

Inside the Mass-Tort Machine That Powers Thousands of Roundup Lawsuits

The weedkiller made by Bayer is the target of a sophisticated legal ecosystem; 'call the number on your screen now'

By *Sara Randazzo* and *Jacob Bunge*

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In late 2016, a group of plaintiffs' lawyers took the stage at the year's largest gathering of their colleagues to talk up a promising new target.

For 30 minutes, they laid out arguments linking the popular weedkiller Roundup to cancer. An arm of the World Health Organization had pegged Roundup's main chemical ingredient as a probable carcinogen the year before, and it was quickly becoming a focus of the plaintiffs' bar.

Some product-liability lawyers in the audience in Las Vegas were skeptical. Tying exposure from everyday products like Roundup to cancer often is less straightforward than linking illness to medications or medical devices, said Chase Givens, a lawyer with the Cochran Firm who attended the event. But the presenters' track records mounting complex cases got the audience's attention.

Three years later, more than 42,700 farmers, landscapers and home gardeners have sued Bayer AG, Roundup's manufacturer, claiming the company knew the herbicide posed a cancer risk but failed to warn consumers. Bayer is contesting the lawsuits and argues that scientific research and regulatory reviews, including from the Environmental Protection Agency, prove Roundup's safety.

Behind the surge in lawsuits is a little-known, sophisticated legal ecosystem that includes marketing firms that find potential clients, financiers who bankroll law firms, doctors who review medical records, scientists who analyze medical literature and the lawyers who bring the cases to court.

Individual plaintiffs can become commodities that are bought and sold by marketers, with prices based on demand. The more lawsuits that get filed, the more pressure companies face to settle.

Building up thousands of cases against a single target gains momentum at conferences like the one in Las Vegas, called Mass Torts Made Perfect. The twice-yearly shindig is product-liability law's big stage, drawing more than a thousand plaintiffs' lawyers and vendors vying for their business over informational panels, cocktail hours and appearances by celebrities such as Peyton Manning and Nelly.



Florida plaintiffs' lawyer Mike Papantonio speaks about Roundup at Mass Torts Made Perfect, a conference he founded.

PHOTO: JOE PAULICIVIC

The real headliners are the target products. They include e-cigarettes, baby powder, firefighting foam and birth-control devices. None have sparked the same level of interest as the weedkiller.

The Roundup litigation is a big threat to Bayer, the 156-year-old German company that last year acquired Monsanto, Roundup's inventor and main marketer, for \$63 billion. Since the deal closed, juries have awarded \$2.4 billion to plaintiffs in the first three Roundup cases to go to trial. Bayer's shares have dropped 27% since the first verdict in August 2018. Bayer is appealing the three awards, which courts have reduced to \$190.5 million. Additional trials have been delayed as the company and plaintiffs' lawyers discuss settlement.

The herbicide first caught plaintiffs' lawyers' eyes in the spring of 2015, when the International Agency for Research on Cancer, a branch of the World Health Organization,

deemed Roundup's active ingredient, glyphosate, "probably carcinogenic" to humans. Bayer rejected that finding, accusing the group of cherry-picking studies and ignoring others that regulatory agencies have relied on to determine Roundup's safety.

Just days after the WHO agency published its findings, personal-injury law firm Weitz & Luxenberg PC registered the domain name www.RoundupInjuries.com. Within months, television advertisements hit the air seeking Roundup users who got cancer. Before year's end, the first lawsuits were filed.

