

# Glyphosate Update

Published 5 June 2019

Since our last update on the glyphosate litigation in October 2018 the cases in the US have continued apace.

## Litigation

### *Johnson v Monsanto*

This was the first case decided against Monsanto in which the plaintiff was initially awarded \$289m in damages, later reduced to \$78m. Bayer has now filed an appeal in California's Court of Appeals seeking to overturn the verdict or, in the alternative, that a re-trial be ordered. The basis of the appeal is that the jury was improperly prevented from considering evidence from the US EPA and other foreign regulatory bodies which did not find Roundup to be likely to cause cancer.

### *Hardeman v Monsanto et al*

In March 2019, a jury (of 6) found that Monsanto's Roundup (the primary ingredient of which is glyphosate) was a "substantial factor" in the plaintiff, Mr. Hardeman, developing non-Hodgkin lymphoma (NHL). The total award of damages was \$80m. Punitive damages totalled \$75m. This case was important in that it was a "bellwether" (exemplar) case. The issues of liability and causation had been, at the request of Monsanto, divided, with the jury initially asked to consider whether glyphosate could cause NHL. Only after that issue had been addressed in the affirmative, did the jury consider liability and damages.



In the second phase of the trial (the jury having found a causal connection) evidence was presented by Mr. Hardeman's lawyers that glyphosate was addressed in a total of 29 separate studies which linked it to cancer and that Monsanto was aware of such studies. In response, Monsanto argued that there was no regulatory or health body in the world which had found a causal connection between glyphosate and cancer. Bayer, the parent company of Monsanto, has indicated that the judgment will be appealed.

### *Pilliod v Monsanto*

A further "bellwether" trial of *Pilliod v Monsanto* continues to be heard in California. The Plaintiffs (a couple) allege that they have both developed NHL as a result of regular use of approximately 1,500 gallons of Roundup on their 4 properties.

Significant testimony from epidemiologists has been given in this case. This testimony not only explored the incidence of NHL, but also addressed other causative factors for NHL including smoking, and the genotoxicity of the Roundup mixture, specifically as opposed to glyphosate alone. The Plaintiffs in this case were successful at trial and awarded, jointly, more than \$2bn in damages. Monsanto have indicated the judgment will be appealed.

There are some 11,500 legal cases pending in the US alleging a link between Roundup and cancer. Over 800 Roundup cases pending in the Federal court in San Francisco, have been consolidated for handling as MDL (multidistrict litigation).



### European Position

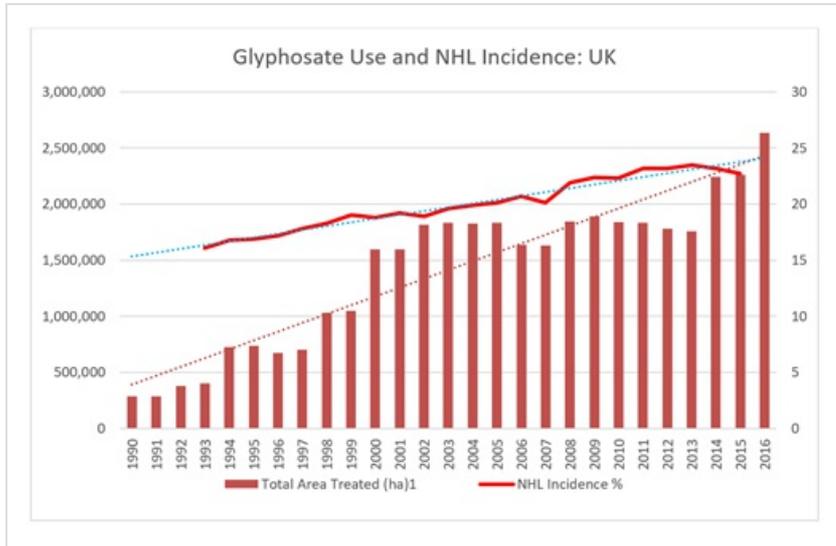
The EU approved the license for use of glyphosate in December 2017 running to December 2022. Companies which wish to continue to use glyphosate must apply for a new license 3 years before the expiration of the current one, i.e. before December this year. In order to prepare for the anticipated applications 4 countries (France, Hungary, the Netherlands and Sweden) are to act as joint rapporteurs on the issue reporting back to the EFSA. This is somewhat unusual as there is generally speaking only one 1 Rapporteur Member State.

### The View from the UK

There are no signs of claimants solicitors seeking to push these claims in the UK.

However, there is a lot of attention being paid to this topic. In April a woman began a petition to have the use of glyphosate prohibited by her local council citing the cancer risks as a concern. In March 2016 the council had passed a motion to phase out the use of glyphosate. In response, the council indicated that it was continuing to look for ways to avoid and reduce the use of glyphosate.

The general incidence of NHL in the US is some 75,000 p/a compared to 16,000 p/a in the UK.



The above does not suggest a correlation or causal connection between the glyphosate use and incidence of NHL. There are many other potential factors which may cause NHL many of which are associated with an aging population. The incidence of NHL in older people has seen a marked increase over the younger cohort.

It appears that the evidence presented in the US cases has not been as comprehensive as it could be. Motions to allow only certain evidence before the jury and other strategic decisions by the opposing legal teams have a significant impact on the evidence to be considered by the jury and their ability to make a fair and balanced decision in light of all of the evidence is thus affected.

Regulatory bodies who have considered the chemical to date support the view that glyphosate is safe for use and is not likely to cause cancer in humans (at least not in the dosages generally encountered).

The claimants in the US cases allege that Monsanto knew there was a risk of cancer associated with Roundup and attempted to suppress that association. Monsanto denies any such allegations.

For employer liability and public liability claims, the state of knowledge of employers and users would hold different conclusions based upon entirely different evidence and duties. It may be sustainable to suggest that until relatively recently

any employer would have been entitled to rely on official government guidance regarding the safety of glyphosate. Employers ought to be taking steps to familiarise themselves with the developing scientific evidence regarding the health risks associated with exposure to glyphosate and to take the necessary steps to reduce the risk of exposure where possible.

In the UK, expert evidence will be presented to the judge and there would be a greater focus on the scientific evidence rather than reliance on emotive arguments and strategic lawyering before a jury. The UK courts have a duty to limit the expert evidence and disclosure. Careful consideration of the number and type of experts who may be required; and the

nature and extent of any disclosure will need to be carefully weighed. Because of the evidential burden in UK claims, it would be an uphill struggle for a claimant to prove causation i.e. that a particular cancer was caused by specific product when such cancers are invariably multi-factorial.

*Our disease team deal with cases like this on a regular basis. For more information or advice, please contact one of our experts.*

#### Authors

Carolyn O'Connor  
Partner  
Wilson Elser

**Thomas Jordan**  
Associate  
DAC Beachcroft



#### Authors



**Thomas Jordan**

*Bristol*  
+44 (0)117 918 2122  
[tjordan@dacbeachcroft.com](mailto:tjordan@dacbeachcroft.com)

---

**DAC BEACHCROFT**