

Ken Moll
Rebecca Fredona
Fatima Abuzerr
MOLL LAW GROUP
22 W Washington St
15th Floor
Chicago, IL 60602
T: 312.462.1700
F: 312.756.0045
rfredona@molllawgroup.com

Attorneys for Plaintiffs

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

IN RE: ROUNDUP PRODUCTS LIABILITY
LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

This document relates to:

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

**PLAINTIFFS' RESPONSE TO
MOTION TO EXCLUDE
TESTIMONY OF DR. DENNIS
WEISENBURGE *DAUBERT*
GROUNDS**

**PLAINTIFFS' RESPONSE TO MOTION TO EXCLUDE TESTIMONY OF DR. DENNIS
WEISENBURGER ON *DAUBERT* GROUNDS**

PLAINTIFFS' RESPONSE TO MOTION TO EXCLUDE TESTIMONY OF DR. DENNIS WEISENBURGER ON

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION1

II. LEGAL STANDARD2

III. ARGUMENT4

 A. Dr. Weisenburger’s Testimony And Opinions In the Wave 2 Cases Are
 Reliable4

 i. Dr. Weisenburger’s Methodology is Reliable and Proper4

 ii. Dr. Weisenburger’s Opinions Are Reliable Because He
 Considered Plaintiffs’ Alternative Risk Factors5

 iii. This Court Has Previously Ruled That Plaintiffs’ Experts
 Properly Ruled Roundup as The Cause of Plaintiffs’ Non-
 Hodgkin’s Lymphoma12

V. CONCLUSION.....12

TABLE OF AUTHORITIES

Cases:

Clausen v. M/V NEW CARISSA,
339 F.3d 1049, 1057 (9th Cir. 2003)2, 11

Cooper v. Takeda Pharmaceuticals America, Inc.,
239 Cal. App. 4th 555 (2014)3, 9, 10

In re Roundup Prod. Liab. Litig.,
390 F. Supp. 3d 1102 (N.D. Cal. July 10, 2018)1, 4

In re Roundup Products Liability Litig.,
No. 16-CV-0525-VC (N.D. Cal., July 12, 2019)..... 1

Messick v. Novartis Pharmaceuticals Corp.,
747 F.3d 1193, 1196 (9th Cir. 2014)2, 3, 10

Primiano v. Cook,
598 F.3d 558, 563, as amended (Apr. 27, 2010) (9th Cir. 2010)3

Wendell v. GlaxoSmithKline, LLC,
858 F.3d 1227, 1237 (2017)2, 9, 10, 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Introduction

Dr. Dennis Weisenburger has more than 40 years of experience and is a highly qualified physician and hematopathologist - currently an Assistant Pathologist at City of Hope National Medical Center in Duarte, California. Fredona Decl., Ex. 1, Dr. Sawyer CV. He is Board Certified by the National Board of Medical Examiners and the Anatomic and Clinical Pathology, American Board of Pathology. *Id.* To date, Dr. Weisenburger has given many dozens of hours of testimony in the Roundup® litigation. He has spent hundreds of hours reviewing published studies, medical records and conducted interviews with Plaintiffs.

Dr. Weisenburger is offering case specific opinions for Gerard Cervantes, John Schafer, James Peterson, Mark Pecorelli, individually and as Representative of the Estate of Michael Pecorelli, deceased and Christine Karman, Individually and as Representative of the Estate of Robert Karman, deceased. Dr. Weisenburger will testify regarding causes of cancer, causes of non-Hodgkin's lymphoma, whether exposure to glyphosate and/or glyphosate-based formulated products can cause cancer, and particularly non-Hodgkin's lymphoma, including testimony in the areas of epidemiology, pathology, hematopathology, cellular changes with the development of NHL and cancer development. These areas of testimony were the subject of his prior testimony in the Roundup litigation.

Monsanto's motion should be denied in full, and the jury should be allowed to consider Dr. Weisenburger's testimony before reaching its conclusions. Monsanto has repeatedly tried and failed to exclude or strike Dr. Weisenburger's opinions. *See In re Roundup Prods. Liab. Litig.*, 390 F. Supp. 3d 1102 (N.D. Cal. July 10, 2018). (Court finding no basis for excluding Dr. Weisenburger's opinion) ; *In re Roundup Products Liability Litigation* (N.D. Cal., July 12, 2019, No. 16-CV-0525-VC) 2019 WL 3219360, at *1 (Dr. Weisenburger's testimony admissible where he testified that Hardeman's "...exposure levels still far exceeded the threshold used in most of the epidemiological literature, and specifically the McDuffie and Eriksson studies."). Further, Monsanto makes the same arguments in its Motion regarding Dr. Weisenburger in Plaintiffs Gerard Cervantes, John Schafer, James Peterson, Mark Pecorelli, individually and as Representative of the Estate of Michael Pecorelli, deceased and Christine Karman, Individually

1 and as Representative of the Estate of Robert Karman, deceased, cases as Monsanto made in
2 motions regarding Dr. Sawyer in Wave One cases. This Court has already considered and denied
3 Monsanto's previous Motions' to Exclude Testimony of Plaintiffs Specific Causation Expert Dr.
4 Weisenburger in Pre-Trial Order ("PTO") 203, Dkt. No. 9144, for the reasons set forth in PTO 85,
5 Dkt. No. 2799. Because the germane facts, issues and law are essentially the same in all of
6 Monsanto's motions regarding Dr. Weisenburger, Plaintiffs here adopt the Wave One Plaintiffs'
7 Response to Monsanto's Specific Causation *Daubert* and Summary Judgment Motion to Strike
8 Certain Opinions of Monsanto Company's Expert Witnesses (MDL No. 2741 Document 2478).

9 Plaintiffs also incorporate the developing science on glyphosate as set forth in and attached
10 as exhibits to their opposition to Monsanto's Motion for Summary Judgment on Causation
11 Grounds (Dkt. No. 8001). By incorporating by reference prior filings to this pleading, Plaintiffs are
12 in no way waiving any arguments raised therein.

13 In addition to the above briefing and this Court's prior ruling that these experts may testify
14 on specific causation issues, Plaintiffs address the issues that Monsanto contends were not
15 previously decided by the Court.

16 **II. Legal Standard**

17 The Ninth Circuit has mandated that "Rule 702 should be applied with a 'liberal thrust'
18 favoring admission." *Wendell*, 858 F.3d at 1232 (quoting *Messick v. Novartis Pharm. Corp.*, 747
19 F3d 1193, 1196 (9th Cir. 2014)). Expert testimony is admissible under Rule 702 when based on a
20 reliable differential diagnosis. *See id.* at 1235 ("Nothing in *Daubert*, or its progeny, properly
21 understood, suggests that the most experienced and credentialed doctors [specifically referencing
22 Dr. Weisenburger and Dr. Shustov] in a given field should be barred from testifying based on a
23 differential diagnosis."). In conducting a differential diagnosis,¹ an expert considers the
24 "pertinence of all potential causes, then rules out the ones as to which there is no plausible evidence
25 of causation, and then determines the most likely cause among those that cannot be excluded." *Id.*

26
27 ¹ *See Wendell*, 858 F.3d at 1234 ("When performing a differential diagnosis, [Dr. Shustov] first assumes the
28 pertinence of all potential causes, then rules out the ones as to which there is no plausible evidence of causation, and
then determines the most likely cause among those that cannot be excluded. We have recognized that this method of
conducting a differential diagnosis is scientifically sound." (citing *Clausen*, 339 F.3d at 1057-58).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.