SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

REBECCA R. HAUSSMANN, trustee of Konstantin S. Haussmann Trust, derivatively on behalf of BAYER AG, Plaintiff, vs. WERNER BAUMANN, WERNER WENNING, LIAM CONDON, PAUL ACHLEITNER, OLIVER ZÜHLKE, SIMONE BAGEL-TRAH, NORBERT W. BISCHOFBERGER, ANDRE VAN BROICH, ERTHARIN COUSIN, THOMAS ELSNER, JOHANNA HANNEKE FABER, COLLEEN A. GOGGINS, HEIKE HAUSFELD, REINER HOFFMANN, FRANK LÖLLGEN, WOLFGANG PLISCHKE, PETRA REINBOLD-KNAPE, DETLEF RENNINGS, SABINE SCHAAB, MICHAEL SCHMIDT-KIEßLING, OTMAR D. WIESTLER, NORBERT WINKELJOHANN, CLEMENS A.H. BÖRSIG, THOMAS FISCHER, PETRA KRONEN, SUE HODEL RATAJ, THOMAS EBELING, KLAUS STURANY, HEINZ GEORG WEBERS, CHRISTIAN STRENGER, BAYER CORPORATION, BOFA SECURITIES, INC., BANK OF AMERICA CORPORATION, CREDIT SUISSE GROUP AG, SULLIVAN & CROMWELL LLP and LINKLATERS LLP, Defendants, - and - BAYER AG, Nominal Defendant.	Index No. _____ **SUMMONS** Index No. Purchased: Mar. __, 2020

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the attorneys for the plaintiff within

20 days after service of this summons, exclusive of the days of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York). In the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York County is designated as the place of trial pursuant to Section 503 of the New York Civil Practice Law and Rules on the basis that (1) a number of the Defendants reside in this County; and (2) the acts and transactions in connection with the wrongdoing complained of occurred in this County.

Dated: New York, New York
March 2, 2020

s/ Clifford S. Robert
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SUPREME COURT OF THE STATE OF NEW YORK
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REBECCA R. HAUSSMANN, trustee of Konstantin S. Haussmann Trust, derivatively on behalf of BAYER AG, Plaintiff, vs. WERNER BAUMANN, WERNER WENNING, LIAM CONDON, PAUL ACHLEITNER, OLIVER ZÜHLKE, SIMONE BAGEL-TRAH, NORBERT W. BISCHOFBERGER, ANDRE VAN BROICH, ERTHARIN COUSIN, THOMAS ELSNER, JOHANNA HANNEKE FABER, COLLEEN A. GOGGINS, HEIKE HAUSFELD, REINER HOFFMANN, FRANK LÖLLGEN, WOLFGANG PLISCHKE, PETRA REINBOLD-KNAPE, DETLEF RENNINGS, SABINE SCHAAB, MICHAEL SCHMIDT-KIEßLING, OTMAR D. WIESTLER, NORBERT WINKELJOHANN, CLEMENS A.H. BÖRSIG, THOMAS FISCHER, PETRA KRONEN, SUE HODEL RATAJ, THOMAS EBELING, KLAUS STURANY, HEINZ GEORG WEBERS, CHRISTIAN STRENGER, BAYER CORPORATION, BOFA SECURITIES, INC., BANK OF AMERICA CORPORATION, CREDIT SUISSE GROUP AG, SULLIVAN & CROMWELL LLP and LINKLATERS LLP, Defendants, - and - BAYER AG, Nominal Defendant.	Index No. _____ **VERIFIED DERIVATIVE COMPLAINT BY ADR/ADS AND COMMON SHAREHOLDERS OF AND ON BEHALF OF BAYER AG ASSERTING CLAIMS FOR OR ON BEHALF OF BAYER AG** **DEMAND FOR JURY TRIAL**

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1. Plaintiff alleges upon personal knowledge with respect to those allegations pertaining to herself, and upon information and belief based upon, *inter alia*, a review of public filings, press releases, articles and reports, and investigations undertaken by counsel, as to all other allegations. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth below after a reasonable opportunity for discovery.[1]

2. Plaintiff Rebecca R. Haussmann, trustee of Konstantin S. Haussmann Trust ("Plaintiff"), derivatively on behalf of nominal defendant Bayer AG ("Bayer"), files this shareholder derivative complaint against Bayer's Chair, certain present and former Bayer Supervisors (directors), two of its top Managers (officers), two banks (BofA Securities, Inc. (a subsidiary of Bank of America Corporation) and Credit Suisse Group AG) and two law firms (Sullivan & Cromwell LLP and Linklaters LLP) (collectively, "Defendants"). As an owner of Bayer common stock shares and/or American Depository Shares/Receipts ("ADRs"), Plaintiff brings this action derivatively on behalf of Bayer, seeking (i) compensatory damages for the harm caused Bayer in connection with Bayer's June 2018 $126-per-share, $66 billion all-cash acquisition (the "Acquisition") of Monsanto Inc. ("Monsanto"); (ii) the

[1] Bayer is one of the largest and most high-profile public companies in the world. Bayer's disastrous Acquisition of Monsanto has been the subject of extensive coverage in the financial press. The Wall Street Journal, Reuters, Deutsche Wells, Barrons and Bloomberg have reported and investigated the Acquisition — obtaining documents and information from insiders. Because this reporting by reputable publications is reliable, Plaintiff relies on it. Also, because it was the press coverage of this Acquisition by Bayer's Managers and Supervisors that has damaged Bayer's reputation, these articles are quoted at length. No Defendant has ever sued any of these publications, or the others quoted here, for libel.

disgorgement of all compensation paid to the Bayer Managers and Supervisors who participated in bringing about the Acquisition and all fees/monies obtained in connection with the Acquisition by two banks and law firms that were retained to advise and protect Bayer in connection with the Acquisition; and (iii) punitive damages from the Banks and three top Bayer insiders. The action alleges Defendants' breaches of their duty of prudence, duty of care, duty of candor and duty of loyalty to Bayer in connection with the Acquisition, as well as aiding and abetting one another while participating in a course of misconduct that induced, permitted and facilitated the Supervisors and Managers' actions damaging Bayer in violation of German law.

3. Shortly after February 7, 2020, Bayer's Supervisors, Managers and lawyers, by secret, improper and unethical corporate espionage, with the knowing assistance of Defendant Christian Strenger, learned of Plaintiff Haussmann's legal strategy and obtained a copy of the 130-plus-page, nearly-final draft of her complaint. Instead of taking proper action to return the confidential attorney work product, and refusing to accept and use the information Strenger was improperly offering, which they knew was secret, proprietary and protected, Bayer's Supervisors, Managers and legal counsel accepted and utilized the work product. They used it to try to hurt Haussmann and her counsel, while furthering their ongoing scheme to cover up the Defendants' wrongdoing and breaches of duties, and to avoid legal responsibility for the damages they have inflicted on Bayer. Bayer's Supervisors and Managers knew that Plaintiff Haussmann's derivative complaint would be the most detailed exposure of their misconduct to date, cause

intensive media coverage in advance of Bayer's April 2020 Annual Meeting, and force Defendant Werner Wenning to resign and the Supervisors to take action, as well as require them to defend the lawsuit seeking damages in the United States. Fearing that the complaint would cause a firestorm of adverse publicity, the Supervisors and Managers — acting out of consciousness of their own guilt and liability — quickly arranged to have the Chair of the Supervisory Board (Defendant Wenning) "voluntarily resign." They also agreed to give Defendant Strenger public credit for his long-ago defeated and forgotten request for a special audit, which they intend to be nothing more than a continuation of Defendants' prior proclamations that they acted properly — a rehash of the past — with no obligation to ***investigate the culpability of the Supervisors and Managers or to evaluate whether or not to pursue them for the damages they caused Bayer***. As detailed herein, the proposed special audit is a fraud — not authorized under Section 142 of the German Stock Corporation Act and not to be conducted by authorized auditors. In short, it is an "audit by the audited" — neither authorized by law or permissible under the circumstances. The bogus audit is part of the ongoing cover-up and intended to create a legal barrier to this case to protect Defendants from their accountability for the damages sought by Plaintiff Haussmann in this derivative suit. In so doing, Bayer's Supervisors, Managers and counsel involved, as well as Strenger, are acting to disadvantage and damage Bayer.

I. INTRODUCTION AND OVERVIEW OF ALLEGATIONS

4. In May 2016 Bayer undertook to acquire Monsanto, a highly controversial, oft-criticized and much-hated U.S.-based corporation. Bayer's

Managers and Supervisors knew of Monsanto's terrible reputation — as they planned from the outset to immediately discontinue the use of the Monsanto brand name, even though Monsanto had been in business for 140 years. Over past years Monsanto had been implicated in several controversies and scandals, including (i) PCB (polychlorinated biphenyl) contaminated products, with their resulting cancer-causing Dioxins, later banned, and requiring Monsanto to pay hundreds of millions of dollars to settle health-related claims; (ii) DDT, the insecticide banned in 2001 by the Stockholm Convention and the U.S. Environmental Protection Agency due to DDT's horrible environmental impact and its human-health impact — causing cancers in young girls and infertility in men; and (iii) the Agent Orange catastrophe, where Monsanto was forced to pay hundreds of millions of dollars in damages to victims (including thousands of U.S. service personnel) for the adverse health impacts (including cancers) of that Monsanto product.

5. Before the Acquisition, Monsanto was a notoriously aggressive seller of genetically modified seeds and a companion herbicide product (Roundup), which utilized Glyphosate, a highly toxic chemical long suspected of causing cancer and/or otherwise harming human health. In March of 2015, ***over one year prior to Bayer's initial May 2016 offer to acquire Monsanto*** the International Agency for Research on Cancer ("IARC"), an arm of the World Health Organization ("WHO") gathered together experts from all over the world in Switzerland to review 1,000 studies concerning the health impact of Glyphosate. The IARC, which "systematically assembles and evaluates all relevant evidence available in the public domain for independent scientific review," concluded that Glyphosate was a ***"probable human***

carcinogen," and that there was a ***"statistically significant association"*** between human cancers and exposure to Glyphosate, including non-Hodgkin's lymphoma. In addition, this WHO review concluded that certain Glyphosate-based formulations using surfactants (to increase spray reach and adherence), like Monsanto's Roundup mixture, ***"were more toxic than Glyphosate alone."***

6. Despite the above and other warnings, the Supervisors, Managers, Banks and Law Firms caused or permitted Bayer to acquire Monsanto for $128 per share/$66 billion in cash — the largest acquisition in German corporate history. The Acquisition has been a disaster, one of the worst corporate acquisitions ever which has inflicted ***billions of dollars*** of damages on Bayer and caused its market capitalization to collapse by some $60 billion.

7. In 2015–2016 the worldwide agri-business industry was consolidating as low commodity prices resulted in slowing orders and growth. Dow acquired DuPont; and Chem China acquired Synergy. These two multi-billion-dollar acquisitions put competitive pressure on Bayer's smaller agri-business. The rapid industry consolidation left Bayer with ***"slim pickings"*** — Monsanto. Monsanto, the ***"black sheep"*** and ***"least desirable company"*** in the industry, with its tarnished reputation and dangerous Roundup product, was all that was left. According to *Der Spiegel*, ***"Monsanto and its herbicide (Roundup) have long been viewed with a significant degree of distaste."*** And as a result of the industry slowdown, by 2016 Monsanto's own business was suffering. In March 2016 Monsanto slashed its 2016 earnings outlook and announced large layoffs of 3,600 employees — 16% of its workforce.

8. While others in the industry had shunned Monsanto, Werner Baumann — the Chairman of Bayer's Board of Management (*i.e.*, Chief Executive Officer ("CEO")), with the support of Werner Wenning, the Chairman of Bayer's Supervisory Board (Board of Directors) — had been eyeing Monsanto as an acquisition for some time. They both had wanted to pursue a Monsanto Acquisition, as that would make Bayer a much larger corporation and would, in turn, benefit both of them personally. Also they planned the Acquisition to be for cash, financed by some $45–50 billion in new debt — far more debt than Bayer had ever had. ***For them an all-cash, debt-financed acquisition of Monsanto would operate as a "poison pill" and prevent a takeover of Bayer by another larger company — an event they wanted to prevent because that would cost them their lucrative and powerful positions at Bayer***.

9. By 2015 Bayer had become a highly respected international pharmaceutical "life sciences" company with the highest valuation on the Frankfurt Stock Exchange. This performance was credited in large part to Marijn Dekkers — the highly successful and well-regarded Bayer CEO. But in January 2016 it was suddenly announced that CEO Dekkers would retire early to be succeeded by Werner Baumann, a longtime Bayer functionary who was in charge of Bayer's "corporate strategy," which included potential acquisitions. Due to Monsanto's controversial reputation, including the PCB, DDT and Agent Orange fiascos and the growing cancer controversy concerning Roundup — Monsanto's flagship herbicide product — ***Dekkers strongly opposed and prevented any attempt to acquire***

Monsanto. As long as Dekkers was Bayer's CEO, no Monsanto acquisition was possible.

10. When the surprising leadership change was announced, Baumann assured Bayer's shareholders he planned no radical or revolutionary changes to Bayer's business: ***"there was no need for [any] fundamental change in strategy."*** But then just 10 days after he assumed the CEO reins on May 1, 2016, Baumann secretly went to Monsanto's headquarters in St. Louis, Missouri to make an unsolicited $122-per-share cash acquisition offer. The size of the proposed acquisition was staggering — over $60-plus billion in cash — the largest acquisition in German corporate history. The initial offer was very generous — a 44% premium over market value — to be paid in cash, and it came with a $2 billion reverse breakup fee to Monsanto.

11. When word of the secret offer leaked in late May 2016, Bayer shareholders and the financial media denounced the offer. The offer **"*sparked outrage*"** and was a **"*huge shock*"** to investors. One large shareholder said he ***"struggled to find investors who favor 'the deal'"*** and said the bid for Monsanto will be **"*expensive, earnings dilutive and destroy value.*"** Because of the huge amount of debt to be incurred, Fitch & Moody's stated they would downgrade Bayer's credit rating by **"*multiple notches*."** According to a professor at Warwick University Business School, Baumann and Wenning had **"*thrown caution to the wind out of being behind in the industry's final stage of consolidation*," Bayer "*may well regret this at leisure … it is probably a good bid to lose …. Bayer's acquisition of 'Frankenstein' Monsanto could be a horror story for … Bayer*** ….

This looks like a lose-lose bid — Bayer has been forced into paying too much."
Nonetheless, Baumann and Wenning assured Bayer's shareholders that the Monsanto Acquisition would create "***shareholder value,***" and that "***due diligence***" regarding Monsanto would be conducted.

12. Glyphosate, the active ingredient in Roundup, has been controversial for many years. Roundup's health impact — from consuming products that were sprayed with it (*i.e.*, consumers) or from exposure to it during agricultural or other spraying (*i.e.*, farmers, landscapers and their workers) had been widely criticized for years. ***Monsanto never put a cancer warning on its Roundup products and never tested its unique Roundup formulation, which contained surfactants to enhance spray spread and adherence to determine if that specific formulation caused cancer.***

13. After the WHO concluded in March 2015 that Glyphosate was "probably carcinogenic to humans" (especially to those exposed to spraying), the Environmental Protection Agency ("EPA") of California — a huge agricultural state and market for Roundup — classified Glyphosate as "***a known carcinogen***" in March 2017. Individuals alleging personal injury due to Roundup exposure now had a greatly enhanced ability to sue, as such findings provided support for the causation element necessary for the Roundup cancer suits to succeed. ***The amount of Roundup sprayed on crops is almost incomprehensible in terms of its potential health and liability impact. Monsanto had been selling Roundup since 1976. In the United States, 100 million pounds of Roundup is sprayed on farms and lawns each year. Over two pounds of Roundup has been applied per year***

per acre on U.S. crops and over a pound per year on cropland elsewhere in the world. Worldwide, nearly 2 billion pounds of Roundup is sprayed on crops and lawns. Every year millions of farmers, landscape workers and their families are exposed to Roundup from spraying. Countless millions more have been exposed from consuming the sprayed products all over the world. Approximately 70,000 patients in the U.S. alone are diagnosed with non-Hodgkin Lymphoma each year.

14. Notwithstanding the shareholder objections and media criticism of the offer to acquire Monsanto, negotiations with Monsanto followed the initial May 2016 offer. In September 2016 a $128-per-share, $66 billion all-cash deal (including the $2 billion reverse breakup fee) was signed, subject to U.S. and European regulatory (antitrust) approval and ***due diligence of Monsanto by Bayer's Supervisors, Managers, Bankers and Law Firms to protect Bayer***. When the deal was signed in September 2016, Bayer's shareholders were again assured by Baumann and Wenning that the Acquisition would close by year end 2017 at the latest, create **"*significant value*" *and "an enhanced agricultural offering"*** with the **"*potential for premium valuation*"** — in short ***"a compelling transaction for shareholders"*** that would ***"improve profitability and earnings growth."***

15. In reality, the Acquisition has been a disastrous failure. Bayer has been engulfed by a tsunami of over 45,000 Roundup cancer lawsuits and has suffered damages verdicts in the billions of dollars in the cases tried since the Acquisition closed. These verdicts caused Bayer's market capitalization to collapse by over $60 billion, wiping out the entire "value" of the Monsanto Acquisition, damaging Bayer and its shareholders. The Acquisition is now ranked as one of the

worst corporate acquisitions in history. Bayer faces the prospect of thousands of Roundup cancer suits and billions of dollars in fees, judgments and settlements — plus horrible publicity of the kind that ruined Monsanto's corporate reputation — even if the cancer lawsuits can be "settled."

16. Bayer and Monsanto were direct competitors when it tried to acquire Monsanto. Because of antitrust concerns, Bayer was forced to keep out of Monsanto's business, including its legal affairs, due to a ***"Keep Separate" court-ordered agreement imposed by the antitrust regulators that sharply restricted the access of the Supervisors, Managers, Banks and Law Firms to Monsanto's business operations, nonpublic information (including the damning evidence lurking in Monsanto's files) and legal defense of the Roundup cancer cases, until the regulators gave permission to "close" the Acquisition.***

17. The antitrust regulatory reviews in Europe and the United States proved to be much more difficult — and time-consuming — than Bayer's Managers had anticipated. Negotiations dragged on with the regulators as they demanded far more in the way of divestitures than anticipated, billions in assets, ***including the divestiture of Bayer's own successful non-Glyphosate-based Liberty herbicide product, which would leave Bayer only with the controversial "probable human carcinogen" Roundup herbicide, if the Acquisition went forward and closed.***

18. As a result of the March 2015 WHO Study identifying Glyphosate as a ***"probable human carcinogen"*** and the March 2017 California EPA classification of Glyphosate as a ***"known carcinogen,"*** ever increasing numbers of personal-injury suits against Monsanto by users of Roundup were being filed in state and federal

courts in the United States, alleging, *inter alia*, a failure to properly warn of the cancer risks of Roundup exposure.

19. It was no secret that once the WHO classified Glyphosate as a "probable human carcinogen" that the plaintiffs' lawyers in the United States personal-injury-lawsuit machine were gearing up to go after Monsanto/Bayer. According to the Wall Street Journal:

> In late 2016, a group of plaintiffs' lawyers took the stage at the year's largest gathering of their colleagues to talk up a promising new target.
>
> For 30 minutes, they laid out arguments linking the popular weedkiller Roundup to cancer. An arm of the World Health Organization had pegged Roundup's main chemical ingredient as a probable carcinogen the year before, and it was quickly becoming a focus of the plaintiffs' bar.
>
> * * *
>
> Three years later, more than 42,700 farmers, landscapers and home gardeners have sued Bayer AG, Roundup's manufacturer, claiming the company knew the herbicide posed a cancer risk but failed to warn consumers. Bayer is contesting the lawsuits and argues that scientific research and regulatory reviews, including from the Environmental Protection Agency, proved Roundup's safety.
>
> Behind the surge in lawsuits is a little-known, sophisticated legal ecosystem that includes marketing firms that find potential clients, financiers who bankroll law firms, doctors who review medical records, scientists who analyze medical literature and the lawyers who bring the cases to court. Individual plaintiffs can become commodities that are bought and sold by marketers, with prices based on demand. The more lawsuits that get filed, the more pressure companies face to settle.
>
> Building up thousands of cases against a single target gains momentum at conferences like the one in Las Vegas, called Mass Torts Made Perfect. The twice-yearly shindig is product-liability law's big stage, drawing more than a thousand plaintiffs' lawyers and vendors vying for their business over informational panels, cocktail hours and appearances by celebrities such as Peyton Manning and Nelly.
>
> The real headliners are the target products…. None have sparked the same level of interest as the weedkiller.

> * * *
>
> The herbicide first caught plaintiffs' lawyers' eyes in the spring of 2015, when the International Agency for Research on Cancer, a branch of the World Health Organization, deemed Roundup's active ingredient, glyphosate, "probably carcinogenic" to humans.
>
> * * *
>
> Just days after the WHO agency published its findings, personal-injury law firm Weitz & Luxenberg PC registered the domain name www.RoundupInjuries.com. Within months, television advertisements hit the air seeking Roundup users who got cancer. Before year's end, the first lawsuits were filed.
>
> Lawyers have clamored to sign up Roundup plaintiffs, making it the top product targeted by mass-tort lawyers and marketing companies in recent years, according to X Ante, which sells data to companies on mass-tort advertising. Between January and September, the weedkiller appeared in 654,280 broadcast and cable-TV advertisements costing an estimated $77.8 million, an X Ante analysis of Kantar Media CMAG and Media Monitors data shows. The number of advertisements is four times that of the next most-targeted product or drug for mass-tort lawsuits.
>
> Bayer blamed lawyer advertisements for more than doubling the number of plaintiffs from July to October.
>
> * * *
>
> "We operate just like any other industry," said Mike Papantonio, a Florida plaintiffs' lawyer who founded Mass Torts Made Perfect.

Sara Randazzo & Jacob Bunge, *Inside the Mass-Tort Machine That Powers Thousands of Roundup Lawsuits*, THE WALL STREET JOURNAL, Nov. 25, 2019.

20. By September 2016 when the Acquisition agreement was signed (still subject to due diligence), ***120 such suits had already been filed.***

21. During 2016–2017 as the acquisition process stalled, there was unrest and increasing criticism from Bayer shareholders concerning the Acquisition. Baumann and Wenning repeatedly reassured Bayer's shareholders that the Monsanto Acquisition would produce ***"significant value creation" and boost earnings significantly — both immediately and in the long term.*** To support —

and boost the credibility of — these assurances, Baumann and Wenning stressed that they had a "***proven track record of successful portfolio management***" that had made Bayer an "***experienced acquirer having successfully integrated various multibillion dollar transactions***." They specifically stressed the success of the most recent Bayer acquisition, Bayer's $14 billion cash acquisition of Merck's consumer-products business led by Baumann and Wenning in 2014. They told the critics of Bayer that this was an example of their proven skills as acquirers and assured them that the **"*Monsanto integration is expected to be no more complex than previous large integrations.*"** As to the regulators, Bayer's top managers assured shareholders they were making **"*good progress*"** and that **"*we remain confident of closing the transaction before the end of 2017.*"**

22. However, the Defendants could not get the Acquisition closed by year end 2017. The antitrust regulators were insisting on unprecedented asset divestitures that would adversely impact the economics of the Acquisition for Bayer ***— including the sale of Bayer's own successful non-glyphosate-based Liberty herbicide product.*** Nevertheless, when the closing was delayed until mid-2018 and Bayer's stock again plunged, Baumann told shareholders **"*this does not affect our expectation of a successful conclusion to the regulatory review nor our conviction that this is the right step." However, as the Acquisition closing was substantially delayed, the filing of Roundup cancer suits against Monsanto accelerated.***

23. By mid-2018, as some of the early-filed Roundup cancer cases had progressed into discovery, incriminating evidence surfaced demonstrating

Monsanto's knowledge of the dangers of Roundup and intentional wrongdoing sufficient to support punitive damages. The so-called "Monsanto Papers" began to circulate on the Internet. And the personal-injury lawsuit industry in the United States geared up to focus on the Monsanto/Roundup cancer situation as a huge economic opportunity. The Roundup suits spread rapidly. ***By June 2018 when the regulators finally said the Acquisition could close, still subject to $9 billion in additional divestitures being completed, over 5,000 — perhaps as many as 11,000 — Roundup cancer suits had been filed — a 4,500% — 10,000% increase in suits while the Acquisition was pending![2] As was the case with manufacturers of asbestos products in the past, the use of Roundup has been so widespread, for so long, without any warning label that the number of potential plaintiffs was unlimited, as was Monsanto's potential liability — not computable — not insurable — but clearly potentially very damaging, if not fatal, to Bayer if it assumed that liability by closing the Monsanto Acquisition.***

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[2] Some sources suggest that 11,000 suits had been filed — many not served. Recently, it was reported:

> What's so astonishing is that Roundup's problems were hardly a secret. Some 11,000 cases were pending against Monsanto when Bayer bought the company, which was called by some "the most hated company in the world." (That might have been a tip-off.)
>
> * * *
>
> Bottom line: ***A massive misunderstanding of the U.S. legal systems has cost shareholders tens of billions of dollars.***

Andy Serwer & Max Zahn, *The Downfall of 3 Iconic German Companies Is Nothing Short of Stunning*, YAHOO! FINANCE, June 5, 2019.

24. During 2017–2018 as the filing of new Roundup cancer suits rapidly escalated and the pending cases were being successfully prosecuted, the ability of the Supervisors, Managers, Banks and Law Firms to conduct due diligence into Monsanto and the ever-increasing risks the lawsuits and Glyphosate posed to Monsanto was ***severely restricted***. As a result, Bayer could not conduct the kind of intrusive and thorough due diligence into Monsanto's business and legal affairs called for under the circumstances. Instead, the Defendants were forced to rely almost exclusively on publicly available information in Monsanto's U.S. Securities and Exchange Commission ("SEC") filings and information obtained from Monsanto's top executives. However, Monsanto's SEC filings disclosed no material risks from Roundup and failed to quantify any potential financial impact. And Monsanto's top executives — who had repeatedly defended Roundup and would, if the Acquisition closed, leave the scene after pocketing hundreds of millions in cash for themselves — ***had every incentive to minimize the Roundup risk in order to get Bayer to close the deal.***

25. BofA Securities, Inc. (formerly known as "Bank of America Merrill Lynch") and Credit Suisse Group AG were retained as advisors/bankers to protect Bayer by, *inter alia*, conducting independent, objective and thorough due diligence into Monsanto. However, their independence and objectivity was compromised from the outset because these two banks had been promised by Baumann and Wenning that they would be the lead bankers in arranging financing for the deal — ***over $50–60 billion in securities offerings and refundings that would net these banks hundreds of millions in fees if, but only if, the Acquisition closed. This***

"contingent" arrangement made the Banks economic "partners" in the closing of the deal — and "cash out" partners at that — because they — with the Monsanto executives — would pocket hundreds of millions when the deal closed, regardless of what happened with the Roundup cancer lawsuits or Bayer after that.

