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In the

Supreme Court of Pennsylvania

Ernest Caranci and Carmela Caranci,

Plaintiffs/Respondents,

v.

Monsanto Company,

Defendant/Petitioner.

Petition for Allowance of Appeal from the Order of the Superior Court dated May 8, 2025 (993 EDA 2024), affirming the Judgment of the Court of Common Pleas of Philadelphia County dated March 11, 2024, at No. 210602213 (Crumlish, J.)

PETITION FOR ALLOWANCE OF APPEAL

John J. Hare
Pa. ID No. 70419
MARSHALL DENNEHEY, P.C.
2000 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 575-2609

David M. Zionts
(admitted *pro hac vice*)
Michael X. Imbroscio
Pa. ID No. 72129
José F. Girón
Matthew Quallen
Sumner Truax
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000

Robert C. Heim
Pa. ID No. 15758
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-2570

Chanda A. Miller
Pa. ID No. 206491
BARNES & THORNBURG LLP
1717 Arch Street, Suite 4900
Philadelphia, PA 19103
(445) 201-8920

Counsel for Petitioner

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INTRODUCTION

The Superior Court broke with decades of precedent requiring new trials because of *ex parte* communications—fashioning a new legal standard under which the most coercive *ex parte* pressure to reach a verdict will never be found prejudicial. It broke with a precedential decision of the Third Circuit on an important and recurring question of federal preemption—creating an untenable split between the two judicial systems sitting in Pennsylvania. And it broke with bedrock principles of Pennsylvania law and constitutional due process establishing guardrails on punitive damage awards—affirming a staggering punishment for selling a product that expert regulators in this country and worldwide have determined is safe, while also disregarding the problem of cumulative punishment for the same conduct.

Each of these momentous holdings calls for this Court's review.

First, the Superior Court announced a new, and troubling, prejudice standard for *ex parte* communications. On Friday, October 27, 2023—the day jurors were told would be their final day of service after a lengthy trial—the jury began deliberations. According to a juror's sworn testimony, the jury became sharply divided and asked the court officer to clarify how many votes it needed to reach a verdict. The court officer answered, but then told jurors that failure to reach a verdict that day would require the jurors to return for three more days and that the court would not declare a mistrial until the following Wednesday. Counsel was never told

of this communication, and its effect was immediate—jurors "flipped out" and became "hostile," and one threatened not to return. R.11146-11148a. The jury then promptly returned a verdict for Plaintiff Ernest Caranci by the narrowest margin, 10-2.[1]

This situation bears a striking resemblance to *Welshire v. Bruaw*, 200 A. 67 (Pa. 1938), where a court officer informed a deliberating jury it would "get the devil" from the judge if it did not return a verdict soon, which the jury then did. *Id.* at 69. This Court ordered a new trial, emphasizing that "[s]tatements or instructions from [court officers] carry much more weight than suggestions coming from an outsider." *Id.* More recently, in again ordering a new trial, this Court "*strictly prohibited communication between the court and jury other than in open court and in the presence of counsel for both parties*." *Bruckshaw v. Frankford Hosp.*, 58 A.3d 102, 112 (Pa. 2012) (emphasis added); *accord Glendenning v. Sprowls*, 174 A.2d 865, 867 (Pa. 1961) ("We strongly condemn any intrusion by a Judge into the jury room during the jury's deliberations, or any communication by a Judge with the jury without prior notice to counsel, and such practice must be immediately stopped!"); *Commonwealth v. Bradley*, 459 A.2d 733, 736 (Pa. 1983) ("The reason for prohibiting a trial judge from communicating with a jury *ex parte* is to prevent the

[1] Mr. Caranci is referred to as "Plaintiff" herein, as all claims of his wife Carmela were withdrawn before the case was submitted to the jury, R.10689a, despite her name remaining in the caption.

court from unduly influencing the jury and to afford counsel an opportunity to become aware and to seek to correct any error which might occur." (citation omitted)).

Bradley instructed courts to conduct a common-sense inquiry into whether there is a "reasonable possibility of prejudice" from an *ex parte* communication. That standard is easily met where, as here, a typical juror could feel pressured to reach a verdict based on the threat of being called back for several more days before a mistrial would be declared. Yet the Superior Court avoided that straightforward conclusion by adopting a rigid test based on whether the communication was "emotional" or related to a "central issue in the case," and by caricaturing a coercive threat to return for more deliberation as a mere matter of "court procedure." A.6, 8-9. Such a test is wholly mismatched to, and indeed contradicts, the rationale for the rule against *ex parte* communications. Unsurprisingly, no Pennsylvania court has ever announced such a prejudice rule for *ex parte* communications. If left unreviewed, it is hard to imagine how even the most coercive *ex parte* communication could ever count as prejudicial, virtually nullifying this Court's strong rule against such communications.

Second, the Superior Court split with the Third Circuit on an important question of federal preemption: whether state law may require a pesticide to include a cancer warning that the responsible federal regulator has concluded is unwarranted

and would itself violate federal law. *Compare* A.20-27, *with Schaffner v. Monsanto Co.*, 113 F.4th 364, 371 (3d Cir. 2024). This Court has long warned of the forum-shopping dangers entailed by a split between Pennsylvania courts and the Third Circuit on questions of federal law. *Stone Crushed P'ship v. Kassab Archbold Jackson & O'Brien*, 908 A.2d 875, 887 (Pa. 2006). With hundreds of Roundup® cases pending in Pennsylvania, this Court should be the one to decide whether there is truly a need to diverge from the Third Circuit.

Third, this Court should review the Superior Court's affirmance of a $175 million verdict for selling the world's most widely used herbicide in accordance with EPA's approved label. Such extreme punishment, six times larger than an already-substantial compensatory award, is especially jarring when the offense is adhering to a worldwide scientific consensus. *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1269 (9th Cir. 2023) ("No agency or regulatory body (including IARC) has concluded that glyphosate poses a carcinogenic risk, which is distinct from a carcinogenic hazard."). Moreover, the issue presents one of first impression for this Court because of the serious risk of cumulative punitive awards—a factor the trial court and Superior Court both failed to consider.

The Superior Court's decision marks a dramatic change in the law governing the rights of civil and criminal defendants alike, solidifies a split between the court systems in Pennsylvania, and affirms an eye-popping verdict that blows past the

traditional guardrails on punitive damages awards. This Court's intervention is required.

OPINIONS DELIVERED IN THE COURTS BELOW

The Superior Court's precedential opinion, --- A.3d ---, 2025 WL 1340970 (May 8, 2025), was authored by Judge Dubow, and joined by President Judge Lazarus and President Judge Emeritus Panella, and is attached at A.1-40.

The trial court's Opinions dated May 28, 2024 (A.42), February 27, 2024 (A.61), and January 5, 2024 (A.128), are not published.

ORDER IN QUESTION

> We . . . affirm the entry of judgment in Appellees[’] favor.

A.39; *see also* A.41 (denying reargument en banc).

QUESTIONS PRESENTED

1. Does the Superior Court's decision conflict with this Court's precedent regarding *ex parte* contacts and threaten litigants' right to an impartial jury?

   Suggested answer: Yes. The trial court officer's *ex parte* communication with the deliberating jury, which broke the jury's deadlock and coerced an immediate verdict, was sufficiently prejudicial to require a new trial or at least an evidentiary hearing, despite the Superior Court's reasoning that the communication "pertained to court procedure and did not address any substantive issues."

2. Does the Superior Court's decision improperly fail to apply FIFRA preemption to Plaintiff's failure to warn claim where EPA has concluded that glyphosate does not cause cancer and Roundup® does not require a cancer warning, as the Third Circuit has held?

   Suggested answer: Yes. The Superior Court's rejection of the Third Circuit's correct application of FIFRA preemption creates an unwarranted conflict between Pennsylvania's state and federal appellate courts.

3. Does the Superior Court's decision to uphold the jury's $150 million punitive damages award, on top of an already-substantial $25 million compensatory award, violate Pennsylvania law and the U.S. Constitution where federal and global regulators have determined that glyphosate does not cause cancer and allowing the award to stand risks multiple punitive awards based upon the same conduct?

Suggested answer: Yes. The jury's award of punitive damages was improper and excessive under Pennsylvania common law and the United States Constitution.

PLACE OF RAISING OR PRESERVATION OF ISSUES

Monsanto preserved these issues in: (1) a motion for summary judgment (R.298a-930a); (2) a reply in support of its motion for summary judgment (R.2138a-2147a); (3) a motion for compulsory nonsuit (*see* R.8224a); (4) timely post-trial motions (R.10240a-10398a; R.10411a-10431a); (5) a timely Rule 1925 Statement of Errors Complained of on Appeal (filed April 29, 2024); (4) a Superior Court Brief for Appellant; (5) a Superior Court Reply Brief for Appellant; and (6) a Superior Court Application for Reargument *En Banc*.

STATEMENT OF THE CASE

I. Procedural History

On June 29, 2021, Plaintiff sued Monsanto in the Philadelphia Court of Common Pleas, alleging that Roundup® caused his non-Hodgkin's lymphoma ("NHL"). Trial on his strict liability and negligence claims began on October 10, 2023, before Judge James Crumlish, III. After a two-and-a-half-week trial, the jury returned a verdict for Plaintiff, awarding $25 million in compensatory damages and $150 million in punitive damages. R.5362a.

After the verdict, Monsanto learned that the trial court's officer had *ex parte* communications with the jury during deliberations. Monsanto timely moved for post-trial relief and raised several issues, including that the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") preempted Plaintiff's claims; that the *ex parte* communications between the court officer and the jury during deliberations warranted a new trial or, at a minimum, an evidentiary hearing; and that the punitive damages award was excessive and unconstitutional. The court denied post-trial relief and entered judgment against Monsanto for $177,285,102.74.

Monsanto timely appealed. On May 8, 2025, the Superior Court affirmed, A.1-A.40, and thereafter denied Monsanto's petition for reargument on July 15, 2025. A.41.

II. Statement of Facts

A. Congress Charged EPA with Regulating the Safety of Pesticides and the Health Warnings on Pesticide Labels.

FIFRA is a "comprehensive regulatory statute" governing the "use, . . . sale[,] and labeling" of pesticides.[2] *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991-92 (1984); *see also* 7 U.S.C. §§136, *et seq.* Under FIFRA, "no person in any State may distribute or sell to any person any pesticide that" EPA has not registered. 7 U.S.C. §136a(a).

EPA is required to determine whether a pesticide poses "any unreasonable risk to man or the environment." 7 U.S.C. §136(bb); EPA, *Summary of the Federal Insecticide, Fungicide, and Rodenticide Act* (Sept. 6, 2023), https://www.epa.gov/laws-regulations/summary-federal-insecticide-fungicide-and-rodenticide-act. That determination involves reviewing voluminous scientific and safety data, including data focused on carcinogenicity. *See* 7 U.S.C. §136a(c)(1)(F), (2)(A); 40 C.F.R. §158.500.

The registration process also involves reviewing and approving (or rejecting) proposed labels that warn users about "the potential effects" of the pesticide on "human health." 40 C.F.R. §§156.10(a)(1)(vii), 156.60, 158.500; *see also* 7 U.S.C. §136a(c)(1)(C) (manufacturers must submit "a complete copy of the labeling of the

[2] FIFRA defines "pesticide" to include herbicides, which eliminate unwanted vegetation. 7 U.S.C. §136(u).

pesticide"). EPA cannot register a pesticide without "determin[ing]" that the product's "labeling . . . compl[ies] with the requirements of" FIFRA, 7 U.S.C. §136a(c)(5)(B), including by containing any "warning . . . which may be necessary and if complied with" would be "adequate to protect health and the environment." 7 U.S.C. §136(q)(1)(G) (definition of misbranding); 7 U.S.C. §136j(a)(1)(E) (prohibition on selling misbranded pesticides); 40 C.F.R. §152.112(f) ("EPA will approve an application [for registration] only if . . . The Agency has determined that the product is not misbranded . . . and its labeling and packaging comply with the applicable requirements of" FIFRA.).

Once EPA has approved a product and label, manufacturers must use the EPA-approved label. 7 U.S.C. §136j(a)(1)(B). Manufacturers cannot change the label's safety warnings without EPA pre-approval. 40 C.F.R. §§152.44, 152.46, 156.70(a). Congress further adopted a "Uniformity" provision under which States "shall not impose . . . any requirements for labeling or packaging in addition to or different from those required under" FIFRA. 7 U.S.C. §136v(b).

B. EPA Has Long Determined Glyphosate Does Not Cause Cancer and That Roundup® Does Not Need a Cancer Warning.

Monsanto has sold Roundup®, with EPA approval, for nearly a half-century. R.5615a-5616a; R.8325a. For decades, farmers have used Roundup® and other glyphosate-based herbicides to increase crop yields, and homeowners, landscaping companies, golf courses, and local government agencies have used these herbicides

for highly effective weed control. This popularity has made Roundup® one of the world's most widely used, and most thoroughly studied, herbicides.

EPA consistently has determined that Roundup® and its active ingredient, glyphosate, are safe, do not cause cancer, and may be sold without cancer warnings. *See, e.g.*, R.8500a; R.6522a-6523a. In 1993, for example, EPA completed its statutory re-registration of glyphosate, classifying "glyphosate as a Group E carcinogen (signifies evidence of non-carcinogenicity in humans)." R2245a; *accord* R.436a; R.447a-448a; *see also, e.g.*, R.252a (citing Glyphosate; Pesticide Tolerances, 67 Fed. Reg. 60,934, 60,943 (Sept. 27, 2002), finding "[n]o evidence of carcinogenicity").

In 2015, the International Agency for Research on Cancer ("IARC") released a report concluding that glyphosate was "*probably carcinogenic to humans*" based on "*limited*" evidence of cancer in humans and "*sufficient*" evidence in animals. R.584a. Although IARC's report spawned Roundup® mass tort litigation, EPA then considered and rejected IARC's conclusion. R.475a. EPA explained that its scientists "performed an independent evaluation of available data," considered "a more extensive dataset than IARC," R.475a-476a, and concluded that "there are no

risks to human health from the current registered uses of glyphosate and that glyphosate is not likely to be carcinogenic to humans," R.484a.[3]

Nor is EPA alone. Its conclusion "is consistent with other international expert panels and regulatory authorities" in the European Union, Canada, Australia, New Zealand, and Japan, among others. R.475a. As one appellate court recognized, "IARC stands essentially alone in its determination that glyphosate is probably carcinogenic to humans." *Wheat Growers*, 85 F.4th at 1278 (9th Cir. 2023). Peer-reviewed literature is in accord: in the largest study measuring glyphosate's effects on humans, R.6545a-6546a, R.7825a-7826a, scientists from the National Institutes of Health tracked 50,000 farmers over decades, finding "no association . . . between glyphosate and . . . [NHL]," R.6546a.

C. Plaintiff Alleges That Roundup® Caused His Cancer, His Case Goes to Trial, and a Court Officer Has *Ex Parte* Communications with the Jury During Deliberations.

Despite the near-universal consensus regarding glyphosate's safety, thousands of claimants with NHL, a common blood cancer, seized upon IARC's findings and began suing.

In 2005, at age 65, Plaintiff was diagnosed with NHL. R.7491a. In 2021, he sued Monsanto, pursuing design-defect, failure-to-warn, and negligence claims.

[3] At trial, Monsanto tried to introduce EPA's reaction to IARC. The trial court sharply limited Monsanto's ability to do so. R.6513a-6514a.

R.5360a-5362a. Trial began on October 10, 2023. At the outset, the court told jurors that the "case has been scheduled for 15 days," and that these fifteen days "include[d] the time sufficient for you to deliberate." R.5408a. The jury therefore would have expected its service to end on Friday, October 27, 2023. On that day, the jury heard closing arguments, began deliberating, and returned a verdict over two dissenting votes, awarding Plaintiff $25 million in compensatory damages and $150 million in punitive damages. R.5360a-5362a.

Plaintiff tried his case on the theory that Roundup® was defective and should have included a cancer warning. To the extent Plaintiff's defect theory was based on anything other than the lack of a cancer warning, the jury rejected it. R.5360a ("Is Roundup defective under the consumer expectation test? A. NO."). It instead found Roundup® "defective because it was not accompanied by proper warnings." *Id.*

Consistent with Pennsylvania law, Monsanto's counsel conducted post-verdict interviews with jurors willing to speak, after first alerting the trial judge of its plans to do so.[4] Through those interviews, Monsanto learned that early in the afternoon of October 27th, the jury became "stuck" and asked a court officer how

[4] *See, e.g.*, Pa. Eth. Op. 91-27, 1991 WL 12030375, at *1 (Nov. 1991) ("[A]fter the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases." (citation omitted)).

many votes it needed to reach a verdict. R.11140a. According to a sworn statement by a juror, "[n]o one understood that ten yes votes or ten no votes were required" to end deliberations. R.11140a.[5]

The court officer returned and told the jury that ten votes were required for either party to prevail. That answered the jury's question, but the officer went much further, telling the jury that unless it reached a verdict by the end of that day—the day the jury was told its service would be complete—it would be required to return on the following Monday, on Tuesday (Halloween), and on Wednesday before the court would declare a mistrial. R.11140a ("The court clerk then told us that if we didn't come to ten for one side today, we would be called back on Monday and that if we didn't reach ten votes either way on Monday, we would have to return on Tuesday and if we still had not reached ten votes on Tuesday that the trial judge would call a mistrial on Wednesday."). According to a juror's sworn statement, the response caused some jurors to "flip[] out," R. 11147a, and "voice their frustration," with one "threat[ening] not to come back" after the weekend. R.11140a. The jury, which had been divided 7-5, promptly returned a 10-2 verdict. *Id.*

In its post-trial briefing, Monsanto argued, *inter alia*, that the *ex parte* communication required a new trial or, at a minimum, an evidentiary hearing.

[5] Juror 9 wrote a statement—neither drafted nor edited by Monsanto—recounting these communications, swore to its contents, and provided it to Monsanto, who then provided it to the trial court and Plaintiff's counsel.

R.10257a-10264a. Without holding an evidentiary hearing, the trial court accused the juror of being a "racist, sexist, and classist" "partisan," who displayed "disgraceful self-superiority." R.10787a; R.10793a. The trial judge further accused Monsanto of misconduct, claiming—contrary to the juror's own sworn and transcribed statements—that Monsanto had attempted to "'prime[]' or otherwise groom[] the target juror." R.10789a-10790a. But while the trial judge asserted that "the court" itself "had no further interaction with the jury" after responding to a separate question from the jury in open court, he made no finding refuting the testimony about the ***court officer's*** statements and does not appear to have conducted any investigation into the issue, instead acknowledging only that the court officer periodically "checked in" with the jury. R.10644a.

The trial court rejected Monsanto's preemption argument at summary judgment, R.5348a, and post-trial, R.10701a-10704a, and further denied JNOV, a new trial, or remittitur as to the punitive damage award, R.10731a-10735a.

D. The Superior Court Affirms.

The Superior Court affirmed. Since "the trial court did not hold a hearing to determine whether the *ex parte* communication described by Juror 9 occurred," the court assumed it did. A.7. It nevertheless affirmed the denial of relief on the ground that the statements "did not unduly influence the jurors" and therefore caused no prejudice. A.9. The court reached that conclusion by "[a]pplying the test set forth

in *Carter*." A.8 (citing *Carter v. U.S. Steel Corp.*, 604 A.2d 1010 (Pa. 1992)). It quoted *Carter*'s description of factors a court should "consider" in addressing the prejudice caused by "extraneous influence" (not *ex parte* communications between court staff and jurors), which include whether it relates to "a central issue in the case," whether it "provided the jury with information they did not have before them at trial," and whether it "was emotional or inflammatory in nature." A.6 (quoting *Carter*, 604 A.2d at 1016-17). In the Superior Court's view, the *ex parte* communication here did not satisfy this "test" because it involved "court procedure" rather than "any substantive issues" and "could not inflame the jury." A.8. The Superior Court declined to consider the sworn evidence concerning jurors' immediate emotional reaction to being told they would have to return for several more days, on the ground that "a juror is incompetent to testify as to what occurred during deliberations." A.7.

The Superior Court also found no preemption. It recognized that in *Schaffner v. Monsanto*, the Third Circuit held "that a Pennsylvania duty to warn claim 'imposes requirements that are different from those imposed under FIFRA, and [the plaintiff's claim] is therefore preempted by FIFRA.'" A.20 (alteration in original) (citation omitted). The Superior Court recognized that it could find "guidance" in "decisions of the federal Courts of Appeals," though it declined to mention Pennsylvania courts' usual preference for following the Third Circuit specifically.

A.20 (quoting *Miller v. Septa*, 103 A.3d 1225, 1231 (Pa. 2014)). Yet the Superior Court found *Schaffner* unpersuasive and believed that the Third Circuit's 65-page opinion had "fail[ed] to consider the misbranding provisions of FIFRA." A.26. In the Superior Court's view, since FIFRA requires manufacturers "not to sell pesticides without adequate health warnings," a state law based on the lack of a cancer warning cannot be preempted, even if EPA has determined that a label without a cancer warning contains all necessary warnings and thus complies with FIFRA. A.27.

The Superior Court also rejected Monsanto's challenge to the punitive damages award. Even though the lack of cancer warning was indisputably consistent with the scientific views of expert regulators at home and abroad, and even though the punitive award was six times the size of an unusually large compensatory award, the Superior Court saw no constitutional infirmity or even much need for reasoned analysis. *See* A.32-34. It also summarily rejected Monsanto's challenge to the cumulative nature of the award. A.35.

CONCISE STATEMENT OF REASONS RELIED UPON FOR ALLOWANCE OF APPEAL

I. The Superior Court's Decision Conflicts with Its Own and This Court's Precedent Regarding *Ex Parte* Contacts and Threatens Litigants' Right to an Impartial Jury.

The rule in Pennsylvania—and nationwide—is that communications with the jury "should be in open court, in the presence of the counsel or their parties, and must be made part of the record." 8 Standard Pennsylvania Practice 2d §48:43 (Jun. 2025 update); *accord Bruckshaw*, 58 A.3d at 112 (explaining that this Court "strictly prohibit[s] communication between the court and jury other than in open court and in the presence of counsel for both parties"); *Glendenning*, 174 A.2d at 867 ("We strongly condemn any intrusion by a Judge into the jury room during the jury's deliberations, or any communication by a Judge with the jury without prior notice to counsel, and such practice must be immediately stopped!"). The "reason" for this rule, this Court has explained, "is to prevent the court from unduly influencing the jury and to afford counsel an opportunity to become aware and to seek to correct any error which might occur." *Bradley*, 459 A.2d at 736 (citation omitted).

When a communication with the jury instead occurs *ex parte*, "such communication . . . will, in itself, be grounds for a new trial" if "not explained satisfactorily on the record." *Bruckshaw*, 58 A.3d at 114. *Bruckshaw*, *Glendenning*, *Bradley*, and other cases make clear that this is the rule for communications involving both judges and court officers. *See also Welshire*, 200 A. at 69 (requiring

new trial based on *ex parte* communication between court officer and jury); *Briskin v. Lerro Elec. Corp.*, 590 A.2d 362, 365 (Pa. Super. 1991) (describing prohibited *ex parte* communications as those occurring between "the court or its officers and the jury").

For decades, when the court or its staff communicated with the jury without counsel present, this Court has instructed trial judges to determine whether the communication resulted in a "reasonable likelihood," or as this Court has said alternatively, a "reasonable possibility," of prejudice. *Bradley*, 459 A.2d at 739; *Commonwealth v. Elmore*, 494 A.2d 1050, 1052 (Pa. 1985) ("reasonable possibility"). Consistent with the grave dangers that such communications pose to a trial's integrity, this Court has instructed that any doubts be resolved in favor of a new trial. *Bradley*, 459 A.2d at 739 ("[F]ailure to maintain an accurate and reviewable contemporaneous record of all . . . communications between the court and a jury may force an implication of prejudice where arguably none exists."); *Commonwealth v. Mosley*, 637 A.2d 246 (Pa. 1993) (vacating conviction where witness spoke with juror about juror's hometown because the encounter "may have the improper effect of enhancing the credibility of the witness in the eyes of the juror").

Breaking with this Court's binding precedent, the Superior Court announced a different standard. Its new rule focuses exclusively on whether an *ex parte*

communication relates to a central issue in the case, whether it provides the jury with information it did not otherwise have, and whether it was "emotional or inflammatory in nature." A.6 (quoting *Carter*, 604 A.2d at 1016-17). And the Superior Court determined that an instruction telling the jury that "if [it] didn't come to ten for one side today, [it] would be called back on Monday and that if [it] didn't reach ten votes either way on Monday, [it] would have to return on Tuesday and if [it] still had not reached ten votes on Tuesday that the trial judge would call a mistrial on Wednesday," R.1140a, was a mere "statement regarding . . . court procedure" that is "not emotional" or relevant to the "substantive issues" in the case, and so as a matter of law can never be viewed as capable of influencing jurors. A.8-9. On such an approach, even the most blatant case of *ex parte* coercion on a jury to reach a verdict becomes harmless error.

This new rule conflicts with controlling precedent, makes no logical sense, and carries grave implications for the integrity of Pennsylvania's jury system. And given "the need for a consistent treatment of these issues in criminal and civil cases," *Bradley*, 459 A.2d at 739, the Superior Court's standard will shield serious trial errors where an individual's liberty is at stake. This Court's review is critically necessary. Pa.R.A.P.1114(b)(1)-(4), (6).

A. The Superior Court's Holding Conflicts with Its Own and This Court's Decisions.

1. Four decades ago, this Court held that "*ex parte* communications between a court and a jury which are likely to prejudice a party" require reversal. *Bradley*, 459 A.2d at 734. That standard, this Court wrote, applies "in civil and criminal cases." *Id.* Precedent both ancient and recent confirms that the need for a new trial is never more vital than when an *ex parte* communication has the potential to pressure jurors to reach a verdict.

In *Welshire v. Bruaw*, this Court ordered a new trial because court staff told jurors that they would "get the devil" from the judge if they did not reach a verdict by a certain time that day. 200 A. at 67-68. This statement by the trial court officer, followed by the jury's prompt return of a verdict, required a new trial. *Id.* And in *Brainard v. Patterson*, this Court affirmed a new trial where a court officer implied to a jury that it could not go home until it had agreed on a verdict. 21 A.2d 29 (Pa. 1941). It is hard to imagine more on-point precedent that the Superior Court violated. *See* Pa.R.A.P.1114(b)(2) (allowance of appeal warranted where "the holding of the intermediate appellate court conflicts with a holding of the Pennsylvania Supreme Court").

The Superior Court violated its own precedent as well. In *Briskin*, the Superior Court applied *Bradley* to find a sufficient possibility of prejudice from *ex parte* communications where "the jury was told to continue deliberating." *Briskin*,

590 A.2d at 365. The parallels between *Briskin* and this case are striking. In *Briskin*, the jury informed the trial judge that it was deadlocked and requested additional instructions. *Id.* at 364. The trial court, *ex parte*, "instructed [the jury] to continue deliberating." *Id.* Here, the court officer instructed the jury that it would need to return again and again—that is, continue deliberating for days—before the court would declare a mistrial. R.11140a. In *Briskin*, a juror told the court officer she "was threatened" and indicated that she was "not going to return [for deliberations] in the morning." *Briskin*, 590 A.2d at 364. Here, upon learning that they would unexpectedly need to return for a fourth week of work, jurors began to "show and voice their frustration at the thought of coming back," with one juror "threat[ening] not to come back." R.11140a.[6] The Superior Court's refusal to award relief thus violated its own precedent. *See* Pa.R.A.P.1114(b)(1) (allowance of appeal warranted where "the holding of the intermediate appellate court conflicts with another intermediate appellate court opinion").

As this Court explained in *Welshire*, "[s]tatements or instructions from [court

[6] The Superior Court ignored this clear evidence of prejudice based on an erroneously broad view of the inadmissibility of juror testimony. A.7-8. This Court has held that testimony that jurors "discussed [an outside influence] during deliberations" "is not testimony of the jury's reasoning processes; rather it is testimony of overt conduct." *Carter*, 604 A.2d at 1015. Under prevailing precedent, testimony that a juror responded to an *ex parte* communication by threatening not to return is just as clearly admissible testimony of overt conduct, not any subjective reasoning process. *See Briskin*, 590 A.2d at 365 (admitting testimony about juror's stated intent not to return).

officers] carry much more weight than suggestions coming from an outsider." 200 A. at 69. And for more than a century, this Court's precedents have reaffirmed that principle. *Sommer v. Huber*, 38 A. 595, 597 (Pa. 1897) (reversing where judge spoke with jury outside counsel's presence); *Glendenning*, 174 A.2d at 867 ("Confidence in the impartiality and integrity of a jury's verdict and the secrecy of its deliberations in a closed jury room are far more important than a juror's glass of water or ride home, or any other comforts or conveniences of a jury."); *Bradley*, 459 A.2d at 739 ("The reason for prohibiting a trial judge from communicating with a jury *ex parte* is to prevent the court from unduly influencing the jury[.]" (citation omitted)); *Colosimo v. Pa. Elec. Co.*, 518 A.2d 1206, 1209 (Pa. 1986) ("Contact between jurors and . . . court officers . . . is viewed with disfavor.").

Indeed, whether judicial coercion occurs in open court or *ex parte*, this Court, and courts throughout the country, have reiterated that a verdict "brought about by judicial coercion is a legal nullity." *Commonwealth v. P.L.S.*, 894 A.2d 120, 124-25 (Pa. 2006) (quoting *Commonwealth v. Montgomery*, 687 A.2d 1131, 1136 (Pa. 1996)); *see also United States v. Scarfo*, 41 F.4th 136, 205 (3d Cir. 2022) ("[W]hen it comes to jurors' understanding of the length of deliberations, we have drawn a distinction between impermissible affirmative coercive conduct by the court—such as reminding the jury of the approaching weekend[.]" (quotation marks omitted)); *United States v. E. Med. Billing, Inc.*, 230 F.3d 600, 615 (3d Cir. 2000) (finding

supplemental instruction coercive and reversible where it "drew the jurors' attention to issues irrelevant to their task"); *United States v. Flannery*, 451 F.2d 880, 883 (1st Cir. 1971) ("[T]he court erred in reminding the jury that it was Friday afternoon."); *Jenkins v. United States*, 380 U.S. 445, 446 (1965) (per curiam) (judge telling jury "You have got to reach a decision in this case" was coercive). This is why when a jury is deadlocked, Pennsylvania courts provide a careful instruction making clear to jurors that the court is "*not* asking any one of [them] to surrender [their] honestly held beliefs or judgments solely to render a verdict." Pa. SSJI(Civ) §12.40 (emphasis added). An *ex parte* communication telling a jury to continue deliberating for days on end—*without* the requisite reminder not to rush to judgment for expediency's sake—cuts to the heart of the judicial concern over pressured verdicts.

2. Rather than adhere to this abundant precedent, the Superior Court transformed the legal landscape by dramatically overreading this Court's decision in *Carter v. U.S. Steel*. *Carter* involved a television broadcast that some jurors viewed, and addressed the factors a court should consider in deciding whether the jury's exposure to such extraneous information was prejudicial. 604 A.2d at 1016-17. At a general level, the Court in *Carter* adopted a reasonable likelihood of prejudice standard, reasoning that it was appropriate to look to the "analogous situation involving an *ex parte* communication between a judge and jury" at issue in *Bradley*. *Id.* at 1016. The Court then offered three more tailored "considerations . . . intended

as guidance for trial courts" when determining whether "extraneous information is reasonably likely to have prejudiced the jury." *Id.* at 1017 n.7. Those considerations included whether the extraneous influence involved information central to the case, provided the jury with information it did not have, or was emotional or inflammatory in nature. *Id.* at 1016-17. Even in the context of extraneous information, the Court was careful to note that it was not creating an inflexible "test" or "rule," but rather guidance toward the ultimate inquiry of whether there was a reasonable likelihood of prejudice "under the facts and circumstances of the case." *Id.* at 1017 n.7.

The Superior Court seriously erred in transplanting "the test set forth in *Carter*" to the context of *ex parte* communications. A.8. For one thing, *Carter* expressly disclaimed creating a "test" at all. 604 A.2d at 1017 n.7 ("[T]he three considerations listed here are not intended as a 'three-part-test' or a 'rule.'"). Even more fundamentally, nothing in *Carter* suggested that the "considerations" relevant to whether "extraneous information is reasonably likely to have prejudiced the jury," *id.*, are the only considerations that could be relevant to the distinct situation of *ex parte* communications from the trial court's own officer.

Indeed, the *Carter* considerations are a fundamental mismatch to the animating purpose of the rule against *ex parte* communications: "to prevent the court from unduly influencing the jury and to afford counsel an opportunity to become aware and to seek to correct any error which might occur." *Bradley*, 459 A.2d at

736 (citation omitted). As this Court has long recognized, "[s]tatements or instructions" from the court or its staff "carry much more weight" than communications from outsiders (as just one example, statements that might appear on a television broadcast). *Welshire*, 200 A. at 69. And as cases like *Welshire*, *Brainard*, and *Briskin* illustrate, *ex parte* statements about the timeline for continued deliberations inherently create the risk of jurors feeling pressure to reach a verdict in order to go home. That sense of pressure, and the possibility of prejudice it entails, has nothing to do with a "central issue in the case" or whether it involves "information" presented at "trial" or an "inflammatory" communication. *Carter*, 604 A.2d at 1017. By transporting those considerations from the context of television broadcasts to *ex parte* communications, and then treating them as a rigid test for proving prejudice, the Superior Court created a standard that ignores the most obvious way in which *ex parte* communications can pressure jurors to reach a verdict, thereby creating at least a reasonable possibility of prejudice.

This explains why Pennsylvania courts, until now, have consistently used the *Carter* considerations to evaluate the potential prejudice resulting from outside sources of information—and ***never*** the potential prejudice occurring from an *ex parte* communication between court staff and jurors. *Compare Commonwealth v. Sneed*, 45 A.3d 1096, 1115 (Pa. 2012) (applying *Carter* factors to woman in the restroom asking a juror about juror's hair but concluding such communication was

not prejudicial), *with Mosley*, 637 A.2d at 249 (citing *Bradley*, but not *Carter*, to hold communication between juror and witness an improper *ex parte* communication).

Rather than distinguish *Briskin*, the Superior Court erroneously suggested that *Carter* overruled it. A.7. *Carter* did no such thing. *E.g.*, *Johnson v. White*, 964 A.2d 42, 46, 47 (Pa. Cmwlth. 2009) (referencing *Briskin* in applying *Bradley*—not *Carter*—in case involving *ex parte* communication). Nor did the Superior Court address *Welshire* or *Brainard*. Indeed, the Superior Court's new rule would deem the very *ex parte* communication at issue in those cases harmless. Consider the *ex parte* statement made by the court officer in *Welshire*: that the jury should reach a verdict by 9:30 or it would "get the devil" from the judge. 200 A. at 69. One could readily say that such a statement "pertained to court procedure and did not address any substantive issues." A.8. But that does not mean the *ex parte* pressure on the jury in *Welshire* was not prejudicial. It means that the *Carter* considerations are not the right framework for evaluating whether *ex parte* pressure on the jury to reach a verdict is prejudicial.

Here, court staff told a divided jury that it would need to return again and again and again—well past the time the jurors expected to have to serve (R.1140a)—before any mistrial would be granted. Whether or not this information is deemed "emotional" or "central to the case," it plainly implicates a "reasonable possibility"

of prejudice. *See Mosley*, 637 A.2d at 250 (awarding new trial after *ex parte* communication between juror and witness because the court "c[ould not] say with any degree of certainty that the contact did not establish a rapport, albeit unconscious, between [the witness] and the jury foreman which in some way influenced the outcome of the trial"). The Superior Court's novel rule led to a result that does not pass the test of common sense, in addition to conflicting with numerous existing precedents.

B. The Superior Court's New Rule Has Sweeping Implications for Civil and Criminal Cases Alike.

Absent review, the implications of the Superior Court's rule will be far-reaching. This Court has long held that there is "no reason to apply different rules in civil and criminal cases" for *ex parte* communications. *Bradley*, 459 A.2d at 734. "The commitment to fairness should be the same in criminal and civil trials." *Carter*, 604 A.2d at 1015; *Bruckshaw*, 58 A.3d at 109 ("[T]he fairness and impartiality of a jury are as scrupulously protected in a civil case as in a criminal case"). Left unreviewed, the Superior Court's new rule will threaten the integrity of criminal and civil proceedings alike.

The requirement that communications with jurors be on-the-record exists "to prevent the court from"—intentionally or unintentionally—"influencing the jury and to afford counsel an opportunity to become aware and to seek to correct any error which might occur." *Colosimo*, 518 A.2d at 1210-11. Thus, *ex parte* "[c]ontact

between jurors . . . court officers . . . and judges is viewed with disfavor." *Bruckshaw*, 58 A.3d at 110 (citing *Colosimo*, 518 A.2d at 1209). Yet in practice, the Superior Court's rule would insulate a variety of so-called procedural instructions from review.

Taking this rule to its logical endpoint, the court or its officers could tell the jury *ex parte* it will be held overnight until it reaches a verdict—without requiring a new trial. Such an instruction would not "relate[] to a central issue in the case." A.6 (quoting *Carter*, 604 A.2d at 1016-17). Nor would it "provide[] the jury with information they did not have before them at trial." *Id.* And because it is about the process until the jury reaches a verdict, one could just as easily say it concerns "court procedure." A.8. Yet under the Superior Court's new rule, there would be no prejudice.

The Superior Court's new rule creates constitutional concerns as well. "[*E*]*x parte* conversations are a due process violation when the integrity of the process and the fairness of the result is tainted by the communication." *Furey v. Temple Univ.*, 884 F.Supp.2d 223, 257 (E.D. Pa. 2012) (quotation marks omitted); *Jackson v. City of Hearne*, 959 F.3d 194, 203 (5th Cir. 2020) (due process violation where a "fair and just hearing" is thwarted). If the Superior Court's decision stands, then the rule in this Commonwealth is that *ex parte* communications pressuring a jury to reach a

verdict are *per se* harmless and insulated from challenge. Due process cannot tolerate that outcome.

More generally, a legal standard that leads to such absurd results on a matter central to the integrity of the judicial process calls for this Court's careful attention. Coercion by a judicial officer to keep deliberating does not relate to the substance of a case and need not be emotional, but it certainly can influence a verdict. That is precisely why Pennsylvania courts reject *Allen* charges, *Commonwealth v. Spencer*, 275 A.2d 299, 303 (Pa. 1971), and require carefully worded deadlock instructions that instruct jurors *not* "to surrender [their] honestly held beliefs or judgments solely to return a verdict." Pa.SSJI(Civ) § 12.40.

The Superior Court's new rule—that communications pertaining to court procedure are *per se* "not emotional and could not inflame the jury"—nullifies this basic principle. The "substantial public importance" of the rights at stake, and their centrality to the integrity of Pennsylvania's judicial system, warrant this Court's review. Pa.R.A.P.1114(b)(4).

