we spot any issues, I presume they'll
25 be inadvertent and we may be able to work them

1 out with the parties but I just flag we may be
2 policing some QC exhibit with respect to
3 Botham. So subject to that, Botham is resolved
4 and we don't need anything on it for volumes 1
5 and 2 today, but I just wanted to --

6 THE COURT: Right, but we still have
7 volume 3. Is there a volume 4?

8 MS. WAGSTAFF: There is a volume 4, 5,
9 6, 7, 8, 9, 10 --

10 THE COURT: Perhaps we should get them
11 in line and make things easier on everybody.
12 So let's see if we can do that, as opposed to
13 playing hours of video playing.

14 MS. WAGSTAFF: Your Honor, plaintiffs
15 will definitely talk about that afterwards and
16 I think my intuition tells me we would prefer
17 that. He would probably be a multiple day
18 witness but, you know, we can just read through
19 the deposition testimony live.

20 THE COURT: Okay.

21 MR. NARESH: Your Honor, on the
22 Dr. Botham thing, what we agreed to with
23 respect to Mr. Dixon was, we're happy to bring
24 him even though he doesn't live here. We want
25 certainty on the dates. We want certainty that

1 he is up one time, you know, put him up, take
2 him off, he can leave. I think we'd want
3 something similar with Dr. Botham rather than
4 coming once in their case, once in our case.
5 We can work that out.

6 THE COURT: Well I think if the
7 plaintiff calls him as of cross in their case,
8 you could do your direct at that time.

9 MR. NARESH: That's what we would
10 want.

11 THE COURT: So he doesn't have to come
12 back and forth.

13 MR. NARESH: And I will reach out to
14 him today. He's in the UK. I don't know what
15 list availability is for the next two weeks.
16 We checked for the following two weeks, but
17 we'll reach out today.

18 THE COURT: All right. Fair enough.

19 And Ms. Henderson, see if you can get
20 us maybe more microphones here.

21 THE COURT CRIER: They can only split
22 the two.

23 THE COURT: That's it?

24 (Discussion off the record.)

25 THE COURT: Fair enough. All right,

1 Mr. Nadel, we ready?

2 MS. WAGSTAFF: We're ready, Your
3 Honor. How would you like to go through this?
4 I think you have the transcript in front of
5 you.

6 THE COURT: I do. I say objection by
7 objection. So it looks like the first one is
8 at page 18, line 14.

9 MS. WAGSTAFF: That
10 counter-designation has been withdrawn.

11 THE COURT: All right. Then I've got
12 20, line 24.

13 MS. WAGSTAFF: There is no -- unless
14 there is an objection in the column -- I mean
15 unless -- that's just their counter that is not
16 objected to. I believe the first column is
17 Syngenta's objections, the middle column is
18 Chevron's and the column is plaintiff's.

19 THE COURT: Okay. So what do we have
20 next? Is it 26, 17?

21 MS. WAGSTAFF: 26, 17, correct, Your
22 Honor.

23 MR. FUSELIER-LIPNICKEY: Yes, Your
24 Honor.

25 THE COURT: What's the nature of the

1 objection there?

2 MR. FUSELIER-LIPNICKEY: Sorry, Your
3 Honor, I'm just trying to find that page and
4 line. It's a little small with my glasses.
5 Sorry. So this falls into kind of one -- one
6 of the I guess three large thematic buckets
7 that our objections kind of fall into. The
8 first one here is anything relating to the
9 attorney-client privilege and the nature of
10 Syngenta's practicing labeling documents as
11 attorney-client privilege.

12 THE COURT: I am having trouble
13 hearing you.

14 MR. FUSELIER-LIPNICKEY: This falls
15 into one of three thematic buckets that are
16 objections to Mr. Nadel's testimony.

17 THE COURT: And what are those three
18 buckets?

19 MR. FUSELIER-LIPNICKEY: The three
20 buckets are Syngenta's practices labeling
21 documents as attorney-client privilege. And
22 with respect to this case specifically and
23 generally, the second bucket would be foreign
24 regulatory action and Syngenta's response to
25 that that is barred, we argue is barred under

1 the Court's ruling in --

2 THE COURT: -- the motion in limine?

3 MR. FUSELIER-LIPNICKEY: Yes, Your
4 Honor.

5 And then the third is little bit more
6 general kind of catchall bucket covering
7 relevance objections, 403 objections, and it's
8 kind of a suite of related foreign objections.
9 And the transcript kind of flows first to the
10 attorney-client privilege objections, the
11 objections on testimony relating to the
12 classification of documents as privileged or
13 not, and then into the foreign regulatory
14 action and then kind of into the general
15 bucket.

16 THE COURT: So the defense, you're
17 asserting that attorney-client privilege on
18 those questions which are coming up regarding
19 labeling of certain documents "privileged,"
20 correct.

21 MR. FUSELIER-LIPNICKEY: I'm sorry,
22 Your Honor, I will clarify. We have waived our
23 privilege objections on these due to a very
24 long history going back relating to the
25 production of these documents in several

1 different courts. Our objection to this
2 testimony specifically is that it calls for a
3 legal conclusion, it's argumentative, it's
4 unduly prejudicial under Rule 403.

5 THE COURT: Plaintiff.

6 MS. WAGSTAFF: Sure. I think one of
7 the important factors here that counsel said is
8 that they have waived the attorney-client
9 privilege through the production on a lot of
10 these. And if you look specifically at the
11 question that -- and I took this deposition --

12 THE COURT: Can you pull your
13 microphone up? I don't like these microphones.
14 They go in and out.

15 MS. WAGSTAFF: What I was saying is
16 that it is an important factor to what counsel
17 said was that they have waived the
18 attorney-client privilege through production in
19 multiple jurisdictions and multiple courts.

20 THE COURT: Well that's what I thought
21 because I saw similar evidence like this come
22 in in the Roundup case and I thought this was
23 going to be an attorney-client objection, so
24 that's waived.

25 MS. WAGSTAFF: So the legal

1 conclusion, if you look -- first of all,
2 Pennsylvania law allows you to ask what a
3 statute says and someone's interpretation of
4 it. What it doesn't allow you to ask is did
5 Syngenta violate this or something like that.
6 That is the legal conclusion and is prohibited.
7 In this question what I say to Mr. Nadel is:
8 So as a lawyer, you're familiar with the
9 attorney-client privilege and the
10 attorney-client work product.

11 THE COURT: Can you tell me what page
12 you're referring to?

13 MS. WAGSTAFF: 26, 11 to 26, 17.

14 I say: "So as a lawyer you're
15 familiar with the attorney-client privilege.

16 "Yes.

17 "And the attorney-client work product
18 doctrine?

19 "Yes.

20 "And you work globally -- " this is
21 really small font, sorry.

22 THE COURT: I know.

23 MS. WAGSTAFF: "You just mentioned
24 but, you know, here in the United States you
25 would agree that these doctrines allow

1 communication that is generated pursuant to
2 these documents to remain confidential, right?

3 "Yes."

4 THE COURT: I don't see a problem with
5 that so far, so I'm going to overrule that
6 objection. And the next one is.

7 MS. WAGSTAFF: It says: "And to
8 remain hidden from the public and the jury,
9 right?"

10 And this is cross-examination and I
11 don't think that that's argumentative. That is
12 what happens. And I don't know if Your Honor
13 has had a chance to go through Mr. Nadel's
14 testimony, but what counsel said is --

15 THE COURT: I am just trying to hit
16 the objections because it's a lot.

17 MS. WAGSTAFF: I understand, and I
18 agree, and one of the things that I think will
19 come up in this is there is a pattern of
20 communication that happens where in 2012
21 Syngenta is instructed by a state court -- you
22 will see this as one of the --

23 THE COURT: Yeah, the Illinois in
24 2012: Stop putting Mr. Nadel as a cc on
25 communications to try to shield it from

1 disclosure. I saw that.

2 MS. WAGSTAFF: So then you
3 fast-forward to this case, in particular in
4 this case, and they're doing it again, there is
5 explicit instruction: "Please cc Mr. Sullivan
6 and Mr. Nadel as the in-house lawyers because
7 it gives our best chance of getting the
8 attorney-client privilege to attach."

9 THE COURT: All right. So the way I
10 read it, that's where the relevance comes in,
11 that there once again -- it's a pattern and
12 practice.

13 MS. WAGSTAFF: Correct. Yes. And it
14 goes towards also -- it's a pattern and
15 practice, and in some of these documents -- and
16 we will get to them if we go one-by-one, you
17 will see that they are doing that and trying to
18 create -- and it starts the second theme that
19 we're talking about of trying to create
20 science, we touched on it yesterday, for
21 litigation. It kind of touches on that and it
22 touches on the fact that I think there is one
23 document that I reread this morning that we'll
24 get to where I think it's Mr. Sullivan in an
25 e-mail saying that: We can't let the other

1 side know that we're creating these -- this
2 science for future litigation. So it goes to
3 the theme of what we were talking about
4 yesterday. And one, the attorney-client
5 privilege is waived in all of these so we don't
6 even need to talk about that. And secondly,
7 what we're talking about here is not legal
8 conclusion. And my question about keeping it
9 hidden from the jury, I mean, that is exactly
10 what they've been doing for 15 years.

11 THE COURT: I think that's a fair
12 cross-examination. It's not argumentative. It
13 may have been one or two of them that may fall
14 into the argumentative bucket, but we can see.
15 So for this first objection, I'm going to
16 overrule that objection.

17 MS. WAGSTAFF: Okay, thank you, Your
18 Honor. And I believe then that takes care of
19 that page.

20 And the next one would be 29, 13.

21 THE COURT: All right. So defense,
22 what's your objection there?

23 MR. FUSELIER-LIPNICKEY: So we would
24 again object on 403 grounds as well as the
25 grounds that this is argumentative, an

1 argumentative question, and it assumes facts in
2 evidence. I just also on the relevance point,
3 Your Honor, these documents have already been
4 turned over. Privilege has been waived on
5 these document. There is no indication as far
6 as I'm aware that there are documents that have
7 been withheld from plaintiff's on privilege
8 grounds that they're still continuing to seek
9 at this point.

10 THE COURT: It's your mic.

11 MS. WAGSTAFF: I can't hear you,
12 Counselor.

13 MR. FUSELIER-LIPNICKEY: I will repeat
14 it. I'm not sure where I was not audible.

15 So on this question and answer
16 specifically we would assert objections on the
17 basis of Rule 403 and on the basis that it's an
18 argumentative question that assumes facts not
19 in evidence; on the point of relevance as well.
20 These documents have already been produced.
21 The argument that any relevance based on
22 privilege kind of misses the point. The
23 documents they're seeking have already been
24 produced. They've already been provided to
25 plaintiff's counsel on this issue.

1 This question here assumes that there
2 is a pattern and practice of going back
3 36 years that isn't rooted at this point in any
4 facts that have been introduced into the record
5 as this point in the deposition.

6 THE COURT: All right, so let me ask
7 plaintiff. What's the relevance of what they
8 did years ago?

9 MS. WAGSTAFF: So --

10 THE COURT: Do you assert that they're
11 hiding documents now or --

12 MS. WAGSTAFF: Yeah, I mean that --
13 if I --

14 THE COURT: I see the overall theme.

15 MS. WAGSTAFF: Yeah, I mean assuming
16 facts not in evidence, that would mean on
17 cross-examination you could never ask a
18 question --

19 THE COURT: Go past that.

20 MS. WAGSTAFF: I think this goes to
21 the overall theme, and I think that one of --
22 you will hear, you know, their main defense
23 here is he doesn't have Parkinson's, wasn't
24 exposed to Paraquat; and if he was exposed to
25 Paraquat and he does have Parkinson's, they

1 don't cause each other. And to the third
2 point, is that there is no epidemiology, there
3 is no science and things like that. And one of
4 our themes in this trial will be that that is
5 by design and that they have hidden things and
6 that they have hidden documents and that they
7 are, you know, a company that is not a good
8 company. And that they have -- and you will
9 see evidence that as far back as 1975 they've
10 been talking about the need to do epidemiology
11 to defend litigations.

12 THE COURT: Well see that comes in.
13 That's all relevant. But what this attorney
14 in-house counsel's action, unless it affects --
15 I don't want it to be overly-prejudicial that
16 they were trying to hide documents if you have
17 all the documents now. So show me why that
18 would be relevant.

19 MS. WAGSTAFF: Okay, well, I don't
20 know we have all the document.

21 THE COURT: That's a good point.

22 MS. WAGSTAFF: I don't know what I
23 don't know, and I think this would not be as
24 relevant if it wasn't tied to this
25 litigation -- I'm sorry, I'm using this as a

1 flashlight -- if in this litigation it wasn't
2 tied back to the facts of this case. So if we
3 go on in this deposition, you will see I talk
4 about what the practice was back then, how they
5 got in trouble for doing it. And then I say
6 something to the effect of now let's look at
7 what you did here. And there are e-mails here
8 with respect to Paraquat and Parkinson's here
9 where they say cc counsel so that we don't have
10 to turn these over. There are actually e-mails
11 where they say things like: We don't want to
12 get this in the hands of the plaintiff's
13 attorneys. I mean, it is happening here in
14 this litigation. So it is highly relevant, and
15 I don't know --

16 THE COURT: I understand that, but
17 aren't those documents going to come into
18 evidence?

19 MS. WAGSTAFF: The ones I just talked
20 about?

21 THE COURT: Right, that e-mail where
22 it says we don't want this to get into the
23 hands of the plaintiff's attorneys. Because
24 that would seem to me to be relevant, but --

25 MS. WAGSTAFF: Well I think it is

1 highly probative of the company and it goes
2 towards punitive damages as well in terms of
3 they've been doing this. This is their
4 pattern. This is not a one-off. This is not
5 Mr. Sullivan or Mr. Nadel saying let's hide
6 this from people. This is literally a pattern
7 and they have been admonished by a Court, and
8 here they are doing it again. I think it's
9 very relevant.

