

Bayer Wins Roundup Trial; Plaintiff Fails to Prove Exposure Caused Child's Disease

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The former Monsanto Co., now owned by Bayer AG, notched its first win in the mass tort U.S. Roundup litigation on Tuesday, defeating at trial a mother who alleged her use of Roundup exposed her child to the pesticide and caused him to develop cancer.

Ezra Clark was born in May 2011 and diagnosed in 2016 with Burkitt's lymphoma, a form of non-Hodgkin lymphoma (NHL) that has a high tendency to spread to the central nervous system, and can also involve the liver, spleen and bone marrow, according to the [court filings](#). Ezra's mother, Destiny Clark, is the plaintiff in the case, which was heard in Los Angeles County Superior Court. A different [Roundup trial](#) is underway in San Bernardino County Superior Court.

Ezra Clark was "directly exposed" to Roundup many times as he accompanied his mother while she sprayed Roundup to kill weeds around the property where the family lived, according to court documents. Ezra has autism and his mother said it calmed him to play outdoors while she worked in the yard, which meant he often played in areas freshly sprayed with Roundup, according to the court filings.

Fletch Trammell, lead attorney for Clark, said his case was subject to a bifurcation order that organized the case into two phases. In the first phase he was limited to presenting evidence that focused on the child's personal exposure to Roundup and whether or not it could have been enough to have contributed to his disease. The case would have proceeded to a second phase had the plaintiff won the first phase, but the loss in the first phases ends the trial.

"This was nothing like any of the other three trials," Trammell said.

The jury was asked to address one key question in the first phase: Whether or not the child's exposure to Roundup was a "substantial factor" in his development of Burkitt's lymphoma.

In a 9 to 3 decision, the jury found that it was not.

Trammell said the jury decision was because the jury doubted the child's exposure to Roundup could have been enough to cause cancer. The decision did not address the larger question of the alleged carcinogenicity of Roundup overall, he said.

But Bayer, which bought Monsanto in 2018 as the first Roundup trial was getting underway, said the jury's decision was in line with scientific research showing glyphosate, the main ingredient in Roundup, is safe and does not cause cancer.

"The jury carefully considered the science applicable to this case and determined that Roundup was not the cause of his illness," the company said in a statement.

80 hours

During the trial, Trammel presented evidence indicating Ezra was exposed to Roundup for about 80 cumulative hours over the years his mother sprayed with him at her side. He paired that with research showing there could be an increased risk of NHL associated with repeated spraying of glyphosate herbicides, such as Roundup. And he noted language on Roundup labels in Canada that advise users to wear protective gloves and avoid getting the chemical on bare skin.

"The studies... they show that Roundup does three different things when it gets to your lymphocyte cells... It can kill cells, which is bad enough; but it also causes the exact DNA damage that results in Burkitt's lymphoma; it also, in a variety of ways, devastates your body's ability to repair DNA damage," Trammell told jurors in his closing argument.

Trammell also sought to counter problems with deposition testimony given by Destiny Clark. Trammell said the mother also has suffered from cancer, a cervical cancer that metastasized to her brain. The illness and treatments she has undergone made it difficult for her to recall details and she "made a lot of mistakes" in the deposition she gave to Monsanto's attorneys, Trammell told jurors. But she was very clear, he told jurors, on recalling her use of Roundup nearly "every weekend" when Ezra was young.

Monsanto attorney Brian Stekloff told jurors that Ezra's exposure was in doubt. He told jurors that while they might have sympathy for the family, they could not ignore inconsistencies in Destiny Clark's testimony about how often her son was exposed, and could not ignore statements by other family members that they did not see her spraying around Ezra.

"And there is an old adage or old saying, and it goes like this: The truth is simple because there's nothing to remember," Stekloff told jurors. "When you tell the truth, you don't mix up the facts. It's when it didn't happen that you can't remember what you said the first time and the next time, and the next time, and the next time. And the inconsistencies start piling up and piling up, and the explanations start coming and piling up and piling up. And that's what you have seen here in this trial."

Stekloff told jurors the evidence did not support a finding that exposure to Roundup was a substantial factor in causing his cancer.

"This is not a popularity contest. This is not a referendum on Monsanto. It's not even a referendum on Roundup," he said in his closing argument. "Roundup did not cause Ezra Clark's Burkitt's lymphoma."

Clark is one of tens of thousands of plaintiffs who filed U.S. lawsuits against Monsanto after the World Health Organization's cancer experts in 2015 classified [glyphosate](#) – the active ingredient in Monsanto's herbicides – as a probable human carcinogen with an association to NHL.

Monsanto lost each of the three previous trials, after lawyers for the plaintiffs presented jurors with multiple scientific studies finding potential health risks with glyphosate and Roundup. The plaintiffs' lawyers also used internal Monsanto documents as evidence, arguing the so-called "Monsanto Papers" showed intentional efforts by the company to manipulate regulators and control scientific research.

The jury in the last trial ordered [\\$2 billion in damages](#) though the award was later shaved to \$87 million.

Bayer has maintained that there is no cancer risk with the glyphosate herbicides it inherited from Monsanto, but it has agreed to pay close to \$14 billion to try to settle the litigation and said it will remove glyphosate products from the U.S. consumer market by 2023. The company will continue to sell the herbicides to farmers and other commercial users.

Mike Miller, who heads the Virginia law firm that won two of the three previously held Roundup trials, but who was not involved in the Clark case, said the verdict does not change anything about the litigation, nor Bayer's liability.

"Nothing about that verdict change the fact: Roundup causes cancer," he said.

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Featured image: Roundup's active ingredient, glyphosate, is the most heavily-used agricultural chemical in history. (Photo: Mike Mozart/Flickr/cc)

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