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Critical Mass with Law.com's Amanda Bronstad: Three Trials Begin Over Monsanto's Roundup, MOVEit Breach Cases Move to Massachusetts



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Critical Mass



Amanda Bronstad
staff reporter

Welcome to Law.com Class Actions: Critical Mass, a weekly briefing for class action and mass tort attorneys.

This week: Will Roundup plaintiffs turn around their string of losses in trials happening in California, Missouri or Pennsylvania? Class actions over this year's MOVEit breach will be coordinated into multidistrict litigation, despite numerous objections. Find out the big defense firms brought into the Hawaii wildfire litigation.

I'm Amanda Bronstad. Feel free to reach out to me with your input. My email is abronstad@alm.com, or follow me on X: [@abronstadlaw.com](https://twitter.com/abronstadlaw).

'Billions of Dollars in Roundup Sales'

Three trials over Monsanto's Roundup began this month in Missouri, California and Pennsylvania.

[Here's my report](#) on the opening statements (broadcast live by Courtroom View Network): Oct. 3 in St. Louis, and Monday in San Diego. My colleague Aleeza Furman, of The Legal Intelligencer, had [this coverage](#) of Tuesday's opening statements in the first Roundup trial in Philadelphia.

In Missouri: Plaintiff's lawyers [Roe Frazer](#) (Frazer PLC), [Isaac Conner](#) (Frazer PLC) and [Wylie Blair](#) (OnderLaw) are up against defense team [Shayna Cook](#) (Goldman Ismail) and [Mike Brown](#) (Nelson Mullins).

In California: [Scott Love](#) (Clark Love), [Grace Hooten](#) (Clark Love), [Ryan Ziminkas](#) (Clark Love), [Paul Kiesel](#) (Kiesel Law) and [Melanie Palmer](#) (Kiesel Law) are pitted against [Pamela Yates](#) (Arnold & Porter), [Daniel Meyers](#) (Arnold & Porter), [Lee Mickus](#) (Evans Fears) and [Jay Schuttert](#) (Evans Fears).

And in Philadelphia: Tom Kline (Kline & Specter) and Jason Itkin (Arnold & Itkin) faced off against Manuel Cachán (Skadden Arps) and Maira Penza (Wilkinson Stekloff).

Why it matters: Monsanto, now owned by **Bayer**, has won at least seven verdicts in a row in Roundup trials in California, Missouri and Oregon. Bayer cites another Sept. 1 defense verdict in Illinois, and, last month, a Missouri judge issued a directed verdict midtrial in a case.

New in the trials: Frazer, in St. Louis, told jurors they were the first to hear evidence that Roundup contained numerous carcinogens, not just glyphosate – the active ingredient. Love and Kline made similar allegations, particularly as to surfactant, which is added to Roundup to make it stick to leaves.

Kline and Itkin, by the way, are the same duo who got an \$8 billion verdict in 2019 in Philadelphia against **Johnson & Johnson** over the antipsychotic drug Risperdal. On Tuesday, Aleeza said Kline didn't give a punitive damages figure to the jury, but "definitely made a point of mentioning billions of dollars in Roundup sales."

"Kline closed things out by telling the jury 'your power is massive and your responsibility is awesome,' and said the case is about what we expect from companies like Monsanto."

MDL Panel Coordinates More Than 100 Class Actions Over MOVEit

The **U.S. Judicial Panel on Multidistrict Litigation** ordered more than 100 class actions filed over this year's **MOVEit** breach be transferred to **U.S. District Judge Allison Burroughs** in Massachusetts. That's despite considerable objections from some plaintiffs' attorneys and entities like **Prudential Insurance Co. of America** and **Johns Hopkins University**, which are among the dozens of defendants added to the lawsuits against **Progress Software Corp.**, maker of the **MOVEit** file transfer program, and **Pension Benefit Information**, a key customer.

A quick backgrounder: The May 31 breach by a Russian cybergang CLOP affected more than 1,000 organizations. Many of those entities, such as **Fidelity Investments** and **TD Ameritrade**, are now named in class actions over their own failures to contain the breach.

Why the opposition? Many plaintiffs argued the breaches were separate and should not be combined into multidistrict litigation, and defendants cited the panel's 2021 decision refusing to coordinate 26 cases over another file transfer program, **Accellion**.

By the way: The panel also transferred nearly 80 cases brought by **Uber** passengers who allege they were sexually assaulted or harassed by drivers. **U.S. District Judge Charles Breyer** will oversee the multidistrict litigation in the Northern District of California, where Uber is headquartered. The panel concluded:

"We find there are sufficient common issues present to warrant centralized treatment, including, for example, Uber's knowledge of the prevalence of sexual assault, representations regarding safety, and policies and practices for handling complaints about drivers."

Who Got the Work?

Munger Tolles & Olson and Hueston Hennigan, both experts in wildfire litigation, have been [retained by key defendants](#) in the lawsuits in Hawaii. **Hawaiian Electric Co.**, which is named in about 35 lawsuits, has brought in Munger Tolles partners [Brad Brian](#), [Lisa Demsky](#) and [Nicholas Fram](#). The state of Hawaii has turned to Hueston Hennigan partners [John Hueston](#) and [Doug Dixon](#). Other defendants are **Maui County**, which has retained **McCorriston Miller** partners [David Minkin](#), and the trustees of the estate of **Bernice Pauahi Bishop**, a landowner and operator of **Kamehameha Schools**, represented by **Dentons** partner [Nick Kacprowski](#) and senior counsel [Paul Alston](#).

Here's what else is happening:

DQ Denied: The special master in the opioid multidistrict litigation who accidentally hit "reply all" on an email, spurring a disqualification motion against him, is protected by judicial deliberative privilege. That's according to a [Tuesday order](#) from **U.S. District Judge Dan Polster**, who rejected a request from two pharmacy benefit managers named as defendants in dozens of opioid cases to disqualify [David Cohen](#). The defendants had argued the email showed an appearance of impartiality, but Cohen insisted he had no reason to recuse.

Data Deal: **Blackbaud** agreed to pay [\\$49.5 million to 49 states](#) and the District of Columbia over a 2020 data breach. Blackbaud, which provides software to nonprofit organizations like schools and healthcare organizations, still faces class actions in multidistrict litigation in federal court in South Carolina. Mediation is scheduled for Oct. 12. Oral arguments on class certification are set for March 6, 7 and 8 of next year.

Expert Excised: A federal judge [tossed the plaintiffs' only causation expert](#) from an upcoming bellwether trial over the **Zostavax** shingles vaccine. **U.S. District Judge Harvey Bartle** granted **Merck's** motion to exclude the testimony of **Dr. Joseph Jeret**, who he found failed to provide any link between Zostavax and the persistent daily headaches that the plaintiff allegedly suffered. Merck's motion had said the expert only learned of the case the morning after reports were due, and never met or examined the plaintiff, Kay Kobylnski.

Thanks for reading Critical Mass! I'll be back next week.

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