10 THE COURT: Defense.

11 MR. FUSELIER-LIPNICKEY: May I
12 respond?

13 THE COURT: Yes. How does this not go
14 to punitive damages in these actions.

15 MR. FUSELIER-LIPNICKEY: So
16 specifically as to punitive damages, there is
17 the category of evidence whether these were
18 withheld that is kind of fraud by the company,
19 they've withdrawn their fraud claims so we
20 don't feel that's relevant to punitive damages
21 in this case. Further, the argument of
22 relevance as to these -- the documents that
23 have been described so far, it misses the
24 point. Those documents have already been
25 turned over and essentially opposing counsel is

1 asking us to prove a negative. They can't at
2 this point provide a single document on this
3 issue that we've withheld as privileged and --

4 THE COURT: But as I read through this
5 there is a concern that there was a secrecy
6 that was done by Syngenta so that the
7 plaintiffs couldn't get that information,
8 whether it be by phone call or lack of taking
9 notes. There could be other explosive evidence
10 out there that was hidden from the plaintiff
11 due to Mr. Nadel's advice.

12 MR. FUSELIER-LIPNICKEY: First I point
13 out that Mr. Nadel was praised by the Court in
14 the 2012 Illinois ruling that was referenced
15 earlier, he was praised by the Court for
16 working to remedy these issues and eliminate
17 over-labeling as attorney-client privilege, so
18 I'm not sure that Mr. Nadel -- that this
19 testimony is relevant to Mr. Nadel's conduct on
20 that point specifically.

21 In terms of --

22 THE COURT: But they're alleging that
23 this continued. So while one judge praised it,
24 as time went on it seems like he got back to
25 doing the same thing.

1 MR. FUSELIER-LIPNICKEY: I think if
2 you look at the documents produced in this
3 litigation, it's quite clear by the number that
4 do have "privileged and confidential" labels on
5 them, they have been produced in this case.
6 The point is somewhat moot as to whether or not
7 documents are being over-labeled as privileged
8 because in this case, they've all been
9 produced. Again, there is nothing that has
10 been -- that I am aware of that has been
11 identified as plaintiff's -- as a document that
12 was withheld as privileged that they believe
13 they should be entitled to see on this --

14 THE COURT: But was it attempted to be
15 withheld because it was labeled "Privileged"?

16 MR. FUSELIER-LIPNICKEY: I'm sorry,
17 Your Honor?

18 THE COURT: That goes to motive.

19 MR. FUSELIER-LIPNICKEY: Could you
20 repeat the question?

21 THE COURT: Was it attempted to be
22 withheld? In other words, was he put on
23 e-mails or any documents, correspondence that
24 he shouldn't have been on?

25 MR. FUSELIER-LIPNICKEY: Based on the

1 production history in this case, I think that's
2 quite unlikely. There is nothing --

3 (Discussion off the record between
4 counsel.)

5 MR. FUSELIER-LIPNICKEY: To address
6 your question more directly, Your Honor, he was
7 copied on e-mails, certainly.

8 THE COURT: That he shouldn't have
9 been copied on that weren't privileged?

10 MR. FUSELIER-LIPNICKEY: That is an
11 issue for debate. Without a specific e-mail in
12 front of me, I couldn't reach a conclusion on
13 that.

14 THE COURT: After 2012?

15 MR. FUSELIER-LIPNICKEY: Yes, Your
16 Honor, I believe so. But the point is on this
17 issue in this case, those documents have been
18 produced.

19 MR. CARTER: Your Honor, if I may.

20 THE COURT: Well let me just hear
21 from --

22 MS. WAGSTAFF: Sorry.

23 MR. CARTER: Again, Ed Carter for
24 Chevron. I just want to chime in at this point
25 to sensitize Your Honor to a concern that we

1 have in particular. Obviously this is a
2 Syngenta witness, but based on plaintiff's
3 argument, I think we're getting very close to a
4 point where the 403 prejudice could cause a
5 real problem. It's one thing -- and we have
6 objections to attacking historical conduct as
7 it comes to litigation, but if the argument
8 veers into attacking the defense of the case
9 and the exercise of due process in the
10 courtroom today, if there is a suggestion that
11 there is some ongoing misconduct by engaging in
12 the litigation process, that would be a
13 substantial issue that we think would, you
14 know, be kind of a skunk.

15 THE COURT: I don't think that's what
16 the plaintiff is saying. I think they're
17 saying that Syngenta tried to hide documents or
18 keep them from being discovered.

19 MR. CARTER: And I understand where
20 Your Honor is leaning on that. I just wanted
21 to flag at this point that we would obviously
22 have a very serious issue if the argument went
23 beyond that to say they're still doing that in
24 this courtroom today, or in the Mertens case.
25 That would be an issue that we think is well

1 across the foul line. So I just wanted to flag
2 that here.

3 THE COURT: Well anything that the
4 lawyers say would have to be backed up, and I
5 do tell the jury at the beginning of the trial
6 that what the lawyers say are not evidence and
7 that they shouldn't take it as evidence. So
8 they are instructed that way. So there
9 shouldn't be any prejudice from that. In trial
10 all the time statements are made that either
11 can't be backed up or are a little
12 over-aggressive. And that's why the jury will
13 determine the credibility not only of the
14 witnesses, but the attorneys. So I'm not
15 concerned about that. I just don't want to get
16 into a whole trial about what happened in the
17 past if it's not relevant today.

18 MR. CARTER: Thank you, Your Honor.

19 THE COURT: And that's my concern. I
20 don't want to -- if you're going to have these
21 documents and you're going to be able to create
22 the impression that they were trying to keep
23 these documents from the public, I don't have a
24 problem with that either.

25 MS. WAGSTAFF: And, Your Honor, that

1 is exactly it. And this is a known commodity.
2 This is a deposition designation. Like this
3 isn't something that it's eye going to be a
4 live witness that could go in a different
5 direction and do that sort of thing. So we can
6 self-contain what is said about these
7 documents. I am not quite sure that we would
8 use them with another witness. I don't want to
9 say that without talking to Mr. Dickens.

10 THE COURT: Was this your witness of
11 how you're getting these documents --

12 MS. WAGSTAFF: Yes.

13 THE COURT: -- are admissible?

14 And I don't know what the documents
15 are because I just have the transcript.

16 MS. WAGSTAFF: I have all the
17 documents. If you want them, I have a set and
18 as we go through them, I can give you each one
19 if you want them.

20 THE COURT: Well let's see if we get
21 there. I'm trying to get a sense of this whole
22 argument and that's why I like to have these
23 arguments, ask a lot of questions and get the
24 lawyers talking so I could understand what the
25 real issue is here. I thought it was going to

1 be an attorney-client issue because that was
2 noted in some of the objections here, but since
3 that is not the objection, I am trying to pivot
4 and figure this out.

5 MS. WAGSTAFF: And Your Honor, if you
6 are not inclined to make orders, determinations
7 now and you want to do it later, I ask that you
8 consider and remember that with respect to this
9 pattern and practice it would be different, I
10 think, in my opinion, if this happened in 2012,
11 they -- Syngenta, you know, got in trouble and
12 they didn't do it again. The important part,
13 the relevant part here is literally with
14 respect to Parkinson's and Paraquat, they are
15 saying the almost verbatim thing that they got
16 in trouble for before, and so I do think that
17 shows a pattern, a motive, hiding it. And
18 again, we don't know what we don't know in
19 terms of that, and I think the jury should be
20 able to hear that with respect to Syngenta.

21 THE COURT: All right, well let's go
22 through the individual ones.

23 MS. WAGSTAFF: Is it your -- do you
24 want to make a decision on each one or do
25 you --

1 THE COURT: I am going to hold off so
2 far.

3 MS. WAGSTAFF: So we are going to add,
4 just for the record, page 30, line 6, just
5 because that wasn't added. We're going to take
6 out 30, line 14. I think that we got the wrong
7 answer.

8 THE COURT: Right.

9 MS. WAGSTAFF: And that would take us
10 to 30, 24.

11 THE COURT: And that's just an answer
12 to that previous question, correct?

13 MR. FUSELIER-LIPNICKEY: Sorry, Your
14 Honor, I believe the next question starts at
15 30, 15 at the bottom of the same page.

16 MS. WAGSTAFF: And, Your Honor, this
17 is at the risk of saving you some time, there
18 is an entire list of the next couple objections
19 relate to the exhibit of the order.

20 THE COURT: Right. So I have to
21 figure out whether I'm letting that order in.
22 What.

23 MS. WAGSTAFF: I can give you a copy
24 and we can argue about that or you can tell us
25 you have enough information on that.

1 THE COURT: Well let me see the order.

2 MS. WAGSTAFF: May I approach?

3 THE COURT: You may. Lady Justice
4 will help you out.

5 MS. WAGSTAFF: I assume you have a
6 copy of it.

7 MR. FUSELIER-LIPNICKEY: Is this
8 Exhibit 2?

9 MS. WAGSTAFF: Yeah. And, Your Honor,
10 and an important part of this order is that it
11 was -- if you turn to the back, it was
12 actually -- so a summary, and you can obviously
13 take all the time you want to read it, but a
14 summary of this is the judge entered this order
15 and instructed Syngenta to e-mail it or its
16 contents to the employees to let everyone know
17 to stop doing that. And so the back part is
18 the e-mail from Mr. Nadel sending it to the
19 Syngenta team.

20 THE COURT: So this is 2012. But then
21 later on there is a document that directs the
22 employees what to do and what not to do?

23 MS. WAGSTAFF: So this is 2012 and it
24 looks like this was entered on March 8th, 2012.
25 And this e-mail is a couple weeks later because

1 in the order the judge tells Syngenta to e-mail
2 its employees and say stop doing that. And so
3 what you have in your hand is an e-mail with
4 the attachment, and the attachment being the
5 order. Does that make sense? So when we get
6 going on through this deposition, there will be
7 an e-mail much more recent in time related to
8 the Paraquat Parkinson's litigation where it's
9 either Mr. Sullivan or Mr. Nadel is instructing
10 people to cc them so that they can have a
11 better chance of getting the attorney-client
12 privilege to attach.

13 THE COURT: That's the relevance I
14 wanted to see.

15 MS. WAGSTAFF: We're going to get
16 there. I'm just going through.

17 THE COURT: So the next bunch of
18 questions all have to do with this order,
19 right?

20 MS. WAGSTAFF: Yeah. And, you know,
21 and again, the order is an attachment to an
22 e-mail that was circulated inside the company.

23 THE COURT: In order for me to decide
24 whether these questions come in, I have to see
25 how the relevance are so we can skip ahead

1 after you're finished with the questions on
2 this order.

3 MS. WAGSTAFF: Okay. Let me figure
4 out where -- let's start -- okay, so if you
5 look at -- defense can correct me if I'm wrong,
6 but if you look at page 3809, I say: Let's
7 talk about what Syngenta was actually doing as
8 a policy and procedure --

9 THE COURT: I just want to take it a
10 step back because there is one question that I
11 am going to sustain the objection, whether I
12 let this in or not. And that would be at 34,
13 20.

14 So the question starts: Okay, and so
15 I've been practicing law and not as long as you
16 but I've never seen an order like this before,
17 have you? And the answer is: No.

18 So that I'm going to sustain the
19 objection no matter what I ultimately decide.
20 So that is definitely out.

21 MS. WAGSTAFF: Fair enough.

22 MR. DICKENS: Thank you, Your Honor.

23 MS. WAGSTAFF: So this is all
24 questions about sort of the order, things of
25 that nature. And then if you go to the next

1 page which is 3809.

2 THE COURT: What about 37, 1 where it
3 references Exhibit 3? There seems to be an
4 objection there I believe to relevance. What
5 is Exhibit 3? Anybody know?

6 MR. FUSELIER-LIPNICKEY: I have copies
7 here, Your Honor. May I approach?

8 THE COURT: Yes. Ms. Henderson.

9 MS. WAGSTAFF: For some reason I don't
10 have an Exhibit 3. If you have a copy for me.
11 Thank you.

12 THE COURT: All right, so --

13 MS. WAGSTAFF: Here is the first of
14 many documents, but if you look down to Jeffrey
15 Sullivan -- sorry, Jonathan Sullivan is an
16 attorney as well, and so if you look at the
17 bottom of this document dated January --

18 THE COURT: -- 19th, 2008?

19 MS. WAGSTAFF: Yeah, and it says:
20 This will allow us to argue the materials that
21 are privileged. This is before 2012.

22 THE COURT: Yes.

23 MS. WAGSTAFF: I don't know why
24 that -- I mean I can see how this would be
25 different than post 2012.

1 THE COURT: So you think we should be
2 able to sustain that objection?

3 MS. WAGSTAFF: I mean --

4 THE COURT: Is that what you're
5 telling me?

6 MS. WAGSTAFF: I could see how you
7 could make a distinction if you were willing
8 to --

9 THE COURT: So, defense, should I make
10 that distinction on this?

11 MS. WAGSTAFF: Let me say this: If
12 the order is coming in, I would concede that
13 this is duplicative. But if for some reason
14 that Your Honor is not inclined to let the
15 order come in, I would request that this come
16 in as evidence of this policy and practice and
17 procedure. But --

18 THE COURT: I think if I'm not going
19 to let the order in, I would not let this in as
20 well.

21 MS. WAGSTAFF: Perhaps. Maybe. There
22 could be a reason why this would come in and
23 yet the order wouldn't.

24 THE COURT: Can you give me one?

25 MS. WAGSTAFF: I could probably give

1 you a few if I thought about it.

2 THE COURT: You don't have to.

3 MS. WAGSTAFF: I mean, I would be
4 arguing against whether the order should come
5 in, so I don't really want to do that right
6 now.

7 THE COURT: All right. We can hold
8 that in abeyance. Then I think we're up to 42.
9 42, line 1.

10 MS. WAGSTAFF: I think, yeah. So but
11 if you just backing up a little bit if you look
12 at 38, 09 there is no objection but we are
13 starting to talk about what's happening in the
14 Paraquat matters. My question is: Let's talk
15 about what Syngenta was actually doing as a
16 policy and procedure in the Paraquat matters,
17 okay? He says: Uh-huh, yes.

