

## Bayer Says Caranci Verdict Should Be Vacated

### *Claims Court Had Undisclosed, Improper Communication with the Jury, Asks Judge to Recuse Post-Trial Motion Cites Numerous Reversible Trial Errors*

The Company filed its post-trial motion in *Caranci*, urging the court to issue judgment for Monsanto, order a new trial, or reduce the excessive and unconstitutional damages. The motion cites numerous prejudicial and reversible errors at trial, including the court's undisclosed communication with the jury, procedural irregularities, flawed evidentiary rulings, and instructional errors. In addition, the Company asked the judge to recuse himself from considering the Company's post-trial motion, given the nature and extent of the issues raised.

Bayer said: "The only reason the jury could reach an adverse verdict in a trial for a product that regulators worldwide consistently find safe and not carcinogenic is because of the numerous and repeated errors by the court and unrestrained conduct by Plaintiff's counsel in creating confusion and prejudice among jurors. This was then compounded by the undisclosed pressure exerted by the court on the jury to reach a verdict. Prior to this case, Bayer won 9 of the last 10 Roundup trials across the country based on the overwhelming weight of scientific evidence over more than four decades and the consistent assessments of leading health regulators worldwide supporting the safety of these products."

The Company's motion details numerous errors in support of its request for relief:

- **The Court's Undisclosed Communication with the Jury.** After being informed that the jury was deadlocked 9-3 on nearly all questions on the verdict form and seeking guidance (10 votes is required in Pennsylvania to reach a verdict), the court gave coercive direction to the jury in conflict with Pennsylvania's standard instruction, failed to inform the parties, and made no record of the jury's request. Such unrecorded communications are presumed to be prejudicial under Pennsylvania law. Moreover, the evidence provided by one juror indicates that the court's instruction caused tension and frustration among jurors over the prospect of deliberating for several more days through Halloween, as the court said would be required. The jury returned a 10-2 verdict the same day. This highly prejudicial conduct by the court impacted the verdict and, by itself, warrants a new trial.
- **Procedural Irregularities.** The court erred by permitting reference to the 9<sup>th</sup> Circuit NRDC decision and subsequent EPA withdrawal of its optional 2020 Interim Registration Decision, including by making its own false statement about the court decision. These two actions did not invalidate EPA's scientific conclusions, nor did they affect glyphosate's or Roundup's legal registration status with EPA. The court's handling of this issue caused prejudicial confusion, including when the court itself questioned the Company's counsel, in the presence of the jury, about the 9<sup>th</sup> Circuit decision and stated falsely that these actions vacated Roundup's legal registration for sale in the U.S. When the Company's counsel attempted to correct these errors, the court repeatedly and harshly criticized her in front of the jury. The Company moved for a mistrial, which the court denied. Ultimately, the court gave a curative instruction to the jury 11 days after the incident. This instruction did not cure the prejudice that occurred in real time and is grounds for a new trial.
- **Errors in Evidentiary Rulings.** The court made several incorrect and one-sided rulings that were prejudicial to the Company and require a new trial. Further, the court's practice of deferring nearly all evidentiary rulings to trial for real-time objections, without sidebars, permitted inadmissible evidence to be heard by the jury.

- The court permitted plaintiffs to introduce evidence of IARC’s 2015 hazard analysis that classified glyphosate as “probably carcinogenic.” However, it excluded evidence of scientific risk assessments done by foreign regulatory bodies that disagreed with IARC and informed the Company’s understanding of the science and guided its actions. There is no principled basis to allow testimony from one international organization and exclude testimony from others.
  - The Company was also precluded from offering evidence of EPA’s consistent –and still valid– determinations that glyphosate is not carcinogenic to humans.
  - The Company was limited in introducing evidence that plaintiff’s exposure to benzene as a residential painter may have been an alternative cause of his NHL, even though IARC gives benzene its top cancer-causing classification. Further, the Company was prevented from using the same exposure day calculation method used by Plaintiff’s expert to establish that Mr. Caranci’s exposure to benzene was significantly greater than his exposure to Roundup™.
  - The court granted the Company’s evidentiary motion to exclude almost all testimony regarding the tobacco industry and its litigation. Still, plaintiffs compared Roundup and tobacco litigation in questions to a Company witness. The Company objected, and the court briefly ruled in its favor. However, plaintiffs returned to the tobacco comparison with a subsequent Company witness and this time the court permitted prejudicial examination regarding tobacco contrary to its own pre-trial evidentiary ruling.
- **Inconsistent Verdict on Design Defect Warrants Judgment as a Matter of Law in Favor of Monsanto.** The jury found that Roundup did not contain a design defect under the consumer expectations test (question 3), and then found inconsistently that design defect was a factual cause of plaintiff’s harm (question 4), despite instruction to skip this question after answering no to the prior one. The Company is entitled to judgment in its favor on this design defect liability question.
  - **Damages are Unsupported, Excessive and Unconstitutional.** There was no evidence offered at trial to support the \$25M compensatory damage award and therefore it reflects only non-economic damages that far exceed precedents in Pennsylvania. Hence, the \$25M compensatory award clearly includes a punitive element. The punitive award is not warranted under the standards required in Pennsylvania, and in a case where the compensatory damages include a punitive element, the ratio between the two awards violates the Constitution’s Due Process requirement.

Finally, there were also errors in jury instructions as the court gave a multiple concurring causes instruction despite the fact that plaintiff’s case throughout trial focused on Roundup as the sole cause of his NHL. The court also erred by permitting plaintiffs to cross examine witnesses on subjects with no foundation and about documents for which they had no knowledge. The motion also argues the court should grant judgment in favor of Monsanto on causation as the plaintiff’s sole causation witness testified on direct for one hour and did not provide sufficient evidence to prove either general or specific causation as required by law. The court also should grant judgment for Monsanto on failure to warn claims as plaintiff’s case rests on IARC’s monograph which was published in 2015, the year after plaintiff stopped using Roundup.

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