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## Investor Relations

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Investor Conference Call  
on June 24, 2020

**Bayer announces agreements to resolve  
major legacy Monsanto litigation**

### **Speeches**

(Please check against delivery)

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## **Remarks: Werner Baumann, CEO of Bayer AG**

- Ladies and gentlemen,
- I am pleased to announce today that Bayer has concluded a series of agreements that are designed to substantially resolve major legacy Monsanto litigation including the Roundup™ product liability litigation, dicamba drift crop damage litigation and most PCB water litigation.
- The decision to settle is one we reached after extensive negotiations, and after significant diligence and consideration by our Board of Management and Supervisory Board, with advice from our Special Litigation Committee.
- Reaching these resolutions is a significant step. Let me start with Roundup™.
- As you know, we have been in mediation under the leadership of Ken Feinberg since Judge Chhabria appointed him to head these talks in May of last year. We appreciate Mr. Feinberg's work in helping us reach this resolution.
- The resolution we've reached in the U.S. Roundup™ litigation is a multi-step program that will bring closure to approximately 75% of the current U.S. Roundup™ product liability claims AND puts in place a mechanism to resolve potential future claims efficiently. For this settlement overall, Bayer will make total payments between \$10.1 billion and \$10.9 billion, or €9.1 billion and €9.8 billion. Here is how these numbers break down:
- To resolve the vast majority of current filed cases and unfiled claims, which total approximately 125,000 overall, Bayer will pay between \$8.8 billion and \$9.6 billion. This amount is intended to cover the resolution of all current cases, including an allowance expected to cover plaintiffs with whom we have not yet reached an agreement. The resolved claims include all plaintiff law firms leading the Roundup™ federal multi-district litigation (MDL) or the California bellwether cases, and those representing approximately 95% of the cases currently set for trial, and establish key values and parameters to guide the resolution of the remainder of the claims as negotiations advance.

- The final payment amount will depend on the actual cost of resolving these outstanding claims covered by the allowance, and also on the number of claims that ultimately are eligible under the agreements.
- In addition, Bayer will pay \$1.25 billion for a separate agreement that puts in place a mechanism to manage and resolve potential future litigation.
- The appeals in the three cases tried to date – *Johnson*, *Hardeman* and *Pilliod* – are not included in the resolution. More on this later.
- One point I want to make very clear up front is that we continue to stand strongly behind the safety and utility of our Roundup™ products.
- And, we are joined in our view by leading expert health regulators across the globe, including the U.S. Environmental Protection Agency, which released its Interim Registration Review Decision in January that found no human health risks associated with exposure to glyphosate.
- Our company is grounded in the well-being of our customers. As a science-based company committed to improving people's health, we have great sympathy for anyone who suffers from disease, and we understand their search for answers.
- At the same time, the extensive body of science indicates that Roundup™ does not cause cancer, and therefore, is not responsible for the illnesses alleged in this litigation.
- Glyphosate-based herbicides are among the most rigorously studied products of their kind, and four decades of science support their safety and that they are not carcinogenic.
- Today we are also announcing resolutions to the previously disclosed dicamba and PCB water litigation. On dicamba, Bayer will pay up to \$400 million for a settlement agreement that will resolve the current MDL drift cases and claims involving alleged damage to soybeans and other crops. The *Bader Farms* case will continue through post-trial motions and appeals, if necessary, and is not included in the settlement. We

will, of course, be seeking a contribution from BASF, as they are a co-defendant in this litigation and should shoulder responsibility for this settlement as well.

- And, on PCBs, Bayer will pay a total of approximately \$820 million to end most of the water litigation. More on these settlements later.
- So, I want to spend a few moments now explaining our rationale for settling the vast majority of the Roundup™ litigation.
- There are three primary reasons for this decision:
  - First given future risks and uncertainty, this settlement is the most efficient and financially reasonable outcome for the company, its owners, and all other stakeholders.
  - The second reason is to end the significant uncertainties and confusion caused by the three Roundup™ verdicts and the volume of pending litigation. The negative coverage from the initial verdicts has affected the reputation and share price of our company. It has also created confusion in markets around the world about the safety and continued availability of our Roundup™ products. Addressing these issues was and remains a high priority.
  - The third is to return the conversation about the safety and utility of glyphosate-based herbicides to the scientific and regulatory arena and move it away from the jury trial setting, where decisions were made based on a small number of unreliable studies and dubious methodologies. One very important constant in the discussion about glyphosate has been the consistent favorable safety conclusions reached by independent health regulators when they assess the full body of relevant science.
- One of the important outcomes of settling the vast majority of this litigation is that it will help provide greater certainty about future availability of Roundup™ products to all customers and especially farmers around the world. Farmers rely on these products not only to control weeds, but also to minimize tillage farming practices, reduce greenhouse gas emissions, preserve more land for native habitats, and provide enough food to meet the needs of a growing population worldwide.

