

Monsanto Wants Ga. Justices To Rule On Widow's Timeliness

By **Rosie Manins**

Law360 (August 9, 2021, 4:42 PM EDT) -- Monsanto Co. has asked a Georgia federal judge to let the state's Supreme Court decide whether Georgia law bars as untimely a widow's survival claims holding the company liable for the alleged Roundup-related death of her husband.

Monsanto said in its Friday request for certification of questions to the state high court that it is unclear when Janice Dollar's survival claims accrued for the purposes of triggering Georgia's two-year statute of limitations for personal injury claims. Dollar brought loss of consortium claims against Monsanto in June 2020 as the personal representative of the estate of Michael Dollar, who died in December 2012, as well as individual claims over her own alleged exposure to the company's controversial weedkiller.

Missouri-based Monsanto said there is no clear, controlling precedent in Georgia to decide the claims accrual issue in survival actions that seek to recover for a decedent's alleged personal injuries under a continuing tort theory, in which the statute of limitations for an injury continuing or repeating over time begins to run when the tort ends.

It wants the state Supreme Court to hold that Janice Dollar's survival claims accrued at or before her husband's death, and that the state's two-year statute of limitations for personal injury claims started running immediately after the five-year maximum tolling period under Georgia law for unrepresented estates. Janice Dollar wasn't appointed the representative of her husband's estate until 2019, the year she claims she discovered the alleged link between Roundup and cancer.

"That would mean the survival action is untimely and that all legal claims relating to Mr. Dollar's alleged exposure to Roundup products should be dismissed with prejudice," Monsanto said in its certification request. "This would leave only the legal claims relating to Janice Dollar's alleged personal exposure to Roundup products, thus significantly reducing the scope of this lawsuit."

Janice Dollar, a Georgia resident, alleged that her husband was diagnosed with cancer in 2009 after working with Roundup at home and at a Georgia nursery for about eight years. She also alleged that Roundup exposure from her horticultural work since 2000 had caused her own cancer diagnosis in 2016.

U.S. District Judge Lisa G. Wood **dismissed the wrongful death claims** relating to her late husband in early June, finding they expired in December 2014 and were not tolled by the delayed discovery of the alleged cause of his cancer. Judge Wood denied Janice Dollar's request to certify for the Georgia Supreme Court whether the state unconstitutionally does not apply to wrongful death claims its general discovery rule, that the statute of limitations begins when the plaintiff discovers the alleged harm.

Judge Wood also denied Monsanto's dismissal bid in relation to Janice Dollar's survival claims, which represent what her husband could have claimed against Monsanto if he had lived. Georgia's discovery rule could apply to the survival claims if Janice Dollar can prove she could not have known prior to 2019 that her husband's injuries were caused by Monsanto, the judge said.

Monsanto said it needs clarity from the Georgia Supreme Court about when the statute of limitations starts running in survival actions based on a continuing tort theory, in cases like Michael Dollar's where the decedent's estate was unrepresented for the maximum allowed time of five years after their death.

Under Georgia law, the relevant statute of limitations generally starts at the end of the five-year tolling period for unrepresented estates, even if the cause of action accrued after the decedent's death. And the state's two-year limitations period for personal injury claims excludes those for loss of consortium, which can be brought within four years after the right of action accrues.

Monsanto said the Georgia Supreme Court's ruling in this case would impact any survival action brought under Georgia law that sought to recover for a decedent's alleged personal injuries based upon a continuing tort theory. It argued that Janice Dollar's survival claims accrued at the latest upon her husband's death, because he would not have been able to bring any claims himself after that point.

"He is the injured plaintiff for purposes of the survival action and his personal injuries were completed by his death," the company said.

Monsanto said the Georgia Supreme Court held that the statute of limitations for wrongful death claims ends two years after the death, because otherwise defendants would be subject to potentially infinite liability. That reasoning should also apply to survival actions, it said.

"It would dramatically undermine the Georgia legislature's and Georgia Supreme Court's policy goals of achieving finality for defendants if liability could survive indefinitely after a decedent's death simply because a representative brings personal injury claims in a survival action rather than a wrongful death claim," the company said. "If anything, this concern over infinite liability is even greater in the context of survival actions because Georgia already provides a special five-year maximum tolling period for unrepresented estates following the decedent's death."

Bayer, Monsanto's parent company, told Law360 it is pleased the trial court has already narrowed the claims in Janice Dollar's case.

"The company will confidently defend the remaining claims as the extensive body of science on Roundup does not support its association with the injuries alleged in this case," a Bayer spokesperson said Monday.

Counsel for Dollar did not immediately respond to a request for comment on Monday.

Janice Dollar is represented by Todd C. Brooks of Catts & Brooks LLC.

Monsanto is represented by Brett S. Covington and Eric G. Lasker of Hollingsworth LLP and William V. Custer of Bryan Cave Leighton Paisner LLP.

The case is Dollar v. Monsanto Co., case number 2:20-cv-00078, in the U.S. District Court for the Southern District of Georgia.

--Editing by Orlando Lorenzo.

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