

The Roundup Cancer Cases

Is there a silver lining?



The Lawsuit



- Strict Liability for Defective Design
- Strict Liability for Failure to Warn*
- Negligence
- Breach of Implied Warranties
- Punitive Damages

MONSANTO

Food • Health • Hope™



WILBUR-ELLIS®



Glyphosate

- Initially registered in 1974
- Most widely used herbicide in the world



International Agency for Research on Cancer – Monograph 112

- Glyphosate = Group 2A:
Probably carcinogenic to humans
 - Non-Hodgkin lymphoma
 - Other similar cancers



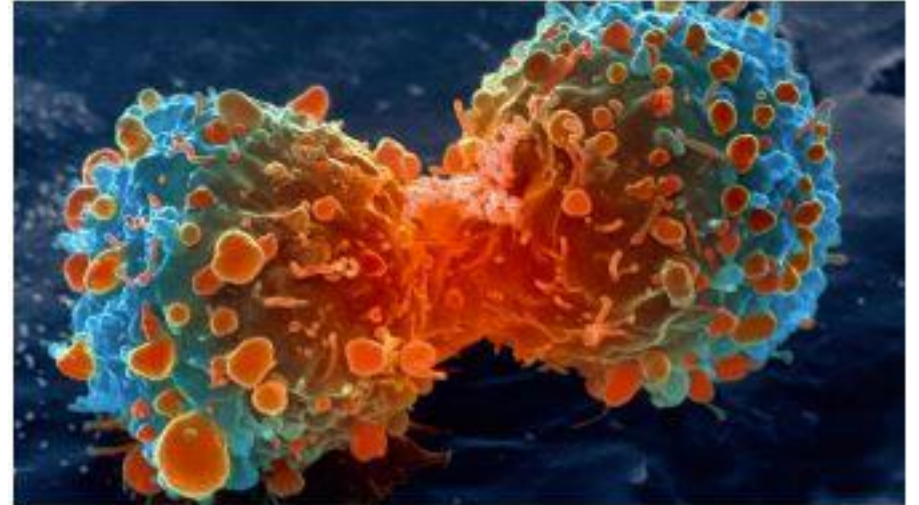
EPA's 2017 Draft Risk Assessment

- Glyphosate = Group E:
“Not likely to be carcinogenic to humans”



What is cancer anyway?

- Changes in the DNA of a cell
- Cells divide, multiply, and spread to surrounding tissue without stopping
- Carcinogen = substance or exposure that can cause cancer



A dividing lung cancer cell.

Credit: National Institutes of Health

Of course the data is accurate – Don't you trust us?

- Registrant conducts tests and submits the data to EPA
- EPA doesn't do testing



Damages

CLAIM OF DAMAGES

If you answered yes to question 3, 8, or 13, then answer the questions below about damages. If you did not answer or answered no to question 3, 8, and 13, stop here, answer no further questions, and have the presiding juror sign and date this form.

14. What are Mr. Johnson's damages?

Past economic loss: \$ 819,882.32

Future economic loss: \$ 1,433,327.00

Past noneconomic loss: \$ 4,000,000.00

Future noneconomic loss: \$ 33,000,000.00

Punitive Damages

17. What amount of punitive damages, if any, do you award to Mr. Johnson?

\$ 250,000,000.00

Signed: 
Presiding Juror

Dated: August 10, 2018

After this verdict form is signed and dated, please notify the bailiff that you are ready to present the verdict in the courtroom.

The next jury will hear a somewhat different story

- Trial is “Bifurcated” – basically split into two parts
 - Causation
 - Liability & damages



