

1 Carol V. Gilden (*admitted pro hac vice*)  
2 **COHEN MILSTEIN SELLERS & TOLL PLLC**  
3 190 South LaSalle Street  
4 Suite 1705  
5 Chicago, IL 60603  
6 Telephone: (312) 357-0370  
7 Facsimile: (312) 357-0369  
8 Email: cgilden@cohenmilstein.com

9 Nicole Lavallee (SBN 165755)  
10 Jeffrey Miles (SBN 293869)  
11 **BERMAN TABACCO**  
12 44 Montgomery Street, Suite 650  
13 San Francisco, CA 94104  
14 Telephone: (415) 433-3200  
15 Facsimile: (415) 433-6382  
16 Email: nvallee@bermantabacco.com  
17 jmiles@bermantabacco.com

18 *Attorneys for Lead Plaintiffs and Additional  
19 Named Plaintiff*

20 [Additional Counsel on Signature Page]

21 **UNITED STATES DISTRICT COURT**  
22 **NORTHERN DISTRICT OF CALIFORNIA**  
23 **SAN FRANCISCO DIVISION**

24 SHEET METAL WORKERS' NATIONAL  
25 PENSION FUND and INTERNATIONAL  
26 BROTHERHOOD OF TEAMSTERS  
27 LOCAL NO. 710 PENSION FUND,  
28 individually and as Lead Plaintiffs on behalf  
of all others similarly situated, and

INTERNATIONAL UNION OF  
OPERATING ENGINEERS PENSION  
FUND OF EASTERN PENNSYLVANIA  
AND DELAWARE, individually and as  
Named Plaintiff, on behalf of all others  
similarly situated,

Plaintiffs,

vs.

BAYER AKTIENGESELLSCHAFT,  
WERNER BAUMANN, WERNER  
WENNING, LIAM CONDON,  
JOHANNES DIETSCH, and WOLFGANG  
NICKL,

Defendants.

Case No: 3:20-cv-04737-RS

**AMENDED CLASS ACTION COMPLAINT**

CLASS ACTION

Courtroom: 3 – 17th Floor  
Judge: Richard Seeborg

**JURY TRIAL DEMANDED**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION ..... 1

II. JURISDICTION AND VENUE AND INTRADISTRICT ASSIGNMENT ..... 14

III. PARTIES ..... 18

    A. Plaintiffs ..... 18

    B. Defendants ..... 19

    C. Relevant Non-Parties ..... 21

IV. FACTUAL BACKGROUND AND SUBSTANTIVE ALLEGATIONS ..... 22

    A. Bayer and its Business ..... 22

    B. Bayer Hastily Seizes the Opportunity to Acquire Monsanto in Largest Foreign Acquisition in German History ..... 24

    C. Defendants Recognized that Monsanto’s Major Red Flags Required an Extensive Due Diligence Investigation ..... 27

        1. The Dramatic Due Diligence Red Flag -- Monsanto’s History of Product Liability Litigation ..... 29

        2. Monsanto’s Growing Legal Exposure to Roundup Litigation ..... 31

    D. Defendants Present the Merger to Investors as an Unparalleled Opportunity for Shareholder Value and Promise an Extensive Due Diligence Investigation ..... 33

    E. After Signing the Merger Agreement in September 2016, Defendants Reassured Investors that the Due Diligence Investigation Would Continue Through the Lengthy Pre-Closing Period ..... 38

    F. In the Pre-Closing Period Prior to June 2018, Damaging Internal Monsanto Documents Began to Emerge ..... 40

        1. March 2017 Damaging Monsanto Papers Emerge ..... 40

        2. After the Release of the Monsanto Papers, Defendants Falsely Reaffirm the Strength of Their Due Diligence and Tout the Benefits of the Merger ..... 42

    G. Almost Immediately After Closing the Merger, Jury Verdicts Begin to Reveal Bayer’s Massive Exposure to Roundup Liability ..... 44

        1. During *Johnson* Trial, Monsanto’s Internal Documents Emerge as Central to Plaintiff’s Case ..... 44

        2. *Johnson* Verdict Awards Plaintiff \$289 Million After Finding Monsanto Ignored Health Risks of Roundup ..... 46

        3. Defendants Admit They Never Looked at Monsanto’s Internal Documents, but Reassure Investors that Reevaluation of Roundup Litigation Risk is Unnecessary ..... 48

        4. *Johnson* Court Rejects Monsanto’s Request to Overturn Verdict, Finding “No Legal Basis to Dispute” Jury’s Conclusions ..... 52