26. By June 2018 — ***now two years after*** Baumann first went to St. Louis to make the offer to acquire Monsanto — when the closing was finally permitted by the regulators ***not only had between 5,000–11,000 Roundup cases been filed***, but plaintiffs in several of the first Roundup cancer cases had survived motions to dismiss, obtained damaging discovery and fended off challenges to expert testimony and pretrial motions. These cases were going to trial. The first bellwether case was scheduled for July 2018 in California, where the plaintiff could win compensatory and punitive damages by a 9–3 vote and ***that State's EPA had classified Glyphosate was a*** "***known carcinogen***," ***a finding upheld by California courts***. However, because of "Keep Separate" antitrust restrictions, ***even if Bayer formally closed the Acquisition on June 8, 2018, it would still have to sell off over $9 billion in assets before the regulators would permit Bayer to have access to, and take operational control of, Monsanto — including Monsanto's legal defense of the Roundup cancer cases — a process that would take until mid-late August 2018 to complete — after the bellwether case in California went to trial.***

27. In June 2018, despite these adverse developments and without having conducted the independent, objective and thorough due diligence required to protect Bayer, and even though Bayer had valid grounds to avoid or delay the

closing due to the explosion of Roundup cancer litigations, and the public disclosure of the damaging evidence long hidden in Monsanto's files, Defendants went ahead and caused Bayer to close the Acquisition. They paid out $66 billion of Bayer's cash, ***despite the unquantifiable financial risk posed by the escalating thousands of Roundup cancer lawsuits, bolstered by both the WHO's and California EPA's findings and reinforced by the discovery of damaging Monsanto documents that showed longtime awareness of the serious adverse health impact of Glyphosate. If the Supervisors and Managers, Banks and the Law Firms failed to preserve Bayer's legal right to delay or terminate the closing of the Acquisition, if material adverse events occurred pre-closing, especially under these circumstances where they knew a protracted regulatory review would delay the closing for an indefinite period of time while business and legal conditions could change materially, they were grossly negligent.***

28. The first bellwether Roundup cancer trial in California started in July 2018 and in August 2018 resulted in a verdict against Monsanto for ***$289 million in compensatory and punitive damages*** — including a finding that Monsanto had acted with ***"malice and oppression."*** Just days later the California Supreme Court affirmed the lower courts' affirmation of the action of the California EPA in classifying Glyphosate as a ***"known carcinogen." Two follow-up Roundup cancer trials in 2019 resulted in additional huge damages verdicts, including a $2 billion punitive damages award.*** These extraordinarily large verdicts confirmed the strength of the claims against Monsanto — and Bayer. The trials made public internal documents in which an internal study by Monsanto admitted Glyphosate is

"geno-toxic" (*i.e.*, causes cancer) that Bayer had never tested its unique Roundup formulation with subjects to determine if it caused cancer and that Monsanto had provided strict warnings to its own employees to wear chemical goggles, boots and other safety protection when exposed to Roundup or using the company's lawn and garden Roundup concentrate.

29. Inside Bayer there was resistance to the Monsanto Acquisition. In addition to Dekkers warning not to buy Monsanto, when Baumann surveyed scientists in Bayer's pharmaceutical unit in Berlin, several said ***they believed Roundup caused cancer***. Bayer employees objected to buying Monsanto, saying the move would detract from necessary investments in the pharmaceutical division and asserted Monsanto's toxic image would soil the good Bayer name. Baumann said there was nothing to worry about and that although Monsanto might be controversial in Europe, "***in the U.S. … Monsanto is a very reputable company***."

30. While the initial Roundup cancer verdicts were later reduced, even the reduced awards were extraordinarily large and, when extrapolated over the universe of existing and potential Roundup cancer cases, penciled out to a likely cost of billions and billions of dollars to Bayer. In a legal environment that permits lawyers to advertise for clients, advance lawsuit costs, charge contingency fees, share evidence and experts, win cases (including punitive damages) on a 51% preponderance of the evidence standard (often by 9-3 verdict votes), these types of mass-tort cases — litigated by America's various, ruthless and powerful personal-injury lawsuit industry — can destroy a company. "Scientific certainty" — whatever that means — is not determinative by the outcome of these lawsuits. ***Bayer now***

faces over 45,000 Roundup cancer suits and thousands and thousands more are coming. To try to stave off this disaster Bayer is seeking to achieve settlements of as many of the cases it can in mediation here in the United States. However, because most of the lawsuits have been filed in separate state courts in the United States, no compulsory mechanism exists to consolidate or even coordinate these thousands of cases filed in separate jurisdictions. Bloomberg recently reported ***"Monsanto may seek bankruptcy protection without favorable deal in glyphosate litigation settlement talks, Bayer lawyers warn."***

31. Shortly after the first devastating Roundup cancer lawsuit verdict, it was reported in *Deutsche Welle*:

> It's been a tough week for agrochemical giant Monsanto and its flagship weed killer, Roundup.
>
> In a landmark court case, Monsanto — which was acquired by German Bayer AG in June — was told to pay nearly $290 million (€255 million) in damages to 46-year-old Dewayne Johnson, a California-based based groundskeeper who claimed he had become terminally ill with non-Hodgkin lymphoma cancer due to exposure to Roundup and active ingredient glyphosate.
>
> With Bayer's share price plunging 10 percent in the wake of the ruling, the company's PR nightmare continued when ***a study released days later found that kids' breakfast cereals and snack bars are laced with glyphosate — the Environmental Working Group report noted that all but two of the 45 products tested that contained oats had traces of glyphosate, and 31 of these exceeded its own child safety standards. Roundup was again the culprit.***
>
> * * *
>
> This so-called Roundup Lawsuit claims that Monsanto knew about the link between glyphosate and cancer as early as the 1980s, but has since concealed the danger and instead marketed Roundup as being "***safer than table salt***" **and** "***practically nontoxic.***"
>
> "***This could very well be the next tobacco or asbestos,***" said attorney Brent Wisner when the lawsuit was consolidated into one federal action in December 2016. ***"Over 70,000 people are***

diagnosed with non-Hodgkin lymphoma every year, and the pervasive use of Roundup at home and at work might explain why that number continues to grow."

Might glyphosate, which has been marketed by Monsanto as a weed killer since 1974, meet the same demise as the company's ***ill-fated DDT insecticide and Agent Orange defoliant ... that were eventually banned due to links to cancer*****?**

* * *

Glyphosate is everywhere

Since the 1990s, glyphosate usage has increased globally from 123 million pounds (558,000 kilograms) to nearly 2 billion pounds (907 million kilograms) a year, according to investigative journalist Carey Gillam.

* * *

Glyphosate is "different than Roundup" since ***it includes a cocktail of other chemicals***, which increases its weed killing potency. Wisner pointed out that the jury in California focused heavily on the "***synergistic effect of the glyphosate and the other chemicals***."

"*And the simple fact is, Monsanto has never tested the carcinogenicity of the combined product,*" Wisner added.

* * *

Quest for transparency

During Dewayne Johnson's trial, the judge ordered Monsanto to provide internal documents, memos and emails indicating that the company long knew that Roundup could potentially cause cancer.

The documents show that Monsanto's hired scientific adviser warned its testing of glyphosate was inadequate, since the other chemical ingredients in Roundup were not included.

... [T]he formerly classified documents "***show how hard the company worked to mislead consumers***, ***regulators***, ***and farmers***, ***and how they are the ones intentionally misrepresenting the scientific record***," ***Carey Gillam told DW***.

* * *

This was the basis of the August 10 judgment, which found Monsanto to have acted **"*with malice and oppression because they knew what they were doing was wrong, and were doing it with reckless disregard for human life,"*** said Robert F. Kennedy Jr., one of the lawyers representing Johnson.

Bayer's regret?

* * *

> Without proper warnings, people will continue to be exposed to health risks. The potential consequence of ongoing corporate denial is that Bayer … ***"will face very large liability exposure,"*** says Baum.

Stuart Braun, *Did Monsanto Know Its Weed Killer Could Be Deadly to People*, DEUTSCHE WELLE, Aug. 17, 2018.

32. The Monsanto Acquisition is a disaster. Roundup is doomed as a commercial product. In addition to the devastating 2015 WHO review of the Glyphosate research and the confirmatory action of the California EPA in early 2017, in 2019 the Administrative Court of Lyon, France revoked approval of Bayer's Glyphosate products, effectively banning Roundup sales in France. In June 2019 *Scientific American* published an article detailing how surfactants in Roundup's "proprietary mixtures," ***increase the toxicity of sprayed Glyphosate, which is deadly to human cells.*** In July 2019 Austria banned the sale of Glyphosate based herbicides. In August 2019, sales of Roundup in Brazil were banned. In September 2019 Germany announced restrictions on the use of Glyphosate — banning its use in garden and parks and imposing stricter rules concerning its use in agriculture, and announcing Germany would ban its use outright at the end of 2023 — which will almost certainly result in a Glyphosate ban throughout the entire European Union. Mexico has banned the import of herbicides using Glyphosate. Costco — the giant U.S. retailer — has discontinued carrying Roundup. Bayer is going to stop selling Roundup for private, *i.e.*, home/garden use — a large (high margin) market for the product. And the first Roundup cancer suits have been filed in Australia, a precursor to the worldwide spread of these suits.

33. As a result of the lawsuits against Monsanto/Bayer due to Glyphosate/Roundup's cancer association and accumulating worldwide opposition to its use, Bayer is going to have to abandon Roundup at a loss of billions of dollars. ***Having sold off its own successful non-Glyphosate based Liberty herbicide to get Monsanto — and its liability from the cancer-causing Roundup — Bayer is now having to spend over $5-plus billion to develop new non-Glyphosate based herbicide products, diverting assets from other needed projects and development efforts in Bayer's other business areas, especially its core pharma business.***

34. As the magnitude of the Monsanto Acquisition disaster became clear to the public in December 2018, Baumann, Wenning and the Supervisors were forced to admit that Bayer's much-touted 2014 Merck acquisition — the $14 billion cash acquisition of part of a U.S. company that they repeatedly told Bayer shareholders demonstrated Baumann, Wenning and the Supervisors' ***proven skills at identifying, completing and integrating large U.S. cross-cultural/border acquisitions successfully — was in fact a failure — just like its Monsanto Acquisition.*** And the Merck acquisition also failed ***due to a lack of required due diligence.*** At yearend 2018, Bayer sold off some of Merck's lead product lines, taking a $4.4 billion write off and eliminated 12,000 jobs. The Merck acquisition ***was failing during 2016–2017–2018 at the same time Baumann, Wenning and the Supervisors were supposedly in the process of doing due diligence on the Acquisition, and the Supervisors and Managers were telling the shareholders***

that the success of the Merck acquisition justified the Baumann/Wenning-led Monsanto Acquisition.

35. The Monsanto Acquisition is not just a failure — it is a disaster. ***Bayer's market capitalization has fallen by over $60 billion*** — a massive destructor of shareholder value — as these Roundup cancer case verdicts have come in and the folly of the Acquisition has been confirmed. ***All for an unquantified — but preventable — liability that was all but obvious and belonged to Monsanto, one of the most-hated corporations in the world with a decades-long association with producing and selling cancer-causing products all over the world.***

36. ***Objective, thorough and independent due diligence by the Defendants would have prevented the Acquisition. Instead, the Defendants let go forward this giant, debt-financed, conflicted and exceptionally risky all-cash Acquisition that put 100% of the financial risk of failure on Bayer, but none on any of the Defendants, or Monsanto or Monsanto's shareholders or executives, yet has benefited all of them personally and immediately, while causing huge damage to Bayer and its shareholders.***

37. Bayer's shareholders are rightly furious over the damage the Monsanto Acquisition has caused Bayer. ***In April 2019, they voted 55% to show no confidence in Bayer's managers/supervisors — and refused to ratify their actions — the first time in history such a vote occurred in a German public company!*** In connection with the shareholders rebuke of Baumann and Wenning in April 2019, one large shareholder complained "***Management infected a healthy***

Bayer with the Monsanto virus, is now playing doctor, but has no healing drug at hand." Another demanded ***"Bayer bought the black sheep of the industry and clearly underestimated the litigation and reputational risks."*** and ***"one has to ask critically if the due diligence was faulty***."

38. Following the unprecedented rejection of Bayer's stewards by Bayer's owners at the April 2019 Bayer shareholder meeting, a Bayer shareholder said:

> ***"The vote is a disgrace. To be gambling away the trust of so many investors within such a short time has historic proportions," said Ingo Speich, head of sustainability and corporate governance at Deka Investment.***

Ludwig Burger, *Shareholders Rebuke Bayer Bosses over Monsanto-Linked Stock Rout*, REUTERS, Apr. 26, 2019.

39. Despite this catastrophe — and the unprecedented shareholder vote of disapproval of the Supervisors and Managers — the Defendants have rejected these criticisms. According to the *Financial Times*, after the shareholder vote, "***the Board showed its contempt for the owners with a statement that it 'unanimously stands' behind management.***" The Supervisors have refused to retain independent experienced counsel with expertise in litigating breach-of-fiduciary-duty claims in the corporate merger/acquisition context to investigate or sue the potentially liable actors for the acts that have damaged Bayer. They remain in their positions of power, prestige and profit continuing to receive very generous compensation and benefits sitting atop one of the largest corporations in the world. Unfortunately, it was Bayer — because of the gross negligence of these Defendants — that bore 100% of the risk of the rushed, ego-driven and conflicted Acquisition. It was Bayer and its shareholders that have been devastated and damaged, while whatever value

the Acquisition may have promised has been wiped out in the ever-escalating onslaught of Roundup cancer suits.

40. Prominent and respected financial publications and commentators have condemned this Acquisition as an example of gross mismanagement including the failure to perform the due diligence necessary to protect the acquiring corporate entity and violations of the duties of care and prudence imposed on those charged under the law with protecting Bayer's interests:

A. Ruth Bender, *How Bayer-Monsanto Became One of the Worst Corporate Deals—in 12 Charts*, The WALL STREET JOURNAL, Aug. 28, 2019:

> … ***[T]he $63 billion gambit ranks as one of the worst corporate deals in recent memory — and is threatening the 156-year old company's future.***
>
> Ten days after Werner Baumann became chief executive of Bayer in May 2016, he made a bid for Monsanto …. Within weeks of the acquisition closing in June 2018, Bayer lost a lawsuit alleging Monsanto's Roundup herbicide causes cancer. Another two defeats followed.
>
> * * *
>
> ***Bayer['s] shares have dropped roughly 30% since the deal closed, making it one of the worst corporate deals by lost share value so far. Its market capitalization is now close to what the company paid for Monsanto, meaning the value of the entire company has almost entirely evaporated.***

B. Eric Reguly, *Acquiring Monsanto's Herbicide Liabilities Become a Massive Headache for Bayer Shareholders*, THE GLOBE AND MAIL, June 21, 2019:

> What were the worst acquisitions of all time?
>
> * * *
>
> Today, the market ***value of Bayer***, $49 billion (US $55 billion), is less than Monsanto's price tag. In the past ***12 months***, Bayer shares ***have fallen*** 43 percent. In 2018, their return, including dividends was minus 39 percent. ***Bayer executives are under fire, as they should be*** …

> ***Bayer's managers, led by CEO Werner Baumann, have a lot of explaining to do. So do Bayer's deal advisers — Credit Suisse, Bank of America …. The health concerns surrounding glyphosate did not suddenly emerge after Bayer agreed to buy Monsanto in mid-2016. There had been grave concerns about exposure to glyphosate products for many years …***
>
> The factor behind the slaughter of Bayer's share price is not so much the science; it is ***the vagaries of the U.S. jury trial system. One legal website this month said glyphosate, and Bayer by extension, faces a "Toxic Tort Timebomb." You can only wonder whether Bayer's advisers underplayed, or simply didn't understand, the severity of the litigation risks when they went to Germany to promote the Monsanto deal.***
>
> ***The miscalculation is all the [more] severe when you consider that, in March, 2015, more than a year before Bayer revealed its desire to buy Monsanto, the World Health Organization's International Agency for Research on Cancer concluded that glyphosate was "probably carcinogenic to humans"….***

C. The Editorial Board, *Bayer's Merger Failure is a Lesson for Other Buyers — The German Company Missed a Familiar Risk in Taking Over Monsanto,* FINANCIAL TIMES, May 6, 2019.

> Bayer's 2016 takeover of Monsanto has become one of the most damaging cases of deal disillusion. The management board … lost the vote of shareholder confidence at its annual general meeting for the first time in German corporate history.
>
> * * *
>
> The problem at Bayer is simple. It faces billions in liabilities from claims that its herbicides Roundup and Ranger Pro can cause cancer.
>
> ***Bayer's failure to predict the liability reflects badly on its due diligence.***

D. *Bayer's Monsanto Acquisition Leaves It with a Toxic Legacy*, FINANCIAL TIMES, Aug. 7, 2019:

> ***The takeover ranks among one of the worst in corporate history …***

> ***Shareholders are furious. At Bayer's annual meeting in late April, they delivered a vote of no confidence to management for the first time in German corporate history.***

E. Frank Dohmen, Martin Hesse & Armin Mahler, *Safe or Not, Roundup Is Toxic for Bayer. German International Bayer Underestimated the Risks of Acquiring Monsanto*, SPIEGEL ONLINE, Jan. 10, 2019:

> Bayer has shed more than 30 billion euros from its market capitalization since the acquisition … largely because Monsanto lost … the first lawsuits against it relating to glyphosate.
>
> * * *
>
> ***Bayer executives and board members who were responsible for the acquisition must now be second-guessing themselves, wondering if perhaps they weren't careful enough. And whether they underestimated the legal and reputational risks the acquisition would bring with it … "Bayer bought the black sheep of the industry and clearly underestimated the litigation and reputational risks."***
>
> ***Bayer's reputation has also suffered among more conventional investors, who are critical of the fact that Baumann, Wenning and other executives wanted to push through the Monsanto deal at any cost. "The shareholders weren't even asked,"*** says Christian Strenger, an expert in good corporate governance…. ***"The shareholders went to bed with pharma and woke up with agrochemicals." The result, he says, has been devastating, adding that today, Bayer is only worth as much as it paid for Monsanto.***
>
> ***Strenger criticizes Bayer's management for having relied too heavily on statements made by a Monsanto management that was very keen to sell, especially when it came to the legal risks. Bayer … has … come to symbolize large-scale shareholder value destruction.***

F. Ralph Atkins, *Bayer's $50bn Blunder — It Was a Deal to Guarantee Bayer's Future but the Disastrous $63bn Purchase of Monsanto Now Threatens It*, FINANCIAL TIMES, Aug. 6, 2019:

> US courts have linked Roundup … to cancer. Bayer faces possibly paying billions in compensation. Its share price has fallen more than 50 percent …, wiping $50bn off a market value that now stands at

> $52bn — less than it spent on Monsanto. ***In April, investors' anger erupted at its annual meeting. Werner Baumann …, became the first serving chief executive of a Dax-listed company to lose a vote of no confidence. "*****In a normal company, the CEO and chairman of the supervisory board would have long gone,"** says one shareholder.

G. *Bayer's Deal for Monsanto Looked Like a Winner. Now, It Looks Like a Lesson in How to Not do M&A*, BARRON'S, Mar. 22, 2019:

> ***It's looking as if Bayer's acquisition of Monsanto is a candidate for the pantheon of truly terrible mergers-and-acquisitions deals … Like many disasters, this one has an air of cursed inevitability.***
>
> * * *
>
> ***In retrospect, Bayer's purchase of Monsanto violated nearly every rule of M&A …. How could Bayer have missed the litigation risk?***

H. Angus Liu, *Worst deal ever? Bayer's Market Cap Now Close to the Total Cost it Paid for Monsanto*, FIERCE PHARMA, Aug. 29, 2019:

> ***What does one of the worst corporate deals in modern history look like? In Bayer's Monsanto takeover, it means the value of an entire company has gone poof.***
>
> Bayer acquired Monsanto for $63 billion in 2018. The German conglomerate's market cap in Frankfurt today is close to that dollar amount … the deal stands as one of the worst, sitting alongside AOL's merger with Time Warner and Bank of America's acquisition of Countrywide.

I. Chris Hughes, *Bayer's Boss Gets to Own His $63 Billion Misstep*, Bloomberg, Aug. 29, 2019:

> ***Bayer's supervisory board needs to take a serious look at how the company sets strategy and makes decisions because something has gone badly wrong. It must address whether its due diligence process for M&A is adequate.*** Some of the lawsuits afflicting Monsanto were happening in the background before the takeover completed. The German giant has commissioned work that says the board fulfilled its duties in assessing the risks. ***It's wrong if it thinks that gets the company off the hook.***

> ***Consider the circumstances of how this deal happened. Buying Monsanto is not a transaction that was supported widely and then went suddenly awry. It was unpopular with investors from the start, marking a radical shift in strategy toward agriculture and constraining Bayer's ability to develop the pharma business through other deals. Shareholders protested but didn't get a vote on a takeover that emerged very much from Baumann's grand vision for the company. Hubris has followed.***
>
> Might management's determination to do this deal have made it take a "glass half-full" view of litigation risk in the U.S.? Bayer's consistent message is that science is on its side in the weedkiller cases. But weighing scientific risk and legal risk are not the same thing, especially in a highly litigious environment like the U.S.

II. THE PARTIES

A. Plaintiff

41. Plaintiff Rebecca R. Haussmann, trustee of the Konstantin S. Haussmann Trust, is a citizen of California. Plaintiff Haussmann has owned shares of Bayer common stock throughout the period of alleged wrongdoing, and continues to own and hold them today.

B. Bayer AG

42. Bayer AG is a corporation organized under the German Stock Corporation Act, headquartered in Leverkusen, a small German town, where it is the overwhelming presence and has influence and power over everything that goes on. Bayer AG was founded in 1863. In 1925 Bayer merged to form IG Farben. IG Farben used slave labor in factories it built in Nazi concentration camps, most notably the Auschwitz camp complex. It also manufactured the poison gas used to kill the Jews and others. By 1943 almost half of IG Farben's 330,000-strong workforce consisted of slave labor, including Auschwitz prisoners. The Allied Control Council seized IG

Farben after World War II, because of its role in the Nazi war effort and involvement in the Holocaust.

43. ***Bayer has always said that it had an obligation above and beyond the letter of any law to act in a socially responsible, ethical and honest manner.*** Because of its notorious past, in Bayer's corporate filings, reports and other communications Bayer's Supervisors and Managers have consistently proclaimed and promised its owners a ***special commitment to honesty, transparency, ethical practices and enhanced corporate governance to protect Bayer and its shareholders: "Living Up to Our Heightened Responsibility — We are fully committed to uphold the highest ethical and responsibility standards."*** By 2015 Bayer had recovered, had the largest market capitalization of any company on the Frankfurt Exchange and was widely admired in Germany and the world. In early 2018 Baumann in his letter to Bayer's shareholders assured them ***"We strictly comply with the law and operate in accordance with the highest ethical standards."***

44. According to Bayer's Supervisors and Managers:

- … ***we act with integrity in all our business dealings, and we comply with all applicable laws*** …
- ***We make business decisions that are not impaired by conflicts of interest and comply with business conduct laws.***

* * *

- We protect corporate assets.
- We conduct responsible risk management.
- We measure key non-financial indicators with the same rigor as financial indicators.

45. Little if any of this was true and the failure of the Supervisors and Managers to assure that their self-imposed/proclaimed standards of corporate behavior were met and complied with, have contributed to the damage of Bayer as alleged in this complaint.

C. Bayer Corporation

46. Defendant Bayer Corporation is a wholly owned subsidiary of Bayer AG operating in the United States. Bayer AG began its U.S. operation in mid-19th century in Albany, New York, and has since maintained a substantial presence in the United States. Today, Bayer AG conducts and manages its U.S. operations on large part through Bayer Corporation, which, directly and through its subsidiaries, develops, produces and markets healthcare products, crop science products and material science products.

47. Bayer Corporation is organized under the laws of Indiana and maintains executive offices in Pittsburgh, Pennsylvania and Whippany, New Jersey. Bayer Corporation is registered to conduct business in the State of New York. Bayer Corporation's registered agent is located at 80 State Street, Albany, New York 12207.

48. Bayer AG also does business in New York via the following 100% owned subsidiaries: Bayer CropScience, Inc., a New York Corporation, and Bayer CropScience LP, Bayer Healthcare LLC and Bayer Healthcare Pharmaceuticals, Inc., PWP Opco, LLC, all registered to do business in New York.

49. While no damages are sought from Bayer Corporation, because it was used as an instrument in the course of Defendants' breaches of duty to Bayer AG,

Bayer Corporation directly participated, and played a substantial role, in the Acquisition by, *inter alia*, acting as the issuer for Bayer AG's 2018 $15 billion U.S. bond offering, which helped finance the Acquisition. A portion of the cover sheet of the offering memorandum is reproduced below:

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OFFERING MEMORANDUM **CONFIDENTIAL**

$

Bayer US Finance II LLC

Wilmington, Delaware, USA

$1,250,000,000 Floating Rate Notes due 2021	**$1,250,000,000 Floating Rate Notes due 2023**
$1,250,000,000 3.500% Notes due 2021	**$2,250,000,000 3.875% Notes due 2023**
$2,500,000,000 4.250% Notes due 2025	**$3,500,000,000 4.375% Notes due 2028**
$1,000,000,000 4.625% Notes due 2038	**$2,000,000,000 4.875% Notes due 2048**

Each with an unconditional and irrevocable guarantee as to payment of principal and interest from

Bayer Aktiengesellschaft

Pursuant to this Offering Memorandum (the "Offering Memorandum," which term includes the documents incorporated by reference herein set forth under "General Information—Incorporation of Certain Information by Reference"), Bayer US Finance II LLC (the "Issuer") is offering $1,250,000,000 floating rate notes due 2021 (the "2021 Floating Rate Notes"), $1,250,000,000 floating rate notes due 2023 (the "2023 Floating Rate Notes" and, together with the 2021 Floating Rate Notes, the "Floating Rate Notes"), $1,250,000,000 3.500% notes due 2021 (the "2021 Fixed Rate Notes"), $2,250,000,000 3.875% notes due 2023 (the "2023 Fixed Rate Notes"), $2,500,000,000 4.250% notes due 2025 (the "2025 Fixed Rate Notes"), $3,500,000,000 4.375% notes due 2028 (the "2028 Fixed Rate Notes"), $1,000,000,000 4.625% notes due 2038 (the "2038 Fixed Rate Notes") and $2,000,000,000 4.875% notes due 2048 (the "2048 Fixed Rate Notes" and, together with the 2021 Fixed Rate Notes, the 2023 Fixed Rate Notes, the 2025 Fixed Rate Notes, the 2028 Fixed Rate Notes and the 2038 Fixed Rate Notes the "Fixed Rate Notes" and the Fixed Rate Notes together with the Floating Rate Notes, the "Notes"). The 2021 Floating Rate Notes will bear interest at an interest rate for each interest period equal to 3-month U.S. dollar LIBOR plus 63 basis points (0.63%) and the 2023 Floating Rate Notes will bear interest at an interest rate for each interest period equal to 3-month U.S. dollar LIBOR plus 101 basis points (1.01%). The Issuer will pay interest on the 2021 Floating Rate Notes on March 25, June 25, September 25 and December 25 of each year, beginning on September 25, 2018. The Issuer will pay interest on the 2023 Floating Rate Notes on March 15, June 15, September 15 and December 15 of each year, beginning on September 15, 2018. The 2021 Fixed Rate Notes will bear interest at a rate of 3.500% per year, the 2023 Fixed Rate Notes will bear interest at a rate of 3.875% per year, the 2025 Fixed Rate Notes will bear interest at a rate of 4.250% per year, the 2028 Fixed Rate Notes will bear interest at a rate of 4.375% per year, the 2038 Fixed Rate Notes will bear interest at a rate of 4.625% per year and the 2048 Fixed Rate Notes will bear interest at a rate of 4.875% per year. The Issuer will pay interest on the 2021, the 2038 and the 2048 Fixed Rate Notes on June 25 and December 25 of each year, beginning on December 25, 2018. The Issuer will pay interest on the 2023, the 2025 and the 2028 Fixed Rate Notes on June 15 and December 15 of each year, beginning on December 15, 2018. The Notes of each series will be issued only in denominations of $200,000 and in integral multiples of $1,000 in excess thereof.

