

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

TWENTY-FIRST JUDICIAL CURCUIT

FILED

DEC 05 2019

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

JAMES ADAMS, JR, et al., )

Plaintiffs, )

Cause No. 17SL-CC02721

vs. )

Division 1

MONSANTO COMPANY, )

Defendant. )

**REPORT OF THE SPECIAL MASTER DATED DECEMBER 3, 2019  
REGARDING THE MOTION OF NONPARTY HUGH GRANT'S  
MOTION FOR PROTECTIVE ORDER REGARDING HIS TRIAL TESTIMONY**

Comes now Thomas J. Prebil, court appointed Special Master, and pursuant to Rule 68.01(g) makes the following report to the Court:

The Special Master met with counsel for the plaintiff and nonparty Hugh Grant regarding Mr. Grant's Motion for Protective Order concerning his trial testimony. The Special Master was provided with pleadings and a copy of Mr. Grant's deposition taken on January 18, 2017 in the U.S. District Court, Northern District of California in the Matter of Roundup Products Liability Litigation. Copies of exhibits to that deposition were also provided.

Hugh Grant was the Monsanto CEO and Board Chairman from 2003 until the time of the sale of Monsanto to German Company Bayer in 2018. He retired in June 2018. Mr. Grant testified at deposition that he is not a toxicologist, nor epidemiologist, nor a regulatory expert. However, as CEO he was responsible for the day-to-day operations of Monsanto and also for the long range business of Monsanto as well. In addition Mr. Grant relies on an agreement the parties entered into providing in part to use discovery and deposition materials from the MDL "as if it were conducted in this action." *Adams et al. v. Monsanto Co.*, 17SL-CC02721 (Sep. 5,

2018) (Case Management Order). Finally, on a personal note, Mr. Grant has advised that he is scheduled to be out of the country beginning February 9, 2020. The actual trial date is January 27, 2020. The case of *Sharlean Gordon v. Monsanto Co.*, will be the first Roundup case tried in St. Louis County.

Plaintiff argues Mr. Grant participated in the internal discussions regarding the safety of Roundup and was informed and updated on the studies conducted on Roundup. Plaintiff identifies numerous instances in of Mr. Grant's involvement, for example: Mr. Grant appeared for interviews on public radio representing that Roundup is not a carcinogen; in earnings calls for investors Mr. Grant personally responded that the classification of glyphosate as a probable carcinogen was "junk science"; in 2016 Mr. Grant personally lobbied the EPA Administrator and the Agricultural Committee Chair of the topic of glyphosate. (Plaintiff's Response in Opposition to Protective Order, pp. 3-4).

Plaintiff and Mr. Grant both submitted memorandums and cited authority.

Mr. Grant relies primarily on *State ex rel. Ford Motor Company v. Messina*, 71 S.W.3d 602 (Mo banc. 2002). In *Messina*, the defendant filed a motion for protective order regarding the depositions of four of its top executives. The writ was denied by the trial judge which the Supreme Court found to be an abuse of discretion. The Court cites Rule 56.01(c) that on motion by a person from whom discovery is sought a protective order may be granted "for good cause shown ... to protect a person from annoyance, embarrassment, oppression, or undue burden or expense ..." Although this rule addresses discovery issues, it has also been held applicable to trial testimony. See, for example, *Wilkins v. Office of the Missouri Attorney General*, 464 S.W.3d 271 (Mo.App. E.D. 2015). In *Wilkins*, plaintiff sought to subpoena Attorney General Koster for trial. The Court noted that a protective order could issue if the deposition may cause

unnecessary annoyance, burden, and expense where persons lower in the organization may have the same or better information. *Id.* at 276, citing *Messina*. Defendant also argued that requiring Koster to appear would substantially impede his ability to perform his duties as Attorney General.

Applying the guidance from the cases relied on, it should be noted that Mr. Grant has now retired, so his appearance would not conflict with any duties owed to Defendant as its CEO. Further, he is a resident of St. Louis County so his appearance would not create a burden, expense, annoyance or oppression. Counsel for Plaintiff has stated Mr. Grant would be called to testify early in his case, so Mr. Grant's appearance would not interfere with his travel plans.

Although Mr. Grant does not have scientific knowledge that doubtless will be a significant component to this lawsuit, he was CEO of Monsanto for 15 years and took part in presentations, discussions, interviews and other appearances for Monsanto as CEO in which the topics of Roundup and glyphosate were explained, discussed and defended. It may be necessary to revisit Mr. Grant's appearance at subsequent trials, but giving careful consideration to these circumstances, it seems entirely appropriate to require his personal appearance at the first of these trials. The trial judge has broad discretion in administering the rules of discovery. *Messina, supra.* at 607, citing Rule 56.01(d).


Having considered the arguments of counsel and the authorities cited, it is the opinion of the Special Master that nonparty Hugh Grant is not entitled to a Protective Order barring Plaintiff from subpoenaing Mr. Grant's trial testimony in this matter and it is therefore the Special Master's recommendation to the Court that this Motion be denied.

Respectfully submitted,



Thomas J. Prebil **MBE 22220**  
Court Appointed Special Master

So Ordered:

 12/5/19