

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 3D24-0569
L.T. CASE NO.: 2020-CA-008726-CA-01

MONSANTO COMPANY,

Appellant,

vs.

LAWRENCE J. BEHAR,

Appellee.

_____ /

**APPELLEE’S PARTIALLY OPPOSED MOTION FOR
EXTENSION OF TIME TO FILE INITIAL BRIEF**

Appellee, Lawrence J. Behar (“Appellee”), by and through undersigned counsel, hereby moves, pursuant to Florida Rule of Appellate Procedure 9.130(e), for a thirty-day extension of time to file his initial brief, which is presently due on May 31, 2024. Good cause exists for this extension of time, but Appellant, Monsanto Company, has partially opposed it, necessitating this motion. And because Monsanto, through the same counsel, has questioned our representations of need for additional time, both in correspondence leading to this motion as well as recently in another case, we

present a more fulsome showing of good cause than we ordinarily would.

1. This appeal involves Monsanto’s appeal of a non-final order granting Plaintiff-Appellee’s motion for leave to amend his complaint to add a claim for punitive damages arising from Monsanto’s conduct concerning its product, Roundup, which appellee alleges caused his cancer. Upon Monsanto’s motion, the trial court stayed “all matters related to Plaintiff’s claims for punitive damages” on May 9, 2024, pending resolution of this appeal. *See* Ex. A (trial court order).

2. Good cause for the requested thirty-day extension exists because the undersigned appellate counsel have obligations in other courts that preclude dedicating the time and attention necessary to complete the initial brief in this case under the existing deadline.

3. First, during the interval between the date Monsanto filed its initial brief on May 1, 2024 and the date of this motion, the undersigned counsel have been primarily occupied with:

- Completing an answer brief in *Menada, Inc. v. Arevalo*, Case No. 3D23-1625 (Fla. 3d DCA), filed on May 22, 2024; and
- Managing presuit discovery in a medical malpractice matter with 11 separate defendants.

4. Also during this period, one of the undersigned counsel was out of the country from April 29 to May 7, 2024 on a long-planned vacation and then had to travel to California from May 12 to 15, 2024 in connection with a surgery his son underwent.

5. Beyond these pre-existing obligations before the existing May 31 deadline, undersigned counsel is also responsible for preparing the initial brief in *Erickson v. Monsanto Company*, Case No. 4D24-0835 (Fla. 4th DCA), due May 28, 2024, in which opposing counsel is also serving as counsel for Monsanto. The *Erickson* case also involves an appeal of an order on a motion for leave to amend to add a claim for punitive damages. In that case, the trial court denied the plaintiff's motion, and Monsanto is the appellee. When undersigned counsel sought a second 30-day extension of time to June 17, 2024 to file the initial brief in *Erickson*, Monsanto advised it would agree to only a seven-day

extension. The undersigned nonetheless sought the time they needed, and Monsanto, through the same counsel here, filed an opposition questioning whether the undersigned truly needed the time requested. Unfortunately, the Fourth District followed Monsanto's objection, and trimmed the 30-day request to just the seven days Monsanto lobbied for. Monsanto's refusal to accommodate undersigned counsel's full request in *Erickson* has forced counsel to drop the various other matters they were working on—and adjust their plans over the Memorial Day weekend—in order to complete that initial brief by the new deadline. The immediate press of work in *Erickson* has accentuated the need for the full thirty-day extension Appellee seeks in this case.

6. Opposing counsel has advised the undersigned that Monsanto will only agree to a 21-day extension in this case, which would make the deadline for Behar's answer brief June 21, 2024. But that deadline is not practicable for undersigned counsel—as we have taken pains to explain to opposing counsel—because of the following additional obligations within and close to that period:

- Preparing for and handling a substantive, special-set hearing in a commercial case on **June 5** in *McCormick*

v. RMLMBR, LLC, Case No. 2023-018399 CA 01 (11th Jud. Cir., Miami-Dade Cty.);