- Additionally, the settlements allow us to bring the conversation back to where it should be: on the future, centering our attention on meeting people's most basic needs for food and healthcare, which is particularly relevant and important at a time when we face the challenges of a global pandemic.
- We also believe that this settlement will enable stakeholders to see our company and people for who we really are – a company grounded in strong ethics and values, committed to transparency and constructive engagement with our stakeholders, and a company that is serious about building and maintaining public trust.
- Before making our decision to settle, we also considered the alternative course of continuing to litigate Roundup™ cases. I want to share a few points to explain why we concluded that continued litigation likely would come with a higher risk and prolonged uncertainty.
- We know that U.S. mass torts like the Roundup™ litigation can persist for many years, and the number of plaintiffs – which is already very large at approximately 125,000 claimants – can grow in size year after year as a result of aggressive plaintiff advertising. As you know, Roundup™ has become the favorite target of plaintiffs' attorneys. Since 2015, no product has been subject to more TV ads by plaintiffs' lawyers than Roundup™. In 2019 alone, plaintiffs' attorneys and their surrogates spent an estimated \$100 million on TV ads attacking Roundup™ and recruiting plaintiffs – which caused a surge in the number of plaintiffs filing cases. And we likely would face more advertising and another surge in cases without a settlement for years to come.
- In addition, had we continued to litigate, we also could have faced upwards of 20 trials in a year in multiple venues, along with all the media coverage and confusion we've seen regarding the safety and availability of Roundup™ as a result of the three trials to date. We are well aware of the negative impact high profile trials already have had on our business and reputation.
- Financially, we likely would face very steep costs if we continued to defend these cases. And, while the science remains very much on our side, having these decisions made in jury trial settings rather than by experts in the scientific arena would create a risk of more erroneous decisions with high damage awards and punitive damages as we've seen in the three past cases.

- You also have to keep in mind that success at the appellate level, including the U.S. Supreme Court, can take years, and even if accepted and we win an appeal, it won't necessarily bring 100% finality to this litigation. It would depend on the specifics of the ruling.
- I should add that these factors are not unique to our litigation. These are the challenging realities that many defendants face in dealing with large mass torts under the U.S. litigation system.
- These factors mentioned were assessed in different combinations and scenarios. The Board of Management and the Supervisory Board unanimously decided to settle now based on the conclusion that potential negative outcomes of further litigation, and associated reputational and business impacts, likely would substantially exceed the settlement and related costs.
- Now I'd like to ask Bill to describe in more detail the terms of the settlement.

***Remarks: Bill Doderer, Global Head Litigation of Bayer***

- Let me start by discussing how we will resolve the vast majority of the current U.S. Roundup™ litigation. This portion of the resolution covers both plaintiffs with filed cases in U.S. federal or state courts, and parties who have retained counsel but not yet filed their claims in court.
- Bayer will make a payment that ranges from \$8.8 billion and \$9.6 billion to resolve approximately 75% of the current U.S. litigation and unfiled claims, about 125,000 total claimants overall, which includes an allowance for plaintiffs with whom we have not yet reached an agreement. All those participating in the settlement will be required to dismiss their cases or agree not to file.
- As Werner mentioned, where the final payment lands within this range depends on two factors: One, there are plaintiffs' firms with Roundup™ cases with which we still need to complete agreements. We've provided an allowance that we expect to cover these agreements, but we won't know the precise final cost until the agreements are

done. The claims still subject to negotiation largely consist of cases generated by TV advertising and for which plaintiffs' law firms have provided little or no information on the medical condition of their clients, and/or cases held by law firms with small inventories.