18 THE COURT: Okay. Then we start
19 getting into these e-mails?

20 MS. WAGSTAFF: Yeah.

21 THE COURT: But we're talking about
22 Exhibit 3, which is --

23 MR. FUSELIER-LIPNICKEY: Yes, Your
24 Honor.

25 THE COURT: -- the January 18th, 2008

1 e-mail.

2 MR. FUSELIER-LIPNICKEY: Your Honor,
3 on Exhibit 3 in addition to the time period
4 issue --

5 MS. WAGSTAFF: Oh, I understand now
6 how these two e-mails or two documents fit
7 together.

8 THE COURT: All right. Mr. Allen is
9 going to hand you out a copy of the order and
10 the motion for summary judgment.

11 MR. FUSELIER-LIPNICKEY: Thank you,
12 Your Honor.

13 MS. WAGSTAFF: Your Honor, how these
14 fit together is that the order in 2012 was on a
15 different litigation and this is on Paraquat.
16 This is how they were doing it on Paraquat. So
17 while it is earlier in time, this was more
18 related to Paraquat and Parkinson's.

19 THE COURT: Okay, and then on --

20 MR. FUSELIER-LIPNICKEY: Your Honor,
21 if I may, on this document not only is Your
22 Honor correct that this predates the 2012
23 e-mail so it's out of time in terms of
24 relevance, but also doesn't appear to be
25 related to Paraquat and Parkinson's. This is

1 an e-mail related to the submission of data to
2 global regulatory agencies around the world
3 that was prepared, I believe, in consultation
4 with in-house -- that was prepared in
5 consultation with in-house counsel. There is
6 no indication in this document suggesting that
7 Syngenta was doing anything to hide or conceal
8 data relating to Paraquat and Parkinson's or
9 anything to that effect. It appears to be
10 related to global regulatory submissions being
11 made across the globe --

12 THE COURT: In reference to what?
13 What's the submissions about?

14 MR. FUSELIER-LIPNICKEY: Based on the
15 title of the, attachment, it appears to be a
16 registration impact assessment of some kind but
17 the document was not included as an exhibit in
18 the deposition itself, Your Honor.

19 MS. WAGSTAFF: It's Paraquat. I mean,
20 this is related to Paraquat.

21 THE COURT: That's why I asked. What
22 was the data --

23 MR. FUSELIER-LIPNICKEY: There is
24 other issues related -- as a registered
25 pesticide, there are a series of other

1 considerations that Syngenta submits data to
2 regulatory agencies across the world that have
3 zero bearing on the issue of Paraquat and
4 Parkinson's; whether or not Paraquat has an
5 effect on environmental factors such as the bee
6 population; whether or not washing procedures
7 are sufficient to remove Paraquat from a
8 container. As far as I'm aware, there is no
9 theory of relevance connecting that data to
10 whether or not this product can cause
11 Parkinson's Disease.

12 THE COURT: I think the issue here is
13 whether Syngenta was trying to shield this from
14 disclosure. Is that --

15 MS. WAGSTAFF: Yeah.

16 THE COURT: Because we're talking
17 about the confidential and privileged
18 communication that is slapped all over both of
19 these e-mails.

20 MS. WAGSTAFF: And it very clearly
21 says: I would ask that you send the templates
22 and drafts in the first instance to me and Alan
23 Nadel only. Those are the two lawyers. And
24 then it says what to put on there. It says
25 headed very boldly: "Confidential and

1 privileged attorney/client work product." And
2 then it says: "This will allow us to argue
3 that the materials are privileged from
4 disclosure, although there is no guarantee that
5 this argument will be successful as it is
6 reasonably clear the materials will not come
7 into existence for the dominant purpose of
8 being used in connection with litigation."

9 So he's basically written out there
10 like this isn't a true like designation, but
11 let's just it gives us our best chance. I
12 mean: It is reasonably clear that the
13 materials will not come into existence for the
14 dominant purpose of being used in connection
15 with this litigation. That is either
16 contemplated or pending.

17 MR. FUSELIER-LIPNICKEY: Your Honor,
18 we think -- we made our position clear that
19 this is outside the time period and these are
20 documents concerning -- they're legal templates
21 and drafts of legal regulatory submissions. We
22 think we've made our position clear on this
23 document, whether it should be admitted.

24 THE COURT: When you say outside the
25 time period, what do you mean?

1 MR. FUSELIER-LIPNICKEY: It's before
2 the 2012 Court order.

3 THE COURT: Right. But this has to do
4 specifically with Paraquat.

5 MR. FUSELIER-LIPNICKEY: Yes, Your
6 Honor, it appears to have to do with Paraquat
7 and with templates and drafts prepared by
8 attorneys for submission to regulatory agencies
9 across the globe. There is nothing in the
10 document suggesting there is anything to do
11 with the research on the Parkinson's hypothesis
12 or anything of that nature.

13 THE COURT: All right. I will hold
14 this in abeyance so I can read it and put it in
15 proper perspective.

16 MS. WAGSTAFF: And, Your Honor, I
17 understand you're holding it in abeyance and we
18 would request that both of them come in to show
19 sort of how bad that it got and that they're
20 still doing it later.

21 THE COURT: I just wanted to see the
22 distinction of the 2008 e-mail and why it could
23 have some relevance here.

24 MS. WAGSTAFF: So does that take us
25 to -- Counsel, how far -- what does that e-mail

1 take us through?

2 MR. FUSELIER-LIPNICKEY: I believe
3 that brings us to 49 -- sorry, 46, 6, Your
4 Honor before another exhibit is introduced.
5 Did Your Honor want to go back to discuss the
6 2012 order after having seen it in context a
7 little bit more or did Your Honor want to
8 proceed?

9 THE COURT: I really need you to -- I
10 don't know whether it's the microphone --

11 MR. FUSELIER-LIPNICKEY: I am a
12 mumbler, Your Honor. I will speak up.

13 THE COURT: What happens is you lean
14 forward and you get comfortable and then you
15 lean back and I'm having trouble hearing you.

16 MR. FUSELIER-LIPNICKEY: I will work
17 on my posture.

18 Did Your Honor want to proceed
19 chronologically through the transcript or did
20 Your Honor want to go back and discuss the
21 2012?

22 THE COURT: No, I have a good idea.
23 So I want to go back and reread the applicable
24 portions and then I will make my ruling now
25 that I've heard argument and I actually have

1 the documents I could put it in a little bit of
2 perspective and I will be able to figure out
3 what I want to do with it.

4 MR. FUSELIER-LIPNICKEY: Thank you for
5 the clarification. The next -- to counsel's
6 question, I believe the next portion of
7 testimony starts at 46, 1.

8 MS. WAGSTAFF: Your Honor, may I hand
9 you the exhibit relevant to this?

10 THE COURT: Yes.

11 MS. WAGSTAFF: This is Exhibit 4.
12 And, Your Honor, this Exhibit 4 is a 2007
13 letter from Jonathan Sullivan who is an
14 attorney. And again, he has -- there is no
15 attorney-client privilege, but in this document
16 they're talking about Syngenta in the process
17 of analyzing the available data regarding an
18 alleged association between exposure to
19 Paraquat and Parkinson's directly on point.
20 And then it talks about how while this analysis
21 continues. It is critical that any written
22 communications, including e-mail, regarding
23 this issue be kept to a minimum. Written
24 communication should be factual in nature.
25 Speculation and opinion should be avoided.

1 So this sort of goes to our --

2 THE COURT: Well now we're really
3 getting to the heart of the matter.

4 MS. WAGSTAFF: This goes to --

5 THE COURT: This is a letter regarding
6 the connection between Paraquat and
7 Parkinson's, and they're stamping privileged
8 and confidential attorney work product which
9 has been waived.

10 MS. WAGSTAFF: Yeah, and they are
11 sending this out on behalf of Jonathan
12 Sullivan, and this is about a year before the
13 one that we just saw. But I just want to put
14 this in perspective. This is definitely a
15 trial theme of ours, and this is highly
16 relevant. So with that I will pass the floor
17 to the defendants to explain their position.

18 THE COURT: Okay.

19 MR. FUSELIER-LIPNICKEY: Just one
20 point, Your Honor. What I would point out,
21 this pre-dates -- this is from 2007, so even
22 before the 2008 e-mail we were just discussing.

23 THE COURT: Right, but this has
24 relevance because now you're talking about the
25 connection between Paraquat and Parkinson's,

1 right, so it has relevance from that
2 perspective.

3 MR. FUSELIER-LIPNICKEY: At this point
4 we think we've kind if laid out all of our
5 argument as to why we don't believe documents
6 related to the coding of internal e-mails as
7 privileged or not. I we think we've made our
8 arguments as to why we don't believe that
9 material is admissible.

10 MS. WAGSTAFF: I didn't hear what you
11 said at the very end.

12 MR. FUSELIER-LIPNICKEY: We think
13 we've laid out our position on this set of
14 documents and this type of testimony.

15 MS. WAGSTAFF: Okay.

16 THE COURT: All right. Where does
17 that bring us to, then?

18 MS. WAGSTAFF: Your Honor, if I may
19 hand you Exhibit Number 5.

20 THE COURT: All right, and what page
21 are we up to now?

22 MS. WAGSTAFF: Your Honor this is a
23 combined 5 and 6 together. Six is the e-mail
24 cover and 5 is the attachment, I believe.

25 MR. FUSELIER-LIPNICKEY: I believe

1 we're at page 49, Your Honor.

2 MS. WAGSTAFF: And, Your Honor, this
3 is a 2013 document, just to highlight that.

4 THE COURT: Is this document that was
5 authored by Mr. Nadel?

6 MS. WAGSTAFF: No, this is -- I
7 believe that the --

8 THE COURT: This is the PowerPoint?

9 MS. WAGSTAFF: Yeah, it's a module,
10 and if you look underneath the module, it says
11 where it says: I am Amy Cook. Do you see
12 that?

13 THE COURT: Yup.

14 MS. WAGSTAFF: If you keep going it
15 says -- the second sentence says: This module
16 has been prepared with the assistance of Alan
17 Nadel. So that's how he's --

18 THE COURT: And was this the module,
19 as I understand, where he is instructing the
20 employees what to do or what not to do.

21 MS. WAGSTAFF: Yeah. If you go to the
22 third page of it which ends with 391: Think
23 before you write. This is showing that this
24 behavior is continuing on. We have a line of
25 questioning about it at the very end. You

1 know, underneath it talks about how you need to
2 be careful with what you write and it really
3 ties in to the litigation and it says: We have
4 probably all seen examples of e-mails and other
5 documents leaked to media organizations or
6 shown as part of ongoing litigation which the
7 authors no doubt wish they had never written.
8 So it's just once again telling, you know, them
9 to kind of curtail what they write so that it
10 can't come into litigations.

11 THE COURT: All right. And what's the
12 position of the defense on this?

13 MR. FUSELIER-LIPNICKEY: Your Honor,
14 at some point these documents start to become a
15 403 cumulative issue, but beyond that, these
16 documents all rise and fall together. I
17 believe that we've made our position as to why
18 these documents are not relevant.

19 MS. WAGSTAFF: With respect to
20 "cumulative," I think in the set that we have,
21 you know, we've got four documents in '07, '08,
22 '12 and '13, and I think it is non-cumulative.
23 We've got the '07, '08 talking about --

24 THE COURT: Where you're showing them
25 pattern and practice.

1 MS. WAGSTAFF: And we're showing the
2 jury that even when a judge tells them to stop,
3 they don't stop.

4 THE COURT: Gotcha. What's the next
5 one?

6 MS. WAGSTAFF: I've got Exhibit 7 here
7 for you, Your Honor. I should have probably
8 just given you the whole stack.

9 THE COURT: If you want to hand them
10 up.

11 MS. WAGSTAFF: They're paper-clipped
12 by number, so it may take me a second.

13 THE COURT: All right. And what page
14 does this bring us to?

15 MS. WAGSTAFF: This -- I'm not sure.
16 While he's telling you I will explain -- I will
17 put this document into context. This is back
18 in '08. So, this was --

19 MR. FUSELIER-LIPNICKEY: Counsel, is
20 this Document 8 or 9?

21 THE COURT: This is 7 and --

22 MS. WAGSTAFF: This is 7. Because we
23 were just on 6. Do you not have any objections
24 to 7?

25 MR. FUSELIER-LIPNICKEY: I heard you

1 say this is Document 8.

2 MS. WAGSTAFF: I said it was from
3 2008.

4 MR. FUSELIER-LIPNICKEY: Thank you for
5 the clarification.

6 THE COURT: And what page is this on
7 the deposition transcript?

8 MR. FUSELIER-LIPNICKEY: 81, Your
9 Honor, I believe.

10 MS. WAGSTAFF: And this a document
11 that I think we've touched on this topic
12 yesterday, Your Honor. Once again, this is
13 Jonathan Sullivan and I referenced this earlier
14 and it says: Just to summarize these
15 e-mails -- and Mr. Nadel is on these e-mails --
16 it's once again, nothing is confidential and
17 privileged until the very end. They slap a
18 title on there if you see at the very last
19 e-mail and what they say is: Please, can we
20 call a halt to this correspondence. Any claim
21 of privilege which we make with respect to it
22 may well be challenged and we will not be
23 well-served by the production and litigation of
24 correspondence which suggests that we would not
25 have carried out the studies but for the threat

1 of litigation.

2 We think that's highly relevant for
3 multiple trial themes. As this case progresses
4 we're going to show they had meetings where
5 studies were created simply to show next week
6 to the jury and we think this document is
7 highly relevant.

8 THE COURT: Defense, anything
9 different than before?

10 MR. FUSELIER-LIPNICKEY: No, Your
11 Honor, the same rationale.

12 THE COURT: Okay, what's next?

13 MR. CARTER: Your Honor, if I may, Ed
14 Carter for Chevron. I will note here as you're
15 seeing this series of exhibits, this is an
16 issue that I would expect Chevron to request a
17 limiting instruction.

18 THE COURT: Of course.

19 MR. CARTER: In addition to that,
20 because I don't know what plaintiff's position
21 will be on that, these documents that we're
22 looking at would be hearsay without exception
23 as to Chevron. So in addition to the 403,
24 there would be core admissibility issues for
25 all of these documents because there is no

1 hearsay exception.

