

FINAL SHOWN

Guard, James 09-13-2018

Guard, James 09-14-2018

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Total Time 00:16:55



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6:6 - 6:6	Guard, James 09-13-2018 (00:00:01)	JG2_COMBINED_05.1
6:24 - 7:4	Guard, James 09-13-2018 (00:00:11) 6:6 Q. Mr. Guard, good morning again. 6:24 Q. You have been designated as a corporate 7:1 representative of Monsanto on a number of different 7:2 topics involving sales, marketing, advertising, and 7:3 labeling. Do you understand that? 7:4 A. I do.	JG2_COMBINED_05.2
7:21 - 8:3	Guard, James 09-13-2018 (00:00:14) 7:21 Q. You are currently an employee of Bayer; is 7:22 that correct? 7:23 A. Yes. 7:24 Q. When did you first become a Bayer employee 8:1 as opposed to a Monsanto employee? When was the date? 8:2 A. When the close occurred. I don't know the 8:3 exact date, but a month or so ago.	JG2_COMBINED_05.3
8:13 - 8:18	Guard, James 09-13-2018 (00:00:11) 8:13 Q. Is your current title with Bayer the 8:14 global lawn and garden lead? 8:15 A. Yes. 8:16 Q. And is that the same title that you last 8:17 held when you were with Monsanto? 8:18 A. Yes.	JG2_COMBINED_05.4
41:23 - 43:7	Guard, James 09-13-2018 (00:01:18) 41:23 As the global lawn and garden lead, your job duties 41:24 included United States media and advertising; correct? 42:1 A. That is correct. 42:2 Q. It included long-range planning and 42:3 budgeting; correct? 42:4 A. Correct. 42:5 Q. It included development of the annual 42:6 business plan and strategy? 42:7 A. Yes. 42:8 Q. It involved at times conflict resolution? 42:9 A. Yes. 42:10 Q. It involved project management and product 42:11 development; correct? 42:12 A. Correct. 42:13 Q. It included managing the advertising media 42:14 and product development for Canada?	JG2_COMBINED_05.5

42:15 A. Yes.

42:16 Q. It involved managing the expansion of
42:17 Monsanto lawn and garden products into Mexico?

42:18 A. Correct.

42:19 Q. It involved oversight of the international
42:20 and United States business; correct?

42:21 A. Correct.

42:22 Q. It involved what are called brand
42:23 extension projects; correct?

42:24 A. Correct.

43:1 Q. It involved managing various licensing
43:2 agreements to different entities?

43:3 A. Yes.

43:4 Q. And it also involved what was called
43:5 obsolete inventory management; correct?

43:6 A. Correct. All within the scope of the lawn
43:7 and garden space. That's right.

75:13 - 75:14

Guard, James 09-13-2018 (00:00:05)

JG2_COMBINED_05.6

75:13 You certainly agree as Monsanto's representative
75:14 that consumers have a freedom of choice; correct?

75:17 - 75:21

Guard, James 09-13-2018 (00:00:12)

JG2_COMBINED_05.7

75:17 A. I believe in the free market and consumers
75:18 can go to a shelf and buy what products they like.

75:19 Q. (By Mr. Jerry Kristal) Okay. And part of
75:20 making an informed decision is having knowledge about
75:21 the hazards of the product; correct?

75:24 - 76:6

Guard, James 09-13-2018 (00:00:21)

JG2_COMBINED_05.8

75:24 A. That could be -- that is a consideration
76:1 that consumers likely would factor in.

76:2 Q. (By Mr. Jerry Kristal) Okay. And you
76:3 would agree that consumers would want to know if
76:4 they're exposing themselves to a product that is a
76:5 probable carcinogen in terms of them making a decision
76:6 to purchase it or not purchase it; correct?

76:9 - 76:15

Guard, James 09-13-2018 (00:00:15)

JG2_COMBINED_05.9

76:9 A. So you want me to speculate what consumers
76:10 would think?

