

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT

FILED

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JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

THERESA ARETINO¹, *et al.*,

Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

Case No. 20SL-CC03676

Division 1

September 9, 2026

**ORDER CONCERNING DEFENDANT'S AMENDED MOTION FOR SUMMARY
JUDGMENT AND PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Presently before the Court are Defendant Monsanto Company's ("Monsanto") Amended Motion for Summary Judgment and Plaintiffs Theresa Aretino, Cynthia Fernandez, and Mark Larkin's (collectively, "Plaintiffs") Motion for Partial Summary Judgment. On September 4, 2026, the Court conducted a hearing on these motions and other motions. The Court reviewed the pleadings, legal briefs, and exhibits, heard arguments of counsel, and took Monsanto's Amended Motion for Summary Judgment, Plaintiffs' Motion for Partial Summary Judgment, and other motions under submission.

After careful consideration of the legal briefs, exhibits, and oral arguments, the Court hereby makes the following rulings.

¹ On August 24, 2026, the Court granted the parties' Joint Motion to Change Style of the Case from "*Frank Amos, et al. v. Monsanto Company*" to "*Theresa Aretino, et al. v. Monsanto Company*."

LEGAL STANDARD

A motion for summary judgment should be granted if the pleadings show that there are no issues of material fact and that the moving party is entitled to judgment as a matter of law. Rule 74.04(c); *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380 (Mo. banc 1993). A “genuine dispute” is a dispute which is real, not merely argumentative, imaginary, or frivolous. *ITT Commercial Fin. Corp.*, 854 S.W.2d at 382.

ANALYSIS

Plaintiffs allege that the chemical compound glyphosate in Monsanto’s Roundup products caused their or their decedent’s cancers—non-Hodgkin’s lymphoma (“NHL”) and subtypes thereof—and that Monsanto should have included cancer warnings on its Roundup products.

Specifically, Plaintiffs have asserted the following claims against Monsanto:

- I. Negligence;
- II. Strict products liability – design defect;
- III. Strict products liability – failure to warn;
- IV. Breach of implied warranties;²
- V. Fraud and misrepresentation;
- VI. Fraudulent concealment;
- VII. Punitive damages;
- VIII. Survival claim pursuant to Missouri Survival Statute, Section 537.020, RSMo; and
- IX. Wrongful death.³

Monsanto moves for summary judgment on all claims asserted by Plaintiffs. *First*, Monsanto argues Plaintiffs’ claims are preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et seq.*, and relies heavily on the recent opinion by the Supreme Court of the United States in *Monsanto Co. v. Durnell*, 146 S. Ct. 2001 (2026).

² While brought as a single cause of action, Plaintiffs’ Count VI asserts Monsanto breached the implied warranty of merchantability and the implied warranty of fitness for particular use and purpose.

³ On September 8, 2026, the Court granted Plaintiffs’ motion for leave to file their Second Amended Petition, which added Counts VII through IX.

Second, Monsanto argues that Plaintiffs Larkin and Fernandez have not presented evidence that they or their decedent relied on a false statement from Monsanto that induced them to purchase the Roundup products to support their fraud and misrepresentation claims.

Third, Monsanto argues that Plaintiff Larkin's fraudulent concealment claim is not a cognizable claim under the applicable law.

Fourth, Monsanto argues that Plaintiffs did not provide Monsanto with pre-suit notice required to bring breach of implied warranty claims under applicable law. Separately, Monsanto argues Plaintiff Aretino's and Fernandez's implied warranty claims fail because applicable law requires privity of contract but neither one purchased Roundup directly from Monsanto.

Fifth, Monsanto argues that Plaintiffs' claims for breach of implied warranty of fitness for a particular purpose fail because Plaintiffs used Roundup for the same reasons it was intended to be used and for the same reason other consumers use Roundup: to kill unwanted weeds.

Sixth, Monsanto argues that applicable law forecloses Plaintiff Larkin's strict liability claim.

And finally, Monsanto argues Plaintiffs' claims for punitive damages are capped or barred under applicable laws and that Plaintiffs cannot meet the threshold showing to impose punitive damages.

In Plaintiffs' responsive memorandum, they expressly concede that applicable laws do not recognize claims for fraudulent concealment and withdraw that claim as to Decedent Larkin. Pls.' Mem. of Law in Opp'n to Monsanto's Am. Mot. for Summ. J. at 8, 9 & 55. The Court, accordingly, grants summary judgment in favor of Monsanto on Count VI as to Decedent Larkin.

Plaintiffs also expressly withdraw their claims for breach of implied warranty of fitness for a particular purpose. *Id.* at 8 & 55. The Court, likewise, grants summary judgment in favor of Monsanto on Count IV as it relates to Plaintiffs' claims for breach of implied warranty of fitness for a particular purpose.

Plaintiffs oppose Monsanto's Amended Motion for Summary Judgment on all other grounds.

Plaintiffs, for their part, have filed a Motion for Partial Summary Judgment and ask the Court to hold that Monsanto is collaterally estopped from disputing certain determinations purportedly made by the U.S. Court of Appeals for the Ninth Circuit in *Natural Resources Defense Council* ("NRDC") v. *U.S. Environmental Protection Agency* ("EPA"), 38 F.4th 34 (9th Cir. 2022). Monsanto opposes Plaintiffs' Motion for Partial Summary Judgment.

1. Choice of Law

As a preliminary matter, the Court must determine which jurisdiction's substantive law applies to Plaintiffs' claims.

"With regard to substantive law, a forum state will choose the applicable substantive law according to its own conflict of law doctrines." *Clair v. Monsanto Co.*, 412 S.W.3d 295, 304 (Mo. App. E.D. 2013). "Missouri courts generally apply Missouri law to procedural questions even if another state's substantive law governs the underlying claim." *Grosshart v. Kansas City Power & Light Co.*, 623 S.W.3d 160, 167 (Mo. App. W.D. 2021) ("Regardless of which state's law governs the substantive issues involved in this case, ... procedural questions are determined by the state law where the action is brought.") (quoting *Kissinger v. Am. Family Mut. Ins. Co.*, 563 S.W.3d 765, 775 (Mo. App. W.D. 2018)).

“For conflicts of law related to tort claims, Missouri employs the ‘most significant relationship’ test set forth in Restatement (Second) of Conflict of Laws § 145 (1971).”⁴ *Zafer Chiropractic & Sports Injs., P.A. v. Hermann*, 501 S.W.3d 545, 550 (Mo. App. E.D. 2016). Section 145 of the Restatement, Second, on Conflict of Laws (the “Restatement”) provides:

(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6 [of the Restatement, discussed below].