2 THE COURT: Well if this is admissible
3 it would be admissible really against one party
4 and not the other. So if you want to draft up
5 a limiting instruction and run it by the
6 plaintiffs and we could pick the best place to
7 make sure it is very clear to the jury, I'm
8 happy to could that.

9 MR. CARTER: Thank you, Your Honor.

10 MR. FUSELIER-LIPNICKEY: One other
11 thing, Your Honor, I'm looking through the
12 submissions that plaintiff's made last night.
13 I am still seeing a few privilege objections
14 reflected in that document. Syngenta has
15 withdrawn those privilege objections at this
16 point and we're not objecting on that basis.

17 THE COURT: Okay.

18 MS. WAGSTAFF: I don't think
19 Exhibits 8 and 9 are at issue, correct?

20 MR. FUSELIER-LIPNICKEY: That is my
21 understanding as well.

22 MS. WAGSTAFF: So my co-counsel,
23 Mr. Dickens, is going to give you a full
24 package of the rest of the exhibits at issue.

25 So we're now at Exhibit 10.

1 THE COURT: And what page of the
2 transcript?

3 MR. FUSELIER-LIPNICKEY: I think that
4 starts at 100.

5 THE COURT: 100 or 102 is the next
6 objection. Let's see. 100 or 102.

7 MS. WAGSTAFF: So this is a theme that
8 I think the next few exhibits relate to. And
9 you will see when you read the transcript --
10 and I can tell you what exhibits I believe
11 relate to this kind of questioning. I think
12 that it goes to notice and it goes to motive
13 and it goes to punitive damages, and this is
14 sort of the over-arching theme that you will
15 get when you read this portion of the
16 transcript.

17 THE COURT: So Exhibit 10, is that the
18 Social Security Institute?

19 MS. WAGSTAFF: 10, 11 and 12 and 13 go
20 towards what I am about to talk about.

21 THE COURT: Okay. So before you start
22 talking, defense, do you have any different
23 objections to this line of questioning in these
24 documents?

25 MR. FUSELIER-LIPNICKEY: Yes, Your

1 Honor, this falls into kind of the second
2 thematic bucket that I laid out earlier having
3 to do with foreign regulatory action that
4 should be excluded.

5 THE COURT: Okay. As far as what I
6 understand the motion in limine was what --
7 the ruling of these regulatory agencies is
8 inadmissible, but any information found out
9 during the course, either their investigation,
10 is admissible. What's your understanding?

11 MR. FUSELIER-LIPNICKEY: My
12 understanding of the Court's ruling is that any
13 regulatory decisions are excluded along with
14 any action that Syngenta or any defendant was
15 required to take by that foreign regulatory
16 agency. There is also language in the Court's
17 order about any action taken in direct response
18 to information provided by the -- any action
19 taken in response to information relating to
20 the safety of Paraquat.

21 MS. WAGSTAFF: So, Your Honor, he is
22 talking -- I've got the motion in limine order
23 right here.

24 THE COURT: I have it right here.

25 MS. WAGSTAFF: I think the important

1 part and what I will explain to you how this is
2 dispositive of this issue, is what the
3 Mexican -- I don't know that it's
4 apples-to-apples calling it the Social
5 Security, but it's something similar to what we
6 have here with that. This gave Syngenta notice
7 that there could be a causal connection between
8 exposure to Paraquat and Parkinson's. That is
9 exactly what it did. And it is probative of --
10 this information is probative of that notice.
11 The example that Judge Roberts put in his
12 footnote, it says: Thus, for example,
13 plaintiffs may present evidence that foreign
14 regulatory agencies have raised concerns about
15 the safety of Paraquat during the relevant
16 periods. This is what they are doing. And I
17 think that Syngenta's response to this
18 information which was -- I mean just to sort of
19 set the stage for Your Honor and you can read
20 what the testimony specifically says, but there
21 was a long-term Syngenta employee in Mexico
22 that was no longer working for the company and
23 seeking benefits from the country of Mexico
24 under whatever, like, that's called.

25 THE COURT: Right.

1 MS. WAGSTAFF: They had -- and you
2 will see, I walk Mr. Nadel through it -- they
3 had a regulatory -- they had a scientific body
4 of experts conduct and look at whether or not
5 his exposure to Paraquat caused his Parkinson's
6 and it was determined in the affirmative. And
7 Syngenta challenged that. And Syngenta did not
8 want -- and it was very clear that it wouldn't
9 cost Syngenta any money, that this man was just
10 going to get the benefits from Mexico and
11 instead of just letting this long-term employee
12 receive his benefits, they challenged that.
13 And then they got off on a technicality and
14 they were cheering and they were excited and
15 they have in their litigation reports how that
16 was something they needed to take care of. And
17 so this is showing notice that Syngenta had a
18 regulatory agency saying there was a causal
19 connection, and as my co-counsel just pointed
20 out, this is not a foreign regulatory agency in
21 the first instance. So I shouldn't have even
22 gone down that road. But to the extent that it
23 was, this is shown for notice. It's shown for
24 what did Syngenta do when received with
25 information that there could be causation? Do

1 they do studies? Did they investigate it? No.
2 They attack it and they challenge it. And then
3 they cheer and they get all excited when they
4 get off on a technicality. So we think it's
5 relevant and it's admissible and that it should
6 come in.

7 MR. FUSELIER-LIPNICKEY: I would, Your
8 Honor, separate these documents into
9 distinct -- I think each of these documents
10 needs to be taken one at a time on their own
11 merit instead of taking them as a group.
12 Looking at Document 10, the first document
13 here, to say this is a document in which the
14 Mexican Social Security Administration informed
15 defense of anything, it's a mischaracterization
16 of what is stated in the e-mail. This is a
17 final -- this e-mail is discussing -- and I am
18 on the second page -- a final action taken by a
19 foreign agency which is directly the language
20 used on the Court's order on MIL-1. It's
21 introducing evidence of a foreign -- of a
22 determination of eligibility for Social
23 Security benefits in Mexico. It introduces
24 exactly the types of issues that the Court
25 warns about in the last sentence of its

1 footnote. So introducing regulatory actions by
2 agencies taken in response to information about
3 the safety of Paraquat. That evidence is
4 outweighed by the risk of jurors holding
5 defendants accountable under whatever standard
6 of proof the Mexican Social Security
7 Administration requires to providing an award
8 and will also -- it will require an extensive
9 mini-trial on that, the legal basis for that,
10 such an award, the standards of proof,
11 differentiating the standards of proof in that
12 context from this context, detailing the type
13 of scientists the Mexican Social Security
14 agency had access to, all those sort of things.
15 It goes on and on and on, and I think it
16 clearly falls within the four corners of the
17 Court's order on this motion in limine.

18 THE COURT: Okay. Understood. What's
19 next?

20 MR. FUSELIER-LIPNICKEY: 11, Your
21 Honor.

22 THE COURT: And what page of the
23 transcript?

24 MS. WAGSTAFF: This is the e-mail that
25 says "redacted privilege" really big on the

1 back.

2 I mean, this e-mail in and of
3 itself -- and counsel may disagree with me --
4 has to be looked at in consideration with the
5 testimony. I think that this e-mail is more
6 showing of the transmittal of information and
7 it probably needs to be looked at with the
8 testimony.

9 And then 12 is the actual article
10 itself. So it's -- you thought we were looking
11 at small font now, 12 is really small.

12 THE COURT: Right. In Spanish.

13 MS. WAGSTAFF: It's in Spanish on the
14 left and English on the right, and this is sort
15 of a write-up of what we've just been talking
16 about.

17 THE COURT: Was this the write-up from
18 the Social Security Institute or -- since it's
19 in Spanish?

20 MS. WAGSTAFF: I believe it was a
21 write-up of -- it talks about in the
22 deposition, I believe -- and I don't know if
23 it's fair to call it the Social Security
24 Institute, by the way, but the company that did
25 this, I believe that it is -- and then it was

1 being circulated around in e-mail 10. So 10
2 and 11 are together.

3 THE COURT: And this is 12?

4 MS. WAGSTAFF: I'm sorry, 11 around 12
5 are together, I'm sorry, not to be too
6 confusing. 11 and 12. 12 is the attachment to
7 11. As you're reading the transcript, it's
8 hopefully clear. And then 13, it is a
9 litigation report.

10 MR. FUSELIER-LIPNICKEY: Again, Your
11 Honor, I think it's most helpful to take these
12 documents on their own terms. 11 and 12 are
13 one set of documents. 12 appears to be some
14 kind of case study of Mr. Grimaldo, the Mexican
15 Syngenta employee. I think it's illustrative
16 that plaintiff's counsel hasn't been able to
17 identify where this document comes from. It
18 doesn't appear to be -- the translation
19 certainly doesn't appear to be original. It
20 appears to be produced in -- the translation is
21 of an unknown providence. It's potentially
22 unreliable. Who translated it? Who compiled
23 it into columns side-by-side?

24 MS. WAGSTAFF: We're not offering this
25 for the truth of the matter asserted, we're

1 offering this for notice and they are
2 circulating this around the Syngenta employees
3 as something that they had notice of. No one
4 is saying on the e-mail: Is this true? Who
5 did this? Like we're not going to tender this
6 number 12 to say look, proof positive, you
7 know.

8 THE COURT: Well the jury could look
9 at it that way.

10 MS. WAGSTAFF: Yeah, but I mean I
11 think this goes towards notice. So the fact
12 that we can't prove who translated this or not,
13 but what we can prove is that they're
14 circulating around as of 2013 a document where
15 the -- as clearly stated in the order of, you
16 know -- again, we don't think this was a
17 foreign regulatory agency, but to the extent
18 that it is, this is evidence that they raised
19 concerns about the safety of Paraquat. I mean,
20 they're saying that it causes Parkinson's. And
21 by the time 2013 comes along when this was
22 happening, we will have established probably 30
23 years of them having situations like this where
24 they thought about this. And so I know Judge
25 Roberts took the time to carve out something

1 when we could use that and this falls squarely
2 in there to the extent that this is a foreign
3 regulatory agency which counsel hasn't really
4 done anything to say this is a foreign
5 regulatory agency.

6 THE COURT: I think this is in the
7 spirit of Judge Robert's ruling. I don't know
8 if he was aware of this specific instance,
9 but --

10 MS. WAGSTAFF: I agree.

11 THE COURT: I understand what the
12 spirit of his ruling is.

13 MS. WAGSTAFF: Okay. Thank you, Your
14 Honor.

15 So the next exhibit --

16 MR. FUSELIER-LIPNICKEY: May I
17 respond --

18 THE COURT: Sure.

19 MR. FUSELIER-LIPNICKEY: I believe
20 that if Your Honor believes it's within the
21 spirit of Judge Roberts' order, Your Honor, we
22 will certainly be happy to go along with you
23 there. We did withdraw our objection under
24 that e-mail on this particular set of
25 documents. I will also point out that this is

1 again a scientific case study detailing the --
2 one of the medical circumstances surrounding
3 one individual's employment -- exposure to a
4 pesticide during the course of their employment
5 and potential medical ramifications for them
6 and do I not believe that this witness is
7 competent to provide testimony. He lacks
8 foundation on the science that hasn't been laid
9 in the --

10 THE COURT: Hold on. I get that. But
11 I have to read through the testimony and
12 what -- if they were circulating this, then it
13 can possibly go to notice. So if I don't know
14 what the testimony is. If he is testifying as
15 to the contents of that, that may be
16 inadmissible. But the fact that he got it and
17 he is on notice, that may be a different. So
18 I've got to go through and see what if any
19 testimony should be admissible and what should
20 be inadmissible. I have to read the
21 transcript. So some may come in, some may not
22 but I don't know what the questions and answers
23 are.

24 MS. WAGSTAFF: That's fair, Your
25 Honor.

1 The next exhibit, which is 13 --

2 MR. FUSELIER-LIPNICKEY: Before we
3 proceed, can you identify the page and line
4 numbers that are associated with this
5 testimony, please, or with this document?

6 THE COURT: Are we talking about 13?

7 MS. WAGSTAFF: I don't know the line
8 and page number. Mr. Dickens is telling me it
9 start at 158.

10 MR. FUSELIER-LIPNICKEY: I think it's
11 138.

12 MS. WAGSTAFF: 138. But I think
13 explaining to the judge these documents will
14 give him a flavor of when you look at it. So
15 this -- with the backdrop that attorney-client
16 privilege has been waived, this is a litigation
17 report, if you turn to page 32, at the bottom
18 right here underneath the block there is a page
19 32 which ends in Bates 500, this is in 2000
20 and -- this is in January, 2015, I think. And
21 this talks about -- this is prepared -- and
22 again the attorney-client privilege has been
23 waived, which I think would be the strongest
24 objection to this. This talks about how
25 Syngenta is handling this situation that we've

1 been talking about. So this is their report
2 and in the deposition I walk through who this
3 was send to and I walk through the relevant
4 portions of it, and I think this will give you
5 a flavor of how we talk about it.

6 THE COURT: So what's the objection
7 from the defense on this document?

8 MR. FUSELIER-LIPNICKEY: So we would
9 object to the relevance of this document. This
10 is -- I think it is important to bear in mind
11 the deponent is the former global head -- at
12 the time, the global head of Syngenta's
13 litigation, of litigation at Syngenta. This is
14 what appears to be a draft of a litigation
15 record that is covering, yes, the facts of the
16 case, but also details information related to
17 Syngenta's strategic legal decisionmaking of
18 how to proceed with specific litigation making
19 specific decisions in a specific case that is
20 not relevant to the sort of exposure that
21 Mr. Mertens is alleging, or for that matter
22 this sort of -- any of the injuries that he's
23 alleging. He is not alleging that it prevented
24 him from obtaining benefits from the U.S.
25 Social Security Administration. It just

1 doesn't seem to fall within the ambit of
2 relevance to any of that.

3 THE COURT: So your objection is on
4 relevance.

5 MR. FUSELIER-LIPNICKEY: Relevance
6 grounds as well as Rule 403 and hearsay as well
7 as this document does not appear to be a final
8 version of this report and we don't believe it
9 satisfies the business records exception as it
10 isn't -- doesn't appear to be the final version
11 of the document.