- Preparing an answer brief in *Gonzalez v. Progressive*, Case No. 3D23-2247 (Fla. 3d DCA), due **June 10**, 2024 (for which counsel will likely need to request a brief extension due to opposing counsel's objection in *Erickson*);
- Preparing an answer brief due **June 22** in *Universal Property & Casualty Ins. Co. v. Rodriguez*, Case No. 4D23-3045 (Fla. 4th DCA);
- Preparing a reply brief due **June 24** in *Arevalo v. Menada*, Case No. 3D24-0569 (Fla. 3d DCA) (a different appeal than *Menada, Inc. v. Arevalo*, Case No. 3D23-1625, mentioned above); and
- Preparing a reply brief due **June 26** in *Souders v. Suarez Trucking Co.*, Case No. 2D23-2211 (Fla. 2d DCA).

7. Undersigned counsel advised opposing counsel of these deadlines via email and asked Monsanto to reconsider its opposition to the full 30-day extension request in an attempt to

confer and avoid motion practice over something the Court surely expects counsel to be able to work out as a matter of professional courtesy. *See* Ex. B (May 22, 2024 1:39 PM email from C. Martinez).

8. After objecting, Monsanto’s counsel did offer to speak to their client, but lectured that “an appropriate pace is expected so as not to delay the underlying trial court proceeding.” *See id.* (May 22, 2024 2:23 PM email from A. Vaughan). He also questioned why undersigned counsel would need the requested thirty days since, in his view, Monsanto’s offered response time is sufficient because the answer brief here would “involve arguments nearly identical to those made in [the] *Erickson* brief.” *Id.* While there are no doubt some efficiencies owing to the related issues in the *Erickson* appeal, the undersigned still need the requested time given obligations in other cases.

9. We therefore asked Monsanto’s counsel to confer (presumably again) with their client, armed with the details of the undersigned’s conflicting work obligations. After having done so, opposing counsel advised that Monsanto was still unwilling to

budge: it refused to consent to the requested thirty-day extension.
Ex. B (May 23, 2024 6:49 AM email from A. Vaughan).

10. A party should not dictate its opponent's deadline, particularly in the face of a showing of legitimate conflicts posed by other work obligations of counsel. The principles of professionalism espoused by Florida courts and the Bar often dictate that attorneys agree as a matter of courtesy to the reasonable requests of their opposing counsel when those requests do not create undue prejudice to their clients. *See* Ex. C (concurring opinion of Makar, J., in *Johnson v. Wal-Mart Stores East, LP*, Case No. 5D2023-0201 (Fla. 5th DCA May 2, 2024)). In the experience of the undersigned counsel, this Court shares the expectation that appellate counsel will strive to meet these goals.

11. Monsanto's opposition to our request for more time does not just sharply depart from that ideal: it is both one-sided and unjustifiable.

12. It is one-sided because, just last month, Monsanto sought the same exact same relief from this Court (a 30-day extension for its principal brief) when *its* counsel needed more time in a different appeal involving another non-final order granting

leave to amend to seek punitive damages in a Roundup case. Monsanto, represented by a different law firm, sought that extension to file its initial brief in *Monsanto Co. v. Callion*, No. 3D2024-0578 (Fla. 3d DCA) (Monsanto's notice of agreed extension, filed April 15, 2024). The opposing counsel in that case agreed to Monsanto's request.

13. Yet when the opposing party seeks the time it needs, Monsanto is unwilling to agree to the full request, seeking to jam opposing counsel for its advantage. At least that is our experience in both this case and in *Erickson*, where we have been forced to file motions, which Monsanto then vigorously opposes.¹

14. Monsanto's opposition is unjustifiable because it cannot articulate any prejudice it will suffer from the passage of the brief additional time counsel has represented they need. The punitive-damages related aspect of the case has been stayed by the trial court. Ex. A. So it is not as though Monsanto is being subjected to net-worth discovery during this interval. Notably, Monsanto had

¹ In fairness, Monsanto did not file a *written* opposition to the undersigned's first request in *Erickson* for a 30-day extension of time; but it opposed the full 30-day extension and represented that it agreed to only a two-week extension of the original deadline.

that stay even before it and its counsel opposed Behar’s request for the requested extension of time. Yet opposing counsel has taken the position that they cannot extend professional courtesies because this is an appeal of a non-final order, and they don’t want to “delay the underlying trial court proceedings.” Ex. B (May 22, 2024 2:23 PM email from A. Vaughan). But those proceedings have been *stayed* with respect to the sole subject of this appeal, the punitive damages claim.

