

Monsanto's Roundup Case: What's at Stake from a Legal and Policy Perspective

by Bryon Benevento and Troy M. Keller

The \$289 million judgment from a California jury against Monsanto earlier this week relating to its Roundup product is significant both from a legal and a policy standpoint.

From a legal perspective, the simple fact that plaintiff's claims made it to trial, let alone persuaded a jury to award such an eye-popping amount, raises the specter of a new and challenging era of products liability for herbicide producers. The success of Monsanto's appeal will be critical in deterring these future claims. In particular, it will be interesting to see if the case should have been disallowed in the first place under FIFRA preemption, which limits failure to warn claims that are in addition to or different from federal standards. In short, much is at stake for the industry from a products liability standpoint.

From a policy perspective, in recent years the highly effective glyphosate chemical has repeatedly survived close regulatory scrutiny, notwithstanding loud resistance from NGOs and consumer advocates. Though the World Health Organization determined it to be "probably carcinogenic to humans" in 2015, in 2017 glyphosates were re-authorized by the European Union pursuant to a five-year renewal that was considered a compromise from the fifteen years originally proposed by the European Commission. In the U.S., the EPA released a draft risk assessment in December 2017 concluding that glyphosate is not likely to be carcinogenic to humans. These regulatory actions were consistent with the significant science put forth by the industry demonstrating the safety of the product. In fact, it is arguable that glyphosate is now the most researched compound ever. All that said, if public opinion sways against the chemical, it might influence the reauthorization in the European Union in 2022 and views of regulators in other parts of the world.

Even if the regulatory stamp of approval remains in place for glyphosate, it might not carry the day for consumers if cases like this one impact public opinion in a material way. Once consumers become concerned, retailers tend to push hard for alternatives. While no other herbicide is currently as effective as glyphosate, retailers may be willing to make compromises. But glyphosate, of course, isn't just used in DIY products. Its more

Related People

- Bryon Benevento
- Troy M. Keller

Related Capabilities

- Food, Beverage & Agribusiness
- Products Liability

significant application is as a herbicide in industrial-scale agriculture. This use has become critical to the global food supply, and so the prospect of coming regulatory restrictions plus significant liability exposure could threaten the continuity of the food chain, as any replacement of glyphosate would require a spectrum of costlier products. And replacements may come with their own environmental impacts.