- The second reason we provide a range for the final cost is because in a large mass tort like this there can be a significant number of claimants who don't meet the eligibility requirements – for instance, they have not been diagnosed with NHL. The final payment will depend on the number of claimants who are eligible, and that number won't be known until the claims process is well underway.
- The company also recognized the need to address people who may bring claims in the future and have not hired counsel to date. To bring resolution to these potential future plaintiffs, the settlement establishes a multi-pronged process. This includes:
  - The establishment of a class of potential future plaintiffs including all persons in the U.S. who claim exposure to Roundup™ prior to today, June 24, 2020, and either have non-Hodgkin's lymphoma or may develop it in the future, but who as of today have not filed a lawsuit against Monsanto or retained a lawyer to file such a lawsuit.
  - In connection with this class, the settlement establishes an independent Class Science Panel. This Science Panel, not juries in trial settings, will determine for purposes of the class, whether Roundup™ can cause non-Hodgkin's lymphoma. The parties expect that the Class Science Panel's determination will take several years from the date that the class agreement is finally approved, following any appeals. During the Science Panel's determination, class members will not be permitted to proceed with Roundup™ claims. The materials considered by the Class Science Panel that Bayer has permission to disclose or are in the public domain will be posted on a public website.
  - Both the class and Monsanto will be bound by the Class Science Panel determination. If the Science Panel determines that Roundup™ does not cause non-Hodgkin's lymphoma, class members will be barred from claiming otherwise and this would effectively end this litigation for class members.

- If the Class Science Panel determines that Roundup™ can cause NHL, it will then determine at what minimum exposure levels. Monsanto could not claim otherwise in cases brought by class members. Class members with specified minimum exposure levels will be permitted to proceed with Roundup™ claims and would have to prove they meet the exposure threshold. Monsanto would preserve all other defenses – including that Roundup™ did not cause the specific class member’s disease – and class members could not seek punitive damages.
- As part of the class agreement, Monsanto also will fund research into treatment of non-Hodgkin’s lymphoma, NHL diagnostic programs in underserved areas, and assistance payments to class members who develop non-Hodgkin’s lymphoma before the Class Science Panel’s determination and are eligible on a need basis for assistance during that period to compensate them for the delay in being able to file claims. This program will be administered by Ken Feinberg, subject to Court oversight.
- The class agreement provisions are subject to approval by Judge Vince Chhabria, of the U.S. District Court for the Northern District of California, who presides over the Multi District Litigation (MDL). This process will include notice to potential class members who will be given a 150-day period to opt out of the settlement. Monsanto retains the discretion to terminate the settlement if there are excessive opt-outs. That said, we believe the class agreement is fair and the number of opt-outs should be small and manageable.
- As part of this class agreement, we will make an additional payment of \$1.25 billion for the programs and mechanisms I’ve described. I want to emphasize that this payment in connection with the class agreement is limited to this amount regardless of the number of individuals in the class.
- Moving now to our appeals, the decision to exclude the *Johnson*, *Hardeman* and *Pilliod* appeals from the settlement affirms our commitment to the expert regulatory process that governs pesticide use in the U.S. We are arguing that panels of judges in the appellate courts should decide these cases based on expert regulatory assessments worldwide and the weight of the extensive body of science – this did not occur in the three trial settings. We have strong arguments in these appeals and final rulings in these cases could be important to any future potential litigation.

- For example, a federal preemption ruling in favor of Monsanto could substantially, if not entirely, restrict future state-based failure to warn claims. The argument here is that the state law warning claims in the Roundup™ litigation conflict with U.S. federal law and therefore must be dismissed. The U.S. Government submitted an amicus brief in the *Hardeman* appeal that is supportive of the arguments we've made on preemption.
- Similarly, rulings on causation – that the prevailing science cannot support a causal relationship between glyphosate and NHL – likewise could curtail future litigation.
- Just this week, a federal judge in California found that the weight of scientific evidence does not support the state's Proposition 65 cancer warning requirement for glyphosate-based herbicides -- a ruling that reinforces the very arguments the company has made at trial.
- Next, I want to describe the terms of the dicamba settlement. The claims in these drift cases are for economic damages allegedly caused by dicamba that impacted fields where the herbicide was not intended to be sprayed and caused damage to the yields of crops that were not resistant to it. Most of these cases involve soybeans, though some relate to other crops. The resolution covers the drift cases pending in the multi-district litigation in federal court in the Eastern District of Missouri and claims for the 2015-2020 crop years.
  - Bayer will pay up to a total of \$400 million to resolve these Multi District Litigation cases and claims. This is a traditional mass tort settlement and those who have claims will need to provide proof of their crop yield damages and evidence that the damage was due to dicamba in order to collect. We expect a contribution from our co-defendant BASF to this settlement.
  - The *Bader Farms* peach orchard case, which is the only dicamba drift case to go to trial, is not included in this resolution. Monsanto and BASF as co-defendants will continue to pursue post-trial motions and an appeal, if necessary, as we continue to believe the verdict in this case is inconsistent with the evidence and the law.

