

Monsanto Hit With \$2.25B Verdict In Philly Roundup Trial

By P.J. D'Annunzio

Law360 (January 26, 2024, 4:13 PM EST) -- A Philadelphia jury on Friday hit the makers of weedkiller Roundup with an astronomical \$2 billion punitive damages verdict, along with \$250 million in compensatory damages, in a case brought by a Pennsylvania man who claimed Monsanto failed to warn users that the product contained carcinogenic chemicals and contributed to his development of cancer.

Friday's result comes after two previous Philadelphia juries hit Bayer AG unit Monsanto with separate \$3.5 million and \$175 million verdicts in the mass tort. (AP Photo/Jeff Roberson, File)

The 12-person jury deliberated for little over an hour before reaching their verdict, capping a trial that began on Jan. 8 before Court of Common Pleas Judge Susan I. Schulman.

In the third bellwether trial in the Philadelphia-based Roundup mass tort, Lycoming County resident John McKivison alleged that using Roundup caused him to develop non-Hodgkin Lymphoma. Friday's result comes after two previous Philadelphia juries hit Bayer AG unit Monsanto with separate \$3.5 million and \$175 million verdicts in the mass tort.

Thomas R. Kline, who represents McKivison, said the award was likely the largest single-plaintiff verdict in any Roundup case nationwide.

"It was a strong and decisive and unanimous declaration by a jury that had heard three weeks of damning testimony about some of the most egregious corporate misconduct in American history," he said. "The jury spoke strength and with conviction."

A Bayer spokesperson on Friday said in an email to Law360 that the company expects to appeal the verdict.

"We disagree with the jury's adverse verdict that conflicts with the overwhelming weight of scientific evidence and worldwide regulatory and scientific assessments, and believe that we have strong arguments on appeal to get this verdict overturned and the unconstitutionally excessive damage award eliminated or reduced; previous damage awards have been reduced by more than 90% overall in final judgments," they said.

The day began with closing arguments. The attorneys each had an hour to sum up the last three weeks of litigation for the jury and sway its members in their favor.

Jason Itkin, who also represents McKivison, told the jurors that they would never again have this much power in their lives. He told them that they could be the ones to put a stop to a multibillion-dollar corporation unabashedly selling cancer-causing products to fatten its coffers.

Of Monsanto, Itkin said, "They have no regrets, they have no remorse, and they take no responsibility. The 12 of you as a jury have the power to right a wrong and make a multibillion-dollar, multinational company right its ways."

In addition to failing to warn consumers about the alleged carcinogenic chemical glyphosate in Roundup, Itkin said Monsanto knew about the dangers but chose to mislead the public by ghostwriting editorials in newspapers and influencing members of the government.

Monsanto's attorney, Anthony Upshaw, told the jury that not a single epidemiology study has shown that Roundup causes cancer.

He said to the jury that McKivison's lawyers tried to distract them with internal Monsanto emails about claims that the company ghost-wrote articles in news publications in an attempt to control the narrative about Roundup.

What's important to the plaintiff's lawyers, Upshaw said "is that you become upset with Monsanto and ignore the science."

He argued that Roundup was harmless because it is 96% water, with only a dash of the plant-killing chemical glyphosate.

Upshaw also said that the Environmental Protection Agency controls what labels go on a product, not Monsanto, so it didn't have the ability to warn of any carcinogenic ingredients anyway.

McKivison said in his lawsuit that he began using Roundup in 2006 several times a year for years thereafter. He estimated that he used Roundup at least 30 times before developing cancer.

Like in the other cases, McKivison claimed that Monsanto and Nouryon, which supplied Monsanto with the chemicals used in Roundup, put profits before people.

"Defendant Monsanto, since it began selling Roundup, has represented it as safe to humans and the environment," McKivison's complaint said. "Indeed, defendant Monsanto has repeatedly proclaimed, and continues to proclaim to the world, and particularly to United States consumers, that glyphosate-based herbicides, including Roundup, create no unreasonable risks to human health or to the environment."

It continued, "Monsanto participated in a prolonged campaign of misinformation to convince government agencies, farmers, customers, and the general population that its Roundup and other glyphosate-containing products are safe."

The roughly three-week trial got heated on Jan. 23 when Judge Schulman grew visibly irritated that a toxicology expert for Monsanto appeared to be retreading previous testimony.

The jury's verdict is a continuation of the pattern of losses for Monsanto in Roundup trials across the country, now reaching combined judgments of billions in dollars.

The McKivisons are represented by **Thomas R. Kline** and **Tobi L. Millrood** of Kline & Specter PC, and Jason Itkin of Arnold & Itkin LLP.

The defendants are represented by Chanda A. Miller of Barnes & Thornburg LLP, Joseph H. Blum, Katelyn A. Romeo, Nicolai Schurko and Erin L. Leffler of Shook Hardy & Bacon LLP, and Anthony Upshaw of McDermott Will & Emery LLP.

The case is McKivison v. Monsanto et al., case number 220100337, in the Court of Common Pleas of Philadelphia County, Pennsylvania.

--Editing by Adam LoBelia.