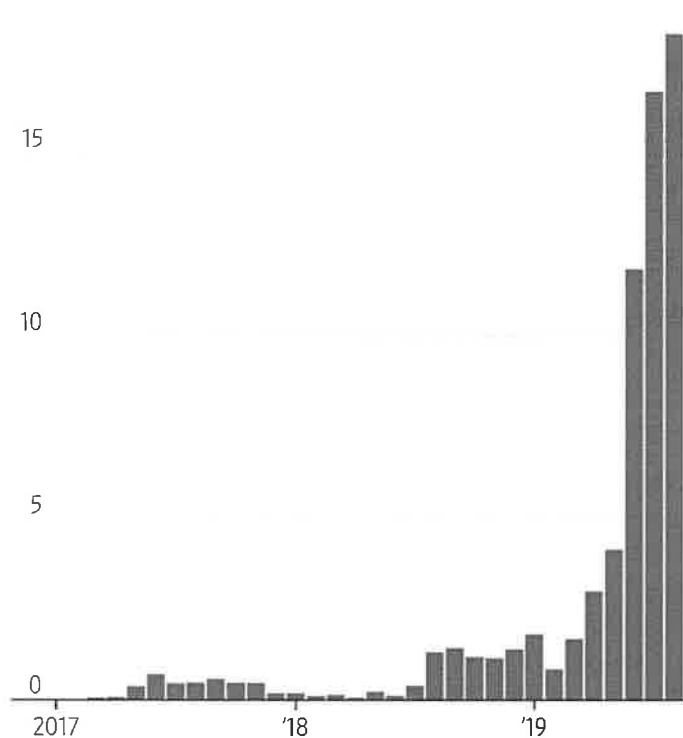
Lawyers have clamored to sign up Roundup plaintiffs, making it the top product targeted by mass-tort lawyers and marketing companies in recent years, according to X Ante, which sells data to companies on mass-tort advertising. Between January and September, the weedkiller appeared in 654,280 broadcast and cable-TV advertisements costing an estimated \$77.8 million, an X Ante analysis of Kantar Media CMAG and Media Monitors data shows. The number of advertisements is four times that of the next most-targeted product or drug for mass-tort lawsuits.

Litigation Machine

As lawyers have increased spending on TV ads soliciting Roundup-related legal claims, the number of plaintiffs has surpassed those in other mass-tort lawsuits.