12 THE COURT: All right.

13 MS. WAGSTAFF: Your Honor, this is
14 highly relevant in the fact that it shows
15 exactly what Syngenta does when somebody dares
16 to tell them that there is a --

17 THE COURT: I get the relevance.

18 MS. WAGSTAFF: All right.

19 THE COURT: The last one, it's
20 hearsay?

21 MS. WAGSTAFF: I mean, I don't even
22 understand why it could be hearsay. This is a
23 litigation report.

24 THE COURT: Is it an exception to
25 hearsay? I don't know if it's a statement

1 by --

2 MS. WAGSTAFF: I am not necessarily --
3 I mean, I don't think it's -- what's the
4 exception you would say it falls under?

5 THE COURT: Is it an admission?

6 MS. WAGSTAFF: A business record.

7 THE COURT: Is it admission?

8 MS. WAGSTAFF: It's an admission.
9 It's a statement by the defendant. It's an
10 admission. It's a business record. It's
11 probably more than those, Your Honor.

12 THE COURT: Okay, what's next?

13 MS. WAGSTAFF: We're coming to the
14 end.

15 THE COURT: And once we do this we'll
16 take a little break.

17 MS. WAGSTAFF: Okay, the next one --

18 MR. CARTER: Your Honor, if I may,
19 since I was looking at the page numbers, with
20 Exhibit 11, which was that dual column
21 translated --

22 MS. WAGSTAFF: 12.

23 MR. CARTER: The double-column one was
24 12. With respect to Exhibit 11, Chevron had
25 objections, additional objections on pages 119

1 and 120 with respect to foundation. We heard
2 from plaintiff that this goes to notice and,
3 you know, that that was their hearsay
4 exception. On pages 119 and 120 when the
5 witness is asked, well these are findings of
6 a -- clinical findings of a doctor. The
7 witness says: I don't know what this is. I
8 have no way to interpret --

9 THE COURT: I'm going to reread all
10 the testimony in light of -- I didn't have the
11 documents before, and now that I understand the
12 nature of the objections, I could go through
13 this in addition to the documents and I can
14 make my rulings.

15 MR. CARTER: I misunderstood, Your
16 Honor.

17 THE COURT: No, that's okay. I'm
18 playing catch-up. Everybody is ahead of me
19 here.

20 MR. FUSELIER-LIPNICKEY: I think we're
21 moving on from the Mexican Social Security
22 Administration, so I would say that if Your
23 Honor believes that this testimony should come
24 in on the issue of notice, we would request
25 that you provide a limiting instruction to the

1 jury to that effect.

2 THE COURT: Okay.

3 MR. FUSELIER-LIPNICKEY: Thank you.

4 THE COURT: And I am happy to
5 entertain any limiting instruction that you
6 think is warranted, I will take a look at it.

7 MS. WAGSTAFF: And, Your Honor, last
8 exhibit that you have in your hands is
9 Exhibit 15. And this is from 2006. So this is
10 the earliest document we've seen, and this goes
11 towards the -- a couple of things, and I think
12 it will be tied in with the testimony, but one
13 of the things that this goes towards is that
14 they have known and -- one of -- let me back up
15 a little. Defendants are going to stand up and
16 talk about how there is no epidemiology in this
17 case that supports plaintiff's position. And
18 so if you look at this --

19 THE COURT: That says the opposite.

20 MR. FUSELIER-LIPNICKEY: Yeah. So I
21 think that this is a party admission. I think
22 that this is a lot of different things, but I
23 think that this is used to impeach a party
24 position and I actually don't know exactly what
25 defendant's objections are to this.

1 THE COURT: I'm going to ask them.
2 What's your objection to Exhibit 15 and any
3 testimony to Exhibit 15?

4 MR. FUSELIER-LIPNICKEY: First to
5 orient the Court, this is at page 173. I am
6 just taking a look to confirm, but our
7 objection here is primarily on lack of
8 foundation grounds. It doesn't appear that
9 Mr. Nadel ever received this document that I
10 can see. I might be missing his name
11 somewhere.

12 THE COURT: But what does he testify
13 when he is presented with the document?

14 MR. FUSELIER-LIPNICKEY: The testimony
15 here is generally -- it appears that
16 plaintiff's counsel is reading portions of the
17 document to him. He is agreeing that yes, that
18 is what the document says. I don't believe the
19 foundation was laid prior to this document
20 being produced.

21 THE COURT: And Mr. Nadel is not a
22 corporate representative? He is not being
23 called in that capacity or has been anointed as
24 a corporate representative?

25 MR. FUSELIER-LIPNICKEY: No, Your

1 Honor, he was called in his personal capacity,
2 or he was deposed in his personal capacity.

3 THE COURT: So if Mr. Nadel is not
4 familiar with this document, how could this
5 document come in through him? Wouldn't you
6 need a corporate representative or somebody
7 that was familiar with this document?

8 MS. WAGSTAFF: Perhaps. I mean that
9 would make it easier.

10 THE COURT: Well, it would also make
11 it admissible.

12 MS. WAGSTAFF: That would make it
13 easier, for sure. I am just reorienting myself
14 with the exact question so I can answer.

15 All right, so I think that this goes
16 towards notice.

17 THE COURT: I have no doubt that it
18 goes towards notice, but how do you get this
19 document in? What's the foundation?

20 MS. WAGSTAFF: Well, I would agree
21 maybe not to show it to the jury, but I think
22 that this last questioning -- and I will let
23 Your Honor think about this, is 174, 15 to 174,
24 19, I think ties it up. So when we talk about
25 in 2006 you now had a French tribunal determine

1 that exposure to pesticides causes Parkinson's.
2 And shortly thereafter we just went through the
3 Mexican government that makes a similar
4 finding. That's right. Yes, appears to be the
5 case. I don't think he needs to be on -- I
6 think we are already showing him documents that
7 show that. It would be the same thing as if it
8 were sort of a medical literature or something.

9 THE COURT: Maybe if he was a
10 corporate representative.

11 MS. WAGSTAFF: Well even so. You
12 know, I am I've not necessarily --

13 THE COURT: But if he is not familiar
14 with this document or those -- if you establish
15 he is familiar with the findings about the
16 French government, or whatever, that's one
17 thing. But if you're specifically relying on
18 this e-mail that wasn't sent to him, he has no
19 knowledge of it, then he may not be the right
20 witness to bring this evidence.

21 MS. WAGSTAFF: I mean there may be a
22 better witness to bring this evidence in, but I
23 think that we have established that in his last
24 line of questioning that we can bring it in to
25 sort of tie up that fact.

1 THE COURT: Well after you showed it
2 to him then you're asking him to then compare
3 it, and that's the problem.

4 MS. WAGSTAFF: I understand, Your
5 Honor.

6 THE COURT: He may not be the right
7 witness for this document. I am not saying the
8 document is not admissible, it looks like it
9 is, but it just looks like he may not be the
10 one to bring it in.

11 MS. WAGSTAFF: We may have to ask
12 Dr. Botham when he comes live.

13 MR. FUSELIER-LIPNICKEY: Just to
14 further orient the Court, I point you to the
15 lines at 175, 1 through 175, 4 which were not
16 designated, that indicates the witness needed
17 to review the document and again in the
18 testimony that counsel was -- he's just
19 agreeing that yeah, it appears that's what the
20 document says.

21 THE COURT: He may have won the battle
22 or this document but ultimately it will
23 probably find its way in if done correctly.
24 But I will take a look at it.

25 MR. FUSELIER-LIPNICKEY: Thank you,

1 Your Honor. I will also point out that this
2 appears to be passing along information
3 regarding another final decision by another
4 foreign regulatory agency which may be excluded
5 under MIL-1.

6 THE COURT: Thank you.

7 MS. WAGSTAFF: Your Honor, we will try
8 to get this document into evidence, as you can
9 imagine.

10 THE COURT: I am sure. Looks like a
11 good document for you, but just maybe not this
12 witness.

13 MS. WAGSTAFF: I hear you. So on the
14 point that counsel made about a tribunal in
15 France, that is necessarily -- that is
16 something that we don't think is a foreign
17 regulatory. It will come in for notice and we
18 can argue that later but there are also ways to
19 get that document in if that needs to be
20 redacted or something like that. So we can
21 talk about that later.

22 THE COURT: All right. I am just
23 concerned that Judge Roberts -- I know the
24 spirit of his order.

25 MS. WAGSTAFF: Okay. Excellent.

1 THE COURT: Especially because we ran
2 into the same issues in the Roundup case.

3 MS. WAGSTAFF: Yes, very familiar with
4 those issues. I think with that, that
5 concludes Nadel.

6 THE COURT: Okay, why don't we --

7 MR. FUSELIER-LIPNICKEY: Is plaintiff
8 going to withdraw their remaining designations?

9 MS. WAGSTAFF: That was all the
10 documents --

11 MR. FUSELIER-LIPNICKEY: Okay, I am
12 not sure that is. I have a stack of additional
13 documents of the designated testimony.

14 MS. WAGSTAFF: Sorry.

15 MR. FUSELIER-LIPNICKEY: The next one
16 it looks like is Exhibit 16, 17 and 18 starting
17 on the following page of 179.

18 MS. WAGSTAFF: Counsel, can you
19 provide the other copy of those, please?

20 THE COURT: There doesn't seem to be
21 any objections there.

22 MR. FUSELIER-LIPNICKEY: Not on that
23 page, Your Honor. There are objections on the
24 discussions of this document starting at page
25 186.

1 May I approach, Your Honor?

2 THE COURT: Yes. Why don't we do
3 this. So you can get that organized, why don't
4 we take ten minutes.

5 MS. WAGSTAFF: Thank you, Your Honor.

6 (A recess was taken.)

7 THE COURT CRIER: Court is reconvened.
8 Please rise.

9 THE COURT: Everybody may be seated.
10 Where did we leave off?

11 MR. FUSELIER-LIPNICKEY: Your Honor,
12 we had just finished discussing Exhibit 15 and
13 I believe we were preparing to discuss Exhibits
14 16, 17 and 18.

15 THE COURT: So I have 16 in my hand.

16 MR. FUSELIER-LIPNICKEY: I would
17 suggest that perhaps though the exhibits were
18 introduced in that order in the deposition, it
19 may be most helpful to start with Exhibit 18.
20 The document is introduced on page 179 but we
21 waived -- or withdrawn some of our objections
22 to this testimony and our next set of
23 objections are on page 187.

24 THE COURT: Let me just -- because I
25 know I will forget later. Where were your

1 objections withdrawn? Can you just point me to
2 the page?

3 MR. FUSELIER-LIPNICKEY: I believe
4 they've already been removed from the documents
5 submitted to the Court.

6 THE COURT: I have one at 178, line 3.

7 MR. FUSELIER-LIPNICKEY: 178, line 3,
8 Your Honor?

9 THE COURT: I'm sorry, 173, line 3.

10 MR. FUSELIER-LIPNICKEY: Yes, Your
11 Honor. That concerns the e-mail relating to
12 the French tribunal.

13 THE COURT: All right, so that's still
14 in.

15 MR. FUSELIER-LIPNICKEY: Sorry?

16 THE COURT: I still have to rule on
17 that, right?

18 MR. FUSELIER-LIPNICKEY: Yes, Your
19 Honor, that's related to Exhibit 15.

20 THE COURT: Okay. 187, right? That's
21 where we are now?

22 MR. FUSELIER-LIPNICKEY: Yes, Your
23 Honor. So this is a report put together by a
24 Syngenta scientist on a conference that he
25 attended. We're objecting to the --

1 specifically lines of testimony from 187, 13 to
2 188, 3, just on the grounds that this is a
3 mischaracterization of the document. I think
4 that's reflective that the witness reads back
5 the actual language of the document. I think
6 the document speaks for itself here.

7 MS. WAGSTAFF: Which ones? Which
8 lines?

9 MR. FUSELIER-LIPNICKEY: 187, 13, to
10 188, 3.

11 MS. WAGSTAFF: Your Honor, this is
12 cross-examination and I think that this should
13 stay in there. I am questioning him on this
14 document and I summarized it and he wrote --
15 and he read back the answer. I think that
16 that's highly appropriate and proper.

17 MR. FUSELIER-LIPNICKEY: I think it's
18 a mischaracterization to say that Dr. Smith is
19 reporting there is a general consensus that
20 pesticides play a role or are primarily
21 responsible for Parkinson's, and I think that's
22 clear in the answer that is read by the witness
23 there.

24 MS. WAGSTAFF: So then the jury can
25 decide that.

1 THE COURT: Is the defense calling
2 Mr. Nadel at any point?

3 MR. NARESH: No.

4 THE COURT REPORTER: That was a no?

5 MR. FUSELIER-LIPNICKEY: No. That was
6 a no, I'm sorry.

7 THE COURT: So I'm going to overrule
8 that objection.

9 MR. FUSELIER-LIPNICKEY: Thank you,
10 Your Honor.

11 I believe that Chevron may have some
12 additional objections on this questioning.

13 No, they're good.

14 THE COURT: Okay, what's next?

15 MS. WAGSTAFF: There are five
16 objections on that page. Does that take care
17 of all five objections on that page?

18 MR. CARTER: Yes. Chevron's
19 objections there are resolved.

20 MS. WAGSTAFF: Okay, so, great.

21 THE COURT: So I'm ruling on this now.
22 What I plan on later is probably issuing an
23 order telling you what my rulings are, but I am
24 not going to address anything I have ruled on
25 the record. Fair enough?

1 MR. FUSELIER-LIPNICKEY: Okay, Your
2 Honor, thank you.

3 MS. WAGSTAFF: Your Honor, just to be
4 clear, your overruling just resolved Chevron's
5 objection to 186, 15, to 186, 21.

6 THE COURT: All five objections on
7 that page.

8 MS. WAGSTAFF: Okay. I just wanted to
9 make sure we're on the same page.

10 THE COURT: Next one I have is 211.

11 MR. FUSELIER-LIPNICKEY: Yes, Your
12 Honor.

13 THE COURT: That is in reference to
14 Exhibit 16?

15 MR. FUSELIER-LIPNICKEY: Yes, Your
16 Honor. Chevron will waive those objections,
17 Your Honor -- I'm sorry, Syngenta will waive
18 those objections.

