

Bayer to Alter Plan for Handling Future Roundup Cancer Suits

By Jef Feeley | BLOOMBERG | July 8, 2020 | 17:25:46.238 GMT

Bayer AG's plan to resolve future Roundup cancer lawsuits for about \$1.25 billion has been temporarily pulled after a judge raised substantial questions about the proposal, which was part of a broader \$11 billion settlement deal involving mostly current claims.

Plaintiffs' lawyers withdrew their request that U.S. District Judge Vince Chhabria preliminarily approve the plan worked out with Bayer attorneys to set up a class-action mechanism to deal with future claims, the company said in a statement.

The proposal will be retooled to address legal questions Chhabria raised, including concerns about the creation of a science panel to determine whether glyphosate, Roundup's active ingredient, is a carcinogen, Chris Loder, a Bayer spokesman, said in the statement. No time line was given for when supporters of the class-action mechanism would seek the judge's approval for a revised proposal.

"Bayer remains strongly committed to a resolution that simultaneously addresses both the current litigation on reasonable terms and a viable solution to manage and resolve potential future litigation," Loder said.

The judge's misgivings about how future claims are handled won't derail Bayer's plan to deal with the current ones. The company agreed to pay as much as \$9.6 billion to resolve 95,000 of the 125,000 lawsuits by Roundup users claiming the weedkiller caused their cancers. The figure also includes a set aside to cover settlements in the remaining 30,000 cases.

Bayer shares fell 0.7% to 63.29 euros on Wednesday in Frankfurt, extending yesterday's decline of 5% on news of Chhabria's concerns.

Roundup users blamed the popular weedkiller, made by Bayer's Monsanto unit, for their non-Hodgkin's lymphomas. Three California juries held Bayer liable for

causing plaintiffs' illnesses and ordered the company to pay billions of dollars in damages. Those awards ultimately were cut to a combined \$190 million.

Plaintiffs' attorneys who opposed Bayer's plan said it isn't designed to negotiate settlements of future Roundup suits, but instead gives the company another shot at having glyphosate cleared from being considered a carcinogen without having to go before individual judges and juries. Bayer officials said the \$1.25 billion would provide funds for Roundup cancer patients in financial distress but wasn't a settlement vehicle.

By pulling their approval request, backers of the proposal "recognized the legal infirmities the proposed class suffered," Hunter Shkolnik, a plaintiffs' lawyer who opposed the idea, said in an emailed statement. "Now maybe Monsanto will properly compensate the victims of Roundup."

Chhabria, based in San Francisco, specifically cited problems with the class's impact on the jury-trial rights of future Roundup plaintiffs and the difficulty in giving notice to potential claimants during a five-month window for opt outs, said Elizabeth Burch, a University of Georgia law professor who teaches about class-action cases.

"I don't think they are ever going to be able to provide proper notice to all potential future plaintiffs," Burch said. "The class is too diverse, and it will be extremely difficult to reach everyone who could potentially file a cancer claim in the future."

That differentiates the Roundup proposal from a class created to deal with future brain-injury claims from National Football League players, Burch said. The \$765 million concussion settlement -- reached in 2014 -- provides for uncapped payments to former players with brain-related problems, such as ALS, also known as Lou Gehrig's Disease. Gehrig, a Hall of Fame baseball player with Major League Baseball's New York Yankees, died of the ailment in 1941.

The appellate courts affirmed the NFL's proposal to deal with future concussion claims in 2016. Bayer's current Roundup proposal probably would not have won appellate approval, based on U.S. Supreme Court cases scrutinizing such classes, Burch said.

The case is In re: Roundup Products Liability Litigation, MDL 2741, U.S. District Court, Northern District of California (San Francisco).

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