

Daily Journal

February 9, 2022

Top Verdicts

The largest and most significant verdicts and appellate reversals in California in 2021

TOP DEFENSE RESULTS

Stephens v. Monsanto Co. et al

Case Info

CASE NAME: STEPHENS V. MONSANTO CO. ET AL.

TYPE OF CASE: PRODUCT LIABILITY

COURT: SAN BERNARDINO COUNTY

JUDGE(S): SUPERIOR COURT JUDGE GILBERT G. OCHOA

DEFENSE ATTORNEYS: Proskauer Rose LLP, Bart H. Williams, Manuel F. Cachán, Lee Popkin, Shawn S. Ledingham Jr., Jennifer Yang, Christina M. Assi, Kelly M. Curtis, Om V. Alladi, Hena M. Vora, Seth H. Victor, Hannah G. Silverman

PLAINTIFF'S ATTORNEYS: Trammell PC, Fletcher V. Trammell, Melissa L. Binstock; Kiesel Law LLP, Paul R. Kiesel; Kirkendall Dwyer LLP, Alexander G. Dwyer, Andrew F. Kirkendall, Erin M. Wood; Gibbs Law Group LLP, Karen B. Menzies



BART H. WILLIAMS



MANUEL F. CACHÁN



LEE M. POPKIN

After several significant losses, Monsanto won an important victory for its herbicide Roundup thanks to some excellent science, according to Bart H. Williams and Manuel F. Cachán, the lead defense attorneys from Proskauer Rose LLP.

Last December, a San Bernardino jury decided that there is insufficient evidence to find that Roundup's active ingredient, glyphosate, causes non-Hodgkin's lymphoma. "I truly believe in this case

we had the scientific truth on our side," Cachán said.

The jury's verdict is especially important for Monsanto because "it's the first case where there's a finding... by the jury on the issue of general causation," Williams said.

"For a jury to say no, full stop, it doesn't cause cancer — it's something that's transferable throughout the whole battery of cases," Cachán added.

The case was brought by a woman who said her regular use of Roundup at three different homes across 32 years caused her non-Hodgkin's lymphoma. The trial was expected to last just a few weeks. It began in person, with all participants masked and witnesses testifying from a plexiglass-enclosed stand. *Stephens v. Monsanto Co.*, CGC-20-58576411/CIVSB210 4801 (San Bern.Super.Ct., filed August 4, 2020).

But a COVID-19 outbreak among participants halted

the trial for several weeks. After it resumed over video, it stretched out to about five months.

Lead plaintiff's attorney Fletcher V. Trammell of Trammell PC said severely shortened trial hours and many technical problems caused extensive delays and contributed to his client's loss. "Just the technical difficulties of trying a case that way made it impossible to present a coherent story to the jury," the Houston trial lawyer said. The delays "put the plaintiff at a tremendous disadvantage as the party with the burden of proof."

But Williams gives much of the credit for his team's win to a cancer researcher and biostatistician from Johns Hopkins. His research identifies which types of cancers in which parts of the body are more likely to be caused by random genetic errors or by environmental or genetic factors. He testified that more than 95% of non-

Hodgkin's lymphoma cases are caused by replicative errors, Williams said. "That testimony was incredibly powerful [and] believable."

On the other hand, he said Cachán's masterful cross-examination of the plaintiff's first expert witness forced the man to admit that an independent outsider might conclude he was a biased advocate.

The two Proskauer partners also disputed Trammell's comments that trial delays and technical problems contributed to the defense victory. They said the delays affected both sides, and they noted that plaintiff's co-counsel Paul L. Kiesel had written several articles along the way about how well the virtual trial was going.

The plaintiff did not seek a retrial. Trammell said he expects the case will be settled as part of an "inventory settlement" of all his Roundup cases.

— DON DEBENEDICTIS