II. The Superior Court's Preemption Decision Squarely Splits with the Third Circuit and the U.S. Supreme Court.

Federal law expressly preempts "any" state-law "requirements for labeling or packaging different from or in addition to those under [FIFRA]." 7 U.S.C. §136v(b). The Third Circuit, in a unanimous, 65-page opinion, held that this "Uniformity" provision preempts Pennsylvania failure-to-warn claims based on Roundup's lack

of a cancer warning. *Schaffner*, 113 F.4th at 371. EPA has long concluded that glyphosate does not cause cancer, has consistently approved Roundup®'s labels with no cancer warning, and federal law requires Monsanto to adhere to the EPA-approved label. *See id.* at 380-81.

The Superior Court's opposite conclusion warrants review for two fundamental reasons. First, by splitting from the Third Circuit, the Superior Court created a conflict between the two judicial systems with jurisdiction in this Commonwealth, incentivizing forum-shopping contrary to this Court's longstanding judicial policy. Second, the Superior Court's opinion contradicted opinions of the United States Supreme Court. This Court should review this issue of first impression in Pennsylvania that poses questions of substantial public importance in light of the hundreds of Roundup® cases pending in Pennsylvania courts. *See* Pa.R.A.P.1114(b).

A. The Superior Court's Opinion Conflicts with Third Circuit Precedent.

The Superior Court acknowledged that it was departing from the Third Circuit's *Schaffner* decision, finding it "unpersuasive." A.26. That split creates an untenable situation: in federal court, a Pennsylvania claim for failure to warn that Roundup® causes cancer will fail, but in state court it will proceed. Litigants who dislike the Third Circuit's holding can "walk across the street" to the Pennsylvania courthouse and obtain a different result. *Commonwealth v. Bowden*, 838 A.2d 740,

753 n.10 (Pa. 2003) (citation omitted). This Court has long urged "consistency with . . . Third Circuit" decisions to "prevent" such blatant "forum shopping." *Stone Crushed P'ship*, 908 A.2d at 887. Indeed, it is this Court's "general practice [to] . . . defer[] to the Third Circuit concerning federal questions." *Bowden*, 838 A.2d at 753 n.10.

That deference may not always be unyielding. But this Court, not the Superior Court, should be the one to decide whether the Third Circuit's lengthy, thorough, and unanimous decision—from which the plaintiff did not even attempt to obtain U.S. Supreme Court review—is really so unpersuasive that Pennsylvania should reject it.

B. The Superior Court's Opinion Conflicts with Decisions of the U.S. Supreme Court

In *Bates v. Dow Agrosciences LLC*, the U.S. Supreme Court held that FIFRA preempts state law when a claim seeks to enforce a "requirement for 'labeling or packaging,'" and that "requirement is . . . 'in addition to or different from those required under [FIFRA].'" 544 U.S. 431, 444 (2005) (quoting 7 U.S.C. §136v(b)). That standard "pre-empts any statutory or common-law rule that would impose a labeling requirement that diverges from those set out in FIFRA and its implementing regulations." *Id.* at 452. State labeling requirements must be "genuinely equivalent" to federal requirements to avoid preemption. *Id.* at 454. Thus, if EPA determines a pesticide should say "CAUTION," a "failure-to-warn claim alleging that a given

pesticide's label should have stated 'DANGER' instead of the more subdued 'CAUTION' would be pre-empted." *Id.* at 453.

Here, the difference is even starker. Federal law required Monsanto to use the EPA-approved label, *see* 40 C.F.R. §§152.44(a), 156.70(c), which omits a cancer warning, R.8500a; R.6522a-6523a. Indeed, EPA has gone further, telling Monsanto that adding a cancer warning to EPA's label would be "false and misleading" and *violate* FIFRA. R.475a. This is not just a matter of degree like CAUTION and DANGER—the state and federal requirements are diametrically opposed.

The Superior Court's decision also conflicts with *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008), which concerned a materially identical preemption provision, *see Schaffner*, 113 F.4th at 387; 21 U.S.C. § 360k. *Riegel* held that when the Food and Drug Administration ("FDA") grants premarket approval to medical devices, that regulatory approval "imposes 'requirements'" under federal law for preemption purposes, to which state law must be compared. *Riegel*, 552 U.S. at 322. The Supreme Court identified two key reasons for this conclusion: "FDA requires a device that has received premarket approval to be made with almost no deviations" from the device and label as approved, and "FDA has determined that the approved form provides a reasonable assurance of safety and effectiveness." *Id.* at 323. Since "FIFRA's regulatory approach" has "the same two elements," "[t]he analysis of 'requirements' adopted in *Riegel* carries over to FIFRA." *Schaffner*, 113 F.4th at

388. EPA approval without a cancer warning, based on extensive safety review and carrying a requirement to adhere to the EPA-approval label, triggers preemption.

In rejecting this analysis, the Superior Court made the curious accusation that *Schaffner* "fails to consider the misbranding provisions of FIFRA." A.26. Yet the Third Circuit considered those provisions at length. *See, e.g.*, *Schaffner*, 113 F.4th at 391 (explaining that regulations "require[] pesticide labels to conform to the EPA's opinion as to whether specific labels would constitute misbranding, and thus each 'give[s] content to' the broad requirement that such labels not be misbranded"). If Pennsylvania's courts are going to split with the Third Circuit on an important and recurring question of federal law, it should only be as a result of this Court's careful review, not an intermediate court's assertion that the Third Circuit failed to consider something it spent pages considering.

In addition to the Superior Court's conflict with the U.S. Supreme Court, the question presented is one "of first impression" and "substantial public importance as to require prompt and definitive resolution." Pa.R.A.P.1114(b)(2), (3), (4). Hundreds more Roundup® cases remain pending in Pennsylvania, some involving judgments awarding plaintiffs hundreds of millions of dollars. *E.g.*, *McKivison v. Monsanto Co.*, Nos. 1845 & 1846 EDA 2024 (Pa. Super.) (appeal of remitted award of $400 million dollars). The Massachusetts Supreme Judicial Court granted discretionary review of the same preemption question. *See Cardillo v. Monsanto*

Co., No. SJC-13741 (Mass.) (*pending*). And the U.S. Supreme Court recently called for the views of the United States on the same question, which is often a precursor to granting certiorari review, particularly in the wake of a circuit split. *Monsanto Co. v. Durnell*, No. 24-1068, 2025 WL 1787702 (U.S. Jun. 30, 2025).

III. The Superior Court's Affirmance of an Unwarranted and Excessive $150 Million Punitive Damages Award Warrants Review.

The Superior Court affirmed a $150 million punitive damages award for selling the world's most widely used and best studied pesticide. This Court should review that holding, which inflicted a severe punishment on Monsanto for selling a product that global regulators agree does not cause cancer. The Superior Court's analysis marginalized that regulatory record, refused to consider the risk of multiple punitive awards for the same conduct in this mass tort litigation, and ignored the United States Supreme Court's guidance that when compensatory damages are "substantial," punitive damages equal to compensatory damages reach the outermost limit under Due Process. Those errors warrant review—particularly given the hundreds of similar cases pending throughout Pennsylvania.

A. The Superior Court's Disregard of the Global Regulatory Consensus on Glyphosate Warrants Review.

Punitive damages "are proper" only when the "defendant's actions are so outrageous" that they "demonstrate willful, wanton or reckless conduct." *Hutchison v. Luddy*, 870 A.2d 766, 770 (Pa. 2005). But "[c]ompliance with industry standard and custom" can "negate an inference of wanton indifference to the rights of others."

Nigro v. Remington Arms Co., 637 A.2d 983, 990 (Pa. Super. 1993), *abrogated on other grounds by Aldridge v. Edmunds*, 750 A.2d 292 (Pa. 2000); *see also Keen v. C.R. Bard, Inc.*, 480 F.Supp.3d 646, 651 (E.D. Pa. 2020) (lack of FDA enforcement action relevant to reasonableness of manufacturer's conduct); *Sansom v. Crown Equip. Corp.*, 2011 WL 13147424, at *5 (W.D. Pa. Aug. 11, 2011) ("[C]ompliance with industry standards and custom weighs against Plaintiffs' argument of a culpable state of mind to underpin a demand for punitive damages, and further negates an inference of wanton indifference to the rights of others."). That rationale is doubly true here, where EPA as well as "[g]lobal studies from the European Union, Canada, Australia, New Zealand, Japan, and South Korea have all concluded that glyphosate is unlikely to be carcinogenic to humans." *Wheat Growers*, 85 F.4th at 1270.

The Superior Court gave this evidence, which should have precluded punitive damages, no consideration. It simply "decline[d] to reweigh the evidence." A.34.

At minimum, the Superior Court was obligated to address this evidence to consider the purported reprehensibility of Monsanto's conduct—"the most important" guidepost[] the Supreme Court has identified for determining whether a punitive award complies with due process. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996). Appellate courts must undertake "[e]xacting" *de novo* review of the constitutionality of punitive damages awards. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003). The Superior Court violated that requirement,

warranting review, Pa.R.A.P.1114(b)(2), (6). Further, given the many pending cases presenting the same question, the relevance of the global regulatory consensus that glyphosate does not cause cancer is a matter of public importance warranting this Court's resolution. Pa.R.A.P.1114(b)(4).

B. The Superior Court's Refusal to Consider the Risk of Duplicative Punitive Awards Warrants Review.

In the broader Roundup® litigation—which involves thousands of cases throughout the country, and several hundred pending in Pennsylvania—Monsanto has paid more than $100 million in punitive damages. In Pennsylvania alone, Monsanto faces additional punitive damage awards for selling Roundup®. *McKivison v. Monsanto Co.*, 2024 WL 618401 (Phila.C.P. Jan. 26, 2024) (awarding $2 billion in punitive damages, later reduced to $350 million); *Melissen v. Monsanto Co.*, 2024 WL 5399546 (Phila.C.P. Oct. 10, 2024) (awarding $75 million in punitive damages).

When assessing punitive damages awards, courts should "take into consideration both the punitive damages that have been awarded in prior suits and those that may be granted in the future." Restatement (Second) of Torts §908, *cmt. e*. "Pennsylvania embrace[s] the guidance of Section 908 of the Restatement (Second) of Torts." *Bert Co. v. Turk*, 298 A.3d 44, 61 (Pa. 2023); *id.* at 84 (Dougherty, J., concurring) (citing *cmt. e*). Courts have "responsibility for preventing repeated awards of punitive damages for the same acts or series of acts."

In re Sch. Asbestos Litig., 789 F.2d 996, 1005 (3d Cir. 1986); *see also Green Oil Co. v. Hornsby*, 539 So.2d 218, 224 (Ala. 1989) ("If there have been other civil actions against the same defendant, based on the same conduct, this should be taken into account in mitigation of the punitive damages award."). This principle is so important, it implicates the Constitution. *See State Farm*, 538 U.S. at 423 (reversing punitive damages award on Due Process grounds because it "create[d] the possibility of multiple punitive damages awards for the same conduct").

Contravening these requirements, neither the trial court nor the Superior Court gave any weight to the prior awards punishing Monsanto for the same conduct, or the inevitable risk of further duplicative awards. R.10735. Without grappling with these authorities, the Superior Court simply asserted Monsanto had "not cited to any authority requiring, as a matter of law, that the trial court remit the punitive damages award simply because juries in other cases awarded other plaintiffs punitive damages against Monsanto." A.35. This Court should review to remind courts that, at minimum, they must at least *consider* past and potential future awards for the same conduct.

Even if the Superior Court were correct that there is no authority on point, that would make this a question of first impression that equally warrants review. Pa.R.A.P.1114(b)(3). Resolving this issue carries "substantial public importance." Pa.R.A.P.1114(b)(4). Another panel of the Superior Court has already applied the

cumulativeness ruling in *Caranci* verbatim to affirm another punitive award in Pennsylvania. *See Martel v. Nouryon Chems., LLC*, 2025 WL 1755527, at *7 (Pa. Super. Jun. 25, 2025) (mem.). Given the number of pending Roundup® cases in Pennsylvania seeking to punish Monsanto for the same alleged conduct, this Court's review is warranted.

C. The Excessiveness of the Award Warrants Review.

Under *State Farm*, "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." 538 U.S. at 425. This Court recently recognized the importance of substantiality in considering excessiveness of a punitive award. *See Bert Co.*, 298 A.3d at 80-81.

Yet all the Superior Court said about the 6:1 ratio here was that "single-digit multipliers . . . are more likely to comport with due process than multiple-digit multipliers." A.34. That analysis squarely conflicts with the approach taken by appellate courts in other jurisdictions. In state and appellate courts in California, a 6:1 punitive damages ratio in a Roundup® case would be unconstitutional. *See Hardeman v. Monsanto Co.*, 997 F.3d 941, 975 (9th Cir. 2021) (3.8:1 ratio marked "the limit of constitutionality"); *Pilliod v. Monsanto Co.*, 67 Cal.App.5th 591, 647-49 (1st Dist. 2021) (same, for 4:1 ratio). In each case, which involved significantly smaller punitive awards, dissenting judges argued a 1:1 ratio was the constitutional

maximum. *Hardeman*, 997 F.3d at 982-83 (Smith, J., dissenting in part); *Pilliod*, 67 Cal.App.5th at 653 (Richman, J., dissenting in part).

This Court should grant review to clarify the limitations on punitive damages where compensatory damages are already "substantial"—an issue it acknowledged but did not resolve in *Bert*.

CONCLUSION

This Court should grant review.

Date: August 14, 2025

Respectfully submitted,

/s/ *John J. Hare*

John J. Hare
MARSHALL DENNEHEY, P.C.
2000 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 575-2609

David M. Zionts
Michael X. Imbroscio
José F. Girón
Matthew Quallen
Sumner Truax
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000

Robert C. Heim
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-2570

Chanda A. Miller
Barnes & Thornburg LLP
1717 Arch Street, Suite 4900
Philadelphia, PA 19103-2825
(445) 201-8920

Counsel for Defendant-Petitioner Monsanto Company

CERTIFICATE OF COMPLIANCE

I certify that this Petition complies with the word count limits of Pa.R.A.P. 1115(f), in that it contains 8,899 words, excluding supplementary matter.

I also certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s John J. Hare
John J. Hare
Attorney for Petitioner

Dated: August 14, 2025

Appendix

Superior Court **Opinion**
Dated May 8, 2025

ERNEST CARANCI AND CARMELA CARANCI	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MONSANTO COMPANY, BAYER AG, S&H HARDWARD AND SUPPLY COMPANY, PENN HARDWARD, INC., PENN HARDWARE TWO, INC.	:	No. 993 EDA 2024
APPEAL OF: MONSANTO COMPANY	:	

Appeal from the Judgment Entered March 11, 2024
In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 210602213

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and DUBOW, J.

OPINION BY DUBOW, J.: **FILED MAY 8, 2025**

Appellant, Monsanto Company ("Monsanto"), appeals from the $177,285,102.74 judgment entered in the Philadelphia County Court of Common Pleas on March 11, 2024, following a jury verdict in favor of Appellees, Ernest Caranci ("Mr. Caranci") and Carmela Caranci (collectively, "Appellees"), in this products liability action. Monsanto challenges the trial court's denial of its motions for a new trial or judgment notwithstanding the verdict based on Monsanto's allegations of improper communications between court staff and jurors, erroneous evidentiary rulings, and federal preemption, and claims that the jury's damages award was excessive. After careful review, we affirm.

The relevant facts and procedural history are as follows. In June 2021, Appellees sued Monsanto alleging that Mr. Caranci's years'-long use of Monsanto's product Roundup and its ingredient glyphosate caused him to develop non-Hodgkin's lymphoma ("NHL"). Appellees' complaint alleged claims of, *inter alia*, Negligence, Strict Liability Defective Design and Strict Liability Failure to Warn.

The parties filed certain pre-trial motions and made certain objections at trial which dispositions are germane to this appeal, including the trial court's rejection of Monsanto's assertion that Appellees' Failure to Warn claim was preempted by the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136, *et seq*, and denial of Monsanto's request to exclude evidence and argument relating to the Ninth Circuit Court of Appeals' decision in ***Natural Resources Defense Council v. U.S. Environmental Protection Agency***, 38 F.4th 34 (9th Cir. 2022) ("***NRDC***").

The parties proceeded to a jury trial after which, on October 27, 2023, the jury found in Appellees' favor on their negligence claim. With respect to Appellees' Failure to Warn claim, the jury found that Roundup was defective because it lacked proper warnings and instructions for safe use.[1] The jury awarded Appellees $25 million in compensatory damages and $150 million in punitive damages after finding that Monsanto's conduct was malicious, wanton, willful, or oppressive, or showed reckless indifference to others.

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[1] The jury found in Monsanto's favor on the "consumer expectations" aspect of strict liability.

After the jury had rendered its verdict and announced its damages award, Monsanto contacted the individual members of the jury, one of whom ("Juror 9") agreed to have a recorded conversation with Monsanto's counsel. During the recorded conversation, Juror 9 alleged that, as the jury was deliberating, the foreperson contacted a member of the court staff for clarification as to whether "ten yes votes or ten no votes were required" to end deliberations." While the jury waited for the court staff member to consult with the judge, it continued to deliberate. Juror 9 further alleged that, eventually the court staff member told the jury it needed "to reach ten 'no' votes or ten 'yes' votes" and that "if [it] didn't come to ten for one side today, [it] would be called back on Monday and that if [it] didn't reach ten votes either way on Monday, [it] would have to return on Tuesday and if [it] still had not reached ten votes on Tuesday that the judge would call a mistrial on Wednesday." Upon hearing this, Juror 9 alleged that one juror threatened not to return. The votes then shifted, and the jury returned a verdict that afternoon. Subsequent to his recorded conversation with Monsanto's counsel, Juror 9 prepared a notarized written statement recounting these alleged communications and his perception of the jury deliberations after the communications and provided the statement to the court.

Monsanto then filed a motion for recusal, a post-trial motion for JNOV or a new trial, or an evidentiary hearing concerning the alleged conversation between the jury and the court staff member, and other post-trial motions for

JNOV or a new trial. The court denied each of these motions, the prothonotary entered judgment against Monsanto, and this appeal followed.

Monsanto raises the following six issues on appeal:

1. Is a new trial or an evidentiary hearing required based on a juror's sworn statement describing improper and prejudicial *ex parte* communications with the jury during its deliberations?
2. Is a new trial required because the trial court made erroneous and prejudicial evidentiary rulings based on double standards and other improper grounds, resulting in a one-sided trial?
3. Is JNOV required because [Mr. Caranci's] claims are preempted?
4. Is JNOV required because [Appellees] failed to introduce sufficient evidence of specific causation?
5. Is JNOV, a new trial, or remittitur required because the punitive damages award was unwarranted, manifestly excessive, and improperly cumulative?
6. Is JNOV, a new trial, or remittitur required because the compensatory damages award was manifestly excessive and punitive?

Monsanto's Brief at 6.

In each of Monsanto's issues, it challenges the trial court's denial of its post-trial motions for JNOV or a new trial. We review the denial of a request for JNOV for an error of law that controlled the outcome of the case or an abuse of discretion. ***Hutchinson v. Penske Truck Leasing Co.***, 876 A.2d 978, 984 (Pa. Super. 2005). In this context, an "[a]buse of discretion occurs if the trial court renders a judgment that is manifestly unreasonable, arbitrary or capricious; that fails to apply the law; or that is motivated by partiality, prejudice, bias or ill will." ***Id.***

When reviewing the denial of a request for JNOV, the appellate court examines the evidence in the light most favorable to the verdict winner. ***Thomas Jefferson Univ. v. Wapner***, 903 A.2d 565, 569 (Pa. Super. 2006) (citation omitted). Thus, "the grant of [JNOV] should only be entered in a clear case[.]" ***Id.*** (citation omitted).

There are two bases upon which a movant is entitled to JNOV: "one, the movant is entitled to judgment as a matter of law, and/or two, the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant." ***Rohm and Haas Co. v. Continental Cas. Co.***, 781 A.2d 1172, 1176 (Pa. 2001) (citation omitted). When an appellant challenges a jury's verdict on this latter basis, we will grant relief only "when the jury's verdict is so contrary to the evidence as to shock one's sense of justice." ***Sears, Roebuck & Co. v. 69th St. Retail Mall, L.P.***, 126 A.3d 959, 967 (Pa. Super. 2015) (citation omitted).

Similarly, "[o]ur standard of review when faced with an appeal from the trial court's denial of a motion for a new trial is whether the trial court clearly and palpably committed an error of law that controlled the outcome of the case or constituted an abuse of discretion." ***Blumer v. Ford Motor Co.***, 20 A.3d 1222, 1226 (Pa. Super. 2011) (citation omitted). "In examining the evidence in the light most favorable to the verdict winner, to reverse the trial court, we must conclude that the verdict would change if another trial were granted." ***Id.*** (citation omitted).

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In its first issue, Monsanto contends that the trial court erred in failing to hold an evidentiary hearing or grant its motion for a new trial because of the alleged improper communication between the jury and a court staff member during the jury's deliberations.

When an *ex parte* communication between the court and the jury takes place, a party is entitled to a new trial if the communication unduly influences the jury's deliberations. ***Commonwealth v. Bradley***, 459 A.2d 733, 734 (Pa. 1983) (reviewing civil cases and providing a universal standard to address *ex parte* communications between juries and courts). In ***Carter v. U.S. Steel Corp.***, 604 A.2d 1010 (Pa. 1992), our Supreme Court provided the following guidance to determine whether the external communication "unduly influenced" the jury. The Court held:

> In determining the reasonable likelihood of prejudice, the trial judge should consider 1) whether the extraneous influence relates to a central issue in the case or merely involves a collateral issue; 2) whether the extraneous influence provided the jury with information they did not have before them at trial; and 3) whether the extraneous influence was emotional or inflammatory in nature.

Id. at 1016-17.

The Court further explained that the standard for assessing prejudicial effect is an objective one:

> Once the existence of a potentially prejudicial extraneous influence has been established by competent testimony, the trial judge must assess the prejudicial effect of such influence. Because a trial judge is precluded from considering evidence concerning the subjective impact of an extraneous influence on

> any juror, **it has been widely recognized that the test for determining the prejudicial effect of an extraneous influence is an objective one.** In order to determine whether an extraneous influence is prejudicial, a trial judge must determine how an objective, typical juror would be affected by such an influence.

Id. at 1016 (emphasis added).

At the outset, we note that because the trial court did not hold a hearing to determine whether the *ex parte* communication described by Juror 9 occurred, we assume for the sake of argument that the court staff member told the jury that it needed ten votes for a verdict and would have to return until it reached a verdict.

Relying on ***Briskin v. Lerro Elec. Corp.***, 590 A.2d 362 (Pa. Super. 1991)—a Superior Court decision issued **before** our Supreme Court decided ***Carter***, ***supra***—Monsanto claims the trial court erred in not granting a new trial because there is a reasonable likelihood, that under an objective standard, the *ex parte* communication prejudiced Monsanto, Juror 9's testimony would be admissible to prove prejudice, and the trial court's reasons for disregarding prejudice were erroneous. Monsanto's Brief at 26-37.

We start by rejecting Monsanto's argument that we should consider Juror 9's perception of the jury deliberations. The Supreme Court in ***Carter*** emphasized that "the rule in Pennsylvania, as well as in a majority of jurisdictions, is that a juror is incompetent to testify as to what occurred during deliberations." ***Carter***, 604 A.2d at 1013 (citing ***Pittsburgh National Bank v. Mutual Life. Ins. Co.***, 425 A.2d 383, 385 (Pa. 1981)). This rule is often referred to as the "no impeachment rule." ***Id.*** However, in order to

accommodate the competing policies in this area, courts have recognized a narrow exception, which permits "post-trial testimony of extraneous influences which might have [prejudiced] the jury during deliberations." ***Pittsburgh National Bank***, 425 A.2d at 386 (citation omitted). Under this exception, **a juror may testify only as to the existence of the outside influence, but not as to the effect this outside influence may have had on deliberations.** ***Id.*** Under no circumstances may jurors testify regarding their subjective reasoning processes.[2]

Thus, our analysis of Monsanto's claim is limited to an objective consideration of whether the court staff member's statement about the number of jurors needed to reach a verdict and the length of time the court would require the jurors to deliberate before declaring a mistrial unduly influenced the jurors. Applying the test set forth in ***Carter*** to determine whether the communication unduly influenced the jurors, we find that this communication did not do so. The statement pertained to court procedure and did not address any substantive issues. Furthermore, using an objective standard, we find that the statement regarding the court procedure was not emotional and could not inflame the jury. We, therefore, conclude that, even

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[2] To permit a party unhappy with a verdict to hold a hearing about jury deliberations would require the return of every juror and subject the jurors to direct and cross-examination, a process that would unfairly burden jurors who have already given much time to participate in the trial. We trust that the courts can apply the relevant legal authority and determine objectively whether an outside communication unduly prejudiced the jurors.

if the court staff member made the statement, it did not unduly influence the jurors. Monsanto's claim, thus, fails to garner relief.

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In its second issue, Monsanto claims that certain of the trial court's evidentiary rulings resulted in a "one-sided" trial. Monsanto's Brief at 37-53.

Questions of admissibility lie within the trial court's sound discretion, and we will not disturb the court's decision absent a clear abuse of discretion. ***Parr v. Ford Motor Co.***, 109 A.3d 682, 690 (Pa. Super. 2014) (citation omitted). "[A]n abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous." ***Keystone Dedicated Logistics, LLC v. JGB Enters., Inc.***, 77 A.3d 1, 11 (Pa. Super. 2013) (citation omitted).

Monsanto raises four distinct claims of error arising from the trial court's evidentiary rulings.[3] We address those claims *seriatim*.

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[3] In addition to the arguments set forth by Monsanto and discussed *infra*, Monsanto also supports its various claims that the trial court erred in its evidentiary rulings by highlighting evidentiary rulings made in other Roundup cases by a different Philadelphia County judge subsequent to the trial in this case. That judge's rulings do not persuade us that the instant trial court—making decisions in the context of this case, with the specific evidence and testimony before it—abused its discretion in its rulings.

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First, Monsanto contends that the trial court abused its discretion in preventing it from relying on the result of studies completed by foreign organizations that concluded that glyphosate was not carcinogenic while permitting Appellees to build their case around a "hazard assessment" of glyphosate prepared by the International Agency for Research on Cancer ("IARC"), an organization under the umbrella of the World Health Organization and based in France. Monsanto's Brief at 38-43.

In support of this claim, Monsanto cites to places in the record where the trial court precluded its **fact** witness, Dr. William Reeves, from testifying about the limitations of the hazard assessment issued by IARC. ***Id.*** at 40-42. Monsanto concludes that because Appellees relied on the IARC report to support its claim for punitive damages, Monsanto was "entitled to respond by showing [that] scientists worldwide dismissed IARC's view." ***Id.*** at 40. Monsanto further complains that the trial court erred because it permitted extensive testimony about the one foreign organization that agreed with Appellees' position that glyphosate causes cancer but precluded testimony regarding the foreign organizations that found it to be non-carcinogenic, thus, creating a "blatant double standard." ***Id.*** at 41. Monsanto contends that the trial court created an additional "double standard" when it prevented Dr. Reeves from testifying about the manner in which the EPA reacted to IARC because "EPA is not here," yet the court "never applied the same principle to IARC's views, which was also 'not here.'" ***Id.*** at 42 (citing N.T., 10/13/23 PM

Session, at 80).[4] Monsanto concludes that the court's rulings precluded Dr. Reeves from "challenging a core pillar of [Appellees'] theory" and "substantially diminish[ed] its ability to present its case." ***Id.*** at 43.

Following our review of the notes of testimony, in particular the instances in which Monsanto alleges the court precluded Dr. Reeves from testifying about the inaccuracies of the IARC hazard assessment, we find no abuse of discretion in the court's ruling. The notes of testimony reflect vigorous discussion between the court and Monsanto's counsel regarding the nature of Dr. Reeves's testimony—that is whether Dr. Reeves was appearing as a fact or an expert witness—and Monsanto's counsel agreeing that Dr. Reeves was appearing as a fact witness. ***See***, ***e.g.*** N.T. 10/13/23 AM Session, at 88, 102, 114.

The rulings that Monsanto challenges are those in which Monsanto attempted to elicit expert testimony from Dr. Reeves, including opinions regarding the consequences or effects of research conducted by international regulatory organizations. Because Dr. Reeves was not qualified as an expert witness and did not prepare an expert report on the consequences or effects of the international regulatory organizations, the trial court properly precluded

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[4] Even if the trial court erred in its evidentiary rulings regarding the EPA's conclusions about glyphosate, the error was harmless because Dr. Reeves testified that the EPA viewed glyphosate as either non-carcinogenic or not likely to be carcinogenic. Monsanto's Brief at 42 (citing N.T., 10/13/23 PM Session, at 91). This testimony implicitly conveyed EPA's disagreement with and rejection of IARC's finding that glyphosate is a carcinogen.

him from testifying in the capacity of an expert. This claim, thus, warrants no relief.

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Next, Monsanto claims that the court erred in admitting prejudicial testimony and improperly instructing the jury regarding the ruling of the Ninth Circuit Court of Appeals in ***NRDC***, ***supra***.[5] Monsanto's Brief at 43-48.

NRDC was an administrative appeal in which the Natural Resources Defense Counsel ("NRDC") challenged the EPA's 2020 Interim Registration Review Decision that concluded that "for the most part," glyphosate does not cause cancer. ***NRDC***, 38 F.4th at 39. Following its review of the EPA's analysis and conclusions, the Ninth Circuit found, *inter alia*, that, "EPA's errors in assessing human-health risk are serious." ***Id***. at 52. In particular, the Court found that the EPA did not adequately consider whether glyphosate causes cancer, and the "EPA's choice of a hazard descriptor [*i.e.*, that glyphosate "for the most part" does not cause cancer] is not supported by substantial evidence." ***Id***. at 51. The Ninth Circuit, thus, vacated the human-health portion of the Interim Registration Review Decision and remanded the matter to EPA for further consideration. ***Id***. at 52.

Monsanto contends that the ***NRDC*** holding regarding the EPA Interim Registration Review Decision pertaining to the link between glyphosate and cancer is irrelevant to the instant case. In particular, Monsanto argues that

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[5] Monsanto was an intervenor in the case filed by the NRDC.

shortly after the Ninth Circuit decided the case, the EPA reaffirmed its views that glyphosate does not cause cancer. ***Monsanto's Br.***, at 43-44. Monsanto further claims that, even if the Ninth Circuit decision were relevant, its prejudicial impact outweighs its probative value because "[l]ay jurors cannot be expected to understand nuanced issues of administrative law." ***Id.*** at 44. Monsanto asserts that the trial court, nevertheless, permitted Appellees to selectively read parts of the decision to the jury and imply that Monsanto had "executed a legally binding document admitting to [Appellees'] characterization of" the decision.[6] ***Id.***at 45 (internal quotation marks omitted).

Monsanto further asserts that the trial court inaccurately stated in open court that "Monsanto is a defendant in a case and there was a ruling, as I understand the testimony, that vacated the registration of the [Roundup], right[?]." Monsanto's Brief at 45 (citing N.T. 10/16/23 AM Session, at 88). Monsanto concludes that the trial court compounded its error by not providing a curative instruction about the inaccuracy until two weeks later when the court charged the jury.

Our review of the record reveals that the trial court permitted Appellees to read portions of the Ninth Circuit's decision when conducting its recross-

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[6] The "legally binding document" refers to a stipulation signed by Monsanto lawyers acknowledging that the EPA's 2020 Interim Registration Review Decision was vacated. ***See*** N.T., 10/13/23 PM Session, at 124, 126. During his recross-examination, Dr. Reeves denied having seen the stipulation. ***Id.*** at 126.

examination of Dr. Reeves. ***See*** N.T., 10/16/23 AM Session, at 56-59. On direct, Dr. Reeves had testified about the EPA's Interim Registration Review Decision. Dr. Reeves characterized the Interim Registration Review Decision as a "well-written document" and testified that it gave Monsanto "more confidence in the safety profile of glyphosate." N.T. 10/13/23 PM Session, at 122, 123. Once Monsanto elicited testimony from Dr. Reeves establishing that Monsanto relied on EPA's determination that glyphosate "for the most part" was non-carcinogenic, the court determined that it would not "ignore all of [Dr. Reeves's] previous testimony about his knowledge of the EPA and the significance of the EPA" and, because the jury had "heard testimony on direct and on cross about the wide range of knowledge and the reliance of Monsanto on the regulatory process of the EPA," it would permit Appellees to examine Dr. Reeves regarding the subsequent history of that determination. N.T., 10/16/23 AM Session, at 15.

The trial court further explained that Appellees were permitted to cross-examine Dr. Reeves about the ***NRDC*** decision because "Monsanto has put all this in play with respect to the efficacy, the procedural substance, all of that Ninth Circuit decision." ***Id.*** at 16.

We agree with the trial court. Since Dr. Reeves testified that Monsanto relied on the EPA's 2020 Interim Registration Review Decision's determination that glyphosate was "for the most part" non-carcinogenic, the trial court did not abuse its discretion permitting Appellees to recross-examine him about the ***NRDC*** decision.

With respect to Monsanto's claim that the trial court's curative instruction regarding the court's interpretation of the ***NRDC*** holding was, in essence, too little, too late, our review of the notes of testimony indicates that Monsanto did not place a contemporaneous, specific objection to the court's inaccurate statement about the holding of the ***NRDC*** decision on the record. In fact, Monsanto continued to question Dr. Reeves about the decision.

The following occurred during Monsanto's re-direct examination of Dr. Reeves:

> **Monsanto**: Who actually withdrew the 2020 interim registration review?
>
> **Appellees**: Objection.
>
> **Court**: Are we disputing what the Ninth Circuit opinion said or directed? OR had a finding? Are you asking this witness to give a legal opinion?
>
> **Monsanto**: No, I am not. I am not. I am asking with the - - I'm asking what his understanding as a Monsanto employee is of what the EPA did.
>
> **Appellees**: Objection.
>
> **Court**: Do you have a witness from the EPA or a witness who is going to testify on this subject?
>
> **Monsanto**: Your honor, this goes directly to his work as a Monsanto employee working in regulatory science and what Monsanto did after that opinion came down.
>
> **Court**: All right. Just so I understand. Monsanto is a defendant in a case and there was a ruling, as I understood the testimony, that vacated the registration of a product, right?
>
> **Monsanto**: Absolutely not, Your Honor. Absolutely not. It was - - absolutely not. . . . It did not vacate the registration of the product.

> **Court**: All right. So you're telling me what this - - you're telling me what the Ninth Circuit opinion said then, right?
>
> **Monsanto**: It says that. It actually does say that in black and white, Your Honor.
>
> **Court**: That sounds like a yes to me.
>
> **Monsanto**: Absolutely.
>
> **Court**: This witness is not going to testify as to his understanding of the Ninth Circuit because he already testified that he didn't read it and didn't know about it.

NT., 10/16/23 AM Session, at 87-89. Monsanto's attorney then proceeded to question Dr. Reeves about his understanding of the ***NRDC*** decision.

It is axiomatic that to "preserve an issue for appellate review, a litigant must place a timely, specific objection on the record. Issues that are not preserved by specific objection in the lower court are waived." ***Jones v. Ott***, 191 A.3d 782, 787 (Pa. Super. 2018). In its Brief, Monsanto explained that, "immediately following [the court's] mistake, Monsanto **tried to correct** the court's mistaken view[.]" Monsanto's Brief at 45 n.13 (emphasis added). Monsanto's attempt to "correct the court's mistaken view," did not, however, operate as an objection to the court's statement sufficient to preserve this allegation of error for our review. Because Monsanto failed to place a timely, specific objection to the trial court's statement about the holding of the ***NRDC*** decision on the record, Monsanto has waived any claim of error about the timing of a curative instruction. ***Jones***, 191 A.3d at 787.

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Next, Monsanto claims that the trial court abused its discretion in permitting Appellees to introduce inappropriate "propensity" evidence in

violation of Pa.R.E. 404(b). Monsanto's Brief at 48-50. Monsanto asserts that the court should have precluded Appellees from introducing evidence that Monsanto produced—and removed from the market around the same time it introduced Roundup—the chemicals Agent Orange, PCBs, and DDT because it was irrelevant and "suggest[s]a propensity to disregard safety." ***Id.*** at 49.

Pa.R.E. 404(b)(1) prohibits admission of evidence of "other . . . wrong[s] or act[s]" to show a propensity to act in accordance with a certain trait. Pa.R.E. 404(b)(1). "This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." ***Id.*** at 404(b)(2).

Our review of the record, including Monsanto's motion in *limine* and the notes of testimony reveals, that Monsanto did not object to the admission of this evidence on Rule 404(b) grounds. Rather, Monsanto invoked Rules 401 and 403 as grounds for exclusions of this evidence. Monsanto's failure to preserve this specific objection results in its waiver. ***Jones***, 191 A3d at 787.

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Last, Monsanto contends that the trial court abused its discretion in determining that Monsanto failed to establish a foundation for its alternative theory of causation, *i.e.*, that it was Mr. Caranci's exposure to benzene[7] that caused Mr. Caranci's NHL. Monsanto concludes that this ruling precluded it

[7] IARC has labelled benzene a known carcinogen.

from developing its theory through Appellees' causation expert witness. Monsanto's Brief at 50-52.

By way of background, Dr. Timur Durrani, Appellees' expert medical toxicologist, testified that, in calculating Mr. Caranci's exposure to Roundup, he used a methodology that involved multiplying the number of instances that Mr. Caranci used Roundup per year by the hours per instance by the number of years over which he used it. N.T., 10/18/23 AM Session, at 100. On cross-examination, Monsanto asked Dr. Durrani to employ the same methodology to calculate Mr. Caranci's hypothetical exposure to benzene over his 10-year career, assuming that he worked five to six days per year, as a painter.

Monsanto did not present its own expert to establish this theory; rather, it attempted to use Appellees' expert to establish that it was Mr. Caranci's exposure to benzene that caused Mr. Caranci's cancer. In support, Monsanto prepared a slide illustrating Mr. Caranci's hypothetical exposures to benzene, and using Dr. Durrani's Roundup-exposure methodology, Monsanto's attorneys calculated Mr. Caranci's total hypothetical benzene exposures.

Appellees objected on the grounds that neither party had presented evidence of the number of hours, days, or weeks that Mr. Caranci spent painting with paint containing benzene. ***Id.*** at 102-103. The trial court, however, overruled the objection stating: "I understand. This is a hypothetical that the jury may consider[,] but also may disregard. So just ask your question, please. You're making an assumption, please put it to the witness." ***Id.*** at 104. When Monsanto's counsel asked Dr. Durrani to calculate, using

his glyphosate exposure methodology, how many benzene exposure events Mr. Caranci had had, Dr. Durrani refused to speculate, explaining, essentially, that it is not appropriate to use the same methodology to gauge benzene exposures and glyphosate exposures. ***Id.*** at 104-106. Because Dr. Durrani would not speculate about Mr. Carangi's hypothetical exposure to benzene, the trial court did not abuse its discretion in ruling that Monsanto had failed to lay a foundation that would permit an expert opinion that it was benzene that caused Mr. Caranci's NHL.