The Issuer may, at its option, redeem each and any series of Fixed Rate Notes, in whole or in part, at any time on the terms set forth in this Offering Memorandum under "Description of the Notes and Guarantees—Optional Redemption." The Issuer may also, at its option, redeem each and any series of Notes, in whole but not in part, at 100% of their principal amount then outstanding plus accrued interest if certain tax events occur as described in this Offering Memorandum under "Description of the Notes and Guarantees—Optional Tax Redemption." The Notes can be redeemed prior to their stated maturity at the option of the holders of the Notes for reasons of a change of control in respect of Bayer Aktiengesellschaft (the "Guarantor") as described under "Description of the Notes and Guarantees—Change of Control Redemption." The Notes will not be subject to any sinking fund requirements. See "Description of the Notes and Guarantees."

The Notes will be unsecured and unsubordinated obligations of the Issuer and will rank equally with each other and with all other present and future unsecured and unsubordinated debt obligations of the Issuer. The Notes will be unconditionally and irrevocably guaranteed by the Guarantor. The Guarantor's guarantees of the Notes (the "Guarantees" and, together with the Notes, the "Securities") will be unsecured and unsubordinated general obligations of the Guarantor and will rank equally in right of payment with the Guarantor's other unsecured and unsubordinated obligations. The Guarantees, which include a negative pledge by the Guarantor, will be governed by, and construed in accordance with, the laws of the Federal Republic of Germany. See "Description of the Notes and Guarantees."

The Issuer does not intend to apply to list the Notes on any securities exchange.

(*Cover continued on next page*)

The Initial Purchasers (as defined in this Offering Memorandum under "Plan of Distribution") expect to deliver the Notes to purchasers in book-entry form only through the facilities of The Depository Trust Company ("DTC") for the benefit of its direct and indirect participants (including Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking, *société anonyme* ("Clearstream")) on or about June 25, 2018.

Joint Bookrunners

BofA Merrill Lynch	**Credit Suisse**	**Goldman Sachs & Co. LLC**	**HSBC**	**J.P. Morgan**
Barclays	**BNP PARIBAS**	**Citigroup**	**Mizuho Securities**	**MUFG**

Co-Managers

Deutsche Bank Securities	**BBVA**	**Credit Agricole CIB**	**COMMERZBANK**	**ING**
Banca IMI	**Santander**	**SOCIETE GENERALE**	**SMBC Nikko**	**UniCredit Capital Markets**

D. Bayer Supervisor and Manager Defendants

50. Defendant Werner Baumann began working for Bayer in 1988 in the finance department. He later worked under Werner Wenning, current Chairman of the Supervisory Board, as his assistant. Baumann, with Wenning's help, went on to hold the position of chief financial officer and chief of strategy. As chief of strategy, Baumann played a key role in the Bayer's acquisition of Merck in 2014. In February 2016, Baumann was announced as the next CEO of Bayer, succeeding Marijn Dekkers. Baumann receives aggregate compensation of over $6 million per year. He is a resident and citizen of Germany.

51. Defendant Werner Wenning became Chairman of the Supervisory Board of Bayer on October 1, 2012. After learning this lawsuit had been prepared and was about to be filed, and because of these facts, Wenning resigned as Chair, effective April 2020. Wenning was Chairman of the Board of Management of Bayer from April 2002 until September 30, 2010. He now receives aggregate compensation of about $400,000 per year from Bayer. Wenning first joined Bayer on April 1, 1996. In 1992, Wenning was appointed Managing Director of Bayer Hispania Industrial S.A., Barcelona, and Senior Bayer Representative for Spain. In April 1996 he returned to Leverkusen to become head of Corporate Planning and Controlling. Wenning was appointed to the Bayer Board of Management as Chief Financial Officer in February 1997 and took over as its Chairman in April 2002. Werner Wenning is also a member of the Shareholders' Committee of Henkel AG & Co. KGaA, Düsseldorf and a member of the Supervisory Board of Siemens AG, München and the Henkel Management AG. From May 2011 to June 2016, he was

also Chairman of the Supervisory Board of E.ON AG, Düsseldorf. Wenning served as Vice President of the German Chemical Industry Association (VCI), Frankfurt, for four years until September 2011 and as VCI President from September 2005 to September 2007. He was also Vice President of the Federation of German Industries (BDI), Berlin. He is a resident and citizen of Germany.

52. Defendant Liam Condon has been a member of the Board of Management of Bayer and President of its Crop Science Division since January 1, 2016. Between 2007 and 2009, he was Managing Director of Bayer HealthCare and General Manager of Bayer Pharma in China. In January 2010, Liam Condon was appointed Managing Director of Bayer HealthCare in Germany and country representative for Bayer Schering Pharma in Germany. From December 1, 2012, until his appointment to the Board of Management of Bayer, Condon was Chairman of the Bayer CropScience Executive Committee. Condon gets aggregate compensation of over $3 million per year. He is a citizen of Germany.

53. Defendant Paul Achleitner became a member of the Supervisory Board effective April 2002, elected until 2022. He is Chairman of the Supervisory Board of Deutsche Bank AG where he has also acted as a "super C.E.O." He is also on the Daimler AG Supervisory Board and Henkel AG & Co. KGaA (Shareholders' Committee). He, like Wenning, is considered one of the most important, influential and powerful members of the German corporate aristocracy. In the past Achleitner held the following positions:

- 1988–1989 Goldman Sachs & Co., New York, Vice President Mergers & Acquisitions.

- 1989–1994 Goldman Sachs International, London, Executive Director, Investment Banking.

- 1994–1999 Goldman Sachs & Co. OHG, Frankfurt, Chairman and partners, Goldman Sachs Group.

- 2000–2012 Member of the Board of Management of Allianz AG (since October 2006 Allianz SE). He pushed Allianz into a failed merger with Deutsche Bank AG in 2000 to aggrandize his own position at Allianz.

- Since 2012 Chairman of the Supervisory Board of Deutsche Bank AG.

He is a citizen of Austria.

54. While a Goldman Sachs partner, Achleitner arranged Deutsche Bank's Acquisition of the scandal-ridden and failing Bankers Trust — it was Achleitner's Acquisition that cost Deutsche Bank billions and has contributed to its near destruction. Later when Achleitner was CFO of Allianz, he presided over another disastrous acquisition, Allianz's acquisition of Dresdner Bank — which caused Allianz a $10-billion loss. Achleitner's tenure as Chair/C.E.O. of the Deutsche Bank has also been a disaster. That bank is in shambles plagued by repeated scandals and the payment of billions in fines and settlements, and huge losses caused in part by that bank's failed acquisition of Bankers Trust, which cost Deutsche Bank billions in losses.

55. Defendant Oliver Zühlke has been Vice Chairman of the Supervisory Board of Bayer AG since July 2015. He has been a member of the Supervisory Board since April 2007. He was elected a fulltime member of the Works Council at the Leverkusen site in 1994 and was Deputy Chairman from 2002 to 2010. Since then, he has also been a member of the Economics Committee of Bayer. Between 2010 and 2015 Zühlke was Chairman of the Works Council at the Leverkusen site and also

held various functions in the German Mining, Chemical and Power Workers' Union (IG BCE). Since 2016 he is a member of IG BCE's main board. From 2009 to 2015 Zühlke was Chairman of the Bayer European Forum. From 2014 until January 2017 Zühlke was a member of the Supervisory Board of Bayer Pharma AG. Since 2015 Zühlke has been Chairman of the Central Works Council of Bayer AG. He is a resident and citizen of Germany.

56. Defendant Simone Bagel-Trah has been a member of the Supervisory Board effective April 2014, elected until 2024. She is also Chairwoman of the Supervisory Board of Henkel AG & Co. KGaA and Henkel Management AG and Heraeus Holding GmbH and Shareholders' Committee of Henkel AG & Co. KGaA. He is a resident and citizen of Germany.

57. Defendant Norbert W. Bischofberger became a member of the Supervisory Board effective April 2017, elected until 2022. He is also President and Chief Executive Officer at Kronos Bio, Inc. He also serves on the following corporate boards: InCarda Therapeutics, Inc., Kronos Bio, Inc., and Morphic Therapeutics. Bischofberger has a U.S. social security number and is registered to vote in California. He has been a resident of Hillsborough, California, in San Mateo County since the 1980s. He is a U.S. citizen domiciled in California.

58. Defendant Andre van Broich became a member of the Supervisory Board effective April 2012, elected until 2022. He is also Chairman of the Bayer Group Works Council and Chairman of the Works Council of the Dormagen site. He is a citizen of Germany.

59. Defendant Ertharin Cousin has been a member of the Supervisory Board of Bayer AG since October 2019, appointed until 2020. She is a U.S. citizen domiciled in Illinois.

60. Defendant Thomas Elsner has been a member of the Supervisory Board effective April 2017, elected until 2022. He is also Chairman of the Bayer Group Managerial Employees' Committee and Chairman of the Managerial Employees' Committee of Bayer AG, Leverkusen. He is a resident and citizen of Germany.

61. Defendant Johanna Hanneke Faber has been a member of the Supervisory Board effective April 2016, elected until 2021. She is also President Europe at Unilever N.V./plc. She resided in several states in the United States, including California and Arizona. She is a citizen of the Netherlands.

62. Defendant Colleen A. Goggins has been a member of the Supervisory Board effective April 2017, elected until 2022. She is also an Independent Consultant. She serves on the following corporate boards: The Toronto-Dominion Bank, IQVIA Holdings Inc. and SIG Combibloc Services AG. Goggins is a citizen of the U.S. domiciled in New Jersey.

63. Defendant Heike Hausfeld has been a member of the Supervisory Board effective April 2017, elected until 2022. She is Chairwoman of the Works Council of the Leverkusen site. She is a resident and citizen of Germany.

64. Defendant Reiner Hoffmann has been a member of the Supervisory Board effective October 2006, elected until 2022. He is also Chairman of the German Trade Union Confederation. He is a resident and citizen of Germany.

65. Defendant Frank Löllgen has been a member of the Supervisory Board effective November 2015, elected until 2022. He is also North Rhine District Secretary of the German Mining, Chemical and Energy Industrial Union. He is a member of Evonik Industries AG and IRR — Innovationsregion Rheinisches Revier GmbH. He is a resident and citizen of Germany.

66. Defendant Dr. Wolfgang Plischke has been a member of the Supervisory Board effective April 2016, elected until 2021. He operates as an Independent Consultant. He is also on the Evotec AG Supervisory Board. He is a resident and citizen of Germany.

67. Defendant Petra Reinbold-Knape has been a member of the Supervisory Board effective April 2012, elected until 2022. She is also a member of the Executive Committee of the German Mining, Chemical and Energy Industrial Union. She also serves on other Supervisory Boards: Lausitz Energie Kraftwerk AG, Lausitz Energie Beregbau AG and DBG Rechtsschutz GmbH. She is a resident and citizen of Germany.

68. Defendant Detlef Rennings has been a member of the Supervisory Board effective June 2017, elected until 2022. He left the Supervisory Board in November 2019. He is also Chairman of the Central Works Council of CURRENTA and Chairman of the Works Council of CURRENTA of the Ueredingen site. He is also on the supervisory board of Currenta Geschaftsfuhrungs-GmbH. He is a resident and citizen of Germany.

69. Defendant Sabine Schaab has been a member of the Supervisory Board effective October 2017, elected until 2022. She is also Vice Chairwoman of the Works Council of the Elberfeld site. She is a resident and citizen of Germany.

70. Defendant Michael Schmidt‐Kießling has been a member of the Supervisory Board effective April 2011, elected until 2022. He is also Chairman of the Works Council of the Elberfeld site. He is a resident and citizen of Germany.

71. Defendant Dr. Otmar D. Wiestler has been a member of the Supervisory Board effective October 2014, elected until 2020. He is also President of the Helmholtz Association of German Research Centers. He is a resident and citizen of Germany.

72. Defendant Dr. Norbert Winkeljohann has been a member of the Supervisory Board effective May 2018, elected until 2023. He is to become Chair of the Supervisory Board in April 2020. He is an independent management consultant. He serves on these other supervisory boards: Deutsche Bank A.G. Georgsmarienhutte Holding GmbH, heristo aktiengesellschaft, and Sievert AG. He was a major partner in Pricewaterhouse from 1994–2018. He is a resident and citizen of Germany.

73. Defendants Dr. Clemens A.H. Börsig, Dr. Thomas Fischer, Petra Kronen, Sue Hodel Rataj, Thomas Ebeling, Dr. Klaus Sturany and Heinz Georg Webers were each members of the Bayer Supervisory Board during 2016, 2017, and 2018 and reviewed, supported and voted for the actions taken by the Bayer Supervisors during that time, including all those relating to the Monsanto

Acquisition. Börsig, Fischer, Kronen and Webers are German citizens. Ebeling is a Swiss citizen. Sturany is an Austrian citizen.

74. Rataj, who was on the Board from 2002 through 2017, is domiciled in California. Born in Peoria, Illinois, Rataj is a U.S. citizen.

75. Being a member of the Bayer Supervisory Board is a prestigious and lucrative position. The members of the Supervisory Board receive annual compensation of €132,000, plus reimbursement of their expenses. Additional compensation is paid to the Chairman and Vice Chairman of the Supervisory Board, as well as for chairing and membership committees. The Chairman of the Supervisory Board receives fixed annual compensation of €396,000, and the Vice Chairman €264,000. The other members receive additional compensation for committee membership. The chairman of the Audit Committee receives an additional fee for committee membership. The chairman of the Audit Committee receives €132,000 and the other members of the Audit Committee €66,000 each and the other members of those committees €33,000 each. The members of the Supervisory Board also receive an attendance fee of €1,000 each time they personally attend a meeting of the Supervisory Board or a committee.

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Current Compensation

Compensation of Baumann & Condon

	Fixed annual compensation		Fringe benefits		Short-term variable cash compensation		Long-term stock-based cash compensation (Aspire)[1]		Aggregate compensation		Pension service cost[2]	
	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand
Serving members of the Board of Management as of December 31, 2018												
Werner Baumann (Chairman)	1,487	1,511	49	46	1,335	1,708	3,530	2,039	6,401	5,304	809	874
Liam Condon	806	819	43	45	519	1,056	1,677	793	3,045	2,713	320	348

Pension Entitlements

	Pension service cost[1]		Settlement value of pension obligation as of December 31[2]		Current service cost for pension entitlements		Present value of defined benefit pension obligation as of December 31	
	2017	2018	2017	2018	2017	2018	2017	2018
	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand	€ thousand
Serving members of the Board of Management as of December 31, 2018								
Werner Baumann (Chairman)	809	874	9,044	11,217	1,290	1,254	13,544	15,075
Liam Condon	320	348	2,345	3,063	563	539	4,038	4,618

* * *

Aggregate Board of Management compensation (IFRS)

Bayer Annual Report 2018
Board of Management Compensation according to IFRS

	2017	2018
	€ thousand	€ thousand
Fixed annual compensation	6,148	6,387
Fringe benefits	266	1,825
Total short-term non-performance-related compensation	**6,414**	**8,212**
Short-term performance-related cash compensation	4,890	6,937
Total short-term compensation	**11,304**	**15,149**
Change in value of existing entitlements to stock-based compensation (virtual Bayer shares)	538	(978)
Stock-based compensation (Aspire) earned in the respective year	9,082	6,660
Change in value of existing entitlements to stock-based compensation (Aspire)	(641)	(3,768)
Total stock-based compensation (long-term incentive)	**8,979**	**1,914**
Service cost for pension entitlements earned in the respective year	3,907	3,489
Total long-term compensation	**12,886**	**5,403**
Severance indemnity in connection with the termination of a service contract	1,978	–
Aggregate compensation (IFRS)	**26,168**	**20,552**

76. Beyond the economic benefits of being the Supervisory Board members, the status, prestige and connections that flow from such an important position includes admission into German corporate aristocracy. Staying on the Bayer Board is as a lucrative and "cushy" position as available in the German corporate world — a premier position in an exclusive club.

E. Bank Defendants

1. BofA Securities, Inc. and Bank of America Corporation

77. Defendant BofA Securities, Inc. ("BofA") was formed as a result of Defendant Bank of America Corporation's ("Bank of America") acquisition of Merrill Lynch some years ago. BofA is a subsidiary of Bank of America, the corporate parent, and is controlled by it. BofA, formerly known as Bank of America Merrill Lynch, is the investment banking unit of Bank of America and is headquartered in — and has its principal place of business in — New York City, where Bank of America has extensive operations as well. Bank of America's BofA Securities/Merrill Lynch unit has been a troubled operation since the Merrill Lynch acquisition. The unit has consistently underperformed, resulting in constant pressure from the very top Bank

of America executives to improve the unit's performance. Failing to do so has resulted in repeated turnover at that unit and continued pressure from the top Bank of America officers to improve performance, *i.e.*, get and close more deals to generate more revenue.

78. Defendant BofA is a citizen of New York and Delaware. Defendant Bank of America is a citizen of North Carolina and Delaware.

79. Bank of America has a long past record of improper and illegal conduct that has been so widespread, so constant and so serious as to create significant doubt as to whether or not that entity is really committed to honest, ethical and legally compliant behavior. While not every lawsuit is well-founded and "settlements" always disclaim wrongdoing, Bank of America's pervasive track record of alleged dishonest or illegal acts over a 30-plus year period, which resulted in billions of dollars in fines, damages settlements and losses to Bank of America's shareholders should have been reviewed and analyzed by Bayer's Supervisors and Managers and resulted in the hiring of a more competent, a more honest and more ethical bank to represent or protect Bayer, especially as to conducting independent, effective and thorough due diligence.

80. Bank of America was one of the main symbols of the excesses that brought about the financial meltdown of 2008, causing massive losses to investors and damage to the world's economy. Bank of America was culpable both through its own actions and those of two troubled companies it acquired in 2008 without doing adequate due diligence, Countrywide Financial and Merrill Lynch. Countrywide initiated billions of the predatory mortgages that were then bundled by Merrill

Lynch into securities that turned out to be toxic. Those entities ended up costing Bank of America vast amounts, including a 2014 Justice Department settlement with a price tag of nearly $17 billion.

81. This pattern of misbehavior by Bank of America dates back many years. In 1985, Bank of America ended a ten-year battle with the California State Controller by agreeing to pay $25.4 million to customers whose dormant accounts were not paid interest and were eventually consumed by the bank's ***illegal service charges***. A decade later, California's Attorney General sued Bank of America, accusing it of corruption in its role as bond trustee for the state by misappropriating funds, overcharging for services and destroying evidence of its misdeeds. Dozens of local governments joined the suit, which as SF Weekly put it alleged ***"a truly astonishing pattern of utterly brazen thievery."*** In 1998 Bank of America agreed to pay $187 million to settle the case. In 2000, Bank of America agreed to pay $35 million to settle a class action suit alleging that it had charged excessive fees to trust account beneficiaries.

82. In 2002, Bank of America paid $490 million to settle a suit by shareholders alleging that they had not been notified of significant trading losses in the period leading up to the NationsBank takeover. In 2004, as it was acquiring FirstBoston, it agreed to a $675 million settlement of charges of improper mutual fund trading practices and agreed to exit the mutual fund business. Bank of America also paid to settle lawsuits alleging it assisted corporate criminals Enron ($60 million) and WorldCom ($460 million).

83. In July 2008, Bank of America completed the acquisition of mortgage lender Countrywide Financial, which was controversial for allegedly pushing borrowers, especially minority customers into predatory loans. The acquisition was a disaster which cost Bank of America shareholders over $40 billion in losses. In September 2008, Bank of America also acquired Merrill Lynch. In August 2009, Bank of America agreed to pay $33 million to settle SEC charges that it misled investors about more than $5 billion in bonuses that were being paid to Merrill employees at the same time as the firm's acquisition. In February 2010, the SEC announced a $150 million settlement with Bank of America concerning the bank's failure causing Merrill "extraordinary losses." Merrill Lynch came with its own checkered history. In 1998 Merrill Lynch had to pay $400 million to settle charges that it helped push Orange County, California into bankruptcy with reckless investment advice. In 2002–2003, Merrill agreed to pay $200 million to settle charges that its analysts skewed their advice to promote the firm's investment banking business. In 2005, industry regulator NASD (now FINRA) fined Merrill $14 million for improper sales of mutual fund shares and in December 2005 fined Merrill Lynch $4 million for allowing their stock analysts to solicit business and offer favorable research coverage in connection with a planned initial public offering of Toys R Us in 2010.

84. In December 2011, Bank of America agreed to pay $315 million to settle a class action alleging that Merrill had deceived investors when selling mortgage-backed securities. In September 2012, Bank of America announced that it

would pay $2.43 billion to settle litigation by shareholders who alleged Bank of America lied to them about the impact of the Merrill Lynch acquisition.

85. In June 2010, Bank of America agreed to pay $108 million to settle federal charges that Countrywide's loan-servicing operations had deceived homeowners who were behind on their payments into paying wildly inflated fees. In May 2011 Bank of America reached a $20 million settlement of Justice Department charges that Countrywide had ***wrongfully foreclosed on active duty members of the armed forces*** without first obtaining required court orders. And in December 2011 Bank of America agreed to pay $335 million to settle charges that Countrywide had ***discriminated against minority customers*** by charging them higher fees and interest rates during the housing boom.

86. In December 2010 Bank of America also agreed to pay a total of $137.3 million in restitution to federal and state agencies for the participation of its securities unit in an alleged conspiracy to rig bids in the municipal bond derivatives market. In January 2011, Bank of America agreed to pay $2.8 billion to Fannie Mae and Freddie Mac to settle charges that it sold faulty loans to the housing finance agencies.

87. Bank of America was one of the five large mortgage servicers that in February 2012 agreed to a $25 billion settlement with the federal government and state attorneys general to resolve allegations of loan-servicing and foreclosure abuses. An independent monitor set up to oversee the settlement reported in August 2012 that Bank of America had not yet completed any modifications of first-

lien mortgages or any refinancings. The New York Attorney General later sued Bank of America for breaching the terms of the foreclosure settlement.

88. In September 2012, Bank of America settled federal allegations that it discriminated against recipients of disability income. In January 2013, Bank of America was one of ten major lenders that agreed to pay a total of $48.5 billion to resolve claims of foreclosure abuses. At the same time, Bank of America by itself agreed to pay $10.3 billion to Fannie Mae to settle a new lawsuit concerning the bank's sale of faulty mortgages to the agency. In April 2013 the National Credit Union Administration announced that Bank of America had agreed to pay $165 million to settle claims relating to losses from the purchases of residential mortgage-backed securities. In May 2013, Bank of America agreed to pay $1.7 billion to MBIA to settle a long-running lawsuit in which the bond insurer had sued Countrywide for misleading it about the quality of mortgages packaged into securities that MBIA agreed to insure. In August 2013, the Justice Department filed a civil suit charging Bank of America and its Merrill Lynch unit of defrauding investors by making misleading statements about the safety of $850 million in mortgage- backed securities sold in 2008. In December 2013, Freddie Mac announced that Bank of America had agreed to pay $404 million to settle claims by the mortgage agency that the bank had sold it hundreds of defective home loans.

89. In December 2013, the SEC announced Bank of America would pay $131.8 million to settle allegations that Merrill Lynch had misled investors about collateralized debt obligations. In March 2014 the Federal Housing Finance Agency announced that Bank of America would pay $9.3 billion to settle the case involving

the sale of deficient mortgage-backed securities to Fannie Mae and Freddie Mac. In April 2014 the U.S. Consumer Financial Protection Bureau ordered Bank of America to pay $727 million to compensate consumers harmed by deceptive marketing of credit card add-on products. In August 2014 Bank of America agreed to a $16.65 billion settlement with the Justice Department the following month to resolve federal and state claims relating to the practices of Merrill Lynch and Countrywide in the run-up to the financial meltdown. In May 2015, the Federal Reserve fined Bank of America $205 million for "unsafe and unsound" practices relating to foreign exchange markets. In June 2016, the SEC announced that Merrill Lynch would pay $415 million to settle allegations that ***it misused client cash to engage in trading for the company's benefit.***

2. Credit Suisse Group AG

90. Defendant Credit Suisse Group AG ("Credit Suisse") is a large international integrated financial enterprise with an investment banking unit (Credit Suisse First Boston — "CSFB").

91. Credit Suisse, including its CSFB investment banking unit, has a long past record of improper and illegal conduct that has been so widespread, so constant and so serious as to create substantial doubt as to whether or not that entity is committed to honest, ethical and legally compliant behavior.

92. While not every lawsuit is well-founded and "settlements" always disclaim wrongdoing, this pervasive track record of alleged dishonest and illegal acts, occurring consistently over a 30-plus year period, which resulted in billions in fines and damages settlements, as well as huge losses to Credit Suisse's

shareholders should have been reviewed and analyzed by Bayer's Supervisors and Managers and resulted in the hiring of a more competent, more honest and more ethical bank to represent or protect Bayer, especially with respect to conducting independent thorough due diligence.

