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October 30, 2019

As Roundup cancer lawsuits surge, Monsanto fights to keep PR work secret

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Posted on October 30, 2019 by Carey Gillam

As Monsanto continues to battle legal claims over alleged dangers of its widely used Roundup herbicides, the company is trying to block orders to turn over internal records about its work with public relations and strategic consulting contractors.

In a series of filings in St. Louis Circuit Court, Monsanto argues that it should not have to comply with discovery requests involving certain dealings between it and the global public relations firm FleishmanHillard, despite the fact that a special master has found Monsanto should hand those documents over. Monsanto is asserting that its communications with FleishmanHillard should be considered "privileged," similar to attorney-client

communications, and that Monsanto should not have to produce them as part of discovery to the lawyers representing the cancer patients suing Monsanto.

FleishmanHillard became the agency of record for Monsanto's "corporate reputation work" in 2013, and its employees became deeply involved with the company, working "at Monsanto's offices nearly every day" and gaining "access to online repositories of non-public confidential information," the company said. "The fact that some of these communications involve the creation of public messaging does not strip them of privilege," Monsanto said in its court filing.

FleishmanHillard worked on two projects for Monsanto in Europe regarding re-registration of glyphosate and worked with Monsanto lawyers on a "specific project for jury research." The nature of the work done by the public relations firm "required privileged communications" with Monsanto's legal counsel, the company said.

Earlier this year Monsanto owner Bayer AG said it was ending Monsanto's relationship with FleishmanHillard after news broke that the public relations firm engaged in a Europe-wide data collection scheme for Monsanto, targeting journalists, politicians and other stakeholders to try to influence pesticide policy.

Monsanto has taken a similar position with respect to communications involving its work with corporate image management company FTI Consulting, which Monsanto hired in June 2016. "The absence of an attorney on a privileged document also does not automatically render that document susceptible to a privilege challenge," Monsanto said in its filing.

Earlier this year, an FTI employee was caught impersonating a journalist at one of the Roundup cancer trials, trying to suggest story lines for other reporters to pursue that favored Monsanto.

The company also wants to avoid handing over documents involving its relationship with Scotts Miracle-Gro Company, which has been marketing and selling Monsanto's Roundup lawn and garden products since 1998.

More than 40,000 cancer victims or their family members are now suing Monsanto blaming exposure to the company's line of Roundup herbicides for their diseases, according to Bayer. The lawsuits allege that exposure to Monsanto's herbicides caused the plaintiffs to develop non-Hodgkin lymphoma and that though Monsanto knew about the cancer risks, it intentionally did not warn consumers.

Bayer held a conference call with investors Wednesday to discuss its third quarter results



and to update shareholders on the Roundup litigation. Striking a reassuring tone, Bayer CEO Werner Baumann said that while investors might be surprised at the high number of lawsuits, it is “actually not that surprising.” He said plaintiffs’ attorneys in the United States have been spending tens of millions of dollars advertising for clients.

“This increase in the number of lawsuits does not change our conviction of the safety profile of glyphosate and is by no means a reflection of the merits of this litigation,” Baumann said. Appeals are underway after the company lost the first three trials, and the company is “constructively” engaging in mediation, according to Baumann. Bayer will only agree to a settlement that is “financially reasonable” and will bring “reasonable closure to the overall litigation,” he said.

Though the company refers to it as “glyphosate” litigation, the plaintiffs allege that their cancers were not caused by exposure to glyphosate alone, but by exposure to glyphosate-based formulated products made by Monsanto.

Many scientific studies have shown that the formulations are much more toxic than glyphosate by itself. The U.S. Environmental Protection Agency (EPA) has not required long-term safety studies on Roundup formulations throughout the 40-plus years the products have been on the market, and internal company communications between Monsanto scientists have been obtained by plaintiffs’ attorneys in which the scientists discuss the lack of carcinogenicity testing for Roundup products.

Multiple trials that were scheduled for this fall in the St. Louis, Missouri area have been delayed until next year.

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