Additionally, Monsanto's counsel admitted that he had no expert testimony to support the theory that using the glyphosate exposure methodology was the same methodology used to determine benzene exposure. Rather, it was, simply, Monsanto's attorneys' argument that it was appropriate to do so. ***Id.*** at 105. Ultimately, the trial court disallowed this line of questioning because the benzene exposure calculation was "merely the calculation from counsel," and this was misleading or prejudicial and Monsanto's attorney had not established the proper foundation for it. ***Id.*** at 106-107.

Following our review, we conclude that the trial court did not abuse its discretion in its ruling. Monsanto failed to provide any evidence to support its position that an expert toxicologist would use or had used the same methodology to calculate the effect of benzene exposures as it would glyphosate exposures or that benzene and glyphosate carry the same risk of cancer. Furthermore, there was nothing in the record to support Monsanto's

attorneys' speculation as to the number of instances of exposure in his time as a painter. Without such a foundation, the trial court properly sustained Monsanto's questioning of Dr. Durrani. Monsanto is, thus, not entitled to relief on this claim.

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In Monsanto's third issue, it contends that the doctrine of federal preemption bars Appellees' Failure to Warn claim. In support, Monsanto relies on the recent decision of the Third Circuit Court of Appeals in ***Schaffner v. Monsanto Corp.***, 113 F.4th 364 (3rd Cir. 2024), in which that Court, interpreting Pennsylvania law, found that a Pennsylvania duty to warn claim "imposes requirements that are different from those imposed under FIFRA, and [the plaintiff's claim] is therefore preempted by FIFRA." Monsanto's Brief at 53-54 (quoting ***Schaffner***, 113 F.4th at 371). Monsanto contends that, based on the ***Schaffner*** decision alone, "JNOV is required on all of [Appellees'] claims." We reject this contention.

As a prefatory matter, we note that we are "not bound by decisions of the federal Courts of Appeals [although] we may, and at times, do look to them for guidance." ***Miller v. Southeastern Pennsylvania Transp. Auth.***, 103 A.3d 1225, 1231 (Pa. 2014) (citation omitted).

Federal preemption is a question of law; our standard of review is, thus, *de novo*, and our scope of review plenary. ***Dooner v. DiDonato***, 971 A.2d 1187, 1193 (Pa. 2009). By way of background, this Court has explained the doctrine of federal preemption as follows:

> The doctrine of federal preemption is founded on the Supremacy Clause. Federal laws are the supreme law of the land; thus, any "state law that conflicts with the federal law is without effect."
>
> A state law is preempted when: (1) Congress expresses a clear intent to preempt state law; (2) when there is outright or actual conflict between the federal and state law; (3) when compliance with the federal and state law is effectively impossible; (4) where there is an implicit federal barrier to state regulation; (5) where Congress has occupied the entire field of regulation; [or] (6) where state law "stands as an obstacle" to the objectives of Congress. The key question is whether Congress intended to preempt state law. Congressional intent may be express or implied:
>
> Congress' intent may be explicitly stated in the statute's language or implicitly contained in its structure and purpose[.] In the absence of an express congressional command, state law is preempted if that law actually conflicts with federal law or if federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it.
>
> Absent express preemption, courts are not to infer preemption lightly, particularly in areas traditionally of core concern to the states such as tort law. This is because the preemption doctrine presumes that police powers historically left to the states are not supplanted by federal law.

Coffey v. Minwax Co. Inc., 764 A.2d 616, 619 (Pa. Super. 2000) (quoting ***Romah v. Hygenic Sanitation Company***, 705 A.2d 841 (Pa. Super. 1998) (internal quotation marks and ellipses omitted)).

FIFRA contains an express preemption provision at Section 136v(b), which provides that a "[s]tate shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under" FIFRA. 7 U.S.C. § 136v(b). In other words, FIFRA will preempt a state law requirement—including a common-law cause of action—that is not fully consistent with FIFRA's requirements and imposes a duty

greater than that imposed by FIFRA. ***Carson v. Monsanto Company***, 92 F.4th 980, 990-91 (11th Cir. 2024) (citing ***Bates v. Dow Agrosciences LLC***, 544 U.S. 431, 447 (2005)). A state law requirement is not fully consistent with FIFRA's requirements when the state law requirement is: (1) for labeling or packaging; and (2) in addition to or different from what FIFRA requires. 7 U.S.C. § 136v(b); ***Carson***, 92 F.4th at 989-91 (citing ***Bates***, 544 U.S. at 444, 446-47).

We start with a discussion of the elements of a Pennsylvania failure to warn claim. A claim for strict liability failure to warn under Pennsylvania law requires a plaintiff to prove, *inter alia*, that a product "lacks adequate warnings or instructions necessary for safe use of the product." ***Zitney v. Wyeth LLC***, 243 A.3d 241, 245 (Pa. Super. 2020) (citation omitted). In other words, Pennsylvania imposes a requirement on manufacturers to provide adequate warnings on its products that are necessary for the consumer's safe use of the product. The issue before us, therefore, is whether FIFRA imposes a similar requirement, *i.e.*, that manufacturers of pesticides provide adequate warnings on their pesticide containers.

Turning to FIFRA's labeling requirements, we start with Section 136a(c)(5)(B) that provides that the Administrator shall register a pesticide if the Administrator determines that the pesticide's **"labeling . . . compl[ies] with the requirements of this subchapter."** 7 U.S.C. § 136a(c)(5)(B) (emphasis added). Among the requirements that FIFRA imposes on a manufacturer of pesticides is that it not distribute or sell "any pesticide which

is adulterated or misbranded." ***Id.*** at § 136j(a)(1)(E). A pesticide is "misbranded" if its label is inadequate, *i.e.*, if it "does not contain a warning or caution statement [that] may be necessary and if complied with . . . is adequate to protect health and the environment." ***Id.*** at § 136(q)(1)(G). In other words, FIFRA imposes a requirement on manufacturers of pesticides that they include adequate warnings on its containers of pesticides to protect health and the environment. Otherwise, the product is "misbranded," and the manufacturer is prohibited from selling it.

Since a Pennsylvania failure to warn claim imposes a requirement on manufacturers of pesticides to provide a label that warns of health risks and FIFRA requires manufacturers of pesticides to include on their labels a "warning or caution statement [that is] adequate to protect health and the environment," the requirements are similar and the Pennsylvania failure to warn claim does not impose any requirement that is in addition to the requirements imposed by FIFRA. Thus, FIFRA does not preempt a Pennsylvania failure to warn claim.

This holding is consistent with numerous other courts throughout the United States that have concluded that FIFRA does not preempt their states' failure to warn claims. In ***Hardeman v. Monsanto Corporation***, 997 F.3d 941, 995 (9th Cir. 2021), the Ninth Circuit Court of Appeals, determined that California's failure to warn cause of action did not impose any additional requirements to FIFRA's labeling provisions. That Court rejected Monsanto's argument that the EPA's approval of a pesticide label demonstrated that the

label is appropriate. The Court first noted that FIFRA only provides that "registration of a pesticide shall be *prima facie* evidence that the pesticide, its labeling and packaging comply with the registration provision of [FIFRA]." ***Id.*** at 956 (internal quotation marks omitted) (quoting 2 U.S.C. 136a(f)(2)). Thus, approval of the label is not determinative that the label is *per se* adequate.

The Court further noted that to hold otherwise would render the provisions regarding misbranding and mandatory reporting of unreasonable adverse effects superfluous:

> And looking at FIFRA holistically, this makes sense—if mere EPA approval of a label were determinative of FIFRA compliance, then FIFRA's misbranding provision and regulations imposing a duty to report additional factual information regarding unreasonable adverse effects would serve no purpose. So even though EPA approved Roundup's label, a judge or jury could disagree and find that same label violates FIFRA. **And because EPA's labeling determinations are not dispositive of FIFRA compliance, they similarly are not conclusive as to which common law requirements are in addition to or different from the requirements imposed by FIFRA.**

Id. (internal citations and quotation marks omitted; emphasis added).

Similarly, in ***Carson***, 92 F.4th at 992, the Eleventh Circuit concluded that FIFRA did not preempt Georgia's failure to warn claim. The Court found that "FIFRA's labeling requirements that bear on our preemption analysis are its (1) prohibition on misbranding; (2) required registration of pesticides and their labels, and (3) ongoing reporting requirements." ***Id.***at 990-91. The Court highlighted the provision of FIFRA that defines "misbranding" as a label

that "does not contain a warning or caution statement which is necessary and if complied with . . . is adequate to protect health and the environment." ***Id.*** at 991-92 (citation omitted).

The Court compared these provisions to a Georgia failure to warn claim. The Court found that "under Georgia common law, a pesticide manufacturer breaches its duty to warn if it fails to provide an adequate warning of the product's potential risks." ***Id.*** at 992 (citation omitted). The Court then concluded that "here, the practical effect is the same: both FIFRA and Georgia common law require pesticide manufacturers to warn users of potential risks to health and safety." ***Id.***

Most recently, a Missouri appellate court rejected Monsanto's argument that FIFRA preempted a Missouri failure to warn claim. That Court held that "the practical effect of both FIFRA's prohibition on misbranding under Section 136(q)(1)(G) and a strict liability failure to warn claim in Missouri are the same: both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product, regardless of the manufacturer's knowledge or intent." ***Durnell v. Monsanto***, 707 S.W.3d 828, 833 (Mo. App. E.D. 2025).

Monsanto, however, asks us to accept the reasoning of the ***Schaffner*** Court and hold that FIFRA preempts a Pennsylvania failure to warn claim. The ***Schaffner*** Court found that, because the EPA through its pre-approval regulation process, approved Roundup's label without a cancer warning, Monsanto could not add a cancer warning without further EPA approval. 113

F.4th at 399. The Court, therefore, concluded that since the Pennsylvania failure to warn claim, which involves the failure to add a cancer warning, imposes a requirement on Monsanto that FIFRA does not impose, FIFRA preempts Pennsylvania law. ***Id.***

We find the ***Schaffner*** Court's reasoning and conclusion unpersuasive because it relies on only one section of FIFRA and does not consider all the requirements that FIFRA imposes on manufacturers of pesticides regarding adequate labels. The ***Schaffner*** Court fails to consider the misbranding provisions of FIFRA that prohibit a manufacturer or distributor of a pesticide from distributing or selling "any pesticide [that] is . . . misbranded," which includes selling a pesticide that does not contain an adequate health warning. 7 U.S.C. § 136j(a)(1)(E).

The holding in ***Schaffner*** implies that EPA's approval of a label is final and determinative that the label adequately warns of risks. We reject this implication. FIFRA provides that EPA approval merely creates a rebuttable presumption of compliance with FIFRA. ***See Hardeman***, 997 F.3d at 957 (observing that "FIFRA expressly states that EPA's decision to approve a label during the registration process raises only a rebuttable presumption that the pesticide and its label comply with FIFRA." (citation omitted)). It does not provide that approval by the EPA is dispositive that the manufacturer has complied with FIFRA and, in particular, with the provisions that prohibit selling a pesticide with an inadequate health warning. Additionally, the approval of the label is not a final blessing that the label adequately warns of risks; FIFRA

still requires a manufacturer of a pesticide to provide to the EPA unreasonable adverse effects of the pesticide. 7 U.S.C. § 136d(a)(2).

We might have found ***Schaffner*** persuasive if FIFRA did not impose any additional obligations on a manufacturer of a pesticide beyond the EPA's approval of the label. However, FIFRA imposes additional requirements on manufacturers; in particular, it requires them not to sell pesticides without adequate health warnings. It is this requirement in FIFRA that is similar to the requirement of Pennsylvania's failure to warn law and, thus, precludes FIFRA from preempting a Pennsylvania failure to warn claim. We, therefore, conclude that FIFRA does not preempt a Pennsylvania failure to warn claim.[8]

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[8] Monsanto also baldly asserts in its brief that "***Schaffner*** confirms that ***Romah v. Hygienic Sanitation Co***, 705 A.2d 841 (Pa. Super. 1997) *aff'd* [] 737 A.2d 249 (1999), was rightly decided and remains good law." Monsanto's Brief at 53 n.15. We disagree that ***Romah*** remains good law. In ***Romah***, this Court found that FIFRA preempted plaintiffs' state law claim that a pesticide manufacturer was negligent in distributing a toxic chemical, which is essentially a claim that the warnings on the pesticide were not sufficient to protect the public from injury. The ***Romah*** Court explained its reasoning as follows: if this "claim was permitted to go to the jury and the jury concluded that the warnings were inadequate, then such a verdict would have the effect of imposing a new labeling requirement . . . an outcome [] expressly preempted by [] FIFRA." ***Romah***, 705 A.2d at 852. Subsequently, however, in ***Bates***, ***supra***, the United States Supreme Court, in considering whether FIFRA permits failure to warn claims disagreed with this reasoning. The ***Bates*** Court explained that "a requirement is a rule of law that must be obeyed; an event, such as a jury verdict, that merely motivates an optional decision is not a requirement. The proper inquiry calls for an examination of the elements of the common-law duty at issue, not for speculation as to whether a jury verdict will prompt a manufacturer to change its label." ***Bates***, 544 U.S. at 432. The Court was clear that "[a] jury verdict that might induce pesticide manufacturers to change labels should not be viewed as a requirement." ***Id.*** We, thus, decline to find either the ***Schaffner*** Court's or Monsanto's reliance on ***Romah*** persuasive.

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In its fourth issue, Monsanto challenges the sufficiency of Appellees' evidence proving Roundup caused Mr. Caranci's cancer. Monsanto's Brief at 55-58. Monsanto claims that, rather than testify how much Roundup Mr. Caranci actually inhaled or absorbed, Appellees' causation expert, Dr. Durrani, merely "extrapolated from the alleged 'positive association' between glyphosate and cancer to conclude that, because [Mr. Caranci] used Roundup for a number of years, it was the specific cause of his cancer." ***Id.*** at 56-57. Monsanto assails the expert's "conclusory guesswork based on alleged 'use'" as "unrelated to any actual absorption or alleged effect of glyphosate." ***Id.*** at 57. Monsanto also claims that Dr. Durrani's testimony regarding Mr. Caranci's Roundup exposure was impermissible "any exposure" opinion. ***Id.*** at 55-56. For these reasons, Monsanto contends Appellees' evidence was "deficient" and required entry of JNOV. ***Id.*** at 58. We disagree.

The notes of testimony indicate that Dr. Durrani did not conclude that Mr. Caranci suffers from NHL based solely on the "alleged positive association between glyphosate and cancer." Rather, Dr. Durrani provided extensive testimony explaining how he developed his conclusion regarding causation. Dr. Durrani explained, generally, the process by which exposure to chemicals can damage cellular DNA through oxidative stress, and damaged cells become cancerous. He also discussed specific studies that concluded that glyphosate caused oxidative stress. Then, Dr. Durrani testified that Roundup was a substantial factor in causing Mr. Caranci's cancer based on his calculation that

Mr. Caranci had a history of "high exposure" to glyphosate. N.T., 10/17/23 PM Session, at 45.

Dr. Durrani also explained that he developed a differential diagnosis to determine the cause of Mr. Caranci's NHL.[9] Dr. Durrani concluded Roundup caused Mr. Caranci's NHL only after considering that cause as one of many possible causes and, by process of elimination, ruling out the unlikely or impossible causes. These other possible causes, or preexisting conditions known for making people more susceptible to NHL, considered by Dr. Durrani included: infections, viruses, autoimmune diseases, radiation exposure, family history, personal medical history, occupational hazards, and exposures to carcinogens. Following his review, Dr. Durrani determined to a reasonable degree of medical and scientific certainty that Mr. Caranci's exposure to Roundup caused his NHL. ***Id.*** at 53. This evidence, which the jury was free to credit, was sufficient to support the jury's conclusion that Roundup caused Mr. Caranci's NHL.

Moreover, with respect to Monsanto's allegation that Dr. Durrani's testimony constituted impermissible "any exposure" opinion testimony, we are not persuaded by Monsanto's misplaced reliance on ***Betz v. Pneumo Abex***, 44 A.3d 27 (Pa. 2012). Our Supreme Court in ***Betz*** considered the

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[9] Dr. Durrani testified that a differential diagnosis is "something we use in medicine when we are trying to get an understanding, trying to provide a diagnosis or a cause of a disease." N.T., 10/17/23 PM Session, at 47. Doctors use differential diagnoses to "understand all the possib[le] causes for someone's symptoms] and then [] rank them" to determine which is the most likely cause. ***Id.***

trial court's entry of summary judgment in favor of the defendants after the trial court precluded on ***Frye*** grounds the plaintiff's expert from testifying that because "any" and "every" exposure to asbestos can cause cancer, the defendant's product necessarily caused the plaintiff's cancer. ***Id.*** at 30, 39-41. The ***Betz*** court affirmed the trial court's decision, reasoning that the trial court properly determined that the expert's methodology for determining causation was novel and not generally accepted. ***Id.*** at 58. ***Betz*** is not a case addressing the sufficiency of the evidence and, thus, does not support Monsanto's assertion that Dr. Durrani's opinion was insufficient to support the verdict in Appellees' favor. This claim, thus, fails.

***

In its fifth issue, Monsanto avers that it is entitled to JNOV or a new trial because the punitive damages awarded to Appellees are unwarranted, excessive, and cumulative. Monsanto's Brief at 58-73.

Pennsylvania juries "enjoy[] discretion in the fixing of punitive damages." ***Bert Co. v. Turk***, 298 A.3d 44, 61 (Pa. 2023). That discretion is, however, subject to the limitations of the Fourteenth Amendment's Due Process Clause, which imposes limits on punitive awards based on "[e]lementary notions of fairness . . . dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also to the severity of the penalty that may be imposed." ***Id.*** at 48 n.2 (internal quotation marks and citation omitted).

In ***Bert Co.***, our Supreme Court recently explained punitive damages as follows:

> Punitive damages have long been a part of traditional state tort law. The common-law method for assessing punitive damages has been recognized in every state and federal court for over two hundred years - since before enactment of the Fourteenth Amendment in 1868. They have been described as "quasi-criminal," and could be described as "private fines" intended to punish the defendant and to deter future wrongdoing. A jury's [or trial court's (in the case of a non-jury trial)] assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation. Punitive damages are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.

Id. at 58-59 (citations, some quotation marks, original brackets, and parentheses omitted).

We review an award of punitive damages for an abuse of discretion. ***Grossi v. Travelers Personal Ins. Co.***, 79 A.3d 1141, 1157 (Pa. Super. 2013). "Under Pennsylvania law the size of a punitive damages award must be reasonably related to the State's interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion." ***Hollock v. Erie Ins. Exch.***, 842 A.2d 409, 419 (Pa. Super. 2004) (citation and original quotation marks omitted); ***see also Grossi***, 79 A.3d at 1157.

> Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his[, or her,] reckless indifference to the rights of others. In assessing punitive damages, the trier[-]of[-]fact can properly consider the character of the defendant's act, the nature and extent of the harm to the

> plaintiff that the defendant caused or intended to cause[,] and the wealth of the defendant.

Bert Co., 298 A.3d at 61-62, (quoting Restatement (Second) of Torts § 908(2)). ***See also Hollock***, 842 A.2d at 419 (citing cases addressing Section 908(2); ***Grossi***, 79 A.3d at 1157 (same). "Punitive damages awards must be tailored to each defendant." ***Bert Co.***, 298 A.3d at 71.

Monsanto raises numerous sub-claims challenging the punitive damages award. First, Monsanto claims punitive damages were improper because Roundup is approved for use by the EPA and the evidence demonstrated that Monsanto acted in accordance with scientific consensus and, therefore, lacked the "evil motive or reckless indifference to the rights of others" necessary to award punitive damages. ***Id.*** at 59-62 (quoting ***Feld v. Merriman***, 485 A.2d 742, 747-48 (Pa. 1984)). Monsanto also contends that the punitive damages award was the result of improper evidence that inflamed the jury. Monsanto's Brief at 63-65.

Monsanto has not cited to any controlling precedent to support its argument that implies that a fact-finder as a matter of law may not impose punitive damages when the defendant acted in accordance with scientific consensus, and we have found none. In fact, this Court has held that "compliance with industry and governmental safety standards **does not**, standing alone, automatically insulate a defendant from punitive damages. ***Daniel v. Wyeth Pharmaceuticals, Inc.***, 15 A.3d 909, 932 (Pa. Super. 2011) (emphasis added) (quoting ***Phillips v. Cricket Lighters***, 883 A.2d 439, 447 (Pa. 2005)). Simply because Monsanto introduced evidence at trial

that it complied with industry standards and scientific consensus does not preclude the jury from awarding punitive damages and does not require the trial court to enter JNOV.

Additionally, we note that Monsanto is, in essence, arguing that because it introduced evidence of its compliance, the jury, when considering whether to impose punitive damages, should have found its evidence of compliance dispositive and disregarded any evidence Appellees presented. This argument challenges the weight that the jury placed on the evidence of compliance. We cannot and will not reweigh the evidence.

*

Next, in support of its claim that the amount of punitive damages awarded was grossly and unconstitutionally excessive, Monsanto asserts that its conduct was not reprehensible because no evidence suggested that Monsanto demonstrated reckless disregard for the health or safety of others, knew that Roundup, in fact, caused cancer, took advantage of Appellees, or acted with malice. ***Id.*** at 67-68. Monsanto also notes that the 6:1 ratio of punitive to compensatory damages is "beyond the outermost limit of the due process guarantee." ***Id.*** at 68. Monsanto next claims that, because Appellees withdrew their request for economic damages, the $25 million compensatory damages award for non-economic damages alone "undeniably contained a punitive component." ***Id.*** at 68-69. Characterizing the compensatory damages award as "already excessive and substantial," Monsanto argues that **any** multiple of that amount violates due process." ***Id.*** at 69 (emphasis in

original). Monsanto also asserts that Appellees "improperly invited the jury to award punitive damages based on Monsanto's wealth" by stating that "Monsanto is in the business of making money." ***Id.*** at 69-70 (citing N.T., 10/10/23 PM Session, at 23).

Monsanto's claim that its conduct was not reprehensible for the reasons it lists is, in essence, a challenge to the weight the jury gave to the evidence presented at trial. The jury heard other evidence about Monsanto's conduct and placed more weight on that evidence. Thus, we decline to reweigh the evidence and do not agree that the jury abused its discretion in awarding $125 million in punitive damages on that basis.

In addition, Monsanto's suggestion—that the $25 million the jury awarded for non-economic compensatory damages must necessarily include a punitive component—is mere conjecture and not grounds for relief. We are likewise unpersuaded by Monsanto's claim that a punitive damages award in an amount six times the compensatory damages award is inherently violative of due process. In fact, the United States Supreme Court has "consistently rejected the notion that the constitutional line is marked by a simple mathematical formula." ***State Farm Mut. Auto. Ins. Co. v. Campbell***, 538 U.S. 408, 425 (Pa. 2003) (citation omitted). The ***State Farm*** Court further noted that "single-digit multipliers" like the one in the instant case, "are more likely to comport with due process" than multiple-digit multipliers. ***Id.*** at 410.

Monsanto's final argument within this sub-claim—that Appellees' improperly invited the jury to award excessive punitive damages by stating

that "Monsanto is in the business of making money"—also fails to provide grounds for relief given that it is simply a statement of fact to which Monsanto did not object when Dr. Reeves was asked to, and did, agree to it. ***See*** N.T., 10/10/23 PM Session, at 23-24.

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Monsanto next contends that the punitive damages award was unconstitutionally cumulative based on Monsanto having already paid more than $100 million in punitive damages to plaintiffs in other cases. ***Id.*** at 72. Because the $150 million punitive damage award in this case more than doubles the punitive damages paid as punishment for the same conduct, and thousands of Roundup cases remain pending, Monsanto claims the award in this case raises "serious due process" concerns. ***Id.***

As with Monsanto's prior claims, this claim likewise fails as Monsanto has not cited to any authority requiring, as a matter of law, that the trial court remit the punitive damages award simply because juries in other cases awarded other plaintiffs punitive damages against Monsanto. The trial court neither abused its discretion nor erred as a matter of law in declining to mold the verdict here.

In sum, our review confirms that, in light of the totality of the record developed at trial, the jury properly exercised its discretion in awarding Appellees $125 million in punitive damages and the trial court did not abuse it discretion or err as a matter of law in denying Monsanto's motion for a new trial or JNOV based on the amount of punitive damages awarded.

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In its final issue, Monsanto claims that the trial court abused its discretion in denying its motion for a new trial, JNOV, or a substantial remittitur because the non-economic compensatory damages awarded were manifestly excessive and punitive. Monsanto's Brief at 74-77. We are guided by the following principles:

> The grant or refusal of a new trial due to the excessiveness of the verdict is within the discretion of the trial court. This Court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice. . . . Similarly, our standard of review from the denial of a remittitur is circumspect and judicial reduction of a jury award is appropriate only when the award is plainly excessive and exorbitant. The question is whether the award of damages falls within the uncertain limits of fair and reasonable compensation or whether the verdict so shocks the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption. Furthermore, the decision to grant or deny remittitur is within the sole discretion of the trial court, and proper appellate review dictates this Court reverse such an Order only if the trial court abused its discretion or committed an error of law in evaluating a party's request for remittitur.

Tong-Summerford v. Abington Mem'l Hosp., 190 A.3d 631, 650-51 (Pa. Super. 2018) (citation omitted).

We begin with the premise that large verdicts are not necessarily excessive and that each case is unique and dependent on its own particular circumstances. ***Gillingham v. Consol Energy, Inc.***, 51 A.3d 841, 857 (Pa. Super. 2012). "In awarding damages for past or future non-economic loss, a jury may consider, *inter alia*, the age of the plaintiff, the severity of his or her injuries, whether the injuries are temporary or permanent, the duration and

nature of medical treatment, the duration and extent of physical pain and mental anguish on the part of the plaintiff, and the plaintiff's physical condition before the injuries." ***Id.*** at 857-58 (citation omitted). "Thus, noneconomic loss must be measured by experience rather than any mathematical formula." ***Brown v. End Zone, Inc.***, 259 A.3d 473, 486 (Pa. Super. 2021) (citation omitted). "For this reason**, the law entrusts jurors, as the impartial acting voice of the community, to quantify noneconomic loss** and compensation." ***Id.*** (citation omitted; emphasis added).

With respect to compensatory damages, "this Court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice." ***Id.*** (citation omitted). A court may consider: "(1) the severity of the injury; (2) whether the Plaintiff's injury is manifested by objective physical evidence or whether it is only revealed by the subjective testimony of the Plaintiff [;] (3) whether the injury will affect the Plaintiff permanently; (4) whether the Plaintiff can continue with his or her employment; (5) the size of the Plaintiff's out-of-pocket expenses; and (6) the amount Plaintiff demanded in the original complaint." ***Id.*** at 486-87 (citation omitted).

With the above six-factor analysis in mind, Monsanto argues that the non-economic damages awarded were excessive because Appellees introduced no "objective physical evidence," and Mr. Caranci achieved remission and successfully treated recurrences of NHL, sold his business in 2010 at age 70 and introduced no evidence of lost earnings capacity, and introduced no evidence of medical bills or out-of-pocket expenses. Monsanto's

Brief at 75. For these reasons, and because this compensatory damages award was many times greater than "other" large products liability verdicts involving serious illnesses in Pennsylvania and other compensatory damages awards against Monsanto in other jurisdictions, Monsanto claims it is entitled to relief. ***Id.***at 76.

Following our review, we conclude that the trial court properly exercised its discretion in denying Monsanto's challenge to the amount of compensatory damages awarded to Appellees. Here, Appellees provided a sufficient evidentiary basis for the jury to conclude that Mr. Caranci suffered, and continued to suffer, disfigurement, pain and suffering, embarrassment, humiliation, and the loss of the ability to enjoy life's pleasures—all non-economic losses recognized under Pennsylvania law. ***See Gillingham***, 51 A.3d at 866 (listing non-economic losses compensable under Pennsylvania law).

Mr. Caranci testified extensively about the physical and emotional toll NHL has had on him. In particular, Mr. Caranci testified that he first became sick in 2005 and that his cancer subsequently returned four times, each time with worse symptoms than the time before. N.T., 10/19/23 AM Session, at 76-77, 83, 85. He underwent chemotherapy that was very painful and caused fatigue and nausea. ***Id.*** at 84. Mr. Caranci testified that his mouth is "dry all the time" and his lips are swollen and dry. ***Id.*** at 85. To Mr. Caranci, food has no taste and "everything smells like medicine." ***Id.*** at 88. Mr. Caranci is frail, has difficulty walking, and "can't stand the pain" he experiences in his

daily life. ***Id.*** at 85. The jury also saw that Mr. Caranci has disfiguring lumps all over his body, including on his chin, arms, and groin. ***Id.*** at 82. He is embarrassed because he "look[s] like a monster." ***Id.*** He experiences "no happiness, "no joy," does not sleep, and feels defeated by the repeated return of his cancer. ***Id.*** at 84. Mr. Caranci testified that selling the business that he had run for 30 years in 2010 because he was not well enough to run it "[broke] his heart." ***Id.*** at 80.

In light of the record created by Appellees, we conclude that the jury—acting as the impartial voice of the community—fairly and adequately valued Mr. Caranci's non-economic suffering. The award here is not "plainly and excessively exorbitant" and it does not "so shock[] the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption." ***Tong-Summerford***, 190 A.3d at 650. Accordingly, we find that the trial court did not err or abuse its discretion in denying Monsanto relief from the compensatory damages award.

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In conclusion, we find that none of the issues raised by Monsanto entitles it to relief. We, therefore, affirm the entry of judgment in Appellees favor.

Judgment affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 5/8/2025

Appendix

Superior Court Order Denying Reargument
Dated July 15, 2025

Filed 07/15/2025

IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

ERNEST CARANCI AND CARMELA CARANCI	:	No. 993 EDA 2024
v.	:	
MONSANTO COMPANY, BAYER AG, S&H HARDWARD AND SUPPLY COMPANY, PENN HARDWARD, INC., PENN HARDWARE TWO, INC.	:	
APPEAL OF: MONSANTO COMPANY	:	

ORDER

IT IS HEREBY ORDERED:

THAT the application filed May 22, 2025, requesting reargument of the decision dated May 8, 2025, is **DENIED**.

PER CURIAM

Appendix

Trial Court 1925 Opinion

Dated May 28, 2024

ERNEST CARANCI and CARMELA CARANCI, Plaintiffs, v. MONSANTO COMPANY, et al., Defendants.	: : : : : : : : : :	COURT OF COMMON PLEAS PHILADELPHIA COUNTY TRIAL DIVISION -CIVIL No. 210602213

1925(b) OPINION

On February 27, 2024, the court entered orders denying the Motion of Defendant Monsanto for Post-Trial Relief, granting Plaintiff's Motion for Delay Damages and striking Defendant's Praecipe to Attach and striking Attached Exhibits (purporting to constitute "trial/hearing exhibits") filed January 10, 2024, which were filed untimely, without leave of court and in direct defiance of the court's Scheduling Order. On March 11, 2024, Plaintiff filed a Praecipe to Enter Judgment on the Verdict. The court's Orders represent a final judgment. On March 27, 2024, Defendant filed a Notice of Appeal of the court's rulings to the Superior Court of Pennsylvania.

Monsanto appeals these orders and several others preceding the entry of final judgment. This court has opined and issued Orders on the denial of post-trial relief and the granting of delay damages, as well as on Monsanto's application for a hearing on its procedurally improper "request" purporting to seek relief from a court en banc to recuse the trial judge and to hear argument on the Post-Trial Motions. Ordinarily, the court's fulsome 44-page opinion addressing the recusal and its 67-page opinion on the post-trial motions would be sufficient to explain the reasons for its decisions. However, Monsanto's markedly unconcise statement of errors complained of on appeal contains serial and serious misrepresentations, a confirmation of the

Defendant's and its counsel's obdurate oblivion to its obedience to the Rules of Civil Procedure and Rules of Professional Conduct [1] and tactically evident, purposeful misconduct and intentional obfuscation and withholding of purported evidence that occurred following the trial, the main focus of which relates to its efforts to tamper with the jury ex parte and to the detriment of the court, its staff and Plaintiff's counsel. Accordingly, it is necessary for the court, focusing on Monsanto's first identified basis for its appeal, to clarify the matters that are properly before the appellate court as opposed to Monsanto's presentation of manipulated suppositions purporting to constitute undisputed facts, in part arising from purposeful withholding of evidence that it now appears to argue as established fact as if it was properly part of the record. The court contends that its analysis of this one issue herein as well as its previous opinions fully support its rulings and demonstrate that those rulings should be affirmed on appeal.

Defendant's 1925b statement identifying its first ground for appeal claims that it factually established an improper ex parte contact between the court and the jury (ignoring the Charge to the Jury of the Court) seemingly proceeding on the assumption that the court was required to advise counsel before any contact between the court officer and the jurors). Defendant and its agents or counsel misrepresent their complicitous misconduct and that the record shows that the court communicated ex parte with the jury as to the length of deliberations and service, number of jurors necessary to constitute a verdict and the alleged "effect of a jury deadlock" (on the asserted presumption that a deadlock had occurred). Defendant further asserts that the "sworn evidence ...caused the jury to prematurely finish its deliberations."[2]

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[1] Troublingly, in particular, is the ignorance to their duties of candor to the Tribunal, fairness to opposing counsel and advancing lawyers as witnesses.

[2] Defendant makes the confusingly circular claim that "certain jurors changed their stated positions to return a verdict that would permit the jurors (and the jury) to conclude their service on the first day of deliberations as opposed to being forced to return for at least three additional

First, the transcribed record before this court reveals compulsive effort by the defense repeatedly to backfill and cure, post Order and Opinions of the Court, the "misperception" and "correct the record" of the Court (including the use of lengthy speaking objections). It is regretful that the defense's wasteful and serial tactic of "last wordism" compels the court's brief response. Relatedly, the post-trial withholding of Defendant's alleged "concern" over the course of the deliberations, including the manipulations on the timing of its release of evidence and the accompanying public relations tactics makes it incumbent upon the court to confirm the reasoned conclusions it reached on Defendant's procedurally improper "request" for court en banc and recusal.

Contrary to the picture Defendant paints in its 1925b statement, the court's determination to reject the "request" was made in a formal opinion (not a dismissively described as "inaccurate perception" requiring "correction" as Defendant in the 1925a statement (p. 3) describes the

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court days of deliberation, as the Court communicated it would require the jury to do before declaring a mistrial based on a deadlocked jury." Is the defendant saying the jurors had a stated position (a topic which its alleged inside source was prohibited from discussing or revealing, and about which counsel should have cautioned was confidential and should not be revealed), were prepared to conclude in Defendant's favor and by virtue of the court's alleged interference changed their position? It appears that Defendant is claiming that the court "forced the jury to return for at least three additional days of deliberation" and represents that the jury was already "deadlocked," and the court should have notified counsel of the deadlock, which it failed to do before providing it with a modified Allen charge. These assertions are total fiction and made in bad faith. Nowhere in the submission does the letter writer describe a situation that could reasonably or technically be described as a "deadlock," let alone the conditions necessary to declare a deadlock. The writer uses the term "stuck," which is alternatively described as a "collective misunderstanding." Beyond the fact that Defendant impermissibly solicited and introduced evidence of alleged conversations during the deliberations and the alleged breakdown of votes, the claimed dissatisfaction with the process ("what feels like an unresolved conclusion," as the juror describes his "feelings") nowhere describes a "hopeless deadlock" or a jury that has informed the court that "further deliberations would not change [their] minds." *See Com v. Marion*, 981 A.2d 230, 233 (Pa. Super. 2009). The writer merely describes the ebb and flow of deliberations and the human factors that potentially motivate jurors who are faced with that ebb and flow after a lengthy trial in the waning hours of a Friday afternoon, facing the prospect of having to return the following week.

court's analysis). Moreover, contrary to the Defendant's attempt to characterize it, the subject "letter to himself" from Juror No. 9 document is not "sworn evidence." It was not drafted with the notion that its purpose (i.e., his post-verdict thoughts and impressions) was to attest to "facts" under oath. The writer is not sworn at the outset and does not appear to have been composing the document's contents based upon any oath-making obligation. Furthermore, the document expressly states that it is merely a record of the juror's personal reactions to the process in the form of self-serving editorial observations and feelings. The stated intent was to "process feelings," not to inform the court, raise permissible matters (not to discuss his version of deliberations and inferential denigration of his fellow jurors as a whole) or immediately seek the court's guidance. It is a recounting of the letter writer's experience **in the deliberations**, a topic that counsel as a matter of law and the Code of Professional responsibility should have immediately advised the juror was off limits in their "interview," or should have terminated the encounter and requested permission to advise the Court and opposing counsel. Most importantly, the writer is solicitous of and beholden to unnamed and unidentified parties, expressing his thanks to them for the "opportunity" to present his musings.[3]

[3] The court pointed out these glaring deficiencies in both its denial of the request for en banc consideration and recusal and in its rejection of Monsanto's Motion for Post-Trial Relief, particularly the lack of substance, the ambiguities, and the insufficiency of facts, not to mention the absence of any statements in the nature of an attestation. Monsanto waited for the court's decision on the recusal before attempting to enlarge the record with admittedly withheld and untimely material that, in its view, was responsive to the court's (apparently legitimate-since it compelled Monsanto to seek to point out the court's error) analysis of the self-addressed letter. In doing so, Monsanto claimed that it had a conversation with the juror on October 30 and a subsequent recorded conversation that it had in its possession since at or about the time of its interview on October 31, **only four days after the trial**, the evidence that it subsequently claimed was so explosive as to disqualify the court AND invalidate the verdict, allegedly withheld, based upon the unsworn and casual assertion that the juror had declined to allow its use (a fact that it could easily have overcome with an immediate request for a conference with the court and opposing counsel). It is also clear that the Defendant had the partially edited its recorded conversation with unidentified agents or counsel of Monsanto for four days before the

Defendant's argument proceeds from its self-appointed expertise in assessing a single partisan juror's presumed legal definition of a deadlock. Having his pronouncement that the status of the deliberations appeared to be "deadlocked" (or a/k/a merely "stuck"), Defendant then describes purported interactions with court staff through that lens as ex parte and impermissible. However, there is no basis for such a declaration let alone crediting the contact with the court. Furthermore, Monsanto has attempted to implicate the court in communications with the jurors irresponsibly and without any factual foundation, accusations intended to disqualify the court (the Mass Tort Program's appointed Bellwether Court) and undermine the verdict (the five-sixths majority) and of every juror other than the letter writer. The writer does not claim that the court entered the jury room or expressly sent a message to the jurors. At best, he speculates that the foreperson was texting the court officer and receiving responses that the foreperson

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juror finalized the letter and while Defendant's Praecipe subsequently attaching an allegedly transcribed version of the October 31 interview defensively (purportedly spontaneously) states that the letter was "written without input from Monsanto or its representatives," which is patently false, based upon the transcript which (although not read by the court in conjunction with its decision on the post-trial motion due to its disallowance) clearly shows that the juror had had contact with the incompletely identified interviewers prior to permission for the recording to be taken (and prior to the unidentified person starting to record) and also shows the questioners shaping and grooming the juror as a member of Monsanto's side with suggestive and leading tactics, planting concepts in his mind. Nothing in the recorded interview demonstrates any attempt to secure an oath or any truth-taking function. Furthermore, the juror's conceptualization that ultimately found expression in the letter was clearly framed by the interviewers. Finally, Defendant only states that it did not make revisions to the letter after the physical document was received, which does not answer whether anyone made revisions to it prior to that time. The court found the Defendant's duplicitous and clandestine tactics fraught with deception and calculated to provide Monsanto with the maximum strategic advantage and press coverage. Because of the admitted withholding and the disclosure of the transcript only after the recusal opinion and more than two months following the deadline for Monsanto's post-trial motion, the court determined that it would not review or consider the materials and would not allow Monsanto to re-argue the contents of the already-ruled upon matter at oral argument on the post-trial motion. The court ordered the transcript and audio recording stricken from the record but it is clear that Monsanto continues to argue from its contents and seeks to elevate its contents well beyond what is justifiable or accurate, necessitating that the court address the matter above and beyond its previous opinions, which it has elected to do herein.

communicated to the panel. At best, he asserts that clarification regarding the number of jurors required for a verdict (which was in the court's (agreed-to by the parties) jury charge and should have been (and may have been) known to the jurors (except the apparently deluded writer who believed that Plaintiff's failure to obtain ten votes represented a "win" for the defense)) based upon the delivery of the charge) came from the court officer. The mere fact that clarification may have moved the course of the deliberations does not establish the requisite "extraneous influence" or "coercion" to satisfy Defendant's burden to either recuse the court or upset the verdict. Nor does the writer claim anything other than his "feelings" or a shift of "momentum" based upon the truthful conveyance of the number required for a verdict.

