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Hot Topics & Opinions

Monsanto Co. v. Durnell: Common Sense & Sound Science Prevail At Last!

By Larry Ebner

The Supreme Court's June 25 opinion in *Monsanto Co. v. Durnell*, 2026 WL 1825691, is a significant victory for sound science and the federal agencies that regulate potentially hazardous products. The 7 to 2 decision, authored by Justice Brett Kavanaugh, effectively terminates all unresolved failure-to-warn suits involving Roundup, the world's most widely used herbicide.

Durnell unequivocally holds that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) expressly preempts any failure-to-warn claim predicated on the absence of a pesticide label warning that the U.S. Environmental Protection Agency (EPA) does not require. The opinion cleans up the mess created by Justice John Paul Stevens' 2005 fuzzy FIFRA preemption opinion in *Bates v. Dow AgroSciences LLC*, 544 U.S. 431 (2005). In so doing, *Durnell* specifically rejects the major counter-arguments—echoed in Justice Ketanji Brown Jackson's dissent—that the plaintiffs' bar has been advocating with considerable success in lower courts since *Bates* was decided.

The Court's *Durnell* opinion not only is a triumph for lawyers who defend business, but also a devastating defeat for the plaintiffs' bar and anti-pesticide activists. *Durnell* essentially eliminates label-based failure-to-warn claims against manufacturers of *any* type of pesticide product, ranging from household disinfectants to agricultural insecticides. *See* 7 U.S.C. § 136(u) (FIFRA definition of "pesticide").

More broadly, the *Durnell* opinion has tremendous economic and societal significance. The ruling helps to ensure that the nation's farmers will be able to continue to produce food crops using pesticides that have been granted registration and approved for reregistration by EPA following its repeated reviews of extensive health and safety data. The ruling also means that innovative pesticide producers will be able to pursue research and development of new pesticidal active ingredients without having to divert millions of dollars for litigation defense and settlements or judgments.

Durnell's Preemption Ruling is Text-Based and Straightforward

The core allegation in *Durnell* and the tens of thousands of other Roundup failure-to-warn suits filed in recent years is that the manufacturer, Monsanto (now part of Bayer AG), failed to include on its product labeling a warning about the supposed risk of cancer associated with use of Roundup products.

The opinion explains, however, that for more than 35 years, “EPA has repeatedly re-evaluated glyphosate [the active ingredient in Roundup], and has repeatedly concluded that glyphosate is not likely to cause cancer.” 2026 WL 1825691, at *5. For this reason, “in accordance with EPA’s view that glyphosate is not likely to cause cancer in humans, EPA has not required glyphosate-based pesticides like Roundup to include a cancer warning on their labels.” *Id*. at *6.

EPA’s science-based determination that a cancer warning is not required for Roundup labeling is the factual lynchpin for the Court’s preemption holding. Equally important, the Court explained that “crucially for this case, FIFRA includes a preemption clause [that] underscores EPA’s comprehensive and exclusive authority in registering pesticides and approving labels.” *Id*. at *5. That express preemption provision, 7 U.S.C. § 136v(b), titled Uniformity, prohibits a state from “imposing any requirements for labeling or packaging in addition to or different from those required under” FIFRA.

“FIFRA therefore preempts a state-law labeling requirement that differs from the federal labeling requirements imposed under FIFRA. ‘Uniformity’ in labeling—the textually stated objective of FIFRA’s preemption clause—would otherwise be impossible to achieve.” 2026 WL 1825691, at *6.

Durnell holds that FIFRA’s preemption provision dooms Roundup failure-to-warn claims. This is because the state tort duty underlying such claims “would require Monsanto to place a cancer warning on Roundup’s label. That state labeling requirement is ‘in addition to or different from’ EPA’s labeling determinations that do not mandate a cancer warning.” *Id*. at *9. Therefore, “Durnell’s failure-to-warn claim is expressly preempted.” *Id*.