19 THE COURT: All right, the two on --

20 MR. FUSELIER-LIPNICKEY: Yes, Your
21 Honor.

22 THE COURT: All right.

23 MR. FUSELIER-LIPNICKEY: So then the
24 next testimony with objections is related to
25 Exhibit Number 27 is at page 232, line 17.

1 THE COURT: Do I have that exhibit?

2 MR. FUSELIER-LIPNICKEY: Not yet, Your
3 Honor. May I approach?

4 THE COURT: Yes.

5 MS. WAGSTAFF: And, Your Honor, we
6 have resolved the -- haven't we resolved all
7 the objections related to this exhibit?

8 MR. FUSELIER-LIPNICKEY: I do not
9 believe we resolved our underlying objection to
10 the exhibit itself.

11 MS. WAGSTAFF: Okay.

12 MR. FUSELIER-LIPNICKEY: If I could
13 hand this to the judge.

14 MS. WAGSTAFF: So, Your Honor, this
15 Exhibit Number 27 is three documents, and
16 counsel for Syngenta correctly pointed out on
17 the record during the deposition that they were
18 sort of non-sequitur documents. So we can talk
19 about the underlying document but if you look
20 at this 27, the first page which is ending in
21 7037 --

22 MR. FUSELIER-LIPNICKEY: Your Honor,
23 I'm sorry, there is not a copy of 27 in that
24 stack that I gave you. Clearly misplaced. I'm
25 trying to run it down.

1 MS. WAGSTAFF: I've got one.

2 THE COURT: I was just there.

3 MS. WAGSTAFF: So I folded it to the
4 page. Just sort of logistically we've agreed
5 during the break that Exhibit 27 will be
6 replaced to only be Syngenta PQ29317038.

7 So the first and third pages of 27
8 will be replaced with just that page, and that
9 will resolve -- we will then remove 233, 09 to
10 233, 18. And we will also remove, 234, 17
11 through 235, 20, which will resolve our
12 objection.

13 That's all administrative stuff, not
14 substance. I just wanted to put it on the
15 record.

16 THE COURT: Okay, so I don't have to
17 rule?

18 MS. WAGSTAFF: No. The ruling on --
19 so we're now getting into some of plaintiff's
20 objections. We're the third column. The
21 ruling on 234, 17 to 235, 01 is resolved
22 because we agreed to take that out.

23 THE COURT: Okay.

24 MR. FUSELIER-LIPNICKEY: We still have
25 some 403 objections to the underlying document,

1 Your Honor. Those are specifically as to the
2 testimony on lines 236 -- I'm sorry, 237, 4 to
3 13 and 237, 14 to 3 -- to the following page,
4 line 3.

5 THE COURT: Sorry, what were the pages
6 again?

7 MR. FUSELIER-LIPNICKEY: The first
8 objection is to the testimony at page 237, line
9 4 to 237, line 13.

10 THE COURT: All right. There's two
11 objections at 236, 20 that I see noted on this
12 transcript.

13 MR. FUSELIER-LIPNICKEY: Yes, Your
14 Honor /it's my understanding that those -- the
15 specific objections should be lined out based
16 on the numbers that are listed there. They're
17 not necessarily placed accurately.

18 THE COURT: So that would apply to
19 237, 09?

20 MR. FUSELIER-LIPNICKEY: Yes, Your
21 Honor. We also object to the testimony at 237,
22 14, to 238, 3, which is just the Q and A
23 following.

24 THE COURT: And your basis?

25 MR. FUSELIER-LIPNICKEY: 403, both on

1 the grounds of confusing the jury based on the
2 back and forth and the potential for prejudice.

3 MS. WAGSTAFF: Let me just walk you
4 through this document, if I may. This is --
5 we're back in the 2008 timeframe. This is one
6 that specifically goes to the discussions from
7 this morning and Mr. Nadel is on the e-mails on
8 both of them, just to reorient the judge.

9 Dr. Smith said: This looks like the
10 final draft which I'm asking Alan Nadel to
11 forward to. And they list a bunch of people.
12 Hopefully this will maintain privilege status
13 for the document. Meaning he is sending it to
14 the lawyers so that they can -- and then Nadel,
15 who may be the truth-teller, says: Jeff and I
16 had provided comments to this draft. Among
17 them was our opinion that it would be difficult
18 to characterize this document as privileged.
19 We think this is very relevant and it goes to a
20 trial theme of ours and it's part and parcel of
21 the same argument from this morning.

22 THE COURT: All right. I will review
23 that.

24 What's the next one?

25 MS. WAGSTAFF: I think the next one is

1 Exhibit 28 which I don't have copies of. If
2 you do, Counsel.

3 MR. FUSELIER-LIPNICKEY: They should
4 be in the packet.

5 MS. WAGSTAFF: This says 23. Oh, got
6 it.

7 THE COURT: So defense, your objection
8 to this is relevance and 403?

9 MR. FUSELIER-LIPNICKEY: Yes, Your
10 Honor. I'm just confirming the basis. I'm
11 just familiarizing myself.

12 The basis of our objection as to 403
13 is that the testimony suggests -- the testimony
14 that was solicited attempts to give the
15 impression that studies were being approved, or
16 were being submitted in-house attorneys for
17 approval; which, A, we don't believe reflects
18 the document; and also is that any potential
19 value of that testimony, the "no" answer is
20 outweighed by the potential for prejudice by
21 placing the idea that these studies were being
22 approved by lawyers and it was not reflective
23 of the practice indicated in this document.

24 THE COURT: Plaintiff?

25 MS. WAGSTAFF: Yeah, so if you look at

1 the last page, Nadel is on the legal team that
2 is sort of within this structure which ties it
3 all in, and this meeting, this Valentine's Day
4 meeting from 2008 that happened in I believe
5 Atlanta is where the idea for the Brent and the
6 Widnes studies was borne which was two big
7 scientific literature things. And I don't
8 think we're just suggesting that legal had to
9 approve these studies, I think the documents
10 actually say that. He is on the team to do it,
11 and I think that we get to walk them through on
12 cross-examination that because I think this
13 Valentine's Day meeting is going to be
14 important for the jury to learn how those
15 studies were borne and how they're now being
16 used in this litigation. And part and parcel
17 of that is that these people with no scientific
18 background and no scientific, you know, just
19 because they have law degrees are having to
20 approve that. And I think when you read the
21 deposition you will see that that is actually
22 not just a suggestion by plaintiff's lawyers
23 but that's what the document says and the jury
24 should hear.

25 THE COURT: All right. I got it.

1 MR. FUSELIER-LIPNICKEY: Nothing else
2 to add.

3 THE COURT: No, I got it. What's the
4 next one?

5 MR. FUSELIER-LIPNICKEY: 29, Your
6 Honor.

7 THE COURT: And what page are we on
8 now?

9 MR. FUSELIER-LIPNICKEY: 246.

10 MS. WAGSTAFF: Is this for Exhibit 29?

11 THE COURT: Yes.

12 MS. WAGSTAFF: Your Honor, do you have
13 a copy of Exhibit 29?

14 THE COURT: I'm looking at it. So
15 this is notes from discussions on December
16 17th, 2007.

17 MR. FUSELIER-LIPNICKEY: Yes, Your
18 Honor, I would just note for the record for
19 your consideration we have waived our privilege
20 objections. So our first objection to this
21 document is at lines 250 -- sorry, page 250,
22 line 5, to 250, line 7.

23 THE COURT: And that's where the
24 question says: And the metadata shows that you
25 deleted it.

1 Right?

2 MR. FUSELIER-LIPNICKEY: Yes, Your
3 Honor.

4 It's not clear what the probative
5 value offered by the testimony is and I think
6 any indication that documents were being
7 deleted without any additional context provided
8 in the testimony or how that impacted the
9 plaintiff's ability to obtain evidence,
10 particularly when he's reviewing the document
11 at a deposition here, any probative value of
12 that is outweighed by the potential for
13 prejudice.

14 THE COURT: Plaintiff.

15 MS. WAGSTAFF: The deletion is
16 extremely probative, and just to put this in
17 context. This is talking about -- I was just
18 reorienting myself. Your Honor is probably
19 familiar with cohort studies from your Roundup
20 trial. And what I said earlier was that the
21 Brent and Widnes studies will be key to
22 defense's case and it is our position that
23 those were created for litigation and then
24 disseminated to the masses. And in this it
25 shows that one of the Paraquat working --

1 epidemiology working group, if you look back at
2 hue this starts: It talks about it is accepted
3 that this is an underpowered study, however it
4 would address a question that is often asked by
5 external scientists. So the point of this
6 document, which you will see when you read the
7 testimony, is that they had internally sort of
8 criticized these studies and then someone
9 deleted that and then you will see later they
10 send it out to the masses with that deleted.
11 And there is testimony that will say well, we
12 deleted that because it was just known. And
13 you know, they had a Paraquat-dot-com website
14 that's linked to the EPA's website and they
15 would put these statements about how great
16 threes studies were while internally they were
17 saying oh, it's underpowered, or, oh, it can't
18 answer this question, things of that nature.
19 So that's -- and this is a document authored by
20 Nadel and circulated by Nadel and so we think
21 it's highly relevant.

22 MR. FUSELIER-LIPNICKEY: To clarify,
23 Your Honor, we don't object to the document
24 itself, we've removed all the remaining
25 objections. Our objection is to the attorney

1 testimony here that the document was deleted.
2 It doesn't appear based on the testimony that
3 he has any recollection. His response to the
4 question is: Okay.

5 MS. WAGSTAFF: It's cross-examination
6 of an adverse witness, and it was impeachment
7 and I asked him if -- I mean --

8 THE COURT: Well he is not actually
9 saying it was deleted. He is just saying --

10 MR. FUSELIER-LIPNICKEY: Exactly, Your
11 Honor.

12 THE COURT: I don't know how he
13 appears on the screen when he testifies, but I
14 don't know if he went "okay," or whatever he
15 said.

16 All right. What's next?

17 MR. FUSELIER-LIPNICKEY: Exhibit 30.
18 Our page objection is on page 257.

19 MS. WAGSTAFF: What about 254? Are
20 you waiving those privilege, but I think
21 Chevron is going hearsay?

22 MR. FUSELIER-LIPNICKEY: We have
23 waived our objection to privilege as to this
24 document, our objection based on privilege to
25 this document. I will let Chevron speak to

1 their hearsay objection.

2 MR. CARTER: Thank you, Your Honor.
3 Page 254 line 20 through 255, line 5, we have
4 an objection based on 403. We just don't think
5 the probative value of this is outweighed by
6 the inflammatory prejudice.

7 THE COURT: Well it says hearsay, but
8 now it's 403?

9 MR. CARTER: Yes, Your Honor.

10 MS. WAGSTAFF: I mean, it clearly
11 isn't hearsay and we don't think it's a 403
12 violation either, but I can -- I need to
13 reorient myself because this is the first time
14 I'm hearing about a 403.

15 MR. CARTER: Our position is there is
16 no reason to be talking about suicidal
17 investigations in this case.

18 THE COURT: All right. I will look
19 that over. What's next?

20 MS. WAGSTAFF: 257 -- that's the
21 inclusion of Document 30.

22 MR. FUSELIER-LIPNICKEY: We'll waive
23 that objection, Your Honor.

24 THE COURT: Okay.

25 MS. WAGSTAFF: I guess the next one is

1 33.

2 MR. FUSELIER-LIPNICKEY: Yes. And our
3 objections are at lines 274, line 2, to 274,
4 line 3.

5 MS. WAGSTAFF: Well that's the
6 document.

7 MR. FUSELIER-LIPNICKEY: Yeah, we have
8 some additional objections as well.

9 THE COURT: All right. Let me hear
10 them.

11 MS. WAGSTAFF: So this document, just
12 to sort of orient, once again it's titled
13 "Privileged and Confidential," and it's --
14 this goes to the fact that Jack Mandel, if you
15 look at the bottom of the first page with the
16 e-mail correspondence where Jack Mandel sends
17 it to Alan Nadel: Here is the document we
18 discussed. I'll be in Washington today and
19 tomorrow, back, and that language. Jack Mandel
20 was helping -- this all starts to tie in
21 together. Jack Mandel was helping them
22 generate, conduct, whatever verb you want to
23 use, the Widnes Study, which is kind of what is
24 attached hereto. And it's showing that he is
25 sending it to the lawyers, not the scientists,

1 but the lawyers. And then Alan Nadel has it,
2 types it "Privileged and Confidential" to keep
3 that attorney-client and sort of now starts to
4 disseminate more to layers. Dr. Breckenridge
5 is a lawyer -- sorry, a scientist. Martin
6 Wilkes is a scientist. Dr. Lewis Smith, and
7 then --

8 THE COURT: So you're saying they
9 threw Nadel's name on here just to --

10 MS. WAGSTAFF: Yeah, and the
11 questioning is also -- I mean, this is a
12 document Nadel received, obviously discussed
13 with Jeff Mandel because it says: Here's the
14 document we discussed. He then disseminated it
15 to other people, and so it fits into three or
16 four differ trial themes and I think it's
17 highly appropriate to ask him questions about
18 it.

19 MR. FUSELIER-LIPNICKEY: So our
20 objection, primary objection to the
21 introduction of this document, Your Honor, is
22 on the basis of hearsay. It has absolutely
23 nothing to do with who is on the e-mail or
24 anything like that. It has to do with the
25 analysis sent from Jack Mandel. It's an

1 out-of-court statement that appears to be
2 offered for its truth and as far as I can tell
3 doesn't satisfy any hearsay exception. The
4 document should be excluded as such.

5 MS. WAGSTAFF: Jack Mandel was working
6 with Exponent at the time who, as you may
7 remember --

8 THE COURT: Yes.

9 MS. WAGSTAFF: -- works for
10 agrochemical companies to create literature all
11 the time. This is highly relevant. It goes to
12 bias of these studies. It goes to a bunch of
13 different things. It also, you know, will go
14 towards bias of some of the experts in the case
15 who were retained by Exponent. So we think
16 it's relevant. We don't think it's hearsay.
17 And we think it comes in to show the
18 relationship and the bias of the studies that
19 they will flaunt to the jury as being
20 independent, scientific causation studies.