The Defendant has wrongfully suggested and purposefully issued press releases declaring that the Judge himself either directly or through the court officer sent "secret messages" in an implicit coercive hopeless deadlock charge to the jury. However, the writer does not claim that the court was ever informed, **at any time**, that a deadlock (hopeless or otherwise) had occurred and nothing in his document amounts to a description of a deadlock. Thus, Defendant's suggestion that the court used --as defendant's public relations machine dubbed it—a "secret message" to propel the jurors to overcome a deadlock is nonsensical and preposterous and, based on Defendant's press release simultaneous with the filing of its request for recusal, a purposeful, manipulated strategic personal attack on the court.

Monsanto also shamelessly advances an amorphous excuse for its disreputable conduct and disclaims improper motive in feebly asserting it acted "consistently with Pennsylvania law when it participated in a recorded discussion with a member of the jury" and paints the court as having a mere "misimpression" in rejecting its mock purely innocent request for oral argument and recusal. However, Monsanto did not present to the court any candid facts or the specifics on

the totality of its conduct and circumstances of its contact with this juror (or other jurors), other than that he was contacted and then, magically under vaguely described circumstances "voluntarily" responded to the contact and that the lengthier discussion was through some type of telephonic mechanism. Defendant does not say who initially contacted the juror (in person, telephone or multiple times) and whether that initial contact was a mere voice message or a longer recorded conversation in which its unnamed representative(s) "primed" or otherwise groomed the target juror.

At the time of its recusal request, Defendant gave no details about the identity of persons who interacted with the juror (other than the name of the person notarizing the letter after the fact who was not present when the letter was written, or the interview taken, an apparent itinerant notary who works on a Sunday). Most importantly, all the alleged "details" that are provided regarding the timing of the contact with the juror and the alleged "above-board" aspect of the contacts, facts potentially important to assess the submission are contained in **UNVERIFIED** pleadings (significantly omitting the identity of the counsel or agents involved in the ex parte communications with juror number nine). Presumably, the point was to raise scandalous, unsubstantiated accusations to provoke the presumed en banc panel (two judges other than the trial judge to whom the application was, contra to court procedure, hand delivered) to disqualify the trial judge and conduct a hearing (in which, presumably, the entire panel, the court officer and the court would be called as witnesses).

The procurement and improper dissemination of a single juror's "impressions," or "feelings" largely of the contents of the deliberations raises serious red flags, and allowing a litigant to upend a verdict after the jury's discharge on this basis would result in courts having to conduct a full-blown second trial (post-trial) with the entire jury panel and potentially the court

and court staff as witnesses subject to examination under oath and examination by the parties (and in this case counsel of the party having procured the juror's "impressions"), an unwarranted and unethical use of a party's purported mere "informational" innocuous inquiry into a juror's opinion about the party's case, witnesses and counsel's performance to purportedly aid in future trials.

Every aspect of Monsanto's covert scheme and handling of this information linked to its integrated public relations campaign was devious and underhanded. As soon as the juror wanted to discuss the deliberations, disparaging his fellow jurors, Monsanto's representatives should have cut him off. To the extent that the juror began to talk about concerns about notes and alleged messages between the foreperson and the court officer, Defendant should have immediately notified co-counsel and the court. Defendant (agents, the client and lawyers) strategically elected to withhold and exploit the information for PR and then and to use it again, strategically by seeking recusal and claiming it invalidated the verdict – but waiting more than a week with the information in its possession and burying it in filings, while at the same time notifying the press of that it was accusing the trial judge of misconduct. Additionally, Defendant disjointedly, presumably to avoid candor, concealed the "letter" behind a standing, general, two-year old discovery order governing confidentiality, submitting it in a sealed file, never seeking leave in advance from the trial judge to make such a submission or subject it to disclosure in advance to opposing counsel with an opportunity to object.

Moreover, Defendant withheld the evidence of the interaction of its representatives with the juror until such time as it deemed its release to its strategic advantage and months after the deadline for submitting trial evidence or to documents supporting its motion for post-trial relief. At the time the Defendant did docket its Praecipe to Attach, it knew that the court had prohibited

Defendant from making any responsive arguments without leave of court, and yet it again used the stale, inapplicable discovery confidentiality order (and not permission from the trial court) to hide the document on the docket in a sealed file. Nothing about this unrelenting and remorseless claymore, three hundred sixty-degree attack is or was respectful of the jurors' service, or even "above board," respectful of the Plaintiff or deferential to the court and judicial and professional process. It was a purposeful mulit-pronged extermination attempt.

Monsanto was not innocently "address[ing] the Court's inaccurate [alleged mis]perception of the circumstances surrounding the juror's sworn written statement and transcribed interview, which could not have been known to Monsanto until after the Court issued its decision," but conceding that the court's pointed identification of deficiencies was valid and required appellate backfilling. The juror had not given a "sworn statement" – ever. Nothing about the letter demonstrates that the writer was under oath or attesting to proper evidential facts. Moreover, "mental impressions" are opinions not facts, not matters as to which veracity can attach. As to the "transcript," there is no indication that an oath, an averment to the truth or accuracy of the information, was ever a concern. The only "oath" is that of the stenographic reporter (puzzlingly a free-lancer from Milwaukee, WI having no apparent connection to this jurisdiction, the Defendant or any of the defense counsel), and that attests only to the accuracy of the transcription (absent the sometimes-critical lapses of "inaudible" words).

Monsanto elected to offer the "letter," not to notify the court or opposing counsel immediately, and/or to bring the juror before the court to testify under oath and be subject to cross-examination. Accordingly, Monsanto is and was stuck with at best, the four corners of the document **it submitted** – a series of "impressions and thoughts" that repeatedly discusses an impermissible topic – the course of the deliberations and purported discussions and opinions of

his fellow jurors, produced under, to be charitable, sketchy circumstances, full of contrived ambivalence and insufficient detail to differentiate between impressions, thoughts, hearsay and speculations, with very little appearing to be based upon personal knowledge, and that claims that information about the 10-juror majority requirement changed the momentum of the deliberations in the mind of this one individual who believed that he had "won" for his "side"--i.e. Monsanto--when he had seemed to have prevented the Plaintiff from securing ten votes.

As Monsanto continues to pursue this course, to claim jury tampering by the court as its primary issue and to assert as established, undisputed facts mere accusations based upon its ex parte grooming of this juror, and to accuse the court of "inaccurate perceptions," the court has been compelled to review the disallowed transcript in conjunction Defendant's Post Trial Statement of Matters Complained of on Appeal and to issue this opinion to ensure that it has fully responded post-trial to Defendant's identified issues.

The court is shocked that a party would submit such a document in its shameful desperation to discredit the court and its staff. Most of the "interview" deals with the details of deliberations. Even in commenting on the Defendant's presentation, the juror engages in personal attacks on fellow jurors.[4] The juror repeatedly demeans his fellow jurors, displays

[4] For example, in discussing his impressions of one of the Defendant's experts, an epidemiologist from Columbia, the juror mentions how impressed he was with the witness because she was an African American woman, and then goes on to criticize fellow jurors—particularly the African American women jurors—for not finding her credible, particularly because the witness was Black and female, never considering that these jurors may have found the witness a calculated racism by Defendant. While the witness made a good presentation on direct, to the court, her credibility was destroyed by the Plaintiff on cross-examination, particularly when counsel pointed out that the organization disseminating information about her most significant area of research – the dangers of hair straightening products used on Black women and their carcinogenic risks—had a significant item on its website devoted to Monsanto's Roundup, describing it as a carcinogenic substance —a fact that appear to catch the witness by surprise and as to which she stumbled to answer.

disgraceful self-superiority and appears acquiescent to Defendant's every self-serving suggestion. In the court's view, the transcript raises more questions, and not surprisingly, about the interviewers and Defendant's conduct, than it answers about the jury. Furthermore, the juror's hubris and repeated attacks on fellow jurors – racist, sexist and classist—presents a shocking and embarrassing aspect to the juror's purported observations, attitudes that the interviewers clearly cultivate for their own improper motives. To be sure, Monsanto would have preferred to obscure for eternity all the shameful intentional conduct in this post trial aspect and raw expression of personal feelings recorded by Monsanto that was unfiltered by the cozy, obsequious flattering, and secret post trial conduct of Monsanto as to juror number nine. The transcript also reflects that, for example, another juror, according to the transcript, was concerned and expressed to fellow jurors that Monsanto might seek personal revenge on the Trial Court. It is not surprising that, upon review of the transcript, one or more of Defendant's decisionmakers deemed the document too problematic to use for the intended publication and strategic purpose and used the "letter" as an alternative means to their disqualification end.

The notion that the Defendant needed to, post Order and Opinion, "correct the record" and respond to the court's "concern" over juror manipulation with such an untimely filed transcription is misguided. There is no formality to the proceeding on the transcript (which is best a fragment of the ongoing interrogation post-trial by Monsanto), nothing to suggest the gravity of testimony or the need to be factual and to stick to what the juror could permissibly discuss – rather, it is clear that Defendant attempted to cultivate a false familiarity and "Monsanto team" identity between one of the interviewers ("I'm from Delco and you're from

Delco"[5]) and conducted the interview in a fully relaxed, friendly and causal ambience, an environment in which the juror after being co-opted as a member of the Monsanto "team" fully displayed his unvarnished biases, belittlement and microaggressions. Defendant's representatives, tellingly, have never identified themselves or provided verification under oath as the seminal fact witnesses as to the circumstances of their contact with this juror, now as the court determines, for obvious reasons. The Monsanto representatives allowed, steered, and encouraged the juror to repeatedly discuss confidential conversations between his fellow jurors in and circumstances surrounding the deliberations, along with their votes, and used targeted and leading questions of him regarding the number of jurors on "our side," enlisting or electing him as their Monsanto "team" spokesperson for the course of the deliberations.

The court did not, as Defendant claims in its 1925b statement, rule that the juror was incompetent to testify but, rather, that the submission provided by Defendant to provoke the court's recusal was an insufficient basis upon which to conduct an entirely separate trial on the jury deliberations. The juror never saw or heard the court engage in any ex parte communications and assertion that such activity occurred is pure rank speculation and a groundless accusation. The claim that the court clerk provided confirmation of the 10-vote requirement did not represent an extraneous influence or prejudicial information favoring one side over the other, assuming, as does this juror, that the information actually came from the court clerk as opposed to the foreperson even merely representing that the information from the court clerk. Finally, as there is no foundation for the claim that the jury was deadlocked, or, more importantly, communicated the requisite level of disagreement to constitute a hopeless

[5] There is no basis in the transcribed submission that supports this background reference, clearly demonstrating prior conversations before the formal interview.

deadlock to the court clerk, there can be no legitimacy to the claim that the court propelled the jurors to enter a premature verdict by delivering a modified Allen charge. Certainly, this alleged witness saw and heard nothing to implicate the court itself and a court clerk would not have the knowledge or experience to volunteer what timeframe the court would set on the deliberations when there was no circumstance that would warrant providing that information. Finally, as the transcript itself reveals, the juror's statements are riddled with references to the contents of the deliberations, references to purported vote totals and presumptions about the momentum.

Pennsylvania Rule of Evidence 606 would disqualify major portions of the transcript. It provides that:

> During an inquiry into the validity of a verdict, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

The court correctly determined that it could not consider Defendant's submission: if a court cannot receive it in the first place, it certainly cannot rely upon it to invalidate the verdict. The only exceptions to the rule encompass prejudicial information not of record and not within common knowledge and improperly exercised outside influence. *See Commonwealth v. Jeter*, 296 A.3d 1187, 1193 (Pa. Super. 2023). Conveying information about the number of jurors required for a verdict is neither prejudicial nor outside of common knowledge, since the jurors heard it in the charge. Rule 606(b) "reflects a policy decision balancing the aim to ensure fair and impartial decision-making, with the interests in confidentiality of jury deliberations and finality of duly rendered verdicts." *Pratt v. St. Christopher's Hospital*, 581 Pa. 524, 866 A.2d 313, 320 (2005). The purpose of the rule is to "promote[] full and vigorous discussion by providing jurors with considerable assurance that after being discharged they will not be

summoned to recount their deliberations, and they will not otherwise be harassed or annoyed by litigants seeking to challenge the verdict. The rule gives stability and finality to verdicts." *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 218, 137 S.Ct. 855, 197 L.Ed.2d 107 (2017)(as to the equivalent Federal rule of Evidence); *see* *1194 *also Pratt*, 866 A.2d at 320 n.8.

In *Commonwealth v. Jeter*, *supra*, the court held that a trial judge may not consider evidence regarding the subjective impact of an extraneous influence upon any juror, *citing* the decision of the Supreme Court in *Pratt*. 296 A.3d at 1195. In *Carter by Carter v. U.S. Steel Corp*, 524 Pa. 409, 504 A.2d 1010, 1016-17 (1992), the Court required the existence of a potentially prejudicial extraneous influence be established by competent testimony. Where a party seeks to set aside a verdict on the basis of an ex parte communication, the court will consider the request only where there is a reasonable likelihood of prejudice. The burden of proof is on the moving party, who must satisfy the following considerations: 1) whether the extraneous influence relates to a central issue in the case or merely a collateral issue; 2) whether the extraneous influence provided the jury with information they did not have before them previously; and 3) whether the information was emotional or inflammatory in nature. *Id.*

While Defendant appears to complain, based upon its impermissible inquiry into the deliberations and the actual vote totals, that momentum was starting to veer in its direction, such an assertion is wholly the delusion of the source –the now-revealed in the untimely submitted transcript as a racist, sexist, classist flawed observer co-opted by Defendant's ex parte pre-transcript grooming and priming. This is a source who believed that if he was able to prevent the Plaintiff from obtaining 10 votes, his "side" had "won." Even if it was the court clerk's confirmation of the 10-vote requirement that corrected his delusion and halted the momentum he hoped to develop, there are no facts, separate and apart from improper revelations of the content

of the deliberations to support a claim of impermissible influence. The information did not relate to a central issue in the case, did not provide the jury with information that they had already received in the court's charge, did not relate to the substance of either side's evidence, witnesses or case, and was not emotional or inflammatory. The court was within its proper discretion to reject such evidence as a basis to conduct a hearing or to invalidate the jury's verdict.

The Supreme Court in *Pratt* describes the parameters as follows: "[t]he procedure for development of [post-verdict claims alleging] ... extraneous information and/or outside influence affecting jury deliberations ... and their ultimate disposition remain vested, in the first instance, within the sound discretion of the trial courts." 866 A.2d 324. "Discretion is abused when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will." *Commonwealth v. Baumhammers*, 599 Pa. 1, 960 A.2d 59, 86 (2008) (quotation marks and citation omitted). "A finding by an appellate court that it would have reached a different result than the trial court does not constitute a finding of an abuse of discretion. Where the record adequately supports the trial court's reasons and factual basis, the court did not abuse its discretion." *Harman ex rel. Harman v. Borah*, 562 Pa. 455, 756 A.2d 1116, 1123 (2000) (quotation marks and citations omitted).

There was simply no basis for the court to convene a post-verdict inquisition in which the court itself (as Defendant would presumably delight in disqualifying and inflicting revenge upon the bellwether trial court) would be forced to become a witness to disprove Defendant's scheme and discount the juror's misconceptions. Failure to overcome the constraints of time and other jurors' motivations to conclude the deliberations is not misconduct on the part of the court nor a basis to overturn a verdict that the majority ten jurors committed to clearly and swore under oath

in open court to having rendered as their verdict. At no time has Defendant addressed the dilatory withholding of this purported "evidence" or the impropriety on the part of its representatives in eliciting information about the deliberations or in failing to caution the juror that the subject was off limits. To the contrary, Defendant facilitated and encouraged the juror to reveal in secret his version of the details, and the transcript shows how far that encouragement, shaping as a partisan "team member," led the juror into regrettable personal attacks on his fellow jurors, attacks that Defendant adopted, amplified and formalized in submission on the transcript.

The court cannot discount the work of this jury—its the steadfast devotion to their civic duty, its committed attention for a three-week trial and the seriousness of its full and fair assessment of all the evidence and the credibility of the witnesses and obedience to the court instructions and fealty to their oath based on such a contrived and self-serving effort (by both the targeted juror and his all too familiar unidentified team partisan interviewers). The court rejected this effort based on the stream of consciousness letter outlining the juror's "feelings" and "impressions" not hard facts and, now having reviewed the transcript, is even more convinced that Defendant's conduct was purposeful, manipulative, devious, dishonest and dishonorable. Had Defendant immediately brought the matter to the court's attention without co-opting and leading the juror into its impermissible inquiries regarding other jurors and the deliberations, its claims could have been addressed promptly and thoroughly, and would have warranted some degree of credibility. By deliberately electing to withhold the information and to introduce it as a cudgel to disqualify the court and disadvantage opposing counsel, Defendant casts serious doubt on its motivation and the probability that any proceeding would lead to the truth. Moreover, the apparent argument and strategy of the defense to target jurors, as a matter of precedent, unfavorable jurors, as argued here by Defendant, and expose them to additional

disruption to their lives and to the risk of enmity and revenge of the losing parties on the jury post trial and punitively dragoon them (unpaid and as a sanction for doing their public duty) into the unseemly interminable post-trial legal brawl cannot be sanctioned.

The court's review of the transcript not only confirms the deficiencies it pointed to in its original opinion on recusal but reinforces its analysis and conclusion that the Defendant could not possibly, and did not, meet the standard of Pennsylvania case law on the minimum requirements for recusing the court or vacating the verdict. Any further detail and analysis has been fully provided in the court's opinion on the recusal "request" and in its opinion fully setting for the reasons for its denial of Defendant's motion for post-trial relief.

As to Defendant's other asserted grounds for appeal – errors in the jury instructions, insufficiency of causation evidence, errors at trial in rulings on evidence and witness examination, failure to grant JNOV based on federal preemption (and the Mass Tort Judge's earlier failure to grant summary judgment on this basis), impropriety of punitive damages, and excessiveness of compensatory damages—these issues have been thoroughly reviewed and rejected by this court in its opinion on Defendant's Motion for Post-Trial Relief, which fully demonstrate that the jury's verdict should be sustained and Defendant's argument soundly rejected.

ERNEST CARANCI and CARMELA CARANCI,	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
Plaintiffs,	:	TRIAL DIVISION -CIVIL
v.	:	
	:	No. 210602213
MONSANTO COMPANY, et al.,	:	
	:	
Defendants.	:	

Trial Court's Notice of Compliance With Rule of Appellate Procedure 1925(a)

Defendant appeals the trial court's orders of February 27, 2024 denying the Motion of Defendant Monsanto for Post-Trial Relief, granting Plaintiff's Motion for Delay Damages and striking Defendant's Praecipe filed January 10, 2024 to Attach and striking Attached Exhibits (purporting to constitute "trial/hearing exhibits" and which were filed untimely, without leave of court and in direct defiance of the court's Scheduling Order) and its order of January 5, 2024 denying Defendant's miscellaneous motion in the form of a "request" to recuse the trial court and for hearing en banc. On March 11, 2024, Plaintiff filed a Praecipe to Enter Judgment on the Verdict. The court's Orders represent a final judgment. On March 27, 2024, Defendant filed a Notice of Appeal of the court's rulings to the Superior Court of Pennsylvania.

Pursuant to Rule of Appellate Procedure 1925(a), the trial court hereby gives notice that its reasons for its entry of the January 5, 2024 Order are set forth in its 44-page opinion previously filed with its January 5, 2024 Order and further states that the reasons for its entry of the February 27, 2024 Orders are set forth in its 67-page opinion filed therewith. The trial court is further submitting its 1925a Opinion herewith further explaining its reasons related to the miscellaneous motion and the court's denial of relief on the basis of Defendant's submission of Exhibit A and the previously stricken Exhibits F and G to Defendant's Praecipe to Attach.

The foregoing reasons set forth in the court's three filed opinions constitute the basis for confirming the Jury's Verdict and entering Judgment in favor of the Plaintiff and awarding delay damages, which rulings represents a Final Order disposing of this matter and rendering the matter ripe for appeal.

BY THE COURT:

JAMES C. CRUMLISH, III, Judge

Appendix

Trial Court Post-Trial Opinion,
Dated February 27, 2024

ERNEST CARANCI and CARMELA CARANCI, Plaintiffs, v. MONSANTO COMPANY, et al., Defendants.	: : : : : : : : :	COURT OF COMMON PLEAS PHILADELPHIA COUNTY TRIAL DIVISION -CIVIL No. 210602213 Control No. 23111401

OPINION

I. Introduction

A. Chronology of Post-Trial Events

Presently before the court is Defendant's Motion for Post-Trial Relief, timely filed following the court's receipt and entry pursuant to Pa. Const. art. I, §6 and 42 Pa.C.S.A. §of a jury verdict in favor of Plaintiff, Ernest Caranci,[1] on his claim for personal injury arising out of exposure to Monsanto's product Roundup. The jury awarded Mr. Caranci $25 million in compensatory damages and $150 million in punitive damages. Within ten days of the verdict, on November 6, 2023, Monsanto filed its 117-page motion for Post-Trial Relief containing three proposed orders seeking alternative orders seeking various forms of relief.[2] Monsanto requests either judgment entered in its favor, a new trial or remittitur of both the compensatory and punitive damages awards.

[1] Prior to submission of this matter to the jury, Plaintiffs withdrew their claim on behalf of Carmela Caranci.

[2] On that same day, Defendant also filed as a "miscellaneous motion/petition" as an appendage to the Motion for Post-Trial Relief characterizing a "request" for this court's recusal and the empaneling of a court en banc, not directed to the trial court as required by the Pennsylvania Rules of Civil Procedure but inexplicably (absent judge-shopping) hand-delivered to two other judges of this court. The court has previously addressed the substance of this "request" in its Opinion and Order filed January 5, 2024 (control no. 23111384).

Monsanto's arguments for judgment NOV are based upon a challenge to the sufficiency of the evidence on Plaintiff's claims for Negligence and Failure to Warn and the precision of the causation evidence. Monsanto's basis for seeking a new trial arise from alleged asserted errors in the conduct of the trial and alleged misconduct on the part of Plaintiff's counsel. Finally, Monsanto challenges the damages claims as excessive.[3] Monsanto makes the unfathomable declaration (apparently denying the evidence at trial or that the assessment of the weight of the evidence and the credibility of witnesses is for the jury, not a defendant arguing its side of the case) that: "The only reason a jury could reach a liability verdict and excessive damages in a trial for a product that regulators worldwide[4] consistently find safe and not carcinogenic is because the numerous and repeated errors by the court and conduct by Plaintiff's counsel created confusion and prejudice among jurors." (Defendant's Motion for Post-Trial Relief, p. 2)(emphasis added). Aggressively blaming the court and Plaintiff's counsel for the outcome as

[3] This is not Monsanto's first effort asserting these losing theories in the form of formulaic arguments. Defendant has previously litigated and lost other cases in which the Plaintiff obtained a substantial award of compensatory and punitive damages and raised the same arguments seeking entry of judgment in its favor or a new trial, criticizing the precision of the causation evidence and challenging the court's evidentiary rulings, arguing the claims were preempted by FIFRA and complaining that the damages awards were too high. *See Hardeman v. Monsanto Co.*, 997 F.3d 941, 950, 954 (9th Cir. 2021); *Johnson v. Monsanto Co.*, 52 Cal.App.5th 434, 266 Cal. Rptr.3d 111 (Ct. App. 2020); *Pilliod v. Monsanto Co.*, 67 Cal.App.5th 591, 601, 282 Cal.Rptr.3d 679, 689 (Ct. App. 2021). In all three cases Monsanto's arguments were firmly rejected although the courts in the exercise of discretion and applying the facts of the cases before them granted reduction of the damages awards.

[4] The reference to "regulators worldwide" is dehors the record and a product of Monsanto's defensive spin and reflects evidence that was deemed inadmissible by virtue of relevance and its potential to confuse the jury as well as the fact that the mere assertion of approval by foreign regulators does not provide foundation or context sufficient to evaluate Monsanto's actions in the jurisdiction where Plaintiff was exposed and where it sold the product to him. Furthermore, as this court concludes in rejecting Monsanto's preemption claim, that mere EPA registration is not a defense to the causes of action here, the court concluded that evidence of foreign registration was not probative or likely to assist the jury in assessing the evidence related to the product's dangers or Monsanto's negligence.

opposed to the ineffectiveness of Defendant's trial tactics, strategic choice of trial witnesses, cross examination or proffered defense evidence outcome is hardly a compelling basis for the court to overturn this jury's decision.

Moreover, Defendant is apparently oblivious to the juror's admirable devoted attention each hour and day during three weeks of dedicated service during which virtually every member took copious notes—the jury was demonstrably and visually fully engaged and showed no indication of confusion during the testimony. The pronouncement reflects a stubborn refusal to acknowledge that the record must be examined in the light most favorable to the verdict winner. Only if the court were to agree with Monsanto's indignant, self-promotional post-trial exculpatory diagnosis and determine that the jury *should have* agreed with Monsanto's assessment, was misled by its rulings and not listening to the testimony of the witnesses could the court agree with Monsanto's assessment.

Upon receipt of the motion, Plaintiff's counsel contacted Monsanto's counsel to seek agreement as to a briefing schedule on the motion, volunteering dates upon which the parties would file briefs and responses. The proposal invited Monsanto to submit a brief in support of the motion to be followed with Plaintiff's response and brief. Monsanto rebuffed Plaintiff's efforts to address the matter by agreement and went on to declare that Defendant would not be filing a brief insofar as Monsanto was "**not in need of additional briefing**" and claimed that per mass tort program rules, "Plaintiff's entire opposition to our entire Post-Trial Motion should be filed by Monday, November 13, 2023" (or only one week after the 117-page motion was filed)(*see* Exhibit A to Monsanto's November 13, 2023 Motion for Reconsideration), this despite that Phila. Ct. R. 227(e)(2) sets no requirement for the filing of a response to a motion for post-trial relief and leaves it to the trial court's discretion as to whether to require briefs. In the

absence of an agreement, the court entered a scheduling order allowing Plaintiff until January 5, 2024 to file a response and providing that, in light of Defendant's position, it was deemed to have waived any further filings and a subsequent response to Plaintiff's brief on its behalf would not be received.

Defendant objected to the court's scheduling order in the form of a motion for reconsideration, in which it made clear Monsanto's unstated objective – to limit the response time allowable to Plaintiff while secretly preserving for it the opportunity to have the "last word." This gamesmanship and tactic of "last word-ism" unfortunately plagued the trial and repeatedly led to the potential to unfairly bushwack opposing counsel with undisclosed post-trial evidence or legal arguments. Monsanto without substantive legal argument complained that the court had provided the Plaintiff with "excessive leeway" and "the unfair advantage of additional time" (Exhibit A), as well as misconstruing the intended meaning of "no need of additional briefing" as an intention to decline from filing a brief as opposed to the apparently veiled attempt to preclude Plaintiff from a fulsome response to be followed by its responsive brief. Nevertheless, setting aside the hectoring aimed at the court in it accommodating its needs and the parties' schedules, the court vacated the order to allow Monsanto to file a brief in advance of Plaintiff's deadline (December 15, 2023) and to have the option to **seek leave from the court** thereafter should its position of "no need to file a brief" changed. Monsanto elected not to file a brief in support of its motion in accordance with the designated deadline or to subsequently seek leave to file a motion for permission to file a brief after Plaintiff's submission.[5]

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[55][5] While Monsanto did not file a brief as allowed by the court's Order **or at any time seek leave to supplement the record or make any formal applications related to additional filings, briefs or corrections of the record**, it did, after receipt of the court's January 5, 2024 44-page opinion denying Monsanto's miscellaneous motion suggesting that the court was disqualified from deciding its own recusal, upload by Praecipe to Attach as "Trial/Hearing Exhibits" two

Plaintiff filed a timely response to the motion on January 5, 2024, the same day as the court issued its opinion on recusal. Four days later Monsanto attempted to supplement the record, without court approval or any filed formal request allowing it.[6] Whereafter, the court entered an Order scheduling the matter for Oral Argument on February 12, 2024. The court has considered all of the written submissions of the parties and their oral arguments and now addresses the arguments on Defendant's Motion for Post-Trial Relief.

II. Overview

Defendant's Motion covers more than 100 pages. However, Defendant organized its attack on the verdict into three major categories representing the relief it was seeking (JNOV,

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items under seal. Monsanto confusingly represents that the proposed "attachments" relate to Exhibit A to Defendant's Motion for Post-Trial Relief (although the ministerial Praecipe docketed by Defendant identified "tabs" (F and G) and it mis-described then as "Trial or Hearing" exhibits sequenced after the exhibits originally submitted with the November 6, 2023 Motion (that ended in Exhibit E). Additionally, the documents were apparently in existence at the time that Motion was filed but purposely withheld from the court as a matter of strategy. Ordinarily, the court would expect a party, having received an adverse ruling on the putative disqualification, to seek reconsideration, indicating that there is additional evidence bearing on the application or asserting that the court had misapplied the law. Defendant took neither position, and, clearly, any strategically withheld "evidence" could not properly support reconsideration. As set forth at the Oral Argument held on the Post-Trial Motion, the Court on the record rejected further arguments or evidence related to its decision of January 5, 2024 on the recusal and en banc hearing request. (See transcript attached as Exhibit E to this Opinion). The submission, albeit ministerially accepted for docketing, did not comply with the court's scheduling order or result from consent of the Plaintiff or leave of court; wherefore, the court deems it ex parte and untimely and violative the rule governing motions for post-trial relief, imposing a ten-day deadline. The court has not in any manner reviewed the materials and will not consider them as a basis for relief—particularly, where, as here, Defendant only submitted the materials **after** obtaining an adverse ruling on the court's recusal.

[6] The court has not requested an explanation, excuse or confession of Defendant as to this conduct, nor would it consider this evidence since it would require Defendant's counsel to testify as witnesses to the circumstances of the documents, potentially becoming adverse to the interests of the Defendant and waiving the attorney-client privilege. As noted above, the court has not considered the untimely, ex parte submission by "Praecipe to Attach" of Monsanto and concludes that the materials should be stricken from the record. See fn5. Any further attempted use of the materials, in the court's view, would constitute contempt and subject the Defendant to waiver of the attorney-client privilege.

new trial and remittitur). At oral argument, Defendant sought to focus the court's attention on five areas: 1) re-arguing the evidence related to alleged off the record jury communications (previously considered and largely rejected in the Defendant's recusal motion and presumably based upon the more recent ex parte, untimely, and improper filing of "attachments"); 2) the alleged prejudice to Defendant arising out of the contents and timing of the court's curative instruction; 3) the amount of damages awarded as a matter of due process; 4) the court's evidence rulings which Defendant claimed resulted in a "one-sided presentation of evidence"; and 5) the court's instructions on causation as having confused the jury. The Defendant did not emphasize any argument that the evidence was wholly insufficient to send the case to the jury, rather seeming to focus on the claim that the court's rulings affected the outcome of the case.

Plaintiff, in opposition, contends that Defendant's motion raises three categories of arguments: first, the jnov argument, which in effect amounts to the contention that the evidence was "catastrophically insufficient," an argument focused on the evidence presented in Plaintiff's case; second, a "new trial" argument to the effect that the trial judge made errors that "unduly prejudiced" the outcome of the case; and third, the remittitur argument, that the jury's award was too large. Plaintiff noted that Defendant's oral argument did not address the contention that counsel did not present enough evidence. As to the "group 2" arguments, Plaintiff counters that the asserted errors implicate an abuse of discretion standard, where a new trial is an extreme remedy only appropriate where the admitted evidence deprived the Defendant of a fair trial and/or the court's handling of its rulings were so far beyond the scope of admissibility as to have prejudiced the case. Finally, the amount of damages analysis requires consideration of the entirety of the record viewed in favor of the verdict winner coupled with the guideposts applicable to assessing the excessiveness of punitive damages under the due process clause.

Prior to the argument, the court analyzed Defendant's submissions to assess the principal issues underlying the motion and concluded that the main topics for its consideration were as follows: insufficient evidence of causation; no warning obligation (preemption/FIFRA); finding on negligent design inconsistent with finding of no defect under consumer expectations test; errors in jury instructions; irregularities in proceedings involving the testimony as on cross of Dr. Reeves and Dr. Farmer; Plaintiff counsel misconduct; and excessiveness of damages and particularly violation of due process in connection with punitive damages. Following a three-week trial occurring after the court considered and disposed of more than 35 motions in limine and the Mass Tort Judge heard 10 *Frye* motions on the admissibility of expert testimony, the court declines Defendant's invitation to venture deep into the weeds to consider every asserted evidential objection and "last word-ism" (which appeared not a "knee-jerk" reactive tick, but a strategic feature), every mistrial motion (of which there were many) or every claimed error in the court's rulings or the jury's verdict. Rather, as indicated by the categories identified above and the matter in which the parties focused their oral argument, the court will focus on the main issues, recognizing, as Plaintiff so effectively pointed out at oral argument, that rulings on evidence implicating "abuse of discretion" require a showing not simply that reasonable minds could rule differently but that, in the context of the entirety of the trial, the decision must have so impacted the outcome of the trial as to have prevented the Defendant from obtaining a fair trial. In a trial of this breadth, with the deference due the jury's determination, addressing each and every contention in the 100 plus page motion or as reflective in the transcript provides no benefit to the litigants or the appellate court.

III. ANALYSIS

A. Sufficiency of the Evidence

Defendant takes issue with the submission of the case to the jury, arguing that the court should have granted it a directed verdict because Plaintiff's causation evidence offered via expert testimony lacked the specificity and precision necessary to establish a connection between its product and Plaintiff's cancer. Defendant contends that Plaintiff's evidence of exposure was vague and not sufficiently "real world," leaving the expert (Dr. Durrani) with no foundation to conclude that the Roundup caused Mr. Caranci's cancer. Monsanto crows as to the quality of its expert's wholly statistical analysis, characterizing it as a comparatively "superior methodology." Monsanto also criticizes Dr. Durrani for failing to give sufficient weight to Monsanto's statistical "bad luck" theory of random cell mutation as the principal explanation for the development of non-Hodgkins lymphoma (NHL). This argument rests squarely upon counsel's opinionated post-verdict arguments, which fail to give a scintilla of credence to the jury's assessment of weight of the evidence and credibility of the parties' and experts' testimony that was subject to vigorous cross examination, and which the jury was free to accept or reject partially or in its entirety.

The court is unwilling to go point-by-point on each of Monsanto's technical and minute attacks on Dr. Durrani's testimony. It is sufficient to determine whether Dr. Durrani had expertise in a scientific disciple that qualified him to offer an opinion on causation, used scientific methodology that was appropriate to reach his conclusion and reached a conclusion that satisfied Plaintiff's burden to provide evidence as to each of the elements of the claims that Plaintiff was making. Furthermore, the opinions of Plaintiff's experts did not exist in a vacuum but were part of extensive documentary evidence and testimony that included Monsanto witnesses and Monsanto documents that the jury could reasonably credit or discredit or conclude,

as they did, supported the finding that the chemicals in the product had genotoxic and potentially carcinogenic propensities.[7] In the court's view, Plaintiff met his burden to introduce evidence, by way of a qualified expert employing proper scientific methodology, to establish a basis on which the jury could conclude that Roundup was a factor in causing Mr. Caranci's cancer.

Under the standard for awarding a JNOV—i.e., that "no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant," *Ruff v. York Hospital*, 2021, Pa. Super. 39, 257 A.3d 43, 49 (Pa. Super. 2021), the court rejects Monsanto's arguments. The court must view the record in the light most favorable to the verdict winner and grant him the benefit of every favorable inference when there is sufficient competent evidence to support the verdict. *Tillery v. Children's Hosp. of Phila.*, 156 A.3d 1233, 1240 (Pa. Super. 2017). Having heard the evidence along with the jury and having concluded that both sides were given the full opportunity to present robust expert testimony as to the characteristics of the product and Mr. Caranci's use and disease process, the court cannot agree that evidence tilts in favor on Monsanto to the degree necessary to grant JNOV.

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[7] The evidence demonstrated that each and every time there was research to suggest a potential issue with the product's safety, Monsanto was most concerned with assembling a well-organized and multi-phased counter-attack and PR response and attacking the credibility of the findings. Rather than initiating a modicum, let alone a thoughtful, look at safety issues, Monsanto engaged in relentless ad hominum attacks on the research and scientists, hired and then fired researchers (e.g., Dr. Parry) to conduct studies to achieve pre-ordained results, ghost-wrote (with undisclosed authors including its own employees whose motives, agendas and conflicts of interests were withheld and untested) criticisms of unfavorable studies and lobbied to and ghost-wrote for politicians, and waged clandestine "astro turf"/faux influence campaigns and coordinated with coopted members of the press. Moreover, Monsanto had more than adequate opportunity to offer, and did offer, the jury its aggressive cross-examination of Dr. Durrani and to make the case that his conclusions were flawed, as well as to present substantial testimony from its own multiple experts who offered a diametrically opposed explanation for the origin of Mr. Caranci's lymphoma. It was up to the jury to judge which experts made the more convincing case, or to reject any or all expert testimony. Suffice it to say that Monsanto's belief that Dr. Durrani was inferior to its experts is not the determinative factor as to whether there was sufficient evidence of causation to support the jury's verdict.