Accordingly, Appellee regrets having to file such a lengthy motion to seek just nine more days of time than Monsanto is willing to agree to, but circumstances compel it. Appellee respectfully requests the entry of an order granting him until June 30, 2024 to file his initial brief.

DATED May 23, 2024.

Respectfully submitted,

/s/ Stephen F. Rosenthal

Stephen F. Rosenthal (B.C.S.)

Florida Bar No. 131458

/s/ Christina H. Martinez

Christina H. Martinez

Florida Bar No. 102943

PODHURST ORSECK, P.A.

One S.E. 3rd Ave., Ste. 2300

Miami, Florida 33131
Tel.: 305-358-2800
Fax: 305-358-2382
srosenthal@podhurst.com
cmartinez@podhurst.com

Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Notice has been filed with the Court through the Florida e-filing Portal and by E-Service to all counsel of record generated by the e-filing Portal and on the attached service list on this 23rd day of May, 2024.

MIHAI M. VRASMASU
Florida Bar No. 0028610
E-Mail: mvrasmasu@shb.com
ANTAR K. VAUGHAN
Florida Bar No. 497754
E-Mail: avaughan@shb.com
LORI-ANN C. RIDLEY
Florida Bar No. 1044695
E-Mail: lridley@shb.com
SHOOK, HARDY & BACON L.L.P.
Citigroup Center, Suite 3200
201 South Biscayne Boulevard
Miami, Florida 33131-4332
Tel.: 305-358-5171/Fax: 305-358-7470
Counsel for Appellant, Monsanto Company

/s/ Christina H. Martinez
Christina H. Martinez

EXHIBIT A

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-008726-CA-01

SECTION: CA15

JUDGE: Jose Rodriguez

Lawrence J Behar

Plaintiff(s)

vs.

Monsanto Company et al

Defendant(s)

ORDER GRANTING DEFENDANT'S MOTION TO STAY PENDING APPEAL

THIS CAUSE having come before the Court upon Defendant's Motion to Stay Trial Court Proceedings Pending Appeal ("Motion"), and the Court having reviewed Plaintiff's opposition to the Motion, heard argument of counsel on May 02, 2024, and being otherwise fully advised on the matter, it is hereby:

ORDERED and ADJUDGED:

The Motion is **GRANTED IN PART**, and all matters related to Plaintiff's claims for punitive damages are stayed, pending the resolution of the appeal of this Court's February 27, 2024 Order Regarding Plaintiff's Motion for Leave to Amend to Assert Claims for Punitive Damages. Matters related to Plaintiff's claims for compensatory damages shall not be so stayed.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 9th day of May, 2024.

