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Thomas Kline: Re-Energizing the Roundup Litigation

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Riley Brennan

In fall 2023, the Roundup litigation was seeing mixed results. After years of strategizing and litigation, all eyes were on the mass tort as it opened for its first trial in Philadelphia, a consequential venue with an active products liability docket.

But, according to **Thomas R. Kline**, who led the trial, the most impactful moments in the case didn’t come when the plaintiff, Ernest Caranci was on the stand, but instead occurred right after.

Kline, a finalist for The Legal Intelligencer’s Attorney of the Year, said the moment came when Caranci, an 83-year-old Philadelphian diagnosed with non-Hodgkin’s lymphoma after years of using Roundup, nearly fell while stepping down from the witness stand.

“Ernie is frail, he had just finished a round of intensive treatment for his cancer, and he was weak, and Ernie stepped down, and for the moment he lost his balance, he was stepping down from the jury box, and I caught him, literally in my arms, and in that moment, it just struck me how poignant my representation of him really was,” Kline said. “He had emotionally told the jury of his journey of well over a decade of suffering from his cancer.”

That moment, Kline said, was a reminder of the responsibility he holds to those he represents.

“There are these moments in being a lawyer that become highlights, and that was a moment in 2023 for me,” Kline said. “That, and telling Ernie about the jury verdict. Ernie was not in the courtroom. He was just struggling to get well again, and so, telling him and hearing his voice, hearing him cry, and understanding the meaning of this to real people, who have real problems, who I’ve been proud to represent for 45 years.”

The jury ended up awarding Caranci \$175 million, and in the months since Philadelphia juries deliberating in Kline’s cases have awarded more than \$2 billion in the litigation, which is now seeing a flurry of trials across the country.

It’s safe to say that under Kline’s guidance, Philadelphia juries have injected new life into this nationwide litigation, as attorneys all sides of the aisle watch closely.

Kline said the wins were a result of teamwork and a willingness to reevaluate the trial strategies that had taken the Roundup litigation up to that point.

Kline said he and his team dove into the science, the documents, and prior testimony, seeking to restructure and perfect the plaintiffs' approach to the litigation.

"Together with the lawyers at my firm and with Jason Itkin and the lawyers at Arnold & Itkin, we literally stripped to the bone the prior trials and we saw a number of things which we thought we could change into a winning strategy," Kline said.

According to Kline, the science of Roundup has evolved since 2015. Specifically, he cited a report by the International Agency for Research on Cancer of the World Health Organization, which found that an ingredient in Roundup was a probable carcinogen.

"We found that the science much more strongly favors the claimants than it did previously, and we knew that we needed to emphasize that and bring that to the front of the discussion in the courtroom," Kline said. "And then we knew that the defendants were defending the case merely exclusively on causation."

According to Kline, knowing the cases could be tried first in first out, they chose to tee up Caranci's case. Bringing in well qualified experts, including a toxicologist to testify to Caranci's usage and the consequence of exposure to the product, Kline and the team reconfigured the case to emphasize Monsanto's bad conduct and the strength of the plaintiff's case on causation.

Despite trying the case under the national spotlight due to the fact that Monsanto had been on a winning streak, the team was able to successfully undermine Monsanto's defense and its credibility, and to grab the reins of the narrative Monsanto was attempting to promote, Kline said.

Less than two months after the jury awarded \$175 million to Caranci, another Philadelphia jury would return a verdict against Monsanto for \$3.5 million, and about a month later, at the start of 2024, Kline secured another victory for his client against Monsanto, this time for \$2.25 billion in McKivison v. Monsanto.

Along with Rosemary Pinto of Feldman and Pinto, Kline also served as co-liaison counsel for all of the Roundup cases, playing a significant role in coordinating plaintiffs counsel in the collective Roundup cases. He also said he regularly meets with Kline & Specter mass tort partner Tobi Millrood to tackle the thousands of daily decisions relating to clients and strategy.

In the Caranci case, specifically Kline also presented witnesses, handled opening statements and closing arguments.

"It's interesting because there's a lot that goes into cases like this, but I don't think that you can underestimate the presentation of the evidence to a jury," Kline said, emphasizing the importance of presenting material in an understandable format, and stressing the amount of work that goes into this presentation, including hundreds of decisions regarding how much and what to tell the jury and in what fashion to relay the information.

Working with an extraordinary band of plaintiffs lawyers was crucial to achieving success with such a massive undertaking, Kline said.

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“In each one of those cases, whether it be an instantaneous decision in the courtroom, or something you’re thinking about at 10 o’clock at night, you have to work hard,” Kline said. “The trial itself, like any trial, it’s a 24/7 job from the moment you walk over for jury selection until the jury renders a verdict.”

Along with the Roundup litigation, Kline’s 2023 was full of numerous other accomplishments and responsibilities, including getting a challenge to the state’s damages cap on personal injury cases before the Pennsylvania Supreme Court and spearheading an investigation with the U.S. Consumer Product Safety Commission, which resulted in a recall of a line of hoverboards.

All of his work, Kline noted, has an impact that goes beyond the individual client.

“The stakes in a trial like this are very significant and very real, not only for the individual we represent, but also the other thousands of claimants who we represent. It’s very, very important that they all have access to justice and eventually access to compensation,” Kline said.