1. Negligence Verdict

Monsanto only weakly contends that the evidence supporting the negligence verdict is insufficient, beyond its initial causation argument. It argues that Plaintiff failed to present sufficient evidence of the standard of care. Further, Defendant asserts that the court must conclude that it complied with the applicable standard of care in the form of EPA regulations.

The jury did not agree, nor can the court cannot agree, with Monsanto's self-serving characterization of the evidence. First of all, Defendant's own witnesses agreed before the jury that the standard of conduct for a responsible chemical company included investigating safety concerns, informing customers of safety risks and how to safely use its products, not manipulating scientific evidence about safety of its products and not hiding true safety risks. (Testimony of Dr. William Reeves, N.T. 10/10/2023 (p.m.) at 17:21-20:11). Secondly, Plaintiff presented evidence from which the jury could reasonably consider and conclude that Monsanto did not live up to these standards—testimony about manipulating data, lobbying legislators, and attacking legitimate scientific research, etc. Furthermore, when the circumstances seemed to reasonably suggest a need to conduct thorough research into the product's carcinogenic potential, Monsanto determined that "nothing good" could come of such research and, like the ostrich in its television ads for Roundup, buried its head in the sand so that it would not learn anything that could adversely affect its ability to market the product.[8]

[8] Monsanto here argues that it had no duty because the risks were "unknowable," but the evidence demonstrated that, if they were unknown to Monsanto, it was because it eschewed any reasonably inquiry and it suppressed all good faith self-evaluation of the risks to consumers because it did not want to know and did not act in the manner of a responsible company to investigate the safety of its product before putting it on the market and while it was being sold to consumers. Monsanto's only concern was to sell and whether the product "worked" i.e. killed weeds and did so more effectively than competitors' products.

Finally, the court does not consider Monsanto's purported compliance with EPA standards to constitute a complete defense to what the jury could conclude was an admitted breach of duty. Specifically, the evidence suggested that the regulatory process relied heavily upon the honesty of the registrant and its candor and willingness to provide the agency with all sufficient scientific information to assess the sufficiency of the proffered label. Approval did not amount to an endorsement of a product's safety, but rather was the product of a company's negotiation in which the industry advanced its self-interest over concerns about the public. While Plaintiff did not offer an expert to testify as to the standard of care or to opine that the above-referenced actions violated any specific standard, the court concludes that the evidence was of a nature that a lay jury could reasonably reach its own conclusion as to the testimony and all of the evidence and give considered weight to the evidence and determine the credibility of the witnesses as to whether Monsanto violated a duty to the public and to Mr. Caranci in particular. Accordingly, there is no basis for entering a JNOV in favor of Monsanto.

2. Strict Liability

Monsanto disputes the sufficiency of the evidence to support Plaintiff's strict liability verdict based upon failure to warn. First, it claims absolution based upon Mr. Caranci's alleged failure to read the label and accompanying instructions (**which admittedly did not contain a warning**). Monsanto misrepresents the testimony insofar as Mr. Caranci did testify that he looked at the label and read the writing on the front of the bottle; however, he didn't see a warning there and would not have used the product if Monsanto had stated that it could cause cancer. N.T., 10/19/2023 (a.m.) at 104:7-13, 42:20-43:4. The jury also saw Monsanto's television promotional advertisements which showed the homeowner applying the product virtually unprotected in short sleeves and shorts, without gloves or a facemask, which contrasted

with evidence that workers in Monsanto's factory were required to wear PPE to handle the product. From this evidence, the jury could conclude that Monsanto did not sufficiently apprise consumers of the proper safe use or handling of the product or of the risks of exposure or how to mitigate or eliminate those risks.

Monsanto's second argument disputes that the product requires any warning (this despite evidence at trial regarding the contents of the Material Data Safety Sheet, which addressed safety issues not brought to a consumer's attention on the Roundup label). Monsanto contends that glyphosate does not cause cancer. While that was certainly one of Monsanto's positions at the trial, the jury had substantial testimony from Plaintiff's experts to the contrary. This was coupled with evidence that Monsanto systematically engaged in efforts to attack and discredit any research that raised safety concerns and that Monsanto itself never undertook a thorough scientific investigation. Monsanto's own experts and history of substantial economic self-interests interests supporting its "no risk of cancer" theme and their credibility and weight were seriously challenged on cross-examination, and the jury was free to disregard their evidence and testimony.

Finally, Monsanto denies that it had any duty in the first instance. Specifically, it claims any purported risk was not known or knowable at the time. Monsanto's own documents and its actions in the scientific community could suggest otherwise – Monsanto's witnesses were confronted with internal documents wherein Monsanto planned elaborate campaigns to discredit any research that suggested risks related to the Roundup product or to glyphosate. For example, Paul Wright, a former Monsanto employee who performed a supposed scientific study was accused of fraud in conjunction with his research (and after that independent research re-hired by Monsanto, which also funded his defense in the subsequent fraud case). After the Wright fraud

became public, Monsanto began its own research and terminated it before a conclusion to avoid any potentially unfavorable outcome. From the evidence at trial, the jury could reasonably conclude that risks were known or potentially knowable if Monsanto had not engaged in disinformation or suspended its investigation. There was substantial evidence that raised concerns about the carcinogenic potential of the product during the years of Mr. Caranci's use, research that Monsanto organized campaigns to discredit.

Only if the record were assessed on the basis of Monsanto's "favorable to the defense, ignoring evidence to the contrary" narrative could the court conclude that the jury had no basis to make a finding in favor of Plaintiff on strict liability failure to warn. However, on the totality of the evidence, submitted for the jury's consideration with the court's comprehensive and standard instructions, weighed in favor of the verdict winner, there is no basis for judgment NOV on strict liability.

3. Preemption

Defendant has asserted in pre-trial motion practice, intra-trial motion practice, at the close of evidence and now on post-trial motion the issue of federal preeption under the Federal Insecticde, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §136v(v). Monsanto argues that once its label was "approved" by EPA, that process essentially immunizes it from any claims related to a deficiency in its labelling. Monsanto infers that a presumably "exhaustive" review process amounted to an endorsement of Roundup's efficacy and safety.

The representation of the process sustaining this argument is both misleading and inaccurate. While the EPA does provide an approval, it does so on the limited basis of the information provided by the applicant – in other words, Monsanto strategically chose what information to give EPA, information that would support the suggested labelling it was willing to

provide. As the court in *Carson v. Monsanto Company*, ___ F.4th ____, 2024 WL 412081 (11th Cir. Feb. 6, 2024) explains: "To register, the manufacturer must submit a proposed label to the Agency along with certain supporting data." 7 U.S.C. §136(c)(1)(C), (F). The contents of the label and its justification are within the control of Monsanto, and not the product of an Agency endorsement. In fact, as *Carson* goes on to explain, the statute "imposes an ongoing reporting requirement...." whereunder a "manufacturer must report to the Agency (1) 'additional factual information regarding unreasonable adverse effects on the environment,' 7 U.S.C. §136d(a)(2), and (2) incidents involving a pesticide's toxic effects on humans that may not be adequately reflected in its label's warning, *see* 40 C.F.R. §159.184(a)." ___ 4th at _____. Clearly, the law presumes an affirmatively responsible registrant providing accurate and complete data, not a self-interested business protecting its income stream. Merely because the agency has not accused a registrant of "misbranding" does not establish that the labelling is compliant or would pass muster as a matter of state tort law, or, as the 11th Circuit in *Carson* explains: "we cannot conflate FIFRA's broad prohibition on misbranding—indisputably a 'requirement'—or even generally applicable agency regulations, with an individualized finding that a particular pesticide is not misbranded." ___ F.4th at . For this reason, FIFRA provides that "[i]n no event shall registration ... be construed as a defense for the commission of any offense under its provisions. 7 U.S.C. §136a(f)(2)." *Id.* In *Hardeman v. Monsanto*, 997 F.3d 941, 956 (9th Cir. 2021), *cert. den.* 142 S.Ct. 2834 (2022), the court held that "because EPA's labeling determinations are **not** dispositive of FIFRA compliance, they similarly are not conclusive as to which common law requirements are 'in addition to or different from' [and thus potentially preempted from] the requirements imposed by FIFRA."

Monsanto itself admittedly never conducted its own studies as to risks of the product and could cherry-pick and funnel the information it provided to EPA in order to justify the label that it proposed. Nothing in the label approval process itself or in the actions of Monsanto as presented in the evidence at trial led to a ringing scientific endorsement of the safety of this product. As the court in *Nat. Res. Def. Council v. U.S. EPA*, 38 F.4th 34, 51-52 (9th Cir. 2022) determined, the process was arbitrary and "not supported by substantial evidence," and the conclusions were not the tested result of an adjudicatory proceeding, nullifying any argument of the re-registration decision's preemptive effect.

Monsanto has suggested that Congress' imposition of a "uniformity" requirement for insecticide labelling creates a preemptive standard which protects manufacturers from claims such as those here. However, the argument ignores the minimal aspect of a manufacturer's undertaking, an aspect that cannot impede a state's concurrent interest in the marketing of safe products with accurate directions for use. Furthermore, Monsanto admittedly never sought any, even if a minimal, caution to a consumer, as a label change. Finally, Monsanto does not explain how the label prevented it from recommending the consumer cover the skin or face from exposure or use PPD or from attaching gloves and a mask to the product for the consumer when it marketed it for sale.

This court is unwilling to conclude that, in a state that has rejected industry standards as a defense to strict liability claims, *see Sullivan v. Werner Ladder*, Pa. , 386 A.3d 846, 861-62 (Pa. 2023), our courts would agree that the type of label approval process at issue here (in contrast to package inserts related to prescription drug use) foreclose any claim based upon an inherent danger or defect that a manufacturer knows or should have known and about which it should have apprised the public. The economic and legal self-interest of manufacturers and/or

their alter ego trade groups in creating "standards" is, in and of itself, at best, a profoundly weak basis upon which to defend Monsanto's actions under Pennsylvania law. In fact, to date, the significant decisional law has determined that a state's interest in product safety and the vindication of such an interest in strict liability law is wholly consistent with the objectives of FIFRA, *see Hardiman v. Monsanto*, 997 F.3d at 955-956, *Carson v. Monsanto*, ___ F.4th at ____, .[9]

4. JNOV

The court concludes that none of Monsanto's arguments in favor of ignoring the jury's determination and replacing that determination with a verdict in favor of Monsanto are persuasive. The court considers "'the entry of a judgment notwithstanding the verdict ... a drastic remedy. A court cannot lightly ignore the findings of a duly selected jury.'" *A.Y. v. Janssen Pharmaceuticals*, 224 A.2d at 12, *citing Education Resources Institute, Inc. v. Cole*, 827 A.2d 493, 497 (Pa. Super. 2003), *appeal denied*, 577 Pa. 721, 847 A.2d 1286 (2004). Monsanto emphasizes evidence only favorable to its self-promoting view of the case and ignores the

[9] Monsanto suggests that this court is precluded from even reaching this question because Pennsylvania precedent going back to 1997 holds that FIFRA preempts state common law personal injury claims. *See Romah v. Hygienic Sanitation Co.*, 705 A.2d 841, 852-53 (Pa. Super. 1997). This court disagrees that *Romah* controls the inquiry here. First of all, under the law of the case, Monsanto previously sought dismissal on the basis of FIFRA and had its motion on this ground denied. Second, *Romah* itself recognizes that not every claim based upon an injurious pesticide is encompassed by a FIFRA preemption argument. *Romah*, citing *Higgins v. Monsanto Co.*, 862 F.Supp. 752 (N.D.N.Y. 1994), recognizes that a manufacturer's failure to disclose complete and accurate information during the FIFRA registration process is outside the scope of federal preemption. Plaintiff here introduced significant evidence related to Monsanto's conduct sufficient to support a finding that it purposefully withheld information during the registration process. Furthermore, *Romah* was decided before the U.S. Supreme Court decision in *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 444 (2005) which rejected the *Romah* proposition that registration alone triggered FIFRA's express preemption clause. Furthermore, the court finds persuasive the preemption analysis of the Superior Court in *A.Y. v. Janssen Pharmaceutials, Inc.*, 2019 PA Super 348, 224 A.3d 1 (Pa. Super. 2019) which rejects *Romah's* conceptualization of the scope of preemption and adopts a presumption against the allowance of such a defense.

substantial body of trial evidence introduced in Plaintiff's case. It invokes FIFRA as a matter of law providing an absolute defense, but the court disagrees with Defendant's legal arguments. At oral argument, Monsanto struggled to instruct the court on how the court should handle matters of credibility and weight and failed to point to evidence free from the jury's determinations on those issues that supported its position on this defense. Accordingly, this is not the type of "clear case" that would permit entry of JNOV.

B. "Irregularities" and Errors

Monsanto next attacks the verdict on the basis of alleged "irregularities" and errors and contends that, individually and collectively, the court's rulings warrant a new trial. At oral argument, Monsanto focused the court's attention on three issues: 1) the circumstances surrounding and the timing of the court's curative instruction; 2) evidentiary rulings generally that purportedly resulted in a "one-sided presentation of evidence"; and 3) the court's instruction on causation. The Motion for Post-Trial Relief also contains a more general attack on the court's jury instructions, complains generally about misconduct on the part of Plaintiff's counsel and suggests that Defendant was not allowed to submit additional voir dire questions.

The Superior Court in *Ferguson v. Morton*, 2013 PA Super 329, 84 A.3d 715 (Pa. Super. 2013) outlined the standard for granting a new trial. The court's consideration:

> must begin with an analysis of the underlying conduct or omission by the trial court that formed the basis for the motion. There is a two-step process that a trial court must follow when responding to a request for new trial. *Morrison* [*v. Commonwealth, Dep't of Pub. Welfare*, 538 Pa. 122], 646 A.2d [565], 571 [(1994)]; *see Riccio v. Amer. Republic Ins. Co.,* 550 Pa. 254, 705 A.2d 422, 426 (1997). First, the trial court must decide whether one or more mistakes occurred at trial. These mistakes might involve factual, legal, or discretionary matters. Second, if the trial court concludes that a mistake (or mistakes) occurred, it must determine whether the mistake was a sufficient basis for granting a new trial. *See Spang* [*& Co. v. U.S. Steel Corp.,* 519 Pa. 14], 545 A.2d [861], 868 [(1988)]. The harmless error doctrine underlies every decision to grant or deny a new

> trial. A new trial is not warranted merely because some irregularity occurred during the trial or another trial judge would have ruled differently; the moving party must demonstrate to the trial court that he or she has suffered prejudice from the mistake. *See Stewart v. Motts,* 539 Pa. 596, 654 A.2d 535, 540 (1995); *Commonwealth v. Faulkner,* 528 Pa. 57, 595 A.2d 28, 39 (1991); *Commonwealth v. Ryder,* 467 Pa. 484, 359 A.2d 379, 382 (1976).

84 A.3d 719-720. *See also*, *Stelz v. Meyers*, 2020 WL1897021 (Pa. Super. April 14, 2020). An improper question posed by counsel can require corrective action by the court. *Stelz*, *citing Siegal v. Stefanyszyn*, 718 A.2d 1274, 1277 (Pa.Super. 1998).

The court disagrees at the outset with Defendant's assertion of evidentiary decisional errors. Moreover, the court's evidentiary rulings are subject to its sound discretion. *Crespo v. Hughes*, 2017 Pa. Super. 320, 167 A.3d 168, 178 (Pa. Super. 2017), *citing Grady v. Frito-Lay, Inc.*, 576 Pa. 546, 839 A.2d 1038, 1046 (Pa. 2003). The court considers these points within the context of a three-week trial, during which Defendant repeatedly made written and oral motions for mistrial, which were seriously considered and addressed by the court, as insufficient to constitute reversible error warranting a new trial, as Monsanto fails to make a showing that they were erroneous AND harmful or prejudicial to the outcome of the case. Other than the fact that Monsanto failed to convince the jury and suffered a loss (and Monsanto was touting in its pre-trial and intra-trial filings a "winning streak" coming into this trial), Defendant's arguments, like its repeated speaking objections at trial, are unpersuasive. An examination of Monsanto's principal arguments listed above demonstrates why its arguments, and its request for a new trial, must be denied.

1) The Curative Instruction

Monsanto's first point at oral argument related to the court's curative instruction, claiming that its timing as part of the charge to the jury was too late. Monsanto overstates the

circumstances of the underlying incident and mispresents the actions of the parties and the court thereafter. Specifically, the issue initially arose out a veiled reference by Plaintiff's counsel during an objection to a "stipulation" and the comment that there would be "more about that later." The objection was made after Monsanto's counsel initiated a series of questions of Dr. Reeves about EPA registration, with the witness' suggestion that such process represented some sort of endorsement of the product. Over Plaintiff's objections, the court allowed Monsanto to question the witness at length about the EPA, which, in the court's view, opened the door to Plaintiff to challenge the witness on the scope of such registration, which counsel did on re-cross. (N.T. 10/13/23 (a.m.) 60:21-62:15; 10/13/23 (p.m.) 126:2-19; 10/16/23 (a.m.) 56:4-20)[10]. Thereafter, the court asked the parties to clarify the correctness of its understanding of the underlying matter that was the subject of Plaintiff's re-cross, which neither party clarified. Only after the Defendant filed a motion for mistrial hours later, after the end of the trial day on October 16, 2023 (at 11:28 p.m.) and Plaintiff provided a courtesy copy of a response on October 17, 2023 at 11:14 a.m. and filed a formal response on the docket after the end of the next trial day (October 17, 2023 at 6:13 p.m.) did the court obtain a partial transcript of the proceeding in

[10] At the time the Plaintiff's counsel posed the re-cross question related to the alleged stipulation entered into in an undisclosed case addressing the status of EPA registration after the Ninth Circuit ruling in *NRDC v. EPA*, and objection to the question was overruled and the witness directed to answer, Monsanto did not make a motion for mistrial. The witness was not aware of the matter referred to in the question and testified as such. While the Plaintiff went on to confront the witness with the actual Ninth Circuit ruling, which dealt registration status, Defendant's direct examination had opened the door to that confrontation. This was not a case in which the court had clearly precluded a party's counsel in limine from questions related to a specific topic. To the contrary, the court deferred ruling on both evidence related to EPA registration and the Ninth Circuit decision to the time of trial. *See Buttaccio v. American Premier Underwriters, Inc.*, 2017 Pa. Super. 368, 175 A.3d 311, 321 (Pa. Super. 2017). The issue encompassed by the curative instruction did not involve statements read from the Ninth Circuit case, but, rather, a purported stipulation in a wholly different case, *Dennis v. Monsanto*, involving a Plaintiff suing for personal injury arising out the alleged exposure to Roundup.

the unrelated trial in California in which the parties discussed coming to some kind of an agreement to address the objection in Defendant's Motion in Limine related to the Ninth Circuit decision in Nat. Resources Def. Council v. U.S. EPA, *supra* (Exhibit E to Plaintiff's opposition to the Motion for Mistrial). However, the parties' submissions still did not sufficiently inform the court to resolve the dispute over the propriety of the Plaintiff's re-cross or whether it amounted to grounds for mistrial, and the court communicated with counsel requesting that Plaintiff "provide a complete record [rather than a partial transcript]," to support the representations counsel made in the re-cross questions, reserving on the motion for mistrial until such time (October 17, 2023, 7:46 pm email to counsel, attached hereto as Exhibit A). Moreover, the court recognized that it may have misunderstood and therefore misstated the identity of the action in which the purported stipulation was made (believing it was *NRDC v. EPA* and that Monsanto was a party to that action) and requested that the parties immediately meet and confer to draft a curative instruction to address the court's comments. (*Id.*).

Only after the court's pointed request for a complete record of the matter referenced in the re-cross did Plaintiff, on October 18, 2023, provide the court with the alleged stipulation, along with an admission that counsel "was wrong in its assertion to the Court and in the language posed in the questions to Dr. Reeves that there was a signed written stipulation," explaining that counsel was mistaken and accepted responsibility for the error. (email of October 18, 2023, at 8:06 a.m., from Tobi Milrood to the court, attached as Exhibit B). The communication from Plaintiff's counsel indicated that the parties would meet to work out a curative instruction.

Rather than meet and confer in good faith and provide the court with the requested agreed upon curative instruction with a degree of diligence, the parties did not respond until two additional trial days had passed and then sent the court, at 10 p.m. on October 19, dueling

instructions (Counsel's emails attached as Exhibit C). The following morning (a Friday), the court directed the parties to re-double their efforts to address the court's concerns and set a deadline of 9 a.m. Sunday morning, October 22 for a response (Court's communication attached as Exhibit D). The parties were still unable to agree, which left the matter to the court as to how and when to address a remedy. Certainly, the conduct of the parties affected the court's ability to address the matter promptly at the time the misstatements were made (as it was not clear until October 18, five days after the initial re-cross) or even to determine that they were misstatements.

Monsanto argues that the court's decision to issue its curative instruction during the charge to the jury was "too little, too late." However, it occurred only days after the parties had reached an impasse on an agreed-upon instruction, which was long after the initial motion for mistrial was filed. Furthermore, from the very outset of the objection, neither party was diligent in providing the court with sufficient information to make a ruling or to determine whether the conduct warranted the extreme remedy of a mistrial. Defendant opened the door to the inquiry during Dr. Reeves' direct testimony by introducing the matter of EPA registration and suggesting an approval covering decades, which then put in issue the nature of the registration and the credibility of Defendant and the approval process.

Only days later, after the court had pressed the parties both as to the insufficiency of the record and the necessity of an initial curative instruction governing the court's misunderstanding, did the court conclude that the matter could not be addressed based upon a cooperative agreement and that it was in the court's discretion as to what to say about the matter and when. Under these circumstances, Monsanto's contention that the timing of the curative instruction warrants a new trial is both disingenuous and misleading. The court attempted to get to the heart

of the issue expeditiously. The parties' initial submissions were insufficiently specific to provide the court with a basis to rule and, coupled with their inability to come to an agreement on a remedy, delayed the outcome, leaving it to the court to determine the most appropriate time to address the matter without causing unnecessary emphasis and jury confusion. The decision to reserve the matter until the charge within the context of this case cannot be deemed an abuse of discretion or warrant the granting of a new trial.[11]

The court was diligent in its efforts to address the mistrial motion (which was not immediately made at the time of counsel's allegedly misleading re-cross and, even when made, did not provide the court with a sufficient basis upon which to rule). *Siegel v. Steganyszyn*, 718 A.2d at 1277 ("Whether remarks by counsel warrant a new trial requires a determination based upon an assessment of the circumstances under which the statements were made and the precaution taken by the [trial] court and counsel to prevent such remarks from having a prejudicial effect. It is the duty of the trial judge to take affirmative steps to attempt to cure harm, once an offensive remark has been objected to."). The court's communications with counsel reveal that the court took affirmative steps to resolve the matter promptly upon receiving Monsanto's motion for mistrial, which itself was not promptly made. Additionally, neither party provided the court with a complete context surrounding the referenced stipulation, the circumstances of its creation or the scope of what it was intended to address (i.e. a mere agreement that the defense would not object during plaintiff's opening if plaintiff described the NRDC v. EPA litigation in accordance with the agreed-upon language, but not, as counsel here

[11] As counsel for Plaintiff persuasively asserted at oral argument, the court's drafted instruction favored Monsanto's submissions in highlighting the erroneous representations of Plaintiff's counsel and occurred at the very beginning of the charge, when the jury was devoting its maximal attention to the court's instruction.

represented, a stipulated fact that was entered into evidence in that case). Without the foundation that counsel later provided, the court's statement on the record about the context clearly demonstrates the court's own confusions and its belief that the parties were referring to an action Monsanto undertook in the NRDC v. EPA case, which was a significant misconception, but one neither party had the information to correct. The court cannot be faulted for pressing the parties to provide accurate information and for waiting for its receipt before making a ruling.

2. Evidentiary Rulings

a. Monsanto Witnesses

Monsanto challenges at least ten rulings on evidence which it claims led to a one-sided trial that favored the plaintiff. Most prominently, Monsanto complains about the denial of its Motion to Quash the Subpoenas directed to its employees Dr. William Reeves and Dr. Donna Farmer and the court's allowance of questions which it argues did not seek to elicit information from these witnesses based upon "personal knowledge." As a result, according to Defendant, the Plaintiff was able to call these individuals as adverse witnesses, and the wide-ranging examination that the court allowed purportedly led to a "one-sided" presentation of evidence.

In the court's view, the question of the scope of a witness' testimony is not confined to a narrow construction of what constitutes "personal knowledge." The question for the court was whether a proper foundation was laid by Plaintiff to support an inquiry into the topics about which the witness was interrogated. In this case, prior to any substantive inquiry, Plaintiff laid a strong foundation to support an expansive cross-examination. Specifically, Dr. Reeves testified about the hundreds of hours that he spent with attorneys reviewing Monsanto records as well as the hours that he actually testified at trials and in depositions. With this foundation in the record, the court determined that Dr. Reeves had sufficient knowledge to be called as a witness by

Plaintiff. He was certainly free to respond that he lacked personal knowledge of any matter and could decline to speculate. However, he not only displayed sufficient familiarity with the information, he repeatedly offered much more in the way of response than the questions required. The court's rulings on Dr. Reeves' adverse testimony did not constitute an abuse of discretion, particularly in light of the foundation laid by Plaintiff.

Monsanto's "one-sided" argument is largely paradoxical (as Defendant in pre-trial motions argued that Dr. Reeeves was incompetent based upon his purported lack of personal knowledge, but then sought to elicit "expert"/expert-like testimony from him because of his wide-ranging experience at Monsanto). Defendant bases the argument upon the characterization that it was unfairly restricted in eliciting testimony from Dr. Reeves on direct. However, Monsanto fails to disclose that any restrictions relate to Monsanto's efforts to exceed Dr. Reeves' lay testimony in Plaintiff's case in chief and to elicit expert opinion from him, without having previously designated him as an expert to be called at trial or having provided Plaintiff with an expert opinion. To the contrary, Monsanto's counsel went on a long, digression about Dr. Reeves having previously testified about his "opinions" without responding to the court's repeated and pointed questions about Defendant's compliance with discovery rules and case management orders in the designation of him as an expert. N.T. 10/13/2023 (a.m.) at 74:6-77:24. Nevertheless, Defendant repeatedly elicited fulsome, self-serving opinion testimony from Dr. Reeves, and the court allowed considerable leeway to the Defendant. For example, Dr. Reeves testified at length premised upon albeit persistently leading questions from Monsanto's counsel requiring a vast array of expertise about the EPA and on the state of scientific study of Glyphosate, as did Defendant's other employee, Dr. Farmer. Further, despite protesting pretrial that Dr. Reeves had no personal knowledge sufficient to allow him to testify at trial, on direct Dr.

Reeves magically became a super witness with wide-ranging personal knowledge and extensive expertise. Not only was Dr. Reeves demonstrated to have requisite knowledge as demonstrated by Plaintiff on cross examination, like many of the Monsanto witnesses, he avoided and evaded responding to questions posed by Plaintiff's counsel which protracted Plaintiff's cross-examination and direct. Dr. Farmer's testimony as well demonstrated not only a well prepared and experienced litigation witness for Monsanto, but she had sufficient knowledge as a fact witness based upon her experience, education,, employment and litigation preparation..

Despite identifying over five thousand documents for trial, and an extensive list of fact and expert witnesses, after Monsanto's experts testified, it chose to call no additional witness(es)(either in person or by video or prerecorded testimony.

b. Alleged Erroneous Admission or Exclusion of Evidence

Monsanto complains about the court's exclusion of purported international regulatory evidence, evidence of Plaintiff's alleged benzene exposure, and admission of alleged prejudicial propensity evidence, graphic photos of diseased rats, alleged testimony regarding glyphosate in the food chain and testimony related to Paul Wright and Industrial Bio-Test. Monsanto sought to present evidence that foreign regulatory bodies had allowed the sale of Roundup. Monsanto did not argue that their processes were the functional equivalent of registration under U.S. law or explain the basis for the relevance of such information, except that it showed a favorable treatment of its product. It simply proposed to "pile on" evidence of approvals without context or explanation that would bring the information within the bounds of something likely to assist the jury in deciding Monsanto's liability for its actions in the United States in selling Roundup. Further, Monsanto's claim that there were worldwide studies and endorsements of Roundup

would require introduction of weeks of evidence of dubious relevance and likely confusion of the issues.

Monsanto suggested (albeit without any expert reporting the quantifiable purported exposure or the causal link between that and Mr. Caranci's NHL) that Mr. Caranci had other exposures during his employment history that might be responsible for his non-Hodgkins lymphoma, specifically asserting that his operation of a painting business led to an exposure to benzene fumes, which are carcinogenic. The court allowed Monsanto to cross examine Mr. Caranci extensively regarding his work history and did not preclude it from questioning him about his painting business. However, Mr. Caranci testified that he had a paint and paperhanging business and that he did the paperhanging while his brother-in-law did the painting, undermining the factual basis for Monsanto offering opinions that benzene exposure was responsible for his condition. The preclusion resulted from Monsanto's failure to establish a foundation, not from the court unfairly preventing Monsanto from exploring this topic. Additionally, the purported importance of this alleged preclusion as a grounds for new trial is puzzling in light of Dr. Tomasetti's opinion that Mr. Caranci's cancer was caused not by any exposure but by "bad luck."

Defendant also claims that the court's alleged wide latitude toward Plaintiff's case resulted in the admission of "propensity evidence" that improperly suggested that, in Monsanto's manufacture of other chemical products such as PCBs and DDT, Monsanto habitually sold harmful products which exposed the public to cancers. This argument represents Monsanto's presentation of a post-trial slanted record to favor its argument as opposed to a description of the actual evidence itself and how it related to the Plaintiff's case. Plaintiff presented background on Monsanto's business and the economic imperative in the timing of Roundup's release, which the

business withdrawal of PCBs and DDT precipitated. Plaintiff did not equate the products or present evidence of the course of approval or sale of these other products as a comparator for Roundup. The products were simply mentioned in context, not in any causation testimony. Accordingly, the court finds Monsanto's argument meritless.

Monsanto sought to preclude evidence related to the Seralini study and photographs of rats that developed tumors following exposure to glyphosate. The court denied Monsanto's motions in limine to exclude the evidence in its entirety. At the time of trial, the court determined that the study related specifically to Monsanto's product at issue and also to Monsanto's conduct in the wake of the release of the study. The display of the photographs was brief and not repeated. The witness, Dr. Reeves, was familiar with the study and Monsanto's response. The evidence had bearing on Plaintiff's negligence cause of action seeking to demonstrate that Defendant did not exercise due care as a reasonable manufacturer in investigating the safety of its product and the potential for risk to the consumer. The court did not abuse its discretion in admitting this evidence.

The matter of glyphosate in the food chain was introduced in Monsanto's cross-examination of Plaintiff's expert, Dr. Durrani. N.T. 10/18/2023 (a.m.) at 57. Monsanto referenced a conclusion about the carcinogenic risk of dietary exposure from a WHO Joint Meeting on Pesticide Residues in an effort to cast doubt on his causation opinion related to Mr. Caranci. Monsanto suggests that Plaintiff bringing up the issue on re-direct was outside the scope of his report, but the court believes it was in its discretion to allow Plaintiff to follow-up on a matter that Monsanto raised in the first instance.

Finally, Monsanto objects to evidence relating to Industrial Bio-Test, a clinical laboratory hired by Monsanto to conduct testing on glyphosate, which tests were conducted under the

supervision of a former Monsanto employee, Paul Wright, who went back later to work for Monsanto immediately after completing the tests. It was undisputed that IBT's test results were determined to be fraudulent, resulting in Wright's subsequent criminal prosecution. Monsanto discounts the importance of the testing and trivializes the evidence in the light most favorable to the non-prevailing party view, claiming a mere coincidence in and technicality of Wright's different employments purportedly demonstrating that IBT crimes are not traceable to Defendant (making the evidence prejudicial). The court concludes that Plaintiff could present the circumstantial aspect of the coincidental timing and make the equally compelling argument that the evidence, even without the Wright issue, is relevant to the issue of Monsanto's diligence in conducting sufficient and responsible investigation into the safety of its product. While potentially prejudicial, the evidence is not irrelevant and has a substantial probative value as to the issue of negligence.

In sum, none of the court's rulings on the admission or preclusion of these points of evidence represents an abuse of discretion. Furthermore, viewed in the context of the entirety of the evidence at trial, not a single one of these issues nor the combination of all of the rulings together were so substantial as rise to the level that would justify the award of a new trial.

c. Jury Instructions and Verdict Slip

Monsanto complains that the court did not adopt its proposed jury instructions or verdict slip. In advance of the trial, the court instructed counsel that it required the submission of proposed requests to charge and verdict on or before the morning of jury selection and that it would expect the parties to "meet and confer" and to try to reach consensus on the content of the charge and the verdict slip prior to the charging conference. The court further instructed the parties that they should rely on the Pennsylvania Suggested Standard Jury Instructions unless a

party could demonstrate that an issue was not addressed in the standard charges or the law had changed after the most recent version of the standard charges was adopted.

Monsanto repeatedly argued chain cites of law from other jurisdictions and altered the language of the standard charges, claiming that their submission properly stated the law in Pennsylvania. Both parties were given ample opportunity to meet and confer, and the court adopted all of the jointly requested instructions. In addition, both parties had multiple opportunities to submit separate requests to be included in the charge and to file bench briefs supporting their positions. The parties were still submitting briefing up to the morning that the charge was given.

The court gave due consideration to the parties' numerous and continuing submissions and considered their proposals in light of the evidence introduced at trial, with the caveat that it would not adopt a non-standard charge without a substantial legal basis and would not give a charge that would create jury confusion, was obtuse or would contradict an adopted standard charge. Defendant repeatedly requested that the court adopt language that required proof that Mr. Caranci's exposure to Roundup had to be THE factual cause of his non-Hodgkins lymphoma, contrary to the language of the standard charge. Monsanto repeats that position here. In reviewing a challenge to the trial court's refusal to give a specific jury instruction, the question for the court to determine is whether the record supports the trial court's decision. *Commonwealth v. Kendricks*, 30 A.3d 499, 507 (Pa. Super. 2011) (citation omitted), *appeal denied*, 46 A.3d 716 (Pa. 2012). The trial court's decision is entitled to deference and an appellate court will reverse a court's decision only when it abused its discretion or committed an error of law." *Commonwealth v. Baker*, 24 A.3d 1006, 1022 (Pa. Super. 2011) (citation omitted), *aff'd*, 78 A.3d 1044 (Pa. 2013). "When evaluating jury instructions, the

charge must be read as a whole to determine whether it was fair or prejudicial." *Commonwealth v. Prosdocimo*, 578 A.2d 1273, 1274 (Pa. 1990). Here, the charge as a whole carefully encompassed the approved standard charges and, faithfully read as a whole, it cannot be deemed unfair or prejudicial.

Monsanto attacks the court's delivery of the standard charges as "inconsistent," and asserts that the court confused the jury. During the deliberation, the jury sent the court a note seeking clarification of "factual cause," and the court re-read the standard charge. As a result of the re-read charge, any potential confusion appears to have been resolved. Certainly, the jury confirmed in open court that their question had been answered by the court and never sought further guidance from the court. And, after the verdict, the clear-throated pronouncement and confirmation of each individual juror as polled reflected that the verdict was the considered, reasoned and agreed upon outcome of the majority.

Monsanto also argues confusion arose from instructions about concurring cause, claiming there was not such evidence at trial. To the contrary, Monsanto itself suggested that there was a cause other than Roundup. Through its witness Dr. Tomasetti, Monsanto presented the "bad luck" defense – i.e. that Mr. Caranci's cancer was merely a product of a random genetic error that occurs when cells divide. On cross-examination, Defendant's experts were questioned as to whether every single instance of non-Hodgkins lymphoma was a result of random error, an opinion that they did not adopt. In fact, these witnesses conceded that there would be no way to distinguish between an allegedly randomly occurring lymphoma and one caused by an environmental exposure. Thus, these witnesses essentially conceded that Mr. Caranci's cancer could be the product of more than one cause. Moreover, throughout the trial Monsanto attempted to introduce evidence of other exposures, such as benzene during Mr. Caranci's time owning his

paint and paperhanging business, or glyphosate in the food chain, as potential causes of his cancer. At a minimum, a concurrent cause charge was not error and the court properly charged the jury that it could conclude that Roundup was "a" cause, even if the defense demonstrated that there were "other" causes (although in light of the verdict, it is unlikely that the jury agreed with any of the causation evidence from Defendant's experts).

None of the Defendant's proposed modifications to the charge correctly presented the law in Pennsylvania or were consistent with the evidence in the case. For example, as in the case of Defendant's position on the heeding presumption, Defendant misrepresents Mr. Caranci's testimony as establishing that he didn't read the label and therefore was not entitled to the instruction. However, Mr. Caranci said he read the label but not the booklet that contained more detailed instructions (none of which warned about protective equipment or cancer risk).

Defendant also complains that the court did not give written copies of the charge to the jury. Defendant's basis for this complaint is that "this was a complex product liability case with multiple claims." Such a complaint does not amount to either an error or abuse of discretion. Furthermore, the verdict slip laid out the issues to be decided in lengthy detail, which focused the jury's deliberations. Moreover, the jurors in this case took extensive notes throughout the entirety of the trial which provided a more powerful reference point for their deliberations, whereas a charge would have favored the more educated members of the panel and focused the deliberations on linguistic debates in the charge rather than weighing the evidence and the credibility of witnesses. The court's discretionary call on the written charge was not error warranting a new trial.

In sum, none of the asserted errors with respect to the contents of the charge, any minor misstatements in the reading of the charge, if any, or not providing a written charge were capable of affecting the outcome or constitute a basis for a new trial.

d. Voir Dire

Monsanto complains that the court should have adopted its supplemental juror questionnaire to be used during voir dire, claiming the court's standard questionnaire was "insuficien[t] ... to address the high-profile nature of this trial." Monsanto's complaint might warrant consideration if the court's written questionnaire was the only basis upon which Monsanto was required to make its challenges to the panel. To the contrary, the questionnaire as provided was merely a starting point to identify overt bias or conflicts.

On the day of jury selection, a panel of 60 prospective jurors was assembled and provided with the court's written questionnaire. The panel was then brought to the courtroom, seated and their questionnaires collected and distributed to counsel. After preliminary instructions, the panel was sworn pursuant to the rules and counsel introduced themselves and their clients and identified potential witnesses with an opportunity of the prospective jurors to signal to the court if they knew the plaintiff, defendant, their counsel, witnesses, the court staff or the court for later individual voir dire, and to indicate any extreme hardship that would prevent them from serving as a juror.