2020-008726-CA-01 05-09-2024 10:08 A



2020-008726-CA-01 05-09-2024 10:08 AM

Hon. Jose Rodriguez

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Antar K Vaughan, avaughan@shb.com
Antar K Vaughan, antar-vaughan-7495@ecf.pacerpro.com
Antar K Vaughan, mrubiera@shb.com
Anthony Nolan Upshaw, aupshaw@mwe.com
Anthony Nolan Upshaw, mblancoaleman@mwe.com
Anthony Nolan Upshaw, amonestime@mwe.com
Belkys Izquierdo, bizquierdo@shb.com
Caroline Marie Iovino, ciovino@mwe.com
Caroline Marie Iovino, mblancoaleman@mwe.com
Caroline Marie Iovino, nmoya@mwe.com
Dorsey C Miller III, Luksboca-pleadings@ls-law.com
Dorsey C Miller III, dmiller@insurancedefense.net
Dorsey C Miller III, ssimpson@insurancedefense.net
Jarvis C. James, jjames@shb.com
Jarvis C. James, mclick@shb.com
Jarvis C. James, jarvis-james-8955@ecf.pacerpro.com
Jessica Holder, JHolder@PODHURST.com
Kristina Infante, kinfante@podhurst.com
Kristina Infante, projas@podhurst.com
Kristina Infante, jholder@podhurst.com
Kristina Infante, kinfante@podhurst.com
Kristina Infante, laja@podhurst.com
Kristina Infante, projas@podhurst.com
Lidia Aja, LAJA@PODHURST.com
Lori-Ann Camille Michelle Ridley, lridley@shb.com
Lori-Ann Camille Michelle Ridley, lori-ann-ridley-2461@ecf.pacerpro.com
Lori-Ann Camille Michelle Ridley, bizquierdo@shb.com
Margaret Rubiera, mrubiera@shb.com
Melissa Raspall Alvarez, malvarez@mwe.com
Melissa Raspall Alvarez, mblancoaleman@mwe.com
Melissa Raspall Alvarez, nmoya@mwe.com
Mihai M Vrasmasu, mvrasmusu@shb.com
Mihai M Vrasmasu, mihai-vrasmasu-2996@ecf.pacerpro.com
Mihai M Vrasmasu, mrubiera@shb.com
Pablo Rojas, projas@podhurst.com
Pablo Rojas, laja@podhurst.com
Pablo Rojas, jpupo@podhurst.com

Patrick Lee Lowther, plowther@mmmlaw.com
Patrick Lee Lowther, nmiles@mmmlaw.com
Patrick Lee Lowther, jphillips@mmmlaw.com
Randy J. Lipkien, rlipkien@defensecounsel.com
Randy J. Lipkien, lcleveland@defensecounsel.com
Randy J. Lipkien, miamipleadings@defensecounsel.com
Robert Alpert, rpa@mmmlaw.com
Steven C. Marks, smarks@podhurst.com
Steven C. Marks, laja@podhurst.com
Steven C. Marks, jpupo@podhurst.com

Physically Served:

EXHIBIT B

Christina H. Martinez

From: Christina H. Martinez
Sent: Thursday, May 23, 2024 8:08 AM
To: Vaughan, Antar K. (SHB); Vrasmasu, Mihai (SHB); Ridley, Lori-Ann C. (SHB)
Cc: STEPHEN F. ROSENTHAL; SANDRA RODRIGUEZ; Rubiera, Margaret (SHB)
Subject: RE: No. 3D2024-0569 - Monsanto v. Behar - Request for Extension

Thank you for checking, Antar. We will file the motion representing your position.

Regards,
Christina

Christina H. Martinez | Podhurst Orseck, P.A. | Miami, FL | 305-358-2800 | www.podhurst.com

From: Vaughan, Antar K. (SHB) <AVAUGHAN@shb.com>
Sent: Thursday, May 23, 2024 6:49 AM
To: Christina H. Martinez <cmartinez@podhurst.com>; Vrasmasu, Mihai (SHB) <MVRASMASU@shb.com>; Ridley, Lori-Ann C. (SHB) <Iridley@shb.com>
Cc: STEPHEN F. ROSENTHAL <SROSENTHAL@podhurst.com>; SANDRA RODRIGUEZ <srodriguez@PODHURST.com>; Rubiera, Margaret (SHB) <MRUBIERA@shb.com>
Subject: RE: No. 3D2024-0569 - Monsanto v. Behar - Request for Extension

Christina,
Good morning. Our position remains the same. We will agree to a 21 day extension.

Thanks,
Antar

From: Christina H. Martinez <cmartinez@podhurst.com>
Sent: Wednesday, May 22, 2024 2:29 PM
To: Vaughan, Antar K. (SHB) <AVAUGHAN@shb.com>; Vrasmasu, Mihai (SHB) <MVRASMASU@shb.com>; Ridley, Lori-Ann C. (SHB) <Iridley@shb.com>
Cc: STEPHEN F. ROSENTHAL <SROSENTHAL@podhurst.com>; SANDRA RODRIGUEZ <srodriguez@PODHURST.com>; Rubiera, Margaret (SHB) <MRUBIERA@shb.com>
Subject: RE: No. 3D2024-0569 - Monsanto v. Behar - Request for Extension

EXTERNAL

Hi Antar,

We are not asking for more time than what we need. We would appreciate if you would consult with your client and let us know by noon tomorrow so we can file a motion if necessary.

