Court Rules Monsanto Roundup Cases to Stay in Delaware

By William B. Larson, Jr.

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Judge Vivian L. Medinilla of the Delaware Superior Court recently denied defendant Monsanto Company's motion to dismiss on the basis of *forum non conveniens* ("FNC") in *Barrera v. Monsanto Company*. This ruling, along with a similar ruling issued by Judge Andrea L. Rocanelli one day prior in *Gilchrist v. GlaxoSmithKline, LLC*, reaffirms and provides new strength to Delaware's long-standing precedent of offering great deference to a plaintiff's choice of forum and requiring a defendant to establish "overwhelming hardship" in order to dismiss a case on FNC grounds.

In *Barrera*, the Court considered the claims of three Plaintiffs alleging their cancers were caused by Monsanto's glyphosate pesticide known as Roundup. The case's only connection to Delaware was Monsanto's status as a Delaware corporation (although Monsanto's principle place of business is in Missouri). None of the Plaintiffs lived in Delaware or alleged any exposure to Roundup in Delaware. Rather, Plaintiffs alleged exposure to Roundup in Michigan, New York, Oregon, Texas, Virginia, and Washington. Monsanto therefore asserted that Plaintiffs' claims would be more properly adjudicated in the respective jurisdictions of their alleged exposures and moved to dismiss the Delaware action on FNC grounds.

In analyzing Monsanto's motion, the *Barrera* Court considered the following six factors, known as the "Cryo-Maid" factors, which Delaware Courts have long relied upon in examining FNC motions:

The relative ease of access to proof;

The availability of compulsory process for witnesses;

The possibility of viewing the premises;

Whether or not Delaware law will be applied;

The pendency or nonpendency of similar actions in another jurisdiction; and

All other practical problems that would make the trial of the case easy, expeditious, and inexpensive. *Barrera*, at 12-13.

In considering all of the factors as a whole, the Court concluded an overwhelming hardship did not exist. Although the relevant proof, witnesses, and premises (factors 1-3) mostly lie outside of Delaware, the Court found obtaining such evidence was not a hardship on Monsanto given the technology available in today's global age. The Court also noted that it routinely applies other states' laws (factor 4) and that no other action was currently pending in another jurisdiction (factor 5). The Court found that the "other practical problems" sixth factor weighed in Monsanto's favor, but nevertheless concluded that this single hardship was insufficient to justify dismissal, stating:

It may be true that there are more appropriate or convenient forums to litigate Plaintiffs' claims. Yet to prevail on this FNC motion to dismiss, Defendant is nonetheless required to demonstrate with particularity that this is "one of those rare cases where the drastic relief of dismissal is warranted" because Defendant will suffer overwhelming hardship if forced to litigate here. Defendant has not demonstrated that this is one of those rare cases. *Barrera,* at 22.

The *Barrera* ruling takes on added significance given that Delaware's FNC jurisprudence had come under some

question of late after a pair of decisions, *Martinez v. E.I. DuPont de Nemours & Co., Inc.* in the Delaware Supreme Court and *Hupan v. Alliance One International, Inc.* in the Delaware Superior Court, surprisingly resulted in a dismissal of claims under FNC grounds. However, as Judge Medinilla noted in her *Barrera* opinion, both of those cases are distinguishable from *Barrera* in that each involved injuries that occurred outside the United States and required the application of foreign countries' laws that were not written in English. At bottom, FNC still does not appear to be a successful defense in toxic tort cases involving alleged exposures confined to the United States.

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