76:11 Q. (By Mr. Jerry Kristal) Okay. As
76:12 Monsanto's representative, are you telling us that you
76:13 don't think a consumer would want to know, in making an

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76:19 - 76:20	76:14 informed choice, whether a product represents a 76:15 potential for them to get cancer? Guard, James 09-13-2018 (00:00:05)	JG2_COMBINED_05_10
76:23 - 77:3	76:19 A. So I'll speculate and say that I think 76:20 consumers would want to know that. Guard, James 09-13-2018 (00:00:11) 76:23 Do you think you have to do a marketing 76:24 study to find out if people would want to know if a 77:1 product they're making a decision about could present a 77:2 cancer hazard to them or not before they make the 77:3 purchase?	JG2_COMBINED_05_11
77:6 - 77:7	Guard, James 09-13-2018 (00:00:05) 77:6 A. You know, I think we would do a study to 77:7 understand that in detail, yes.	JG2_COMBINED_05_12
93:4 - 93:7	Guard, James 09-13-2018 (00:00:09) 93:4 Q. And there are various precautionary 93:5 measures that are listed in a safety data sheet; 93:6 correct? 93:7 A. Yes.	JG2_COMBINED_05_13
96:12 - 96:15	Guard, James 09-13-2018 (00:00:11) 96:12 Q. So there's lots of precautionary 96:13 information in the safety data sheet for the exact same 96:14 product which is not on the label that the consumer 96:15 would be reading; correct?	JG2_COMBINED_05_14
96:19 - 96:20	Guard, James 09-13-2018 (00:00:04) 96:19 A. There's different texts describing the 96:20 warnings or precautions.	JG2_COMBINED_05_15
101:23 - 102:4	Guard, James 09-13-2018 (00:00:21) 101:23 Q. (By Mr. Jerry Kristal) You would 101:24 certainly agree that in terms of a consumer making a 102:1 choice to purchase a product such as an herbicide like 102:2 Roundup, consumer would want to know if they got that 102:3 product on the skin that it could enter their 102:4 bloodstream; right? That's a no-brainer?	JG2_COMBINED_05_16
102:8 - 102:9	Guard, James 09-13-2018 (00:00:02) 102:8 A. I don't know what consumers would want to 102:9 know.	JG2_COMBINED_05_17
104:19 - 104:23	Guard, James 09-13-2018 (00:00:13) 104:19 Q. (By Mr. Jerry Kristal) Would you 104:20 want to know if an herbicide that you go into a Home	JG2_COMBINED_05_18

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106:2 - 106:3	<p>104:21 Depot, for example, to purchase could get into your 104:22 bloodstream? Would you want to know that fact before 104:23 making a purchasing decision? Guard, James 09-13-2018 (00:00:06)</p>	JG2_COMBINED_05.19
106:4 - 106:8	<p>106:2 A. Yeah. I would want to understand if 106:3 there's risks of using the product. Guard, James 09-13-2018 (00:00:13)</p>	JG2_COMBINED_05.20
106:12 - 106:18	<p>106:4 Q. Would you want to understand, if it was 106:5 true, that there was a potential for the product to 106:6 enter your bloodstream, circulate around your whole 106:7 body in your blood and then get excreted through the 106:8 urine or feces? Would you want to know that fact? Guard, James 09-13-2018 (00:00:15)</p>	JG2_COMBINED_05.21
106:21 - 106:21	<p>106:12 A. I suppose I would. I really, like I said, 106:13 haven't really thought about it much. 106:14 Q. (By Mr. Jerry Kristal) Okay. But you 106:15 were not able to even think about whether you should 106:16 convey that fact in any ad or marketing of Roundup 106:17 because you didn't know that there was even that 106:18 potential; right? Guard, James 09-13-2018 (00:00:00)</p>	JG2_COMBINED_05.22
116:13 - 116:19	<p>106:21 A. Right. Guard, James 09-13-2018 (00:00:16) 116:13 Q. Now, safety data sheets are meant for, in 116:14 the lawn and garden context, either Monsanto employees 116:15 or Scott's employees; correct? 116:16 A. Or retailers. 116:17 Q. What do you mean? Like a Walmart or a 116:18 Lowe's or a Home Depot? 116:19 A. Correct.</p>	JG2_COMBINED_05.23
116:20 - 116:23	<p>Guard, James 09-13-2018 (00:00:09) 116:20 Q. But the safety data sheets are not 116:21 provided with Roundup lawn and garden products to the 116:22 consumer purchasing them; correct? 116:23 A. Correct.</p>	JG2_COMBINED_05.24
124:20 - 124:24	<p>Guard, James 09-13-2018 (00:00:14) 124:20 Q. Would you agree that if a person is 124:21 provided with information about something being 124:22 harmful, they would want to know what the harm is in 124:23 order to determine how extensively they should protect</p>	JG2_COMBINED_05.25