(2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

- (a) the place where the injury occurred,
- (b) the place where the conduct causing the injury occurred,
- (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
- (d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

“[T]hese contacts are not the sole factors for a court to consider. Rather, these contacts are to be taken into account in applying the principles of section 6 [of the Restatement, discussed below,] to determine the law applicable to an issue.” *Goede v. Aerojet Gen. Corp.*, 143 S.W.3d 14, 26 (Mo. App. E.D. 2004), *abrogated on other grounds by Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2012).

⁴ Missouri courts refer to this concept as “conflict of law” and “choice of law” interchangeably. *See, e.g., Goede v. Aerojet Gen. Corp.*, 143 S.W.3d 14, 24–25 (Mo. App. E.D. 2004), *abrogated on other grounds by Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2012) (citing *Kennedy v. Dixon*, 439 S.W.2d 173, 184 (Mo. banc 1969) (“When determining choice-of-law issues in a tort action, Missouri courts apply the ‘most significant relationship’ test set out in Section 145 of the Restatement, Second, on Conflict of Laws.”)).

Missouri courts also look to Section 146 of the Restatement to determine the choice of law in personal injury cases, which provides:

In an action for a personal injury, *the local law of the state where the injury occurred determines the rights and liabilities of the parties*, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 [of the Restatement, discussed below,] to the occurrence and the parties, in which event the local law of the other state will be applied.

(Emphasis added). See *Grosshart*, 623 S.W.3d at 167 (applying Section 146) (holding that Kansas law applied to claims based on alleged exposure to heavy metals in water because the alleged source (a power plant) was located in Kansas “and the location of the vast majority of [the plaintiff’s] alleged exposure” occurred while she lived in Kansas). Comment *e* to Section 146 of the Restatement provides the following additional guidance, in relevant part, for “[w]hen conduct and injury occur in different states”:

The local law of the state where the personal injury occurred is most likely to be applied when the injured person has a settled relationship to that state, either because he is domiciled or resides there or because he does business there. When, however, the injured person is domiciled or resides or does business in the state where the conduct occurred, there is a greater likelihood that this state is to be the state of most significant relationship and therefore the state of the applicable law with respect to issues that would usually be determined by the local law of the state of injury. The same may be true when the injury occurred in the course of an activity or of a relationship which is centered in the state where the conduct occurred and when the injured person has no settled relationship to the state where the injury occurred.

The state where the conduct occurred is even more likely to be the state of most significant relationship when these two elements are combined, that is to say, when, in addition to the injured person’s being domiciled or residing or doing business in the state, the injury occurred in the course of an activity or of a relationship which was centered there. One example is where the injury occurred in the course of an employment which is centered in the state where the conduct took place and where the injured person is domiciled.

As stated in Comment *c*, *an important factor in determining which is the state of most significant relationship is the purpose sought to be achieved by the rule of tort law involved. If this purpose is to punish the tortfeasor and thus to deter others from following his example, there is better reason to say that the state where the*

conduct occurred is the state of dominant interest and that its local law should control than if the tort rule is designed primarily to compensate the victim for his injuries (see § 145, Comment c). In the latter situation, the state where the injury occurred would seem to have a greater interest than the state of conduct. *This factor must not be over-emphasized.* To some extent, at least, every tort rule is designed both to deter other wrongdoers and to compensate the injured person. Undoubtedly, the relative weight of these two objectives varies somewhat from rule to rule, but in the [case] of a given rule it will frequently be difficult to determine which of these objectives is the more important.

(Emphasis added).

Similarly, Section 175 of the Restatement provides the following with respect to choice of law in wrongful death actions:

In an action for wrongful death, the local law of the state where the injury occurred determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 [of the Restatement, discussed below] to the occurrence and the parties, in which event the local law of the other state will be applied.

(Emphasis added). Comment *f* to Section 175 of the Restatement also provides that, “[w]hen conduct and injury occur in different states,” “[t]he local law of the state where the injury occurred is most likely to be applied when the decedent had a settled relationship to that state, either because he was domiciled or resided there or because he did business there.”

Section 6 of the Restatement, as referenced in Sections 145, 146, and 175 above, provides:

- (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
- (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
 - (a) the needs of the interstate and international systems,
 - (b) the relevant policies of the forum,
 - (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
 - (d) the protection of justified expectations,
 - (e) the basic policies underlying the particular field of law,
 - (f) certainty, predictability and uniformity of result, and
 - (g) ease in the determination and application of the law to be applied.

Section 171 of the Restatement further provides: “The law selected by application of the rule of § 145 determines the measure of damages.”

Generally, Missouri courts in personal injury cases apply the law of the place of injury unless another state has a more significant relationship. *Thompson v. Crawford*, 833 S.W.2d 868, 870 (Mo. banc 1992); *Winter v. Novartis Pharms. Corp.*, 739 F.3d 405, 410 (8th Cir. 2014) (citing *Thompson*, 833 S.W.2d at 870).

For example, in *Clair v. Monsanto Co.*, residents of California filed suit against Monsanto and Pharmacia Corporation in Missouri state court and asserted claims for strict liability based on design defect and negligence, alleging polychlorinated biphenyls (“PCBs”) manufactured and distributed by the defendants caused their NHL. 412 S.W.3d at 300-02. The Missouri Court of Appeals, Eastern District, applied Section 145 of the Restatement and held that California substantive law applied:

Here, the injuries occurred in California. Plaintiffs came into contact with PCBs in California predominantly. Plaintiffs all reside in California. Plaintiffs have no relationship with Pharmacia other than coming into contact with its products in California. Further, the parties all agree that California law applies to the substantive claims in this case. Therefore, we will look to California substantive law when evaluating the merits of Plaintiffs’ points.
Id. at 304.

“[T]he Restatement approach to choice of law does not require that all issues in a particular case be controlled by the law of the same state. Under the conflict-of-laws doctrine of *depeçage*, different issues in a single case may be decided according to the laws of different states.” *Goede*, 143 S.W.3d at 25 (citation omitted).

Indeed, the Restatement itself contemplates that different states’ laws may be applied to different issues in the same case. Section 145(1) provides that “the rights and liabilities of the parties with respect to *an issue* in tort are determined by the local law of the state which, with respect to *that issue*, has the most significant relationship.” (Emphases supplied). Continuing, section 145(2) provides that the

“contacts are to be evaluated according to their relative importance with respect to *the particular issue*.” (Emphasis supplied). And, as set forth in the comments to section 171, “the state of conduct and injury will not, ..., be the state that is primarily concerned with the measure of damages in a tort action.” Accordingly, we find that the trial court may separately analyze the issues of liability and damages in a case, and may properly apply different states’ laws to each issue.

