

Insights

THE NEW MASS TORT: HERBICIDES

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The modern mass tort, where thousands of personal injury cases are transferred to a single court for coordinated management, has evolved over the past two decades after courts concluded that the class action procedure was not appropriate for this type of litigation. Coordinated mass tort proceedings have come to dominate court dockets. They are spearheaded by well-funded and organized plaintiffs' lawyers who often engage in aggressive marketing and advertising to increase the number of claimants. Previously, pharmaceutical and medical device companies bore the brunt of these oftentimes messy proceedings.

Until recently, herbicide manufacturers and distributors largely avoided entanglement in mass tort proceedings. A glyphosate-based herbicide now has been embroiled in mass tort proceedings since 2016 involving tens of thousands of cases consolidated in both federal and state court venues. And litigation involving dicamba herbicides was transferred to a multi-district litigation proceeding ("MDL") in early 2018. Some of the same plaintiffs' attorneys who led the way in creating those mass torts have now turned their aim toward another herbicide, Paraquat.

There are a few dozen cases pending in federal courts across the country in which individuals allege their Parkinson's disease was caused by exposure to the popular herbicide Paraquat. Plaintiffs in early April asked the Judicial Panel on Multidistrict Litigation ("JPML"), a committee of federal judges, to create a proceeding that transfers the existing cases to a single federal district court. If an MDL is created, almost certainly hundreds if not thousands of more cases will be filed and transferred to that proceeding. The JPML will likely decide whether and where to create an MDL shortly after it hears argument from the parties later this month.

A Paraquat MDL would be the third significant mass tort involving herbicide manufacturers and distributors within the last several years. The lesson is clear: as the mass tort mechanism has continued to evolve over the past two decades, plaintiffs lawyers experienced in mass tort have now identified herbicide manufacturers and distributors as prominent targets for these proceedings. Herbicide manufacturers and distributors should be prepared to face this risk.

Bryan Cave Leighton Paisner's Food and Agriculture team has helped lead the defense in both the glyphosate and dicamba mass tort litigation. Bryan Cave lawyers have and continue to defend a leading glyphosate herbicide manufacturer in the glyphosate litigation at both the post-trial and

appellate levels, including arguing successfully to reduce damages by over \$2.2 billion. Our team also has played a lead role in defending a major dicamba herbicide manufacturer in the In re Dicamba Herbicides Litigation MDL proceeding through all stages of the litigation, including briefing, preparation of company witnesses, identification and development of expert witnesses, and trial of the first dicamba herbicide lawsuit included within that MDL proceeding.

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