21 THE COURT: All right, I got it.
22 What's next?

23 MS. WAGSTAFF: So I believe that the
24 next one is -- if you go down to Exhibit 34 --

25 MR. FUSELIER-LIPNICKEY: We have some

1 additional exhibits -- objections to the
2 testimony as well. If you flip the page, Your
3 Honor, to 276.

4 THE COURT: Yup.

5 MR. FUSELIER-LIPNICKEY: We object on
6 the basis that -- I'm happy to go line-by-line
7 if that's helpful. As to the first question
8 and answer on the page, we object on the basis
9 that the question mischaracterizes the document
10 and on the basis of hearsay. It's about the
11 contents of the document as a lack of
12 foundation. You can see in the answer on lines
13 277, 3 to 5, that the witness was just
14 referring to what the document is saying.

15 THE COURT: He is interpreting it,
16 right?

17 MS. WAGSTAFF: And he is a recipient
18 who discussed with Jack Mandel -- I mean, he
19 has extremely personal knowledge of this and --

20 MR. FUSELIER-LIPNICKEY: To answer
21 Your Honor, I understand his answer to be just
22 reflecting what it is this study is saying.

23 THE COURT: All right.

24 MS. WAGSTAFF: And, Your Honor, we
25 think additionally this exact colloquy and this

1 line of questioning goes to notice to
2 defendants that they knew at this time this is
3 talking about the witness study, that it wasn't
4 going to produce informative results, and the
5 jury should hear they knew even before the
6 study was even really completed and
7 disseminated that it wasn't going to produce
8 formative results from the conductor of the
9 study himself. And there is no prejudice there
10 as he says: Well, that it is unlikely to
11 produce informative. And I think the jury
12 needs to know that the person who created the
13 study and carried it out said to Syngenta this
14 is unlikely to produce informative results.
15 And they're going to stand up in front of them
16 and say: This the most informative study.
17 That's important.

18 THE COURT: All right. What's next?

19 MR. FUSELIER-LIPNICKEY: It would be
20 the following lines of questioning there, page
21 277, lines 10 through 16. We object on 403
22 grounds on the basis that this will confuse the
23 jury. It jumps from the contents of Exhibits 3
24 to discussing what is or is not mentioned on
25 Paraquat-dot-com without any testimony to

1 indicate what that is, why it is relevant, who
2 maintains that website. It seems to introduce
3 the potential to confuse the jury.

4 THE COURT: How far does that go down
5 to, from 277, 10, down to --

6 MR. FUSELIER-LIPNICKEY: 277, 16, yes,
7 Your Honor.

8 MS. WAGSTAFF: And, Your Honor, we
9 fully intend to introduce evidence of
10 Paraquat-dot-com. And that is -- I don't know
11 if at the time this video is played, but it
12 will be introduced and will be discussed in
13 opening. Paraquat-dot-com, just for your own
14 reference, is there is a trial theme of what
15 defendants are telling the public and what they
16 know internally. And Paraquat-dot-com is a
17 website -- we may even be on it. It is a
18 website talking about how great these chemicals
19 are and how, you know, the lawsuits are
20 terrible and all of these different things.
21 And it actually links to the EPA, showing how
22 closely aligned the EPA and Syngenta are. And
23 this is just going to show that once again,
24 while their person is informing them that this
25 is not going to be an informative study, they

1 don't put that on there. And so if you were to
2 go and look at the Widnes Study at this
3 relevant time, I think probably even now it
4 would be touted as a very informative study,
5 and it's just us letting the jury know again --
6 it's the jury knowing again sort of the two
7 faces that Syngenta has and I think it's very
8 important.

9 THE COURT: All right. I understand
10 that theme.

11 MR. FUSELIER-LIPNICKEY: We were not
12 objecting o the relevance grounds to that
13 testimony, just simply on 403.

14 THE COURT: 403, yup.

15 MR. FUSELIER-LIPNICKEY: Yes, Your
16 Honor.

17 THE COURT: Then we have Exhibit 34.

18 MR. FUSELIER-LIPNICKEY: Yes.

19 THE COURT: Which is 279, line 6.

20 MR. FUSELIER-LIPNICKEY: Yes, Your
21 Honor. This is an e-mail exchange between
22 Jonathan Sullivan, who is one of Syngenta's
23 in-house attorneys and Jeffrey Wolf who is one
24 of Syngenta's outside regulatory counsel. We
25 object to this document on two grounds. The

1 first is if you look at the top of the
2 document, Your Honor, you'll notice that the
3 most recent e-mail is one that Mr. Nadel did
4 not receive. So we object to this document as
5 to lack of foundation as well as to hearsay to
6 the communications from Mr. Wolf.

7 THE COURT: Did he receive any of
8 these e-mails on this chain?

9 MR. FUSELIER-LIPNICKEY: Yes, Your
10 Honor.

11 MS. WAGSTAFF: Your Honor, just
12 walking you through it again where if you look
13 on the first page when Jeffrey Wolf is writing
14 to Jonathan Sullivan who is the lawyer and
15 cc'ing Alan Nadel talking about --

16 THE COURT: When you say the first
17 page, the first e-mail?

18 MS. WAGSTAFF: The second one down,
19 the first page. Jeffrey Wolf on July 16th,
20 2018. Do you see?

21 THE COURT: Yup.

22 MS. WAGSTAFF: This is again talking
23 about how they're sending scientific reference
24 dose reports to the lawyers, not to the
25 scientists.

1 THE COURT: Well let me stop you there
2 for a second. Is this document displayed on
3 the screen? Is it going to --

4 MS. WAGSTAFF: I don't know that -- I
5 would assume that it is. We did a two-camera
6 deposition so I would assume that it would be
7 displayed. That would be our preference.

8 THE COURT: Well, my question is
9 defense counsel raised an issue that the e-mail
10 that is July 16th, 2008, at 17:50, Mr. Nadel is
11 not included.

12 MS. WAGSTAFF: I'm not sure if we care
13 that that's redacted.

14 THE COURT: Is that the nature of the
15 objection or is there more?

16 MR. FUSELIER-LIPNICKEY: I am just
17 conferring, Your Honor. I believe that is the
18 nature of our objection. We do maintain a
19 hearsay object to the contents of the e-mail
20 from Jeffrey Wolf who is an out-of-court
21 witness whose statement is being offered for
22 the truth of the matter asserted and it doesn't
23 appear there is any applicable hearsay
24 objection.

25 THE COURT: And Jeffrey Wolf is an

1 attorney?

2 MR. FUSELIER-LIPNICKEY: Yes, Your
3 Honor. I believe if you look at the middle of
4 the second page, his firm name is listed there.

5 THE COURT: I see it on his e-mail
6 address.

7 MS. WAGSTAFF: And we would say it's
8 not a hearsay -- it's a party statement. He's
9 an agent of Syngenta and they've waived the
10 attorney-client privilege and this is a bunch
11 of lawyers talking about the scientific nature
12 of certain things.

13 THE COURT: But to defendant's
14 objection, that top e-mail will be redacted?
15 Is there any testimony to that top e-mail?

16 MS. WAGSTAFF: I don't know if there
17 is any testimony. I don't think so. I wasn't
18 prepare to answer that question but I don't
19 think there is.

20 Is there, Counsel?

21 MR. FUSELIER-LIPNICKEY: Not to my
22 knowledge. As to the hearsay objection, I'll
23 just point out that the -- our position is that
24 Jeffrey Wolf, the outside attorney, is not an
25 officer of Syngenta and cannot --

1 THE COURT: Okay.

2 MS. WAGSTAFF: So to the extent there
3 is no communication about that and to the
4 extent the Court orders it, we would be okay
5 with redacting that top part.

6 THE COURT: All right, the Court is
7 going to order that and then I will address the
8 rest of those.

9 MR. FUSELIER-LIPNICKEY: Thank you,
10 Your Honor.

11 THE COURT: Now starting at 27, 18
12 we've got six objections, right?

13 MR. FUSELIER-LIPNICKEY: Yes, Your
14 Honor, and these are all -- again our privilege
15 objections are waived as to this document. Our
16 objections are to the hearsay in the document
17 and I believe that Your Honor's ruling on the
18 hearsay objections as pertains to the document
19 will address these objections as well.

20 I believe Chevron may have some
21 additional objections. I don't want to speak
22 for them.

23 MR. CARTER: Our additional objections
24 have been resolved to this point, Your Honor.

25 THE COURT: Okay.

1 MS. WAGSTAFF: So is Chevron's
2 position to 282, 05, 282, 12 resolved?

3 MR. CARTER: Yes. Thank you for
4 asking.

5 MS. WAGSTAFF: All right, Your Honor,
6 now I think we're getting into our objections.
7 If you go to 347.

8 MR. FUSELIER-LIPNICKEY: Could you
9 repeat the page number, Counsel.

10 MS. WAGSTAFF: 347.

11 THE COURT: Okay.

12 MS. WAGSTAFF: There are two
13 objections on that page. Do you see those?

14 THE COURT: Yes.

15 MS. WAGSTAFF: We're going to waive
16 both of those.

17 THE COURT: 352.

18 MS. WAGSTAFF: So those are actually
19 found on the other page, starting with 353, 16.
20 We think that's leading. I was going to say
21 counsel asks now to the extent this document
22 were to be used to try to suggest that the age
23 next to new lawsuit filed alleging cause is
24 intended to show that there was a high
25 probability that a new lawsuit would be filed,

1 would that be a fair characterization of the
2 document. I believe that's leading. We
3 objected to it.

4 MR. FUSELIER-LIPNICKEY: Our response,
5 Your Honor, is this is a challenge question
6 that's challenging the characterization made on
7 cross-examination. We think that's fair game
8 here.

9 THE COURT: And he says: I don't
10 believe so.

11 MS. WAGSTAFF: They're now on direct
12 examination with their witness. This is not
13 cross-examination so we think it's leading.

14 THE COURT: I'm going to overrule that
15 objection.

16 MS. WAGSTAFF: Okay, and we would just
17 ask that our object to form come out of the
18 cut.

19 THE COURT: Yeah, you can take it out.

20 MS. WAGSTAFF: The next one we have is
21 just write the letter right after the black
22 ink, 354, 13, we think that's leading as well.

23 THE COURT: I am going to overrule
24 that.

25 MS. WAGSTAFF: This is just we are

1 wanting to take out some of the attorney
2 commentary. If you look back down on 359, 07
3 to 08, I think Mr. Naresh says: And I wanted
4 to ask you about how this really worked. We
5 just ask that that be taken out.

6 MR. FUSELIER-LIPNICKEY: We're happy
7 to cut that sentence, Your Honor.

8 MS. WAGSTAFF: The next page, 361 to
9 362. We're going to waive that.

10 And then the last one, the last Nadel
11 one on 356, we thing that this is an Aldridge
12 issue related to medical literature on direct
13 examination. It's all of the red stuff.

14 MR. FUSELIER-LIPNICKEY: Your Honor,
15 our position is this is fair game and it
16 doesn't present an Aldridge issue. The Brent
17 Study came up during the course of counsel's
18 deposition examination. We think this is fair
19 game to address those questions.

20 THE COURT: Well in essence, when it's
21 coming up in this fashion, it's almost like
22 it's on redirect. So depending what's brought
23 out on cross, there is a little more leeway in
24 Aldridge. There's not a lot of guidance.
25 Aldridge is a sometimes complex case to apply,

1 but if it's brought out on direct there is a
2 little leeway given to -- sorry, brought out in
3 cross, this would be in essence almost like a
4 redirect. So let me see. Well, you don't read
5 in any part of that study, are you? If you're
6 not reading any part of that study I don't
7 think we even get into Aldridge.

8 MR. FUSELIER-LIPNICKEY: I believe
9 there is one quote, Your Honor, on page 367,
10 line 7, to 367, line 8, just sort of in the
11 middle of the block. It just says: This study
12 has several limitations, right?

13 THE COURT: Yeah, okay. Overruled.

14 MR. FUSELIER-LIPNICKEY: Thank you,
15 Your Honor.

16 THE COURT: Oh, that's the end. All
17 right, that will take about a week of trial and
18 it took us three hours to go through it. I am
19 not even done. Now my work is just getting
20 started now that I understand the issues and
21 have the documents. I am going to have to
22 spend probably a couple hours going through it,
23 which I would like to do today.

24 What else?

25 MS. WAGSTAFF: Your Honor, a proposal

1 that I have is we have a Patterson deposition
2 next. That would mean about three that we've
3 gone through because we had the Botham one too.
4 I don't think there are a ton of objections and
5 if we could get through that, that would get us
6 through the second day of trial, although we
7 may have to shift around because we have a live
8 witness on Tuesday, so -- if Tuesday is our
9 first trial day.

10 THE COURT: It probably will be.

11 MS. WAGSTAFF: We may have to shift
12 around a lot. We may have a different order.
13 But those three depositions will get us
14 through, and then we have two smaller ones that
15 we could do if you wanted to. If you want to
16 do. If not, we can do those later.

17 THE COURT: I feel obligated because I
18 have a new court reporter coming at 1 to let
19 her do a little work so she didn't come down
20 here for no reason. Is she coming in?

21 Maybe we can go to maybe close to 2
22 and then we can take a break and then I can
23 spend the rest of the day trying to work
24 through these objections. So let's go through
25 Patterson.

1 MR. CARTER: Your Honor, if I may, two
2 things on Patterson. First, I don't think it
3 comes up in either of these two volumes, but in
4 light of the ruling from Judge Roberts this
5 morning on the summary judgment, I do know
6 there were discussions that would implicate
7 that -- this is a seven-volume witness. He was
8 a corporate representative on toxicology
9 issues.