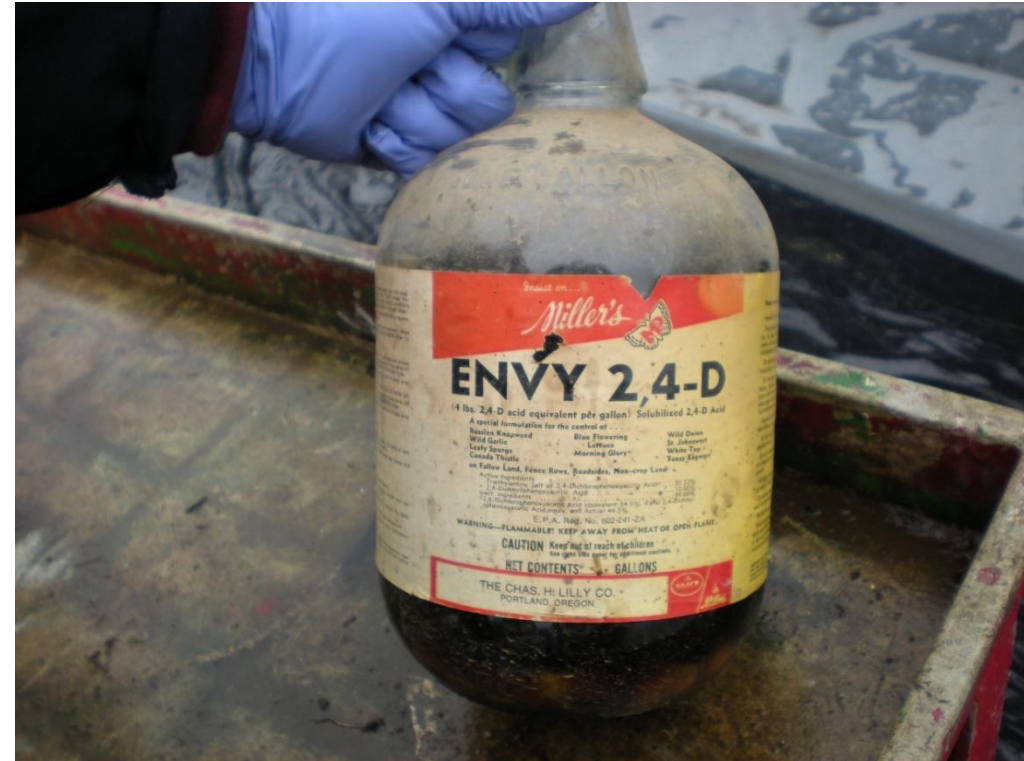
Back to Failure to Warn

- Federal Insecticide Fungicide Rodenticide Act (“FIFRA”)



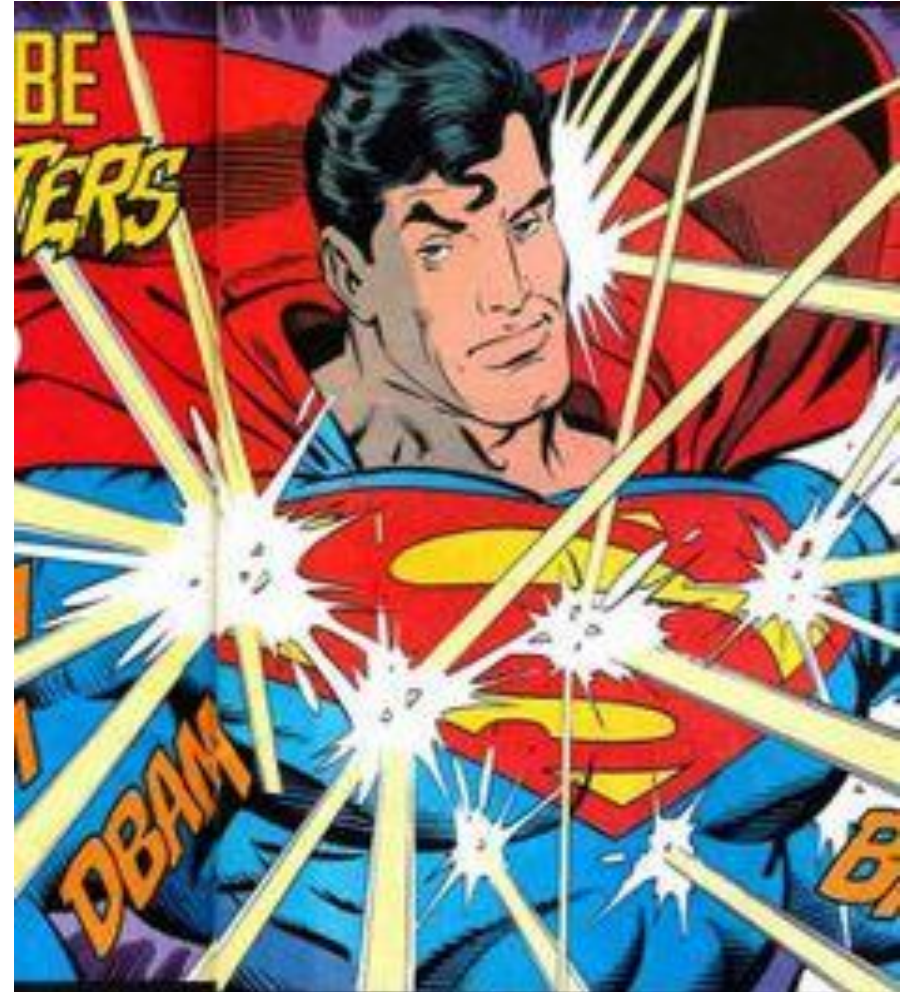
FIFRA's Preemption Provision

- States may may regulate the sale or use of any federally registered pesticide . . . But
- Such State shall not impose or continue in effect any requirements for **labeling or packaging in addition to or different from those required** under this subchapter.



