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ERNEST CARANCI, et al., Plaintiffs, v. MONSANTO COMPANY, et al., Defendants.	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY JUNE TERM 2021 NO. 02213
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**MONSANTO'S REQUEST FOR HEARING ON ITS POST-TRIAL MOTION BY
THE COURT EN BANC AND RECUSAL OF THE TRIAL JUDGE**

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ERNEST CARANCI, et al.,
Plaintiffs,
v.
MONSANTO COMPANY, et al.,
Defendants.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

JUNE TERM 2021
NO. 02213

CONTROL NO.

ORDER

AND NOW, this ____ day of _____ 2023, upon consideration of Defendant Monsanto Company's Request for Hearing on its Post-Trial Motion by the Court en banc and Recusal of the Trial Judge, and any response thereto, it is **ORDERED** that the Request is **GRANTED**.

IT IS FURTHER ORDERED that a hearing of Defendant Monsanto Company's Post-Trial Motion shall be held by the Court en banc on _____, 2023 at ____ in courtroom ____.

The judges of the Court participating in said hearing will be:

BY THE COURT:

J.

Pursuant to Pa.R.Civ.P. 227.1, Monsanto submitted its post-trial motion for (1) judgment notwithstanding the verdict (“JNOV”); (2) in the alternative, a new trial; or (3) in the further alternative, modification of the damages award. Pursuant to Pa.R.Civ.P. 211, and Philadelphia Civil Rules 227(e)(1), Monsanto requests oral argument on this Motion. *See* Phila. Civ. R. 227(e)(1). Moreover, for the reasons set forth below, Monsanto requests its Post-Trial Motion be heard by the Court en banc and that, based on the nature of the issues raised in Monsanto’s Post-Trial Motion, the trial judge in this case not participate in the hearing, and recuse himself from otherwise ruling on the Motion.

1. Monsanto’s Post-Trial Motion raises a number of grounds for relief including that Monsanto is entitled to judgment notwithstanding the verdict on all of Plaintiff’s claims, as well as remittitur of the grossly excessive damages awards.

2. Monsanto’s Post-Trial Motion also asserts a host of grounds warranting a new trial due to the significant, cumulative, and fundamental errors that occurred at trial, including numerous prejudicial errors flowing from the trial court’s conduct and administration of the trial itself.

3. Most significantly, new evidence discovered after the verdict revealed that *ex parte* communications took place during the jury’s deliberation between the Court’s staff, the Court, and the jury. Those matters are set forth in Monsanto’s Motion and exhibits, filed under seal.¹ The most troubling of these matters are that the Court, through its staff, failed to inform the parties that during deliberation, the jury informed the Court staff that it was at an impasse and requested further instruction. The Court, through its staff, provided a “deadlock” instruction to the jury. The

¹ While Monsanto believes the material referenced in its Motion is adequate to support a new trial, an evidentiary hearing on these issues would also be appropriate if the Court was so inclined.

instruction was coercive and inconsistent with Pennsylvania law. Moreover, the parties were never informed of these events, and the Court did not conduct any record of these events.

4. Monsanto is entitled to oral argument on its Post-Trial Motion, Phila. Civ. R. 227(e)(1). Monsanto is also entitled to request that its Motion be heard by a court en banc. Pa.R.Civ.P. 227.2.

5. While the panel of the court en banc would normally include the trial court, given the nature of the issues for consideration in that Motion, the trial court's impartiality in ruling on the motion is reasonably questioned. Accordingly, Monsanto requests that the trial court recuse itself from ruling on the Motion.

6. “[A] judge shall recuse [himself] from a ‘proceeding in which the judge’s impartiality might reasonably be questioned.’” *Hvizdak v. Linn*, 190 A.3d 1213, 1223 (Pa. Super. 2018) (quoting Pa. Code of Judicial Conduct Rule 2.11), *reargument denied*, (Aug. 21, 2018), *appeal denied*, 204 A.3d 364 (Pa. 2019).

7. Monsanto respectfully believes recusal is appropriate under these circumstances, given the nature and gravity of the errors and irregularities that occurred during this trial. Monsanto requests the trial court recuse from ruling on the Motion, and not participate in a hearing on the Motion by the Court en banc.

Dated: November 6, 2023

Respectfully submitted,

s/Chanda A. Miller

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CERTIFICATE OF SERVICE

I certify that on November 6, 2023, I caused a true and correct copy of Defendant Monsanto Company's Request for Hearing on Its Post-Trial Motion by the Court en banc and Recusal of the Trial Judge:

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