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125:3 - 125:4	124:24 themselves? Guard, James 09-13-2018 (00:00:05)	JG2_COMBINED_05.26
138:15 - 138:19	125:3 A. Yeah, I don't know what people who were 125:4 using this might or might not want. Guard, James 09-13-2018 (00:00:13) 138:15 Q. (By Mr. Jerry Kristal) Did you ever speak 138:16 to anybody about, hey, why are we not telling consumers 138:17 buying Super Concentrate, or Roundup Weed and Grass 138:18 Killer Number Three, that they should follow what's on 138:19 the SDS? Did you ever ask anybody?	JG2_COMBINED_05.27
138:22 - 138:22	Guard, James 09-13-2018 (00:00:01) 138:22 A. I don't recall.	JG2_COMBINED_05.28
139:22 - 140:3	Guard, James 09-13-2018 (00:00:22) 139:22 Q. (By Mr. Jerry Kristal) In any 139:23 means of communications that you can think of, did you 139:24 ever ask anyone at Monsanto, as the Monsanto lawn and 140:1 garden lead for the entire earth, why don't we provide 140:2 the safety information to a consumer purchasing our 140:3 Roundup product that we're providing to our employees?	JG2_COMBINED_05.29
140:6 - 140:6	Guard, James 09-13-2018 (00:00:03) 140:6 A. Yeah, I don't recall -- I don't recall.	JG2_COMBINED_05.30
154:7 - 154:8	Guard, James 09-13-2018 (00:00:02) 154:7 Q. (By Mr. Jerry Kristal) Do you use 154:8 Roundup?	JG2_COMBINED_05.31
154:11 - 154:13	Guard, James 09-13-2018 (00:00:04) 154:11 A. You're asking me personally? 154:12 Q. (By Mr. Jerry Kristal) Yes, sir. 154:13 A. Yes, I do.	JG2_COMBINED_05.32
193:7 - 193:7	Guard, James 09-13-2018 (00:00:02) 193:7 Q. (By Mr. Jerry Kristal) I'm going to mark	JG2_COMBINED_05.33
193:8 - 193:14	Guard, James 09-13-2018 (00:00:33) 193:8 as Exhibit 8 -- this is an e-mail with an attachment. 193:9 The e-mail is from Martin Voss -- V-O-S-S -- to a 193:10 number of different people. It's dated February 12th, 193:11 2009. This was produced by Monsanto. The Bates number 193:12 is 03400272, and the attachment is a February 12th, 193:13 2009, Roundup FTO growth initiative. And that's a 193:14 PowerPoint.	JG2_COMBINED_05.34 EXHIBIT 788.1.1
197:24 - 198:5	Guard, James 09-13-2018 (00:00:21) 197:24 Q. The e-mail says from Mr.	JG2_COMBINED_05.35 EXHIBIT 788.1.2