Id.

Here, Monsanto argues that the substantive laws of the following jurisdictions apply to each Plaintiff’s claims on issues that conflict with Missouri law:

- Monsanto argues Plaintiff Aretino’s claims are governed by Florida law because the vast majority of her use of and exposure to Roundup occurred in Florida;
- Monsanto argues Plaintiff Fernandez’s claims are governed by Florida law because her use of and exposure to Roundup occurred exclusively in Florida; and
- Monsanto argues the claims brought on behalf of decedent Betty Larkin (“Decedent Larkin”) are governed by Virginia law because her use of and exposure to Roundup occurred exclusively in Virginia.

Plaintiffs, on the other hand, argue Missouri law applies to their claims despite any claimed conflict on substantive law because Missouri has the most significant relationship to their claims and a strong interest in applying its laws to punish Missouri corporations like Monsanto.

Based on the analysis above, the Court concludes that, on issues concerning liability that conflict with Missouri law, the laws of Florida shall apply to the claims brought by Plaintiffs Aretino and Fernandez and the laws of Virginia shall apply to the claims on behalf of Decedent Larkin.

On the issue of damages, Missouri courts are clear that a state has the “predominant interest” when deciding damages for injuries “occurring within its boundaries.” *Goede*, 143 S.W.3d at 26 (affirming the trial court’s determination that Missouri law on damages applied in a wrongful death case based on asbestos exposure in California).⁵

Where the issue involves a right of recovery as opposed to a question of liability, the domicile of the parties becomes a highly significant contact, as states have a great interest in applying their own compensation-related laws to their own residents, but very little interest in applying those same laws to non-residents.

Wilson v. Image Flooring, LLC, 400 S.W.3d 386, 398 (Mo. App. W.D. 2013) (citing *Goede*, 143 S.W.3d at 27). “Where . . . the conflict involves a rule of recovery or question of compensation, *the domicile of the parties is the most significant contact.*” *Id.* (emphasis added).

Here, the record before the Court shows that Plaintiffs Aretino and Fernandez are both domiciled in Florida and Decedent Larkin was also domiciled in Florida at the time of her death.

Based on the analysis above and weighing the appropriate factors, the Court also concludes that, on issues concerning recovery for damages in which an actual conflict exists with the law of Missouri, the laws of Florida shall apply to the claims brought by Plaintiffs Aretino and Fernandez and the claims on behalf of Decedent Larkin. *See Thompson*, 833 S.W.2d at 870; *Clair*, 412 S.W.3d at 304; *Wilson*, 400 S.W.3d at 398.

⁵ The Supreme Court in *Sanders* abrogated *Goede* solely on the issue of “whether a party must move for directed verdict both at the close of the opposing party’s evidence and again at close of all evidence, or whether a sole motion at close of all evidence suffices to preserve the issue.” *Sanders*, 364 S.W.3d at 207 (comparing *Goede*, 143 S.W.3d at 18, with *Schnatzmeyer v. Nat’l Life Ins. Co.*, 791 S.W.2d 815, 819 (Mo. App. E.D. 1990)). *Goede* remains good law for the issue of determining choice of law regarding damages. *See, e.g., Brenneman v. Great Wolf Lodge of Kansas City, LLC*, No. 4:15-CV-00683-SRB, 2017 WL 6383979, at *5 (W.D. Mo. Jan. 24, 2017) (relying on *Goede* in concluding Missouri law on damages applied in a choice-of-law analysis where the plaintiff, a Missouri citizen, was injured in Kansas but “Missouri has an overriding interest in obtaining recovery for its citizens”).

2. Whether Plaintiffs' Claims are Preempted by FIFRA

Monsanto first argues that all of Plaintiffs' claims are expressly preempted by federal law, namely FIFRA, 7 U.S.C. § 136 *et seq.* “In 1972, Congress passed and President Nixon signed the Federal Environmental Pesticide Control Act” and “‘transformed’ FIFRA ‘into a comprehensive regulatory statute’ and placed the newly created Environmental Protection Agency in charge of pesticide registration and labeling.” *Durnell*, 146 S. Ct. at 2006 (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 437 (2005)). Specifically, FIFRA provides the following in relevant part:

(a) In general

A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

(b) Uniformity

Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

7 U.S.C. § 136v. The crux of Monsanto's argument that Plaintiffs' state law claims are “in addition to or different from” requirements imposed by the EPA under FIFRA is because they are premised on an alleged duty to include a cancer warning on Roundup products despite the EPA repeatedly determining glyphosate was not carcinogenic.

Earlier this year, the Supreme Court of the United States issued its opinion in *Durnell* and held that a Missouri plaintiff's failure-to-warn claim against Monsanto for not including a cancer warning on Roundup's label was expressly preempted by FIFRA because such “state tort claim would impose a pesticide labeling requirement ‘in addition to or different from’ the label required by EPA.” 146 S. Ct. at 2006. The Supreme Court explained that “the heart of *Durnell*'s failure-to-warn claim under Missouri tort law is that Monsanto should have included a cancer warning on

its Roundup labels.” *Id.* at 2010. The EPA, however, has concluded that “glyphosate is not likely to cause cancer in humans” and, accordingly, “EPA has not required glyphosate-based pesticides like Roundup to include a cancer warning on their labels. Therefore, as a matter of federal law, Monsanto legally must use a label without a cancer warning unless and until EPA approves or requires a change.” *Id.* at 2009.

In light of *Durnell*, Monsanto argues it is entitled to summary judgment because FIFRA expressly preempts Plaintiffs’ claim for strict products liability — failure to warn (Count III). The Supreme Court in *Durnell* also stated that “FIFRA’s preemption clause expressly preempts *any state tort claim* that would require a pesticide manufacturer to use a label ‘in addition to’ or ‘different from’ . . . the EPA-approved label.” 146 S. Ct. at 2014 (emphasis added). Accordingly, Monsanto also argues Plaintiffs’ other claims are also expressly preempted because they “all boil down to the preempted theory that Monsanto is liable for failing to include a cancer warning on Roundup’s label.” *See* Monsanto’s Corrected Mem. of Law in Supp. of its Am. Mot. for Summ. J. at 15-16.