The court then conducted individual voir dire of every juror out of the presence of the panel of prospective jurors, wherein the court, in attendance for the entirety of the selection process, colloquized each juror (in conjunction with the oath) as to their ability to serve, whether they could keep an open mind during the trial, only listen to the evidence heard during the trial and follow the court's instructions as to matters of law. Only after an individual juror affirmed

to the court's satisfaction the requirements of service, did the process proceed. Jurors who had initially asserted an extreme hardship were questioned on this topic first with the court and the parties in agreement to excuse those unable to serve for the length of time required. Any juror surviving the court's initial colloquy was then subjected to questioning by the parties, which allowed Defendant to inquire into the juror's knowledge of or predispositions concerning Monsanto. Every prospective juror who had knowledge of any negative information about Monsanto (such as a frequently-mentioned documentary) was immediately dismissed for cause. The court allowed reasonable follow-up from counsel. Counsel could inquire into the jurors' professions, which further led to questions into areas revealing bias. Monsanto does not explain how this process prevented it from a fair selection process. Monsanto had at its disposal a jury consultant and the ability to conduct internet searches out of the presence of the court based upon the jurors' names and identified neighborhoods to assist it. Under these circumstances, Monsanto cannot demonstrate that the conduct of the voir dire prevented it from a fulsome inquiry. This claim is totally without merit.

e. Plaintiff's Closing Argument

Monsanto seeks a new trial on the basis of statements of Plaintiff's counsel in his closing that allegedly misrepresented evidence, improperly identified other litigation and improperly attempt to inflame the jury. The court considers the references to paid witnesses and their extensive compensation or record as witnesses as evidence that was brought out in testimony, to which the witnesses conceded and which, in context, supported the inference that these witnesses were making a substantial living (well in excess of their professional employment), which was a fair basis for the jury to question their credibility. In the context of the entirety of the evidence and the court's admonishment to the jury that counsel's statements are not evidence, the court

concludes that Monsanto's complaints are not a basis for this court to reject the jury's determination.

f. Jury Deliberations

Not satisfied with arguments related to issues related to discretionary trial decisions, Monsanto lastly attacks the verdict and seeks a new trial based upon what it characterizes as "newly discovered evidence." Contrary to the descriptor, the material is not "trial evidence" but rather a manufactured, stream of consciousness recitation of a disaffected juror whom Monsanto pursued after the verdict and after the panel was polled in open court. The parties refer to the recitation as an "affidavit," but the Court cannot accept such a designation because the document in question bears little resemblance to what that term encompasses. Specifically, an "affidavit" is generally understood to be a sworn statement that a person makes before a notary or officer of the court outside of the court asserting that certain facts are true to the best of that person's knowledge. https://www.law.cornell.edu/wex/affidavit. An affidavit can be given weight only to the extent that it sets forth matters that would be admissible in evidence. *See Todd Heller, In. v. United Parcel Service, Inc.*, 754 A.2d 689, 698 (Pa. Super. 2000). In other words, an affiant's speculation or recitation of hearsay does not become admissible because it is contained in a sworn document. *Turner v. Valley Housing Develop. Corp.*, 2009 Pa. Super. 72, 972 A.2d 531, 536 (Pa. Super. 2009).

The court has previously, in its opinion on Defendant's motion seeking the court's recusal, objectively examined this document in detail and outlined its fatal legal and factual shortcomings and defects. Briefly, on the fact of the proffered document, it, puzzlingly, takes the form of letter from Juror 9 to himself post-verdict, the purpose of which is to set forth his impressions and feelings, not to provide or address the "facts." Additionally, that document was

not made before a notary or an officer of the court in the form of a sworn statement-it is akin to a personal diary entry, appearing on its face to be written solely for the benefit of the writer himself. Only after the document was drafted did someone apparently instruct the writer to seek out a notary and the sworn statement is a separate document not written the same day.[12] Finally, the document is vague and replete with speculation and hearsay. It is not possible to tell whether the juror personally observed the matters described, was told that they occurred or merely speculates based upon other hearsay. Moreover, the juror repeatedly refers to conversations that purportedly constituted "deliberations," a matter that Defendant is barred from revealing or using to undermine the verdict. Most troubling are the suggestions of the involvement of the court in the alleged impropriety, a matter clearly outside the juror's knowledge, yet the basis for the entirety of Monsanto's argument.

After the court rejected this information as a basis for recusal and made a detailed analysis of each and every deficiency, Monsanto sought to remedy its submission with a belated filing, ex parte, without leave of court and by misrepresenting the newly filed material as a "trial/hearing exhibit" bearing exhibit letters unilaterally adding them to its previously filed Post-Trial Motion, suggesting the submission was simply an innocently omitted attachment. The

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[12] Monsanto also refers to the letter as "Juror Nine's **testimony**' … multiple times (Motion for Post-Trial Relief, ¶18). Nothing about the document represents testimony—i.e. a party previously sworn, subject to examination before a judicial officer, in an adversarial process, where evidential objections can be made and resolved. Monsanto would insist that its untimely submission resolves that problem because it is apparently in the form of a "transcript" (albeit on its face incomplete. However, there is NO EVIDENCE that Monsanto placed the Juror under oath prior to initiating a recording or that the proceeding bore any of the indicia of testimony, with the overlay of punishment for perjury. There is simply no accountability inherent in Monsanto's methods, either for the manner in which counsel solicited and preliminarily prepared the witness prior to initiating the "official" interview, for counsel withholding evidence from the court and a lack of candor, or for a purported witness allowed to speak in secret, with his assertions only submitted under seal.

material was uploaded to the docket as an attachment to a Praecipe to Attach, which, based upon the terminology, makes it a mere request for the court to allow the attachment not an acceptance or endorsement in and of itself. In fact, Monsanto was aware of the court's Orders and Opinion and its prohibition on additional filings, since the court had entered an order precluding it from filing a brief on its motion for post-trial relief without leave of court. Monsanto even sought reconsideration of that Scheduling Order which only allowed additional filings prior to the deadline for Plaintiff's brief. While the attachments are not a motion or a brief, they were clearly intended as either a publicity stunt or a basis for reconsideration of the court's order denying the recusal request or a supplement to the existing argument in the motion for post-trial relief, the latter amounting to late submissions running afoul, at least in spirit, of the court's prohibition on further briefing without first obtaining leave of court.

The rules provide several proper timely substantive procedural options for Monsanto to address the court's ruling on the recusal or to supplement the record as to the post-trial motion. Monsanto could have sought reconsideration of the court's January 5, 2024 Order if it had new evidence or if it contended that the court committed an error of law. However, Monsanto recognized that withholding the transcript that was purportedly **in existence prior to its filing** of the motion for post-trial relief and request for recusal did not meet the requirements for obtaining reconsideration. In fact, Monsanto risked advising the court that counsel had violated the obligation of candor and fairness by knowingly withholding the information revealing the full circumstances of what they now (after the court's Opinion and Order) purport is relevant information. The description of Monsanto's encounter with Juror 9 set forth in the motion for post-trial relief misrepresents its course of dealing with the Juror. Monsanto states that it "conducted a phone interview" whereafter the Juror simply "submitted the attached statement."

Monsanto contended that "**this evidence**, supporting Juror Nine's description of what occurred, is more than adequate to support a new trial …" (Motion for Post-Trial Relief, p. 4, fn2) (emphasis added), knowing that it was seemingly withholding evidence from the court. Moreover, Monsanto goes on to describe what Juror Nine "advised" (*Id.*, ¶7), what Juror Nine "also reported" (*Id.*, ¶8), what Juror Nine "most significantly … reported" (*Id.*, ¶9) … presumably information counsel collected in the interview and is paraphrasing to its advantage and not quoted language from the purported statement (which is neither quoted nor is what Juror 9 "advised" particularized with a page and line reference). The degree of preparation and encouragement to obtain these hearsay accusations remain (and still are) secret and wholly and solely within Monsanto's control.

Monsanto additionally filed the attachments under seal without express approval from the trial judge to make such a filing in such a manner (no motion to supplement the record or for reconsideration of the court's Order of January 5, 2024 rejecting the original juror statement preceded it), no approval to file under seal was obtained, but rather Monsanto insincerely referenced a standing order applicable to materials produced to another party designated as confidential (which this document clearly was not), and no effort was made to bring the matter to the court's attention at the first available opportunity. Rather, Monsanto withheld the statement for the tactical advantage of including it in its post-trial motion and request for the court's recusal.

The Praecipe to Attach purports to explain (although not in any verified form in which the facts are attested to by counsel or counsel's representative involved in procuring the information from Juror 9) that Monsanto had in its possession a partial transcribed version of its secret interview with Juror 9, conducted by yet unidentified individuals under insufficiently

described conditions that it elected to willfully withhold despite it allegedly existing at the time of the filing of the Motion or Post-Trial Relief. The feeble justification for the attachment and the basis for Monsanto submitting it at this late occasion and unsupported by law or Rule or prior notice to opposing counsel was an audacious last word-ism and unseemly purpose of "given the statements made by the trial judge regarding Juror Nine's [purported] affidavit in his January 5, 2023 Order and Opinion" (in other words, presuming to set the court straight). Despite that Monsanto withheld the Juror's concerns from the court and Plaintiff's counsel and did not immediately bring the alleged report of "secret communications" to the court's attention so that the Juror could be examined in court under oath without Defendant's previous manipulation, encouragement or undisclosed representations, Monsanto argued that the materials established the need for an evidentiary hearing – a hearing that could have occurred immediately but now – after having the benefit of the court's decision and analysis, Monsanto proposed to present the Juror it had prepared and potentially manipulated for confirmatory bias.

The court has not reviewed the belatedly filed materials – they were never of record and are not properly before the court and Defendant's purposeful withholding cannot be rewarded after the court has already ruled on the contents of what Monsanto elected to submit timely of record. In fact, the material should be stricken from the docket because it cannot be appended to the record by Praecipe without consent of the Plaintiff or leave of court. Furthermore, at oral argument, Monsanto proposed to address as its first issue the matter of off the record jury communications. The court addressed from the bench (the transcript attached as Exhibit E) the ex parte, untimely and improper submission of the speaking document's Praeciped attachments, misrepresented as Trial/hearing exhibits, and advised counsel that it would not be hearing argument on those improperly identified and untimely submitted materials.

On the basis of the Juror 9's purported original letter to himself, presumably composed after Monsanto's instigation and refreshment of his recollection, most of the contents constituting inadmissible hearsay, there is no basis in fact for Monsanto's premise that there was a jury deadlock (hopeless or otherwise). To the contrary, the "impressions" and "feelings" of this Juror expressed in his stream of consciousness "letter" demonstrate a typical ebb and flow of jury deliberations. The main area of "disagreement" described in the document is as to the number of jurors needed for a verdict and the apparent belief of this juror that, if he could prevent a vote of 10 jurors for the Plaintiff, the verdict would be for Monsanto. While he surmises about his own persuasive ability to "turn the tide" to his position, at no time does he report even a 6-6 split. Nor does the document ever indicate that any vote was communicated outside the jury room or to the court. On this record, there was no information representing the status of the deliberations communicated to the court that would have invited a deadlock charge (assuming the premise that such a communication occurred, which the writer is incompetent to confirm). Other jurors expressing frustration at the potential for deliberations extending beyond that day into the following week and threatening not to return as a basis for bringing the deliberations to a conclusion simply cannot demonstrate that the court or its officer made improper communications or even were made aware of a reason to do so. For these reasons and for the reasons more thoroughly discussed in the court's January 5, 2024 Opinion, the court cannot reward the Defendant's conduct and replace the jury's verdict with an order for a new trial after Monsanto has tampered with a Juror outside the court and without immediate notice of the Juror's alleged concerns to the court. As soon as Juror 9 stated to Monsanto's counsel or counsel's representative that he wanted to discuss the deliberations, as officers of the court, counsel's obligation was to cut off any further discussion and to inform the juror that such a

topic pertained to the jury's subjective reasoning process and was prohibited under the no-impeachment rule in Pennsylvania Rules of Civil Procedure. Pa. R. Evid. 606(b); *Pratt v. St. Christopher's Hosp.*, 581 Pa. 524, 534-35, 866 A.2d 313, 320-21 (Pa. 2005); *see also*, *Com. V. Neff*, 2004 PA Super. 400, 860 A.2d 1063, 1071 (Pa. Super. 2004). Monsanto could have notified the court, which could have determined whether the Juror should be examined in court. Monsanto elected to play cat and mouse game with the information and to present it in the form it chose for its own strategic advantage and public relations narrative. It cannot seek a last word(s) or rebuttal of the court's order and opinion or second bite at the apple of the basis of it having withheld information and a with a clandestine "transcript."

C. Damages

Monsanto's final points relate to the jury's damages award. Monsanto presumes that the mere mention of the numbers in the jury's determination "shocks the conscience" and thus entitles it to relief. The court cannot agree that the mere award of a substantial verdict creates a presumption in favor of an arbitrary reduction or a new trial as to damages. The question for the court is: what evidence did the jury hear and does the evidence support its verdict?

1. Compensatory Damages

Monsanto argues that Mr. Caranci is old, has essentially exceeded his actuarily calculated life expectancy for a male born in 1940 and therefore has outlived his mathematically allotted years despite his diagnosis and long-suffering agonies and justifiable fears from his injuries that the jury found were a result of Monsanto's tortious conduct, so, ergo, the jury's compensatory award is excessive. Monsanto further essentially contends that Mr. Caranci also had no claim for economic loss due to his advanced age and lack of employment-related wage loss, so the entirety of the award was for noneconomic loss and, thus, bore no reasonable relationship to an actual

loss, a disparity it deemed glaring. Monsanto also points to Mr. Caranci's other medical conditions affecting his quality of life, which, in its view, should have entitled Monsanto to a discount against recovery.

It is incontrovertible and well-settled under Pennsylvania law, as the Supreme Court has clearly opined in *Bert Company v. Turk*, 298 A.3d 44, 61 (Pa. 2023): "the purpose of compensatory damages is also "to make the plaintiff whole." *Feingold v. Se. Pa. Transp. Auth.*, 512 Pa. 567, 517 A.2d 1270, 1276 (1986). For decades, the alleged excessiveness of a compensatory verdict was measured by a "criterion of shockability." *Howarth v. Segal*, 232 F.Supp. 617, 620 (E.D. Pa. 1964) (citing *Flank v. Walker*, 398 Pa. 166, 157 A.2d 163, 165 (1960)). This court also considers the Superior Court's guidance in *Tillery v. Children's Hospital of Phila.*, 2017 Pa. Super. 50, 156 A.3d 1233, 1246 (Pa. Super. 2017) that the inquiry begins "with the premise that large verdicts are not necessarily excessive verdicts," and that "[e]ach case is unique and dependent on its own special circumstances ..." *citing Tindall v. Friedman*, 970 A.2d 1159, 1177 (Pa. Super. 2009). Moreover, abstract comparison with other verdicts is not a reason to deem a damages award excessive. *Potochnick v. Perry*, 861 A.2d 277, 285 (Pa. Super. 2005).

The court finds Monsanto's analysis demeaning and disrespectful to Mr. Caranci and to the jury that applied the court's charge to Plaintiff's real-life injuries suffered, and assessed his credibility and clear evidence of his fears and ongoing disfigurement in the painful disease process that was still ongoing at the time of trial. At every instance Monsanto coldly trivializes Mr. Caranci's life and trivializes the damage Plaintiff demonstrably suffered. The clear and compelling evidence before the jury was that Mr. Caranci has suffered with his exposure-related cancer since 2005, had undergone numerous days, weeks and years of treatment, had suffered

four remissions and was currently undergoing a highly painful treatment. The jury heard from Mr. Caranci what impact the non-Hodgkins lymphoma has had on his quality of life—how it had made him weak and frail and unable to engage in daily activities, how it affected his emotional and mental well-being, how it had robbed of the most basic enjoyment of the taste of food, how he had had to give up his business, from which he derived his living, the enjoyment of running a business and the interaction with his customers. The impact on his life was extensive and profound, robbing him of all joy and enjoyment and bringing disfiguring changes to his appearance. The jury had the full real-life opportunity at trial to judge Mr. Caranci's credibility and weigh the evidence presented in this case and to fully and fairly assess the damage to his life, and to determine his extent of pain and suffering and what amount would compensate him, as this court charge the jury to do.

Having heard the same evidence and observed Plaintiff at trial, the court cannot, in good conscience after reviewing and considering the entire record of this trial say that the compensatory award is "shocking" or plainly excessive and exorbitant. The legal question of whether this award of damages falls within the uncertain limits of fair and reasonable compensation or whether the verdict so shocks the court's sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption from a weight of the evidence standpoint cannot be resolved in Defendant's favor. Viewing the entirety of all the evidence and considering that Monsanto did not successfully impact at trial or contest the full import of Mr. Caranci's testimony or sufficiently convince the jury with its "bad luck" theory that his cancer was not related to his use of Roundup, the court cannot substitute its judgment for that of the good and faithful citizens on the jury.

2. Punitive Damages

Monsanto also disputes the award of punitive damages. At the outset it argues that its conduct was reasonable and again posits that the EPA exhaustively determined that its product was safe, negating any basis for punitive damages. Monsanto seeks vacatur or reduction of the jury's punitive damages award on due process grounds, because the award is arguably cumulative as to conduct that has already been punished and because the award is confiscatory.

The court cannot agree that weight of the evidence supports the position that Monsanto acted reasonably. In awarding damages for negligence, the jury determined that Monsanto violated a duty of care and did not act reasonably. The compensatory award is a question of the assessment of the extent of a plaintiff's injury, a factual determination, "whereas [the jury's] imposition of punitive damages is an expression of its moral condemnation." *Cooper Indus, Inc. v. Leatherman Tool Grp., Inc.*, 523 U.S. 432, 121 S. Ct. 1678, 149 L.Ed.2d 674 (2001).

Whether the degree of the jury's finding of sufficient behavior warranted punitive damages is a question of the weight that the jury gave to the evidence and its credibility determinations. Monsanto at trial was confronted with substantial evidence in the form of its own internal communications revealing repeated defiant and invidious efforts to attack and discredit science raising a concern as to the product's safety. While Monsanto claims to have its own studies to the contrary, the court would consider it disingenuous if it now suggested that there was no evidence showing bad motive and conduct. There was clear evidence that Defendant was motivated by financial considerations and to protect its sales and profits over conducting unbiased research on the risks to consumers or the safety of its product. Furthermore, the evidence also showed that the financial considerations were more than consequential—the amount of profits over the course of Mr. Caranci's exposure and from the

sale of the product were in the stratosphere. Further, in the context of the full trial evidence, Monsanto demonstrably showed the jury that it was remorseless in continuing unabated its profit driven sales and marketing of the product.

The jury determined this conduct met the standard of outrageousness for the award of punitive damages. The jury also imposed a penalty consummate with Monsanto's wealth[13] and the profits it made from its reckless action. The court will not abrogate the jury's considered verdict that is well grounded in weighing and considering all the evidence admitted at trial or otherwise disrupt its determination.

The further question involves the awarded amount of punitive damages. Monsanto generally argues comparisons and claims that it has already lost and settled after trials and paid such damages in other cases, to the point where imposition of such damages has become confiscatory and violates its due process rights. The Pennsylvania Supreme Court has recently issued its interpretation of the constraints of federal due process on punitive damages awards in state tort cases. The court reasoned:

> The overall concern of the United States Supreme Court in limiting the discretion-based common-law approach to the assessment of punitive damages was to curtail punitive awards that "run wild" and offend "judicial sensibilities," *[Pacific Mutual Live Insurance v.] Haslip*, 499 U.S. [1] at 18, 111 S.Ct. 1032 [113 L.Ed.2d 1 (1991)], or that amount to an arbitrary deprivation of property in violation of due process, *TXO [Production Corp. v. Alliance Resources Corp.]*, 509 U.S.[443] at 453–54, 113 S.Ct. 2711. The High Court "rejected the notion that the constitutional line [of excessiveness] is marked by a simple mathematical formula, even one that compares actual and potential damages to the

[13] As the court in *Sprague v. Walter*, 441 Pa.Super. 1, 61, 656 A.2d 890, 920 (Pa. Super. 1995) noted: "It is well-settled that when punitive damages are at issue in a case, the jury must consider not only the character of the act underlying the claim and the harm suffered by the plaintiff, but also the wealth of the defendant. *Kirkbride v. Lisbon Contractors, Inc.*, 521 Pa. 97, 102, 555 A.2d 800, 803 (1989) (citing Restatement (Second) of Torts § 908(2)). *Accord Feld v. Merriam,* 506 Pa. 383, 396, 485 A.2d 742, 748 (1984). *See also, Empire Trucking Co., Inc. v. Reading Anthracite Coal Co.*, 2013 Pa. Super. 148, 71 A.3d 923, 938 (Pa. Super. 2013).

> punitive award." *[BMW of North America, Inc. v.] Gore*, 517 U.S. [559] at 582, 116 S.Ct. 1589, 134 L. Ed. 2d 809 (1996)].

Bert Company, 298 A.3d at 81-82. This court is wary to determine the propriety of the award here when the outcome would be to replace the determination of our duly sworn citizens in the dignified and sober discharge of their public service duty as jurors weighing the all evidence with the court's opinion, particularly where the state's highest court recognizes that constitutional principles only require curtailing punitive awards that "run wild" and offend "judicial sensibilities." 298 A.3d at 81.

In this case, Plaintiff presented substantive evidence of the profits that Monsanto recorded for the sale of glyphosate containing products and GMO seeds genetically engineered to be immune to glyphosate containing products (so that only the weeds would respond), sales to ordinary consumers and commercial users that continued unchanged after an independent scientific agency raised concerns that glyphosate was genotoxic and carcinogenic and after several juries awarded substantial damages to individuals just like Mr. Caranci. Not only did Monsanto continue to sell the product, unchanged and without warning or safety recommendations, it repeatedly reminded the court of a recent series of cases in which it had prevailed.[14] The issue for this court is the evidence that the jury had before it when it decided the issue in conjunction with the factors for assessing the award of punitive damages. *Gore*

[14] Since the verdict, Monsanto has made numerous public statements criticizing the court and jury and even suggesting in its motion that the court's rulings led to a "one-sided" presentation of evidence. These arguments are meritless and ignore that Monsanto's witnesses did not provide the jury with credible testimony. For example, Dr. Llanos, while having an impressive resume and having given cogent testimony on direct, floundered on cross-examination when she revealed the extensive income that she was receiving as a Monsanto expert and she was confronted with statements about glyphosate's carcinogenic risks on the website of the organization involved with her critical research into the cancer risks of hair straighteners used by African American women.

articulates what the court in *Bert Company v. Turk* calls "three 'guideposts' for determining if an award of punitive damages is grossly excessive":

> (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Id.* at 575, 116 S.Ct. 1589.

298 A.3d at 60.

In this case, the jury heard evidence about Monsanto's actions—e.g., remorselessness, ghostwriting, lobbying legislators, covertly attacking scientific research unfavorable to its position, economic bullying, all the while collecting exceedingly high profits and paying excessive compensation to a stable of expert witnesses, from which the jury could find Monsanto's conduct reprehensible. The harm to Plaintiff was demonstrable, not potential at some future time. From the evidence, this jury could conclude the Monsanto violated and continues to violate the public trust and its recklessness was directed at a vulnerable population of ordinary homeowners, landscapers and maintenance workers, creating a moral imperative warranting the imposition of punitive damages.

The court has reviewed the record (in the light most favorable to the Plaintiff), in light of the controlling Pennsylvania law and under the accepted guideposts and determines that the evidence meets the criteria for degree of reprehensibility based on the Defendant's extreme recklessness presented in Plaintiff's case and based upon the jury's apparent inability to find Monsanto's witnesses credible, having assessed the weight and credibility of all the evidence. The court is not shocked evaluating the trial record as a whole by either the verdict or the amount, with the benefit of substantial experiences and having observed every witnesses, and, in particular, the Plaintiff, with the defense having failed to persuade the jury of its defenses and

trial strategy and its demonstrably troubling denigration of Mr. Caranci's extreme suffering, as described in his testimony.

In light of the court's determination that, in the context of the entirety of the trial, considering all of the evidence and having observed the jurors' engagement and responses to the evidence in real time, the damages verdicts, and in particular the punitive damages, are not conscience shocking, but rather reflect the measured and thoughtful response of ordinary citizens to what could be considered extreme hubris, reckless and intentional indifference and callous disrespect for the risk to which individuals such as Mr. Caranci were exposed, the court cannot conclude that it is in a better position than the jury to assess the damages.

The court further declines to provide Monsanto relief on due process grounds. In this court's view, its arguments to the effect that it has been penalized or paid settlements based upon business judgments factually developed in trials in this court or in other jurisdictions for the same (or better or worse) bad actions or injuries proven here, which should require the court to remit the jury's verdict, are incongruous. Monsanto is not saying this verdict in and of itself and in light of the record before the court violates due process, but that, it having injured scores of individuals resulting in juries imposing damages against its widely-determined intentional and reckless conduct should be a basis to relieve some of its obligation here and apparently in perpetuity. The court cannot agree that based upon the evidence presented in this case, due process requires reduction of the jury's award of punitive damages.

IV. CONCLUSION

For all the reasons set forth in this opinion, as well as the reasons contained in the court's prior opinion of January 5, 2024 addressing Monsanto's request to recuse the court, the court denies Monsanto's Motion for Post-Trial Relief in its entirety.

EXHIBIT A

Simon, Deborah

From: Simon, Deborah
Sent: Tuesday, October 17, 2023 7:47 PM
To: Melissa Merk
Cc: Tobi Millrood; Miller, Chanda
Subject: Re: Caranci et al. v. Monsanto Company, No. 210602213

Counsel:

The Judge has reviewed both sides' papers related to Defendant's Motion for Mistrial.

One issue that concerns us is the vagueness surrounding Plaintiff's representations regarding a "stipulation". In the copy of Friday's trial transcript, Mr. Kline refers to a "stipulation" and Mr. Itkin questioned Dr. Reeves about a "legally binding document" that Monsanto "**signed**." Plaintiffs' attached submission at Exhibit E includes a transcript of proceedings in Dennis v. Monsanto Company, a case in state court in San Diego County, California, which appears to hint at an agreement between the parties in that case related to what appears to be a motion in limine on the Ninth Circuit decision. The court assumes that the purpose of this attachment is to support the representations regarding the existence of a "stipulation."

This court understands the term "stipulation" as a term of art that suggests a writing that is signed by both parties and approved by the court. The court looks to the contents of Plaintiffs' Exhibit E to support counsel's statements to the court in the presence of the jury.

Plaintiffs have only provided a small portion of the San Diego court's transcript -- the part that suggests that the parties had come to some kind of agreement. Plaintiffs do not provide the entirety of the proceedings on this issue. It is not possible from that transcript to tell whether, as represented by counsel, the "it" was actually a stipulation. The transcript refers to "one sentence that is on paper" that was circulated to the court and counsel. Furthermore, the record suggests at least one underlying caveat to the agreement, which is NOT called a stipulation, at least in the portion of the transcript provided to the court.

Based upon this transcript, the court is able to determine that there was some kind of statement to which Monsanto agreed, but the substance of it is not provided. We know that there is an "it" but what "it" is has been omitted. We don't know whether it was read into the record or anything other than a basis for the court in that case to dispose of the motion in limine.

I am requesting on behalf of the Judge that Plaintiffs provide a complete record as to this matter immediately and the substance of the writing (i.e. the "legally binding document") that was allegedly referenced by Mr. Itkin in the transcript.

In the meantime, the court will **reserve** on Defendant's motion for mistrial.

Additionally, in reviewing the transcript of the proceedings on Friday, including the colloquy related to Mr. Itkin's question about a stipulation, the Judge has concluded that he may have misunderstood counsel's question to the witness as to the contents and scope of the stipulation and in what proceeding Monsanto entered into the stipulation (believing it was in the Ninth Circuit matter). Accordingly, the Judge is directing

counsel to meet and confer and to draft an agreed upon curative instruction that addresses any misimpression that the Judge may have created or any misstatement that he made to the jury with regard to Mr. Itkin's question.

The court appreciates your **immediate** attention to this serious matter.

Deborah H. Simon
Law Clerk to the Honorable James C. Crumlish, III

From: Melissa Merk <Melissa.Merk@klinespecter.com>
Sent: Tuesday, October 17, 2023 11:13 AM
To: Simon, Deborah <Deborah.Simon@courts.phila.gov>
Cc: Tobi Millrood <Tobi.Millrood@klinespecter.com>; Miller, Chanda <chanda.miller@btlaw.com>
Subject: Caranci et al. v. Monsanto Company, No. 210602213

Dear Ms. Simon,

Attached is Plaintiffs' Opposition to Defendant's Motion for Mistrial. Please accept my email on behalf of Mr. Millrood, who is in the courtroom this morning. He will provide a courtesy copy to the Court as well.

Respectfully,
Melissa Merk

Melissa Merk (she/her)
Kline & Specter PC
1525 Locust St.
Philadelphia, PA 19102
Main: 215.772.1000
Direct: 215.792.5618
Follow me on LinkedIn

EXHIBIT B

Simon, Deborah

From: Tobi Millrood <Tobi.Millrood@klinespecter.com>
Sent: Wednesday, October 18, 2023 8:07 AM
To: Simon, Deborah; Miller, Chanda
Subject: Caranci vs. Monsanto
Attachments: 2023.10.06 Pre-Trial (Day 4).pdf; FINALmonsanto100923.pdf; Dennis opening slide.png

Dear Ms. Simon:

On behalf of Mr. Kline and Mr. Itkin, in response to your e-mail of last night, we now realize we were wrong in our assertion to the Court and in the language posed in the questions to Dr. Reeves that there was a signed written stipulation. Mr. Kline and Mr. Itkin thought so at the time in court last Friday. We now understand it was an agreement of the parties, but not a signed written stipulation. Tom Kline conveys that he accepts responsibility for the error, and we want to correct it.

While Mr. Kline and Mr. Itkin are in Court this morning, I will meet with defense counsel as necessary to try to work out a curative instruction. We believe there should be a simple instruction that corrects the misstatement, and will meet and confer in good faith attempting to reach agreement.

As to the requests regarding the context of the language used in *Dennis*, attached is the complete transcript of a pre-trial in *Dennis vs. Monsanto* on 10/6/23. Page 3, Line 13 through page 9, line 19. That discussion and agreement was followed by the Opening Statement in which Plaintiff counsel introduced the subject language about the EPA, on 10/9/23, at page 57, line 5 through page 59, line 12, along with the Slide that was shown to the jury in *Dennis* in opening, by agreement.

Please let me know if there is anything else we can supply the Court.

Respectfully,

Tobi Millrood
Kline & Specter, PC
1525 Locust St.
Philadelphia, PA 19102
(215) 772-1358
tobi.millrood@klinespecter.com

EXHIBIT C

Simon, Deborah

From: Miller, Chanda <Chanda.Miller@btlaw.com>
Sent: Thursday, October 19, 2023 10:01 PM
To: Simon, Deborah
Cc: Tobi Millrood
Subject: Caranci et al. v. Monsanto Company, No. 210602213

Dear Ms. Simon,

On behalf of Defendant, I write in follow up to the Court's instruction to the parties to meet and confer on a proposed curative instruction to address the issues raised by Defendant's October 16th Motion for a Mistrial. The parties met and conferred in good faith and were unable to reach agreement on a proposed instruction. Monsanto's proposed instruction is below, and I understand Plaintiffs will submit their own proposed instruction.

Plaintiffs shared their proposed instruction with Monsanto during the meet and confer process, and Monsanto objects to it on various grounds. First, Plaintiffs' proposed instruction compounds the prejudice because it repeats prejudicial statements regarding the Ninth Circuit's decision. Second, the misstatements by Plaintiffs' counsel that Monsanto's counsel "signed a legally binding document" are inextricably intertwined with the Ninth Circuit's decision in *NRDC v. US EPA*, as the "legally binding document" was always referred to in the context of that decision. In addition, the misstatements regarding that purported document were followed by questions to Dr. Reeves in which only portions the Ninth Circuit's opinion were read into the record, and this misled even the Court as to the actual effect of the Ninth Circuit's decision, as evidenced by the subsequent misstatements in front of the jury on Monday. A curative instruction that does not address these multiple inaccuracies does not cure the prejudice to Monsanto.

For these same reasons, Monsanto objects to any curative instruction that does not address all of the issues covered by its proposed curative instruction. If the Court is not inclined to give Monsanto's proposed curative instruction, Monsanto respectfully stands on its motion for a mistrial.

Monsanto's Proposed Curative Instruction

Members of the jury, last Friday October 13th, there was a statement by Plaintiffs' counsel and a question of Dr. Reeves suggesting that (1) that EPA's registration of glyphosate or Roundup had been vacated and (2) there was a "legally binding document" signed by legal counsel for Monsanto regarding this. On Monday, October 16th, Plaintiffs' counsel read excerpts from a legal opinion from the Ninth Circuit during questioning of Dr. Reeves, and there were further comments suggesting glyphosate or Roundup were no longer registered. All of that testimony and commentary are stricken from the record and you are instructed to disregard all of those comments, suggestions, and testimony. First, there was never any "signed" document or "legally binding document" by Monsanto's counsel regarding EPA's registration of glyphosate or Roundup. Second, EPA "registration" means that a pesticide may be legally sold in the United States. EPA registration of glyphosate and Roundup have never been vacated. Glyphosate and Roundup are currently registered by EPA for use in the United States, and EPA's current position remains that glyphosate is not likely to be carcinogenic to humans.

Respectfully,

Chanda Miller | Partner
Barnes & Thornburg LLP
Three Logan Square
1717 Arch Street, Suite 4900, Philadelphia, PA 19103-2825
Direct: (445) 201-8920 | Mobile: (215) 620-0401

Simon, Deborah

From: Tobi Millrood <Tobi.Millrood@klinespecter.com>
Sent: Thursday, October 19, 2023 10:21 PM
To: Miller, Chanda; Simon, Deborah
Subject: RE: Caranci et al. v. Monsanto Company, No. 210602213

Good evening Ms. Simon,

Ms. Miller is correct that we have been meeting in good faith and are at an impasse. We disagree with counsel's characterization below. As I indicated during our meet and confer, the cross-examination of Dr. Reeves on 10/16 was entirely appropriate of a regulatory witness who provided the necessary foundation.

The clarifying charge that Plaintiffs propose is as follows:

Members of the jury, on Friday October 13th, there was a statement by Plaintiffs' counsel and a question of Dr. William Reeves on whether he was familiar with a stipulation signed by Monsanto lawyers which acknowledges that the EPA's 2020 inter-registration review decision for glyphosate was vacated. Dr. Reeves responded he has not seen that stipulation. Both the question and answer are stricken from the record and you are to disregard both the question and the answer.

Respectfully,

Tobi Millrood
Partner
Kline & Specter, PC
1525 Locust Street
Philadelphia, PA 19102
M: 215-772-1000
D: 215-772-1358
tobi.millrood@klinespecter.com
www.klinespecter.com

From: Miller, Chanda <Chanda.Miller@btlaw.com>
Sent: Thursday, October 19, 2023 10:01 PM
To: Simon, Deborah <Deborah.Simon@courts.phila.gov>
Cc: Tobi Millrood <Tobi.Millrood@klinespecter.com>
Subject: Caranci et al. v. Monsanto Company, No. 210602213

Dear Ms. Simon,

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Respectfully,
Chanda Miller

Chanda Miller | Partner
Barnes & Thornburg LLP
Three Logan Square
1717 Arch Street, Suite 4900, Philadelphia, PA 19103-2825
Direct: (445) 201-8920 | Mobile: (215) 620-0401

EXHIBIT D

Simon, Deborah

From: Simon, Deborah
Sent: Friday, October 20, 2023 11:03 AM
To: Tobi Millrood; Miller, Chanda
Subject: Re: Caranci et al. v. Monsanto Company, No. 210602213

Importance: High

Mr. Milrood,

The court has reviewed the parties' separate proposals. Unlike counsel in the Dennis case, from which this entire episode derives, you are unable to come to an agreement as to a proper instruction. To say that the court is disappointed is an understatement. Particularly disappointing is your statement that the cross examination was "entirely appropriate." Understand --- if it had been "entirely appropriate," we would not be here. Plaintiffs' proposal does not apprise the jury that the basic premise from which all of this proceeds is a serious misrepresentation on the part of Plaintiffs' counsel --a claimed misunderstanding, at best, and possible recklessness or purposeful misrepresentation, at worst, on the part of Mr. Kline and Mr. Itkin, the actual reality of which is irrelevant to the court (but certainly undermines counsel's credibility in the eyes of the court). Regardless of how or why counsel came to make the misstatement, the serious nature of the misstatement must be addressed. A charge that says there was this topic and just ignore it does not get to the root of the problem. In fact, Plaintiffs' proposal reiterates the testimony and turns the misconduct into an advantage by reminding the jury about Dr. Reeves' testimony, as opposed to correcting **your** misstatement, upon which the entire examination proceeded.

In light of the court's concerns, I direct Plaintiffs to make a more serious effort. The Judge will allow the parties additional time to meet and confer today and tomorrow. If we do not receive additional direction from the parties by 9 a.m. on Sunday, the court will be drafting its own curative instruction.

Thank you for your anticipated cooperation.

Deborah H. Simon

From: Tobi Millrood <Tobi.Millrood@klinespecter.com>
Sent: Thursday, October 19, 2023 10:21 PM
To: Miller, Chanda <chanda.miller@btlaw.com>; Simon, Deborah <Deborah.Simon@courts.phila.gov>
Subject: RE: Caranci et al. v. Monsanto Company, No. 210602213

Good evening Ms. Simon,

Ms. Miller is correct that we have been meeting in good faith and are at an impasse. We disagree with counsel's characterization below. As I indicated during our meet and confer, the cross-examination of Dr. Reeves on 10/16 was entirely appropriate of a regulatory witness who provided the necessary foundation.

The clarifying charge that Plaintiffs propose is as follows:

Members of the jury, on Friday October 13th, there was a statement by Plaintiffs' counsel and a question of Dr. William Reeves on whether he was familiar with a stipulation signed by Monsanto lawyers which acknowledges that the EPA's 2020 inter-registration review decision for glyphosate was vacated. Dr. Reeves responded he has not seen that stipulation. Both the question and answer are stricken from the record and you are to disregard both the question and the answer.

Respectfully,

Tobi Millrood
Partner
Kline & Specter, PC
1525 Locust Street
Philadelphia, PA 19102
M: 215-772-1000
D: 215-772-1358
tobi.millrood@klinespecter.com
www.klinespecter.com

From: Miller, Chanda <Chanda.Miller@btlaw.com>
Sent: Thursday, October 19, 2023 10:01 PM
To: Simon, Deborah <Deborah.Simon@courts.phila.gov>
Cc: Tobi Millrood <Tobi.Millrood@klinespecter.com>
Subject: Caranci et al. v. Monsanto Company, No. 210602213

Dear Ms. Simon,

On behalf of Defendant, I write in follow up to the Court's instruction to the parties to meet and confer on a proposed curative instruction to address the issues raised by Defendant's October 16th Motion for a Mistrial. The parties met and conferred in good faith and were unable to reach agreement on a proposed instruction. Monsanto's proposed instruction is below, and I understand Plaintiffs will submit their own proposed instruction.

