

# 04.26.19

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## Monsanto and Bayer's Exposures Continue to Grow - Glyphosate Litigation Headache for Policyholders, Insurers and Reinsurers Continues to Expand - UPDATE

Three cases signal a continuation of "Bellwether Trials" against Monsanto for its herbicide product, Roundup. Bayer recently acquired Monsanto for \$63 billion so that company and its insurers also have exposure.

In the Dwayne Johnson state court case in Francisco, California, Mr. Johnson alleged his exposure as a groundskeeper over a number of years to glyphosate contained in Monsanto's Roundup caused his cancer. The jury agreed and awarded Mr. Johnson a staggering \$289 million. This verdict was later reduced to \$78 million, including \$39,253,209.35 in punitive damages.

The second case to reach verdict was in the Federal Multi-District Litigation ("MDL") Court, again in San Francisco, California. In that case, Edwin Hardeman alleged that his exposure to glyphosate in Roundup from 1986 through 2012 caused his cancer. The jury agreed and awarded close to \$80 million in damages, including \$75 million in punitive damages. Hardeman is the first case out of 1,600 to be tried in San Francisco's MDL.

Currently pending in the Oakland, California state court is the husband and wife lawsuit of Alva and Alberta Pilliod. They are alleging that exposure to Roundup caused both of them to contract Non-Hodgkin lymphoma, Alva in 2011 and Albert in 2015. This is the first Non-Hodgkin lymphoma case to go to trial.

In addition to San Francisco's Federal MDL, there are more than 11,000 lawsuits against Monsanto regarding Roundup. In addition, more than 9,000 cases have been filed in the State of Missouri against Monsanto, and over 150 cases are pending in "Roundup JCCP" in California State Court.

The Federal Court judge running the MDL program in California (Judge Chhabria) has recently ordered that all other Federal Court trials in the Roundup MDL be stayed pending individual and/or global settlement negotiation, in light of these recent verdicts. Judge Chhabria has also strongly suggested that Monsanto and Bayer attempt to reach a global settlement with the plaintiffs. However, at the same time, state court cases, primarily in California, will continue to go to trial (Pilliod, etc.).

Multiple advertisements on television, across the United States, seeking the sign up of new plaintiffs for Roundup Cancer Litigation are increasingly familiar. Additionally, new studies continue to be released (in the U.S. and EU) directly addressing not simply direct exposure claims but also potential consumer products contamination claims (children cereals, snack foods, etc.) including the glyphosate/Roundup "contaminants" in these products. While consumer class action/false advertising-type lawsuits around the country continue forward, there are as yet no cases filed alleging personal injury/illness from "contaminated food products". Additionally, while agricultural workers/"home gardeners" are bringing the thousands of cases mentioned above, there are as yet no occupational exposure claims for food processing/packaging industries for alleged "glyphosate contamination" from the products being handled.

**Comment:** Mass Tort/Toxic Tort/ Product Liability litigation (Glyphosate/Roundup Litigation) continues to expand/explode and evolves in the very short period that this litigation has first come into the public awareness. All of this litigation on multiple fronts, the anticipated continued expansion of potential future litigation involving glyphosate direct exposure claims, and potential consumer products contamination claims, especially in light of the recent very large verdicts, in addition to associated chain of distribution issues, continue to present potentially overwhelming exposures for policyholders, insurers and reinsurers.

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Recent industry analysts have suggested that, unless properly identified and professionally managed, glyphosate litigation losses (US-P&C market) could reach "asbestos-level exposures." Indeed, issues such as trigger of coverage, known loss, allocation of loss and the (re)insurability of punitive damages are already emerging.

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