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Big Monsanto Loss Signals Glyphosate Litigation Headache for Policyholders, Insurers and Reinsurers - UPDATE

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The first of its kind-Bellweather trial in California of a groundskeeper who alleged that Roundup Weed Killer usage containing Glyphosate caused his Non-Hodgkin's Lymphoma resulted in a jury verdict of \$39 million in compensatory damages and \$250 million in punitive damages.

The jury verdict has just been substantially cut by the Judge on post-trial motions. The Judge reduced the punitive damages down to \$39 million to match the amount of compensatory damages. This \$211 million reduction was in lieu of a new trial on punitive damages, only. However, this reduction will prevent a new trial on punitive damages only if the reduction is accepted by the Plaintiff, Dewayne Johnson, who has not yet responded.

The Judge held that the punitive damages verdict amount was excessive, not in keeping with current state laws, and that the punitive damages award needed to be limited to protect Monsanto's due process rights. However, the Judge found that there was a reasonable basis for the jury to conclude that Monsanto acted with actual malice for continuing to market and sell a dangerous product without a proper warning. It was solely the amount of the punitive damages award that the Judge cut. Monsanto still plans to appeal the entire verdict.

Additionally, in the Federal MDL, or multi-district litigation "cluster of cases" (approximately 500 cases, separately filed) pending in the Federal Court for the Northern District of California, the Judge running these cases has just announced that the trials of several selected "Bellweather claims" will start as early as late February 2019. Similarly, multiple state court cases around the country are being pushed towards trial as early as February-April of 2019 in Missouri, with possible other trials to start in other states later next year.

New studies are being released almost monthly suggesting that more consumer products, especially children's cereals and other popular consumer food items such as snack foods, etc., contain higher levels of Glyphosate (the main ingredient in Roundup) than previously believed based on earlier testing studies. Thus far, other than some consumer class action false advertising-type lawsuits around the country, there have been no cases filed yet alleging any sort of personal injury or illness related to the consumption of food products allegedly contaminated by Glyphosate. Additionally, at least thus far, there have been no occupational exposure claims from the food processing and packing industries relating to this sort of Glyphosate exposure.

Comment: The Glyphosate litigation, i.e. Mass Tort/Toxic Tort/Product Liability litigation, continues to expand and evolve. The issues raised by current and potential future plaintiffs in Glyphosate lawsuits, resulting verdicts and post-verdict rulings, along with associated coverage and chain of distribution issues, presents potentially overwhelming exposure for policyholders, insurers and reinsurers unless they are properly identified and professionally managed.

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