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198:1 - 198:8	198:1 Voss, dear all, attached for your reference is the 198:2 Roundup FTO deck. We didn't get to go through today. 198:3 Looking forward to presenting this to you during a 198:4 telco soon. So let's untangle that a little bit. FTO 198:5 means freedom to operate; correct? Guard, James 09-13-2018 (00:00:00)	JG2_COMBINED_05.36
208:5 - 208:8	198:8 A. Yes. Guard, James 09-13-2018 (00:00:09) 208:5 Q. (By Mr. Jerry Kristal) Would you agree 208:6 that any alleged hazard could affect Monsanto's freedom 208:7 to operate with respect to Roundup if it was an alleged 208:8 hazard of Roundup?	JG2_COMBINED_05.37 elcar
208:11 - 208:11	Guard, James 09-13-2018 (00:00:00)	JG2_COMBINED_05.38
221:16 - 221:17	208:11 A. Yes. Guard, James 09-13-2018 (00:00:05) 221:16 Q. (By Mr. Jerry Kristal) And if you turn to 221:17 Roundup on the media screen/consequences page. On that	JG2_COMBINED_05.39 EXHIBIT 78A.25.1
221:18 - 222:2	Guard, James 09-13-2018 (00:00:29) 221:18 PowerPoint it says -- quote -- "for Roundup, 221:19 restrictions could directly impact our business. Uses 221:20 the more at risk: Vineyard/around the 221:21 farm/amenity/L&G" -- end quote. Do you see that? 221:22 A. Yes. 221:23 Q. So before you got there, there was concern 221:24 at Monsanto that restrictions on Roundup could impact 222:1 the lawn and garden business, among other things; 222:2 correct?	JG2_COMBINED_05.40 EXHIBIT 78A.25.2
222:5 - 222:6	Guard, James 09-13-2018 (00:00:02) 222:5 A. Yes, I would assume so based on that 222:6 sentence.	JG2_COMBINED_05.41
222:7 - 222:8	Guard, James 09-13-2018 (00:00:06) 222:7 Q. (By Mr. Jerry Kristal) If you turn to the 222:8 page what do we do, stewardship technical teams. Do	JG2_COMBINED_05.42 EXHIBIT 78A.30.1
222:9 - 222:12	Guard, James 09-13-2018 (00:00:12) 222:9 you see that page? The middle bullet point says -- 222:10 quote -- "glyphosate and Roundup tox allegation. 222:11 Defend glyphosate and Roundup against all toxicological 222:12 allegations, (Belli/Seralini studies) by asking to the	JG2_COMBINED_05.43 EXHIBIT 78A.30.2
222:13 - 222:19	Guard, James 09-13-2018 (00:00:20) 222:13 officials or independent experts to write reports,	JG2_COMBINED_05.44

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	222:14 publications, refuting their conclusions" -- end quote.	
	222:15 Do you see that?	
	222:16 A. Yes.	
	222:17 Q. Okay. So Monsanto is going to defend	
	222:18 Roundup and glyphosate against all toxicological	
	222:19 allegations without even knowing what they are; right?	
222:22 - 223:1	Guard, James 09-13-2018 (00:00:09)	JG2_COMBINED_05.45
	222:22 A. I don't know.	
	222:23 Q. (By Mr. Jerry Kristal) Well, that's what	
	222:24 it says; right? Defend glyphosate and Roundup against	
223:4 - 223:4	Guard, James 09-13-2018 (00:00:01)	JG2_COMBINED_05.46
	223:4 A. Yes, those are the words on this page.	
223:5 - 223:8	Guard, James 09-13-2018 (00:00:10)	JG2_COMBINED_05.47
	223:5 Q. (By Mr. Jerry Kristal) And in fact,	
	223:6 that's what Monsanto did for years and years. If	
	223:7 something negative came up about Roundup regarding	
	223:8 toxicology, it would push back against it; correct?	
223:11 - 223:13	Guard, James 09-13-2018 (00:00:06)	JG2_COMBINED_05.48
	223:11 A. If there was an allegation against the tox	
	223:12 profile of glyphosate and Roundup, we would investigate	
	223:13 it.	
223:14 - 223:15	Guard, James 09-13-2018 (00:00:03)	JG2_COMBINED_05.49
	223:14 Q. (By Mr. Jerry Kristal) It doesn't say	
	223:15 investigate toxicological allegations here, does it?	
223:18 - 223:18	Guard, James 09-13-2018 (00:00:01)	JG2_COMBINED_05.50
	223:18 A. That word isn't on the page.	
259:24 - 260:2	Guard, James 09-13-2018 (00:00:13)	JG2_COMBINED_05.51
	259:24 Q. (By Mr. Jerry Kristal) Is it correct that	alcar
	260:1 Monsanto was spending for many years on average about	
	260:2 \$10 million a year advertising Roundup?	
260:5 - 260:6	Guard, James 09-13-2018 (00:00:02)	JG2_COMBINED_05.52
	260:5 A. For Roundup lawn and garden in the United	
	260:6 States, yes, that's right.	
260:7 - 260:10	Guard, James 09-13-2018 (00:00:05)	JG2_COMBINED_05.53
	260:7 Q. (By Mr. Jerry Kristal) And you were	
	260:8 responsible for the budget and the long-range planning,	
	260:9 so you would know that; right?	
	260:10 A. That's correct.	
313:21 - 313:21	Guard, James 09-13-2018 (00:00:04)	JG2_COMBINED_05.54