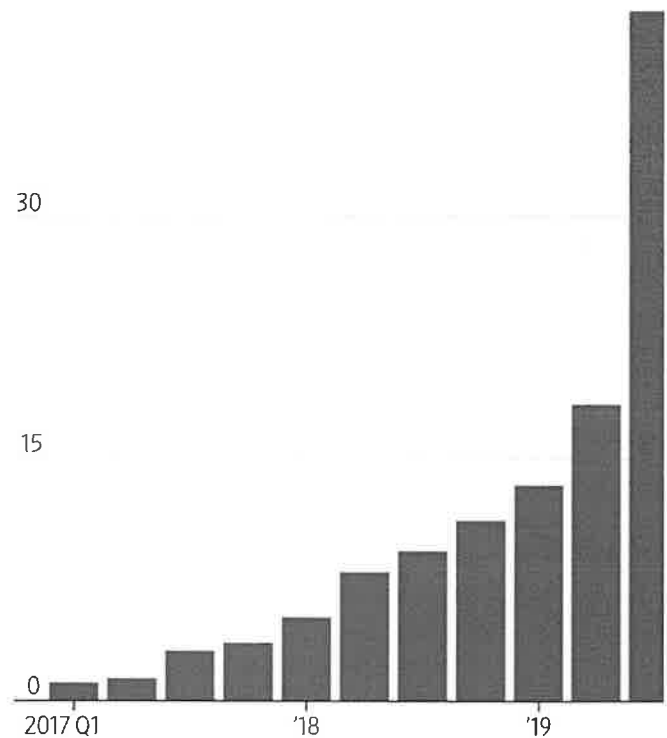
Ad spending

\$20 million

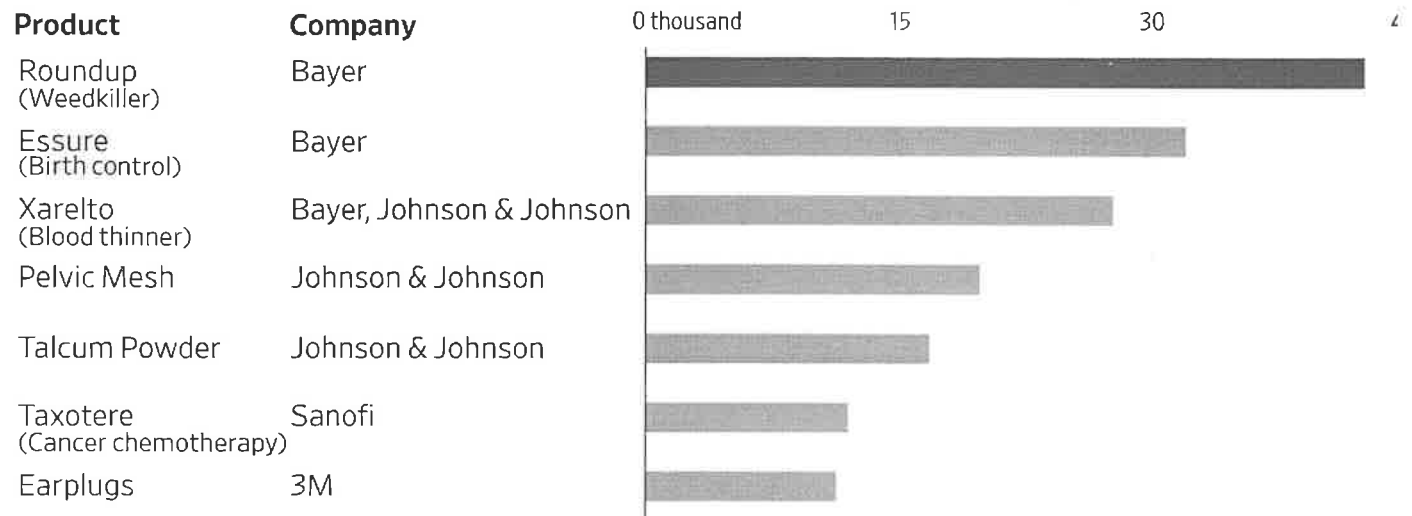


Number of plaintiffs in Roundup litigation

45 thousand



Number of plaintiffs in selected tort cases



Note: Data does not include advertising on local cable television channels.

Sources: X Ante utilizing Kantar CMAG data (ads); the companies (plaintiffs)

Bayer blamed lawyer advertisements for more than doubling the number of plaintiffs from July to October.

Bayer officials and industry groups say the ability of plaintiffs' lawyers to rapidly build injury lawsuits burdens companies with costs and threatens innovation, raising the prospect that a product declared safe now could be targeted for damages years or decades later.

Personal-injury lawyers say they advocate for consumers with no other recourse against big companies—and that their sprawling system lets them compete against deep-pocketed corporations.

“We operate just like any other industry,” said Mike Papantonio, a Florida plaintiffs' lawyer who founded Mass Torts Made Perfect. “One firm may be wonderful on memos, appeals and briefings, another firm is really good at trying the case.”

The U.S. Chamber Institute for Legal Reform, a frequent critic of the plaintiffs' bar, estimates that in 2016 plaintiffs' lawyers collected \$77 billion in fees on tort cases. Lawyers collect a percentage of settlements struck between companies and plaintiffs.

The first step is getting the word out about an allegedly harmful product, often through TV and online advertisements.

“If you or someone you love used Roundup, and were diagnosed with cancer, call the number on your screen now,” says one TV spot sponsored by Guardian Legal Network. The ad touts the multimillion-dollar verdicts and urges callers to file a claim before it's too late.

Callers to Guardian, one of the largest mass-tort marketing companies, are routed to call centers around the country. There, operators run through a list of questions: Has the caller used Roundup? When, and for how long? When was the caller diagnosed with cancer, and what type?

Law firms also buy targeted online ads and create social-media pages, some of which steer users to automated chat programs that run through similar screening questions.

If hotline callers qualify as potential plaintiffs, the lead-generation companies hired by law firms send them law-firm contracts to sign and request their medical records for further screening. Other lead-generation companies working on spec sell the leads to law firms. Brokers sometimes stand between a lead generator and a law firm.