Plaintiffs oppose Monsanto’s preemption argument and assert that Monsanto is judicially estopped from arguing that FIFRA preempts all non-failure-to-warn claims because of statements made by Monsanto’s counsel during the *Durnell* oral arguments before the Supreme Court purportedly conceded that FIFRA has a “narrow . . . preemption clause” that “focuses on label-based failure-to-warn claims” and acknowledged that a plaintiff “can still have design defect claims.” Plaintiffs’ Ex. 28, *Durnell* Oral Argument Transcript at 40:25-41:10.

The Court concludes that FIFRA preempts Plaintiffs' claim for strict products liability – failure to warn and grants summary judgment in favor of Monsanto on Count III. The Court, however, does not read *Durnell* as being dispositive of Plaintiffs' other claims at the summary judgment stage.

Significantly, the Supreme Court's decision in *Durnell* was explicitly limited to the failure-to-warn claim before it. The Supreme Court noted that “[its] precedents make clear . . . state tort duties constitute state labeling requirements.” *Durnell*, 146 S. Ct. at 2010 (collecting cases). The Supreme Court's entire analysis was anchored to the proposition that state failure-to-warn claims “are premised on common-law rules that qualify” as labeling requirements because those “rules set a standard for a product's labeling.” *Id.* at 2010 (quoting *Bates*, 544 U.S. at 446). “Because *Durnell*'s state tort claim would impose a pesticide labeling requirement ‘in addition to or different from’ the label required by EPA, FIFRA expressly preempts *Durnell*'s claim.” *Id.* at 2006. Non-labeling claims do not share this characteristic and, therefore, fall outside the scope of *Durnell*'s holding.

Despite the underlying lawsuit in *Durnell* involving other claims like those claims at issue in this case⁶, the Supreme Court's opinion contains no discussion of claims for negligence, design defect, or other non-labeling tort theories. In fact, the Supreme Court granted Monsanto's petition for a writ of certiorari expressly “limited to the following Question: Whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts a label-based failure-to-warn claim where EPA has not required the warning.” Opinion Granting Petition for Writ of Certiorari, *Monsanto*

⁶ See Complaint, *Durnell v. Monsanto Co., et al.*, No. 1922-CC00221 (Mo. Cir. Ct. City of St. Louis Jan. 31, 2019) (asserting the following claims: strict liability (design defect) (Count I); strict liability (failure to warn) (Count II); negligence (Count III); fraud, misrepresentation, and suppression (IV); violation of the consumer fraud acts (Count V); and survival and wrongful death (Count VI)).

Co. v. Durnell, --- S.Ct. ---, 2026 WL 120678 (Mem), 223 L.Ed.2d 553 (Jan. 16, 2026) (No. 24-1068).

The Supreme Court's earlier decision in *Bates*—which remains good law and was expressly relied upon in *Durnell*—plainly stated that the first condition for FIFRA preemption is that the state rule “must be a requirement ‘for labeling or packaging.’” *Bates*, 544 U.S. at 444 (emphasis in original). “[R]ules governing the design of a product, for example, are not pre-empted.” *Id.* (emphasis added).

It is perfectly clear that many of the common-law rules upon which petitioners rely do not satisfy the first condition. Rules that require manufacturers to design reasonably safe products, to use due care in conducting appropriate testing of their products, to market products free of manufacturing defects, and to honor their express warranties or other contractual commitments plainly do not qualify as requirements for “labeling or packaging.” *None of these common-law rules requires that manufacturers label or package their products in any particular way. Thus, petitioners’ claims for defective design, defective manufacture, negligent testing, and breach of express warranty are not pre-empted.*

Id. (emphasis added). The Supreme Court in *Bates* also noted that warranty and fraud claims based on oral representations of a defendant's agents “fall outside the text of § 136v(b) for an independent reason”: “[b]ecause FIFRA defines labeling as ‘all labels and all other written, printed, or graphic matter’ that accompany a pesticide, § 136(p)(2), any requirement that applied to a sales agent's oral representations would not be a requirement for ‘labeling or packaging.’” *Id.* at n.17 (emphasis in original).

Pre-*Bates*, the Eighth Circuit also held that defective manufacture or design claims are not preempted by FIFRA. “A claim of defective manufacture or design . . . does not directly attack the EPA-approved label or packaging. Although the specifications and ingredients may be known, approved and accounted for in the EPA-approved label, a defect may still occur as a result of inadequate manufacturing or inappropriate design.” *Nat’l Bank of Com. of El Dorado, Arkansas*

v. *Dow Chem. Co.*, 165 F.3d 602, 609 (8th Cir. 1999) (“In other words, defectively manufactured or designed products properly labeled under FIFRA may still be subject to state regulation, in the form of common law or other claims.”) (citing *Worm v. American Cyanamid Co.*, 5 F.3d 744, 749 (4th Cir. 1993)).⁷

In light of the above caselaw, the Court concludes FIFRA does not preempt Plaintiffs’ other claims beyond Count III asserted against Monsanto. Furthermore, the Court disagrees with Monsanto’s contention that all of Plaintiffs’ claims “are all in substance failure-to-warn claims” and, therefore, preempted by FIFRA. See Monsanto’s Corrected Mem. of Law in Support of Law in Supp. of its Am. Mot. for Summ. J. at 2.

As a preliminary matter, Monsanto quotes from Justice Clarence Thomas’s concurring opinion in *Bates* in which he noted the petitioners in that case had actually asserted claims for “negligent testing and defective design and manufacture,” which the Court of Appeals below treated as “disguised claim[s] for failure to warn.” *Bates*, 544 U.S. at 457 (Thomas, J., concurring in part). The next sentence in Justice Thomas’s concurrence, however, shows why Monsanto is not entitled to summary judgment on this ground at this juncture. Justice Thomas noted that “[i]f

⁷ Multiple state supreme courts pre-*Bates* have also concluded non-label-based tort claims are not preempted by FIFRA. See *Jenkins v. Amchem Prods., Inc.*, 886 P.2d 869, 880, 883–84 (Kan. 1994) (“[I]n seeking to avoid liability under a design defect strict liability action, a manufacturer would alter the design of its product rather than its label. Therefore, a design or manufacturing defect strict liability action is not preempted under FIFRA. However, in seeking to avoid liability under a warning defect strict liability action, a manufacturer would choose to alter the warnings associated with its product rather than alter the product itself, and the action would be preempted under FIFRA.”); *Gorton v. Am. Cyanamid Co.*, 533 N.W.2d 746, 755 (Wis. 1995) (“[A] claim based on misrepresentation survives preemption under FIFRA. We see nothing in FIFRA that seeks to overturn the longstanding rules governing misrepresentation. On the contrary, FIFRA simply seeks uniformity in labeling and packaging and mandates that states shall not impose labeling or packaging requirements other than those prescribed by the statute itself. Further, our reading of sec. 136v(b) leads us to conclude that its preemptive effect does not encompass the general duty not to make false statements. Quite simply, claims based on misrepresentations of fact do not challenge the labeling of a manufacturer’s product.”).

