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## Judge 'Skeptical' Of Settlement For Future Roundup Claims

By **Mike Curley**

Law360 (July 7, 2020, 4:27 PM EDT) -- A California federal judge has refused to postpone a hearing on a proposed \$1.25 billion class action settlement seeking to resolve potential claims from users of Monsanto's Roundup weedkiller who haven't sued the company or developed cancer yet, saying there's no reason to delay when the court is already "skeptical" that the settlement is fair.

In an order published Monday, U.S. District Judge Vince Chhabria rejected a bid from potential class members to reschedule a hearing set for July 24, saying that given the court's mood, it's better for all involved if a decision is made sooner rather than later.

"If the motion would already be denied on the current record, it would be a waste of time and money to wait for hundreds of pages of briefing from dozens of lawyers and law professors from around the country, no matter how interesting those briefs would be," the judge wrote.

The suit, led by named plaintiff Robert Ramirez, is one of thousands included in a sprawling multidistrict litigation, with plaintiffs alleging that the use of Roundup weedkiller gave them cancer. Bayer, which bought Monsanto in 2018, announced two weeks ago that it had reached a **\$10.9 billion settlement** to resolve the bulk of roughly 125,000 claims in the MDL.

The settlement in the Ramirez case, which is part of the \$10.9 billion deal, is meant to resolve future claims, as the class will represent plaintiffs who were diagnosed or retained counsel after the total settlement was announced June 24, and that is where Judge Chhabria's skepticism takes root, according to Monday's order.

In denying the bid to delay a hearing on the deal, the judge agreed that a settlement of this nature needs careful scrutiny and he appreciated the widespread interest in the deal, but said that the court already has major doubts making it lean toward denial.

Even if both Monsanto and the Ramirez plaintiffs consent, the judge wrote that the constitutionality and lawfulness of the settlement is in doubt, as it supplants judges and juries with a panel of scientists in determining if Roundup causes cancer.

In addition, the judge wrote it's unclear how the proposed system would benefit those Roundup users who either have cancer but haven't sued, or haven't developed cancer, saying in the cases that have gone to jury, many have turned in substantial verdicts for the plaintiffs.

"Why would a potential class member want to replace a jury trial and the right to seek punitive damages with the process contemplated by the settlement agreement?" the judge asked.

Judge Chhabria also noted the evolving nature of science, questioning whether it's right to "lock in" a decision from a panel of scientists that would bind all future cases, saying later studies might undermine the panel's conclusion.

Finally, the judge wrote that given the indeterminate nature of the proposed class, it seems "unlikely" that they'd be able to make a meaningful decision as to whether they want to opt out, and he was "dubious" that all potential class members would be able to receive notice of the deal.

With those doubts in mind, the judge wrote that it would be against everyone's interest to delay the hearing, saying that if the deal is denied preliminary approval and Monsanto and the Ramirez plaintiffs have to go to a plan B, they would presumably want to start on it sooner rather than later.

"The proposed class counsel have described this as a 'unique' class yet it is nothing more than a legally infirm backroom deal to protect Monsanto from lawsuits rather than compensating Roundup cancer victims," Hunter J. Shkolnik of Napoli Shkolnik PLLC, counsel for plaintiffs opposing the deal, told Law360 on Tuesday. "Judge Chhabria, in a well-reasoned opinion, outlined how the parties should be looking at this class."

An attorney for the Ramirez plaintiffs declined to comment Tuesday.

"We appreciate the judge's order raising his preliminary concerns with the proposed class settlement, which we take seriously and will address at the preliminary approval hearing on July 24," a spokesperson for Bayer told Law360 on Tuesday.

Ramirez is represented by Robert L. Lieff, Elizabeth J. Cabraser, Kevin R. Budner, Steven E. Fineman, Wendy R. Fleishman, Rhea Ghosh and Andrew R. Kaufman of Lieff Cabraser Heimann & Bernstein LLP; James R. Dugan II, TerriAnne Benedetto and David S. Scalia of The Dugan Law Firm LLC, William M. Audet and Ling Y. Kuang of Audet & Partners LLP and Samuel Issacharoff.

Monsanto is represented in the MDL by Joe G. Hollingsworth and Eric G. Lasker of Hollingsworth LLP.

The opposing plaintiffs are represented by Paul J. Napoli, Hunter J. Shkolnik and Christopher L. Schnieders of Napoli Shkolnik PLLC and Thomas C. Goldstein, Eric F. Citron and Daniel Woofter of Goldstein & Russell PC.

The MDL is In Re: Roundup Products Liability Litigation, case number 3:16-md-02741, and the case is Ramirez et al. v. Monsanto Co., case number 3:19-cv-02224, both in the U.S. District Court for the Northern District of California.

--Additional reporting by Daniel Siegal and Cara Bayles. Editing by Abbie Sarfo.

*Update: This story has been updated with comment from Bayer.*