

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

KYLE CHAPLICK, *et al.*,

Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

Case No. 19SL-CC04115

Division 1

PLAINTIFFS' MOTION FOR TRIAL SETTING

I. INTRODUCTION

In accordance with Judge Reno's Administrative Order No. 13, dated May 6, 2019, the administrative procedures for Roundup cases that Your Honor's set forth in an email dated January 24, 2019, and the trial setting procedures for Roundup cases that Judge Ribaldo set forth in an email dated March 20, 2019, Plaintiffs submit this memorandum in support of their request for a trial setting beginning October 15, 2019. As the Court might be aware, until several weeks ago, the Plaintiffs in *Winston v. Monsanto*, Case No. 1822-CC00515 (Circuit Court of St. Louis City) (hereinafter referred to as "*Winston*") were scheduled to begin trial on October 15, 2019 in St. Louis City. But when, on September 3, 2019, the Supreme Court issued a preliminary writ in the *Winston* case, staying all further action of all *Winston* Plaintiffs other than plaintiff Walter Winston, the 13 remaining *Winston* Plaintiffs withdrew their opposition to Monsanto's underlying motion seeking their severance and transfer to the County. Plaintiffs argued that by withdrawing their opposition, the writ was moot; Plaintiffs further argued that, after the writ was mooted, their case proceed to trial, as intended, beginning October 15, 2019, in St. Louis County. In response, and over Monsanto's objection, the Supreme Court in just two days agreed and quashed the writ as moot. In the ensuing days, the Circuit Court of the City of St. Louis transferred the Plaintiffs,

other than Mr. Winston, to this Court. That case is now pending in this Court, *Chaplick, et al. v. Monsanto*, 19SL-CC04115 (hereinafter referred to as “*Chaplick*”), and is ready for trial. Accordingly, the *Chaplick* Plaintiffs respectfully request that Your Honor assign the case for trial as of October 15, 2019 or as soon thereafter as is practical.

II. BACKGROUND

Plaintiffs filed the *Winston* petition in March 2018. In June 2018, Judge Mullen, the Circuit Court Judge for the City of St. Louis assigned to the *Winston* case, set the trial for the 14 *Winston* Plaintiffs for October 15, 2019. That date has remained the trial date since that time, and the parties have proceeded accordingly, even in light of the numerous procedural twists and turns, culminating in the very recent transfer to this Court.

Over the course of the past 18 months, the *Winston* case has been the subject of extensive discovery and considerable motion practice before Judge Mullen. It has also been the subject of several writs before both the appellate division and the Supreme Court. In the most recent writ application, Monsanto sought severance and transfer of the *Winston* Plaintiffs, other than Mr. Winston himself. On September 3, 2019, the Supreme Court issued its preliminary decision on the writ: it denied the writ as to plaintiff Walter Winston but it granted a preliminary writ as to the other 13 plaintiffs, ordering briefing on the issues presented as to those plaintiffs only. (See Exhibit 1.) Wanting to preserve their trial date, the *Winston* Plaintiffs (other than Plaintiff Walter Winston) decided to withdraw their opposition to the underlying motion to transfer venue and to consent to transfer of their cases from the Circuit Court of the City of St. Louis to this Court. In its withdrawal, Plaintiffs argued that the withdrawal of their opposition to severance and transfer rendered Monsanto’s writ application moot. (See Exhibit 2.) Despite Monsanto’s strong opposition to plaintiffs’ mootness argument (see Exhibit 3), the Supreme Court, two days later, on

September 12, 2019, agreed and quashed the writ as moot. (See Exhibit 4.) On September 18, 2019, the 13 plaintiffs from the *Winston* petition were transferred to this Court, as *Chaplick*.

III. ARGUMENT

The parties are ready for trial in *Chaplick*. Discovery was closed prior to the transfer of the *Chaplick* petition to this Court.¹ In addition, a substantial portion of the pre-trial briefing is done or could be finalized in short order. In the *Winston* case, Monsanto has filed its motion for summary judgement as to plaintiff Walter Winston, and it has also moved to exclude Plaintiff's expert witnesses as they relate to Walter Winston under *Daubert*. Plaintiff's opposition to Monsanto's multiple motions is due tomorrow, on September 25, 2019, at which point the briefing will be fully submitted. Most of those motions are equally applicable to *Chaplick*. For example, the general causation briefing will be the same for the *Chaplick* plaintiffs as for Mr. Winston as general causation issues are not plaintiff specific, nor are issues involving preemption and punitive damages.

Regarding specific causation, the experts that are the subject of the *Winston* motions are the same expert witnesses designated for the *Chaplick* Plaintiffs; as a result, their methodology will have been subject to *Daubert* briefing in the *Winston* case (although given Monsanto's track record of filing expert challenges under *Daubert* for all experts in every case to date, it will undoubtedly move against each specific causation expert for each of the *Chaplick* plaintiffs). Yet even if they file their typical laundry list of expert challenges, the individualized issues will not present new or novel issues as applied to the *Chaplick* Plaintiffs. Thus, with little lead time, the parties can and will be ready to try *Chaplick*.

¹ There are only two remaining Monsanto specific causation expert witnesses to be deposed; those depositions will be taken this week.