93. Credit Suisse, has in recent years been caught up in a variety of scandals involving its role in helping wealthy U.S. and German customers evade taxes, and apparent violations of U.S. laws prohibiting dealings with countries such as Iran and Sudan, and in selling toxic subprime mortgage securities to investors. ***In 2014 it pleaded guilty to a federal criminal charge related to the tax evasion issue and was forced to pay a penalty of $2.6 billion. In January 2017 Credit Suisse agreed to pay $5.28 billion to settle a Justice Department case involving its sale of toxic mortgage-backed securities during the financial crisis.***

94. In the mid-1990s, Credit Suisse was approached by relatives of Holocaust victims who had been unable to access assets held by the bank for decades. There were also charges that the banks profited by receiving deposits of funds that had been looted by the Nazis. In 1998, the banks including Credit Suisse agreed to pay a total of $1.25 billion in restitution. The judge in the case later accused the banks of stonewalling in paying out the settlement.

95. Credit Suisse (along with Bank of America) was one of the banks sued for its role in the 1994 bankruptcy of California's Orange County. In 1998 Credit Suisse agreed to pay $870,000 to settle SEC charges of having misled investors in Orange County bonds and then settled a suit brought against it by the county for $52.5 million.

96. In 1999, Japan's Financial Supervisory Agency revoked the business license of a Credit Suisse unit after investigating the firm for using derivatives transactions to help companies conceal losses — and for impeding that investigation by destroying evidence. ***The latter also led to a criminal conviction in a Japanese court*** and a $4 million fine by Britain's Financial Services Authority.

97. In 2000, CSFB acquired investment house Donaldson, Lufkin & Jenrette, the leading U.S. trader of junk bonds without doing adequate due diligence. CSFB was accused of wrongdoing over the way in which it allocated shares of initial public offerings of tech stocks. In 2002 the SEC announced that the firm would pay $100 million to settle allegations that it charged inflated commissions to customers for shares of "hot" IPOs. Industry regulator NASD later fined and suspended two CSFB executives for failing to prevent those practices. In 2003, a CSFB executive who handled high-profile IPOs during the dot.com boom was charged by NASD with conflicts of interest between his research and his investment banking activities. NASD later permanently banned him from the securities industry. Also in 2003, CSFB was one of ten major investment firms that agreed to pay a total of $1.4 billion in penalties, disgorgement and investor education spending to settle federal and state charges involving conflicts of interest between their research and investment banking activities. CSFB's share was $200 million.

98. In 2005, CSFB agreed to pay $12.5 million to settle a lawsuit brought by investors against it and other investment banks for their role in helping World Com sell bonds to the public prior to its collapse amid an accounting scandal.

99. In 2004, NASD, fined Credit Suisse and ordered $600,000 in restitution for failing to provide customers the best price in an initial public offering. In 2006, NASD fined Credit Suisse $225,000 for numerous violations of research analyst conflict of interest rules. In 2007 the Financial Services Authority fined Credit Suisse $1.75 million for failing to provide accurate and timely transaction reports.

100. In 2008, Credit Suisse agreed to pay $172.5 million euros to settle litigation relating to its dealings with the dairy company Parmalat, which had collapsed five years earlier in Italy's largest bankruptcy case. That same year it was fined $5.6 million by the Financial Services Authority for management's failure to recognize that the firm's traders had mispriced asset-backed securities. In December 2014 FINRA fined Credit Suisse Securities $5 million as part of a case against ten investment banks for allowing their stock analysts to solicit business and offer favorable research coverage in connection with a planned initial public offering of Toys R Us in 2010.

101. In 2009, FINRA fined Credit Suisse Securities $275,000 for failing to comply with the 2003 Global Research Analyst Settlement. Later that year, Credit Suisse had to agree to pay $536 million and enter into a deferred prosecution agreement to settle accusations by U.S. government and New York State authorities that it violated laws prohibiting dealings with customers in countries such as Iran and Sudan. The charges alleged that the bank altered wire transfers to remove names that appeared on official lists of banned entities.

102. In February 2016, the SEC announced that Credit Suisse would pay $84.3 million to the agency and the New York Attorney General to resolve allegations that it violated securities laws by operating alternative trading systems known as dark pools. In October 2016 the SEC announced that Credit Suisse had agreed to pay a $90 million penalty and ***admit wrongdoing*** to settle allegations that it misrepresented how it determined a key performance metric of its wealth management business.

103. In 2010, Credit Suisse's offices in Germany were searched by police and prosecutors as part of an investigation of the role the bank's employees may have played in helping clients evade taxes. The following year, four employees of Credit Suisse were indicted in U.S. federal court on charges of providing banking services designed to enable tax evasion. Credit Suisse later disclosed that it was being investigated by U.S. authorities for such activity. In September 2011 Credit Suisse agreed to pay German authorities 150 million euros to put an end to an investigation of whether it helped clients conceal assets.

104. In 2011 FINRA fined Credit Suisse Securities $4.5 million for abuses, including the misrepresentation of delinquency rates, relating to the sale of subprime mortgage securities, and later added another fine of $1.75 million for failing to properly supervise short sales. That same year, the Federal Housing Finance Agency sued Credit Suisse and other firms for abuses in the sale of mortgage-backed securities to Fannie Mae and Freddie Mac. In 2014 Credit Suisse agreed to pay $885 million to settle the case. And the Financial Services Authority

imposed a fine of $5.95 million for failing to exercise proper controls in the sale of complex financial instruments known as structured capital at risk products.

105. In February 2012 federal prosecutors brought ***criminal charges*** against three former Credit Suisse investment bankers and traders for inflating the value of subprime mortgage securities during 2007 and 2008 in a scheme to increase their year-end bonuses. Two of the traders, David Higgs and Salmaan Siddiqui, each pleaded guilty to one count of conspiracy to falsify records and commit wire fraud. In November 2012 the SEC announced that Credit Suisse Securities would pay $120 million to settle charges of misleading investors in the sale of mortgage-backed securities; specifically, it was charged with failing to tell investors of the fees it received from mortgage originators when packing delinquent loans into the securities.

106. In February 2014 the SEC announced that Credit Suisse would pay $196 million and admit wrongdoing to settle charges that it had provided cross-border brokerage and investment advisory services to U.S. clients without first registering with the agency. That same month, Credit Suisse's woes on the tax evasion issue escalated as a lengthy report by a Senate investigative committee provided extensive details regarding ways in which the bank allegedly helped wealthy U.S. customers evade taxes. In May 2014 the Justice Department announced that Credit Suisse would plead guilty to criminal charges of conspiring to aid tax evasion and would pay penalties of $2.6 billion.

107. As to both Bank of America and Credit Suisse, this long track record of wrongdoing was not confined to the distant past. Yet the Supervisors and Managers

did nothing and allowed these tainted banks of dubious integrity to continue to represent and protect Bayer despite their long track record of betrayal of the trust of others and violating their duties under the securities and corporate laws of the United States and other countries.

108. The past record of behavior and performance of these two corporate financial enterprises involved not only alleged breaches of law but breaches of trust — ***alleged acts of dishonesty*** — to enrich themselves at the expense of those to whom they owed duties of care, loyalty or honesty. That track record was relevant as to whether or not BofA and Credit Suisse's conduct over time had evidenced the kind of commitment, not only to honest and lawful behavior, but the kind of high ethical standards Bayer has held itself and those who supply it with services to and that would assure strict adherence to these standards, so as to protect Bayer and its assets by assuring independent objective careful due diligence in connection with the Acquisition.

F. Law Firm Defendants

1. Sullivan & Cromwell LLP

109. Sullivan & Cromwell LLP is a New York City-based law firm with over 800 lawyers in 13 offices worldwide generating yearly revenues over $1.5 billion. Sullivan & Cromwell is a worldwide partnership headquartered in New York with offices in Los Angeles and Palo Alto, California, Brussels, Belgium, Frankfort Germany, London, England, and Paris, France. Many Sullivan & Cromwell partners reside in and are citizens of New York, California, Belgium, Germany, England, and France.

2. Linklaters LLP

110. Linklaters is a large international law firm headquartered in London England with a large New York office and offices in Belgium, Germany, France, and Luxembourg. Many of Linklaters's partners reside in and are citizens of New York, Belgium, Germany, England, France, and Luxembourg. Linklaters has over 2,500 lawyers, revenues of close to $2 billion per year and profit per partner of about $1.7 million.

111. Sullivan & Cromwell and Linklaters acted as advisors to Bayer and like the Banks owed their duties of care, prudence and loyalty to Bayer — independent of their relationship and working with the Supervisors and Managers. The Law Firms were in a position to influence the Supervisors and Managers to act to the disadvantage of Bayer and did so in permitting and facilitating the Acquisition, including failing to perform proper due diligence to protect Bayer and its assets.

112. The Supervisors and Managers have publicly asserted that the Law Firms participated in the Monsanto due diligence and assessed the risk of the Roundup cancer lawsuits as low, and that after the fact have continued to be advised by these Law Firms that their conduct in connection with the Acquisition was proper and legally compliant, thus waiving the attorney client privilege if one existed and disqualifying them from advising them further with respect to this suit.

113. These two Law Firms have been intimately involved in the Monsanto Acquisition and the Supervisors' and Managers' efforts to cover up, conceal, and justify their mistakes and negligence and avoid being held accountable to Bayer by

its shareholders. In an April 2019 letter to Bayer shareholders Wenning and Baumann stated in defense of their actions regarding Monsanto:

> … [T]he Board of Management assessed the legal risks in connection with the use of Glyphosate as low. ***When doing so, it also based its assessment on a detailed expert opinion prepared and updated regularly by a renowned U.S. law firm*** [*i.e.*, Sullivan & Cromwell] ***before the merger agreement was entered into. Compliance of the Board of Management with its legal duties has been confirmed by an external expert opinion by the renowned international law firm Linklaters which — after an extensive review — came to the firm conclusion that the members of the Board of Management had complied with their legal duties in every respect with regard to the acquisition of Monsanto, and in particular with regard to the Board of Management's risk assessment of Monsanto's Glyphosate-related business.***

G. Christian Strenger

114. Defendant Christian Strenger is a Bayer shareholder and corporate governance advocate/activist, who is frequently publicly critical of corporate management and governance at large German corporations. He makes himself freely available to the press, seeking publicity and being interviewed and quoted, as he often is. He is a self-proclaimed corporate governance expert. He has been critical of Bayer Supervisors and Managers in the past. He is in a position to influence Bayer's Supervisors and Managers.

115. In April 2019, Strenger sought shareholder approval of a special audit resolution related to the Monsanto Acquisition. Bayer's Supervisors and Managers vehemently opposed this resolution. It was rejected getting only 26% of the votes. In defeating the resolution, Bayer's Supervisors stated their opposition to any special audit as completely unnecessary and possibly harmful. Strenger did not

renew his request for a special audit in connection with the upcoming April 2020 Annual meeting. As of February 2020, it was a dead letter.

116. In August 2019, Strenger announced that he was "preparing an application for a special audit in court," which the German Stock Corporation Act requires for shareholders with shares worth €100,000, "but [he had] not yet reached the full number." Strenger never filed for a court-ordered special audit as required by law.

117. On February 7, 2020 Strenger met with Plaintiff Haussmann's counsel and investigators ("Haussmann's Team"). At the meeting, Haussmann's Team informed Strenger, in confidence and with an express understanding of non-disclosure, that the proposed Haussmann derivative suit had been thoroughly investigated, and that a complaint had been drafted and would be filed in the next few weeks.

118. Shortly after this February 7, 2020 meeting, Strenger went to Bayer and divulged this information. In order to satisfy his own ego, boost his public standing and for his own personal, economic gain, Strenger betrayed obligations and an express promise of confidentiality and non-communication with Bayer. He went and tipped Bayer off to the anticipated filing of this derivative complaint. He directly or indirectly shared a copy of Plaintiff Haussmann's draft complaint with Bayer insiders and made a deal whereby Bayer's Supervisors would agree to his defeated and discarded year-old request for a special audit, ***give him prominent public, personal credit*** and pay him compensation later. Then Strenger and Bayer's Supervisors and Managers agreed that they would join forces to try to block Plaintiff

Haussmann's independent, meritorious derivative suit seeking ***damages*** from the insured Supervisors and Managers and their co-defendants. This conduct disadvantaged and damaged Bayer in violation of Section 117 of the German Stock Corporation Act.

III. JURISDICTION, NON-REMOVABILITY AND VENUE

119. This Court has subject matter jurisdiction over the claims pursuant to New York Constitution Article VI, Section 7(a).

120. Venue is permitted and proper in this Court under Section 503 of the New York Civil Practice Law and Rules because a number of the Defendants reside in New York County, and because the acts and transactions in connection with the wrongdoing complained of, including the Acquisition, occurred in New York County, and for the further reasons set forth below in Section VII.D).

121. The substantive claims made are based on German law to be entered in New York Court via New York's procedural rules. There are no claims asserted under U.S. federal law. No individual recovery is sought by Plaintiff who sues solely derivatively on behalf of the corporate entity and true plaintiff — Bayer AG.

122. This action is not removable to federal court for many reasons, including:

(a) There is no complete diversity of citizenship between Plaintiff and Defendants. In any event, removal would be improper under 28 U.S.C. § 1441(b)(2) because certain defendants, including the Law Firm Defendants and BofA Securities, Inc., are citizens of New York.

(b) This action is not a class action and is thus outside the purview of the Class Action Fairness Act of 2005. It does not seek any relief for them individually or collectively as a class. The action is an entirely derivative one for Bayer. It does not allege fraud in connection with the purchase or sale of Bayer securities.

(c) Plaintiff does not assert any claims under federal law or regulation, including the federal securities laws and to the extent any claim or factual assertion herein may be construed as stating a federal claim, Plaintiff disavows that claim.

123. The Court has personal jurisdiction over each Defendant under Section 302 of the New York Civil Practice Law and Rules. Every Defendant sued is fluent in English and has had systematic, significant and ongoing contact with New York for their own professional and economic benefit, gain, and advantage separate and apart from their extensive New York and U.S. contacts in relation to their position with Bayer. The Court has personal jurisdiction over all Defendants not residing in New York, as each meets the statutory definition of a "person," and these claims arise from the actions of each "directly or by an agent" in that each Defendant regularly transacted and/or solicited business in New York and/or derived substantial revenue from goods used or consumed or services rendered in New York, and/or contracted to supply goods or services in New York and/or caused injury by an act or omission in New York and/or caused injury in New York by an act or omission outside New York.

IV. THE GERMAN STOCK CORPORATION ACT

124. In order to protect Bayer and its shareholders from damage due to the lack of due care or prudence of its Supervisors, Managers and others whose positions allow them to influence Supervisors and Managers and thus Bayer, the German Stock Corporation Act imposes duties of due care and prudence on such persons, and provides for joint and several liability on those whose lack of due care and prudence or failure to obtain the necessary information on which to base corporate decisions, damages Bayer.

125. The following substantive provisions of the German Stock Corporation Act control this litigation and provide the legal basis for Defendants' liability. The German Stock Corporation Act provides:

> (A) Section 76 Leadership of the Stock Corporation
>
> (1) ***The management board shall be directly responsible for the management of the company***.
> (B) **Section 77 Management**
>
> (1) If the management board comprises more than one person, the members of the management board **shall manage the company jointly**.
>
> **(C) Section 93 Duty of Care and Responsibility of Members of the Management Board**
>
> **(1) In conducting business, the members of the management board shall employ the care of a diligent and conscientious manager.** They shall not be deemed to have violated the aforementioned duty if, at the time of taking the entrepreneurial decision, they had **good reason to assume that they were acting on the basis of adequate information** for the benefit of the company.
>
> * * *
>
> **(2) Members of the management board who violate their duties shall be jointly and severally liable to the company for any**

resulting damage. They shall bear the burden of proof in the event of a dispute as to whether or not they have employed the care of a diligent and conscientious manager. If the Company takes out an insurance covering the risks of a member of the management board ... such insurance shall provide for a deductible ...

* * *

(4) Liability for damages shall not be precluded by the fact that the supervisory board has consented to the act.

(D) Section 111 Duties and Rights of the Supervisory Board

(1) The supervisory board shall supervise the management of the company.

* * *

(5) Members of the supervisory board may not confer their responsibilities on other persons.

(E) Section 116 Duty of Care and Responsibility of Members of the Supervisory Board

Section 93 on the duty of care and responsibility of members of the management board shall ..., apply accordingly to the duty of care and responsibility of the members of the supervisory board.

(F) Section 117 Exertion of Influence on the Company

(1) Any person who, by exerting his influence on the company, induces a member of the management board or the supervisory board, act to the disadvantage of the company or its shareholders shall be liable to the company for any resulting damage insofar as they have suffered damage in addition to any loss incurred as a result of the damage to the company.

(2) In addition to such person, the members of the management board and the supervisory board shall be jointly and severally liable if they have acted in violation of their duties. They shall bear the burden of proof in the event of a dispute as to whether or not they have employed the care of a diligent and conscientious manner ... Liability for damages shall not be precluded by the fact that the supervisory board has consented to the act.

(3) In addition to such person, any person who has willfully caused undue influence to be exerted shall also be jointly and

> **severally liable to the extent that he has obtained an advantage from the detrimental act.**
>
> **(G) Section 53 Damage Claims in Case of Post-Formation Acquisition**
>
> §§ 46, 47 and 49 to 51 regarding damage claims of the company shall apply accordingly to post-formation acquisitions. With respect to such provisions the members of the management board and the supervisory board shall be substituted for the founders. ***They shall be required to employ the care of a diligent and conscientious manager.***

126. The corporate governance provisions of Section 161 of the German Stock Corporation Act also apply and control, as the Defendants were bound by Section 161.

V. DUTIES OF DEFENDANTS TO BAYER AND THEIR INVOLVEMENT IN THE FAILED MONSANTO ACQUISITION

127. Each Defendant had a duty to comply with German corporate law, including to act with care, prudence and loyalty to Bayer — to employ the care of diligent and conscientious managers to protect Bayer and its interests, taking or permitting to be taken corporate action only when the Supervisors had "good reason" to believe they had adequate information to protect Bayer and its interests with respect to any significant corporate action and to refrain from using their influence over the Supervisors or Managers to induce or cause any of them to act to the disadvantage of Bayer or with shareholders. Each Defendant violated his, her or its duties as alleged herein.

A. The Bayer Supervisors and Managers' Involvement in the Monsanto Acquisition

1. The Bayer Supervisors and Managers Directly Participated in the Monsanto Acquisition

128. The members of the Supervisory Board of a German corporation have much more "hands-on" involvement in the "management" of the business operations of the corporation they supervise than is typical of directors in a United States domestic corporation. The members of the Bayer Supervisory Board named were each intimately involved in the Monsanto Acquisition at critical points from May 2016 to the date the Acquisition closed in June 2018. Had they properly discharged their duties they could and would have prevented the Acquisition and avoided the damage it has caused Bayer and its shareholders. They have supported efforts to cover up the mistakes made in connection with the Acquisition, to erect defenses to prevent the assertions of those meritorious claims, and falsified Bayer's financial statements by refusing to take billions of required write-downs or write-offs due to Roundup cancer lawsuits, and the implied value of the Monsanto Acquisition goodwill of some $40 million. The details below come from Bayer's 2016–2018 Annual Reports and confirm that during 2016–2018 the Supervisory Board was involved in every decision of importance to the company, and in particular the Monsanto Acquisition.

129. During 2016, the Supervisory Board "monitored the conduct of the company's business by the Board of Management on a regular basis" with the aid of "detailed written and oral reports received from the Board of Management." In addition, the Chairman of the Supervisory Board (Wenning) "maintained a constant

exchange of information with the respective Chairman of the Board of Management and with the other Management Board members. "In this way the Supervisory Board was kept ***continuously informed*** about the company's intended business strategy, corporate planning (including financial, investment and human resources planning), earnings performance, the state of the business and the situation in the company and the Group as a whole."

130. The Supervisory Board met five times during 2016. The deliberations of the Supervisory Board focused on questions relating to Bayer's strategy, portfolio and business activities. The discussions at the respective meetings in 2016 centered on the Monsanto Acquisition. "At an extraordinary meeting in May 2016, the Supervisory Board dealt in detail with the planned acquisition of Monsanto, including the associated financing. Following up on deliberations at earlier Supervisory Board meetings, the strategic aspects of the possible acquisition and the question of Monsanto's valuation were discussed at length. At its September [2016] meeting, the Supervisory Board once again dealt in detail with the acquisition of Monsanto and resolved on the final offer conditions for the acquisition. In the intervals between its meetings, the Supervisory Board was regularly informed in writing about the respective status of the planned acquisition of Monsanto. In addition to the customary reports, the Chairman of the Supervisory Board was also kept constantly informed in detail about all major developments."

131. During 2017, the Supervisory Board monitored the conduct of the company's business by the Board of Management on a regular basis with the aid of detailed written and oral reports received from the Board of Management. In

addition, "the Chairman of the Supervisory Board maintained a constant exchange of information with the Chairman of the Board of Management and with the other Management Board members." "In this way the Supervisory Board was kept continuously informed about the company's intended business strategy, corporate planning (including financial, investment and human resources planning), earnings performance, the state of the business and the situation in the company and the Group."

132. The 2017 deliberations of the Supervisory Board focused on questions relating to Bayer's strategy, portfolio, business activities and personnel issues. A "particular focus of the Supervisory Board's work was the Monsanto transaction, including the progress of the merger control proceedings, which were reported on extensively at several meetings. Between the meetings of the Supervisory Board, this issue was also the subject of an extensive exchange of information between the Chairman of the Supervisory Board and the Chairman of the Board of Management."

133. The Supervisory Board met seven times in 2018 and where necessary, the Supervisory Board met without the Board of Management or with only the Chairman of the Board of Management present. The 2018 deliberations of the Supervisory Board focused on questions relating to Bayer's strategy, portfolio, business activities and personnel matters. "The work of the Supervisory Board focused particularly on two main areas that were each addressed at several meetings: First, the Monsanto transaction, including the progress of the merger control proceedings, the performance of the Monsanto business, the related risks

and the integration of the business. Between the meetings of the Supervisory Board, these issues were also the subject of an extensive dialogue between the Chairman of the Supervisory Board and the Chairman of the Board of Management."

134. At its February 2018 meeting, the Supervisory Board dealt with the status of the merger control proceedings relating to the Monsanto acquisition and the Group's risk management system. At an extraordinary meeting convened in April, the Supervisory Board looked in detail at the required divestment of parts of the Crop Science business in connection with the merger control proceedings for the Monsanto transaction. At its September 2018 meeting, the Supervisory Board discussed the status of the glyphosate-related litigations in detail.

2. The Ever-Present Risks of Any Corporate Acquisition Were Greatly Exacerbated by the Special Circumstances Present Here

135. In past decades acquisitions have become a means for corporate managers to grow the size of their company, thus increasing the size of the corporate empire they oversee and/or manage, which can justify increased compensation, bonuses, stock options and other economic benefits and perks to them in their corporate offices. Mergers and acquisitions are also a huge source of revenue and profit for investment banks who are supposed to have expertise in corporate finance, as well as cross-business sector knowledge such that they are able to investigate, evaluate, structure and then carry out such transactions. ***Because of these economic incentives, there are a large number of mergers and acquisitions. However, many of them do not succeed.*** Competent and experienced investment bankers, law firms and corporate sophisticates likely know

from education, training and experience that there have been a number of major acquisition failures in recent years which have resulted in substantial destruction of shareholder value.

136. Any significant acquisition is a major corporate event and poses significant risks to the acquirer. Because of the risk inherent in any major acquisition it is incumbent upon the supervisors and managers of the corporate entity making the acquisition to become fully informed concerning the potential transaction and assure ***that in depth, objective and independent*** due diligence of the entity to be acquired be conducted so that the potential transaction can be evaluated consistent with their duties of prudence, care, and inquiry and then act on an informed basis.

137. According to academic studies, only 35% of acquisitions succeed in achieving their stated goals and increase shareholder value, while over 60% fail to do so, often failing disastrously, resulting in billions in losses to, and even the bankruptcy of, the acquiring entity. The primary cause of the failure of acquisitions is the failure of the acquiring entity, and the investment banks and law firms working with it to conduct adequate, independent, objective due diligence into the risks posed by the to be acquired entities' business, operations and finances, including litigation — individual and "mass-tort" cases involving alleged defects in or adverse health impacts of the acquired entity's products or operations.

138. Any significant corporate merger can be a "bet your life" event for the acquiring entity. Mergers and acquisitions are high risk events which require due care by the supervisors in the exercise of their duties and that due diligence is done

to protect the acquiring entity, the assets and the shareholder community. But these generic risks present in any merger can be exacerbated by other specific factors in any given situation. There are certain factors that can increase significantly the risks of a merger or acquisition. ***Virtually every one of these exacerbating risk factors were present in the Bayer acquisition of Monsanto. They were "red flag" warnings to Defendants of the need for scrupulous and independent due diligence into Monsanto, especially given its notoriously bad corporate record/reputation.***

139. First among these exacerbating factors is the size of the acquisition and the consideration paid — cash versus stock. The larger the size of the acquisition, *i.e.*, the larger the consideration paid by the acquiring company, the greater the risk to the acquiring company. Payment in cash also exacerbates risk. In that regard this Acquisition could hardly have been riskier. This was the largest and riskiest acquisition in the history of Bayer — in fact in German corporate history — an all-cash acquisition that would require Bayer to take on over $50 billion in debt to pass for it. Another exacerbating risk factor is where, as here, the acquisition offer is "unsolicited," the acquirer does not have the benefit of any pre-offer due diligence conversations, meetings *etc*. with the target to gain insight into the business operation's problems. In solicited or "friendly" deals the acquirer has a much better opportunity to do pre-acquisition offer due diligence of the target.

140. Another factor that can exacerbate the risk inherent in any acquisition is where the acquisition is of a competitor and thus requires antitrust reviews by regulators in several jurisdictions, which can indefinitely delay the progress of the

acquisition ***in an ever changing business and legal environment***, and restrict the ability of the acquiring entity to gain access to internal business information of the to be acquired competitor (restricting its ability to conduct due diligence). Here, Bayer and Monsanto were direct competitors and antitrust regulators were especially strict, forcing Bayer to sign a "Keep Separate" agreement that severely restricted Bayer's access to Monsanto's business operations and internal corporate data before any closing.

141. Another exacerbating risk factor is what is called cross-border/cultural acquisition. As finance has globalized and more corporations operate internationally there have been more mergers whereby a corporation organized and operating primarily in one country with a certain type of business culture and legal system acquires another corporation operating primarily in a different business culture and legal culture. These cross-cultural/border acquisitions are associated with a large number of failures.

142. Corporations, especially large German corporations, have a poor track record in cross-cultural/border acquisitions, especially involving competitors where the ability to conduct due diligence is restricted. German corporate history is littered with failed mergers which were known to the Supervisors, Managers and Banks and highlighted the need for care and extensive, objective due diligence. For example:

- In 2008, Allianz, a large German insurer, acquired Dresdner Bank. The acquisition failed, causing Allianz $2.5 billion in losses and then a $10 billion write off when it later sold off Dresdner Bank.