Tennessee resident Sherry Brobeck was browsing [Facebook](#) about two years ago when an advertisement popped up, alerting non-Hodgkin lymphoma patients that lawyers were evaluating cases for potential Roundup lawsuits.

“I called them immediately,” Ms. Brobeck said. Her husband, Michael, died from that cancer in early 2010, and she had searched unsuccessfully for a local lawyer to file a lawsuit. She said the family’s oncologist wondered at the time of her husband’s 2009 diagnosis if the cancer arose from the Roundup Mr. Brobeck bought by the case to clear weeds from land in the Appalachian foothills they converted to an RV campground.

Ms. Brobeck had struggled to repay debts racked up after her husband’s uninsured cancer treatments and for a time took a second job as a grill cook. “I didn’t have anything to lose,” Ms. Brobeck said of her decision to call.

After giving an operator her basic information, she got a call two hours later from a lawyer at Louisiana-based law firm Pendley, Baudin & Coffin LLP. He asked about her husband’s illness, she said, whether she had receipts for their Roundup purchases, and if she could send a copy of the death certificate. She did.

While Ms. Brobeck worked to pay down property liens brought on by her husband’s medical bills, her lawyers contacted the St. Louis-based Onder Law Firm, a big personal-injury firm. Onder was compiling plaintiffs to sue Bayer in St. Louis Circuit Court, which has attracted thousands of other lawsuits over drugs and medical devices.

Pendley and Onder struck a deal for Ms. Brobeck’s case that is typical in the personal-injury law business. Onder handles local matters such as filings and jury selection, and if the case makes it to trial, Pendley lawyers will argue it, lawyers for the firms say. If Ms. Brobeck’s case settles, Pendley will receive the majority of the fees, with a smaller amount going to Onder. In November 2018, Ms. Brobeck became part of a group suing Bayer in a St. Louis court.

SHARE YOUR THOUGHTS

What’s the best way to resolve claims that a company’s product is dangerous? Join the conversation below.

Lead generators can charge law firms for each signed plaintiff, or a flat monthly rate. The price of a mass-tort client, like any commodity, rises and falls depending on market

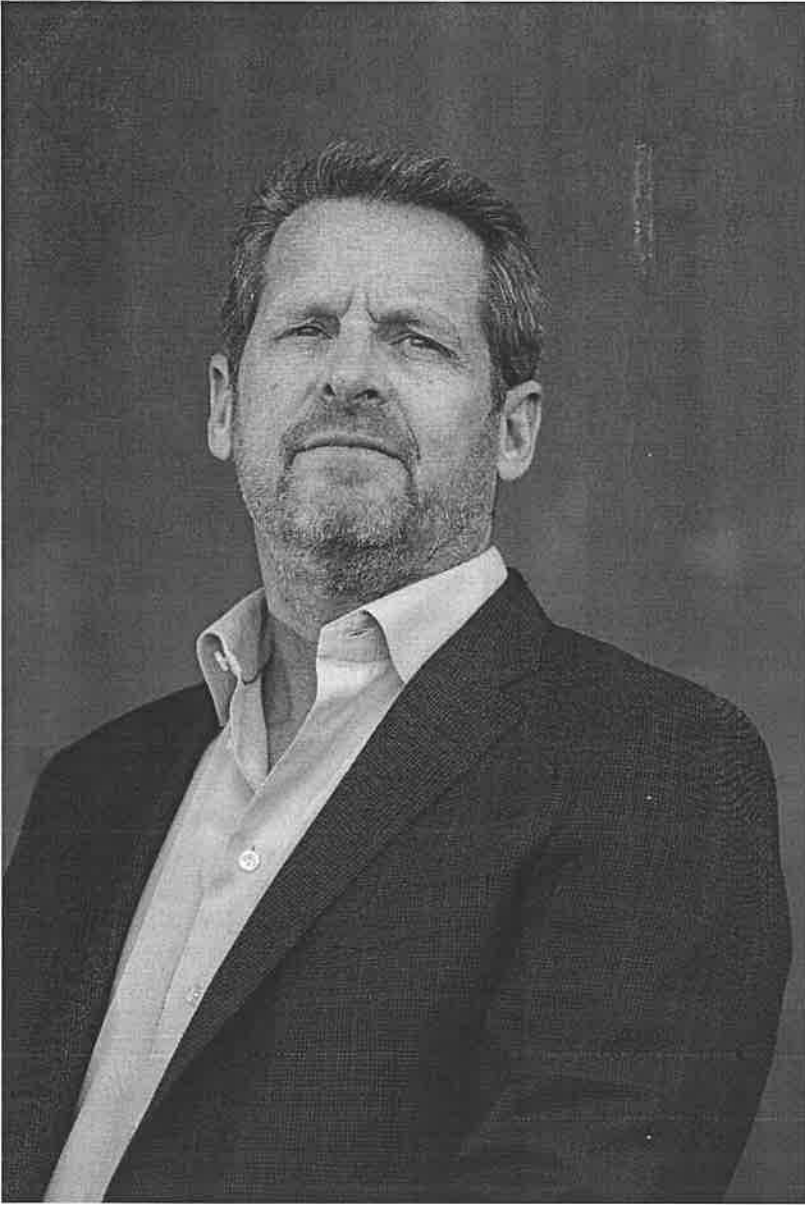
interest.