1           5.     In the *Hardeman* Trial, Plaintiff’s Case Turns on Monsanto’s  
2           Internal Documents Showing Roundup is More Toxic than  
3           Glyphosate Alone..... 53  
4           6.     The *Hardeman* Jury Awards \$80 Million to Plaintiff, Finding  
5           Monsanto Consciously Disregarded Public Safety by Concealing  
6           Roundup’s Health Risks ..... 55  
7           H.     Unbeknownst to the Market, Defendants Internally Acknowledged that the  
8           Monsanto Due Diligence Investigation Was Potentially Inadequate ..... 56  
9           I.     In Bid to Prevent Shareholder Revolt, Defendants Present Expert Reports  
10          to Shareholders as Validating the Failed Due Diligence Investigation ..... 58  
11          J.     The *Pilliod* Jury Renders Massive \$2 Billion Verdict After Plaintiffs  
12          Present Dozens of Additional Internal Documents Showing Monsanto’s  
13          Misconduct..... 61  
14          K.     In An Effort to Regain Shareholder Support, Defendants Agree to An  
15          Audit of Bayer’s Due Diligence Practices and to Release Linklaters and  
16          Habersack Reports as Confirmation of the Adequacy of its Due Diligence..... 63  
17          L.     Defendants Admit that they Misled Investors About the Scientific  
18          Evidence on Roundup’s Cancer Risks ..... 65  
19          M.     The Linklaters and Habersack Reports Establish that Prior to Signing the  
20          Merger Agreement, Defendants Failed to Examine Any Internal  
21          Documents Related to Roundup Liability Risks..... 67  
22          N.     Bayer Announces \$10.9 Billion Settlement of Roundup Litigation ..... 71  
23          O.     Bayer’s Proposed Settlement Quickly Falls Apart ..... 72  
24          P.     Bayer Fraudulently Understated Liabilities, Overstated Profits, and Failed  
25          to Disclose Material Contingencies ..... 74  
26            1.     Accounting and Reporting Standards Applicable to Bayer ..... 74  
27            2.     Specific Accounting Standards Relevant to Bayer ..... 74  
28            3.     Bayer Had Actual Knowledge from August 13, 2018 to July 6,  
              2020 that its Financial Statements Were Materially False and  
              Misleading..... 78  
          Q.     Post-Class Period Events ..... 80  
              1.     California Appeals Court Confirms that Defendants Misled  
                  Investors About the Roundup Liability Risks..... 80  
V.     FALSE AND MISLEADING STATEMENTS AND OMISSIONS..... 82  
          A.     Defendants’ False and Misleading Statements About the Due Diligence  
              Investigation of Monsanto ..... 82  
              1.     Defendants’ False and Misleading Statements and Omissions  
                  Before the Signing of the Merger Agreement..... 82  
              2.     Defendants’ False and Misleading Statements About the Results of  
                  the Pre-Signing Due Diligence Investigation ..... 83  
              3.     Defendants’ False and Misleading Statements About the Due  
                  Diligence Investigation Prior to the Closing the Merger ..... 87  
              4.     Defendants’ False and Misleading Statements After the Closing of

1 the Merger About the Adequacy of the Due Diligence  
Investigation..... 91

2 B. Defendants’ False and Misleading Statements After Closing the Merger  
3 About Bayer’s Access to Monsanto’s Internal Documents ..... 97

4 1. Defendants’ False and Misleading Statements About Bayer’s  
5 Access to Monsanto’s Internal Documents Under the Hold  
6 Separate Order ..... 97

7 C. Defendants’ False and Misleading Statements About the Safety and  
8 Cancer Risks of Roundup and Glyphosate ..... 100

9 1. Defendants’ False and Misleading Statements about the Relative  
10 Safety of Roundup Compared to Glyphosate ..... 100

11 2. Defendants’ False and Misleading Statements About the Weight of  
12 the Scientific Evidence of Roundup’s Safety ..... 101

13 D. Defendants Made False Statements and Omissions About Bayer’s  
14 Accounting and its Financial Results and Condition ..... 108

15 1. Defendants’ False and Misleading Statements in Bayer’s Periodic  
16 Reports Through June 2020 ..... 108

17 2. Interim Financial Statements for Q2 2018..... 109

18 3. Interim Financial Statements for Q3 2018..... 111

19 4. 2018 Annual Financial Statements ..... 112

20 5. Quarterly Statement for Q1 2019..... 116

21 6. Half-Year Financial Report for 2019 ..... 117

22 7. Quarterly Statement for Q3 2019..... 118

23 8. 2019 Annual Financial Statements ..... 120

24 9. Quarterly Statement for Q1 2020..... 123

25 10. The Truth Comes Out in Bayer’s Half-Year Financial Report for  
26 2020..... 125

27 11. Defendants’ Other False and Misleading Statements ..... 128

28 VI. ADDITIONAL ALLEGATIONS SUPPORTING SCIENTER ..... 130

A. Defendants Knowledge or Reckless Disregard of Legal and Reputational  
Risks Prior to September 14, 2016 Support a Strong Inference of Scienter..... 131

B. Defendants Knowledge or Reckless Disregard of Roundup Liability Risks  
from September 14, 2016 through June 7, 2018..... 132

C. Defendants Knowledge or Reckless Disregard of Roundup Liability Risks  
from June 8, 2018 to June 24, 2020 ..... 133

D. Defendants’ Public Statements Regarding the Scientific Evidence on the  
Safety of Glyphosate Support a Strong Inference of Scienter ..... 133

E. Defendants’ Admission that They Never Reviewed Monsanto’s Internal  
Documents Supports a Strong Inference of Scienter ..... 134

F. The Magnitude of the Glyphosate-Related Costs Supports a Strong  
Inference of Scienter ..... 134

1 G. Defendant Baumann Acted with Scierter..... 135  
2 H. Defendant Wenning Acted with Scierter ..... 135  
3 I. Defendant Condon Acted with Scierter ..... 136  
4 J. Defendant Dietsch Acted with Scierter ..... 136  
5 K. Defendant Nickl Acted with Scierter ..... 136  
6 VII. LOSS CAUSATION AND ECONOMIC LOSS ..... 137  
7 VIII. THE PRESUMPTION OF RELIANCE ..... 141  
8 IX. THE INAPPLICABILITY OF STATUTORY SAFE HARBOR ..... 143  
9 X. CLASS ACTION ALLEGATIONS ..... 145  
10 XI. CLAIMS FOR RELIEF ..... 147  
11 COUNT I ..... 147  
12 COUNT II..... 149  
13 XII. PRAYER FOR RELIEF ..... 150  
14 XIII. JURY TRIAL DEMAND ..... 151

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.