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MONSANTO COMPANY

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No.: 3:16-md-02741-VC

Cervantes v. Monsanto Co., 3:19-cv-03015-VC
Karman v. Monsanto Co., 3:19-cv-01183-VC
Pecorelli v. Monsanto Co., 3:16-cv-06936-VC
Peterson v. Monsanto Co., 3:18-cv-07271-VC
Schafer v. Monsanto Co., 3:19-cv-02169

**DEFENDANT MONSANTO
COMPANY'S NOTICE OF
MOTION AND MOTION TO
EXCLUDE THE SPECIFIC
CAUSATION TESTIMONY OF
DR. DENNIS WEISENBURGER**

Hearing date: May 28, 2021
Time:

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** beginning on May 28, 2021, in Courtroom 4 of the United States
3 District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco,
4 CA 94102, or as ordered by the Court, Defendant Monsanto Company (“Monsanto”) will present its
5 Motion to Exclude the Specific Causation Testimony of Dr. Dennis Weisenburger. Monsanto seeks
6 an order excluding opinion of this witness under Federal Rule of Evidence 702 and *Daubert v. Merrell*
7 *Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

8
9 DATED: March 18, 2021

10 Respectfully submitted,

11 /s/ Michael X. Imbroscio

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INTRODUCTION

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2 As before, Dr. Dennis Weisenburger has presented differential “etiologies”¹ to support his
3 opinions that Roundup®-branded products (“Roundup”) caused five Plaintiffs’ NHL: Gerard
4 Cervantes, Robert Karman, James Peterson, Michael Pecorelli, and John Schafer. All five Plaintiffs
5 have disclosed Dr. Weisenburger as both a general and specific causation expert. For all the reasons
6 Monsanto previously asserted—including his “ruling in” of Roundup based on flawed studies that do
7 not apply to the specific subtypes these Plaintiffs have and his failure to account for the fact that the
8 majority of NHL cases have no known cause—Dr. Weisenburger’s specific causation opinions are
9 faulty, unreliable, and barred under Rule 702 and *Daubert*. Dr. Weisenburger’s opinions in Wave 2,
10 however, are even more flawed than those this Court previously considered. Because it is inconsistent
11 with his desired result in this case, Dr. Weisenburger ignores a known risk factor for NHL, welding,
12 that his own research establishes has a far higher risk ratio than glyphosate per the studies on which
13 he relies. At the same time, Dr. Weisenburger dismisses or ignores other possible causes with no
14 analysis, even though one of the Plaintiffs previously asserted in court that this other exposure caused
15 his NHL. And Dr. Weisenburger continues to opine, in violation of Pre-Trial Order 85 (“PTO 85”),
16 that an individual’s risk of NHL doubles if they use Roundup for greater than two days per year or 10
17 days in their lifetime.

18 Accordingly, Monsanto hereby moves to exclude the specific causation opinions of Dr.
19 Weisenburger on Rule 702 grounds and for summary judgment on causation grounds in the above-
20 captioned cases.

I. Dr. Weisenburger’s Testimony in the Wave 2 Cases Confirms that His Unreliable Opinions Should be Excluded.

A. Dr. Weisenburger Ignored His Own Research and Failed to Follow His Own Stated Methodology.

24 Dr. Weisenburger’s “always Roundup” approach to specific causation is best exemplified by
25

26 ¹ As explained in Monsanto’s Motion to Exclude Drs. Boyd, Pinter-Brown, and Schiff, the
27 “differential etiology” employed by Plaintiffs’ experts was invented solely for litigation, and is not
28 used in medical practice. *See* Monsanto’s Motion to Exclude Testimony of Plaintiffs’ Experts Barry Boyd, Lauren Pinter-Brown, and Ron Schiff at 8-9.