Regards,
Christina

From: Vaughan, Antar K. (SHB) <AVAUGHAN@shb.com>

Sent: Wednesday, May 22, 2024 2:23 PM

To: Christina H. Martinez <cmartinez@podhurst.com>; Vrasmasu, Mihai (SHB) <MVRASMASU@shb.com>; Ridley, Lori-Ann C. (SHB) <lr Ridley@shb.com>

Cc: STEPHEN F. ROSENTHAL <SROSENTHAL@podhurst.com>; SANDRA RODRIGUEZ <srodriguez@PODHURST.com>; Rubiera, Margaret (SHB) <MRUBIERA@shb.com>

Subject: RE: No. 3D2024-0569 - Monsanto v. Behar - Request for Extension

Christina,

I understand your position and normally we are more than amenable to extend professional courtesies and granting requested extensions. However, because this involves an interlocutory appeal, an appropriate pace is expected so as not to delay the underlying trial court proceeding.

That said, I'm happy to consult with my end again about this. However, won't your Behar response brief involve arguments nearly identical to those made in your Erickson brief, which you will be filing by May 28? Due to the fact that this is an interlocutory appeal, a 21-day extension (providing for a total of 51 days to prepare your filing) seems generous, especially given that at this point both sides are mostly just re-working arguments already made several times now. Our view is that 51 days for a response brief that mostly just reuses previous work product is more than reasonable.

If there is more to your response brief that I am missing/misunderstanding, please let me know so that I may convey that appropriately on my end.

Thanks,
Antar

From: Christina H. Martinez <cmartinez@podhurst.com>

Sent: Wednesday, May 22, 2024 1:39 PM

To: Vaughan, Antar K. (SHB) <AVAUGHAN@shb.com>; Vrasmasu, Mihai (SHB) <MVRASMASU@shb.com>; Ridley, Lori-Ann C. (SHB) <lr Ridley@shb.com>

Cc: STEPHEN F. ROSENTHAL <SROSENTHAL@podhurst.com>; SANDRA RODRIGUEZ <srodriguez@PODHURST.com>; Rubiera, Margaret (SHB) <MRUBIERA@shb.com>

Subject: RE: No. 3D2024-0569 - Monsanto v. Behar - Request for Extension

EXTERNAL

Antar,

We'd like you to please ask your client to reconsider its opposition to our requested 30-day extension of time, as a matter of professional courtesy. It is, in our combined experience, unusual and disappointing when opposing

counsel will not extend the full professional courtesy on extending appellate deadlines. So let us take a moment to explain further why we need this time, even though this effort has now consumed valuable time itself.

The 21 days you are willing to agree to would put our deadline to file our answer brief in this case to June 21. That is not practicable for us because of the following additional deadlines within and close to that period that Stephen Rosenthal and I have:

1. Finalization for filing of an answer brief due **today** in *Menada v. Arevalo* (3d DCA);
2. Devoting our remaining attention for the next week--and through the Memorial Day weekend--to preparing our initial brief in *Erickson v. Monsanto Co.* (4th DCA) now due on **May 28**, thanks to your firm's objection to the lengthier request for extension we sought in that case (and which, to our chagrin, the Fourth DCA followed last Friday, giving us just 7 more days to complete that brief);
3. Preparing for and handling a special-set hearing in Miami-Dade Circuit Court on **June 5** in *McCormick v. RMLMBR, LLC*;
4. Preparing an answer brief due **June 10** in *Progressive Insurance Co. v. Gonzalez* (3d DCA) (which we now need to seek to extend due to your firm's objection in Erickson)
5. Preparing an answer brief due **June 22** in *Universal Property & Casualty Ins. Co. v. Rodriguez* (4th DCA).
6. Preparing a reply brief due **June 24** in *Arevalo v. Menada* (3d DCA) (different appeal from #1)
7. Preparing a reply brief due **June 26** in *Souders v. Suarez Trucking* (2d DCA).