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313:22 - 314:3	313:21 Q. (By Mr. Jerry Kristal) And if you turn to Guard, James 09-13-2018 (00:00:20)	EXHIBIT 791.A.1 JG2_COMBINED_05.55
	313:22 Page 4 of Exhibit 11, the top says -- quote -- "Roundup 313:23 dollar sales have increased at a CAGR of 12.6 percent 313:24 from 1996 to 1999 and are projected to increase another 314:1 12.5 percent in the year 2000" -- end quote. Do you 314:2 see that?	EXHIBIT 791.A.2
314:21 - 314:24	314:3 A. Yes. Guard, James 09-13-2018 (00:00:14)	JG2_COMBINED_05.56 EXHIBIT 791.A.3
	314:21 Q. (By Mr. Jerry Kristal) And if I'm reading 314:22 this graph correctly, the dollar sales of Roundup in 314:23 1996 were about \$130 million?	
315:11 - 315:12	314:24 A. That appears to be right. Guard, James 09-13-2018 (00:00:07)	JG2_COMBINED_05.57 EXHIBIT 791.A.4
	315:11 Q. 1997, sales of Roundup for 315:12 lawn and garden was just shy of \$160 million?	
315:15 - 315:19	Guard, James 09-13-2018 (00:00:10)	JG2_COMBINED_05.58
	315:15 A. That's what's written on this slide. 315:16 Q. (By Mr. Jerry Kristal) Do you have any 315:17 reason to think this is not accurate? 315:18 A. I don't have any reason to believe it's 315:19 accurate or inaccurate.	
316:14 - 316:17	Guard, James 09-13-2018 (00:00:15)	JG2_COMBINED_05.59 EXHIBIT 791.A.5
	316:14 Q. (By Mr. Jerry Kristal) And this was early 316:15 in the year 2000, but the projection was the Monsanto 316:16 Roundup lawn and garden dollar sales would be maybe 316:17 215 -- I'm sorry -- yeah, \$215 million, approximately?	
316:20 - 316:21	Guard, James 09-13-2018 (00:00:03)	JG2_COMBINED_05.60
	316:20 A. That's a reasonable assumption on this -- 316:21 what's being depicted on this chart.	
336:14 - 336:18	Guard, James 09-14-2018 (00:00:23)	JG2_COMBINED_05.61 elcar
	336:14 Q. In the process of Monsanto deciding what 336:15 to put on a label of Roundup, has there ever been 336:16 consideration of telling the consumers why certain 336:17 precautions are being recommended?	
402:11 - 402:16	Guard, James 09-14-2018 (00:00:16)	JG2_COMBINED_05.62
	402:11 A. I think our scientists have determined and 402:12 the EPA has determined the testing that's necessary to 402:13 determine the safety of a product.	

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402:19 - 402:21	<p>402:14 Q. (By Mr. Jerry Kristal) Well, you're not 402:15 saying that a company is limited to only doing the 402:16 required testing, are you?</p> <p>Guard, James 09-14-2018 (00:00:06)</p> <p>402:19 A. I don't know what a company could -- I 402:20 suppose they could do additional testing if they wanted 402:21 to.</p>	JG2_COMBINED_05.63
669:1 - 669:14	<p>Guard, James 09-14-2018 (00:00:36)</p> <p>669:1 Q. Could you look at what's been marked as 669:2 Exhibit Number 4? Do you have that in front of you? 669:3 A. Yes.</p> <p>669:4 Q. If you could just turn to the last page of 669:5 that exhibit, which is a Bates number ending in 29021? 669:6 MR. JERRY KRISTAL: Would you kindly just 669:7 identify for which product this is the SDS for? 669:8 MR. CHERNACK: Certainly. This is the 669:9 Roundup Weed and Grass Killer Super Concentrate, with 669:10 effective date of December 15th, 2010. 669:11 MR. JERRY KRISTAL: Thank you.</p> <p>669:12 Q. (By Mr. Chernack) And do you see there 669:13 are two large boxes at the end of this document? 669:14 A. Yes.</p>	JG2_COMBINED_05.64
669:15 - 670:3	<p>Guard, James 09-14-2018 (00:00:56)</p> <p>669:15 Q. If you could just read the first 669:16 five-and-a-half lines of the first of those two boxes. 669:17 A. This material safety data sheet (MSDS) 669:18 serves different purposes than and does not replace or 669:19 modify the EPA-approved product labeling attached to 669:20 and accompanying the product container. 669:21 This MSDS provides important health, 669:22 safety, and environmental information for employers, 669:23 employees, emergency responders, and others handling 669:24 large quantities of the product in the activities 670:1 generally other than product use, while the labeling 670:2 provides that information specifically for product use 670:3 in the ordinary course.</p>	JG2_COMBINED_05.65
670:8 - 672:19	<p>Guard, James 09-14-2018 (00:02:54)</p> <p>670:8 Q. Could you explain what lawn and garden 670:9 products are? 670:10 A. Those are the products that are marketed</p>	JG2_COMBINED_05.66

