

Bloomberg

Bayer Draws Uncertain Line Under Roundup in \$12 Billion Deal

By [Jef Feeley](#) and [Tim Loh](#)

June 24, 2020

Bayer AG's \$12.1 billion settlement to resolve U.S. lawsuits over its flagship weedkiller Roundup and other products offered only fleeting relief to investors looking to move on from the legal woes that have hobbled the stock for almost two years.

The shares declined as much as 2% in Frankfurt trading, erasing early gains a day after the German company's move to resolve a trio of major litigation risks that soured its \$63 billion purchase of Monsanto.

Getting past the legal drama is crucial for Chief Executive Officer Werner Baumann, but the milestone settlement left open the potential of more lawsuits. Bayer still faces about 30,000 unresolved cancer claims that could cost billions, and lawyers vowed to keep pressuring the agriculture-chemicals giant.

“If Bayer and its investors thought the Roundup litigation was wrapped up in a nice, neat ball with this settlement, they are sadly mistaken,” said Tom Kline, a Philadelphia-based plaintiffs' lawyer who won an \$8 billion verdict against Johnson & Johnson last year over one of its anti-psychotic drugs. **“We are working hard getting these cases in and ready for trial.”**

Bayer on Wednesday announced settlements that included as much as \$10.9 billion for Roundup, the embattled weedkiller inherited from Monsanto, \$820 million for toxic-chemical pollution and \$400 million related to damage from dicamba, another herbicide.

The deal includes agreements to end only about 95,000 of the 125,000 lawsuits claiming Roundup caused cancer. The others refused to settle, and

the number of cases is growing. Last week, attorney Fletch Trammell filed 13 suits on behalf of kids who developed non-Hodgkin's lymphoma after being exposed to the weedkiller in backyards, parks and playgrounds.

"The settlement announcement feels like Bayer is trying to stop a gigantic problem by putting its finger in the proverbial dam," said Jason Itkin, a Houston based lawyer who won a \$70 million verdict against J&J last year. "Every day, new people are diagnosed with Roundup-induced cancer. There will be thousands and thousands of future cases because Bayer is currently still selling this dangerous product."

Former Roundup users blame glyphosate for their non-Hodgkin's lymphoma and other cancers. The Leverkusen, Germany-based company denies glyphosate is a carcinogen, a position backed by the U.S. Environmental Protection Agency. A federal judge ruled earlier this week that California officials can't force companies to place warning labels on glyphosate-based products.

Paying Debt

Bayer faced a surge in new lawsuits last year after it lost several U.S. jury trials, and investors issued a rare rebuke to Baumann last spring. Some, including Elliott Management Corp., urged the company to seek a comprehensive settlement.

Bayer executives said the deal shouldn't affect the company's credit rating or dividend policy and that paying down its large debt load from the Monsanto transaction remains a "high priority." Payments can be funded with cash on hand, future free-cash flow, the sale of Bayer's animal-health unit and potentially by issuing bonds, officials said.

Still, the cost of resolving most of the litigation will slow the company's ability to pay down debt, wrote Moritz Melsbach, an analyst for Moody's.

Under the terms of the Roundup settlement, Bayer will set up a \$1.25 billion fund to cover future cancer claims. That money will also be used to provide financial assistance to struggling cancer patients and support research into whether the weedkiller's active ingredient is a carcinogen, the company said.

Individual payouts may range from several hundred thousand dollars per case to less than \$50,000.

The accord allows Bayer to continue selling Roundup in the U.S. for use in backyards and farms without any safety warning, and plaintiffs' attorneys who settled their case inventories agreed to stop taking new Roundup clients.

Retired Judge Glenn Norton, who served as a mediator to help negotiate the agreement, said that Bayer's lawyers and the attorneys for Roundup users who haven't yet reached deals are "determined to get them settled, too."

Norton, who served 14 years as an appellate judge in Missouri, was tapped by the judges presiding over Roundup cases in the city of St. Louis and St. Louis County to serve as mediator for the Bayer litigation in those courts.

The uncertainty of getting trial dates amid the pandemic played a role in bringing both sides together to hash out the deals, Norton said. The lack of trials allowed lawyers to focus on overcoming disputes about value of the cases, he added.

Three California juries in a row have ruled against the company and ordered it to pay damages to former Roundup users. The next cases could be brought in state court in St. Louis. Bayer is appealing the cases it has lost.

"The remaining cases are in the hands of lawyers who know how to litigate, so we're going to see some more Roundup trials in the future," said Fletcher Trammell, a Texas-based lawyer who held his roughly 5,000 cases out of the settlement. "This litigation is far from over."

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