- We stand strongly behind our XtendiMax™ herbicide with VaporGrip™ technology and continue to enhance our training and education efforts to help ensure growers use our products successfully. To be clear, we are settling these cases solely to enable us to move forward and focus on the needs of our customers.
- Of note, the dicamba settlement is separate from the EPA registration case. In response to the 9th Circuit decision, the EPA has ordered that existing stocks of our XtendiMax™ herbicide with VaporGrip™ technology can be used until July 31, 2020.
- The last issue I want to cover are the agreements to resolve cases representing most of the company's exposure to PCB, or polychlorinated biphenyl, water litigation. Monsanto legally manufactured PCBs until 1977 when the company ceased their production, two years before they were banned by EPA. Thus, the company has been out of this business for more than 40 years. This settlement will resolve the previously disclosed water litigation brought by local governments by establishing a class that includes all local governments with EPA permits involving water discharges impaired by PCBs. As part of this agreement, which is subject to court approval, Bayer will pay a total of approximately \$650 million to the class.
  - We also have entered into separate agreements with the Attorneys-General of New Mexico, Washington, and the District of Columbia to resolve similar PCB claims. For these agreements, which are separate from the class, Bayer will make payments that together total approximately \$170 million.
- Now, I will turn the call over to Wolfgang Nickl.

## **Remarks: Wolfgang Nickl, CFO of Bayer AG**

- Let me turn briefly to some important financial topics related to the settlements.
- Given our frequent exchange with investors on this subject, we do understand that a settlement and the corresponding removal of the uncertainty is of value not only to the company, but also to our owners. To that end we firmly believe that the settlements reached, and the related economics, are also in the best interest of our shareholders.
- Cash payments related to the settlements are expected to start in 2020. We currently expect cash outflow will not exceed \$5 billion in 2020 and \$5 billion in 2021; the remaining balance would be paid in 2022 or thereafter.
- The overall payments are subject to tax treatment and we assume a tax shield of around 15%.
- In order to finance these payments, we can make use of existing surplus liquidity, future free cash flows, the proceeds from the Animal Health divestiture, and additional bond issuances, which will provide flexibility in managing the settlement payments as well as upcoming debt maturities, including approximately €8bn in bond and USD Term Loan maturities in 2021.
- As a reminder the sale of our Animal Health Business is expected to close in the middle of this year. The consideration is \$5.3bn (pre-tax) in cash at closing and we will receive Elanco shares that were valued at around \$2.3bn when the transaction was announced. These shares are subject to a holding period and could be monetized by the middle of 2021, depending on market conditions. Note that the value of these shares has been subject to the volatility we've seen in the overall market.
- Based on publications by the rating agencies and our close communication with them, we expect to keep investment grade credit ratings.
- Given the strength of our underlying business, we also intend to keep our dividend policy with attractive levels of cash dividends.

- Additionally, deleveraging our balance sheet – albeit delayed – remains a high priority for Bayer.

### ***Final Remarks: Werner Baumann***

- Now, before we open the line for questions, I want to make a few final points:
- The settlements we announced today, including Roundup™, are the right decisions for Bayer and our shareholders. They remove uncertainty, allow us to focus fully on our customers and our business priorities, and move us back to a discussion about the utility and safety of our products based on the full body of science – consistent with our purpose of ‘Science for a better life.’ And science has never been more important in our lifetimes than it is today.
- The settlements also meet the criteria we set at the outset in that they are financially reasonable given the realities we face, and the Roundup™ agreement puts in place a mechanism that we believe can manage and resolve any potential future litigation efficiently.
- As we look ahead, our focus remains on the future: We are in a strong position to live up to our vision of ‘Health for all, Hunger for none’ with increased engagement, confidence and support of our many stakeholders. This appears to be more important than ever with the massive impact of the COVID-19 pandemic on our society. We run businesses that are – literally – of existential relevance. On top of that, as you can see by our investments in R&D, we are committed to being an innovation leader that embraces sustainability as an integral part of our business model. In closing, and before we take your questions: we are well positioned for the future!

#### **Forward-Looking Statements**

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