By moving the brief in this case to the 30 days we are requesting, the deadline would fall on July 1. We'll have to seek some extensions on the deadlines at the end of June to manage that.

Please let us know by tomorrow at noon if your client will reconsider its decision to oppose our full 30-day request.

Regards,
Christina

Christina H. Martinez | Podhurst Orseck, P.A. | Miami, FL | 305-358-2800 | www.podhurst.com

From: Vaughan, Antar K. (SHB) <AVAUGHAN@shb.com>
Sent: Wednesday, May 22, 2024 8:30 AM
To: Christina H. Martinez <cmartinez@podhurst.com>; Vrasmasu, Mihai (SHB) <MVRASMASU@shb.com>; Ridley, Lori-Ann C. (SHB) <lr Ridley@shb.com>
Cc: STEPHEN F. ROSENTHAL <SROSENTHAL@podhurst.com>; SANDRA RODRIGUEZ <srodriguez@PODHURST.com>; Rubiera, Margaret (SHB) <MRUBIERA@shb.com>
Subject: RE: No. 3D2024-0569 - Monsanto v. Behar - Request for Extension

Christina,
Good morning. We can agree to 21 day extension. We cannot agree to the 30 day request.

Antar

From: Christina H. Martinez <cmartinez@podhurst.com>
Sent: Tuesday, May 21, 2024 4:37 PM
To: Vaughan, Antar K. (SHB) <AVAUGHAN@shb.com>; Vrasmasu, Mihai (SHB) <MVRASMASU@shb.com>; Ridley, Lori-Ann C. (SHB) <lr Ridley@shb.com>
Cc: STEPHEN F. ROSENTHAL <SROSENTHAL@podhurst.com>; SANDRA RODRIGUEZ <srodriguez@PODHURST.com>
Subject: No. 3D2024-0569 - Monsanto v. Behar - Request for Extension

EXTERNAL

Antar,

I am writing to advise that we plan to request a 30-day extension for our answer brief in Monsanto v. Behar, which is currently due on May 31. The extension would put the new deadline at Sunday, June 30 (which would roll over to Monday, July 1). Please advise if you object to our request.

Regards,
Christina

Christina H. Martinez

Podhurst Orseck, P.A.

One S.E. 3rd Avenue

Suite 2300

Miami, FL 33131

(305) 358-2800

www.podhurst.com

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

EXHIBIT C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

Frederick Johnson,

Appellant(s)

v.

Wal-Mart Stores East, LP, A Foreign
Limited Partnership,

Appellee(s).

Case No.: 5D2023-0201

L.T. No.: 2019-CA-0446

Date: May 2, 2024

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Extension of Time to File Motion for Rehearing, Rehearing En Banc and/or Certification, filed April 26, 2024, is granted and Appellant shall file any such motion on or before **May 22, 2024**.

Makar, J., concurring.

I concur in the grant of the motion for a requested 20-day extension; the circumstances and hardships expressed in the motion establish a basis for at least that amount of additional time, particularly in a case having no apparent urgency and prior extensions to both parties. That the appellee-defendant objected to such a reasonable request without any explanation is mystifying and disheartening; if an additional twenty days imposes such a hardship, the objection ought to say why. Florida's courts and bar

associations work hard to promote professionalism, which has been in decline, making it incumbent on experienced practitioners to lead by example. Sometimes clients direct that their lawyers take ill-advised positions; sometimes lawyers do so on their own. A wise and seasoned litigator once said, however, that professionalism sometimes dictates that attorneys agree graciously to what a court will order in any event; the grant of the modest extension here confirms that adage.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

5D2023-0201 5/2/2024

SANDRA B. WILLIAMS, CLERK



Panel: Judges Makar, Eisnaugle and Boatwright

cc:

Brigid F. Cech Samole
Deana N. Dunham
Jessie L. Harrell
James R. Holland II
Todd Michaels
Bethany J. M. Pandher
Elliot H. Scherker
Todd T. Springer