Durnell Rejects the Plaintiff Bar’s Principal Argument Against Preemption

Although the phrase “in addition to or different from” in FIFRA’s preemption provision is expansive, the Court held in *Bates* that it does not encompass state-law labeling requirements that are “parallel,” “genuinely equivalent” to, and “fully consistent with” labeling requirements imposed under FIFRA. *See* Bates, 544 U.S. at 447-48, 453-54. From the day *Bates* was decided, the plaintiffs’ bar exploited this narrow, implied, parallel-state-requirements exception to FIFRA preemption. They argued that preemption of pesticide failure-to-warn claims does not apply because a general state-law duty requiring product manufacturers to provide adequate health warnings—a tort duty that every state

imposes—is parallel to FIFRA's general prohibition against distributing misbranded products with inadequate label warnings. *See* 7 U.S.C. §§ 136(q)(1)(G), 136j(a)(1)(E).

In her *Durnell* dissent, Justice Jackson echoes this argument: "Durnell's failure-to-warn claim is not 'in addition to or different from' FIFRA's mandates; it is *equivalent* to FIFRA's key labeling requirement—the misbranding prohibition." 2026 WL 1825691, at *15 (Jackson, J., dissenting). Justice Kavanaugh's majority opinion squarely rejects this simplistic argument, which ignores the crucial fact that EPA regulates pesticides and the warnings on their labels on a product-by-product basis:

"Durnell (echoed by the dissent) contends that a [state-law] failure-to-warn claim, like FIFRA itself, simply requires manufacturers to include adequate warnings to protect human health, and not to include false or misleading statements. . . . But that argument operates at far too high a level of generality and disregards the central and comprehensive role that EPA performs in making labeling determinations under FIFRA's registration provisions. Looking at only FIFRA's general standard for misbranding rather than the specific requirements imposed under federal law would nullify FIFRA's preemption clause and the uniformity that Congress sought for safety warnings on pesticide labels." *Id.* at *9

Sound Science Prevails

Plaintiff John Durnell sued Monsanto in Missouri state court alleging that his use of Roundup for two decades caused his non-Hodgkins lymphoma, a form of cancer. A jury awarded him more than $1 million based on his theory that Roundup labeling should have included a cancer warning. The Missouri trial and intermediate appellate court rejected Monsanto's FIFRA preemption arguments. *Id.* at *6.

Mr. Durnell's state-court victory was a scientific as well as a legal travesty.

The Supreme Court's opinion explains that "EPA requires robust evidence of a pesticide's potential carcinogenicity as a part of registration. . . . that is why, with respect to Roundup specifically, EPA has repeatedly evaluated glyphosate's potential carcinogenicity." *Id*. at *7 n.5. EPA's repeated conclusion that "glyphosate is not likely to cause cancer" is "shared by many other regulatory bodies around the world that have likewise concluded that glyphosate is not carcinogenic, including regulators in Canada, Australia, Japan, and the European Union." *Id.* at *5. "In 2017 and 2019, after the International Agency for Research on Cancer [IARC] classified glyphosate as a probable carcinogen, EPA re-examined the issue but still adhered to its longstanding position on glyphosate." *Id.*

EPA's *rejection* of IARC's classification of glyphosate as a "probable carcinogen" is important because of the plaintiff bar's reliance on that classification in pursuing Roundup failure-to-warn litigation. EPA, however, did anything but ignore IARC. Instead, "in the

aftermath of [IARC's] classification of glyphosate as probably carcinogenic, EPA commissioned multiple reports about glyphosate's potential carcinogenicity from its Cancer Assessment Review Committee and Office of Pesticide Programs." *Id.* at *13.

EPA's exhaustive and repeated scientific assessments of glyphosate's potential carcinogenicity in humans—and its unwavering conclusion that a Roundup cancer label warning is scientifically unwarranted—should not be second guessed in failure-to-warn suits by lay jurors, who lack EPA's scientific resources, expertise, and experience. The Supreme Court's decisive FIFRA preemption opinion in *Monsanto Co. v. Durnell* will put an end to such litigation not only in connection with Roundup, but also for other EPA-registered pesticides. The plaintiffs' bar now will have to look for a different pot of gold.

Larry Ebner has advocated for FIFRA preemption of pesticide failure-to-warn claims in many federal and state appellate and trial courts for more than 35 years. He is Executive Vice President & General Counsel of the Atlantic Legal Foundation and founder of Capital Appellate Advocacy PLLC. Larry also is immediate past chair of the DRI Center for Law & Public Policy, a past chair of the DRI Amicus Committee, and current vice chair of the DRI Appellate Advocacy Committee.