- In 1998 Daimler Benz acquired Chrysler for $36–40 billion. Later it sold off Chrysler taking a $35 billion loss. This acquisition is one of the worst acquisition disasters in history. The failure is attributed to cross-border/cultural differences and inadequate due diligence, in part due to restrictions on precluding due diligence because of antitrust restrictions which limited Daimler's ability to conduct due diligence on Chrysler.
- In 1999 Deutsche Bank acquired a competitor — Bankers Trust of New York — in a multi-billion-dollar cross-cultural/border acquisition. It later wrote off billions of dollars due to that failed acquisition resulting in a $6–7 billion loss.
- In 1994 BMW acquired Rover — an English company — in a cross-cultural/border merger for over $1 billion — at the time a very large deal. The acquisition was a failure. BMW later sold its interest in Rover for a pittance. Rover then went bankrupt.
- In 1986 Volkswagen AG acquired a controlling interest in the Spanish automobile manufacturer SEAT S.A. — a competitor. The acquisition failed due to a lack of adequate due diligence by Volkswagen, which lost over $2.2 billion on the deal — a huge sum at the time — losses that endangered Volkswagen's ability to survive.

143. Cross-border/cultural acquisitions have proven to be difficult and risky to corporations outside Germany as well. For example:

- In 2007, Royal Bank of Scotland acquired a Dutch competitor ABN/AMRO a deal described as a "horrendously damaging acquisition." RBS all but

failed after this acquisition, lost billions and billions and had to be bailed out by Scotland twice.

- In 2011-2012 Hewlett Packard acquired Autonomy in a cross-border/cultural acquisition for $111 billion. Hewlett Packard later wrote off $9 billion from its disastrous acquisition due in large part to inadequate due diligence.
- Toshiba acquired Westinghouse — a competitor — in a cross-cultural/border acquisition for $4.2 billion. The acquisition was a failure. Toshiba sold Westinghouse, wrote off $6.3 billion and almost went bankrupt.
- HSBC of England acquired U.S.-based Household Finance — in a $15 billion cross-cultural/border deal. The acquisition was a failure and HSBC wrote it off to the tune of $17 billion.
- In 2000 France Telecom acquired Orange, an England competitor in a cross-cultural/border acquisition for $45 billion, suffering billions of dollars in losses as that acquisition failed.

144. Even when large acquisitions are not plagued by cross-cultural/border issues like the Monsanto Acquisition was they still often fail due to inadequate due diligence.

- In 2000 Time Warner acquired AOL for $111 billion. The acquisition was a disastrous failure due to inadequate due diligence. Time Warner suffered $100 billion in write offs and losses, almost going bankrupt before getting rid of AOL.

- In 2004 HP acquired Compac Computer for $25 billion – the largest competitor industry merger to date. The acquisition was a disaster because of inadequate due diligence resulting in huge losses – the "dumbest deal of the decade."
- In 2014 Microsoft acquired Nokia for $7.9 billion and within a few years wrote off $7.6 billion due to that disastrous acquisition —caused by inadequate due diligence.
- In 2007 Microsoft acquired Quantive for $6.3 billion and then wrote off $6 billion due to that failed acquisition also caused by inadequate due diligence.
- In 2006 Alcatel acquired Lucent for $13.4 billion. The acquisition was a huge failure due to inadequate due diligence. Alcatel suffered massive losses and had to be sold (CHECK).
- In 2005 Sprint acquired Nextel for $36 billion. The acquisition was a huge disaster due to inadequate due diligence.

145. In addition to this record of failed mergers of ***other*** companies, the Bayer Supervisors were, at the same time as they authorized Baumann, Condon and Wenning to acquire Monsanto, ***confronting the failure of the most recent Baumann/Wenning led cross-border/cultural all-cash Acquisition of United States-based Merck's consumer products business for $14 billion in 2014.*** That Baumann/Wenning led acquisition was a multibillion-dollar failure unfolding internally at Bayer at the same time the Supervisors permitted Baumann and Wenning to set out on a ***much larger*** ($66 billion) and ***much riskier*** cross-

cultural/border deal — and this time of a ***highly controversial scandal-ridden company whose main herbicide product the WHO and the California EPA said was a "known" or "probable human carcinogen***."

3. The Failure of Bayer's 2014 Merck Acquisition Was a Major "Red Flag" for the Supervisors and Managers

146. The Supervisors own recent experience with Bayer's $14 billion all-cash cross-border/cultural acquisition of Merck's consumer products business in the United States in 2014 was a major warning calling for enhanced caution in the Monsanto Acquisition. In 2014 — at the urging of Wenning and Baumann — Bayer undertook to acquire the over-the-counter drug business of Merck — a large US-based corporation. The $14.2 billion all-cash acquisition was the largest acquisition in Bayer's history up to that time. At Wenning's insistence his protégé Baumann was put in charge of the Merck acquisition, including the due diligence.

147. The Merck acquisition was failing badly in 2016–2018 even as Bayer, *i.e.*, Wenning, Baumann, Condon and the Supervisors were trying to acquire Monsanto. Worse, the Merck Acquisition failed for lack of adequate due diligence conducted or supervised by Baumann and Wenning. Despite this failure due to inadequate due diligence, the Supervisors stressed the supposed success of this acquisition as justifying the Monsanto Acquisition. However, in December 2018 after the Monsanto Acquisition had closed in September 2018 and then crashed as the huge Roundup cancer verdicts came in, the Supervisors disclosed the failure of the Merck acquisition when they announced a major corporate restructuring, involving Merck, essentially writing off that acquisition, selling off much of the Merck business and firing 10% of Bayer's personnel — 12,000 employees — taking

a $2-4 billion write off of Merck's consumer products business assets. Baumann and Wenning have admitted that the due diligence in the Merck acquisition was deficient — that information regarding Merck's products was not nearly as good as presented due to circumstances that limited Bayer's ability to conduct due diligence into Merck before closing the Acquisition. ***Despite the Merck failure the Supervisors accepted the Wenning/Baumann rushed proposal to try to acquire after Monsanto where they would again be in charge of conducting or overseeing the due diligence — only this time on the much larger and much riskier Monsanto acquisition they were pushing.***

148. Just as was the case when Baumann, Wenning and the Supervisors announced the Monsanto Acquisition in 2016, when Bayer announced Bayer's acquisition of Merck in 2014 they assured Bayer's stockholders that the Merck acquisition "***significantly enhances*** Bayer's over-the-counter (OTC) business across multiple therapeutic categories and geographies and will give Bayer the global number two position in non-prescription medication." They also assured that "Bayer also expects the integration of the businesses to generate significant cost synergies … [and] ***to yield a positive contribution of 2 percent to core earnings per share already in the first year after closing." None of this was proving true by 2016/2017 when the Supervisors approved Wenning and Baumann pushing forward with the Monsanto Acquisition and repeatedly cited the success of the Merck acquisition as supporting the wisdom and benefits of the Monsanto Acquisition.***

149. Even ***before*** the due diligence into Monsanto had been completed the Baumann/Wenning led Merck acquisition had been reported as being in trouble — underperforming due to the inability of Wenning and Baumann to conduct proper due diligence.

> Bayer AG's failure to identify weaknesses in Merck & Co.'s over the counter drug business before it bought it in 2014 ***sets a problematic precedent for its latest acquisition, said an M&A expert.***
>
> ***Due diligence errors in assessing Merck & Co.'s over the counter business raise questions about the vetting that Bayer has done on [the] Monsanto deal, according to Scott Moeller, a professor of finance at Cass Business School in London and director of the M&A Research Centre.***
>
> "There is no excuse for not doing a proper due diligence, especially if it is not an unsolicited bid," said Mr. Moeller.
>
> After an unsolicited bid or hostile takeover, the acquiring company may find it challenging to assess the quality of the asset it wants to buy, as the target company might decide to not release information needed to perform adequate due diligence.
>
> "In an unsolicited deal, you don't get access to everything," Mr. Moeller said …
>
> * * *
>
> ***"The [Merck] business that was expected to be handed over had a top line of around $100 million lower than what was actually presented during due diligence," Mr. Baumann said.***
>
> ***He also admitted the "Merck business's new product development efforts were "not nearly as good as it was presented," He added that there was "limited ability to do due diligence" on Bayer's part.***
>
> * * *
>
> ***In Bayer's case, the misstep is amplified since the company promotes its record of acquisitions and successful integrations to shareholders.***
>
> ***Mr. Moeller said he expects Bayer to have learnt from this incident. "One would hope that they are applying that knowledge to what***

> ***they are doing today," Mr. Moeller said. Bayer did not respond to a request for comment.***

Nina Trentmann, *Bayer's Diligence Failure in Merck Deal Haunts Its Monsanto Purchase*, THE WALL STREET JOURNAL, Sept. 21, 2016.

150. After the failure of the Monsanto Acquisition became apparent in the fall of 2018, the Merck acquisition loomed large — a significant warning that had been ignored. In late 2018 Bayer's Supervisors and Managers threw in the towel on the Merck Acquisition admitting it was a failure, writing it off:

> … [A] key reason for the shake-up announced Thursday is the unraveling of Bayer's previous big deal, its $14.2 billion acquisition of Merck & Co's consumer business in 2014. ***Bayer seems to have flunked its due diligence twice.***
>
> Bayer said it would write down the value of its consumer-health business by $2.7 billion in the fourth quarter, mainly due to brands bought from Merck …
>
> * * *
>
> ***Bayer bought the Merck business as part of a strategy to become the world's largest owner of drugstore brands, but the deal never lived up to expectations.*** **One problem was that sales turned out to be lower and product development less advanced than Bayer believed when it was sizing up the acquisition. At a 2016 investor event, Chief Executive Werner Baumann blamed a "limited ability to do due diligence in a highly competitive process."**
>
> * * *
>
> … Bayer still needs to deal with its second mess mounting lawsuits against Roundup.
>
> * * *
>
> To paraphrase Oscar Wilde, ***to lose one big deal may be regarded as a misfortune; to lose both looks like carelessness.***

Stephen Wilmot & Charley Grant, *Another Bad Deal for Bayer — The German chemical maker is cutting jobs and selling brands from $14 billion Merck acquisition*, THE WALL STREET JOURNAL, Nov. 29, 2018.

151. The failing Merck acquisition — a Wenning/Baumann pushed deal just like the Monsanto deal — was a "red flag" to Bayer's Supervisors. The very same types of promises being made by Baumann, Condon and Wenning for the Monsanto deal had been used to justify the failing Merck deal. This experience should have highlighted the heightened danger of all-cash cross-cultural/border acquisition attempts, especially where circumstances restricted due diligence, and the Supervisors should have realized that relying on Wenning and Baumann (and the Banks and Law Firms they recommended) was questionable as they had been incapable of successfully undertaking the due diligence in the Merck acquisition necessary to protect Bayer. Nonetheless the Supervisors let the Monsanto Acquisition go forward with Wenning and Baumann and Condon in charge of the due diligence necessary to protect Bayer, its assets and its shareholders.

4. The Bayer Supervisors and Managers Failed to Conduct Due Diligence Regarding the Monsanto Acquisition

152. Because of their purported business and financial expertise, experience and cross-industry knowledge, and to assure independent due diligence of acquisition targets, investment banking firms and law firms are often retained by the board on behalf of the purchasing entity to conduct the due diligence investigation necessary to protect that corporation's assets in the acquisition while acting as an advisor to the acquiring corporation. When an investment bank or law firm is retained by a corporation to act as a financial advisor in connection with the corporation making an acquisition, the investment bank ***owes its duties of prudence, care, loyalty and independence to the corporation, not to the individual interests of the members of the supervising board or the***

management, even though the banks deal with those individuals on the transaction. The corporation has a legal existence separate and apart from whoever the corporate supervisors and managers are at any given point in time.

153. The corporation's bankers and lawyers deal with its managers who have identified and are advocating the merger or acquisition at issue. Managers often have short term personal motivations and interests favoring the completion of the acquisition — especially where they are advocating the acquisition — notwithstanding risks to the corporate entity. The Supervisors must therefore exercise due care to make certain that the bankers maintain their independence when conducting due diligence on behalf of the acquiring entity — here Bayer.

154. The Supervisors and Managers of Bayer failed to assure the hiring of competent and reliable investment banks that would act independently to protect Bayer's interests and act loyally to Bayer and thus protect Bayer, and also permitted promises to be made and economic arrangements entered into with the Banks to exist in connection with the Acquisition which deprived the Banks of their independence and thus deprived Bayer of the protection entitled to under the law it needed and deserved.

155. At the recommendation of Baumann and Wenning, the Supervisors hired BofA and Credit Suisse as the primary financial advisors/investment banks to protect Bayer's interests in the Acquisition. The Bayer Supervisors knew that it was important to protect Bayer from the risks inherent in this extremely large unsolicited all-cash cross-cultural/border acquisition proposed by Bayer's management. This alone required competent, expert investment bankers be

retained to assure that independent, adequate due diligence occurred in the Monsanto Acquisition. In addition because the proposed Monsanto acquisition was an unsolicited offer to acquire a direct competitor, the Supervisors and Managers had ***no internal access to Monsanto operations or inside information and thus no way to conduct any pre-offer due diligence except as an outsider looking at public information, without having in depth discussions with Monsanto executives about Monsanto's business and legal affairs. Because Bayer and Monsanto were competitors the "Keep Separate" restrictions imposed by the antitrust regulators would make it impossible to gain access to Monsanto's business operations, internal documents and legal affairs operations until the regulators gave permission for such access — a procedure that could take many months.***

156. In addition to the undeniable Roundup Glyphosate cancer risk the Bayer Supervisors and Managers knew that Monsanto had an exceptionally controversial reputation and was previously implicated in one of the largest scandals in corporate history — DDT/Agent Orange. Monsanto herbicide product was implicated in causing cancers — including harming U.S. soldiers in Vietnam — and as a result of which Monsanto had been required to pay billions of dollars in compensation, seeing its corporate reputation forever damaged.

157. Bayer had also been involved for some time in a number of major Asbestos litigations in the U.S. According to Baumann ***"we have quite a bit of experience in U.S. products litigation."*** They were aware of the notorious prior corporate disaster involving Halliburton where it purchased Dresser Industries

without doing adequate due diligence into its asbestos litigations and ended up going bankrupt because of Dresser's asbestos litigations. The Supervisors and Managers were aware that in the U.S. mass-tort/toxic-tort litigation was widespread, and there existed a personal-injury lawsuit industry operating nationwide — with lawyers sharing cases, evidence and experts — generating billions of dollars of recoveries from corporate defendants. The Supervisors and Monsanto knew of the very significant risks posed by the U.S. tort litigation system via product-liability and personal-injury suits and that any acquisition of a company facing escalating product-liability claims in the U.S. was extremely risky as evidenced by examples of past failures.

158. Thus, in connection with the Monsanto Acquisition, Bayer was exposed to (i) the ***generic risks*** of any extremely large cash acquisition ***plus*** (ii) the known ***additional risks*** surrounding this specific acquisition and to having Wenning and Baumann, who led the failing acquisition of Merck, now ***proposing to acquire and pursuing the acquisition of the highly controversial Monsanto in the largest, riskiest acquisition in German corporate history — with them again overseeing this due diligence.***

159. All of these factors required Bayer's Supervisors to be especially vigilant in making sure that independent, competent, thorough and skeptical due diligence was performed before the Monsanto Acquisition closed, to protect Bayer, its assets, and its shareholder community. To assure such due diligence was conducted (independent of Bayer management) they had to retain independent, competent, ethical investment bankers — with proven track records of competence

and honesty — to conduct the required due diligence on behalf of and to protect Bayer. Unfortunately, they failed to do so and the Monsanto disaster occurred.

160. Because the Supervisors (and the Law Firms) permitted the retention of the Banks under a structure whereby the independence of those Banks and their incentives to do independent, skeptical due diligence was compromised from the outset, sufficient due diligence never took place and specifically the due diligence was not properly "brought down" to the June 2018 closing date as economic pressure to close the deal increased so the Banks could get the economic benefits of the Acquisition to them. Instead of being independent the investment bankers were conflicted with virtually all incentives being on the side of getting the deal completed and closed as Bayer's Managers and Wenning were pushing for. There was no reason that Bayer's Supervisors could not have required the hiring of ***independent*** bankers or others, who did not stand to pocket hundreds of millions in financing fees (but only if the deal closed) to conduct independent, skeptical and thorough due diligence into the true nature of the Roundup cancer litigations, their likelihood of success and the type of exposure that Monsanto actually had to these lawsuits in the U.S. legal environment, based on the evidence being gathered by the Plaintiff's lawyers. They failed to do so. Instead they permitted the due diligence to be overseen by Wenning, Baumann and Condon, and done by Banks with an overwhelming economic interest in the deal getting done because they were "cash out partners" who would walk away with hundreds of millions of dollars in fees if the deal was completed regardless of the Acquisition impact on Bayer and its shareholder community.

161. The best indicator of how an organization will behave, act or perform is their past record of behavior and performance, and whether or not an entity's track record shows honest, ethical and competent behavior in their own affairs and in rendering service to others. When attempting to retain competent ethical investment banker(s) to protect Bayer by doing independent thorough due diligence into Monsanto it was important in the exercise of prudence and care to obtain adequate information about and on an informed basis consider the reputation and track records of any Bank proposed by the Managers for honest and ethical behavior demonstrating a real commitment to legal compliance and ethical behavior. In addition, any such banks' prior record for conducting due diligence inadequately while evaluating the Banks in the merger/acquisition setting was a key indicator of competence and skill in such activities. ***The Supervisors did no such investigation, review, or evaluation — rather they accepted the recommendation by Baumann and Wenning without conducting such a review, analysis or evaluation.***

162. Had the Supervisors adequately investigated and evaluated the Banks to whom they were entrusting Bayer's fate they would have discovered disturbing facts about the background and prior acts and track record of the Banks. These facts on their own — and certainly in combination with the presence of the other high risk exacerbating factors regarding the Monsanto Acquisition plus the fact that the Merck Acquisition was failing due to poor pre-Acquisition due diligence into the Merck acquisition by Baumann and Wenning — should have caused the Supervisors to seek and insist on more reputable banks whose track records were not littered by

so many prior bad acts, illegal misconduct and failed due diligence as was the case with Bank of America and Credit Suisse. Even a cursory review of these two Banks would have revealed their checkered corporate histories.

163. In fact, Bank of America, one of the Banks involved in acting on behalf of Bayer in this case — and doing the due diligence to protect it — had been involved in two badly-failed acquisitions that should have been red flags to Bayer's Supervisors and Managers. In 2008 Bank of America acquired Countrywide for $4.1 billion in the "'worst deal in the history of American finance." In 2009 Bank of America acquired Merrill Lynch in an acquisition that set "the land speed record for disaster." ***Both these disastrous acquisitions were due to Bank of America's inadequate due diligence into the acquired entity.***

164. Impaired by cultural bias against or lack of information concerning the U.S. legal system and deprived of the necessary extensive objective independent and competent due diligence the Banks and Law Firms were supposed to provide but did not, the Bayer Supervisors failed to obtain adequate information needed to properly evaluate with due care and prudence the risks posed by the Monsanto Acquisition including Monsanto's Roundup cancer litigations.

165. For instance, based on advice from the Law Firms, the Supervisors and Managers have repeatedly asserted that Roundup is "safe" and there are scientific studies that failed to show that Glyphosate causes cancer, as if this would prevent or defeat the Roundup cancer litigations. But scientific proof-certainty is different from proving causation in a personal-injury lawsuit in the U.S. The U.S. legal system does not require "proof" of causation to a scientific level of certainty.

Under the U.S. proximate cause, substantial factor, preponderance of the evidence standard a jury may impose liability and assess punitive damages based on far less than scientific certainty or proof beyond doubt. The WHO Study and actions of the California EPA provided whatever "scientific" proof needed for the Roundup cancer cases to be filed and proceed in the U.S., and Monsanto's internal documents are so incriminating that juries will impose massive verdicts. While Bayer's Supervisors and Managers pointed to "scientific" studies that do not show how Glyphosate caused cancer — in light of the WHO Study that only raises fact/jury issues all of which Bayer/Monsanto has lost to date in the Roundup cancer suits.

166. Bayer is quintessentially a German corporation operating in a civil law system whereby victims of corporate wrongdoing have few if any remedies. By contrast, Monsanto operated primarily in the U.S. with its common law — federal/state legal systems whereby victims of corporate wrongdoing can sue. Under the U.S. tort legal system, including its unique dual state/federal court system — personal-injury claims involving product defects or products that cause illnesses including cancer are a major multibillion-dollar industry. In most jurisdictions in the U.S. personal-injury lawyers are permitted to advertise, to use contingent fee contracts and to advance the costs of litigation, prosecuting cases where compensatory and punitive damages may be awarded (often by a jury vote of 9 to 3) and whereby verdicts are obtained by a mere preponderance (51%) of the evidence ("weight of a feather"), all of which creates the real potential for vast product liabilities that can destroy any company caught up in the U.S. mass-tort industry. Proper due diligence by the Supervisors, Managers and Law Firms would have

warned of this such that with proper information the Supervisors could not have allowed the Acquisition to close.

167. The Supervisors and Managers violated their duties to Bayer and its shareholders including their duties of candor and loyalty and did not act with due care and prudence, or on the basis of adequate information and in the best interests of Bayer. They failed to: (i) adequately safeguard the assets under their control; (ii) conduct adequate, independent and objective due diligence in connection with the Acquisition by themselves, the Banks and the Law Firms; (iii) assure that the Bank(s) hired to conduct the due diligence were competent, and had a track record of honest ethical behavior such that their competence and integrity could be relied on and were not compensated in a manner in the Acquisition to compromise their independence; (iv) realistically assess the financial, legal and reputational risks posed by the Monsanto Acquisition; (v) assure the Acquisition Agreement protected Bayer by permitting it to withdraw due to any material adverse event developing before closing without any financial penalty, especially because the antitrust review process is of an indefinite duration, and the "Keep Separate" Agreement restricted access to Monsanto; and (vi) make truthful, complete, accurate disclosure of, or a fair presentation of, the true motivations behind and risks of the Acquisition to Bayer's shareholders.

168. The failure of Bayer's Supervisors and Managers to assess the litigation risks associated with Monsanto's products is not limited to Roundup. Since at least June 2016, Monsanto has faced hundreds of complaints involving

dicamba, another herbicide that has allegedly destroyed hundreds of farms in the United States and left thousands of farmers with substantial claims for damages.

169. In a 2016 lawsuit brought in the United States District Court for the Eastern District of Missouri, captioned *Bader Farms, Inc. v. Monsanto Co.*, No. 16-0099 (E.D. Mo.), a farmer alleged that Monsanto marketed defective, incomplete crop systems of genetically modified soybean and cotton seeds without the proper herbicides, and that, as a result, the anticipated, inevitable use of the highly volatile and drift-prone dicamba herbicide destroyed the surrounding crops and the farmer's business. In the summer of 2016, the underlying allegations in the *Bader Farms* case were the subject of investigations conducted by the Environmental Protection Agency and Missouri House Select Committee on Agriculture. Additional lawsuits asserting similar claims were commenced between 2016 and 2018. In February 2020, a unanimous jury in the *Bader Farms* case awarded the farmer $15 million in compensatory damages and $250 million in punitive damages, concluding that Monsanto (now Bayer) knowingly marketed a defective product that would lead to widespread crop damage. To date, more than 140 lawsuits involving dicamba have been filed, and more than 2,000 farmers are expected to join the litigation.

170. Despite the well-publicized nature of the dicamba litigation — since 2016 and throughout the due diligence period — Bayer's Supervisors, Managers and other Defendants failed to perform adequate due diligence regarding the risks associated with the dicamba litigation. As a result, Bayer is now facing "another potentially multi-billion-dollar problem." Jef Feeley & Tim Bross, *Bayer Is Facing a*

New Wave of Herbicide Lawsuits—and This Time It's Not Over Monsanto's Roundup, FORTUNE, Feb. 17, 2020.

B. The Banks Were Financially Conflicted and Compromised and Failed to Perform the Thorough and Independent Due Diligence Necessary to Protect Bayer

171. In the wake of the great stock market crash of 1929 and the exposure of the widespread wrongdoing by the international and Wall Street Banks came the enactment of laws to protect investors. These large banks were forced to divide their investment banking, commercial, lending and merchant banking operations to eliminate conflicts of interest and other perceived evils. Over recent decades these restrictions have been largely eliminated and giant international "full service" banks have re-evolved with a comprehensive range of banking operators including investment banking and merchant banking, commercial (lending) banking and other services. The Banks are two examples of such re-evolution and both provide merger and acquisition advisory services, due diligence and billions in financing, in one form or another, for large merger/acquisition transactions.

172. This contemporary structure provides the opportunity for the banks to take much more revenue out of a given deal than just acting as an advisor and getting only an advisor or due diligence fee. However, where these giant banks obtain key positions in a major corporate acquisition, as was the case with Bayer's Monsanto Acquisition, the banks are in a position to make hundreds of millions of dollars in financing fees/revenue from financing related activity fees — fees which dwarf the advisory/due diligence fee. However, virtually all of such financing fees/revenue ***is dependent upon and can only be realized upon if and when the***

acquisition is completed. In other words, almost all of the hundreds of millions of dollars the Banks were looking to make in the Bayer/Monsanto Acquisition were contingent on the transaction going forward and closing. If the Banks did independent, objective, skeptical due diligence and reported the true threat of Roundup cancer litigations to the Monsanto Acquisition this would greatly increase the likelihood it would not have closed, and they would not get their hundreds of millions of dollars in fees. Doing the proper thing to protect Bayer would have cost the Banks hundreds of millions of dollars in fees (including identifying, evaluating, and suggesting acquisition/merger opportunities). They were in a clear conflict.

173. In connection with the Bayer acquisition of Monsanto, the Banks stood to pocket hundreds of millions of dollars in fees if, but only if, the deal was closed. First of all, they received a large investment banking fee for advising on the merger, the payment of which was contingent upon the closing of the merger. In addition, these two Banks were promised by Baumann and Wenning that if the deal went forward, they could be lead underwriters or deal managers on a number of multibillion-dollar securities issuances (debt and equity) that would occur in connection with the Monsanto Acquisition.

