

Bayer Backs Away from Plan to Contain Future Roundup Cancer Claims

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Monsanto owner Bayer AG is backing away from a plan to contain future Roundup cancer claims after a federal judge made it clear he would not approve the scheme, which would delay new trials and limit jury decision-making.

[The plan concocted](#) by Bayer and a small group of lawyers was filed last month in U.S. District Court for the Northern District of California as part of a effort by Bayer to put an end to sweeping litigation that has so far led to three losses in three jury trials, staggering punitive damage awards and shareholder discontent. More than 100,000 people in the United States claim exposure to Monsanto's glyphosate-based Roundup herbicides caused them to develop non-Hodgkin lymphoma (NHL) and that Monsanto long knew about and covered up the cancer risks.

On Monday Judge Vince Chhabria [issued an order](#) setting a hearing on the matter for July 24 and making it clear he would not approve the settlement plan. He was "skeptical of the propriety and fairness of the proposed settlement," Chhabria wrote in the order.

Prior to the judge's order, multiple parties filed notices of their own opposition to the Bayer plan; [citing "major deviations from ordinary practices"](#) called for in the proposed settlement.

In response, on Wednesday the group of lawyers who had structured the deal with Bayer [filed a notice of withdrawal](#) of their plan.

The proposed settlement plan for future class action litigation was separate from the settlement agreement Bayer made with lawyers for plaintiffs who have already filed cases and is designed to help Bayer contain and manage future liability. Under the structure put together by Bayer and a small group of plaintiffs' lawyers the class action settlement would have applied to anyone exposed to Roundup who had not filed a lawsuit or retained a lawyer as of June 24, 2020, regardless of whether or not that person already had been diagnosed with cancer they believe was due to Roundup exposure.

The plan would have delayed the filing of new cases for four years, and called for the establishment of a five-member "science panel" that would take any future findings on cancer claims out of the hands of juries. Instead, a "Class Science Panel" would be established to determine whether Roundup can cause non-Hodgkin lymphoma, and if so, at what minimum exposure levels. Bayer would get to appoint two of the five panel members. If the panel determined there was no causal connection between Roundup and non-Hodgkin lymphoma then the class members would be barred from future such claims.

Judge Chhabria took issue with the whole idea of a science panel. In his order, the judge wrote:

“In an area where the science may be evolving, how could it be appropriate to lock in a decision from a panel of scientists for all future cases? For examine, imagine the panel decides in 2023 that Roundup is not capable of causing cancer. Then imagine that a new, reliable study is published in 2028 which strongly undermines the panel’s conclusion. If a Roundup user is diagnosed with NHL in 2030, is it appropriate to tell them that they’re bound by the 2023 decision of the panel because they did not opt out of a settlement in 2020?”

Bayer said it would set aside \$1.25 billion for the arrangement. The money would be used to compensate class members diagnosed with NHL for the “effects of the delay” in litigation, and to fund research into the diagnosis and treatment of NHL, among other things.

The plaintiffs’ attorneys who put the plan together with Bayer stood to make more than \$150 million in fees payable by Bayer. They are not the same law firms that have led the litigation to date. This group of law firms include Lieff Cabraser Heimann & Bernstein; Audet & Partners; The Dugan Law Firm; and lawyer Samuel Issacharoff, Reiss Professor of Constitutional Law at New York University School of Law.

Several members of the lead law firms who won the three Roundup cancer trials oppose the proposed class action settlement plan, saying it would deprive future plaintiffs of their rights while enriching those other lawyers who have not previously been at the forefront of the Roundup litigation.

It is not clear how the withdrawal of this proposed class action settlement plan might impact the larger settlement of existing claims. Bayer [said last month](#) it will pay up to \$9.6 billion to resolve roughly 75 percent of the current claims and will continue working to settle the rest. That settlement does not require court approval.

Bayer issued a statement Wednesday saying it 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.”

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