

**No. 21-10994**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

JOHN D. CARSON,  
*Plaintiff-Appellant,*

v.

MONSANTO COMPANY,  
*Defendant-Appellee,*

---

On Appeal from the United States District Court  
for the Southern District of Georgia  
No. 4:17-cv-00237-RSB-CLR (Baker, J.)

---

**DEFENDANT-APPELLEE MONSANTO COMPANY'S UNOPPOSED  
MOTION TO FILE DOCUMENTS UNDER SEAL**

---

Joe G. Hollingsworth  
Eric G. Lasker  
Martin C. Calhoun  
HOLLINGSWORTH LLP  
1350 I Street, NW  
Washington, DC 20005  
Tel: 202-898-5800  
Fax: 202-682-1639  
jhollingsworth@hollingsworthllp.com  
elasker@hollingsworthllp.com  
mcalhoun@hollingsworthllp.com

Michael X. Imbroscio  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street NW  
Washington, DC 20001  
Tel: 202-662-6000  
Fax: 202-662-6291  
mimbrosio@cov.com

K. Lee Marshall  
BRYAN CAVE LEIGHTON PAISNER LLP  
Three Embarcadero Center, 7th Floor  
San Francisco, California 94111-4070  
Tel: 415-675-3400  
Fax: 415-675-3434  
klmarshall@bclplaw.com

*Counsel for Defendant-Appellee Monsanto Company*

## **CERTIFICATE OF INTERESTED PARTIES**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(3), Appellee Monsanto Company, through undersigned counsel, hereby submits this Certificate of Interested Persons and Corporate Disclosure Statement.

Below is a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case or appeal, including subsidiaries, conglomerates, affiliates, part corporations, any publicly held corporations that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

### **Interested Persons**

1. Baker, Hon. R. Stan, United States District Judge
2. Boswell, Chase E., Attorney for Appellee (in the District Court)
3. Calhoun, Martin C., Attorney for Appellee
4. Carson, John D., Sr., Appellant
5. Hollingsworth, Joe G., Attorney for Appellee
6. Imbroscio, Michael X., Attorney for Appellee
7. Lasker, Eric G., Attorney for Appellee
8. Madison, Ashleigh Ruth, Attorney for Appellant
9. Marshall, K. Lee, Attorney for Appellee

10. Ray, Hon. Christopher L., United States Magistrate Judge
11. Thomas, Michael J., Attorney for Appellee (in the District Court)

Entities

12. Bayer AG, BAYRY
13. Bryan Cave Leighton Paisner LLP
14. Covington & Burling LLP
15. Hollingsworth LLP
16. Monsanto Company
17. Pennington, P.A.
18. Southeast Law, LLC

Dated: April 28, 2021

Respectfully submitted,

By: /s/ Michael X. Imbroscio  
Michael X. Imbroscio  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street NW  
Washington, DC 20001  
Tel: 202-662-6000  
Fax: 202-662-6291  
mimbroscio@cov.com

*Counsel for Defendant-Appellee  
Monsanto Company*

Defendant-Appellee Monsanto Company respectfully moves for leave to file under seal the parties' "Confidential Settlement Agreement and Release," which is Exhibit 1 to the Declaration of Michael X. Imbroscio filed in support of Monsanto's Opposition to the Motion by Non-Parties for Leave to File Letter Brief ("Opposition"), as well as an unredacted version of that Opposition. In support of its Motion, Monsanto states as follows:

1. On April 22, 2021, non-parties to this case filed with this Court a Motion for Leave to File Letter Brief. Attached to the non-parties' Motion were a "letter brief" and a declaration that purport to describe aspects of a confidential settlement agreement entered into by and between Plaintiff Dr. John D. Carson, Sr. and Defendant Monsanto Company in *John D. Carson v. Monsanto Company*, Civil Action No. 4:17-cv-237 (S.D. Ga.). The non-parties do not assert that they have seen the settlement agreement.

2. As Monsanto affirmatively explained in its civil appeal statement, filed with this Court on April 5, 2021, Dr. Carson and Monsanto Company entered into a "high-low" settlement agreement under which the amount of Dr. Carson's recovery is contingent on how this Court resolves his appeal of the district court's dismissal of his failure-to-warn claim. The non-parties' letter brief and declaration includes hearsay descriptions of the settlement agreement that are incomplete, misleading, and in some respects inaccurate.

3. Because the non-parties have purported to describe the settlement terms in detail, but in inaccurate and misleading ways, Monsanto believes that the Court should see a full and complete copy of the parties' executed "Confidential Settlement Agreement and Release." However, the parties have strong interests in maintaining the confidentiality of their private agreement and have required that the settlement agreement, with certain exceptions allowing for disclosure to the Court, remain confidential under Section 9.0 of the agreement. Accordingly, Monsanto respectfully requests leave to file under seal the settlement agreement (Exhibit 1 of the Imbroscio Declaration), and an unredacted version of its Opposition.<sup>1</sup>

4. In the most recent, leading court of appeals case concerning the effect of a high-low settlement on appellate jurisdiction, the Second Circuit granted a motion to file the settlement agreement at issue there under seal, and permitted the parties to heavily redact their briefs in describing the settlement's terms. *See* Order, *Linde v. Arab Bank, PLC*, 16-2119 (2d Cir. May 26, 2017), ECF No. 218 (granting motion for leave to file under seal a copy of the settlement agreement referenced at oral argument); *see also Linde v. Arab Bank, PLC*, 882 F.3d 314,

---

<sup>1</sup> On the public docket, Monsanto has filed a lightly redacted, public version of its Opposition. The only information redacted from the publicly filed version of Monsanto's Opposition is the "high" payment amount Dr. Carson will recover if he prevails on this appeal. Pursuant to 11th Circuit Rule 25-5(a), Monsanto has redacted Dr. Carson's social security number from all filed documents in which it appears.

# 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.