

Bayer Heads into Next U.S. Cancer Trial

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Global Research, August 05, 2021

[US Right to Know](#) 4 August 2021

Region: [USA](#)

Theme: [Biotechnology and GMO](#), [Law and Justice](#)

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Despite Bayer AG’s efforts to put an end to costly litigation inherited in its acquisition of Monsanto, opening statements in yet another trial are set for Thursday as a woman suffering from non-Hodgkin lymphoma claims Monsanto’s Roundup herbicide caused her cancer.

A jury of seven men and five women have been seated in the case of Donnetta Stephens v. Monsanto in the Superior Court of San Bernardino County in California. Judge Gilbert Ochoa was hearing last-minute arguments over evidence on Wednesday.

The trial comes a week after [Bayer announced](#) it would stop selling Roundup, and other herbicides made with the active ingredient glyphosate, to U.S. consumers by 2023. Monsanto was purchased by Bayer AG in 2018, and Bayer insists, just as Monsanto has for decades, that there is [no valid evidence](#) of a cancer connection between its weed killing products and cancer.

Bayer said the move to stop selling the herbicides to consumers was “to manage litigation risk and not because of any safety concerns.” The company said it will continue to sell its glyphosate-based herbicides for commercial use and for use by farmers.

Bayer also said last week it was setting aside \$4.5 billion – on top of roughly \$11 billion already earmarked for Roundup litigation settlements – to cover “potential long-term exposure” to liability associated with claims from cancer victims such as Stephens.

Bayer further said with respect to ongoing litigation, it “will be very selective in its settlement approach in the coming months.”

Evidence at issue

Ahead of the opening statements in the Stephens trial, many issues were being argued without the jury present on Wednesday in front of Judge Ochoa, including the scope of allowable arguments by plaintiffs that Monsanto should have provided warnings to Roundup users that certain scientific research showed links between its products and cancer.

Judge Ochoa earlier ruled – in agreement with Monsanto – that federal law regarding

Environmental Protection Agency (EPA) oversight of pesticide product labeling preempts “failure to warn” claims under state law, meaning Stephens’ lawyers would not be able to pursue such claims.

The plaintiffs still hope to argue, however, that separate from the labeling issues, Monsanto could have, and should have, warned consumers about the potential cancer risk in other ways, according to Stephens’ lawyer Fletcher Trammell. He and Stephens’ other lawyers will seek to prove that Monsanto made an unsafe herbicide product and knowingly pushed it into the marketplace despite scientific research showing glyphosate-based herbicides could cause cancer.

Lawyers for [Stephens](#) say that she was a regular user of Roundup herbicide for more than 30 years and it was that extended exposure to the glyphosate-based products made popular by Monsanto that caused her non-Hodgkin lymphoma.

Stephens was diagnosed in 2017 and has suffered from numerous health complications amid multiple rounds of chemotherapy since then. She is one of tens of thousands of plaintiffs who filed U.S. lawsuits against Monsanto after the World Health Organization’s cancer experts classified [glyphosate](#) – the active ingredient in Monsanto’s herbicides – as a probable human carcinogen with an association to non-Hodgkin lymphoma.

The [list of evidence](#) to be presented at trial runs more than 250 pages and includes scientific studies as well as Monsanto emails and other internal corporate documents. A federal judge who has been overseeing nationwide Roundup litigation stated [in a recent order](#) that there is “a good deal of damning evidence against Monsanto—evidence which suggested that Monsanto never seemed to care whether its product harms people.”

Close to 70 people are listed as witnesses to testify at trial, either live or through deposition testimony, including many former Monsanto scientists and executives.

The first witness set to take the stand is retired U.S. government scientist Christopher Portier, who has been an expert witness for the plaintiffs in each of the prior Roundup trials. Portier has previously testified that there is clear scientific evidence showing glyphosate and glyphosate-based formulations such as Roundup can cause cancer in people. He has also testified in the past that U.S. and European regulators have not properly assessed the science and have ignored research showing cancer concerns with Monsanto’s herbicides.

Before retiring, Portier led the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry at the Centers for Disease Control and Prevention (CDC), part of the U.S. Department of Health and Human Services. Prior to that role, Portier spent 32 years with the National Institute of Environmental Health Sciences, where he served as associate director, and director of the Environmental Toxicology Program, which has since merged into the institute’s National Toxicology Program. Portier was also an “invited specialist” to the International Agency for Research on Cancer unit of the World Health Organization when the group made its probable carcinogen classification of glyphosate in 2015.

Bayer hopes for help from Supreme Court

Monsanto has lost three out of three previous trials, with a jury in the last trial – held in 2019 – ordering a staggering [\\$2 billion in damages](#) due to what the jury saw as egregious conduct

by Monsanto in failing to warn users of evidence – including numerous scientific studies – showing a connection between its products and cancer. (The award was later shaved to \$87 million.)

In trying to free itself from the weight of Monsanto-related woes, Bayer said last week that in addition to replacing its glyphosate-based products in the U.S. residential market with new formulations using alternative ingredients, it is exploring changes to Roundup labeling.

“It is important for the company, our owners, and our customers that we move on and put the uncertainty and ambiguity related to the glyphosate litigation behind us,” Bayer CEO Werner Baumann said during a recent investor call.

The company also said it will file a petition this month seeking U.S. Supreme Court review of one of its trial losses – the case of *Hardeman v. Monsanto*. Bayer said if the Supreme Court grants review, the company “will not entertain any further settlement discussions” while the court reviews the appeal.

In the event of a “negative Supreme Court outcome,” Bayer said it would set up a claims’ administration program that will offer “pre-determined compensation values” to “eligible individuals” who used Roundup and developed non-Hodgkin lymphoma over the next 15 years.

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