174. The importance of the Monsanto Acquisition — its size and profitability to both Bank of America and Credit Suisse — is difficult to overstate. According to Credit Suisse **"*this was one of the largest merger and acquisition deals of all time" a "deal that was mammoth in all ways.*"**

175. The Banks were the leaders of the largest acquisition bridge loan in history, in May 2016 to Bayer, amounting to $56 billion dollars. When it became

clear the acquisition would go forward, they helped market or sell some 75 million shares of Bayer common stock in a "capital call" or "rights offering" to Bayer's existing shareholders including the ADR holders here in the U.S. amounting to billions of dollars. In addition, they were then the lead underwriters of a Regulation 144A Bond issuance in the United States — issuing the bonds via Bayer's U.S.-based subsidiary, Bayer Corporation, guaranteed by Bayer AG — totaling $15 billion dollars and a concurrent $5 billion dollar Euro bond offering by Bayer itself. In addition, the Banks ran transactions whereby new Bayer bonds were exchanged for $6 billion dollars outstanding Monsanto debt — 16 separate bond issuances. Finally, the Banks were lead underwriters in a $4 billion dollar convertible equity offering by Bayer as part of the financing of the Acquisition. Thus, in addition to their investment banking advisory fee, these Banks received hundreds of millions of dollars in fees on some $90 billion of financings, which were dependent on the acquisition of Monsanto going forward, *i.e.*, closing.

176. These huge fees paid to the banks are not only significant to the bank as an entity but even more so they are significant to the heads of the investment banking operations/units of these large, integrated banks. Their individual compensation depends directly upon the financial profit performance of their investment banking units. Thus, the investment bankers in the investment banking units of the Banks here were personally conflicted for the same reasons that the Banks overall were conflicted. This conflict prevented the investment bankers from using independent, objective and skeptical judgment in investigating and weighing the risks posed to the Monsanto Acquisition.

177. This conflict was exacerbated by the long passage of time between when the Acquisition was started in May 2016 and when it finally closed in June 2018 — long after the original December 2017 closing date and the investment banks were able to finally realize on the huge fees that they had been anticipating. The Banks — and their investment banking units' executives had anticipated receiving these huge fees in 2017 and were extremely upset about the delay of the closing of the Acquisition. In the case of Bank of America, the investment banking division was having significant difficulties that had plagued that part of Bank of America for years since it had acquired Merrill Lynch investment bank in what has long been viewed as a very troubled acquisition. The Bank of America investment banking unit was an underperforming unit with significant management turnover. The Chairman and CEO of BofA's parent was constantly applying pressure on this unit to generate more income. ***The Bayer deal was one of the biggest deals that BofA had been able to obtain in recent years and the managers of that unit were desperate to obtain the revenues from it, all the more so when the deal closing spilled over to 2018.*** As a result of this, no one on the investment banking teams at either Credit Suisse or BofA was in any way incentivized to try to obtain, circulate or emphasize negative information about the Roundup cancer lawsuits, which by mid-2018 were accelerating dramatically, with some of the cases now approaching trial — after surviving pretrial attempts to dismiss those cases or bar their medical causation evidence and expert testimony.

178. The Banks also abandoned any pretense of independence when they joined with the Supervisors and Managers in aggressively selling the deal to Bayer's

shareholders and the investment community generally. Because Baumann and Wenning structured the Monsanto Acquisition as a 100% cash deal to avoid a shareholder vote, and did not discuss or pre-clear the $60-plus billion offer with large Bayer shareholders before making it, many of these shareholders were upset over the sudden all-cash debt-financed Acquisition of a company with the horrible reputation and problems that Monsanto had. Shareholders were also unhappy with Bayer taking on some $45–50 billion in debt to finance the Acquisition — ***the largest debt assumption by far in Bayer's history which would take years to pay off*** diverting funds from other important parts of Bayer's business. Faced with this intense level of shareholder skepticism and opposition and the need to successfully access the capital markets to finance the Acquisition, Baumann, Wenning and Condon with the active participation or help of the Banks, undertook a "sales job" to present the Acquisition as a "low risk" step which would quickly benefit Bayer's earnings and create substantial shareholder value — assuring all that Bayer's managers had the skill and experience necessary to successfully complete the Acquisition. Baumann, Wenning and the Banks knew that Bayer would have to sell billions of dollars of equity and debt securities to finance the Acquisition. They therefore wanted to create investor "demand" for those securities offerings, a major part ***of which would be a "rights" offering to Bayer's existing shareholders***, who would be given an opportunity to purchase Bayer stock in the largest "rights" offering in German history. Thus, they were highly motivated to keep Bayer's stock price as high as possible and create investor demand for both its equity and debt securities.

179. The Bankers played a key role in "selling" the deal to Bayer's shareholders and the investment community. During 2016–2018 the Defendants arranged and conducted numerous investor conferences and conference calls to "sell the deal." During these presentations they presented the Acquisition as a highly positive, low risk step that would create substantial shareholder value. By participating in these "sell the deal" conferences which minimized the risks of the Acquisition, the Banks abandoned any pretense of independent investment bankers objectively pursuing due diligence investigation, and acted as partners with the Managers and Supervisors in getting the Acquisition done so they could get paid hundreds of millions of dollars.

180. In the Monsanto Acquisition the Banks were so intertwined and so economically dependent on the Acquisition closing they became "partners" in the transaction. They had such an overwhelming monetary interest in the transaction closing that it prevented them from acting independently and objectively conducting the due diligence into Monsanto and its Roundup cancer causing risks which were the single greatest danger posed to the Acquisition. Worse, the Bankers were "cash out" partners, as if when the transaction closed they got hundreds of millions of fees ***but no ongoing risk, and no ongoing exposure to the risks and losses caused by the failure of their own due diligence***. The risk was borne entirely by Bayer and its shareholders.

181. The Banks owed Bayer duties of loyalty and due care and to remain independent of Bayer's Supervisors and Managers who hired them on behalf of Bayer to protect Bayer, and not use their influence on Bayer to cause or allow any

person to take action detrimental or damaging to Bayer. As sophisticated financial professionals recommending strategies to Bayer while financing the transaction they were required to adhere to the highest standards.

182. In acting and failing to act as alleged herein, these Banks exerted influence on the Company by inducing the Supervisors and Managers to act to the disadvantage of the company, and thus aided and abetted the breach of duties by the Managers and Supervisors participating in a common course of conduct by acting in concert with them and/or each other to commit unlawful acts, including the violations of the duties imposed on each of them by law.

C. The Law Firm Defendants Influenced, Permitted or Induced the Supervisors and Managers' Conduct That Disadvantaged and Damaged Bayer

183. Sullivan & Cromwell and Linklaters acted as advisors to Bayer and like the Banks owed their duties of care, prudence and loyalty to Bayer — independent of their relationship and work with the Supervisors and Managers. The Supervisors and Managers have asserted that the Law Firms participated in the Monsanto due diligence and assessed the risk of the Roundup cancer lawsuits as "low" and that after the fact they have continued to be advised by these Law Firms that their conduct in connection with the Acquisition was proper and legally compliant, thus waiving the attorney client privilege if one existed or could have been asserted in a derivative action.

184. These two Law Firms have also been intimately involved in the Monsanto Acquisition and the Supervisors and Managers efforts to cover up, conceal, and justify their mistakes and negligence and avoid being held accountable

to Bayer. In an April 2019 letter to Bayer, shareholders Wenning and Baumann stated in defense of their actions regarding Monsanto:

> "… the Board of Management assessed the legal risks in connection with the use of Glyphosate as low. When doing so, it also based its assessment on a detailed expert opinion prepared and updated regularly by a renowned U.S. law firm before the merger agreement was entered into. Compliance of the Board of Management with its legal duties has been confirmed by an external expert opinion by the renowned international law firm Linklaters which — after an extensive review — came to the firm conclusion that the members of the Board of Management had complied with their legal duties in every respect with regard to the acquisition of Monsanto, and in particular with regard to the Board of Management's risk assessment of Monsanto's Glyphosate-related business."

185. Baumann has asserted that ***"Bayer, with the help from an outside firm had performed due diligence … before concluding that the Roundup litigation risk had been low."*** The Supervisors and Managers have repeatedly asserted that "leading" law firms provided advice to them during the due diligence process that the risks of the Roundup cancer litigations were low, and these firms had reviewed events and concluded after the fact that the Supervisors and Managers acted properly and fulfilled their statutory duties in connection with the Acquisition, specifically with regard to the Roundup cancer lawsuit risk. The Law Firms failed to conduct adequate due diligence regarding the true risks of the Monsanto Acquisition to Bayer. Because these Law Firms were retained to assist with the Acquisition, including the due diligence into the Roundup cancer suits, their subsequent advice and conclusions are tainted by conflicts of interest, and they have acted improperly in helping the Supervisors and Managers block the assertions of facially meritorious claims on behalf of Bayer against the Supervisors, Managers, Banks and themselves.

VI. DEFENDANTS' LACK OF DUE CARE AND PRUDENCE, AND INADEQUATE DUE DILIGENCE IN CONNECTION WITH THE FAILED MONSANTO ACQUISITION DAMAGED MONSANTO BY BILLIONS OF DOLLARS

A. The Bayer Supervisors and Managers Set Up the Monsanto Acquisition to Advance and Protect Their Own Interests

186. In 2015–2016 the agricultural industry came under pressure due to a slump in global commodity prices. As farmers cut back purchases, growth slowed and the industry underwent a consolidation. Monsanto tried to acquire Syngenta but was turned away. Du Pont then bought Dow, and Chem China bought Syngenta in 2015. According to Wenning, after the Dow and Chem China acquisitions ***"the question was how are we going to deal with the consolidation in the agricultural market."*** Due to Monsanto's bad reputation no one wanted to combine with the "***Black Sheep***" ***— the*** "***least desirable member***" of the industry that had long been viewed with "***distaste***."

187. In fact, in 2015 Monsanto approached Bayer about ***Monsanto purchasing Bayer's agri-business***, in part because the Monsanto executives knew their own Roundup product was doomed in the mid-to-long term as more evidence of the cancer-causing properties accumulated and resulted in the WHO findings in early 2015. As Monsanto had been earlier turned away by Syngenta, this acquisition effort was rebuffed by Bayer. Not only was Monsanto turned away due to its bad reputation, this approach was also rebuffed because Wenning and Baumann feared if Bayer sold off its agri-business and became ***a smaller company with little debt*** it would be a much more attractive acquisition target itself. Pfizer or some other giant pharmaceutical company might take over Bayer. Such a takeover would result in Wenning, Baumann, Condon and the Supervisors ***all losing their lucrative***

positions of power, prestige and profit — their corporate sinecures — a result which they all wanted to avoid. According to Wenning, "At one point, Monsanto considered merging the two agricultural businesses under Monsanto's leadership … ***our Board of Directors turned the tables***."

188. Baumann, Condon and Wenning wanted to acquire Monsanto and to do so by paying all cash. By financing the deal with debt — about $45–50 billion in new assumed debt — they would vastly increase Bayer's debt load, *i.e.*, leverage such that the Acquisition would operate as what Wenning called a ***"poison pill"*** forcing the acquirer to assume Bayer's huge debt, thus making Bayer ***"unacquirable."*** Also by paying cash rather than issuing shares — taking a huge debt risk — they avoided a Bayer shareholder vote to approve the Acquisition that would likely have been required if shares had been issued — Wenning and Baumann knew that many large Bayer shareholders would oppose the acquisition, and expose its infirmities during the debate over shareholder approval. Thus, by purchasing Monsanto for cash the Supervisors and Managers served their own interests and helped entrench themselves. The Monsanto acquisition was an ego driven, rushed deal, that Baumann, Condon, and Wenning intended to use, in part, to entrench themselves and the compliant Bayer Supervisory board they dominated, by insulating Bayer itself from a takeover they feared might otherwise occur, ousting them all from their positions of power, prestige and profit.

189. While Baumann (with the support of Wenning) was Director of Corporate Strategy, he had been eyeing Monsanto as an acquisition target for some

time. As long as Dekkers was CEO, no such Acquisition was possible. However, as soon as Dekkers was out of the way, Wenning and Baumann quickly went forward.

190. When Dekkers departed as Bayer's CEO on May 1, 2016 Wenning and Baumann immediately moved to acquire Monsanto. Without discussing their plans with any of Bayer's large shareholders (many of whom are in frequent contact with Bayer's top management and investor relations people), just 10 days after becoming CEO Baumann secretly traveled to St. Louis to make the initial $122 per share cash offer — a $62 billion offer including a $2 billion break-up fee. When the offer became public in late 2016, it was seen as very generous — cash — a 44% premium over Monsanto's market price — and a $2 billion break-up promise.

B. Despite Shareholder Opposition to, Widespread Criticism of and Warnings Not to Proceed with the Acquisition, the Supervisors and Managers Went Forward and "Sold the Deal" to Bayer's Shareholders and the Investment Community, Using False Assurances

191. When word of the offer began to leak and Bayer confirmed the Monsanto offer in mid-May, its stock plunged 10% — losing billions in market cap. The offer ***"sparked outrage"*** and was a ***"huge shock"*** to investors. One large shareholder said he ***"struggled to find investors who favor 'the deal'"*** and said a bid for Monsanto will be ***"expensive, earnings dilutive and destroy value."*** Because of the huge amount of debt to be incurred Fitch & Moody's stated they would downgrade Bayer's credit rating by ***"multiple notches."*** According to a Professor at Warwick University Business School, Baumann and Wenning ***had "thrown caution to the wind out of being behind in the industry's final stage of consolidation," [and] Bayer "may well regret this at leisure … it is probably a***

good bid to lose … Bayer's acquisition of 'Frankenstein' Monsanto could be a horror story for… Bayer … This looks like a lose-lose bid — Bayer has been forced into paying too much."

192. In order to overcome criticism of the deal and try to condition the market and Bayer's existing ADR and common stockholders to accept the large equity rights offering and huge debt sales necessary to finance the Acquisition, the Supervisors and Managers and the Banks undertook an aggressive effort to sell the benefits of the deal stressing short and long term benefits and minimizing its risks.

193. During a May 23, 2016 Investor Conference Call, a presentation reviewed and approved by the Banks and Law Firms, Baumann and Condon extolled the virtues and economic benefits of the Monsanto Acquisition using the slides set forth below:

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Science For A Better Life

Acquisition of Monsanto to Create a Global Leader in Agriculture

Innovation Powerhouse to Deliver Integrated Solutions for the Next Generation of Farming

Investor Conference Call • May 23, 2016

Unique and Compelling Opportunity for Bayer

Strong Fit with Bayer's Strategy	• Reinforces Bayer as a Life Science company with leadership positions in its core business segments • Targeting an attractive long-term growth industry • Highly innovative biotech based business addressing unmet scientific need
Integrated Leader in Agriculture	• Combination creates an industry leader in Crop Science with integrated offering of Seeds & Traits, Crop Protection, Biologics and Digital Farming • Broad product portfolio as well as broad and deep combined R&D pipeline to deliver better solutions for farmers
Significant Value Creation	• ~$1.5bn total synergies after year three plus additional integrated offer benefits in future years • Accretion to core EPS by mid-single digit percentage in the first full year after closing and double-digit percentage thereafter • Potential to command premium valuation for combined Crop Science business via re-rating

Attractive Value Creation for Bayer Shareholders

~$1.5bn total synergies after year three plus additional integrated offer benefits in future years

Cost Synergies
- Significant synergies expected in-line with industry benchmarks from optimizing product supply chains, marketing & sales and R&D teams, as well as overhead reduction

Sales Synergies
- Top-line acceleration expected to result from more customized product combinations and integrated solutions across geographies (primarily in the Americas) and indications

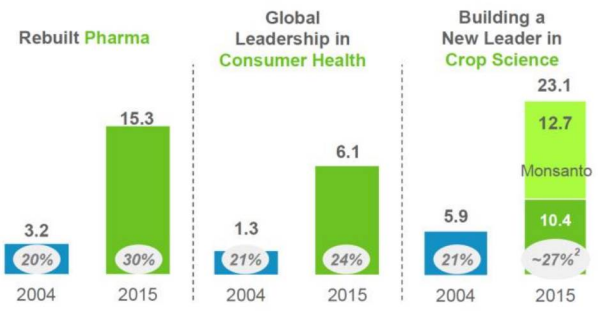
Earnings & Growth Accretion
- Core EPS accretion by mid-single digit percentage in the first full year after closing and double-digit percentage thereafter
- Margin accretive to Bayer

Premium Valuation
- Potential for trading multiple expansion due to Ag-leadership and enhanced overall earnings outlook for Bayer

Delivering Shareholder Value Through Superior Execution

Building Leading Life Science Franchise + **Proven Integration Track Record**

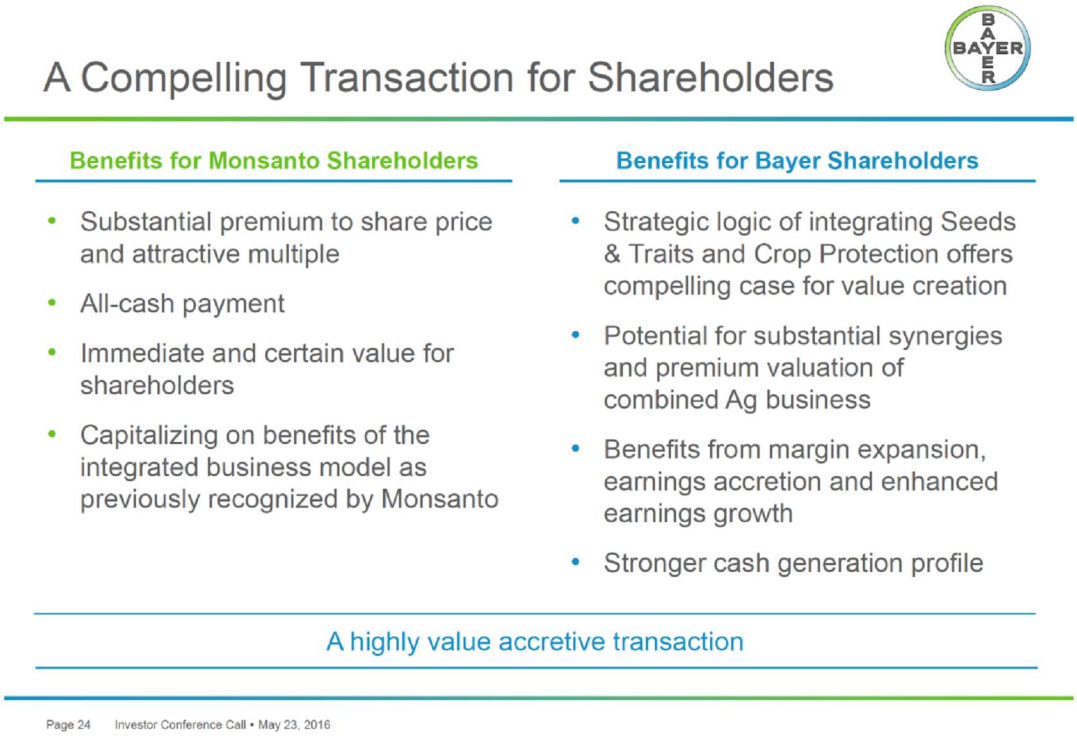
Sales (€bn) and EBITDA Margin (%)[1]



- Experienced acquirer having successfully integrated various multi-billion € transactions
  - Aventis CropScience
  - Schering
  - Roche OTC
  - Merck & Co. Consumer Care
- Monsanto integration no more complex than previous integrations

Increased market cap ~4x since 2004[3]

[1]2015 figures restated according to new organizational structure
[2]2015 Pro-forma combined EBITDA margin
[3]As of December 31, 2004 and May 20, 2016



194. After the Acquisition deal was signed in September 2016, ***subject to due diligence***, the Supervisors and Managers with the active participation and help of the Banks began a concerted "sales job" to portray the Monsanto Acquisition as a low/no risk deal which would benefit Bayer immediately and in the long term. During investor conference calls, meetings and presentations throughout November 2016 and year-end 2017, the Defendants told Bayer shareholders that the Monsanto Acquisition was a ***"transformative step to strengthen [the] life sciences portfolio"*** bringing ***"significant value creation"*** with ***"substantial synergy potential," "accretive in the first year with the potential for premium valuation of combined agricultural business."*** They also continued to stress their ***"proven track record of successful portfolio management" — citing the supposedly successful Merck***

acquisition as the prime and most recent example of their skills — and assured all that the closing was "expected by the end of 2017."

195. On September 14, 2016 Baumann and Condon, using the presentation reviewed and approved by the Banks and Law Firms, again held an investor conference call to assure Bayer shareholders and the analysts and extoll the virtues and economic benefits of the Acquisition. They used the following visuals:

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Creating a Global Leader in Agriculture

Innovation Engine to Deliver Enhanced Solutions for the Next Generation of Farming

Investor Conference Call | September 14, 2016

BAYER MONSANTO

Advancing Together

Transaction Summary

Offer Summary	• All-cash consideration of $128 per Monsanto share
	  • Enterprise value (EV) of $66bn including net debt
	  • Equity value of $57bn
	• Transaction unanimously approved by Monsanto's Board of Directors, Bayer's Board of Management and Bayer's Supervisory Board

Key Metrics	• Premium of 44% to Monsanto's share price of $89.03(1) • Premium of 43% to Monsanto's three-month volume weighted average share price(1) • LTM(2) EBITDA multiple of 18.6x as of May 31, 2016; consensus(3) FY 2017 EBITDA multiple of 16.5x

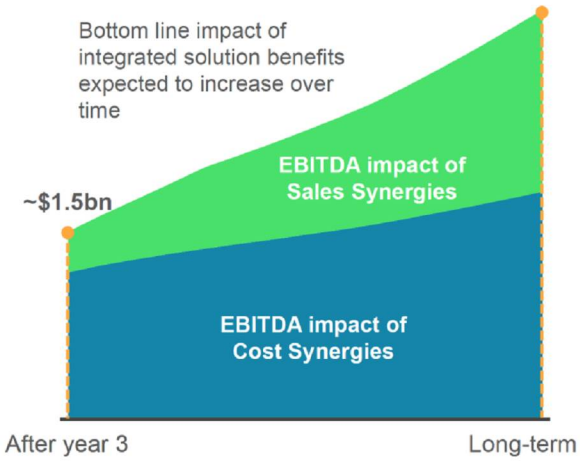
Value Creation	• Combined business well positioned to benefit from agro market upswing
	• Significant value creation through expected synergies confirmed in due diligence:
	  • ~$1.5bn annual net synergies after year three (~80% cost, ~20% sales)
	  • Additional synergies from integrated solutions increasing over the years thereafter
	• Transaction expected to be accretive to core EPS in the first full year after closing; double-digit percentage core EPS accretion expected in the third full year after closing

(1) As of May 9, 2016, the day before Bayer's first written proposal to Monsanto; (2) Last Twelve Months (3) as per Bloomberg, Sep 13, 2016; Fx rate: USD/EUR=1.11

Substantial Longer-Term Synergies from Integrated Solutions Anticipated

Advancing Together

Net EBITDA Impact of Synergies



From Combined Offering to Integrated Solutions

- Creates an enhanced agricultural offering to address broad range of farmer needs
- Initial sales synergies expected mainly from broader product variety materializing already **near-term** (~$0.3bn net EBITDA impact)
- Sales synergies **expected to expand** in the mid to long-term from integrated solutions
  - **Smart combinations**
  - **Innovation of integrated systems**

Fx rate: USD/EUR=1.11

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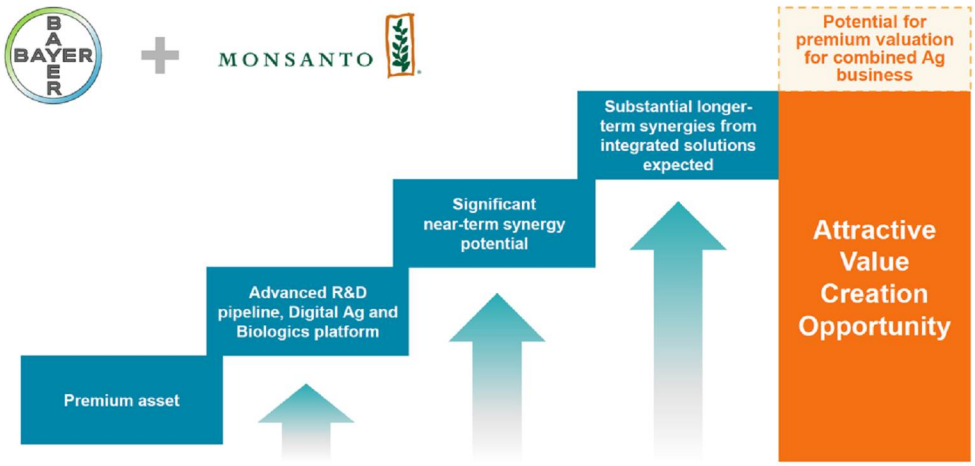
Attractive Value Creation Opportunity

Advancing Together



Combined agricultural business expected to deliver stronger growth, better profitability and more resilient business profile

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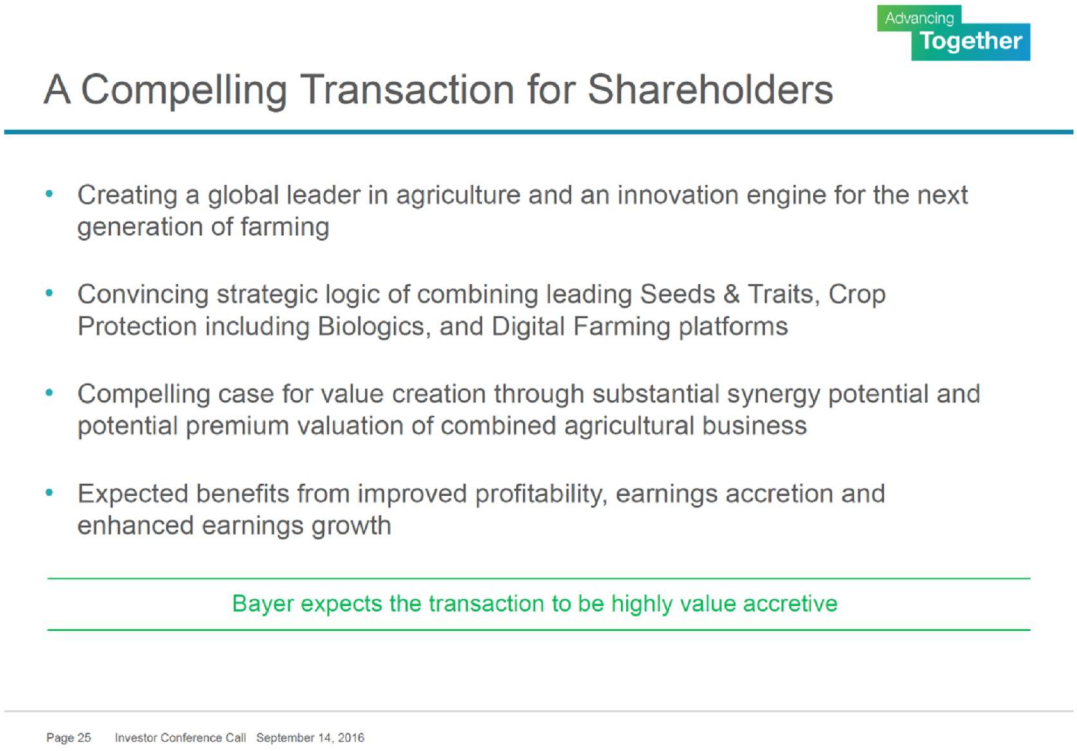

196. Many months later on June 7, 2018, after the antitrust regulators finally gave approval to cause the acquisition, Baumann announced Bayer would go ahead and close the Monsanto Acquisition, but without taking control of Monsanto and gaining access to its internal corporate data and information until sometime in August after $9 billion in divestitures mandated by regulators had been completed. Baumann again assured the Acquisition ***"will generate significant value"*** and ***"we have diligently prepared for the upcoming integration over the past two years. Our extensive experience in integrating other large companies has proven that we can and will be successful."***

197. In none of these presentations or conferences did the Bayer Managers and Supervisors make candid, truthful disclosures regarding the true nature and extent of the risks of the Monsanto Acquisition, including the reputational, legal and

economic risks of acquiring Monsanto and assuming the liabilities of Monsanto's Roundup product, immediately discontinuing the use of the Monsanto name and thus putting Bayer's good name on that controversial product, while at the same time selling off Bayer's own highly successful herbicide "Liberty" as a condition of satisfying antitrust regulators and procuring permission to close. The Supervisors, Managers, Banks and Law Firms violated their duties of candor and truthful communication with Bayer's shareholders and owners in this regard.