Plaintiffs shared their proposed instruction with Monsanto during the meet and confer process, and Monsanto objects to it on various grounds. First, Plaintiffs' proposed instruction compounds the prejudice because it repeats prejudicial statements regarding the Ninth Circuit's decision. Second, the misstatements by Plaintiffs' counsel that Monsanto's counsel "signed a legally binding document" are inextricably intertwined with the Ninth Circuit's decision in *NRDC v. US EPA*, as the "legally binding document" was always referred to in the context of that decision. In addition, the misstatements regarding that purported document were followed by questions to Dr. Reeves in which only portions the Ninth Circuit's opinion were read into the record, and this misled even the Court as to the actual effect of the Ninth Circuit's decision, as evidenced by the subsequent misstatements in front of the jury on Monday. A curative instruction that does not address these multiple inaccuracies does not cure the prejudice to Monsanto.

For these same reasons, Monsanto objects to any curative instruction that does not address all of the issues covered by its proposed curative instruction. If the Court is not inclined to give Monsanto's proposed curative instruction, Monsanto respectfully stands on its motion for a mistrial.

Monsanto's Proposed Curative Instruction

Members of the jury, last Friday October 13th, there was a statement by Plaintiffs' counsel and a question of Dr. Reeves suggesting that (1) that EPA's registration of glyphosate or Roundup had been vacated and (2) there was a "legally binding document" signed by legal counsel for Monsanto regarding this. On Monday, October 16th, Plaintiffs' counsel read excerpts from a legal opinion from the Ninth Circuit during questioning of Dr. Reeves, and there were further comments suggesting glyphosate or Roundup were no longer registered. All of that testimony and commentary are stricken from the record and you are instructed to disregard all of those comments, suggestions, and testimony. First, there was never any "signed" document or "legally binding document" by Monsanto's counsel regarding EPA's registration of glyphosate or Roundup. Second, EPA "registration" means that a pesticide may be legally sold in the United States. EPA registration of glyphosate and Roundup have never been vacated. Glyphosate and Roundup are currently registered by EPA for use in the United States, and EPA's current position remains that glyphosate is not likely to be carcinogenic to humans.

Respectfully,
Chanda Miller

Chanda Miller | Partner
Barnes & Thornburg LLP
Three Logan Square
1717 Arch Street, Suite 4900, Philadelphia, PA 19103-2825
Direct: (445) 201-8920 | Mobile: (215) 620-0401

EXHIBIT E

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ERNEST CARANCI, et al. :

v. : NO. 210602213

MONSANTO COMPANY, et al. :

Courtroom 636, City Hall
Philadelphia, Pennsylvania

FEBRUARY 12, 2024

BEFORE: THE HONORABLE JAMES C. CRUMLISH, III, J.

EXCERPT

REPORTED BY: JANET M. MANSFIELD, RPR
OFFICIAL COURT REPORTER

APPEARANCES:

CHARLES L. BECKER, ESQUIRE
THOMAS R. KLINE, ESQUIRE
Counsel for the Plaintiffs

CHANDA MILLER, ESQUIRE
ERIN L. LEFFLER, ESQUIRE
Counsel for the Defendants

(In open court.)

THE COURT: You may be seated.

So welcome to Courtroom 636. As you can see, it's not as grand as some of the courtrooms in this building. But as I am assigned to the commerce program, this is somewhat typical for commercial litigation.

So, again, I thank you. I say that by way of an invitation to counsel that they may argue from the seated position if it's comfortable. I know many of us have had excessive experience in appellate advocacy and are used to the podium. But I'll try and ask you to use those microphones effectively if you will.

So having said that, we are here today in the post-trial motions in the Caranci versus Monsanto case. Oral argument was ordered in this case on January 9th on the defendants' post-trial motion which was filed on November 6th, 2023, and plaintiffs' reply dated January 5th of 2024.

The Court has on January 5th also issued an opinion and order disposing of that part of defendants' November post-trial motion representing a request relating to alleged conduct relating to conduct of jury deliberations.

No further oral argument will be necessary or will be allowed related to those issues identified in a request for relief and recusal of the Court or for a hearing en banc.

In January, after the Court had issued its opinion and order and the order provided for oral argument, an unsolicited package was delivered to the Court's chambers with counsel for defendants' return address affixed to that envelope.

However, the Court's docket did not reflect that this material was ever docketed as a motion or other pleading, and the Court presumed that the material was an attempt to communicate with the Court ex parte.

Considering aside from the fact

that it may have been an attempt ex parte to communicate with the Court, it was well beyond the time provided by law and the rule relating to post-trial motion practice, untimely, and the matter of the filing was procedurally irregular, and the Court did not and would not review the material as to do so would be to countenance and reward the ex parte attempt of communications to the prejudice of the Court and counsel to the parties.

Initially, the Court's docket also reveals filed materials on January 10th purporting to be filed as a supplement or attachment to a motion or to constitute a trial slash forward slash evidentiary hearing and exhibits without a corresponding motion or leave of Court or notice to counsel of their intention to docket these materials purportedly as a supplement to their November 6th post-trial motion.

The materials were never admitted into evidence at trial or as exhibits in

any hearing either post-trial or subsequently during the trial, and the defendants certainly not ever had a part of a hearing before the Court on these materials, again, demonstrates efforts to argue in a purposeful derogation of the rules and this Court's order and are deemed untimely, ex parte, and, therefore, will not be considered by the Court.

Further, it is troubling that the late, gratuitous docketing of purported trial evidence or hearing evidence was not as represented, evidence supported by motion practice and introduced subject to cross-examination and admitted during trial.

In fact, the materials appear to relate to a request by precipe, which is a ministerial function, not filed in the form of a motion and not in accordance with the recognized substantive procedural rules and requirements seeking the Court's recusal and/or the appointment of a court en banc.

This material could be considered by the Court at best if it had made a timely and excusable filed application or motion to supplement to an exhibit to the post-trial motion.

But defendant decided to not timely file such a formal motion to supplement the record, and it plainly represents materials, again, intentionally withheld from the trial court and plaintiff and only filed after the Court had already rejected defendants' position by order and opinion on defendants' recusal and en banc request on January 5th and after its order setting down an argument, order for oral argument on January 9th.

Defendants did not seek reconsideration of the Court's ruling of January 5th and reconsideration based upon apparently tactically withheld purported evidence which would not be the proper basis for seeking reconsideration or leave of the Court.

Now, we will proceed to the oral argument as provided in the January 9th

order of this Court.

The Court has been provided with extensive pre-trial and post-trial written and oral motions and the parties have also been the beneficiaries of same-day transcripts during the trial for our consideration of the defendants' November 6th post-trial motion and plaintiffs' January 5th response.

Please, I'm going to ask the parties to officially focus your oral arguments on the most significant arguments and direct that the arguments themselves not be mere replication of the parties' extremely fulsome and well-done briefing and motion practice.

We therefore will allow one hour for argument, oral argument, that is, to be divided by a half an hour for each party, and then, if necessary, the Court may briefly ask a few follow-up questions if it deems necessary.

Counsel for the defense, you may identify yourselves and you may proceed.

(END OF EXCERPT)

CERTIFICATION

I HEREBY certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause, and this copy is a correct transcript of the same.

JANET M. MANSFIELD, RPR
Official Court Reporter

Appendix

Trial Court Jan. 5, 2024, Opinion

ERNEST CARANCI and CARMELA CARANCI, Plaintiffs, v. MONSANTO COMPANY, et al., Defendants.	: : : : : : : : :	COURT OF COMMON PLEAS PHILADELPHIA COUNTY TRIAL DIVISION -CIVIL No. 210602213 Control no. 23111384

OPINION

I. INTRODUCTION – The Instant Matter

Presently before the court is a matter styled by Defendant Monsanto as a companion to its Motion for Post-Trial Relief (control no. 23111401) in the form of a non-motion "request" for oral argument on its motion (a proceeding already provided for under Local Rule 227(e)(1)). The vehicle—the filed "request," gratuitously suggests that Defendant obtain replacement of the Rule-provided hearing before the trial court with an en banc hearing, thus enabling the Defendant to evade the Rule-required consideration by motion before the trial court in such post-trial proceedings. The non-motion "request" seeks that the non-trial judges on the panel[1] should preemptively recuse the trial judge from any participation in this request or in adjudicating Defendant's separately-filed post-trial proceedings.

[1]Monsanto does not fashion its "request" as a "motion" or direct it to the trial court. In fact, Monsanto "courtesy copied" the "request" filing on two other members of the court, seeming to solicit them to undertake granting Defendant's "request" to recuse the trial court and preclude it participation in the rulings necessary to resolve the request to the exclusion of the trial court, and to effectuate the recusal determination without input from the trial court. It is difficult to deem counsel as merely ignorant of the express requirements of 34 Pa. Code §131.24 and 231 Pa. Code 227.2 and blameless of judge shopping or of the unintended consequences of Deendant's extrajudicial narrative in the press release accompanying the filing.

Defendant frames the application in the form of a procedurally dubious non post-trial motion request interlacing salacious arguments to recuse this court with the request for an en banc hearing, both separate matters under the Rules of Procedure directed to the authority of the trial court, alone, in the first instance. In the interests of judicial efficiency, the court will consider these two discrete issues herein under the recognized "heavy burden" that Defendant carries to obtain this relief, without prejudice to the court's fuller consideration, if necessary, in conjunction with issues fully briefed by the parties, and, if necessary consideration of oral arguments of counsel, bearing on Defendant's arguments in favor of, inter alia, a new trial, the briefing as to which is subject to the court's Scheduling Order, and as further expounded during oral arguments. The consideration and disposition here will encompass only the content of the request and not the other substantive arguments addressed in the actual Motion to trial errors.

The court first became aware of the filing upon receipt of a voice mail financial press inquiry prior to its assignment and docketing by court administration, such inquiry seeking the court's comment regarding Defendant Monsanto's parent (Bayer) corporation's press release characterizing its purported defenses and making accusations and criticisms of the trial and the verdict, accusations and criticisms Monsanto clearly understood (and intended) must go unanswered by this court. Also troubling in this publication are the aforementioned "courtesy" copies served on other members of the bench of the court, presumably tactically trolling these non-trial and unassigned judges[2] and clearly soliciting their participation in ex parte proceedings to exclude the trial court.

[2] Despite their judicial reputations and court assignments, these judges would not, in the ordinary course, have responsibility for considering Monsanto's requests

Defendant does not offer any Rule-based arguments or any specifics other than to state that purported "new evidence" contained in its wholly separate Motion for Post-Trial Relief allows it to "reasonably question" the trial court's "impartiality." However, timing issues and the publicity campaign undercut any suggestion of "reasonable questioning" and, artfully present the court with a Morton's Fork: a transparent attempt that has purposefully created an impossible morass and potential for punitive post-trial verdict litigation by a defendant (including likely efforts to embroil the entire jury and the court and even defense counsel) and presents a dilatory and cynical diversion aimed not at the merits of the evidence at the trial but at promoting a vindictive campaign against the jury and disqualifying the assigned trial judge from promptly artfully and fairly considering post-trial motions, impugning jurors who, following the court's charge and under oath, rendered a verdict and publicly announced their vote in the majority in favor of the Plaintiff, and challenging the integrity of the jury's considered verdict entirely. The reasonable questioning seems to derive tactical justification from the same rationale inherent in the Defendant's robotic reminder to the court throughout the trial--that Defendant's prior "winning streak" in other jurisdictions that presumptively entitled it to a defense verdict.

Without conceding that these tactics and the accompanying public relations campaign, however distasteful, necessitate a defense of the court, the court must ignore and set aside any provocation and, as it must, impartially and objectively consider and apply the law to the facts, without fear or favor. In this regard, the court considers it necessary to review the history of the matter before the court to provide the background for resolving the "request," including the course of the trial and the course of the deliberations. Also germane to the court's analysis is the stark contrast between the specific trial evidence before the court and the jury, and the questionable basis of the safety claims underpinning the "winning streak." At the trial, the court

gave both parties had significant leeway to argue their scientific evidence to the jury, even allowing Defendant to turn its corporate representatives into "pseudo-experts" on the safety and efficacy of the product, which makes the claims here suspect.

II. THE TRIAL

This matter was assigned to the court for trial on September 27, 2023, with the trial to begin two weeks thereafter. The trial was scheduled for a time period of three weeks, as agreed by the parties. The parties' agreed upon time resulted from both parties' pre-trial representations and commitment to the court to complete the matter within that parameter.

Prior to trial, the parties exchanged witness lists, proposing potentially more than 30 fact witnesses and more than 10 experts and listed thousands of documents and reams of deposition designations and objections to documents and designations.[3] The court's trial schedule consisted of trial days beginning at 9:00 a.m. and concluding at 5:00 p.m. Following jury selection and swearing in of the panel, trial commenced on October 10, 2023.

The trial commenced with the court providing general instructions to the jury and reminding it of the importance of the juror's task, including keeping an open mind, not conducting independent research, not discussing the case before deliberations and putting aside personal bias. The jurors solemnly took an oath to uphold these values, as to which the court reminded the jurors daily and during the concluding remarks in the charge. The trial was aggressively litigated by both parties from the outset, with the parties having filed more than 35 motions in limine that were addressed and decided prior to trial by this court. Both sides had two lead attorneys and numerous additional colleagues in the courtroom providing support, including

[3] Defendants' Pre-Trial Memorandum alone consists of almost 1500 pages. Its list of fact witnesses does not appear until page 1030 of the submission.

a record number of attorneys admitted pro hac (nine, by this court's count, not counting Plaintiff's co-counsel, a member of the Pennsylvania bar and his firm, both based in Houston, TX). The parties also filed pretrial and orally argued ten *Frye* motions, as to which the court reserved pretrial, leaving the disposition of *Frye* issues to the trial judge.

Additionally, throughout the trial, counsel for Monsanto responded frequently to adverse evidentiary rulings with motions for mistrial (often in the form of bench memoranda or written filings late night after business hours, not notifying the court at the start of the next trial day, but, rather, handing the papers to the court at the end of the day) and repeatedly insisted on making speaking objections in the presence of the jury.

For the entire three weeks of the trial, the court observed the jury as diligently engaged, observant and fully committed to their sworn duties. The jury (originally, twelve plus four alternatives) largely took notes. The court had to replenish the supply of juror notebooks multiple times, complementing the attentiveness to the trial evidence. Additionally, jurors who needed to be excused for a family or personal emergency were so dedicated to their public service that they requested the opportunity to come back, and the last remaining alternate on the last day of trial wanted to remain for the closing arguments and the deliberations. The jury's interest and attentiveness were at a high level, which was particularly commendable given the three-week length and the intensity of the trial.

The defense rested on October 26. The court delivered the charge to the jury on October 27, 2023, shortly after court opened for the day. Deliberations immediately commenced thereafter in mid to late morning, and the First Judicial District provided the jury lunch to facilitate a convivial atmosphere and to avoid an interruption in deliberating. In the early afternoon, the jury, through its foreperson sent a written note to the court seeking clarification as

to the meaning of "factual cause." The jury re-assembled in the courtroom at 12:36 pm, and, after discussion, and by agreement of counsel, the court, in answer to the written question, re-read the charge the court had previously given (13.20) on factual cause. While the court "checked in" with the jurors through the court officer thereafter, the court received no further communications or questions from the jury or the court officer indirectly and **had no further interaction with the jury**, directly or indirectly. At no time, formally or informally, did the jury express that it was experiencing any difficulties or that it had any concerns, insurmountable disagreements or hopeless deadlock in the deliberations.

Later in the day, after approximately 4-5 hours of deliberations, the jury notified the court that it had reached a verdict. The court summoned counsel for the parties who, then, returned to the courtroom. The court publicly requested of the foreperson of the jury to confirm on the record whether the jury had indeed reached a verdict and confirmed that at least 10 jurors had agreed on a verdict, to which the response by the jury was immediate and clear in the affirmative. The foreperson was then called by the court to rise and identify herself and publicly read the verdict. In a clear and unequivocal voice, the foreperson then announced the jury's written verdict, clearly reading the jury's decision on each of the verdict slip questions. At the conclusion of the foreperson's announcement of the jury's written verdict, the court asked all counsel if they wished to have the jury polled, to which both parties agreed. Thereafter, each individual juror was called upon and had the individual opportunity to and did publicly state whether they agreed with the verdict that had just been read by the foreperson. Ten of the 12 clearly and without hesitation answered "Yes". Two jurors answered "No." After the verdict, the jurors had the opportunity to raise any concerns before the court both on and off the record. No juror expressed any concern.

The court received and recorded the verdict as affirmed by the jury and promptly entered it on a trial worksheet that was filed on the docket. No party contends that the verdict was improperly recorded or that ten of twelve jurors did not, in open court, state an unequivocal agreement with the verdict. No observable hesitation or confusion transpired during the reading of the verdict or in the polling responses by the parties or the court. To be clear, not a single juror waivered in stating their public agreement on their vote on the verdict, and not a single juror approached the court or the court officer after they were dismissed (with the court conveying the court's and the parties' gratitude for their public service) to express any uncertainty, concern or disagreement with any aspect of the trial, the deliberations or the verdict. Based upon the receipt of the single note and the timing of announcement of the verdict, the court concluded that the jury's attentiveness, notetaking and overall selfless engagement had contributed to its ability to render a verdict with such efficiency.

III. DEFENDANT'S POST-TRIAL CONDUCT

At no time during the deliberations, at the time of reading the verdict, in an informal, post-discharge meeting with the court immediately after the verdict or in the immediate days thereafter did either party or any juror communicate with the court regarding any concerns or irregularities during the proceedings. Ten days after the verdict adverse to the Defendant was received and only after the court returned to the chambers from performing election-related duties[4] did the court learn that representatives of the Defendant had interrogated at least one if not all of the jurors and had issued press releases in advance of or contemporaneously with the electronic docketing of their filings encompassing "requests" for various forms of post-trial relief

[4] At the time, the court had been assigned by the President Judge to serve as Acting Chair of the City Commissioners, with responsibilities for the conduct of the election on November 7, 2023.

relating to a "letter" purportedly written by a single juror, with a jurat separately appended to the letter, purporting to allege some "interference" by the court in the deliberations which the dissenting juror speculated affected his ability to advocate successfully for his dissenting views and arguments to his fellow jurors in favor of the Defendant and to change the voting momentum. The "letter" repeatedly refers to purported deliberation statements or perceived interactions between the jurors spanning the entire deliberations, and repeatedly makes representations in temporally abstract times as to votes of the jury as a whole, and claims to present assumptions, speculation and speculative presumptions about the voting breakdown and second or thirdhand hearsay of the writer's presumed inter-deliberation conjecture among the jurors and separately his hypothesizing of presumed interactions between the foreperson and the court officer.

According to Defendant's filed "request," its unnamed "counsel" (or designated representative) ex parte solicited feedback from all the jurors at some undisclosed time in some undisclosed manner (and did so knowing the specific identity of jurors voting no to the verdict). Juror 9 (presumably the only response and one of the two "no" votes) allegedly "affirmatively" contacted the defense on October 31, 2023 in response to counsel's vaguely termed and incompletely described "solicitation". Defendant provides no evidence or contemporaneous memorialization of the unidentified counsel's conduct of the purported "interview" and no transcript has been proffered with the above filing that would eliminate the concerns about the solicitation or any offered inducements, encouragement or manipulation. Nor does the Defendant disclose whether any of the remaining majority of 11 jurors **had any concerns** or even responded. The court, therefore, has no means to judge what suggestions or shaping of the ex parte "interview" were made to the juror to prompt his belatedly-encouraged or expressed

"concerns" or gratuitous overinclusion of details amounting to a hostile and disrespectful characterization of the deliberations of his fellow jurors. The court can only assume that the eleven other jurors either rejected an "interview" or failed to confirm Juror 9's thoughts or conclusions.

The defense counsel, it can be inferred, guided and presumably recollection-assisted the "letter" from this single juror, who was encouraged or directed to withhold his concerns from the court, allegedly not recording his "observations" until more than a week **after** the verdict was received and five days after focused questions from the defense. The "letter," with this murky and secretive background, forms the basis for Defendant's self-serving accusation of impropriety on the part of the trial judge (and derivatively the court officer) -- that despite the fact that the juror at no time asserts any basis for personal knowledge of the involvement of the court and all of his "impressions" are based upon his presumptions of what the foreperson was thinking, doing or not doing and whose input the foreperson was purportedly soliciting or describing by anyone outside of the jury itself.

Rather than immediately notify the court (which would have been some credit to the conduct of counsel) of an apparent claim of alleged improper communications or purported "ex parte" instruction-giving as soon as the juror began to reveal details of the actual deliberations (the competence of such deliberation evidence is prohibited from disclosure by the Rules of Procedure) so that a hearing in camera with counsel for all parties present could be immediately held and the information timely obtained unfiltered or untainted and without the risk of suggestive partisan defense counsel or defense representative ex parte prompting, shaping or injecting a confirmation bias, Defendant tactically elected to withhold this information from the court for a week, only revealing it after it had integrate it in its post-verdict strategy and in a

filing integrated into its motion for post-trial relief, with the motion for post-trial relief asserting that the contents of the letter necessitated a new trial. Not only did Defendant not notify the trial court immediately, when the juror did purportedly reveal the issue, it did so first by facilitating the "letter" and then integrating the letter into post-trial arguments and constructing its arguments around it, issuing press releases revealing the contents of the letter and chillingly claiming "impropriety," and simultaneously hand delivering copies of the motion for post-trial relief and the companion instant "request" on two additional common pleas judges—the presumptive team.

The notification to other non-trial judges suggests a particularly troublesome motivation considering the unambiguous language of the rules applicable to the filing of a Motion for a hearing en banc and/or seeking recusal of a trial judge, which motions "shall" be first presented to the trial judge who has the authority to address these matters in the first instance. Both the inexplicable delay in immediately bringing the matter to the trial court upon first knowledge and the gratuitous "courtesy" copies hand-delivered to non-assigned judges appear calculated to amplify ex parte accusations in the press and to undermine the court's authority, these actions strongly suggesting objectively-intended judge-shopping. The contents of the "letter" now adjectively amplified by counsel into a purportedly "sworn" statement similarly oddly claiming by a non-lawyer "legal competency" underscores the dubious nature of the basis for the non-motion "request" of the Defendant. A close examination of the letter does not further give credibility or satisfy the high burden substantive evidentiary basis to grant Defendant's request, but rather raises concerns of potential manipulation of the circumstances and content of the disclosure. A close examination of the document does not dispel the court's impression.

IV. THE "LETTER"

Defendant filed a post-trial letter purportedly authored by Juror 9 as an Exhibit to its Motion for Post-Trial Relief (not as part of the instant non-motion "request"). While Defendant asserts that it filed the Exhibit "under seal" to "protect the identity of the juror," Defendant does not similarly protect the contents of the document or its accusations related to other jurors (particularly the foreperson, and other jurors identified by number whose decisional deliberations and alleged post-verdict statements are discussed) or the substance of the deliberations, all of which Defendant reveals, in exhausting, pejoratively-framed detail, in the Motion for Post-Trial Relief. Clearly, Defendant falls short of showing respect for the dignity and public service of the jurors or the protected sanctity of the deliberations and fails to display any concern to protect the confidentiality of the deliberations, facts which, necessarily bear on the credibility and purported weight of the contents. The exploitation of and ex parte denigration of the other 11 jurors also raises a serious concern of the possible intended punitive effect on the jurors based upon Defendant's response to the adverse verdict.

The structure of the document itself raises equal concerns. On the surface, curiously, is a letter from Juror 9 to himself (not to the court or defense counsel who facilitated the "letter" as a cornerstone to its post-trial motion as well as its public narrative). Additionally, it is dated November 4, 2023 and appears to be a complete document insofar as the juror signed the document on the last page, including repeating his address and including his phone number. Nevertheless, appended to the document in an additional page, and (not within the original letter) is a wholly separate document, expressed in legalese as an allegedly sworn statement purporting to validate and verify the contents of the previously-composed letter.

The notarized addition stands in stark contrast to the letter, which, as is stated therein, was intended by the writer, not as a series of competent attested facts, but merely as a collection of "some of my observations and thoughts," and not, as characterized in Defendant's advocacy-based, actively inflated description, a "statement sworn and under oath." Suggestively, after the "letter's" editorial completion was obtained by counsel, it was determined that the contents were to be weaponized in Defendant's post-trial arguments and thereby required an imprimateur of validity and veracity, and the writer, the next day, inexplicably, but for such an intended purpose, executed a wholly separate and somewhat incongruous "oath" to this letter to himself, witnessed by a notary (who presumably did not observe him signing the document the previous day), this additional signature appearing to occur on a Sunday.

The contents of the letter confirm that it contains a single minority ("no vote") juror's mere post-verdict "observations and thoughts," as much of it is a word stream of consciousness and is confusing to the reader and internally inconsistent. Furthermore, the writer of the letter appears to gratuitously interweave denigrating disclosures about purported voting breakdowns and his rank hearsay version of purported substantive opinion exchanges of the other 11 jurors' deliberations with his interpretive inferences, presumptions and hearsay including his "impressions" about actions of parties outside the room and purportedly reported to the writer second or third hand, all intended to validate his single "no" vote. Unravelling the swirl of arguments of counsel from the facts, from Juror Number 9's own "thoughts" and mental impressions, objectively from his own apparent misunderstandings, from his conjectures on statements allegedly made to parties other than himself, from views on the trial evidence or from his own deliberation to the other 11 jurors and eliminating legally incompetent and impermissible evidence of purported deliberation statements or thoughts of the other 11 jurors as

substantive content presents a significant task, but a necessary one, which the court undertakes reluctantly, but with a detailed and critical eye, as it underlies the credibility and weight to be given the letter and the motives of both the writer and the proponent of the document in its various roles in post-trial motion practice of the Defendant, motives demonstrated by the timing, structure and manner of the submission.

A. Timing

As noted previously, significantly the concerns of Juror 9 were not brought to the attention of the court by the juror himself. The juror did not approach the court after the verdict and only provided his "thoughts" and "observations" after being prompted covertly in some fashion and ex parte by an unnamed "counsel" for or representative of the Defendant. According to the face of the "letter," and having taken care to record the timing of his contemplative "revelations," the juror only crafted the letter after an "interview" of undisclosed length, detail and substance with an undisclosed individual and representative on behalf of Defendant. Furthermore, a fair inference can be made from the form of the letter to and from himself that it came not from the juror, but from the Defendant, with the strategic litigation intent to use the information to Defendant's advantage. Particularly telling in the "letter," purportedly written five days after the ex parte "interview," is that the juror does not reveal the interaction with the Defendant **at all**, instead suggesting that the timing related to it taking "a few days to fully process the magnitude of the task and the emotional impact *that I was feeling*." (emphasis added). Failing to disclose the intervening encounter(s) or communications presumes that the writer, wholly on his own, felt it necessary to the "letter's" litigation usefulness to allow full control over it to Defendant to its advantage in its post-trial motion practice and to leave the

misimpression that the entirety of the "feelings" sprung, spontaneously, from his head, without any undisclosed prompting.

Additional unanswered questions and undisclosed facts about the timing further cast doubt on the weight and objective credibility of the statement as well as the statement's validity. Defendant's artfully unidentified counsel does not inform the court as to when or how initial contact was made with this juror. In fact, Defendant is oblique on the relevant substantive details, except to artfully and peremptorily state: "representatives of Monsanto, consistent with Pennsylvania law, contacted jurors to inquire whether they were willing to provide feedback on the trial, as is customary and permissible in this and other jurisdictions." The fact that Defendant felt affirmatively compelled to defend ex parte conduct and exploitation of jurors' deliberations as merely "customary and permissible" raises reasonable concern that Defendant feared that they were not acting within permissible boundaries. How and whenever Defendant made that initial contact (or perhaps undertook multiple efforts), it encouraged Juror 9 to "affirmatively contact" Defendant's counsel or representative. It appears that the "few days" referenced in the letter were the few days it took for the writer to engage with the Defendant's counsel. It was not a "few days," but rather more than a week before the "letter" was constructed and generated.

Defendant's tactically advantageous withholding of prompt notification to the court after the interview and allowing five days to produce a supporting "letter" raises the potential that the letter has been crafted not to address legitimate concerns, if any, of Juror 9, but rather to exploit his dissenting vote and thoughts and speculations to, after the fact and ex parte, impugn the majority of fellow jurors and the court and the legitimacy of the verdict as rendered. Certainly, a juror expressing his own "observations and thoughts" would not be concerned with revealing other jurors' thoughts and observation and the content of deliberations and would be equally

incognizant to seeking out a notary and drafting a verification, an appendage of a "letter" to and from himself that was not contemporaneous with the drafted "observations." Additionally, and incongruously, why would Juror 9 in expressing his own "thoughts and observations" require a confirmation that they were made "under penalty of perjury" and how would an ordinary citizen (a non-lawyer) know to make such a statement or further state that the legal conclusion was that he was "competent to testify to the matters in the attached document"? Finally, some unseen hand instructed the juror that the appropriate manner to raise his concerns was not to contact the court directly but to provide his "observations" in document form to the Defendant for its use as a weapon in litigation.

The timing and the method of disclosure cast serious doubt on the "competency" of the contents of the letter as evidence. Offering the conclusory hearsay of other jurors and revealing their alleged deliberative thoughts and votes prior to the final announced verdict undercuts reliability and validity of the contents of the "letter" insofar as they purport to represent an untainted and unaided product of the writer's mere "feelings". These circumstances clearly support the conclusion that this document was **procured** and constitutes the product of counsel's manipulation of a single dissenting juror to attack sacrosanct deliberations of the jury as a whole. Had counsel, if so genuinely concerned as Defendant now claims, immediately, with notice to all parties, sought an in camera hearing to bring the matters to the court's attention rather than engage in undisclosed ex parte communications that clearly invaded inpermissible areas of inquiry of the jury as a whole, the actions would not raise questions about the origin and contents of this disclosure. Such is not the case, and, Defendant's purposeful tactics bear on how the court must address the substance, ascertain the credibility of the proffered "letter," extract any competent evidentiary facts, assess the totality of the circumstances and weigh the

Defendant's artful insinuations and unsupportable premises against the standards for the trial court's disqualification and for obtaining argument en banc.

B. The Contents

The court has reviewed the "letter" in depth and has determined that certain themes appear to occur repeatedly and are expressed by the writer in several distinct categories. The court will order and conduct its analysis to address these themes within the expressed categories, although not necessarily in the same order as the writer's.

1. The Damages Award

The first area of concern expressed in the document is the writer's "surprise" at hearing the total amount of the verdict, an amount he allegedly had not heard before it was announced by the Foreperson in the courtroom. The writer then goes on to muse the pre-verdict "conversation regarding the damages …" clearly a revelation invading the sanctity of the deliberations. The writer purports his memory, or lack thereof, goes back and forth on the different points of the temporally unanchored ebb and flow of the deliberations. The writer admits to not being in the discussions because of voting "no" against the Plaintiff on the questions related to liability (either by protest or voluntary boycott), so the court must seriously discount h his "observations" as his individual "no" vote was publicly announced at the reading of the verdict. The writer attempts to inject his impressions into his by-then self-disengagement in the discussions by claiming that some jurors were in an "adjoining room" or outside the room when discussions were occurring. The "letter" does not assert that he or other jurors were excluded in any ongoing deliberations, as opposed to any juror individually choosing to move about within the confines of the jury deliberation space. The recitation of out of context comments coupled with inconsistent and confusing musings about votes and vote movement do not represent compelling facts.

The claim of this juror, which is intermixed with after-the-fact "impressions" and speculative comments about the course of the deliberations of the jury as a whole and the different deliberative positions in the process that ultimately led to the verdict, is completely undercut by the undisputed fact that the jurors were publicly polled individually and every one of the ten in the majority clearly stated an agreement to the published reading of the complete final verdict in favor of the plaintiff and in the specific amounts as publicly reported by the foreperson. Any purportedly alleged overheard comment of which the writer was not the declarant cannot present competent evidence in the face of the concurrence under oath with ten of the empaneled jurors to the final verdict, conduct of the jurors in open court and on the record.

2. Questions

The writer also seeks to express continuing dissent over the final verdict as read by the foreperson as representing the final outcome of the deliberations of the jury as a whole on the verdict by suggesting that questions were posited to the court that were not in accordance with the requirement that the questions be in writing, something the writer "recalled being told," as if it was simply mentioned in passing somehow. To the contrary, the requirement that written notes must be communicated and signed by the forepersons was a part of the specific charge that the court gave the jury. What the court stated was:

> If during deliberations you have a serious doubt about some portion of these instructions that I have given you, write your question in a note signed by the foreperson and you can give that note to [the court officer].

(N.T. 10/27/23, a.m., pp. 39-40). The jurors (other than the writer, apparently) understood this when the foreperson sent a written question to the court about a serious doubt concerning the meaning of the concept of "factual cause" in the instructed charge,

a term repeatedly referred to in the charge, specifically defined in the Standard Charge in section 13.20 and a finding required on the verdict slip.

The instruction related to written notes did not require that every question that rose during deliberations be in the form of a note to the court, only doubt related to the content of the charge. The charge did not prohibit the jurors, through the foreperson from asking the court clerk about scheduling matters or requests for aid. Only substantive instructions about which doubt arose are encompassed by the note form of communication.

Having clarified the court's directive with respect to notes, the court turns to the writer's claims related to contacts between the court and the jury to which the attorneys and the parties were allegedly not privy. The statement claims three instances of contact that the writer claimed required the use of a note.

a. The Roundup Bottle

First, the document vaguely references a discussion involving the container for the product (Round-up) at issue in the case and apparently some discussion that examining the bottle might resolve. The writer claims that "the foreperson either called or texted the court clerk asking if we could see the Round-Up bottle." While the writer further purports to describe what the court clerk told the jury in response, based upon the assertion that the writer didn't know if the request was communicated by phone call or text (or was ever communicated at all) and does not assert that the clerk came to the jury room with a response, it is clear that any assertion that there was any communication to the clerk, much less a response or what Juror 9 speculatively presumed speculatively presumed the response to be is dubious. Further, the parties did not request, nor did the

court allow any evidence to go with the jury during deliberations. Additionally, at no time did either party seek to offer the demonstrative Round-Up bottle as evidence and the physical item was not admitted into evidence.

Thus, even assuming that there was a question and the claimed response was provided, there is nothing improper in the clerk's supposed conduct. It was totally consistent with the conduct of the deliberations and the fact that the bottle had not been entered into evidence and the likelihood that court allowing a demonstrative not in evidence would have provoked the jury's off the record experimentation. Defendant is not arguing that the bottle should have been provided or even that the unverified request was an issue related to the contents of the court's charge subject to the court's instruction in Pa. Standard Jury Instruction 12.00. In fact, Defendant took the position that the bottle contained no warnings related to the use of the product by consumers (because no warnings were necessary or required) and the container was irrelevant to its position on the safety of the contents.

The writer goes on to claim that the assumed negative response generated some independent research by the foreperson who "googled" and held up a photo of the bottle on her phone. Defendant does not explain how this series of events rises to the level of outside interference **by the court** or constituted prejudice affecting the outcome of the deliberations—the bottle was repeatedly displayed during the trial and the contents of the label discussed by numerous witnesses. Defendant's witnesses freely admitted that the bottle did not contain any warning or instructions for safe use, claiming that the formula was not dangerous or carcinogenic and did not require a warning label. Thus, any efforts by the foreperson to call up a photograph of the product did not introduce any prejudicial

information that the jury had not previously heard (and seen) and the asserted negative response did not withhold information to which Defendant claims that jury was entitled. Certainly, Juror 9's discussion of the incident does not suggest any misconduct on the part of the court in introducing an outside factor into the deliberations.

b. The Number of Jurors Required for a Verdict

The next area in Juror Number 9's "letter" is characterized as a "collective misunderstanding as to how many jurors were needed on either side for this process to be over." Aside from this juror purporting to express his view or surmise of the mental thoughts and impressions of other jurors, whose beliefs or impressions Juror 9 is incompetent to advance as personal knowledge and cannot represent as "facts," the claim flies in the face of the explicit direction of the court in the concluding remarks of the charge in which the court stated the verdict did not need to be unanimous, that a verdict of five-sixths of the jury was required, that five-sixths of twelve jurors was ten, and that, when ten jurors had agreed and reached a verdict, they should report that to the court clerk. (N.T. 10/27/23, a.m. session, pp. 41-42).

For purposes of this motion, the court has to assume that what this juror observed or heard firsthand (as opposed to what the juror claims were the statements of persons made from outside the room to the foreperson and then allegedly relayed to the group) is true, despite what it knows transpired and what it believes about its staff.[5] Unfortunately, the court is impeded in this

[5] For example, Juror 9 claims that there was some statement or instruction attributed to the court clerk related to how long the jury would have to continue to deliberate before the court would call for a mistrial, information that Defendant characterizes as an improper "deadlock" instruction, based upon the representation that the court "would not declare a mistrial until Wednesday." The court considers the entire notion that anyone, including the court itself, could determine after only a few hours of deliberations how long a jury would continue to deliberate before the court would consider the jury hopelessly deadlocked preposterous. Certainly, no responsible judge or court clerk would express such a matter with the precision asserted in this document. The court could conceive of a frustrated fellow-juror looking at a substantial majority

inquiry by the purposeful imprecision of the statement and the repeated lack of clarity between what occurred in the writer's presence and what represents information relayed by the foreperson, imprecision calculated to necessitate a separate "trial" in the form of an evidentiary hearing rife with witnesses and evidence designed to attack the integrity of the deliberations.

The juror reports various ongoing votes and shifts among the jurors in the midst of the alleged confusion over the number required for a verdict, while at the same time clearly inferring, in the case of the purported 11-1 vote, knowledge that a substantial majority was required. In fact, the writer expressly claims that a question arose because "we were unable to secure at least ten yes votes." He characterizes it as "we got stuck," but what is suggested, without reference to the short time that could have transpired up to that point and the infancy in the deliberations (the writer claims they were addressing a question on page 2 of the verdict sheet[6]—a document that was three pages long, so only about halfway through the questions to be answered). What the juror describes (improperly invading the sanctity of the deliberations) appears to be the ebb and flow of jury deliberations. Nevertheless, in the midst of what was an alleged inquiry as to the precise number required for a verdict and this juror's apparent belief that

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in favor of one side and needing only one additional vote saying to his or her peers that they might be kept over for several days if the jury couldn't reach agreement and saying it to urge someone to change their vote. To suggest that such a directive came from the court is malicious and without competent evidence. In fact, the writer as much as concedes this discussion was wholly internal and not a representation of the court—the statement asserts: "A few jurors were not afraid to show and voice their frustration at the thought of having to come back and one threatened not to come back."

[6] There are only three questions on page 2 of the verdict sheet – two involve factual cause – the subject of the jury's written question to the court and for which the court re-read the portion of the charge dealing with factual cause, as agreed to by the parties. The remaining question is whether the Round-up was defective because it was not accompanied by proper warnings or directions for its use—clearly the only question that could have implicated a debate or disagreement as to liability, and which likely explains the purported request to see the Round-up bottle, a request likely instigated by the writer, who admits to telling the foreperson that he "needed to see more evidence."

simply not achieving that number rendered a verdict in favor of his position, the foreperson is alleged to have sought to dispel any confusion by contacting the court clerk, who allegedly relayed the necessity of ten jurors to agree. Juror 9 infers that this inquiry was communicated to the court, who supplied the response (which Defendant claims was in the form of a coercive charge related to the time it would take to declare a mistrial) but there is no basis in the statement to support such a presumption, other than the purported time it took to obtain a response.

