

NEWS RELEASES

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Husch Blackwell Prevails for Ag Coalition in Glyphosate Litigation

Along with co-counsel Latham & Watkins and Arnold & Porter Kaye Scholer, Husch Blackwell won summary judgment preventing the State of California from requiring a label on Roundup® misstating that it causes cancer. All three firms represented Monsanto. Husch Blackwell also represented a coalition of agricultural organizations, including lead plaintiff National Association of Wheat Growers. The coalition successfully challenged California’s false and misleading Proposition 65 warning requirement for the herbicide glyphosate, the most widely used herbicide in the world.

In his decision, Judge William Shubb of the U.S. District Court for the Eastern District of California concluded that “the heavy weight of evidence in the record is that glyphosate is not known to cause cancer,” noting that “[e]very regulator of which the court is aware, with the sole exception of IARC, has found that glyphosate does not cause cancer or that there is insufficient evidence to show that it does.” Judge Shubb granted Plaintiff’s Motion for Summary Judgment on its claim under the First Amendment, finding that the Proposition 65 warning label stating that glyphosate is “known to the State of California” is false and misleading. Where the purpose of Proposition 65 is to inform the people of California about exposures to chemicals that cause cancer, Judge Shubb held that “misleading statements about glyphosate’s carcinogenicity . . . do not directly advance that interest.”

“This is an incredibly important ruling that will have far-reaching implications for California and beyond,” said Catherine Hanaway, the Husch Blackwell partner who served as team lead on the matter. “Simply put, there is no evidence here on which the State can forward its claim to advance the public interest, and compelling our clients to make misleading statements takes us further away from the purported goal of such regulation, which is public safety.”

In 2017, California’s Office of Environmental Health Hazard Assessment (OEHHA) listed glyphosate as a substance “known to the state” to cause cancer, which would effectively require any product containing any amount of glyphosate to bear a warning stating that the product contains a chemical known to California to cause cancer, despite the fact that regulatory authorities around the world—including the U.S. Environmental Protection Agency and even OEHHA itself—have repeatedly concluded that glyphosate is safe for use. Plaintiffs successfully demonstrated that absent an injunction, they would be irreparably harmed, and Judge Shubb issued a permanent injunction preventing California from requiring warning labels on products containing glyphosate. Absent this injunction, Plaintiffs and other businesses could have faced civil penalties of up to \$2,500 per day per violation for failure to provide the Proposition 65 warning.

This coalition of agricultural associations, along with Monsanto, manufacturer of the glyphosate-based herbicide Roundup, sued the California State Attorney General and OEHHA Director Lauren Zeise in November 2017 on First Amendment grounds, asserting that the state’s Prop 65 compelled the plaintiffs to make “false, misleading, and highly controversial statements.”

At each stage in the litigation, the Court agreed. Two years ago, Judge Shubb recognized that “virtually all...government agencies and health organizations that have reviewed studies on [glyphosate] have found there was no evidence that it caused cancer,” and on that basis Judge Shubb found that it would be “misleading at best” to force parties to state on glyphosate-containing products that the products were “known to the state to cause cancer.” By granting summary judgment and issuing a permanent injunction enjoining the warning requirement, Judge Shubb cemented his ruling, noting that developments since then “do not change the court’s conclusion that the Proposition 65 warning requirement for glyphosate is misleading” and that therefore the First Amendment prohibits California from requiring glyphosate-containing products to be so labeled.

The Hanaway-led Husch Blackwell team included Matthew Schelp, Matthew Diehr, Christopher Miles and Natalie Holden.