FIFRA = Virtual Immunity from 1992 to 2005

- Preemption provision in Federal cigarette statutes = No State labeling requirements



2005 – Peanut Farmers vs. “Strongarm” (Dow)

- Farmers: Dow knew, or should have known, that Strongarm would stunt the growth of peanuts in soils with pH levels of 7.0 or greater
- Dow: this would require us to change our label – but States can't require labeling that is **in addition to or different** than required by FIFRA



Peanut Farmers win!

1. Claims not involving labeling or packaging are not preempted
2. State law claims on labeling that are equivalent to and consistent with FIFRA's "misbranding" requirements are not preempted



FIFRA Preemption from 2005 to ~ 2016



So what changed?

- It wasn't farmers with injured crops
- Roundup cancer cases - Failure to Warn claims are recurring theme



“Misbranded”

- any word, statement, or other information required . . . to appear on the label or labeling is not prominently placed thereon with such conspicuousness . . . and in such terms as to **render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;**
- the labeling accompanying it does not contain **directions for use which are necessary for effecting the purpose for which the product is intended** and if complied with . . . **are adequate to protect health and the environment;**
- the label does not contain a **warning or caution statement** which may be necessary and if complied with . . . is **adequate to protect health and the environment.**

Maybe a silver lining?

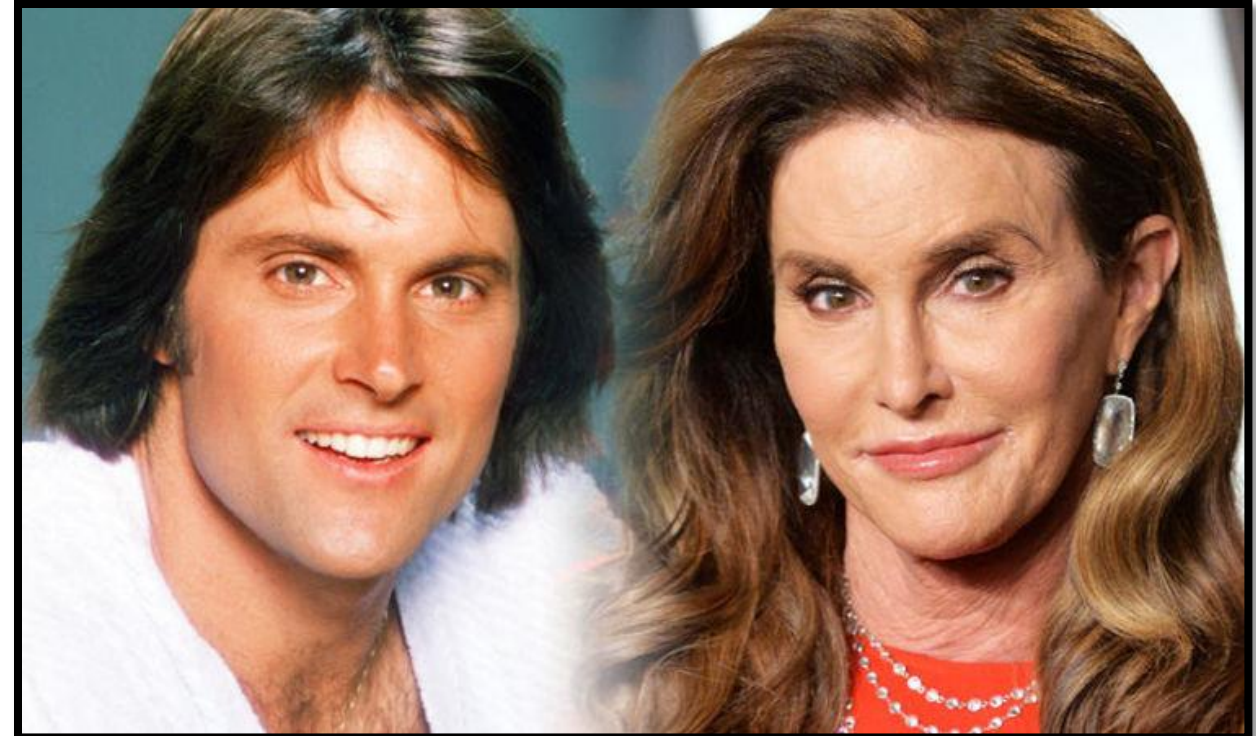
- adequate to protect health and the environment
- likely to be read and understood by the ordinary individual under customary conditions of purchase and use



Is this the end of the world (or glyphosate)?



Be skeptical – reliable information is hard to come by



Thanks. Questions?

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