1 his treatment of Plaintiff Gerard Cervantes' increased risk of developing NHL due to his career as a
2 welder.² At first, Dr. Weisenburger testified that he did not factor Mr. Cervantes' history of welding
3 into his opinion, claiming at his deposition that he did not consider welding to be a risk factor for
4 NHL. See Declaration of Michael Imbroscio (March 19, 2021) ("Imbroscio Decl."), Ex. 1,
5 Weisenburger (*Cervantes*) Dep. at 51:18-19 ("I don't believe welding is a risk factor for non-Hodgkin
6 lymphoma"); see also *id.* at 51:13-52:18, 83:6-84:1. While he initially denied having done any
7 research on an association between welding and NHL,³ when shown a study *that he had co-authored*,
8 Dr. Weisenburger *agreed that it found statistically significant increased risks of NHL among*
9 *welders*. *Id.* at 79:19-81:15; Imbroscio Decl., Ex. 2, Zheng et al., *Occupation and Risk of Non-*
10 *Hodgkin's Lymphoma and Chronic Lymphocytic Leukemia*, 44 J. Occupational & Environmental
11 Med. 469 (2002). In fact, Dr. Weisenburger's study showed a *higher* risk of NHL associated with
12 welding than the studies he purports to rely on showed for glyphosate. Imbroscio Decl., Ex. 1,
13 Weisenburger (*Cervantes*) Dep. at 81:3-6 ("So *you found in your study that welders had a 2.9-fold*
14 *increased risk* that was statistically significant for non-Hodgkin lymphomas; right? A. *Yes.*")
15 (emphasis added); see also *id.* at 81:10-15 ("And for diffuse large B-cell lymphoma like Mr.
16 Cervantes had, you actually found a 3.4-fold increase risk for welders and solderers; right? A. *Yes.*").
17 And Dr. Weisenburger has previously claimed that he primarily relies on odds ratios from
18 epidemiology studies to assess causation. See Imbroscio Decl., Ex. 3, Weisenburger (*Evans*) Dep. at
19 38:2-39:8 ("Q. So other than looking at the epidemiology and the relevant risks or the odds ratios, is
20 there any other test or method or procedure that you can use to identify or assess the degree to which
21 any given risk factor contributed to a patient's non-Hodgkin lymphoma? A. Well, not -- not that I
22 could think of at the moment, no.").

23 The most profound signal of unreliability under a Rule 702 analysis is an expert's failure to
24

25 _____
26 ² The Wave 2 Plaintiffs' risk factors and exposure allegations are discussed in greater detail in
Monsanto's Motion to Exclude Testimony of Plaintiffs' Experts Barry Boyd, Lauren Pinter-Brown,
and Ron Schiff.

27 ³ In particular, he did not review the IARC analysis suggesting that welders face an increased risk of
28 cancer or the underlying studies IARC reviewed. See Imbroscio Decl., Ex. 1, Weisenburger
(*Cervantes*) Dep. at 82:23-83:5.

1 follow his own stated methodology, as Dr. Weisenburger failed to do here. *In re Mirena Ius*
2 *Levonorgestrel-Related Products Liability Litigation (No. II)*, 341 F.Supp.3d 213, 242 (S.D.N.Y.,
3 2018) (“Where an expert ignores evidence that is highly relevant to his conclusion, contrary to his
4 own stated methodology, exclusion of the expert's testimony is warranted.”). Dr. Weisenburger
5 belatedly claimed at his deposition that he “obviously” ruled out welding as a contributing factor to
6 Mr. Cervantes’ NHL, Imbroscio Decl., Ex. 1, Weisenburger (*Cervantes*) Dep. at 83:10-84:1, but this
7 last-minute attempt to salvage his opinion cannot be reconciled with a reliable method in light of (1)
8 his original (but incorrect) statement that he had “not done any research on that topic,” *id.* at 79:22,
9 and (2) his own published article that contradicts such statement as well as his litigation-driven
10 conclusions. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999) (an expert’s methodology
11 must reflect “the same level of intellectual rigor that characterizes the practice of an expert in the
12 relevant field.”). Dr. Weisenburger’s testimony confirms that, contrary to his own research, he had
13 not even considered welding as a risk factor prior to his deposition, much less ruled it out as a potential
14 cause. His testimony in *Cervantes* should be excluded on this basis alone, and is indicative of his
15 unscientific, litigation-driven approach to specific causation more broadly.

16 **B. Dr. Weisenburger’s Testimony in All of the Wave 2 Cases Confirms that His**
17 **Consideration of Alternative Causes Is Unscientific and Unreliable.**

18 Dr. Weisenburger has not seriously considered potential alternative causes in any of the Wave
19 2 cases. This is not the same methodology the Court concluded “barely inched over the line” in its
20 prior ruling regarding Dr. Weisenburger. *See* PTO 85 at 1. In that circumstance, the Court
21 emphasized that Dr. Weisenburger’s “core opinion[]” was that “plaintiffs had no other significant risk
22 factors and were exposed to enough glyphosate to conclude it was a substantial factor in causing their
23 NHL.” *Id.* at 6. That has not been Dr. Weisenburger’s testimony in the Wave 2 cases. Instead, he
24 brushes off any potential alternative causes without meaningful analysis, or in some cases without
25 even sufficient information with which to conduct a scientific analysis. Such testimony is not
26 consistent with the Court’s prior ruling and cannot survive Rule 702 scrutiny. Specific problems with
27 Dr. Weisenburger’s failure to consider alternative causes are noted below.

28 Dr. Weisenburger dismissed **Gerard Cervantes’** occupational exposure to other chemicals

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