

## ROUNDING UP

Mark Burton was on the team that won the first jury verdict—\$285 million—in the Roundup cases against Monsanto, and he's not done yet

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For years, Dewayne "Lee" Johnson worked as the groundskeeper for Benicia Unified School District, spraying Monsanto's Roundup—"the juice," as he called it—to kill weeds. When he was diagnosed in 2014 with non-Hodgkin lymphoma, he called Monsanto to find out if Roundup caused cancer. The company said someone would call him back.

No one called.

So Johnson found a lawyer and made history.

His case, claiming the weedkiller causes non-Hodgkin lymphoma, was the first Roundup verdict against Monsanto. The \$285 million verdict brought out all the evidence for the first time. Mark Burton, with Audet & Partners in San Francisco, was the Northern California member of the six-attorney trial team for Johnson, and he has continued to represent plaintiffs suing Monsanto. The flood of other lawsuits included a class action, and a single case—which Burton also helped handle—that resulted in \$2 billion in punitive damages.

"To see Monsanto held responsible is very satisfying," says Burton.

When the Johnson case was filed in 2018, thousands of cases already had been filed against Monsanto in state courts, as well as a federal multidistrict litigation. Because Johnson was gravely ill, the court granted the trial team's motion for the case to be given preference.

With the plethora of existing cases, discovery was already in the works. "There were many videotaped depositions of Monsanto employees that the trial team combed through for the Johnson case," says Burton.

The team filed two claims against Monsanto: failure to warn of the danger, as well as the consumer expectation test—a law unique to California—which asks if the product performed as safely as an ordinary consumer would expect.

"Both of these claims rely on causation: Does Roundup cause cancer?" says Burton. "And that's where the main battle of the trial took place."

Timing is everything. When the Johnson case was filed, science had finally caught up. In 2015, the International Agency for Research on Cancer, which is part of the World Health Organization, made a determination that glyphosate was "probably carcinogenic to humans." Dr. Christopher Portier, former director of the Agency for Toxic Substances and Disease Registry, served as a consultant to IARC, and was a critical expert witness for Johnson.

"The International Agency for Research on Cancer is the gold standard," says Burton. "Top experts serve on the agency's panels, and everyone is cleared of conflicts. It was the first time Dr. Portier testified in a case against Monsanto, and he was probably motivated to do so because Monsanto tried to publicly discredit him."

The link between Roundup and cancer was further strengthened by a report from Dr. James Parry, a toxicologist whom Monsanto had hired as a scientific adviser. Burton says Dr. Parry had told the company its past testing was insufficient because glyphosate was tested in isolation and recommended further studies.

During the trial, Burton says, the trial team introduced internal Monsanto memos that established these studies were never done.

In addition, Burton says, his team introduced into evidence that Monsanto's company employees "ghostwrote" scientific articles about Roundup's safety and compensated outside scientists to publish the articles under their names.

While the experts were critical to winning the case, so was the jury.

"We wanted a well-educated jury that could understand the science," says Burton.

Since Monsanto is a well-known company that evokes strong views, at least 200 prospective jurors were brought in, and Burton and his team managed to secure a jury that included several members with PhDs in science. This would be a strategy repeated in subsequent cases. In the second Roundup case to go to trial, *Edwin Hardeman v. Monsanto*, this time in federal court, prospective jurors were sent a questionnaire to help with jury selection. "Monsanto wanted to strike the jurors with advanced degrees in science," says Burton, who assisted with jury selection. "The judge was shocked when we tried to save them."

The Johnson trial team used a mock jury to ensure the arguments it was making were clear. The judge allowed the opening statements to be videotaped, and the mock jury watched the tapes and told the lawyers what seemed important.

"We had an email from one of the Monsanto sales reps that called Californians 'zombies' and 'liberals,' a real derogatory tone," says Burton. "We thought it was a great piece of evidence, but the mock jury didn't care about it at all. They wanted to hear about the science."

On August 10, 2018, the jury awarded Johnson \$39 million for economic and non-economic losses, and \$250 million in punitive damages. The trial judge subsequently reduced the punitive damages to \$39 million to match the compensatory damages; on appeal, the total of both was reduced to \$20 million.

For Burton, the battle against Monsanto didn't end there. On March 27, 2019, the Hardeman case in federal court resulted in a verdict of \$80 million (later reduced, and upheld by the 9th Circuit Court this May). In April 2019, a class action was filed for future cases, but this May, a proposed \$2 billion settlement was rejected by U.S. District Judge Vince Chhabria in San Francisco. In May 2019, Burton was part of the trial team that represented Alva and Alberta Pilliod, husband and wife, and won a verdict of \$55 million in economic and non-economic damages, and \$2 billion in punitive damages, the ninth-largest verdict in American history.

Roundup is still on the shelves, but Burton hopes the class action settlement will result in a cancer warning on the product's label. "That would be a silver lining," he says.

### Timeline

**August 10, 2018:** Dewayne Johnson wins verdict against Monsanto: \$39 million in economic and non-economic damages, \$250 million for punitive damages.

**March 27, 2019:** Jury awards Edwin Hardeman \$200,967 in economic damages, \$5 million in future and non-economic damages, and \$75 million in punitive damages.

**April 24, 2019:** Audet & Partners files first class action against Monsanto based on the established link between Roundup and non-Hodgkin lymphoma.

**May 13, 2019:** Jury awards Alva and Alberta Pilliod \$55 million in economic and non-economic damages and \$2 billion total in punitive damages against Monsanto.

**2020:** Bayer, the parent company of Monsanto, announces \$11 billion in settlements for 80,000 cases involving dozens of law firms.

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