

Litigators of the Week: The Duo Who Kept Monsanto's RoundUp Defense Winning Streak Alive

George Lombardi of Winston & Strawn and Jennifer Lee of Husch Blackwell led a trial team that won a defense verdict in state court last week in a case where an Oregon man claimed the herbicide caused his non-Hodgkin's lymphoma, marking Monsanto's fourth straight win in Roundup cases.

By Ross Todd
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After an eventful, month-long trial, it took a state court jury in Medford, Oregon, less than an hour and a half last week to return a complete defense verdict for Monsanto in the latest trial over whether the company's blockbuster weedkiller RoundUp causes cancer.

Our Litigators of the Week – Monsanto's lawyers **George Lombardi** of **Winston & Strawn** and **Jennifer Lee** of **Husch Blackwell** – only needed to persuade nine jurors, but convinced all 12 to reject claims brought on behalf of Larry Johnson, an Oregon man who had used RoundUp around his residence since the 1970s. Jurors found Johnson's lawyers failed to prove RoundUp caused his non-Hodgkin's lymphoma, a form of blood cancer he was diagnosed with in September 2019, or Monsanto was negligent. The win, which came after both lead lawyers tested positive for COVID during trial, marked the fourth straight defense win for the company in Roundup cases.

Lit Daily: Who is your client and what was at stake?

George Lombardi: Our client was Monsanto Company and the case involved plaintiff's allegation that his residential exposure to Monsanto's RoundUp product caused his Non-Hodgkin Lymphoma (NHL). Plaintiff sought \$79 million in damages, including punitives. Also at stake was Monsanto's three-trial winning streak in RoundUp cases.



Courtesy photos

(L-R) George Lombardi of Winston & Strawn and Jennifer Lee of Husch Blackwell.

Who all was on your team and how did you divide the work?

Lombardi: This was a true team win with contributions coming from every corner of the trial team. Winston partner **Kurt Mathas** and Husch partner **Rick Norris** had a hand in every aspect of the trial and were indispensable to the winning effort, working on witnesses, and arguing key evidentiary issues and jury instructions.

Other key Winston trial team members who were crucial to the win include associates **John Drosick**, **Karalena Guerrieri**, **Jennifer James**, **Linda Greene**, **Jake Seiden** and **Tyree-Petty Williams**, and paralegals **Pat Pratt**, **Martha Calvo** and **John Poziopoulos**.

Winston partner **Sandra Edwards** and of counsel **Rand Brothers** provided invaluable assistance as well.

Jennifer Lee: For Husch Blackwell, other than Rick Norris and me, senior counsel **Karen Luong**, senior associate **Shayan Heidarzadeh**, paralegal **Harmonie Siu**, medical specialist **Dawn Agozzino**, and paralegal **Brian MacDonald** played important roles.

In addition, **Alexandra Whitworth**, **Jed White** and **Peter Bay** from **Bryan Cave** briefed and argued many legal issues.

What were your key trial themes and how did you drive them home with the jury?

Lee: The defense trial theme focused on the long history of sound scientific review of glyphosate's and Roundup's safety and non-carcinogenicity. With that background, we focused the jury on the key—and essentially, the only—issue at hand: whether this plaintiff's cancer was caused by his residential Roundup use. We also provided the jury with the most reasonable explanation for plaintiff's cancer – naturally occurring cell replication errors that increase with age.

You all elicited the memorable testimony “getting old sucks” from one of the experts in the case. How did that play into your trial themes? And Mr. Lombardi, how did you use that in closing?

Lombardi: One of our themes in the case was that the risks of getting NHL, the disease the plaintiff suffers from, rise as we age. Risks in men in particular rise as they age. Mr. Johnson's NHL did not result from his exposure to RoundUp, but rather from the naturally occurring changes that occurred in his cells as he aged. “Getting old sucks” fits that theme perfectly and, coming from the plaintiff's expert, made it a point we emphasized in closing.

You both tested positive for COVID during trial. How did you and the court manage that?

Lombardi: After one week of trial, both Jen and I tested positive for COVID-19 despite both of us having been fully vaccinated. The court gave the parties

one day off and then resumed for the next two days with deposition videos that plaintiff designated. None of this was problematic from our perspective until plaintiffs' lawyers indicated that they had an expert who could only testify during the time Jen and I would be quarantining. The court offered us the option of cross-examining the expert by video while the witness, opposing counsel, and the jury were in court, but that was not a good option. Fortunately, **Lee Popkin** of **Proskauer** had cross-examined the same witness in a prior trial and was able to parachute into our case on very short notice to handle the cross live and in person in court. She did a great job, so we did not miss a beat. Trial got back to normal the next trial day.

Did you have contingency plans in place before trial in case this disruption was to happen? Or did you have to manage it on the fly?

Lombardi: We managed the COVID issues on the fly. Given our vaccination status, and that we had all made it to this point without getting COVID, it did not occur to us that we could have a problem. In retrospect, we obviously were naïve.

This was Monsanto's fourth consecutive trial win in the past eight months after some significant early losses. What's different from those early losses to this string of wins?

Lee: Experience is a great teacher.

What will you remember most about this matter?

Lombardi: Testing positive during a trial; quarantining in a hotel room in Medford, Oregon, for 5 days; working collaboratively with a great team of lawyers to overcome all these obstacles; and of course, the ultimate victory, made this trial memorable for many reasons.

Lee: Dealing with COVID on the fly was certainly memorable, although it was great to see our teams and our colleagues from prior trials step in and rally around us. Mostly, I'll remember the entire trial teams from both Winston and Husch; the whole trial process was collaborative and congenial, which made for a very memorable experience.