*petitioners offer no evidence on remand that Dow erred in the testing, design, or manufacture of Strongarm, these claims will fail on the merits.” Bates, 544 U.S. at 457 (emphasis added). See, e.g., Netland v. Hess & Clark, Inc., 140 F. Supp. 2d 1011, 1017–18 (D. Minn. 2001) (granting summary judgment on a negligence claim that the district court characterized as a “semantically reworked . . . repeat salvo on” the plaintiff’s FIFRA-preempted failure-to-warn claim, noting the plaintiff “has not produced any evidence of errors in the manufacture of [the product] by Defendant other than the adequacy of the warning”), *aff’d*, 284 F.3d 895 (8th Cir. 2002).*

Here, however, Plaintiffs have pleaded and seek to present evidence to the jury that Monsanto did or failed to do more than use an adequate label. For example, in support of their negligence claim, Plaintiffs claim Monsanto was negligent in, among other things, failing to adequately test Roundup and its ingredients and designing, manufacturing, producing, and formulating an unreasonably dangerous product. *See* Pls.’ Mem. of Law in Opp’n to Monsanto’s Am. Mot. for Summ. J. at 30-31 (citing Pls.’ Pet. ¶¶ 188-98).

The Court also concludes that Monsanto is not entitled to summary judgment on Plaintiffs’ design defect claim. Monsanto asserts Plaintiffs are required by applicable Florida and Virginia law to show a feasible and safer alternative design for Roundup, and it argues they have failed to do so. Plaintiffs, however, contend the record shows Monsanto could have developed Roundup without its alleged carcinogenic risk that would have had the same utility and economic feasibility as other herbicides. Plaintiffs also argue Monsanto’s own Roundup product line establishes the necessary proof that Monsanto manufactures and sells a glyphosate-free Roundup formulation, which Plaintiffs contend could have made it safer. The Court finds that at this stage of the litigation, Monsanto’s alternative Roundup formulations without glyphosate make this an issue for the jury’s determination.

For these reasons, the Court grants summary judgment in favor of Monsanto on Count III for strict products liability — failure to warn because it is preempted by FIFRA. The Court, however, denies summary judgment on Plaintiffs’ other claims based on the issue of preemption.

3. Whether Plaintiffs Larkin’s and Fernandez’s Fraud and Misrepresentation Claims Survive Summary Judgment

Monsanto next argues that it is entitled to summary judgment on Plaintiffs Larkin’s and Fernandez’s fraud and misrepresentation claims (Count V) because the laws of Missouri, Florida, and Virginia all require plaintiffs to prove they relied to their detriment on a false representation by the defendant. *See Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 131–32, 134 (Mo. banc 2010); *Cohen v. Corbitt*, 135 So. 3d 527, 529 (Fla. Dist. Ct. App. 2014); *Sweely Holdings, LLC v. SunTrust Bank*, 820 S.E.2d 596, 605 (Va. 2018). According to Monsanto, Decedent Larkin’s and Plaintiff Fernandez’s deposition testimony revealed they did not rely on any representation made by Monsanto. Specifically, Monsanto cites to Decedent Larkin’s deposition testimony in which she said she purchased Roundup because she “had heard it worked” from people at Virginia Tech, friends, and neighbors—not from Monsanto. Monsanto also cites to Plaintiff Fernandez’s deposition testimony in which she testified to not having seen any Roundup commercials or spoken to anyone at Monsanto about Roundup.

Plaintiffs oppose Monsanto’s Amended Motion for Summary Judgment on this ground and argue the laws of Missouri, Florida, and Virginia recognize fraud claims based on omissions of material facts and failure to disclose safety information associated with a product. *See Dechant v. Saaman Corp.*, 63 S.W.3d 293, 295–96 (Mo. App. E.D. 2001); *Hess v. Philip Morris USA, Inc.*, 175 So. 3d 687, 698 (Fla. 2015); *Doe by & Through Doe v. Baker*, 857 S.E.2d 573, 589 (Va. 2021).

At this point and based on the evidence presented in the summary judgment filings, the Court declines to grant summary judgment on this ground. “Generally, whether a party has justifiably relied on a misrepresentation is an issue of fact for the jury to decide.” *Renaissance Leasing*, 322 S.W.3d at 132 (citing *Monsanto Chemical Works v. American Zinc, Lead & Smelting Co.*, 253 S.W. 1006, 1010 (Mo. 1923)). Missouri courts have allowed reliance to be inferred from representations to the public at large. See *B.L. Jet Sales, Inc. v. Alton Packaging Corp.*, 724 S.W.2d 669, 671–73 (Mo. App. E.D. 1987). Here, Decedent Larkin purportedly saw Roundup advertisements, and Plaintiff Fernandez testified to seeing Roundup for sale in a hardware store and reading the label. The Court concludes the jury should determine whether they justifiably relied on information provided by Monsanto.

4. Whether Plaintiffs’ Implied Warranty Claims Survive Summary Judgment

Monsanto next argues that Plaintiffs’ implied warranty claims fail because they did not provide pre-suit notice to Monsanto before filing their warranty claims as required under Florida and Virginia law. See Fla. Stat. § 672.607(3)(a) (“The buyer must within a reasonable time after he or she discovers or should have discovered any breach notify the seller of breach or be barred from any remedy”); Va. Code Ann. § 8.2-607(3)(a) (“[T]he buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy”). Monsanto cites caselaw applying the pre-suit notice to sellers as well as manufacturers like Monsanto. See *Lamb v. Graco Children’s Prods. Inc.*, No. 4:11CV477-RH/WCS, 2012 WL 12871963, at *2 (N.D. Fla. Jan. 24, 2012). Monsanto also argues Plaintiffs Aretino’s and Fernandez’s implied warranty claims also fail for lack of privity between them and Monsanto. See *Kramer v. Piper Aircraft Corp.*, 520 So. 2d 37, 39 (Fla. 1988).

Plaintiffs oppose Monsanto's Amended Motion for Summary Judgment on this ground and argue Missouri law applies to their claims. If Missouri law does not apply, Plaintiffs argue Virginia courts have confirmed the statutory language is limited to requiring pre-suit notice by "those who buy or contract to buy goods from a seller . . . as a prerequisite to recovery." See *Yates v. Pitman Mfg., Inc.*, 514 S.E.2d 605, 607 (Va. 1999). Because Monsanto was the manufacturer and did not directly sell Roundup to Decedent Larkin, Plaintiffs argue she was not required to give pre-suit notice. Plaintiffs offer no response to Monsanto's Florida-specific arguments.