The *Chaplick* Plaintiffs have spent extraordinary time preparing for trial. There have been over 63 plaintiff-related fact depositions taken of the *Chaplick* Plaintiffs,² including the Plaintiff himself or herself, his or her spouses when relevant, treating physicians and other fact witnesses. Monsanto has deposed all of Plaintiffs' expert witnesses for each of the *Chaplick* Plaintiffs. In fact, Plaintiffs know that Monsanto is ready to file its dispositive motions and *Daubert* challenges against each of them: at a recent status conference in *Winston* (which happened to be the day before its dispositive motions in *Winston* were due, Monsanto asked for additional time to file its motions, including summary judgement and *Daubert* challenges, because it had to *remove its arguments for the other 13 plaintiffs* and pare-down its motions to address Walter Winston only.

Plaintiffs anticipated the possibility that their case could be transferred from the City to the County as far back as May 2019, and they made it well known to Monsanto at that time that they would be seeking the same or a very similar trial date if their case was transferred to the County. In advance of the May 7, 2019, hearing before Judges May and Ribaud, counsel for the *Chaplick* Plaintiffs, in the case of *Byrd v. Monsanto*, Case No. 18SL-CC03320, filed a Response in Opposition to Defendant's Omnibus Motion for trial Selection Process ("Response"). (See Exhibit 5.) Among the arguments Plaintiffs made was that Plaintiffs whose cases are currently set for trial in other Missouri state courts, and specifically in St. Louis City, but who are later transferred to the County, should have their trial date preserved:

At every turn, Monsanto has tried to sever the cases and have them transferred either to this Circuit or other Missouri state courts. To date, it has been unsuccessful and Plaintiffs believe Monsanto's efforts should and will fail. However, in the event that cases pending in St. Louis City that have been the subject of extensive discovery and/or expert disclosures are transferred to this Circuit, those cases should be given preferential trial dates. Such cases are nearly trial ready, the plaintiffs have devoted considerable time to respond to Monsanto's discovery demands, they have been deposed, their treating doctors have been deposed, and in some situations they have designated experts and Monsanto has deposed the

² If Mr. Winston were included, there would be a total of 72 fact depositions.

experts. If these cases are ultimately transferred to this Circuit, efforts should be made to set trial dates immediately, with trials to commence in or around the time they would have commenced in the absence of transfer.

(See Exhibit 5 at 3.)³ What is more, in numerous conferences before Judge Mullen, counsel for the Winston plaintiffs made clear to Monsanto that trial preparation should not be stayed due to writ practice and that, if at any time the Winston Plaintiffs were transferred to the County, the Plaintiffs would be seeking the same trial date as was set by Judge Mullen.

In sum, the efforts of the *Chaplick* plaintiffs militate in favor of an immediate trial date. Among the *Chaplick* Plaintiffs is a man who lost his eye sight in his early 50s because his non-Hodgkin lymphoma (NHL) wrapped around his ocular nerve; another man who in his early 50s can barely walk because his NHL has caused debilitating scrotal edema; a man whose NHL was so aggressive that his tumor nearly doubled in size while on his second regimen of chemotherapy and is alive today only because he was accepted into a new NHL treatment therapy referred to as CAR-T; a young man, now 25 years old, who was diagnosed with NHL at age 17; and a man whose NHL has come back six times over the last 20 years, and each time it returns has to undergo another round of chemotherapy. They and their fellow Plaintiffs deserve their day in court. The *Chaplick* Plaintiffs have complied with all discovery demands. They have worked tirelessly to ensure that their case is trial ready. And they have succeeded -- the case is, in fact, trial ready.

³ Plaintiffs also addressed the importance of multiple plaintiff trials, such as the *Chaplick* case, as an important mechanism for managing the Court's docket of cases. As of May 2019, when the *Byrd* plaintiffs filed their Response, there were approximately 6,000 individual plaintiffs who had filed cases in the Missouri state courts. (See Exhibit 5 at 4.) The estimate today is over three times greater than that, and the number of filed cases climbs every week.

Monsanto's repeated attempts to avoid the trial of the *Chaplick* Plaintiffs should be rejected, and the case should be set for trial in 2019.⁴

IV. CONCLUSION

For the reasons stated above, this Court should schedule the *Chaplick* case for trial on October 15, 2019.

Respectfully submitted,

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⁴ Because Judge Mullen cleared his calendar for the full *Winston* trial long ago, Plaintiffs asked Judge Mullen, following the September 3, 2019 writ, if he was amenable to sit in the County to try the *Chaplick* case if he were asked to do so. Apparently fearful that that might happen once the *Chaplick* case was given a docket number in this Court, Monsanto wrote a letter to Presiding Judge Reno asking that she not seek Judge Mullen's appointment in the County to preside over the *Chaplick* trial. See Exhibit 6. Monsanto made this motion even though there was no motion pending before Judge Reno and made the same arguments that the Supreme Court immediately rejected when it vacated the writ. See Exhibit 4.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed and served on all counsel of record through the Missouri Electronic Filing System, on this 24th day of September 2019.

/s/ Mark R. Niemeyer