C. The Special Circumstances of the Monsanto Acquisition Called for Enhanced Independent Due Diligence

198. Product-liability claims where products sold by the company to be acquired are alleged to harm the health of humans exacerbate the acquisition risk — and especially so in the U.S. where the legal system has created a huge personal-injury lawsuit industry whereby facially meritorious personal-injury claims can spread like wildfire. Sharing of discovered evidence and experts generates more claims and more incriminating evidence. The claims presentation process is constantly redefined and improved, and as success builds upon success the cases increase in value. If the defendant wins one case, it has no preclusive effect on the thousands of other cases. With the ability to spend millions of dollars on advertising and charge contingent fees and advance costs without recourse, win the case on a preponderance of the evidence (not scientific certainty) proofs standard for causation, generous compensatory damages rules and the availability of punitive damages, ***product-liability litigation in the U.S. holds the real potential to destroy an acquiring entity.***

199. The Defendants could take no comfort from Monsanto's SEC filings. Monsanto's SEC filings for the year ended August 31, 2017, filed in late October 2017 stated:

> "The company is defending lawsuits in various state and federal courts, in which approximately 3,100 plaintiffs claim to have been injured by exposure to Glyphosate-based products manufactured by the company. The majority of plaintiffs have brought actions in state courts in Missouri, Delaware and California, while the remainder of plaintiffs' cases were filed in many different federal courts."
>
> **Adverse outcomes in legal proceedings could subject us to substantial damages and adversely affect our results of operations and profitability.**
>
> From time to time, we have been involved in major lawsuits concerning torts, and other matters …. Pending and future lawsuits and governmental inquiries and investigations may have outcomes that may be significant to our results of operations in the period recognized or limit our ability to engage in our business activities. While we have insurance related to our business operations, it may not apply to or fully cover any liabilities we incur as a result of these lawsuits. We have recorded reserves for potential liabilities where we believe the liability to be probable and reasonably estimable. However, our actual costs may be materially different from this estimate. The degree to which we may ultimately be responsible for the particular matters reflected in the reserve is uncertain.

200. Because the Acquisition offer was unsolicited as opposed to consensual, Bayer had no ability to conduct any pre-offer due diligence in terms of extensive discussions with the acquisition target's officers, and had no or little access to internal Monsanto business information due to antitrust restrictions. In addition, the fact that the Monsanto executives had never publicly quantified, and refused to quantify, the financial risks and exposure of the Roundup cancer lawsuits in Monsanto's SEC filings or other public statements should have been a substantial red flag to the Defendants that in acquiring Monsanto, Bayer was ***acquiring a***

corporation with a black hole liability where those who knew the most about that potential liability were quite willing to hand it off to Bayer and leave with huge cash payments.

201. Inside Bayer there was resistance to the Monsanto Acquisition as well. When Baumann surveyed scientists in Bayer's pharmaceutical unit in Berlin, several said they believed Roundup caused cancer. Shortly after the Acquisition offer became public, during a company webcast several employees objected noting the move would detract from necessary investments in the pharmaceutical division, and expressing apprehension as to whether Monsanto's toxic image would soil Bayer's good name. Baumann said there was nothing to worry about and that although Monsanto might be controversial in Europe — its reputation was different: ***"in the U.S. Monsanto is a very[,] very reputable company."***

202. The Bayer Acquisition of Monsanto epitomizes the enhanced risks of a cross-cultural/border acquisition whereby in an all-cash unsolicited acquisition transaction Bayer was attempting to acquire a U.S. company with an extremely controversial reputation that was embroiled in an explosion of risky lawsuits alleging that one of its primary products caused cancer which had the potential to generate billions of dollars in liability as in the tobacco industry, and even destroy the company as happened in the past with several manufacturers and sellers of asbestos products.

203. Because of Monsanto's terrible reputation Bayer was going to immediately stop using the Monsanto name on products and almost all top Monsanto executives were going to leave immediately after the Acquisition.

Because the Monsanto executives were cashing out — and cashing out to the tune of hundreds of millions of dollars in cash due to their Monsanto stock ownership and acceleration of their Monsanto stock options — they were about to score a financial bonanza plus get rid of dealing with the Roundup cancer controversy. Monsanto's top executives were not going to be working for Bayer because they were going to leave after the Acquisition, and thus had no interest in the success of the Acquisition or how Bayer dealt with the escalating Roundup cancer litigations. ***As a result, the Monsanto insiders had no incentive to provide negative information with respect to the Monsanto Roundup cancer lawsuits in this unsolicited offer.*** This required the Bayer Supervisors and Banks to be extraordinarily skeptical of any information provided by Monsanto insiders because of the tremendous economic incentive they had to get the Acquisition completed, *i.e.*, closed so they could pocket hundreds of millions of dollars and get away.

204. In most instances, even when there are antitrust issues, an acquisition can still be completed in 90 or 120 days and thus the due diligence effort remains a focused and concentrated effort — in effect "a snapshot" of the acquiring entity. However, in a situation like Monsanto where the acquisition dragged on for over 24 months in a rapidly evolving business and legal environment, the due diligence becomes much more difficult — a moving picture under the best of circumstances. In order for ***the due diligence to have been properly performed to protect Bayer and its shareholder community under the circumstances it was imperative that the due diligence be continued actively until the very date of the closing.*** This type of "bring down" procedure was necessary in light of the fact that the Roundup

cancer litigations involving Monsanto were escalating dramatically, more evidence of serious Monsanto wrongdoing was emerging and circulating, and some of the cases were actually now approaching trial in very plaintiff-friendly jurisdictions as these cases had been significantly strong and well prosecuted to survive pretrial procedures that are utilized by Defendants to weed out weak, meritless cases. The need for "bring down" due diligence was made all the more so due to the terms of the "Hold Separate" agreement barring Bayer from access to Monsanto's internal operations or operational control of Monsanto or its litigations until ***after the first of the Roundup cancer cases had actually gone to trial in July 2018 in San Francisco, California***.

205. Because Monsanto was a direct competitor of Bayer, Bayer's Managers had no inside access or ability to conduct due diligence into Monsanto prior to making the unsolicited offer. Even after Bayer was permitted by regulatory authorities to pursue the Acquisition, ***subject to antitrust review***, it was required to agree to a stringent "Hold Separate" arrangement whereby it could not have internal access to Monsanto operational control or its operations unless and until all required divestitures were made — which turned out to exceed $9 billion in assets. These final asset transfers did not take place until August 18, 2018 and it was not until that date that Bayer was able to obtain operational control of Monsanto and access to its internal information. By then it was too late. The first Monsanto Roundup cancer case had been lost in a giant $289 million compensatory and punitive damages verdict.

206. As a result of the WHO Study, lawsuits against Monsanto by agricultural users of Roundup alleging a failure to properly warn them of the risks of Roundup exposure and that the product caused cancer began to be filed in state and federal courts in the U.S. By September 2016 when the merger agreement subject to due diligence was signed, 120 lawsuits had been filed.

207. As the acquisition process was delayed and the anticipated December 2017 closing date was postponed, the filing of Roundup cancer suits continued to accelerate — bolstered by the finding of the California EPA — one of the largest agricultural states and Roundup markets in the world in March 2017. Additionally, previously filed cases progressed as they entered into discovery and incriminating evidence of Monsanto's knowledge and intentional wrongdoing that would support punitive damages began to circulate on the internet (the "Monsanto Papers"). The suits spread. ***By June over 5,000 — and likely as many as 11,000 Roundup cancer suits had been filed — an enormous increase while the Acquisition was pending.*** As was the case with Asbestos, where product liability suits had previously bankrupted several large companies, the use of the Roundup product has been so widespread for so long without any warning label that the plaintiff pool is enormous and the potential liability is unlimited — not computable — not insurable and potentially fatal to Bayer.

208. By June of 2018 when the antitrust authorities finally permitted Bayer to close the acquisition and at least 5,000 and as many as 11,000 Roundup cancer suits had been filed, some of the first Roundup cases filed had progressed — surviving motions to dismiss, pursuing discovery, fending off challenges to expert

testimony, summary judgment and were going to trial — the first "bellwether" case in July/August 2018. Because of the "Keep Separate" antitrust restrictions, even if Bayer closed the acquisition in June ***it would have to sell off over $9 billion in assets before it could take operational control of Monsanto*** — including Monsanto's legal defense — a process that would take until mid-late August 2018 to complete — after the bellwether case went to trial.

209. By June 2018 Monsanto was a ***much riskier acquisition plunge than it was two years earlier in May 2016*** when the initial, rushed offer was made by Baumann and Wenning. As the due diligence went forward with respect to the Monsanto Acquisition by Bayer there was a failure on the part of the Banks, Bayer's Managers and Supervisors and the Law Firms to adequately process the ever increasing risk posed to Bayer by this Acquisition which would expose Bayer to the liabilities faced by Monsanto in an ever growing number of personal-injury suits in state and federal courts as the cases moved toward trial.

210. Under the Acquisition Agreement dated as of September 14, 2016 the changed circumstances concerning Glyphosate's cancer-causing potential and the Roundup cancer litigations constituted a material adverse event/effect on Monsanto's business, operations and finances such that the Defendants should have refused to go forward with the closing and refused to pay Monsanto any compensation, as what had happened was Monsanto's fault and responsibility.

211. Another final risk factor in this Acquisition to Bayer was that in their rushed attempt to get this offer accepted by Monsanto executives, the Bayer Managers and Supervisors approved a $2 billion dollar breakup fee to be paid by

Bayer to Monsanto under certain circumstances if the deal did not close. Thus, they put $2 billion dollars at risk in a situation where they knew the Acquisition, even if the governmental regulators ultimately permitted it to go forward, would take a long time to close and caused extra risk because business risks and conditions would evolve and change as time passed. Over the 24 months following the first offer and the closing in June 2018 (a period much longer than originally anticipated) the risks of the Roundup cancer litigations escalated tremendously. Because they had allowed the deal to be structured with a potentially large cash penalty to Bayer, even though the initial offer made was very generous and attractive to Monsanto and with a 44% premium over Monsanto's market price, this structure suggested by Baumann and Wenning made it more difficult later for the Supervisors to take the action necessary to protect Bayer, its assets and shareholder community by terminating the Acquisition.

212. Despite having solid factual and legal arguments to avoid paying the $2 billion break-up fee, *i.e.*, the escalating Roundup suits as a material adverse event and the fact that Monsanto and its executives had not made truthful disclosures, including internal Roundup evidence. The Defendants nevertheless went ahead and closed the Acquisition on June 9, 2018 in disregard of the clear ever escalating and yet completely unquantifiable financial risk posed by the Roundup cancer lawsuits now bolstered by the WHO Study's "probable human carcinogen" finding and the California's EPA classification of it as a "known carcinogen."

D. Weeks After the June 2018 Closing, the Acquisition Collapsed as Monsanto/Bayer Lost Huge Compensatory and Punitive Damages Verdicts in the First Three Monsanto Roundup Cancer Trials

213. The first Roundup cancer trial started in July 2018 and in August 2018 resulted in a verdict against Monsanto for $289 million in compensatory and punitive damages. At the same time the California Supreme Court ***upheld the lower court's affirmation of the California EPA's designation of Glyphosate as a known carcinogen***. Second and third Roundup cancer trials in 2018/19 resulted in huge compensatory damages including a $2 billion punitive damages verdict. These extraordinarily large verdicts confirmed the strength of the claims against Monsanto. While verdicts were later reduced by judges, even the reduced compensatory and punitive damages verdicts are still very large and have received enormous publicity. With the ability of lawyers in the U.S. to advertise for clients, personal-injury lawyers spending millions to solicit plaintiffs while advancing lawsuit costs and operating via contingency fees, winning cases on a 51% preponderance of the evidence standard (often 9-3 verdicts, including punitive damages) and sharing evidence and pools of experts — these types of mass-tort cases when prosecuted by America's personal-injury litigation industry can overwhelm or destroy a company. Moody's and S&P both ***downgraded Bayer's credit rating***, including a "***negative outlook***." Bayer's market capitalization has collapsed and it currently faces over 45,000 similar lawsuits alleging Roundup caused cancer.

214. Had proper due diligence been done into Monsanto by qualified firms acting independently, those who were supposed to be doing or supervising the due

diligence would have found evidence inside Monsanto that was extremely damning, very incriminating and showed that Monsanto's own scientists knew that Monsanto had never tested Glyphosate — especially the "amped up" Roundup product using surfactants to determine if it was carcinogenic — and did not want to do those tests for fear of what they suspected such tests would show, and that Monsanto had no basis to assert that Roundup (with surfactants) was not carcinogenic.

215. The trials also made public internal documents in which Monsanto admitted Glyphosate is "geno-toxic" (*i.e.*, causes cancer) and that Monsanto had provided strict warnings to their own employees to wear chemical goggles, boots and other safety protection when exposed to Roundup, and an internal study in which its scientists recommended people wear gloves and boots when using the company's lawn and garden concentrate.

216. Bayer's market capitalization has fallen by over $60 billion as these verdicts have come in, and the failure of the Acquisition has been confirmed. The Supervisors and Managers are now desperately trying to settle the cases across the U.S. having entered into mediation here in New York before a U.S. mediator. Due to the availability of the "Monsanto Papers" and the factors alleged earlier these cases will continue to proliferate nationwide — worldwide — as legal systems provide access to justice. No one can determine how vast Bayer's liability will be or how destructive to Bayer shareholders the Acquisition has been and will be. ***All for a liability that belonged to Monsanto, one of the most hated corporations in the world, whose main herbicide product the WHO said in 2015 was a "probable human carcinogen" the California EPA in 2017 classified as a "known***

carcinogen" and the highly respected CEO of Bayer (Dekkers) warned Baumann, Wenning and the Supervisors not to acquire. Instead the Defendants collectively, and negligently, let go forward this huge, conflicted and highly risky acquisition that benefited all of them personally in one way or another, but caused huge damage to Bayer.

VII. PLAINTIFF HAS STANDING TO SUE DERIVATIVELY FOR BAYER; DEMAND ON THE SUPERVISORS TO SUE THEMSELVES AND THEIR CO-ACTORS IS EITHER NOT REQUIRED OR IS EXCUSED; NEW YORK IS A PERMITTED, PROPER AND MORE CONVENIENT FORUM THAN LEVERKUSEN, GERMANY

A. Derivative Allegations and Plaintiff's Standing to Sue

217. This is a derivative action on behalf of, and for the benefit of, Bayer by Bayer shareholders for breaches of duties of due care, prudence, loyalty and candor including aiding, abetting and participating in a concerted action, *i.e.*, a common course of conduct, common enterprise or civil conspiracy. The action is brought to redress injuries suffered and to be suffered by Bayer as a result of the breaches of duties and misconduct by Defendants.

218. This lawsuit presents a legal dispute between Bayer — sued derivatively by the named Plaintiff — and the Supervisors, Managers, Banks and Law Firms named as defendants. It is not a dispute between Plaintiff and Bayer, the corporate entity on whose behalf the action has been filed derivatively by Plaintiff. Plaintiff, who is a Bayer shareholder, and Bayer are on the same side of the suit. While Bayer is designated a "Defendant," that designation is a technical formality, *i.e.*, it is a "***nominal*** defendant." In reality, Bayer is the "true" plaintiff in this action, which is on behalf of, not against, Bayer and in order to obtain damages and other

relief for it, not from it. The named plaintiff has no dispute with Bayer, the corporate entity.

219. Bayer is named solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this court that it would not otherwise have. Plaintiff is a Bayer shareholder and was at the time of one or more of the breaches of duties complained of. Plaintiff will adequately and fairly represent the interests of Bayer in enforcing and prosecuting its rights.

220. Given that the current Supervisory Board cannot objectively or independently weigh as to whether to bring these claims and they will not and cannot bring the claims, the only way these facially meritorious and potentially valuable claims can be vigorously prosecuted and Defendants held accountable for their misconduct, is by this derivative action being prosecuted by experienced, competent, private lawyers on a contingent basis, advancing litigation expenses to assure a vigorous, independent, uncompromised prosecution of these claims.

221. Bayer has suffered damage due to the defendants' misconduct which can be redressed in this derivative action in this court via the recovery of damages. As a stockholder of Bayer, Plaintiff has standing to assert claims on behalf of Bayer — the true plaintiff — to affect a recovery that will accrue to Bayer, because Bayer's Supervisors have improperly neglected to bring an action, or actions, against themselves and the other defendants.

222. Bayer's 932 million shares of common stock or equity are represented by shares of common stock and by American Depository Shares ("ADS") a.k.a. American Depository Receipts ("ADR"). Bayer's common shares trade on the

London, Frankfurt, and other exchanges while Bayer's ADR/ADSs, registered with the SEC, trade in the United States in the over-the-counter market. Each ADR/ADS represents ¼ of a common share of Bayer common stock. Bayer's ADR/ADSs are the same as Bayer's common stock in every material respect, have all the legal rights as the common shares, including standing to assert claims derivatively for Bayer.

223. Bayer describes its ADR/ADSs as follows:

> American Depository Receipts (ADRS) are an instrument used widely by non-U.S. companies to offer and trade their shares conveniently and efficiently in the U.S. equity markets. In the United States, Bayer stock has been traded under [an] OTC Level 1 ADR Program since September 27, 2007.
>
> ADSs are a U.S. dollar-denominated form of equity ownership in a non-U.S. company. ***They represent that company's shares and carry the rights attaching to them***. An ADR is the physical certificate evidencing ownership of one or more ADSs. The terms ADR and ADS are often used interchangeably. The relation between the number of ADRs and the number of shares is typically referred to as the ADR ratio.
>
> Bayer … remains committed to maintaining an open and direct dialog with institutional investors and analysts in the United States.
>
> ADRs are issued by a U.S. bank, in Bayer's case by The Bank of New York Mellon (BNY Mellon), acting as depositary.
>
> The ADR Program
>
> | | |
> |---|---|
> | Ticker symbol | BAYRY |
> | Currency | USD |
>
> * * *
>
> On September 20, 2017, Bayer performed an ADR ratio change. With the new ratio, four Bayer ADRs correspond to one Bayer ordinary share.
>
> *** * ***
>
> Bayer ADSs are traded in the U.S. over-the-counter market.
>
> * * *

> Bayer will continue to publish material documents on this website in English as required by Rule 12g3-2(b) under the U.S. Securities Exchange Act.

224. Owners of Bayer ADR/ADSs are entitled to participate in a direct purchase plan for Bayer stock with BNY Mellon and Bayer whereby their ADR/ADS, *i.e.*, common stock dividends are reinvested automatically in Bayer common stock, *i.e.*, Bayer ADR/ADSs.

225. Bayer and BNY Mellon have filed and periodically update a Form F-6 — the Bayer AG Registration Statement under the Securities Act of 1933 covering the Bayer ADR/ADSs. These SEC Registration Statements were signed by Baumann and Condon, and authorized and approved by the Supervisors. The Depository Agreement for the ADSs as filed with the SEC states:

- "Shares" means the ordinary registered shares of the Issuer, *i.e.*, Bayer.
- Each owner **"*agrees that such Owner is bound by and subject to the Articles of Association of the Issuer as if owner were a holder of shares and each Owner agrees to comply with all applicable provisions of German law and the Articles of Association of the Issuer*."**
- The ADR/ADSs are entitled to the same cash or non-cash distributors as common stock holders and including participating in rights offerings and including the right to vote their ADS the same as common stock and to receive any notice sent to common stockholders.
- "The Deposit Agreement and the ADRs should be interpreted and all rights hereunder and thereunder and the provisions hereof shall be governed by the laws of the state of New York."
- Bayer "irrevocably appointed its US subsidiary Bayer Corporation as its agent for service and "consents and submits to the nonexclusive jurisdiction of any state or federal court in the County of New York in which suit or proceeding may be instituted."

B. The Procedures of the German Stock Corporation Act for Filing Derivative Claims in the Leverkusen, Germany Regional Court Do Not Control in New York State Court

226. The procedural provisions of Section 148 of the German Stock Corporation Act are inapplicable to this lawsuit in New York State court, where New York's pre-suit demand/demand futility procedures, set forth in Section 626 of the New York Business Corporation Law, govern all derivative shareholder suits filed on behalf of any "***domestic or foreign corporation***."

227. To bring a corporate derivative claim in a German court, a shareholder must engage in a two-step process set forth in Section 148 entitled "Court Procedure for Petitions Seeking Leave to File an Action for Damages." The first procedural step is a "special action admission procedure conducted by the Regional Court of the Company's seat," (*i.e.*, the regional court in Bayer's hometown of Leverkusen), for leave to file the action.[3] When they petition for leave to file the action, the shareholders must meet substantial minimum ownership thresholds, and produce evidence demonstrating "gross" wrongdoing to survive a pre-filing adversarial hearing on the merits of their claims without any discovery. Even if permission to file is granted, that decision can be appealed and thus delayed for years. If the petition is denied plaintiffs bear the costs of the proceeding — the loser

[3] The German Stock Corporation Act provides:

Section 14 Jurisdiction

Unless otherwise specified, references in this Act to the court shall be references to the court of the company's domicile.

pays. If plaintiffs win, they are in effect limited to one attorney to prosecute the case going forward. According to one commentator,

> **Special Action Admission Procedure**
>
> The special action admission procedure as set forth under AktG, section 148 enables shareholders whose shares together represent at least 1 percent of the issued share capital or a fractional amount of at least 100,000 Euros to apply to the competent court for admission. At this first stage of the process, AktG, section 148 provides for a summary procedure for the consideration by the court of the admission application.
>
> * * *
>
> In the first instance, the court will consider the application on the basis of the written evidence filed by the applicants. In any event, however, before the court takes its decision the respondents must be given the opportunity to comment on the application.
>
> * * *
>
> For the action to be admitted, it will be necessary that the applicant shareholders prove that they have acquired their shares no later than they knew or ought to have known about the alleged breach of duty or damage suffered by the company.
>
> * * *
>
> Further, and eventually reflecting the fact that the rights to be enforced are those of the company, the shareholders must ***prove*** that the company has failed to bring proceedings itself within a reasonable period of time after being called to bring proceedings itself within a reasonable period of time after being called to do so by shareholders in quorum size … in a summary procedure the court will also have to consider the facts of the case before it. To be admitted, the shareholders have to ***prove the facts justify the suspicion that the company has suffered damage by dishonesty or gross violation of the law or the company's articles.***
>
> * * *
>
> If the aforementioned pre-conditions are fulfilled, the court will basically be prepared to admit the action. However … the court must refuse the application if there are ***overriding interests of the company that prevent the enforcement of the claim ….***

CARSTEN A. PAUL, *Derivative Actions under English and German Corporate Law Shareholder Participation between the Tension Filled Areas of Corporate Governance and Malicious Shareholder Interference*, EUROPEAN CO. & FIN. L. REV. 7(1):81-115 (Mar.

2010). Plaintiff is unaware of any derivative action involving a public German corporation being successfully prosecuted under these procedures.

228. No such accelerated, convoluted, pre-discovery, fact weighing semi-summary judgment merits review requiring "proof" exists under New York law. *See* N.Y. BUS. CORP. § 626(c). Thus the procedural requirements of Section 148 do not apply to this action. *See Davis v. Scottish Re Grp. Ltd.*, 30 N.Y.3d 247, 256–57 (2017); *see also Mason-Mahon v. Flint*, 166 A.D.3d 754, 757 (N.Y. App. Div. 2d Dep't 2018). New York's procedural rules control.

C. Demand on the Bayer Supervisors to Sue the Managers, the Banks, the Law Firms and Themselves Is Unnecessary and Would be Futile in Any Event

229. Plaintiff has not made a demand on the current Bayer Supervisors to bring suit asserting the claims set forth herein because pre-suit demand on them is not required under these circumstances. In the face of obvious damages to Bayer and widespread shareholder complaints and criticism from the financial press, they have neglected to bring these facially meritorious negligence claims despite adequate opportunity to do so. However, if demand were required, it is excused, as it would be a futile act.

230. Despite the disastrous results of the Acquisition and severe criticism of the Monsanto Acquisition, the Supervisors have refused to objectively and honestly evaluate what happened or whether Bayer had valid legal claims to recover the damage caused it. Instead, they have been acting preemptively to try to erect defenses to protect themselves even before anyone demanded they investigate, evaluate and possibly bring suit on behalf of Bayer.

231. A corporate legal claim for damages, especially if the defendant(s) has assets or insurance to cover the claim, is an asset of the corporation and properly protected and developed can be a very large asset. Like any other significant asset of a corporation, the Supervisors and Managers have a duty to obtain adequate information concerning any such claim to evaluate it, and then use due care and prudence to protect that asset and to ***maximize its value. The Supervisors and Managers are covered by a multi-hundred-million-dollar directors-and-officers ("D&O") liability insurance policy purchased and paid for with Bayer's corporate funds — not their funds. The policy belongs to Bayer not them.*** That policy is a corporate asset that can and ought to be realized upon, to help compensate Bayer for the damage they caused it due to their lack of due care and prudence. That was why the insurance was purchased.

232. Yet, the Supervisors have never retained outside counsel with special expertise in evaluating or prosecuting such claims against corporate officials, investment banks or law firms to evaluate the factual and legal bases to pursue such claims and then to pursue them, if valid grounds exist to do so. They have continued to use, involve and rely upon the Law Firms who are themselves conflicted since they participated in the due diligence and permitted the Acquisition to go forward. This is because they do not want to pursue the claims or see them pursued by others because despite the huge size of the D&O policy the damages caused Bayer by their negligence far exceed the limits, and the policies contain large deductibles.

