

Special master crafts \$2B Roundup settlement

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Loder declined to comment outside of a news release by the German company — which bought Monsanto, the maker of Roundup, in 2018 — that touted the benefits of the proposed settlement.

“Qualifying class members over the next four years will be eligible for levels of compensatory awards based on guidelines set forth in the agreement,” the company said in a statement.

The settlement “will seek permission from the Environmental Protection Agency (EPA) to add a reference link on the labels for its glyphosate-based products that will provide consumers with access to scientific studies and information that the company has permission to disclose or are in the public domain,” according to Bayer.

Cabraser compared the proposed settlements to similar large resolutions, including one Feinberg handled involving the BP Deepwater Horizon victim compensation fund. *In re: Roundup Products Liability Litigation*, 16-MD02741 (N.D. Cal., filed Oct. 4, 2016).

“In its structure of scheduled compensation awards and medical assistance, this settlement follows the model set out in the most successful mass harm resolutions under Rule 23,” Cabraser wrote.

“And, importantly in light of the court’s concerns, the settlement does so on terms whereby not a single class member can lose the right to sue Monsanto for compensation in the tort system unless he or she individually decides — after being diagnosed with NHL — to participate in the compensation



Daily Journal photo

Special master Kenneth R. Feinberg

fund and accept payment, in return for a release,” she added.

Compensation will be limited to \$250,000 to individuals exposed to Roundup and diagnosed with Non-Hodgkin lymphoma. A \$50 million fund will also be established to provide for payments above \$200,000 in extraordinary circumstances.

R. Brent Wisner, an attorney with Baum, Hedlund, Aristei & Goldman PC who represents individual plaintiffs who have sued Monsanto, said the new settlement proposal has many of the same problems even if he thinks the company is “making progress.”

“Ultimately, however, I think these proposed class settlement ideas are not viable,” Wisner wrote, adding he thought Chhabria would reject the deal. “They should just take the product off the market so people stop getting cancer.”

David I. Levine, a professor at Hastings College of the Law, said the agreement would allow plaintiffs who don’t want to accept the fund administrator’s offer to file

a lawsuit separately. But filing a lawsuit is risky, he said, predicting the vast majority of claims will be resolved under the system.

“You’re trading your lottery ticket for a sum certain,” Levine said in a telephone interview.

He compared the deal to the Agent Orange product liability litigation settlement Feinberg negotiated with Vietnam War veterans and chemical companies.

Levine said he thought Bayer, which inherited all of the Roundup problems when it acquired Monsanto, “took a huge hit.” But plaintiffs have been successful in cases thus far, though the jury awards have been slashed on appeal.

The professor also said the removal of much of the uncertainty surrounding the litigation would be worth it for Bayer, and estimated it would gain more in market capitalization than it would lose in the settlement.

“The only way to fix it is to make these cases go away,” Levine said.

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