

08.26.19

Weber 
Gallagher

Roundup/Glyphosate Litigation Now Expands Beyond Monsanto/Bayer - Class Action Litigation Targets Distributors - New Policyholders, Insurers and Reinsurers "In the Mix"- UPDATE # 3

A new class action lawsuit has just been filed in federal court in the Central District of California, naming Lowe's Home Centers, and up to 100 (as yet) unnamed companies, as defendants. The case is styled *James Weeks, individually and on behalf of all others similarly situated v. Lowe's Home Centers, LLC and Does 1 through 100*. This latest litigation is an effort to pursue damages for all purchasers of various Roundup products in California from distributors (like Lowe's). The theory is that Lowe's and the other as yet unnamed distributor defendants had a duty to warn consumers about potential risks regarding Roundup (glyphosate) but failed to do so. According to the complaint, Lowe's received safety information about the hazards related to the utilization of Roundup but continued to sell the product to consumers.

This is the latest expansion of the glyphosate litigation that is exploding across the United States. This lawsuit also notes there is no warning that glyphosate "is probably a cancer-causing agent," a determination made by the World Health Organization International Agency for research on cancer (IARC) in 2015. In addition, this lawsuit alleges that despite having knowledge from the MSDS (material safety data sheet), the defendants did not warn consumers they may be exposed to this alleged carcinogen through inhalation and skin contact. The plaintiffs also allege that Lowe's omitted proper use instructions, e.g., advising consumers to use a gas mask respirator when using Roundup. The plaintiffs are seeking class certification.

The proposed class members are those that purchased Roundup at these distributor locations, and either would not have done so had they known of the carcinogenic risk, or would have followed self-protective procedures, had the defendants provided a warning on how to minimize those risks. The class action lawsuits seek restitution to any California residents who purchased Roundup products at its stores. The complaint also alleges that Lowe's violated: (1) California's Consumer Remedies Act; (2) California's Unfair Competition Law; and (3) California's Unfair Competition Law.

On a related note, the above complaint was filed just one day before the U.S. EPA issued its latest "guidance," which stated it will not approve products which carry a label warning required by the State of California, that alert consumers that Roundup may cause cancer. This California requirement (Proposition 65) is believed by the U.S. EPA to be "false and misleading," since the EPA does not agree with the IARC findings.

This is yet the latest chapter in the Roundup lawsuits, coming at a time when Monsanto and Bayer face increasing pressure to "block settle" the Roundup lawsuits filed by currently more than 18,500 individual plaintiffs, nationwide. This litigation all relates to the alleged diagnosis of Non-Hodgkin's Lymphoma by some of the users of Roundup. Following the first few unsuccessful "shock" jury verdicts in favor of the plaintiffs, Monsanto and Bayer are currently engaging in court-ordered mediation in an attempt to resolve all of the currently pending U.S. Court system personal injury (individual) litigation.

Comment: Mass Tort/Toxic Tort/ Product Liability litigation (Glyphosate/Roundup Litigation) not only continues to expand/explode in the individual/personal injury litigation front (now over 18,500 cases nationally), but continues to evolve in the very short period that this litigation has first come into the public awareness. Specifically, while the current litigations are on multiple fronts, this latest litigation now confirms our previously held anticipated direction that the evolution of the claims would take, namely, direct claims against companies in the associated chain of distribution. This, then, continues to present even more

08.26.19



challenging and potentially overwhelming exposures for policyholders, insurers and reinsurers.

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

For more information, please contact Richard S. Ranieri at rranieri@wglaw.com or 973.242.2230. Our previous alerts, along with our Roundup/Glyphosate webinar can be found at www.wglaw.com.