10 THE COURT: When you say seven
11 volumes, you mean --

12 MR. CARTER: The deposition had seven
13 sessions. What Your Honor has now is volumes 1
14 and 2 of 7. And so I was just going to say
15 while I think we have a very narrow set of
16 things to resolve with respect to volumes 1 and
17 2, obviously I want to make sure that we
18 applied the Court's order and so if there is
19 anything that we think is implicated, we'll
20 notify counsel so that the parties can either
21 get it out by agreement or come back to you.

22 THE COURT: Perfect.

23 MR. CARTER: The second thing I would
24 flag based on what counsel was just saying,
25 because this is a seven-volume deposition, we

1 would object if plaintiffs were going to play
2 like volumes 1 or 2 on day one and then break
3 it up to some undetermined break. I don't want
4 to let that stand in the way of progress. I am
5 happy to go ahead and get through 1 and 2 so
6 that we're using the Court's time efficiently,
7 I just didn't want to prejudice myself by
8 saying we've got 1 and 2 cut, that can play,
9 we'll deal with the rest later, so I do --

10 THE COURT: I would prefer we do a
11 witness at a time.

12 MR. DICKENS: Your Honor, I think part
13 of our position is we're going to be working
14 around the live witnesses here and we've tried
15 to narrow --

16 THE COURT: I understand. A lot of
17 time with live witnesses, I've stopped trials
18 and the live witness has to go home and come
19 back a week later. Whatever happens with trial
20 we have to do it. But if we can get through,
21 especially because they're videos, play them
22 all the way through.

23 MR. DICKENS: We understand that.
24 Just depending on how long they end up being if
25 we have to break for a day and come back to it.

1 THE COURT: That's a different story.
2 If the schedule dictates that we have to do
3 that, then we'll do it.

4 MR. DICKENS: Understood.

5 MR. CARTER: So with that, Your Honor,
6 we move through -- the parties have been making
7 progress, just to make sure that we track. I
8 think the first dispute that Your Honor has in
9 front of you would be on page 80. And I
10 believe plaintiffs have withdrawn their
11 objection to that counter; is that correct?

12 MR. DICKENS: That is correct, yes.

13 THE COURT: All right. I am not
14 seeing it on --

15 MR. DICKENS: And I think part of the
16 issue, Your Honor, which it might actually help
17 streamline is plaintiff's objections didn't
18 seem to make it into the copy that was
19 submitted to the Court. So we only have two
20 objections that we haven't withdrawn. So I can
21 bring those up when we get to those pages.

22 THE COURT: Okay.

23 MR. CARTER: So with that, I think the
24 first objection for Your Honor today would be
25 on page 206, lines 3 through 14. And this was

1 a Chevron counter-designation and this was one
2 of the two objections that counsel was just
3 referencing.

4 THE COURT: 206, 3 through 14.

5 MR. CARTER: 4 through 14.

6 THE COURT: I was going to say 3 looks
7 like the end of the answer.

8 MR. DICKENS: Yes, Your Honor, and
9 plaintiff's objection there is that it is
10 nonresponsive. I think we can live with the
11 answer of: "No, sir." But the rest of the
12 answer there is nonresponsive to the question.
13 And so we would seek to strike everything after
14 "No, sir."

15 MR. CARTER: We would disagree. We
16 think it's an explanation given to the answer.
17 There was no contemporaneous motion to strike.
18 And this is a subject that is discussed
19 throughout the deposition, you know, why did
20 Chevron get out of the business when they did.
21 And so we would submit that this is relevant
22 and responsive to the question.

23 THE COURT: And you didn't ask for a
24 yes or answer so they have a right to explain
25 their answer, so I'm going to overrule that

1 objection.

2 MR. CARTER: The next objection in
3 this same section, Your Honor, Exhibit 14 which
4 if I may approach, I will hand up some copies.

5 THE COURT: Yes. And that's on page
6 206?

7 MR. CARTER: Yes, Your Honor.

8 So this is actually the kind of
9 remaining chunk of volume 1 that relates to
10 this exhibit. So it starts on 206, but our
11 objection continues through to page 212 and
12 then that is the only thing that remains in
13 this volume. Our objection -- I will frame the
14 exhibit and then you can see kind of the Q and
15 A as it goes through.

16 This objection is based on three
17 things: Foundation, hearsay and relevance.

18 I'll deal with the foundation because
19 that is the most discrete and, you know,
20 easiest to address. So you see, Your Honor,
21 this starts with a Chevron letter where they're
22 attaching some memorandum, some materials that
23 the company had received. Page 3 and page 4 of
24 Exhibit 14 are the portions of this exhibit
25 that are referenced in the deposition

1 designations.

2 So page 3 is a letter from an R. Gwin
3 Follis, F-O-L-L-I-S, writing to someone at the
4 company.

5 THE COURT: Who is R. Gwin Follis?

6 MR. CARTER: Exactly where I was
7 headed. So he is a former board member for
8 Chevron who had been retired for 20 years by
9 the time that he wrote this letter, which is in
10 1985. So he had come across some information
11 in a letter that was in public literature and
12 is writing to the company saying: I am sure
13 you're aware of this -- and we'll get into the
14 specifics because the you see the 403 if you're
15 looking at that. One of the things he attaches
16 is at page 4, which is an October letter
17 from -- it's initialed by JGF and as you will
18 see when we look at the designations, there is
19 no foundation, no one knows who JGF is. So
20 Mr. Follis is attaching a letter from an
21 unidentified individual. So that's the
22 foundation objection.

23 The hearsay objection will come from
24 the fact that JGF, who is unknown, and Mr.
25 Follis are not employees of Chevron, they're

1 not working for Chevron, and so it's not
2 subject to an exception.

3 To the extent plaintiffs argue that
4 this goes to notice, you know, that walks us
5 into the 403 problem.

6 THE COURT: Well, this is just a
7 former board member, right?

8 MR. CARTER: Retiree, yes, Your Honor.

9 THE COURT: Do you have any idea what
10 this document is?

11 MR. CARTER: Yeah. So when we look at
12 the document, he is forwarding a letter from
13 someone who was commenting on a public letter
14 so the way to address this probably makes sense
15 to go with the designations. So you've got the
16 exhibit there for reference, but the language
17 that is at issue is reflected in the
18 designations that we're discussing.

19 So on page 206 and 207, it's really
20 the introduction to the exhibit. The meat of
21 what we're discussing in terms of the prejudice
22 you will see on page 207, the witness is asked
23 if -- he doesn't know who Mr. Follis and he
24 doesn't recognize the initials, but I told you
25 who Mr. Follis is. When you turn to page 209,

1 line 20, this is the crux of the 403 problem.
2 So the examiner asks the question -- and he's
3 quoting from the letter, this is page 4 of
4 Exhibit 14. The bankruptcy of the asbestos
5 manufacturer, the Manville Corporation, has
6 highlighted the especially severe financial
7 risks involved in selling the product which
8 contributes to a chronic disease. Parkinson's
9 can go on for decades.

10 And then he goes on to talk about kind
11 of the risk to the shareholders. So Mr. Follis
12 is passing along this letter of someone who is
13 concerned about shareholder issues and this
14 turning into asbestos litigation.

15 On page 211 they quote from page 3 of
16 the exhibit which Mr. Follis' letter where he
17 says -- well, I'll let Your Honor read.

18 THE COURT: I read the article.

19 MR. CARTER: You saw what it says.

20 And so he's again saying, the sign-off is: I
21 will pass this up to you as I cannot think of
22 anything more horrible for us to bequeath our
23 successors than an asbestos problem.

24 So it's one thing if they want to
25 suggest that the article is given to the

1 company for notice of these things, but the
2 references to asbestos litigation, the
3 speculation from non-employees about whether
4 this poses an asbestos problem or litigation
5 risk would be unduly prejudicial and that would
6 outweigh any probative value.

7 So let me stop there and I will let
8 plaintiff respond.

9 THE COURT: All right, plaintiff.

10 MR. DICKENS: Yes, Your Honor. So we
11 can take a step back. So Timothy Patterson is
12 testifying in this capacity as the corporate
13 representative for Chevron. So he was
14 designated as the representative to testify
15 with respect to these issues. Now, these
16 documents --

17 THE COURT: So let me just stop you
18 there. From the foundation argument,
19 Mr. Patterson is standing in the shoes of the
20 corporation, correct?

21 MR. DICKENS: That's correct.

22 THE COURT: This is a document
23 received through the corporation.

24 MR. DICKENS: That's correct.

25 THE COURT: So maybe that checks off

1 foundation. But now we run into an area of
2 either relevance, hearsay, or 403. So address
3 those issues.

4 MR. DICKENS: And for hearsay. So
5 these are ancient documents and we actually
6 issued requests for admissions to Chevron to
7 establish ancient documents that they received
8 this. There is no question as to authenticity,
9 you know, and meeting each of the requirements
10 for an ancient document. So there is -- and
11 the reason for ancient documents is clear here.
12 Gwin Follis is no longer available for us to go
13 and examine, nor anyone who actually drafted
14 these memorandums or included those. So either
15 that is why the ancient document exception for
16 hearsay is available is because, you know, our
17 only ability to question Chevron with respect
18 to these documents is through their corporate
19 representative, and that's what we did. So
20 that's, you know, the first.

21 The other is, you know, with respect
22 to these documents and memorandum. We believe
23 that JGF is, based on the -- as well as Gwin
24 Follis, just in the language being used, we'd
25 say they are opposing party statements, I mean,

1 since we don't want to take any chance of
2 facing an asbestos situation.

3 THE COURT: Who said that, Follis?

4 MR. DICKENS: That's Follis, and
5 that's on the first document.

6 THE COURT: But he is the former board
7 member, correct?

8 MR. DICKENS: That's what they're
9 indicating to us. The corporate representative
10 testified he didn't know who Gwin Follis was.
11 So I can take counsel's word for it.

12 THE COURT: Right, but if he is a
13 former board member, he can't now speak as
14 admission for --

15 MR. DICKENS: Understood. And part of
16 it is we didn't know, right, who Gwin Follis
17 was. So I'll take their representation that
18 that's the case. But it doesn't change the
19 fact that it is ancient documents as well as,
20 in our view, business records in which they
21 received. And I do think it does go to --

22 THE COURT: So how is it a business
23 record? Are you talking about the letter?

24 MR. DICKENS: The memorandum. And
25 what we -- you know, in saying that he is a

1 former business member -- I mean, the
2 memorandum does actually seem to indicate that
3 it's from the Chevron's Environmental Health
4 Center, and that's the Gwin Follis e-mail. And
5 so it's a little confusing with respect to the
6 representation that he has no connection to
7 Chevron or isn't serving as an agent of Chevron
8 when he is sending a memorandum under kind of
9 cover letter of Chevron Environmental Health
10 Center.

11 THE COURT: But he might own a lot of
12 stock in Chevron --

13 MR. DICKENS: He might.

14 THE COURT: -- as a former board
15 member.

16 MR. DICKENS: Yeah, and part of it is
17 he might certainly own a lot of stock, but once
18 again, it's from the letterhead of Chevron
19 Environmental Health Center, you kind of seems
20 to distinguish just a mere stockholder versus
21 someone with more sway.

22 But, you know, even if would you take
23 business records aside, I mean the ancient
24 documents is a pretty clear exception to
25 hearsay here. But it does indeed go to notice.

1 But it also goes go to impeachment. If you
2 look at the question that we had objected to
3 and the Court just overruled, it specifically
4 asks: "So did the connection between Paraquat
5 and Parkinson's have anything to do with
6 Chevron's decision to get out of the sales of
7 Paraquat?

8 "No, sir."

9 And then it goes on.

10 These documents are then used
11 immediately after for impeachment of those
12 purposes to show that they were aware of the
13 Paraquat and Parkinson's issue. It was an
14 issue that was being raised to them in the end
15 of 1985 and then within the year they
16 completely pulled out of the Paraquat business.

17 So these documents are being used for
18 impeachment, they can gauge the credibility of
19 Mr. Patterson. But it's going specifically to
20 that question of whether or not Parkinson's
21 Disease did have a basis in their decision to
22 pull out of Paraquat.

23 MR. CARTER: A few things in response,
24 Your Honor, first with respect to the business
25 record point. I believe what counsel is

1 referring to is a stamp on the top of page 3
2 which shows that it's received. You look at
3 the date of Mr. Follis' letter and it's October
4 18th, 1985, and then the stamp is October 21,
5 1985. And says file copy. So we're not
6 disputing authenticity.

7 THE COURT: A letter.

8 MR. CARTER: This is a general letter
9 that existed in the files, but that doesn't
10 make it a business record.

11 With respect to ancient documents, I
12 understand that is an exception the Court can
13 consider, but there is also layered hearsay in
14 here. Page 4 is a letter that Mr. Follis is
15 transmitting from someone else. So there is
16 also a hearsay within hearsay. No one is able
17 to cross-examine JGF regarding that.

18 The last argument that counsel made
19 with respect to what this goes to show I think
20 underscores the 403 problem. This is being
21 offered by plaintiffs to suggest that this was
22 the reason that Chevron in fact left the
23 business. And there is -- when you layer on
24 the foundation with the hearsay, as well as the
25 inflammatory reference to asbestos litigation,

1 you know, that's the crux of our argument. And
2 we have MIL number 9 which is to be resolved,
3 but one of those things was talking about other
4 litigation. And Roundup and asbestos. So
5 that's an additional concern of ours from a 403
6 perspective, Your Honor.

7 THE COURT: All right. I will re-read
8 these documents and the testimony and make a
9 decision on this.

10 MR. CARTER: Thank you. Just for
11 administrative purposes, I believe Your Honor's
12 ruling will resolve all of the disputed
13 portions from 206, line 22, through the end of
14 the designations in volume 1. So we'll apply
15 your ruling to those sections.

16 THE COURT: I'm sorry, I missed the
17 last part of that.

18 MR. CARTER: I just said we will apply
19 Your Honor's ruling to the sections from 206
20 line 22, through 212, line 9, which is the kind
21 of the full discussion of that memo.

22 THE COURT: All right. Since we have
23 our replacement court reporter, come on up.
24 Join the party.

25 (End of morning session.)

C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this is a correct transcript of the same.

JUDITH J. HALL, CRR/RMR
Official Court Reporter

DATE

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Judith J. Hall, C.R.R., R.M.R.

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