Nothing in the juror's improper recitation of various ongoing deliberations and vote splits suggests any manner of "deadlock," despite claiming the jury was "stuck" getting ten votes on one question. Furthermore, the writer appears to suggest that someone (likely him) was insistent that the failure to obtain ten votes at any given time before the final vote meant that the jury was finding in favor of the Defendant. The improperly disclosed vote split by Defendant does not confirm any type of impasse and certainly not a "hopeless deadlock." This term is attributed to the statement by the Defendant who thereafter uses it to claim improper influence on the part of the court, its staff or both. At best, Juror 9 is claiming that there was movement toward an even split. However, nowhere in the vagaries of his musings over the different breakdowns and trends is there any evidence that numbers were ever communicated to the court clerk. For this reason, the claim that an unsolicited prediction as to the amount of time necessary before a mistrial would be declared as a pronouncement by the court is not credible and wholly contradictory to the status of the deliberations known to the court. Even assuming there was some expression of the need to carryover for an additional day or days, such a disclosure would seem to be in the ordinary grasp of the jury, given that it took almost three weeks to present the evidence. Clearly, any ordinary juror would appreciate that it was the end of a week, going into the weekend, and

the inability to come to a consensus pursuant to the court's charge as a matter of law would, if necessary, require returning the following week.

As to the suggestion that court was motivated to push the jury to an outcome because it had represented to the venire at the outset that the trial was scheduled to take three weeks including deliberations, such time limitations arose from an agreement of counsel well in advance of the assignment of the case to the court. In describing the upcoming proceedings at jury selection, the court did convey the pre-agreed time estimates so that jurors with hardships could communicate them to the court and seek accommodation. To suggest that the court forced the panel with an ex parte instruction because of a preliminary time estimate that did not originate with the court, but rather the parties, is both insulting and disreputable since the Defendant itself agreed to those confines. Despite the court's respect for and desire to minimize the jurors' sacrifice of time, the court had no motive to shorten the deliberations or to urge the jurors to rush a decision, and the court had no "personal capital" invested in completing the trial in 15 days. There was simply no sense of urgency that would have compelled the court to interfere in the deliberations by imposing time limits.

The "collective misunderstanding" asserted by Juror 9 to have instigated the alleged perception of a deadlock and the alleged ex parte communication of an improper deadlock instruction have no basis in any objective evidence or concrete facts. It appears to derive solely from Juror 9's "no" vote position and disaffection and his efforts to derail the outcome by insisting that anything less than 10 was a "win" for the defense. When the writer says "no one understood that ten votes yes or ten votes no were required," what he really means is that no one would agree with him that less than ten for plaintiff meant that plaintiff could not prevail simply based on that vote. The court clerk confirming the required ten in the court's instruction, which

the writer clearly understood, and assuming that even occurred in some manner, when he indicated that the group had not reached ten votes on one of the questions on the second page, did not sway the deliberations one way or other, it simply deprived Juror 9 of a position that he was using to persuasively leverage and continue to argue for his "no" side.

c. "More Evidence"

The statement further suggests impropriety in the foreperson's claimed response to Juror 9's revelation that he might change his vote if he "could see more evidence," a request that he claims precipitated further texting with the court clerk. Juror 9 purportedly pointed out that there could be no more evidence other than what had been presented at the trial, which then led the foreperson to "cancel her request." Whatever insinuations Juror 9 seeks to make of this encounter and whether it is to suggest some sort of underhanded pattern of ex parte communication, this alleged incident is not worthy of consideration since it apparently never led to any response from the court clerk.

d. The bottom line

Juror 9's speculates that the deliberations might have taken a different course "had we understood at the beginning that we needed to achieve ten votes on either side to achieve a verdict." Juror 9 imputes his alleged "understanding" to the thoughts of other unidentified jurors .Such a statement is both preposterous and presumptuous—preposterous because they did know at the outset since it was one of the final points in the court's charge (and possibly one with which Juror 9 either disagreed or that he did not hear), and presumptuous because Juror 9 purports to represent the individual understandings of 11 other people. To suggest, as Juror 9 appears to do, that somehow the court caused the deliberations to derail and then reverse course, cannot be concluded from the insufficient facts in this document and does not explain the

inconsistencies in the juror's assertions. For example, despite claiming a collective misunderstanding, the juror describes the panel as "stuck" because ten members did not agree to an answer of one of the questions on the second page. Clearly, that statement demonstrates the knowledge that ten were required and is inconsistent with the claim of "collective misunderstanding." What is described is disagreement and ongoing debate, not deadlock or misunderstanding. Seeking confirmation of the necessity of ten jurors agreeing in the midst of what is described is not an influence that prejudices one side over another.

Expediency as a priority is not a factor that the court introduced but one that was present from the moment, on a Friday, that the court turned the case over to the jury. Whether jurors were motivated to reach a decision and felt a sense of urgency was as much a product of the length of the proceedings as it was the day on which the jury received the case for a decision. The document ignores the jury's attentive demeanor throughout the trial and the thorough notetaking that occurred. In the court's observations, the jury was assessing and drawing conclusions from the evidence long before the deliberations began—the jury was anxious and ready to decide when the court turned the matter over to it.

The predominant message that arises from this "letter" document is that Juror 9 resented being in the minority, resented that fellow jurors rejected his opinion, and likely clashed with the foreperson whose actions he repeatedly questions. Originating from an exchange with the Defendant's unidentified representative, the document lacks the substantive and objectively grounded detail and evidence of one-sidedness by the court that would undermine the court's integrity and ability to rule on Defendant's post-trial motion, a decision that is subject to incontrovertible procedural and substantive standards the details of which are barely acknowledged in Defendant's submissions, but which this court will address in detail next. In

the context of these standards, the Defendant's failure to provide any credible arguments is both telling and determinative. The timing, method and content of the attack on the court advanced without convincing legal analysis and compelling precedent undercuts any credible basis to consider Defendant's position.

V. LEGAL ISSUES

A. Recusal

Defendant contends that the aspersions cast by the juror statement, alone, disqualify the court from considering its own recusal and warrant its exclusion from a court en banc (which three-judge proceeding Defendant apparently presumes it is entitled to because it believes that the letter amounts to an accusation against the trial judge of impropriety, an matter of such inherent importance as to, in and of itself, convey entitlement). Defendant cites only one case in support of its recusal contention, *Hvizdak v. Linn*, 190 A.3d 1213, 1223 (Pa. Super. 2018), in the request and two cases in post-trial motion, *Bruckshaw v. Frankford Hosp. of the City of Phila*, 58 A.3d 102, 105 (Pa. 2012), and *Briskin v. Lerro Elec. Corp.*, 590 A. 2d 350, 352 (Pa. Super. 1991). Neither *Bruckshaw* nor *Lerro* involve recusal. *Hvizdak* was a contentious divorce case in which the husband sought to disqualify an entire county bench because prior rulings had gone against him. The Superior Court held that the assigned judge had properly determined that she was capable of impartiality. It provides little more than stock quotes about recusal decisions, none of which pertain to a situation where a litigant seeks out a juror post-trial for the apparent purpose of obtaining grounds to undermine the sitting judge.

The premise for Defendant's motion and for the contention that the court is not competent to decide its own ability to decide the matter impartially is that Defendant has accused the court of impropriety. Defendant presumes that an accusation such as the one it has made

presumptively entitles it to a new trial (or, at a minimum, to a full-blown trial on its accusations with the 12 jurors and the court as witnesses), and the court's interest in defending its actions make it unlikely to decide that matter fairly. The court's purpose in dissecting the statement from Juror 9 is to determine whether any factual foundation exists that supports Defendant's assertions and whether the facts represent such a serious basis for assessing the request for a new trial as to warrant referral to another judge. Without determining the merits of the underlying motion, the court considers the case law addressing outside communications with jurors during deliberations.

1. Communications with Jurors During Deliberations

Defendant presumes that the mere existence of any contact not precipitated by a juror note automatically presents grounds for a new trial. The presumption ignores the precise language of the charge and the reality of the court's administrative and mid-trial support of jurors during deliberations. Additionally, the "letter" forming the basis for Defendant's attempt to disqualify the court is rife with speculative "observations" and mental impressions and mindreading that are not based upon the personal knowledge of the juror but derive from speculative assumptions he makes from the second-hand relay of conversations to which he was not a party. Problematically, the document appears to purposefully entangle a timeless web of accusations with recitations relating to internal deliberations and purported claims about vote-splints and the ebb and flow of the decisional process. Furthermore, the format appears designed to foster imprecision with the specific intent to cast a cloud over the entire legitimacy of the deliberations in order to completely undermine the outcome or, at a minimum, suggest that only a further full-blown proceeding with witnesses and testimony on the record (potentially including the court as a witness) will untangle the claims made by the disgruntled juror. The desired

outcome seeks to substitute one single juror's attempts to invalidate a decision on the publicly announced and confirmed verdict of the majority of jurors and convert it into an award for the Defendant simply based upon the confirmed failure to achieve a ten-vote agreement, and, in particular, an agreement with his single "no" position.

The letter proceeds from the assumption that the court had instructed that "any" communications from the jury needed to take the form of a written note. However, the Suggested Standard Instruction given by the court states: "If, during deliberations, you have a serious doubt about **some portion of these instructions**, write your question in a note, signed by the foreperson." (Pa. Suggested Standard Jury Instruction (Civil) §12.00)(emphasis added). As the comments to the section make clear, the concern over communications relates to the trial judge rendering substantive instructions without doing so on the record. The letter has no foundation for any claim that communications occurred with the court. It simply claims that texts of indeterminate content were sent to the court officer (based purely on assumption): 1) requesting access to an item (the Round-up bottle not in evidence); and 2) purportedly seeking clarification as to how many jurors constituted a verdict (which this letter somehow claims included inquiry as to how long deliberations needed to transpire before a mistrial would be declared).[7] The writer presumes that a delay (untethered to the passage of time) between his assumption that a communication occurred by text or phone call meant that the court had been informed and had rendered a response. However, such an assumption is not based upon any

[7] The letter also claims there was one additional unwritten question communicated to the court officer as responsive to this juror's claim that he "needed more evidence" to vote for the Plaintiff and a request to the court officer to allegedly "bring more evidence for you," which Juror 9 claims was quickly "cancelled." Since this claimed request did not produce any response from the court officer, the court concludes that it is nothing more than a gratuitous attempt to disrespectfully malign the foreperson and to further undermine the verdict on the basis of hearsay and speculation.

specifics or personal knowledge. Furthermore, the document is wholly unclear as to whether the writer personally heard the court officer make statements or is simply relaying what he claims he "thought" the foreperson said about alleged communications with the court officer.

For purposes of determining the court's ability to consider these claims as a basis for ruling on Defendant's post-trial motion, the court considers the type of irregularities that support the consideration of the document. Specifically, as the Superior Court noted in *Keene v. Kirsh*, 2018 WL 822290 *2-3 (Pa. Super. Feb. 12, 2018), *citing Flenke v. Huntingdon*, 111 A.3d 1197, 1199 (Pa. Super. 2015):

> Initially, the court must decide whether a mistake occurred at trial. Id. If an error did transpire, the trial court must "determine whether the mistake was a sufficient basis for granting a new trial." Id. Specifically, the "harmless error doctrine underlies every decision to grant or deny a new trial" so that a new trial "is not warranted merely because some irregularity occurred[.]" Id. at 1199–1200. Instead, the party moving for a new trial "must demonstrate to the trial court that he or she has suffered prejudice from the mistake." Id. at 1200.

Defendant is asserting an irregularity in the nature of ex parte communications of the foreperson with the court officer, which, by inference, it (irresponsibly and without competent evidence) claims must have involved and/or been at the direction of the court. Nothing in the letter is evidence to support such an inference.

Moreover, the principal "complaint" set forth in the letter is not that the claimed responses from the court officer constituted substantive commentary or introduced non-record evidence into the deliberations, but rather, the juror's "perception" that the timing of the response and the suggestion that the deliberations did not have a deadline and could potentially continue over into an additional day or days impacted the movement of jurors from one side to the other and, ultimately, caused a sense of urgency to come to a result that led some jurors to "shift their vote" after, in his mind, the jury was stuck at less than a majority.

A juror's perception of an impasse (apparently temporary as demonstrated by the ultimate majority vote here) is not the same as a "deadlock," despite Defendant's characterization of it as such and assertion that a "deadlock" instruction was provided by the court. Nothing in the letter supports that interpretation. Nowhere, does Juror 9 say that the foreperson reported that the jury was "stuck". In fact, the letter inconsistently exposes his belief about an apparent global breakdown substantially favoring the Plaintiff and a section on the second page where the jury had not reached the requisite majority (inferring that they had done so elsewhere), at which point the writer claims a question was transmitted to the clerk about what constituted a sufficient vote for a verdict.

The imprecision in this document is particularly telling insofar as the jury through the foreperson did send a written note to the court more than an hour into the deliberations seeking clarification on the matter of "factual cause." Two of the questions on the second page asked the jury to determine factual cause. The transcript of proceedings reveals that the jury was recalled to the court at approximately 12:30 p.m. in response to this question and that the court re-read its charge on factual cause. The afternoon session of the trial that day further indicates that, following notification from the foreperson and after the time it took for counsel to return to the courthouse, the jury rendered its verdict at 3:54 p.m.

This is not a case like *Keene v. Kirsh* in which Defendant is alleging that jurors who had outside knowledge of and/or a relationship to one of the parties brought that bias into the deliberations. Nor, is this a case like *Pratt v Children's Hospital*, 581 Pa. 524, 539, 866 A.2d 313, 322-323 (Pa. 2005) in which the complaining juror reported that fellow jurors discussed the case with acquaintances who were physicians and then discussed the outside opinions in the deliberations. Fundamentally, the complaint here is not that outside information bearing on the

merits of the claim was communicated to the jurors and influenced the outcome, but that alleged confirmation of the number required for a verdict and the potential that the deliberations might have to continue beyond the afternoon prevented Juror 9 from continuing to argue his position and to eventually sway more jurors to his side or at least to secure a deadlock that would cause a mistrial, all matters intertwined with the deliberations, individual jurors' mental processeses and the vote splits. Even if the number ten for a majority was communicated and it was deduced, perceived or somehow inferred from that communication that, absent that number, deliberations could be expected to continue for an undisclosed amount of time, which "motivated" some of the jurors to consider whether to change their vote, such factors represent uncontroversial aspects of the process (the ten vote requirement) or ordinary pressures inherent in deliberations occurring after a lengthy trial and taking place on a Friday afternoon. Nothing in the substance that Juror 9 incompetently describes as part of the deliberative process represents a deadlock charge or extraneous influences improperly brought to bear. *See Malaney v. Missanelli*, 2014 WL 10920380 *5 (Pa. Super. May 29, 2014). Most importantly, Defendant makes no effort to show prejudice resulted from the communications, even if it is assumed that the description in the document is admissible evidence and accurate.

The Supreme Court in *Pratt* endorsed the Superior Court's objective test for prejudice in the initial decision on appeal. That test is described by the Court as follows:

> (1) whether the extraneous influence relates to a central issue in the case or merely involves a collateral issue; (2) whether the extraneous influence provided the jury with information they did not have before them at trial; and (3) whether the extraneous influence was emotional or inflammatory in nature.

866 A.2d at 317, *citing Carter by Carter v. United States Steel*, 529 Pa. 409, 421-22, 604 A.2d 1010, 1016-17 (Pa. 1992). Under this test, nothing in the claimed communication went to a

specific issue in the actual case but rather involved an administrative aspect of trials generally. Furthermore, the alleged communication did not tell the jury anything that the court had not told them in the charge or that, based on common sense (i.e. that if they did not complete deliberations on Friday, they would be held over to the following week), they would not have known, and finally the "influence" to the extent it could be called that, was not emotional or inflammatory in any manner. Accordingly, there is no basis for this court to conclude that document rises to a sufficient level that it would convey such a degree of prejudice that the court should be disqualified from addressing the recusal motion.

2. Content of the Deliberations

Juror 9's "observations" entwine "concerns" about communications with purported commentary on mental impressions and thoughts of other jurors including numerous claims about vote splits. Such "information" undermines the competency of entire document and renders Defendant's methods of bringing it to the court's attention suspect. While the superficial impression sought to be conveyed is that of Juror 9 engaged in a lengthy contemplative exercise whose "concerns" sprung unassisted and previously undisclosed from his lengthy ruminations. However, Defendant admits to instigating the efforts and to conducting an "interview" in which, the court has to assume, many of these matters, including disclosure of deliberations and vote totals occurred.

Rather than bringing this matter **immediately** to the court's attention to enable a confidential examination of this juror by the court on the record, Defendant elected to direct and control the use of the information and to manipulate its disclosure as part of its own court filing coupled with a simultaneous announcement to the press. While Defendant pronounced an interest in "protecting the identity" of the writer by filing the document under seal, other than the

name, the contents of the document and in particular crafting it as an attack on the court for a "secret" message and disclosing in the press a vote taken prior to the verdict are fully revealed. https://www.nasdaq.com/articles/bayer-says-judge-gave-roundup-jury-secret-message-before-$175-mln-verdict. Positioning the announcement, as it did in the financial press, demonstrates a purposefully directed effort to undercut the publicity from the verdict and influence the financial market in the Defendant's favor. It also presents a context in which the entirety of the document loses any potential validity.

The Court in *Pratt* recognized that: "the general framework concerning the admissibility of post-verdict juror testimony is fairly well settled and is, in fact, embodied in Pennsylvania Rule of Evidence 606(b)." 581 Pa. at 534, 866 A.2d at 319. The rule provides:

> Upon an inquiry into the validity of a verdict, ... a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions in reaching a decision upon the verdict or concerning the juror's mental processes in connection therewith, and a juror's affidavit or evidence of any statement by the juror about any of these subjects may not be received. However, a juror may testify concerning whether prejudicial facts not of record, **and beyond common knowledge and experience**, were improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

Pa.R.E. 606(b)(emphasis added). The Court describes the rule as a "competency-based principle" referred to in the decisional law as the "no-impeachment rule," the purpose of which is to prevent decisionmaking on the basis of an improper third-party communication rather than trial evidence. *Pratt*, 581 Pa. at 537, 866 A.2d at 321. The only inquiry is into the degree upon which extra record information was used in the deliberations and the impressions which jurors had about it.

Here, the letter does not implicate a situation in which the jury was supplied with prejudicial facts that were not of record. The matters allegedly concerned the number of jurors

necessary for a verdict, a matter not involving the evidence of liability or damages, and the alleged possible length of deliberations, equally irrelevant to the matters the jury was addressing on the verdict slip. These were not matters beyond common knowledge or experience. The concluding instructions specifically advised that 10 jurors of the 12 constituted a verdict. The letter seems to suggest that someone (likely the disaffected writer) had introduced the concept that as long as the jury did not have 10 votes, the matter was concluded in favor of the defendant, a notion that others disagreed with and purportedly needed confirmation (to the writer) before moving on, and not a matter of real controversy. Matters related to whether the jurors had heard/appreciated the total damages number do not implicate "secret" communications and are nullified by the jurors' statements, on the record, of agreement with the verdict as delivered by the foreperson.

Much of the document is based upon Juror 9's "thoughts," mental impressions and speculations as to the mental impressions of other jurors, all clearly reinforced with his "no" vote perspective. Such information is more self-confirming argument than fact and cannot form a basis for further inquiry into the jury's deliberations. *See Perez v. Maroon*, 2020 WL 3076574 *12-13 (Pa. Super. June 10, 2020). Weak and speculative accusations about improper influences on jurors does not merit a hearing. *Id*. Furthermore, the fact that Defendant first spoke to the juror who revealed the information about mental impressions and votes undermines the process by which Defendant has sought the court's disqualification.

The references in the statement to mental impressions and vote are so pervasive as to call into question the entire trustworthiness of any assertions, particularly when it is so unclear what the writer knows personally and what he has presumed from repeated hearsay. These aspects highlight the danger of a disqualification based upon a statement resulting from a post-verdict

interview by counsel of an already dissenting juror. The *Pratt* Court notes that it has discouraged pointed, post-verdict discussions between disappointed litigants and discharged jurors that are specifically directed toward collecting evidence with which to impeach the verdict. *See* ***Commonwealth v. Patrick,*** 416 Pa. 437, 442–43, 206 A.2d 295, 297 (1965) ("The practice of interviewing jurors after a verdict and obtaining from them ex parte, unsworn statements in answer to undisclosed questions and representations by the interviewers is *highly unethical and improper* and was long ago condemned by this court[;] ... *[i]t is forbidden by public policy* " (emphasis in original)). As this statement was gathered not only to impeach the verdict but to disqualify the court, the court views it as highly suspect and insufficient to preclude the court from addressing the recusal motion. Furthermore, the appended affirmation in front of a notary does not dispel the notion that this statement was not intended by this juror as a statement of facts under oath. It remains an ex parte statement that arises from undisclosed questions and representation by the interviewers.

Certainly, what Defendant proposes as the appropriate method to respond to its salvo should be troublesome to the courts: Defendant is suggesting that fellow jurors from the court take the case away from the trial judge in order to conduct a second trial on the outcome of the trial by calling every juror as a witness, and then attempting to call as a witness (which would never be allowed) before a panel of non-trial judges interrogating a fellow-judge as to his conduct during the deliberations, all based upon speculation and hearsay and as necessary discovery of the conduct of by-then identified counsel. Defendant's intent to turn this mere "request" for oral argument on a motion into an opportunity to interrogate the court is transparently obvious and substantively and procedurally improper from its actions—by providing unannounced copies of its filings to judges having no involvement in the trial, judges

having some supervisory role in the court, Defendant is asking them to sit in judgment and to ignore consistent case law reserving decision on recusal to the trial judge. The critical headlines in the press provide a further lobbying opportunity for this position.

Nevertheless, this court concludes the there is no express prohibition defeating the general rule throughout the courts that a recusal motion, in the first instance, must be addressed to the judge whose recusal is sought, and the court turns to the question of whether, under recusal law, it must turn this matter over to another jurist or to a court en banc, from which it is excluded, and turns to the substance of recusal based upon the Defendant's submission.

B. The Motion

Defendant characterizes its filing as a mere "request" for oral argument on its motion for post-trial relief and its contention that the argument should be heard by a court en banc simply because "it is entitled to request" such a hearing by a court en banc. Monsanto does not cite any facts or law suggesting that a court en banc is the proper procedure to address an ordinary motion for post-trial relief, presumably inferring its request to exclude the trial judge from such proceedings is a basis for obtaining a three-judge panel. Neither recusal law nor the rule governing en banc hearings support Defendant's position.

1. Recusal law

The law in Pennsylvania on recusal is neither controversial nor unclear. As a general matter, a motion for recusal must initially be directed to and decided by the jurist whose impartiality is being challenged. In considering a recusal request, the jurist must first make a conscientious determination of his or her ability to assess the case in an impartial manner, free of personal bias or interest in the outcome. The jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to

undermine public confidence in the judiciary. This is a personal and unreviewable decision that only the jurist can make. Where a jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overruled on appeal but for an abuse of discretion. *2303 Bainbridge, LLC v. Steel River Building Systems, Inc.*, 239 A.3d 1107, 1118 (Pa. Super. 2020) (quoting *Commonwealth v. Kearney*, 92 A.3d 51, 60 (Pa. Super. 2014), *appeal denied*, 627 Pa. 763, 101 A.3d 102 (2014)). "In practice, '[d]iscretion is abused when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will.' " *Lewis v. Lewis*, 234 A.3d 706, 722 (Pa. Super. 2020) (quoting *Commonwealth v. Goldman*, 70 A.3d 874, 879 (Pa. Super. 2013), *appeal denied*, 624 Pa. 672, 85 A.3d 482 (2014)). "Further, 'because the integrity of the judiciary is compromised by the appearance of impropriety, a jurist's recusal is necessary where [the judge's] behavior appears to be biased or prejudicial." *Bowman v. Rand Spear & Associates, P.C.*, 234 A.3d 848, 862 (Pa. Super. 2020) (quoting *Rohm and Haas Co. v. Continental Cas. Co.*, 732 A.2d 1236, 1261 (Pa. Super. 1999)). However, simply because a judge rules against a [party] does not establish bias on the part of the judge against that [party]. Along the same lines, a judge's remark made during a hearing in exasperation at a party may be characterized as intemperate, but that remark alone does not establish bias or partiality. *Lewis, supra* at 722 (quoting *Commonwealth v. McCauley*, 199 A.3d 947, 951 (Pa. Super. 2018)). Likewise, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings ... do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Bowman, supra* at 862-63 (quoting *Kearney, supra* at 61).

In this case, the court upon receipt of its trial assignment was presented with some 37 motions in limine, all of which were ruled on prior to jury selection. The court also assumed the task of addressing the admissibility of expert testimony when the assigned judge and team leader of the mass tort program referred decision on all of the *Frye* motions to the trial court. The court faced numerous mistrial motions from the defense throughout the trial, each time it made a ruling with which the defense disagreed. Based upon the court's adverse rulings at trial, the Defendant was clearly motivated to secure the court's disqualification and approached its post-trial relief with such an objective.

In this case, Defendant attempts to preclude the court from ruling on its own recusal by suggesting that the court had secret communications with the jury through the court officer. However, the Defendant has no factual basis for such a suggestion. At best, it relies upon an assumption of its corrupted, disaffected juror who is mind-reading another juror's alleged text messages and guessing what the court officer is doing out of the presence of the jury. The juror did not directly receive any communications and has no knowledge of any involvement of the court. To allow such a weak foundation to support recusal would reward the Defendant's questionable conduct and condone judge-shopping. This is not a case that implicates the court as a witness regarding the juror's letter. *See Municipal Publications, Inc. v. Court of Common Pleas of Philadelphia County*, 507 Pa. 194, 489 A.2d 1286 (Pa. 1985). This case is clearly distinguishable from *Municipal Publications*, where the judge was a witness as to his asserted (and admitted) relationship with the Plaintiff's counsel. As the Supreme Court noted: "Where the disqualification hearing brings in question the credibility of the judge, it is obvious that the judge is not in the position to maintain the objective posture required to preside over the proceeding and to assume the role of the trier of fact in that proceeding." (citations omitted).

507 Pa. at 201-202, 489 A.2d at 1289. Here the basis for questioning the court and examining the judge's credibility is pure speculation interpreting the actions of parties other than the court, in a matter not brought to the court's attention immediately upon an interview with the juror in a manner capable of securing the information in an uncorrupted manner.

Defendant makes clear that its objective is pure, undisguised judge-shopping, even as to the preliminary matter of recusal. It has served the papers on two other judges, with the obvious intent to solicit their involvement and to have them remove the trial judge. It has characterized the "letter" as describing "secret" messages from the court, despite the writer lacking personal knowledge--not having been privy to the alleged communications and not having observed any actions implicating the court. Moreover, it has further corrupted the process by issuing press releases characterizing its own filings and using inflammatory characterizations of the court's actions that lack factual confirmation in the underlying documentation.

Having publicly touted nine previous verdicts in its favor, Defendant repudiated the outcome and sought a means to discredit it, with Juror 9 providing the mechanism for that object. Additionally, Defendant repudiates the court itself, asserting that it cannot decide the recusal issue itself, but must be excluded from the court en banc—an obvious attempt to silence the court. As the Supreme Court in *Pratt* has recognized:

> Judge shopping has been universally condemned, and will not be tolerated at any stage of the proceedings. *See, e.g., Commonwealth v. Ryan,* 484 Pa. 602, 400 A.2d 1264 (1979); *Commonwealth v. Prado,* 481 Pa. 485, 393 A.2d 8 (1978); *Commonwealth v. Schab,* 477 Pa. 55, 383 A.2d 819 (1978); *Craig v. W.J. Thiele & Sons, Inc.,* 395 Pa. 129, 149 A.2d 35 (1959); *Linn v. Employers Reinsurance Corp.,* 392 Pa. 58, 139 A.2d 638 (1958). Thus, where fabricated, frivolous or scurrilous charges are raised against the presiding judge during the course of the proceeding, the court may summarily dismiss those objections without hearing where the judge is satisfied that the complaint is wholly without foundation. In such case the complaining party may assign the

> accusation as a basis for post-trial relief and, if necessary, a record can be developed at that stage and in that context.

507 Pa. at 202, 489 A.2d at 1289-90. Examining the contents of the letter and the vague and speculative suggestion of involvement of the court as analyzed herein, the court must summarily conclude that the claims are frivolous, fabricated to foreclose adverse rulings with which the defense has previously disagreed and broadcast to counter adverse publicity from the verdict and curry favor with investors and the financial press. Summary dismissal of those objections as a basis for recusal is warranted on the face of the document, although further consideration as a basis for post-trial relief can be reserved, as contemplated in *Pratt*. *See also, M.O. v. F.W.*, 2012 Pa. Super. 49, 42 A.3d 1068, 1071 (Pa. Super. 2012).

Justice Wecht addressed the chilling effect on the judicial system of judge-shopping in the form of recusal motions in *League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 341, 179 A.3d 1010 (Pa. 2018):

> Recusal is not to be granted lightly, lest a jurist abdicate his "responsibility to decide." Pa. Code of Judicial Conduct Rule 2.11(A) (hereinafter the Pa.C.J.C. or the "Code"). … "[u]nwarranted disqualification or recusal may bring public disfavor to the court and to the judge personally." *Id.* 2.7, cmt. 1 ("Responsibility to Decide)." Furthermore, the Preamble to the Code notes that it is not "intended to be the basis for litigants to seek collateral remedies against each other or to gain tactical advantages in proceedings before a court." *Id.* Preamble ¶ 7.

645 Pa. at 347, 179 A.3d at 1086. Such efforts represent a form of "gamesmanship" particularly suspect when not brought to the court at the very first opportunity (which these were not as soon as Defendant interviewed the juror). *Lomas v. Kravitz*, 642 Pa. 181, 195, 170 A.3d 380, 389 (Pa.

While it is true that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome," *In Re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955), recusal motions are routinely addressed in the first instance by the

judge whose recusal is sought. *Com. v. Abu-Jamal*, 553 Pa. 569, 720 A.2d 121, 89 ("As a general rule, a motion for recusal is initially directed to and decided by the jurist whose impartiality is being challenged."). Therefore, it cannot be the case that any question of fact even remotely involving a judge's impartiality requires a separate hearing before a separate judge. Instead, the general rule is that a party seeking the recusal of a judge, at a minimum, must satisfy a burden of production and persuasion to show that the recusal claim is not frivolous. *Com. v. Dip*, 2019 Pa. Super. 307, 221 A.3d 201, 207 (Pa. Super. 2019). In order to prevail on a motion for recusal, the party seeking recusal is required "to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." *Interest of L.V.*, 2019 Pa. Super. 144, 209 A.3d 399 (emphasis added); *see also Bridgeport Fire Litigation*, 5 A.3d at 1254.

Taking all these matters into consideration and having determined as an initial matter that the letter does not advance any personal knowledge to suggest that this court engaged in backdoor communication and further that it does not reference prejudicial facts not of record or not within common knowledge, nor does Defendant present any arguments related to how the claimed information caused the jurors to decide the matter based upon extraneous information, this court's conscientious assessment does not lead to the inescapable conclusion that it must recuse. In fact, in this court's view, it would be a dereliction of its obligations to the prevailing party, the jurors, its fellow judges and the court system to withdraw from the case. The court invested more than four weeks of its time in the case, first addressing extensive motions in limine and then sitting daily during the presentation of evidence for almost three full weeks. The court is intimately acquainted with the evidentiary issues in the case which form a large part of the post-trial motions. The case was the first and denominated a "bellweather" case in the Mass

Tort Program. No other judge is equally prepared to address the matters raised post-trial. The court cannot, on the basis of the weak observations of the letter-writer and in light of the circumstances involved in the revelation of his complaints, in good conscience, allow such an opportunistic effort to eliminate the court's involvement in the case. The "drive-by" effort to implicate the court by speculation and hearsay does not legitimately undermine the court's ability to conduct a full and fair assessment of the trial and Defendant's asserted points of error. The court has no vested interest in the outcome or bias for or against any party. The court must deny recusal on the record presented, and does so without a hearing because the submission simply does not present an adequate factual foundation to support such relief.

2. Court en Banc

Defendant's "request" for oral argument concomitantly includes the claim that it is "entitled" to make such arguments before a court en banc, consisting of three judges of this court. Such entitlement is subject to examination in light of the applicable rule. Pa.R.C.P. 227.1 is the rule dealing with motions for post-trial relief. It sets forth the relief that the court may afford and the reasons why such relief may be granted. Rule 227.2 is the provision addressing a court en banc. Contrary to Defendant's assertion and constituting a change from prior procedures, a hearing on post-trial motions before a court en banc is not the default procedure. In fact, it is not an "entitlement" or readily available. Nor is it a procedure to by-pass the trial judge, as Defendant proposes. Tellingly, Defendant does not reference the text of the rule—for good reason, as the rule is entirely contrary to Defendant's representations and argument.

Rule 227.2 provides that "all post-trial motions and other post-trial matters shall be heard and decided by the trial judge unless the trial judge orders that the matter be heard by a court en banc." The availability of the procedure is not an automatic "entitlement" or a guarantee if a

party requests it. As the comment to the Rule indicates, "it is in the discretion of the trial judge to grant the request," and further suggests that the decision of the trial judge as to whether the issues "warrant" consideration by a panel of judges is unreviewable (which would appear to be why Defendant seeks to disqualify the court before the issue of a hearing before a court en banc is even considered).

The stated purpose of post-trial motions—to allow the trial judge (or, if unavailable, a substitute judge) to correct errors made in the course of the trial—makes this court's authority to determine whether to utilize the en banc procedure particularly germane. *Harris v. Burgmann*, 2023 WL 3533508 (Pa. Super. May 18, 2023) The judge who conducted the trial is in the best position to review its rulings and take corrective action. The purpose of post-trial motions is to give the trial court an opportunity to review and reconsider its earlier rulings and correct its own errors before an appeal is taken. *Lahr v. City of York,* 972 A.2d 41 (Pa.Cmwlth.2009). Post-trial motions should be granted only when the moving party suffered prejudice as a result of the trial court's clear error. *Id.*; *Boswell v. Skippack Tp.* 2012 WL 8670346 (Pa. Cmmwlth. June 12, 2012).

In this case, Defendant's actions in coupling this filing with a press release and public advocacy touting the number of cases in which it has prevailed suggest a level of self-importance out of touch with the law in this jurisdiction dealing with defective products and the function of post-trial process. Having slogged its way through motions in limine and the trial where numerous rulings were greeted with motions for mistrial, this court sees no purpose in burdening two additional judges with Defendant's post-trial arguments, taking resources away from other equally important matters.

Furthermore, Defendant offers no convincing reason why it requires consideration before a court en banc, other than "entitlement."

Accordingly, the court will deny the request for oral argument before a court en banc. An order setting forth the court's rulings herein will accompany this opinion.

ERNEST CARANCI and CARMELA CARANCI, Plaintiffs, v. MONSANTO COMPANY, et al., Defendants.	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY TRIAL DIVISION -CIVIL No. 210602213 Control no. 23111384

ORDER

AND NOW, this 5th day of January, 2024, upon consideration of the Defendant's "miscellaneous motion" styled as a non-motion 'Request' to recuse the trial court and for appointment of a court en banc, and Plaintiff's Response thereto, and for the reasons set forth in the court's opinion filed herewith, and the court having determined that Defendant is not asserting that the court exhibited personal animus or bias or had a financial interest in the outcome of the trial or had an undisclosed relationship with counsel or any of the parties or witnesses, and the court having made a thorough self-evaluation and a conscientious determination that it is fully capable of deciding and will decide the Defendant's Motion for Post-Trial Relief fairly and without prejudice, it is hereby ORDERED and DECREED that Defendant's "request' for relief in the form of the recusal of the trial court and Defendant's companion request for a hearing before a court en banc are DENIED.

BY THE COURT:

Crumlish 3

Crumlish, III, J.

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IN THE SUPREME COURT OF PENNSYLVANIA

Ernest Caranci and Carmela Caranci	:	993 EDA 2024
v.	:	
Monsanto Company, Bayer AG, S&H Hardward and Supply Company, Penn Hardward, Inc., Penn Hardware Two, Inc.	:	

Appeal of: Monsanto Company

PROOF OF SERVICE

I hereby certify that this 14th day of August, 2025, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	Arnold, Kurt Brynilde
Service Method:	eService
Email:	karnold@arnolditkin.com
Service Date:	8/14/2025
Address:	6009 Memorial Drive Houston, TX 77007
Phone:	713-222-3800
Representing:	Respondent Caranci and Carmela Caranci, Ernest

Served:	Becker, Charles Lyman
Service Method:	eService
Email:	charles.becker@klinespecter.com
Service Date:	8/14/2025
Address:	Kline & Specter, P.C. 1525 Locust Street, 19th Floor Philadelphia, PA 19102
Phone:	215-772-1000
Representing:	Respondent Caranci and Carmela Caranci, Ernest

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Christensen, Roland
Service Method:	eService
Email:	rchristensen@arnolditkin.com
Service Date:	8/14/2025
Address:	6009 Memorial Drive Houston, TX 77007
Phone:	713-222-3800
Representing:	Respondent Caranci and Carmela Caranci, Ernest

Served:	Itkin, Jason A.
Service Method:	eService
Email:	jitkin@arnolditkin.com
Service Date:	8/14/2025
Address:	6009 Memorial Houston, TX 77007
Phone:	713-222-3800
Representing:	Respondent Caranci and Carmela Caranci, Ernest

Served:	Laidacker, Ruxandra Maniu
Service Method:	eService
Email:	andra.laidacker@klinespecter.com
Service Date:	8/14/2025
Address:	1525 Locust St. Floor 19 Philadelphia, PA 19102
Phone:	215-772-1000
Representing:	Respondent Caranci and Carmela Caranci, Ernest

Served:	Merk, Melissa A.
Service Method:	eService
Email:	melissa.merk@klinespecter.com
Service Date:	8/14/2025
Address:	140 Wrights Rd Newtown, PA 18940
Phone:	267-240-1808
Representing:	Respondent Caranci and Carmela Caranci, Ernest

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Millrood, Tobias Lael
Service Method:	eService
Email:	tmillrood@pbmattorneys.com
Service Date:	8/14/2025
Address:	1525 Locust Street Philadelphia, PA 19102
Phone:	215-772-1358
Representing:	Respondent Caranci and Carmela Caranci, Ernest

Served:	Wexler, Noah Michael
Service Method:	eService
Email:	nwexler@arnolditkin.com
Service Date:	8/14/2025
Address:	6009 Memorial Drive Houston, TX 77007
Phone:	713-222-3800
Representing:	Respondent Caranci and Carmela Caranci, Ernest

/s/ John Jacob Hare

(Signature of Person Serving)

Person Serving:	Hare, John Jacob
Attorney Registration No:	070419
Law Firm:	Marshall Dennehey, P.C.
Address:	Marshall Dennehey Pc 2000 Market St Ste 2300 Philadelphia, PA 19103
Representing:	Petitioner Monsanto Company