

California Appeals Court Substantially Reduces Jury Award in Roundup Toxic Tort Case

(Johnson v. Monsanto (Cal. App. 2020) — Cal.Rptr.3d —, 2020 WL 4047332)

In a partially published opinion issued on July 20, 2020, the California Court of Appeal, First District, upheld the verdict for design defect, failure to warn, and punitive damages, but reduced the jury's award, in a case involving exposure to Roundup Products causing non-Hodgkin's lymphoma in a former school grounds' keeper. Because the agreed to jury instruction limited future noneconomic damages to those Mr. Johnson was reasonably certain to suffer, the Court reduced the future non-economic damages from \$33M to \$4M. Plaintiffs asked for non-economic damages of \$1M per year for the remainder of his life, which meant his life expectancy would be measured by his reduced life expectancy (4 years) rather than the average additional life expectancy of a person his age (33 years). Thus, plaintiffs seemingly waived their rights to obtain compensation for a reduction in his life expectancy as a part of his future non-economic damages given the agreed upon instruction.

On the issue of punitive damages, despite a lack of clear scientific consensus that Roundup products can actually cause non-Hodgkin's lymphoma (IARC lists the offending chemical in Roundup Products - glyphosate - as a "probable" human carcinogen), the Court nonetheless found substantial evidence existed for the jury to determine that Monsanto's conduct amounted to willful and conscious disregard of the safety of others to warrant the imposition of punitive damages. Such evidence included, but was not limited to: (1) knowledge of the potential genotoxicity of their product, (2) failure to adequately test products, (3) attempts to influence regulatory agencies regarding the safety of their products, and (4) failure to communicate with Mr. Johnson regarding his concerns over the medical effects of exposure to their products. While the court upheld the imposition of punitive damages, it reduced the award to a one to one ratio with the reduced compensatory damages. In accepting the trial court's prior remittitur of the award from \$250M to \$39.3M, the Court of Appeals noted that when "there is a punitive element to a compensatory damages award [like there was for pain and suffering here], the law supports one to one ratio for punitive damages." As a result of the ruling, Mr. Johnson was awarded approximately \$10.25M in compensatory damages and \$10.25M in punitive damages, plus costs, which substantially reduced the jury's initial verdict of roughly \$290M.