As noted above, the Court concludes that Missouri's choice-of-law analysis requires that, on issues concerning liability that conflict with Missouri law, the laws of Florida shall apply to the claims brought by Plaintiffs Aretino and Fernandez and the laws of Virginia shall apply to the claims on behalf of Decedent Larkin. Because Missouri does not have a pre-suit notice requirement for warranty claims, a true conflict exists.

Upon review of the cases cited by the parties, it appears that courts applying Florida and Virginia law require pre-suit notice to manufacturers like Monsanto. See *Hebron v. Am. Isuzu Motors, Inc.*, 60 F.3d 1095, 1097–98 (4th Cir. 1995) (applying Virginia law and reasoning: "[E]ven though the requirement of reasonable notice may be more strictly applied to merchant buyers than to retail consumers, the term 'buyer' as used in § 8.2–607(3)(a) clearly applies both to merchant buyers and retail consumers. Retail consumers are, under the plain meaning of the word, 'persons' who buy or contract to buy goods."). The Virginia-specific caselaw Plaintiffs cite concern non-buyers—e.g., employees who used products purchased by their employers. *Yates*, 514 S.E.2d at 607; see also *Cole v. Keller Indus., Inc.*, 132 F.3d 1044, 1048 (4th Cir. 1998) ("We are of opinion that the proper reading of the statute is that a non-purchaser is not required to give notice, under

Va.Code § 8.2–607 to the manufacturer, as a condition precedent to suing on a warranty under the Virginia law for personal injuries.”).

Consequently, the Court grants summary judgment in favor of Monsanto on Plaintiffs’ claim for breach of implied warranty as it relates to merchantability (Count IV) for failure to provide pre-suit notice as required by Florida and Virginia law.

5. Whether Applicable Law Forecloses Plaintiff Larkin’s Strict Liability Claim

Monsanto next argues it is entitled to summary judgment on Plaintiff Larkin’s strict liability claim because “Virginia has not adopted a strict liability regime for products liability.” *Evans v. Nacco Materials Handling Grp., Inc.*, 810 S.E.2d 462, 469 (Va. 2018).

Plaintiffs expressly concede that Virginia does not recognize a theory of recovery under strict liability but nevertheless maintain their position that Missouri law applies here under the Restatement (Second) of Conflict of Laws §§ 6 and 145. Pls.’ Mem. of Law in Opp’n to Monsanto’s Am. Mot. for Summ. J. at 56.

As noted above, the Court concludes that Missouri’s choice-of-law analysis requires that, on issues concerning liability that conflict with Missouri law, the laws of Virginia shall apply to the claims on behalf of Decedent Larkin. Accordingly, the Court grants summary judgment in favor of Monsanto on Plaintiff Larkin’s claim for strict products liability – design defect in Count II.

6. Whether Plaintiffs’ Claims for Punitive Damages Survive Summary Judgment

Lastly, Monsanto argues it is entitled to summary judgment on Plaintiffs’ claims for punitive damages because Plaintiffs cannot meet the applicable standard under Missouri, Florida, or Virginia law in light of the scientific and regulatory evidence concerning its registration of glyphosate and Roundup, which Monsanto contends defeats the elevated standard of misconduct

required in each applicable jurisdiction for a plaintiff to recover punitive damages. *See* Section 510.261.1, RSMo (“[P]unitive damages shall not be awarded unless the claimant proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others.”); Fla. Stat. § 768.72(2) (“A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence.”); *Blakely v. Austin-Weston Ctr. for Cosm. Surgery L.L.C.*, 348 F. Supp. 2d 673, 677–78 (E.D. Va. 2004) (“[T]o sustain a claim for punitive damages in a personal injury case [under Virginia law], the plaintiff must demonstrate negligence which is so willful or wanton as to evince a conscious disregard of the rights of others, or malicious conduct.”) (cleaned up) (quoting *Doe v. Isaacs*, 579 S.E.2d 174, 176 (Va. 2003)).

In support, Monsanto relies heavily on what it characterizes as the EPA’s “longstanding scientific assessment of glyphosate” as not likely to cause cancer in humans and quotes at length from the Supreme Court’s opinion in *Durnell*, 146 S. Ct. 2001. *See* Monsanto’s Corrected Mem. of Law in Supp. of its Am. Mot. for Summ. J. at 32. Accordingly, Monsanto contends that Plaintiffs cannot show it knew or should have known that Roundup or glyphosate posed a danger but nevertheless acted with a deliberate and flagrant disregard for the safety of others.

Monsanto also asserts statutory caps on punitive damages under Virginia and Florida law apply to Plaintiffs’ claims. First, it argues Virginia law applies to Plaintiff Larkin’s claim for punitive damages and caps his punitive damages at \$350,000. *See* Va. Code Ann. § 8.01-38.1. Second, Monsanto argues Florida law bars Plaintiffs Aretino’s and Fernandez’s punitive damages claims. *See* Fla. Stat. § 768.73(1)(a). That statute provides, in part, “punitive damages may not be awarded against a defendant in a civil action if that defendant establishes, before trial, that

punitive damages have previously been awarded against that defendant in any state or federal court in any action alleging harm from the same act or single course of conduct for which the claimant seeks compensatory damages” unless “the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish that defendant’s behavior.” *Id.* § 768.73(2)(a)-(b). Because Monsanto has previously been found liable for punitive damages in other Roundup-related cases, Monsanto argues Plaintiffs Aretino’s and Fernandez’s punitive damages claims are barred by § 768.73(2).

Plaintiffs oppose Monsanto’s Amended Motion for Summary Judgment on this ground and point out that *Durnell* does not address punitive damages at all. They further maintain that Missouri law applies to their damages and note that plaintiffs in prior Roundup-related trials in this Circuit Court have been permitted to pursue punitive damages.

As noted above, the Court concludes that Missouri’s choice-of-law analysis requires that, on issues concerning recovery for damages in which an actual conflict exists with the law of Missouri, the laws of Florida shall apply to the claims brought by Plaintiffs Aretino and Fernandez and the claims on behalf of Decedent Larkin based on their states of domicile.⁸

At this stage of the proceedings, the Court declines to grant summary judgment in favor of Monsanto on Plaintiffs’ punitive damages claims. Compliance with governmental regulations does not necessarily defeat punitive damages if other evidence suggests intentional wrongdoing. *See Alcorn v. Union Pac. R.R. Co.*, 50 S.W.3d 226, 249 (Mo. banc 2001) (“[C]onformity with the regulatory process does not negate the conclusion that the railroad’s conduct was tantamount to intentional wrongdoing.”), *overruled on other grounds by Badahman v. Catering St. Louis*, 395

⁸ Even if Virginia law applied to Plaintiff Larkin’s damages, that state’s statutory cap does not come into play at the summary judgment stage.