670:11 and labeled for use by homeowners to use around their
670:12 home.

670:13 Q. And is there a separate division or group
670:14 within Monsanto that is responsible just for lawn and
670:15 garden products?

670:16 A. Yes.

670:17 Q. And you're part of that group; is that
670:18 right?

670:19 A. That's correct.

670:20 Q. Are there other groups in Monsanto
670:21 responsible for other types of Roundup products?

670:22 A. Yes.

670:23 Q. And what groups are those?

670:24 A. We have an ag group, agriculture. And we
671:1 have a group -- we did -- up until the JV -- that
671:2 handled I T & O products.

671:3 Q. And starting with the ag or agriculture
671:4 group, could you just describe generally the uses of
671:5 Roundup products for the agricultural group?

671:6 A. Sure. Generally that's a product that's
671:7 used by a farmer or farmers' employees, typically
671:8 spread in large quantities because they have a large
671:9 number of acres over the top or around on crops to
671:10 either produce food or clothing.

671:11 Q. And you mentioned I T & O. What does I T
671:12 & O stand for?

671:13 A. That stands for industrial turf and
671:14 ornamental.

671:15 Q. Can you explain a little bit about what
671:16 industrial turf and ornamental uses of Roundup are?

671:17 A. That would be the groups of products that
671:18 are labeled and designed for people who are using it in
671:19 golf courses, roadways, people that apply pesticides
671:20 for a profession, either the guy that comes to your
671:21 home and takes care of your weeds at your yard and is
671:22 paid for that.

671:23 Q. So a landscaper?

671:24 A. A landscaper, the professional landscaper.

672:1 Things like that. It would be professional applicators
672:2 that are not agriculture and not do-it-yourself

672:3 homeowners.

672:4 Q. Now, would your group, the lawn and garden

672:5 group, would you also work in the agriculture or the I

672:6 T & O spaces?

672:7 A. No.

672:8 Q. And how are the agriculture and the I T &

672:9 O products different from the lawn and garden Roundup

672:10 products? They're all Roundup-branded glyphosate

672:11 herbicides, though; correct?

672:12 A. That's correct.

672:13 Q. But how are they different?

672:14 A. They have different formulas, different

672:15 packaging systems, different labels, use instructions.

672:16 You know, an example might be a farmer could receive a

672:17 tanker truck at their farm full of some kind of Roundup

672:18 product whereas a consumer would go to Home Depot or

672:19 Lowe's and buy a one-gallon container.

675:16 - 676:2

Guard, James 09-14-2018 (00:00:41)

JG2_COMBINED_05.67

675:16 Q. Turning back to lawn and garden

675:17 specifically. How can users of the Roundup-branded

675:18 lawn and garden products obtain information about those

675:19 products?

675:20 A. They can look at the product label. They

675:21 can go to our Roundup.com website. They can do Google

675:22 searches, and there's other information out on the

675:23 internet. They can read the signs and brochures that

675:24 we may put out there. They can ask store associates,

676:1 their neighbors. A whole host of ways they can get

676:2 information.

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Documents Shown

EXHIBIT 784

EXHIBIT 788

EXHIBIT 791