

Philadelphia Court Corrals Roundup Litigation Into Mass Tort

The order consolidates about 100 suits against Monsanto Co. and suburban Philadelphia-based chemical producer Nouryon alleging that the herbicide caused the plaintiffs to develop cancer.

May 12, 2022

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Philadelphia's Complex Litigation Center is now home to a new Roundup mass tort, created Wednesday in an order from Administrative Judge Lisette Shirdan-Harris.

The order consolidates about 100 suits against Monsanto Co. and suburban Philadelphia-based chemical producer Nouryon alleging that the herbicide caused the plaintiffs to develop cancer.

Those suits are led by Feldman & Pinto, working with Williams Hart Boundas Easterby; **Kline & Specter**, with Arnold & Itkin; and Tracey Fox King & Walters.

Kline & Specter's Thomas Kline said he expects his firm and Feldman & Pinto will helm the consolidated litigation. "Both of our firms are experienced in the mass tort practice in Philadelphia," he said.

Tobias Millrood, head of Kline & Specter's mass torts department, said he expects the litigation to ultimately encompass several hundred more suits, though he said he is unsure if the number will surpass the one thousand mark.

The defendants, in their brief opposing the move, cautioned that a Philadelphia mass tort would create "a magnet for numerous Roundup cases that do not belong in this court."

Defense counsel with Shook, Hardy & Bacon and Eckert Seamans Cherin & Mellott argued that there was little to be gained through the consolidation since the plaintiffs already have access to the coordinated discovery that has been produced from other roundup litigation pending in Missouri and the multidistrict litigation in the U.S. District Court for the Northern District of California.

But Millrood said that, while the Philadelphia cases are in many ways similar to the other ongoing Roundup litigation, there's still more discovery to be conducted. "The underlying claims of the dangers of roundup ... are the same, but there's still a lot of work left to be done," he said.

Kline said the Philadelphia cases stand on their own and that the Pennsylvania plaintiffs are "entitled to process within this jurisdiction, and that would include the necessary discovery and necessary trials to which they're entitled."

The plaintiffs allege that Nouryon—headquartered in Radnor, Pennsylvania—produced a toxic component used in Roundup, a claim the defendants criticized as an attempt to add a Pennsylvania co-

defendant to the litigation to prevent it from being swept into the federal MDL.

According to the defendants' brief, plaintiffs counsel named Nouryon as a defendant alongside Monsanto shortly after Nouryon relocated its headquarters to Pennsylvania. The defendants say that the plaintiffs initially named local retailers as defendants, but "swap[ped] one set of Pennsylvania defendants for another set of Pennsylvania defendants" when Nouryon moved.

The plaintiffs' response brief contests that idea, however, claiming, "Nouryon is not merely a manufacturer of some inert component part. There is substantial evidence that Nouryon's surfactants are toxic chemicals, and that they make Roundup more toxic to humans."

According to Kline, Nouryon has appeared as a defendant in a few Roundup cases outside of Pennsylvania, but the majority of suits involving the company are within the state.

Several of the suits included in the mass tort also name Monsanto's parent company, Bayer AG, as a defendant, but the plaintiffs' petition to coordinate notes that the parties are set to voluntarily dismiss the company from the case.

In an emailed statement, a spokesperson for Bayer said, "The company is confident that it can successfully defend against these previously filed cases now coordinated in the PCCP, as well as claims in other jurisdictions, based on the weight of the extensive body of scientific research over four decades and the conclusions of leading health regulators worldwide, all of which support the safety of Roundup™ when used as directed.

“With the recent trial wins in Clark and Stephens, and the resolution of the vast majority of claims, Bayer is confident in its legal strategy, which the company has laid out in its five-point plan.”

Albert Bixler of Eckert Seamans declined to comment, and Joseph Blum of Shook, Hardy & Bacon did not respond to requests for comment.

The case is captioned In re Roundup Products Litigation.