

[Products Liability Law Daily Wrap Up, TOP STORY—DAMAGES—Cal. Super.: Jury finding of manufacturer liability stands in Roundup suit, while punitive damages reduced, \(Oct. 23, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

A jury verdict against agrochemical giant Monsanto Company in a lawsuit by a former groundskeeper who claimed that he developed terminal cancer due to his repeated exposure to Roundup herbicide was upheld by a California state trial court, but the punitive damages awarded by the jury were reduced. In the first case of its kind to proceed to trial, the jury had awarded the dying man \$39.2 million in compensatory damages and \$250 million in punitive damages after finding that the glyphosate-based Roundup caused him to develop non-Hodgkin's lymphoma (NHL) (*Johnson v. Monsanto Co.*, October 22, 2018, Bolanos, S.).

From 2012 to 2015, the plaintiff had been employed as a groundskeeper for a San Francisco Bay Area school district. Part of his job was to apply herbicides, among which was Roundup, a glyphosate-based broad-spectrum herbicide (GBH) marketed by Monsanto as a "safe" general-purpose herbicide for widespread commercial and consumer use. In 2014, he began to experience severe skin irritation and ultimately was diagnosed with lymphoma at age 42. After his diagnosis, the groundskeeper's job still required him to apply and be in close contact with Roundup.

Despite chemotherapy, the groundskeeper's cancer progressed, and he filed suit against Monsanto and others in 2016. The lawsuit alleged causes of action against Monsanto for strict liability design defect and failure to warn, as well as negligence, breach of implied warranties, and punitive damages. The case went to trial in June 2018 and, after an eight-week trial, the jury unanimously concluded that Roundup weed killer caused the groundskeeper to develop cancer and that Monsanto failed to warn of that severe health hazard [see *Products Liability Law Daily's*, August 13, 2018 [analysis](#)].

In addition, the jury found that Monsanto was liable for punitive damages because it had known of the potential health hazards of its glyphosate-based products but nevertheless had intentionally concealed or had recklessly failed to disclose those hazards to the public to ensure continued and increased sales of those herbicides.

Following the jury verdict, Monsanto moved for judgment notwithstanding the verdict (JNOV) or a new trial.

Judgment notwithstanding the verdict. In ruling on a JNOV motion, a trial court may not weigh the evidence or make its own credibility determinations. Based on this standard, the trial court here found no legal basis for overturning the jury's finding that the worker's exposure to GBHs was a substantial factor in causing his illness. The court determined that, based on the evidence presented by expert witnesses, particularly the plaintiff's causation expert's differential diagnosis report, which concluded that the plaintiff's exposure to GBHs was the most substantial factor in his development of NHL, the jury's verdict was valid. The court went on to note that the causation expert was not required to eliminate every other possible cause of the plaintiff's cancer. Because there was no substantial evidence of an alternative explanation for the worker's illness, the jury was free to give weight to the expert's testimony that GBHs were a substantial factor in causing the cancer. Consequently, the manufacturer's motion for judgment notwithstanding the verdict was denied as to the issue of liability.

Punitive damages. As to the punitive damages, the court agreed with the manufacturer that the jury's award was excessive based on the limited evidence that an officer, director, or managing agent of the manufacturer had acted with malice or oppression in the conduct that gave rise to liability. While the manufacturer argued that there was no clear or convincing evidence of a specific managing agent authorizing or ratifying malicious conduct, the court found reasonable the jury's determination that the decision by the manufacturer to continue

marketing its GBH-containing product knowing full well of its possible link with NHL constituted corporate malice for purposes of punitive damages. Having found punitive damages justified, the court then evaluated whether the manufacturer's actions warranted the extent of the punitive damages awarded.

When conducting such an evaluation, the court must consider three factors: the seriousness of the manufacturer's misconduct; the disparity between the compensatory and punitive damages awarded; and the difference between the punitive damages awarded by the jury and the civil penalties authorized in comparable cases. Based on this analysis, the court reasoned that due to the substantial compensatory damages award, which included \$37 million in non-economic damages and which due process case law recognizes has a punitive element, the law supported only a one-to-one ratio for punitive damages. Accordingly, the punitive damages award was reduced to \$39,253,209.35, an amount equal to the compensatory damages awarded by the jury based on its findings of harm to the plaintiff.

The case is No. [CGC-16-550128](#).

Attorneys: James Arthur Bruen (Farella Braun + Martel LLP) for Monsanto Co. Mark E. Burton (Audet & Partners, LLP) for Dewayne Johnson.

Companies: Monsanto Co.

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