Legal marketers say the price to acquire a signed Roundup client peaked in August and September at between \$3,000 and \$6,000 a plaintiff, after a report that Bayer was close to settling the litigation. Lower-value cases, by comparison, can cost \$100 or less per plaintiff.

Edward Lott, president of lead-generation firm ForLawFirmsOnly Marketing, said his law-firm clients have paid around \$1,350 each for “zero-risk” Roundup leads that he will replace with a new plaintiff if, for instance, their medical records don’t back up the injuries they described over the phone.

“For every big mass-tort attorney out there, it’s very much a science in how much they’re paying per lead,” said Scott Hardy, a marketer who charges law firms a flat rate of as much as \$15,000 a month to sponsor case-specific pages on his website, TopClassActions.com.

Consumer Attorney Marketing Group, one of the largest lead generators, sends law-firm clients data on how many leads come a week from their TV, radio and online advertisements. Ads the company runs for hundreds of law firms send between 20,000 and 25,000 calls a month to a call center in Hermosillo, Mexico. Those who meet initial standards get a call from a CAMG employee in California, who walks them through the paperwork needed to sign with a law firm.



Consumer Attorney Marketing Group signs up between 7,000 and 8,000 clients a month for law firms, says co-founder Steve Nober.

PHOTO: JESSICA PONS FOR THE WALL STREET JOURNAL

On a recent afternoon, CAMG's Los Angeles call center buzzed with conversations between operators and potential plaintiffs for cases related to metal hip implants, asbestos and contaminated Flint, Mich., water. Between 7,000 and 8,000 callers a month become signed clients, said company co-founder Steve Nober. The TV ads, he said, help people connect an injury or disease to its possible cause. "It's that ah-ha moment," he said.

Roundup has been one of the firm's top campaigns for years, Mr. Nober said. His data shows Roundup ads have had the most success airing during daytime reruns of programs including "The FBI Files," "M*A*S*H" and "My Wife and Kids," a time of day when people who have purchased garden or landscaping items are likely to be watching.

Mr. Lott and other marketers say some law firms will sign up almost anyone who says they used Roundup and got non-Hodgkin lymphoma, the primary cancer the litigation is focused on. Others want only those who used Roundup at least 30 times a year for many years, or those who used Roundup at work.

Lawyers and marketers describe the mass-torts practice like an investment portfolio: Firms take on some high-risk cases that are years from a payday but cheaper to acquire, and pricier ones that are surer bets and close to a conclusion. If done right, money will trickle in regularly as cases resolve.

Plaintiffs' law firms may spend \$20 million to \$30 million pursuing long-term, complex cases like Roundup, said Mr. Papantonio, the Florida lawyer who has represented plaintiffs in large cases such as the BP PLC oil-spill litigation. "You have to have a war chest so you can run as long as you want to," said Mr. Papantonio, who estimates his firm represents about 2,000 Roundup plaintiffs.