S.W.3d 29 (Mo. banc 2013). *See also* *Blanks v. Fluor Corp.*, 450 S.W.3d 308, 403 (Mo. App. E.D. 2014) (distinguishing its facts from *Alcorn*, 50 S.W.3d 226, and noting the plaintiffs presented evidence that “the defendants hid information from regulators, resisted regulatory changes, and never complied with industry standards for ambient air quality standards”).

Here, Plaintiffs have alleged Monsanto had reason to know of glyphosate’s alleged danger since at least the mid-1970s and engaged in efforts to conceal the danger. Accordingly, at this point in the litigation, Monsanto is not entitled to summary judgment on this ground.

Turning to the arguments based on Florida law, the relevant subsection of the Florida statute at issue provides in full:

In subsequent civil actions involving the same act or single course of conduct for which punitive damages have already been awarded, *if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish that defendant’s behavior, the court may permit a jury to consider an award of subsequent punitive damages.* In permitting a jury to consider awarding subsequent punitive damages, the court shall make specific findings of fact in the record to support its conclusion. In addition, the court may consider whether the defendant’s act or course of conduct has ceased. Any subsequent punitive damage awards must be reduced by the amount of any earlier punitive damage awards rendered in state or federal court.

Fla. Stat. § 768.73(2)(b) (emphasis added). The Court sees no authority that requires a trial court to make its determination as to the sufficiency of any prior punitive damages award before Plaintiffs have a chance to present evidence in their case in chief. Rather, the text of the statute allows the Court to make such determinations and findings of fact as to the sufficiency of any prior punitive damages—and whether the defendant’s acts or conduct supporting any such punitive damages have ceased—before permitting the jury to consider whether to award subsequent punitive damages. Monsanto may, accordingly, raise the issue again after Plaintiffs rest their case in chief or, at the latest, prior to the instruction conference.

Monsanto relies, in part, on a recent decision from Florida's intermediate appellate court that reversed and remanded a Florida trial court's decision allowing a plaintiff in a Roundup-related case to add a punitive damages claim. *Monsanto Co. v. Behar*, 417 So.3d 383, 384 (Fla. Dist. Ct. App. 2025), *reh'g denied* (Aug. 15, 2025). The *Behar* court concluded, upon its review of the record in that case, "that Behar failed to make a reasonable showing which would provide a reasonable basis for recovery of punitive damages" under § 768.72(2). *Id.* at 389. The *Behar* court further explained:

The allegations, proffer, and record evidence do not demonstrate intentional misconduct or gross negligence. While Monsanto was well-aware of the continued reevaluation of glyphosate since 1973, the record does not show that glyphosate is carcinogenic, Monsanto knew it was, and Monsanto intentionally sold its product without a warning label anyway. § 768.72(2)(a), Fla. Stat. The record similarly does not demonstrate that Monsanto's "conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct." § 768.72(2)(b), Fla. Stat.

Id. (underlines in original). Plaintiffs' responsive filing does not address *Behar*.

While this Court is cognizant of and respectful towards the *Behar* court's decision and holding with regard to the evidence and record presented *in that case*, that opinion does not say any plaintiff in a Roundup-related case is "foreclosed" from offering evidence that may provide a reasonable basis for punitive damages under Florida law as Monsanto suggests. *See* Monsanto's Corrected Mem. of Law in Supp. of its Am. Mot. for Summ. J. at 35. Rather, Monsanto seemingly acknowledges this point by noting it has previously been found liable for punitive damages in other Roundup-related cases albeit under different states' frameworks.

For these reasons, the Court denies Monsanto's Amended Motion for Summary Judgment on these grounds.

7. Whether Plaintiffs' Motion for Partial Summary Judgment Is Proper

In Plaintiffs' Motion for Partial Summary Judgment, they ask this Court to find that Monsanto is collaterally estopped from disputing the following five "facts" that Plaintiffs assert are reflected in the Ninth Circuit's opinion in *NRDC* and, according to Plaintiffs, are therefore undisputed in this litigation concerning the EPA's scientific analysis of glyphosate's carcinogenicity in its 2017 Cancer Paper and 2017 Human Health Assessment:

- EPA's conclusion that glyphosate was "not likely to be carcinogenic to humans" was "not supported by substantial evidence." *NRDC*, 38 F. 4th at 51.
- When assessing glyphosate's carcinogenicity, EPA "fail[ed] to abide by" EPA's Cancer Guidelines. *Id.* at 51.
- EPA "cannot reasonably" reach "a conclusion that glyphosate is 'not likely' to cause cancer within the meaning of the Cancer Guidelines," because that conclusion contradicted EPA's own evaluation of the epidemiological evidence. *Id.* at 46-47.
- In concluding that EPA "did not consider any of the tumors observed in the animal carcinogenicity studies to be ... caused by glyphosate," EPA erred by (1) using "historical-control data selectively," (2) discounting "the evidence of statistical significance from trend tests," and (3) "disregard of tumor results occurring at high dosages," all of which are "inconsistent with the Cancer Guidelines." *Id.* at 47-51.
- EPA's "errors in assessing human-health risk [in EPA's 2017 Cancer Paper] are serious." *Id.* at 51-52.

Plaintiffs cite Missouri caselaw noting, "[a]lthough collateral estoppel is more commonly invoked by defendants, it is also used by plaintiffs 'offensively' to estop defendants from relitigating issues that have been determined by a prior valid judgment" even, if certain factors are met, "where the plaintiff was not a party to the earlier judgment." *In re Caranchini*, 956 S.W.2d 910, 912 (Mo. banc 1997). According to Plaintiffs, those factors for "offensive non-mutual collateral estoppel" are met here because *NRDC* involved the same issues concerning the EPA's scientific analysis of

glyphosate's carcinogenicity, the Ninth Circuit's opinion was on the merits, and Monsanto was a party to that case and had a full opportunity to litigate. *See id.* at 912-13.

Monsanto opposes Plaintiff's Motion for Partial Summary Judgment, arguing it is both procedurally improper and that application of non-mutual collateral estoppel is unwarranted because it would be unfair to Monsanto. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330–31 (1979) (stating that “[a]llowing offensive collateral estoppel may also be unfair to a defendant if the judgment relied upon as a basis for the estoppel is itself inconsistent with one or more previous judgments in favor of the defendant” or “where the second action affords the defendant procedural opportunities unavailable in the first action that could readily cause a different result”). Monsanto notes that the Ninth Circuit's review in *NRDC* utilized the substantial-evidence-standard for the administrative law cases and further suggests juries in other Roundup-related trials that have found for Monsanto have evidently agreed with the EPA's cancer conclusions.

After considering the arguments, the Court denies Plaintiffs' Motion for Partial Summary Judgment. For one, Plaintiffs' Motion for Partial Summary Judgment relies heavily on the 2025 opinion by the Missouri Court of Appeals, Western District, in *Anderson v. Monsanto Co.*, 719 S.W.3d 755, 779 (Mo. App. W.D. 2025), that addressed *NRDC* and the status of the 2017 Cancer Paper and 2017 Human Health Assessment. However, the Missouri Court of Appeals' 2025 decision in *Anderson* is no longer good law after the Supreme Court of the United States granted Monsanto's petition for writ of certiorari, vacated the judgment, and ordered the case remanded to the Missouri Court of Appeals for further consideration in light of *Durnell*. Opinion Granting Petition for Writ of Certiorari, *Monsanto Co. v. Anderson*, --- S.Ct. ---, 2026 WL 1871308 (Mem) (June 30, 2026) (No. 25-1042).

Plaintiffs suggest that the Supreme Court's decision to vacate and remand *Anderson* "does not call into question *Anderson*'s analysis of *NRDC*'s relevance" and asserts that, "[o]n remand, *Andersen*'s [sic] analysis of *NRDC* will not be at issue and will remain undisturbed." Pls.' Reply in Supp. of Mot. for Partial Summ J. at 7 n.2. Plaintiffs are incorrect for a few reasons. First, when the Supreme Court of the United States grants certiorari, vacates the judgment below, and remands the case (sometimes referred to as a "GVR" order), that lower court opinion loses its precedential import. See *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 168 (1996) (per curiam) ("Used in accordance with this approach, the GVR order can improve the fairness and accuracy of judicial outcomes while at the same time serving as a cautious and deferential alternative to summary reversal in cases whose precedential significance does not merit our plenary review."); *Salitros v. Chrysler Corp.*, 306 F.3d 562, 575 n.2 (8th Cir. 2002) ("A vacated decision is deprived of its precedential effect."). Second, neither Plaintiffs nor this Court are in a position to know how the Missouri Court of Appeals in *Anderson* will rule on its reconsideration in light of *Durnell* and whether or how its analysis of *NRDC* may change from its now-vacated 2025 opinion. In fact, the Missouri Court of Appeals only recently imposed an expedited briefing schedule and has yet to set it for oral argument. See Order, *Daniel Anderson, et al. v. Monsanto Co.*, No. WD87059 (Mo. App. E.D. Aug. 11, 2026).

More importantly, the Court agrees with Monsanto that Plaintiffs have not presented a proper motion for summary judgment. Missouri's Rule 74.04(c)(6) provides that summary judgment is warranted only if "there is no genuine issue as to any material fact" and as a result "the moving party is entitled to judgment as a matter of law." Missouri courts have, thus, commented that "a summary judgment motion does not constitute a proper forum for seeking solely declarations of undisputed fact" in the absence of an entitlement to judgment. *CFM Ins.*,

Inc. v. Hudson, 432 S.W.3d 797, 803 (Mo. App. W.D. 2014). Especially in light of *Durnell* and the Supreme Court's vacatur and remand in *Anderson*, the Court concludes Plaintiffs have not shown that the "facts" in their Motion for Partial Summary Judgment are not subject to genuine dispute nor that they are entitled to judgment on any of their claims as a matter of law. Their Motion for Partial Summary Judgment is denied.

CONCLUSION

For the reasons stated above, Monsanto's Amended Motion for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**.

Monsanto's Amended Motion for Summary Judgment is **GRANTED IN PART** as it relates to Plaintiff Larkin's claim for strict products liability – design defect in Count II.

Monsanto's Amended Motion for Summary Judgment is **GRANTED IN PART** as it relates to Plaintiffs' claim for strict products liability – failure to warn (Count III), which the Court concludes is preempted by FIFRA.

Monsanto's Amended Motion for Summary Judgment is also **GRANTED IN PART** on Plaintiffs' claims for breach of implied warranty as it relates to merchantability in Count IV for failure to provide pre-suit notice as required by Florida and Virginia law.

Monsanto's Amended Motion for Summary Judgment is also **GRANTED IN PART** on Count IV as it relates to Plaintiffs' claims for breach of implied warranty of fitness for a particular purpose, which Plaintiffs expressly withdraw in their responsive filing. *See* Pls.' Mem. of Law in Opp'n to Monsanto's Am. Mot. for Summ. J. at 8 & 55.

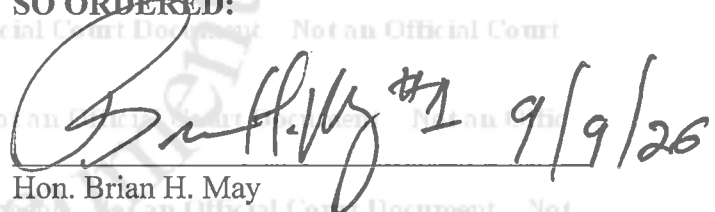
Monsanto's Amended Motion for Summary Judgment is also **GRANTED IN PART** on the claim for fraudulent concealment (Count VI) as to Decedent Larkin, which Plaintiffs expressly

concede in their responsive filing. *See* Pls.' Mem. of Law in Opp'n to Monsanto's Am. Mot. for Summ. J. at 8, 9 & 55.

Except as expressly granted above, Monsanto's Amended Motion for Summary Judgment is **DENIED IN PART** on all other grounds. Plaintiffs may continue on their claims for negligence (Count I), strict products liability – design defect except as to Plaintiff Larkin (Count II), fraud and misrepresentation (Count V), fraudulent concealment except as to Plaintiff Larkin (Count VI), punitive damages (Count VII), survival claim pursuant to Missouri Survival Statute, Section 537.020, RSMo, as to Plaintiff Larkin (Count VIII), and wrongful death as to Plaintiff Larkin (Count IX).

Plaintiffs' Motion for Partial Summary Judgment is **DENIED**.

SO ORDERED:

 #1 9/9/26
Hon. Brian H. May
Circuit Judge, Division 1