Jean McCrea called a number from a TV advertisement earlier this year that said Roundup could be linked to a cancer her husband has had since 2013, chronic lymphocytic leukemia. She had heard before that Roundup could be carcinogenic, but didn't realize CLL, a type of non-Hodgkin lymphoma, could qualify for a lawsuit.

"We've never done anything like this," the 74-year-old Arizona resident said of responding to the advertisement from local law firm Goldberg & Osborne. She told the firm her husband used Roundup on a half-acre property sprinkled with fruit trees they used to live on in Madera, Calif. After a few phone calls, she was sent paperwork to sign.

Roundup ALERT

•Non-Hodgkin Lymphoma
•Leukemia (certain types)
•Other Cancers of the Blood

You may be entitled to significant compensation
exposed to the weedkiller Roundup®

The advertisement features three small images: a tractor in a field, a jug of Roundup, and a person spraying a field.

Arizona law firm Goldberg & Osborne has found Roundup clients through its television advertisements.

USED ROUNDUP WEED KILLER
DIAGNOSED WITH
NON-HODGKINS LYMPHOMA

MONSANTO ROUNDUP LEGAL HELPLINE
CALL Us Now! 1-800-960-8344

The advertisement shows a person spraying Roundup on a field with a bottle of Roundup in the foreground.

A television advertisement seeking clients for St. Louis-based Onder Law Firm.

A lawsuit was filed on the couple's behalf in Arizona in August and sent to U.S. District Court in San Francisco, where thousands of federal-court Roundup lawsuits have been centralized.

Retired Californian Brenda Huerta didn't know lawyers had gone forward with a lawsuit in her name for months after its January 2016 filing, she said, until her sister's friend saw mention of it online.

Ms. Huerta had been in remission from cancer for about a year when a call came in 2014 from her husband's health insurer looking to recoup the more than \$1 million it paid to treat her non-Hodgkin lymphoma. "We were so grateful to them, we said absolutely," the 65-year-old Ms. Huerta said.

A lawyer at the Miller Firm in Virginia told her the cancer could be tied to years of Roundup exposure. She and her husband had used it in their yard, as had sod farmers who leased their land in Tehachapi, Calif.

Companies facing such lawsuits argue the mass-tort machine encourages the proliferation of claims, which in turn pressures them to settle, even if they believe their products are safe. They say the system makes it easy for lawyers to file nearly identical complaints in rapid succession, with just a few paragraphs changed about each plaintiff, giving defendants little to go on to gauge the legitimacy of any given case.

Defense lawyers point to the Vioxx painkiller litigation, in which court documents show that nearly one-third of plaintiffs who had filed claims by the time of a \$4.85 billion settlement with drugmaker Merck & Co. failed to meet the criteria necessary to collect any money.

TV lawyers who pass on clients to bigger firms "are building inventory without close scrutiny being given to the claims that they have filed, and hoping that hard work by other lawyers will lead to a mass settlement that will allow them to cash in," said Mark Behrens, a partner at Shook, Hardy & Bacon LLP who advises Bayer on mass-tort issues.

Bayer said it would like to see more transparency around who is sponsoring and funding plaintiffs' lawyer advertising.

Gary Falkowitz, whose call-center company Intake Conversion Experts has signed up 50,000 cases for lawyers since 2016, sees it differently. "Claimants will have an almost

impossible job to bring these claims on their own,” he said. “The more people law firms are representing, the more of a chance you can hold these companies responsible.”

A rumor this summer that Bayer had made a multibillion-dollar settlement offer, said Mr. Lott, caused the marketer’s phone to ring off the hook, and drove up the price brokers were charging for leads. Anticipation grew for a payout to be shared by the advertising law firms, legal funders, trial lawyers and Roundup users.

“What they hope for is that the Monsantos of the world come in and say, here’s \$10 billion, spread it how you like,” Mr. Lott said of the lawyers he sells leads to. “That’s what they’re looking for.”

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