233. At the time of the commencement of this action, Bayer's Supervisory Board consists of 20 members: Defendants Wenning, Zühlke, Achleitner, Bagel-

Trah, Bischofberger, van Broich, Cousin, Elsner, Faber, Goggins, Hausfeld, Hoffmann, Löllgen, Plischke, Reinbold-Knape, Schaab, Schmidt-Kießling, Wiestler and Winkeljohann, as well as non-party Robert Gundlach. To show demand futility under Section 626, Plaintiff is required to allege only (i) that a majority of the Supervisory Board (at least ten members) did not fully inform themselves about the Acquisition; (ii) that these Defendants' due-diligence failure was so egregious on its face that it cannot be the product of business judgment; or (iii) that a majority of the Supervisory Board is interested or lacks independence.

234. Under this standard, the facts set forth above are more than sufficient to show demand futility.

235. Indeed, the Supervisors were themselves intimately involved in reviewing and approving the Acquisition. ***They had real hands-on involvement in the Acquisition.*** They failed to act with due care, prudence or with adequate information, when they misjudged the true extent of the risks and dangers of the Acquisition to Bayer and that proper, independent, objective due diligence had not been performed as to Monsanto including the Roundup cancer litigations, down to and including the effective date of the merger in June 2018. There is a substantial likelihood that a majority of the current Supervisors could be found liable in this action. Thus, any investigation resulting in a suit against them would jeopardize — potentially exhaust — their individual assets and they will not risk that.

236. All or a majority of the current Bayer Supervisors suffer from disabling conflicts of interest and divided loyalties that preclude them from exercising the independent good faith judgment required to commence, oversee and

pursue this type of expensive and contentious litigation. A clear majority of the current Supervisors participated in, approved of, and/or permitted some or all of the wrongs alleged herein — which have continued to the current date — as the Supervisors and Managers have tried to conceal or disguise their wrongdoings, including failing to write down excess goodwill from the Monsanto Acquisition or take the required reserve for the financial cost of the Roundup litigations which combined exceed $30–40 billion. Indeed, the cover-up of their own wrongful conduct is ongoing — in February 2020, the Supervisory Board approved the bogus "voluntary special audit," in collusion with Defendant Strenger, based on information wrongfully obtained through corporate espionage.

237. In order to pursue a recovery for Bayer by filing the claims asserted in this action, the Supervisors would have to sue the Banks and Law Firms they hired and worked with on the Acquisition, ***with whom they are jointly and severally liable under German law.*** They know that if they caused Bayer to sue the Banks and Law Firms directly, the litigation will focus back on them and their failures. They also know the Banks and Law Firms will claim that they are entitled to be indemnified against claims brought directly by Bayer. However, this indemnity defense — even if not void on policy grounds — does bar a derivative action and can be avoided via this derivative claim where the failures and wrongdoings of the Supervisors and Managers are not imputed to Bayer — the true plaintiff.

238. The current Board of Supervisors will also never sue Wenning — the Board Chair. Wenning is one of the most important and powerful men in Germany and is on top of the German corporate community — "***a lion of German industry***"

according to Bloomberg. He is by far the single most powerful individual in the Bayer corporate structure. No similarly powerful Board Chair of a U.S. domestic corporation exists. He has been with Bayer for over 40 years. He was its CEO from 2002–2010. He has been Chair of the Supervisory Board since then with a term extending to 2022, and is effectively Bayer's Co-CEO with Baumann whom he nurtured, whose mentor he is and he handpicked Baumann as the new CEO. No person can become a member of or remains a member of Bayer's Management or Supervisory Board without his consent and support. Nothing of significance can occur at Bayer without his approval. Wenning's influence is evident in the fact that he was allowed to retire — instead of being terminated for cause — despite his egregious misconduct in connection with the Acquisition.

239. Wenning's influence extends throughout the German corporate community. He serves on the Supervisory Boards of other huge German corporations, including Henkel AG and Siemens AG. He has held important positions in the German Chemical Industry Association and the Federation of German Industries. There are no circumstances under which the current members of the Bayer Board of Supervisors would ever sue Wenning, or allow a lawsuit he opposed to occur given his power and prestige at Bayer and in Germany.

240. Bayer's acquisition of Monsanto was a Wenning/Baumann driven transaction, a deal they had both been eyeing — pushing for years. The new CEO Baumann was Wenning's protégé and handpicked CEO. Wenning had guided and advanced Baumann's career at Bayer for years. Baumann worked for Wenning and is completely loyal to him. They are known (behind their backs) as "Little Werner"

and "Big Werner." To investigate or sue Baumann would be to defy Wenning, not only because of their long association and close friendship but also because the Monsanto Acquisition was their pet project — one they imprudently rushed to implement as soon as the prior Bayer CEO left at the end of April 2016. To sue Baumann is to sue Wenning, and the Supervisors will never do that. In addition, any litigation would focus on the failed Merck Acquisition which the then Supervisors approved and which was also a Wenning/Baumann driven deal, and now a source of embarrassment to both of them and actually all concerned.

241. The Bayer Supervisory Board includes members who have a vested personal interest in curtailing and blocking any shareholder derivative suits against defaulting Supervisors and Managers because of their own past misconduct in their corporate positions, which leaves them vulnerable to suit. Thus, wholly apart from not being willing to sue themselves, they would vigorously oppose authorizing any suit by Bayer against those who have violated their duties to Bayer to avoid creating what would be for them personally a very dangerous precedent. For example:

- Supervisor Paul Achleitner is the Chairman of the Supervisory Board of Deutsche Bank AG and sits on the Supervisory Board of Daimler AG and like Wenning is one of the most powerful members of the German corporate power structure.[4] No other member of the Bayer Board would

[4] Achleitner's wife, Ann-Kristin Achleitner, is a Professor of Entrepreneurial Finance and sits or has sat on the German Corporate Governance Cordex and numerous German corporate supervisory boards (*e.g.*, Munich Re, Engie, Linde, Deutsche Börse, Metro AG and Depfa Bank), as well as the Trilateral Commission and World Economic Forum.

ever authorize a lawsuit against him. Achleitner has a long track record of involvement in corporate scandals including failed acquisitions. In 2001 when Achleitner was CEO of Allianz, a giant German insurer, he engineered and then led Allianz's acquisition of Dresdner Bank. This acquisition was a complete failure resulting in Allianz suffering a $2.5 billion loss before it sold Dresdner Bank for half of what it paid for the acquisition — causing an aggregate of $10 billion in losses to Allianz. More recently, Achleitner has presided over the widely reported corporate disaster at Deutsche, where he has been chairman/CEO for years. Under Achleitner's watch, Deutsche Bank repeatedly violated the law and, as a result, was required to pay billions of dollars in fines, penalties and settlements. Deutsche Bank has also suffered a $6.6 billion loss/write-off on its failed acquisition of Bankers Trust. The last thing in the world Achleitner would want is for corporate supervisors of a huge German company to be sued, as that would invite — and help justify — litigation on behalf of Deutsche Bank or its shareholders against him under German corporate law.

- In addition, Supervisor Coleen Goggins is a professional director serving on many corporate boards — T.D. Bank Group, Krauss Maffei Group, SIG Combibloc and Valeant Pharmaceuticals. In addition, she was a top officer and board member at Johnson & Johnson, where she was recently a member of Johnson & Johnson's Executive Committee and served as Worldwide Chair of its Consumer Group for 10 years. Like

Monsanto/Bayer, Johnson & Johnson has been caught in a torrent of product-liability suits and is implicated in the opioid epidemic scandal sweeping the U.S. Johnson & Johnson was on the losing side of a $572 million verdict for the death of a user of opioid products. The verdict ***"is just the beginning of what could be years of lawsuits examining how the company sold its opioid products and manufactured raw ingredients it sold to larger opioid makers including Purdue Pharma."*** Johnson & Johnson is also being sued in thousands of cases alleging its talcum powder contained asbestos and caused cancer — allegations the U.S. Justice Department is investigating. Johnson & Johnson paid $775 million to settle product-liability claims relating to its Xarelto blood thinner, and is a defendant in many suits alleging it failed to warn of the health risks of its vaginal mesh implant product. Given her huge income from serving as a professional director and her long presence at the very top of scandal-ridden Johnson & Johnson, she will never authorize any suit directly by Bayer under these circumstances.

- Supervisor Winkeljohann is also a member of the Supervisory Board of Deutsche Bank AG. As pleaded above, Deutsche Bank is scandal ridden, having paid billions in fines and settlements in recent years as a result of dubious if not illegal misconduct. The Supervisors there have come under serious criticism and are threatened with suits by its shareholders. As a result — similar to Achleitner and Goggins — the last thing Winkeljohann wants is for Bayer to sue the Defendants in this case.

242. In light of these facts, relationships and power positions, it is inconceivable that the current Supervisory Board of Bayer would authorize suit against their fellow Supervisors, let alone themselves. Demand is thus futile and excused.

243. The Monsanto Acquisition, especially because it was structured as an all-cash deal ($66 billion), to be financed by a huge amount of Bayer debt (some $45 billion) served the personal interests of Baumann, Wenning, Condon and the Supervisors as it operated as a "poison pill" insulating Bayer from being taken over itself — which would have resulted in them all losing their positions of power, prestige, and profit — something they wanted to avoid.

244. In 2015–2016 Bayer was in a state of flux, and viewed by many as a potential takeover target. The agribusiness industry was consolidating as DuPont acquired Dow and Chem China acquired Syngenta creating two larger competitors. As this consolidation was unfolding ***Monsanto actually approached Bayer about acquiring Bayer's agriculture business, which included non-Glyphosate based herbicides which Monsanto wanted given the controversies surrounding its Glyphosate based Roundup product.*** This approach was rebuffed. The sale of Bayer's agricultural business would make Bayer smaller and more vulnerable to be taken over itself — an event that, if it occurred, would have resulted in Wenning, Baumann, Condon and the Supervisors losing their positions of power, prestige and profit at Bayer. According to Wenning ***"we turned the tables on them," and "acquiring Monsanto will make Bayer unacquirable — according to one of the bankers — a "poison pill" because of the $45 billion in new Bayer debt.***

245. The Supervisors and Managers knew that by structuring the Acquisition as a huge $66 billion **all-cash *purchase***, they would greatly raise Bayer's leverage/debt level so high that the Acquisition would advance their desires to entrench themselves in their positions of power, prestige, and profit at Bayer. By doing so, they acted disloyally — favoring their own personal interests over those of Bayer. Because of this they have no "business judgment" defense to either their conduct or their ability to objectively decide whether or not to sue themselves and their co-actors.

246. Not only have the Supervisors failed to seek independent outside advice to objectively evaluate the merits of any potential legal claim for Bayer against themselves or the Bankers, they have been preemptively erecting defenses to any such claim and denouncing in advance any challenge to their conduct as **"*ill conceived*,"** evidencing closed minds that cannot possibly objectively evaluate their prior conduct or sue themselves and their co-actors.

247. After the first Roundup cancer case verdict signaled the failure of the Acquisition and Bayer's stock market capitalization collapsed, the Supervisors with the help of the Law Firms immediately began to take action to make it more difficult or impossible for Bayer or any Bayer shareholders to hold them accountable. At an extraordinary meeting in November 2018, the Supervisory Board dealt in detail with the status of the Monsanto integration and once again looked closely at the status of the litigations in connection with glyphosate. The discussions also addressed the extent to which these risks had been analyzed and assessed prior to the Monsanto Acquisition. At its meeting in December 2018, building on the

discussions from previous meetings and a detailed examination of the relevant documents undertaken in the meantime, the Supervisory Board also dealt once again with the risks arising from Monsanto's glyphosate business. ***"This discussion also focused on a comprehensive expert report by a prominent law firm that examined compliance with audit obligations and duty of care responsibilities in this regard when the Monsanto transaction was prepared and implemented. The report came to the conclusion that the members of the Board of Management fulfilled their statutory duties in connection with the Monsanto transaction, particularly with regard to the examination and assessment of the liability risks related to the glyphosate business. The Supervisory Board concurred with the report's findings."***

248. Baumann, Condon and Wenning, upon whom the Supervisors continue to rely for information regarding the Monsanto Acquisition, have closed minds as well. While admitting that "there's no getting around it[,] the lawsuits and the first verdicts concerning Glyphosate ***are placing a heavy burden on our company and worrying many people,"*** Baumann asserted that "the Monsanto acquisition ***was and is a good idea***," and that he would acquire Monsanto "***at any time without any ifs, ands or buts***." According to him, "***all reputational issues and risks were actually identified and assessed.***" Baumann stated that he "***certainly would not be sitting [t]here representing the company if a major mistake had been made***." He affirmed that "[t]he Management Board enjoys the full confidence of the Supervisory Board," and "the full extent of the current Glyphosate litigation ***was not foreseeable*** when Bayer assessed the value of

Monsanto." Condon has stated he ***"has no regrets"*** and that accusations that Bayer should have been more aware of the legal risks when it bought Monsanto ***"were baseless … we went through everything that was available in the due diligence process … and we reviewed it afterwards. Today looking back we would still have come to the same conclusion."*** As the statements were being made, a Bayer spokesperson asserted that Baumann, Wenning and Condon ***"assessed the legal risks in connection with the use of Glyphosate as low"*** and the Supervisors ***"performed this risk assessment based on all information and update process which was in all respects adequate."***

249. The Supervisors have already come to the conclusion that they and the members of the Board of Management met their legal obligations in every respect both when the Acquisition agreement was signed and when the transaction closed. Thus, even before any demand was made upon Wenning, Baumann, Condon and the Supervisors to consider having Bayer sue to recover the damages inflicted on it, they have made up their minds that such claims are meritless. The Supervisors and Managers cannot objectively consider any demand that they sue or consider suit against themselves or their co-actors. Based on the foregoing, the Supervisors and Managers have prejudged their own conduct and absolved themselves.

250. By Spring 2019 as the extent of the Monsanto catastrophe became ever more apparent, Bayer shareholders were in revolt. Before Bayer's April 2019 shareholder meeting certain influential proxy services recommended to vote against Baumann and Wenning, and to refuse to ratify their conduct regarding Monsanto.

Wenning, as Board Chair and on Bayer letterhead, in an April 2019 letter rejected any criticism, claiming a **"*renowned US law firm had assessed the legal risks as low*"** and that they had all examined what they had done, were sure they did nothing wrong and had all acted **"*in accordance with their duties.*"** At the 2019 Annual Meeting, the Supervisors opposed a resolution proposed by Strenger seeking a special audit of the Monsanto due diligence. It was voted down 75%–25%.

251. Defendant Strenger met with Haussmann's Team in Frankfurt, Germany on Friday, February 7, 2020, as Haussmann's Team was completing a multi-day trip to Germany to meet with lawyers, Bayer shareholders, and others to complete their factual investigation and discuss the proposed *Haussmann* derivative lawsuit. By that time, Haussmann's Team had been investigating for months, and had prepared a detailed 130-plus-page draft complaint with Rebecca R. Haussmann identified as a named plaintiff.

252. Earlier during their Germany trip, on Wednesday, February 5, 2020, Haussmann's Team met with DWS Individual A, an investment manager at DWS Group & GmbH Co KgaA ("DWS"), at the law office of Klaus Nieding in Frankfurt to discuss Haussmann's proposed derivative complaint. With lawyers present, and ***under an explicit understanding of absolute confidentiality and secrecy and that no internal information would be shared with Bayer***, Haussmann's Team explained their work to DWS Individual A, and that they intended to file the *Haussmann* derivative complaint in the next few weeks. They provided DWS Individual A with a draft of the complaint.

253. DWS Individual A worked for DWS, a longtime subsidiary of Deutsche Bank AG, to which DWS remains closely related. Defendant Paul Achleitner, the Chair of the Supervisory Board of Deutsche Bank AG, is also a member of the Supervisory Board of Bayer and was a prominent defendant in Haussmann's draft complaint, a copy of which DWS Individual A obtained under an understanding of confidentiality and non-communication with Bayer.

254. Because of DWS Individual A's position at DWS and relation to Achleitner, he could not be of assistance to Haussmann. However, he recommended that Haussmann's Team contact and meet with Strenger, who DWS Individual A said he knew quite well. Strenger had worked for many years for Deutsche Bank AG and in 1991 became CEO of DWS Investment, a Deutsche Bank AG unit, Germany's largest asset manager. He still uses the email address christian.strenger@dws.de.

255. Haussmann's Team then met with Strenger on February 7, 2020. At the February 7, 2020, meeting with Strenger, ***after securing his agreement of secrecy and confidentiality, as well as an understanding that he would not communicate with Bayer***, Haussmann's Team explained to Strenger Haussmann's planned derivative suit, showed him a copy of, and/or let him review, the draft complaint, and in response to his questions as to what would happen next, disclosed their litigation strategy, including their timetable for moving forward and filing the complaint in the next few weeks.

256. Immediately after the February 7, 2020, meeting with Haussmann's Team, Strenger communicated and met with Bayer or its agents and wrongfully disclosed the content of his confidential, secret discussions with Haussmann's Team

to Bayer and its legal counsel, telling them Haussmann's derivative lawsuit was going to be filed very soon. Bayer obtained a draft of Haussmann's derivative complaint. Bayer and its legal counsel knew this information was secret and confidential, and constituted attorney work product, and was being wrongfully offered to be shared with them. Nevertheless, they accepted and used the information.

257. On February 25, 2020, Werner Wenning — a prime defendant in this derivative complaint, which he now knew was about to be filed and would expose his participation in the wrongdoing in the Monsanto Acquisition in great detail — voluntarily resigned effective April 2020. Then two days later, on February 27, 2020, Bayer issued the following press release:

> **Bayer reaches agreement with shareholder Prof. Strenger on voluntary special audit of due diligence procedures**
>
> **Leverkusen, February 27, 2020** — Bayer AG has reached agreement with Prof. Christian Strenger, a stockholder of the company, on a voluntary special audit of due diligence procedure. The agreement provides, among other things, for Prof. Dr. Hans-Joachim Böcking of the University of Frankfort to review Bayer's existing specification and requirements for conducting due diligence on major M&A transactions in the future and summarize them in a report. Bayer will publish Böcking's report on its website by the end of March and thus prior to the 2020 Annual Stockholders' Meeting.
>
> It has been agreed that lawyer Dr. Ralph Wollburg of Linklaters and Prof. Dr. Mathias Habersack of the University of Munich will issue more detailed statements about the legal opinions they prepared at the end of 2018 and in early 2019 concerning the duties of the Board of management in relation to the Monsanto acquisition. In their respective statements, these experts explain how they reached the conclusion that Bayer's Board of Management had acted with due care in every respect and in compliance with its obligations under stock corporation law when making its decisions regarding the Monsanto acquisition. These statements will also be published on the Bayer AG website.

> In addition, the opinions that Bayer's Board of Management obtained from a leading U.S. law firm prior to the acquisition of Monsanto concerning potential litigation risks associated with glyphosate and the Roundup™ products containing this active ingredient have been independently reviewed. U.S. lawyer James B. Irwin, a renowned expert in fields including product liability and mass tort litigations, comes to the conclusion that these opinions thoroughly address and appropriately assess potential risks in accordance with professional standards. The decisions made by Bayer's Board of Management in connection with the acquisition of Monsanto were partly based on these opinions. Irwin's statement will also be published on the Bayer AG website.
>
> Strenger had put forward a motion at the company's Annual Stockholders' Meeting on April 26, 2019, that a special audit be conducted to examine whether, in connection with the acquisition of Monsanto, the Board of Management and Supervisory Board had acted in accordance with their duties regarding the glyphosate litigation since the start of fiscal 2018. With 25.7 percent of shareholders supporting the motion, it failed to gain majority approval.

258. ***Note how Strenger is given headline credit for the "voluntary" action by Bayer***. Wenning's resignation and the February 27, 2020, release purporting to agree to Strenger's previously defeated and discarded request for a special audit are the direct result of Strenger's action in breach of his promise of confidentiality and non-communication, and Bayer's counsel's wrongful conduct in accepting and using what they knew was confidential and privileged attorney work product obtained under conditions of confidentiality and in an act of corporate espionage. Strenger undertook this action to leverage his personal involvement with Bayer and reputation as a shareholder activist, get Bayer to purport to agree to his defeated and abandoned special audit proposal, ***give him personal public credit for it*** and compensate him down the road.

259. In fact, however, the agreed-to "special audit" is nothing of the kind required by German law. The German Stock Corporation Act requires that a special audit be authorized either by a shareholder vote or ordered by a court upon application. Voluntary audits are not authorized — especially where the auditors are handpicked by those who are audited. In addition, the German Stock Corporation Act requires that auditors be persons "trained and experienced in accounting" or "auditing firms." The proposed special auditors do not meet these qualifications. The "voluntary special audit" is statutorily unauthorized and bogus. Moreover, the examination of Bayer's due diligence procedures is to be forward-looking only; no audit or examination of the due diligence procedures actually employed in the Monsanto Acquisition is to be conducted.

260. By taking this action, Strenger influenced one or more Managers and Supervisors of Bayer to take action to the disadvantage of Bayer, inducing and assisting the "voluntary" creation of a "special audit," which is in fact part of the on-going actions of Bayer Supervisors and Managers to cover up their misconduct and stop, impede or disadvantage any attempt to hold them civilly responsible for ***damages***, including through this meritorious derivative suit, which is being prosecuted independently of the influence of Bayer's Supervisors and Managers (not in cahoots with them) in a ***judicial forum***, where a recovery of damages for Bayer can actually be sought.

261. This most recent dishonest and unethical conduct by Bayer's Supervisors, Managers and lawyers is nothing more than a rehash — the legal opinions they refer to are already published in connection with the 2019 Annual

Meeting by the Supervisors who declared that they conclusively exculpated them. Republishing these legal opinions does nothing other than to continue the effort of Bayer's Supervisors and Managers to cover up their misconduct and protect themselves.

262. In sum, the proposed special audit is not only staffed with ineligible auditors, but is also unauthorized by the German Stock Corporation Act. In fact, the text of Bayer's February 27, 2020 press release demonstrates that the proposed special audit is a façade. The first paragraph of the press release calls for an examination of "Bayer's existing specification and requirements for conducting due diligence on major M&A transactions in the future." Bayer's ***existing*** due diligence procedures for ***future*** acquisitions have no bearing to Defendants' liability for failing to conduct due diligence ***in the past*** with regard to the Monsanto Acquisition. Likewise, the second paragraph of the press release says nothing more than giving an opportunity to two lawyers who have previously provided the opinions that are at issue in this lawsuit to brush up those opinions to make them look better. Finally, the third paragraph of the press release merely states the obvious: Bayer's Supervisors and Managers believe that Defendant Sullivan & Cromwell's pre-Acquisition opinions "have been independently reviewed" and are thus reliable. All told, as reflected in the plain text of the February 27, 2020 press release, Bayer's proposed special audit is a façade.

263. In April 2019 a "no confidence" motion was filed for the Bayer Annual Meeting. During the 13-hour long shareholder meeting, 55% of Bayer shareholders voted **"*no confidence*"** in the Managers and Supervisors because of the Monsanto

fiasco — ***a stunning rejection of their actions and the first time in Germany history such a non-confidence vote in corporate managers and overseers has occurred.*** Notwithstanding this extraordinary rebuke, immediately after the vote the Supervisors called an extraordinary meeting and voted to reject the shareholders vote and stated it "***unanimously stands behind***" management. ***As Bloomberg repeated "The Board showed its contempt for the owners with a statement [that it] unanimously stands behind management." Their minds are closed.***

264. According to Bloomberg:

> Bayer's market value of 56 billion euros ($62 billion) is more than 30 billion euros lower than where it was in August thanks to the huge potential liabilities relating to Monsanto's Roundup weedkiller, which faces thousands of lawsuits claiming it causes cancer.
>
> * * *
>
> ***Bayer's supervisory board needs to take a serious look at how the company sets strategy and makes decisions because something has gone badly wrong. It must address whether its due diligence process for M&A is adequate.*** Some of the lawsuits afflicting Monsanto were happening in the background before the takeover completed. The German giant has commissioned work that says the board fulfilled its duties in assessing the risks. ***It's wrong if it thinks that gets the company off the hook.***
>
> ***Consider the circumstances of how this deal happened.*** Buying Monsanto is not a transaction that was supported widely and then went suddenly awry. ***It was unpopular with investors from the start, marking a radical shift in strategy toward agriculture and constraining Bayer's ability to develop the pharma business through other deals. Shareholders protested but didn't get a vote on a takeover that emerged very much from Baumann's grand vision for the company. Hubris has followed.***
>
> Might management's determination to do this deal have made it take a "glass half-full" view of litigation risk in the U.S.? Bayer's consistent message is that science is on its side in the weedkiller cases. ***But weighing scientific risk and legal risk are not the same thing, especially in a highly litigious environment like the U.S.***

Chris Hughes, *Bayer's Boss Gets to Own His $63 Billion Misstep*, BLOOMBERG, Apr. 29, 2019.

265. Additionally, in an attempt to prevent any remedy of the prior failures of due care and provide prudence, all the current Supervisors are continuing the wrongdoing by publishing false and misleading Bayer financial statements to try to conceal — or at the least delay recognition of — the true extent of the damages inflicted at Bayer by their breaches of duties. They have refused to write down any part of the $38 billion in good will put on Bayer's balance sheet as a result of the Acquisition — and have refused to make the required litigation reserves provision — in the billions of dollars — that will be required to pay for the Roundup cancer litigation claims, thus minimizing or concealing the true extent of the damages caused to Bayer due to their negligence in connection with the Acquisition. They are continuing to accept advice from conflicted professional advisors, including the Law Firms.

266. Large D&O insurance policies customarily include what is called an "insured *versus* insured" exclusion, intended to exclude from the insurance coverage claims by one insured, *i.e.*, the corporation, against another insured, *i.e.*, a corporate Supervisor or Manager or employee. Thus, were the company, an insured under such a policy, to bring the claims asserted herein, the insurer will deny coverage based on the exclusion. Purchasing this type of insurance where the premiums measure in the millions of dollars and are paid by the company is in itself a breach of the Supervisors and Manager's duties of due care and prudence as policies without those exclusions are available and could have been purchased. The

presence of an "insured *versus* insured" exclusion in the D&O policies means this derivative lawsuit — which does not fall within any such exclusion — is the legal vehicle best available to realize on this corporate asset for the benefit of the corporation, which after all paid 100% of the premiums.

D. Venue Is Permitted, Proper and More Convenient in New York Than Leverkusen, Germany

267. Bayer's Articles of Incorporation, provide that Bayer's "registered office … is in Leverkusen," and in Article 3(3) provide:

> The place of jurisdiction for all ***disputes between the company and stockholders*** shall be the location of the company's registered office. Foreign courts shall have no jurisdiction with respect to ***such disputes***.

268. There is no statutory authority for provisions like Article 3(3) in the German Stock Corporation Act. Article 3(3) does not expressly cover derivative claims, *i.e.*, the type of claim asserted here — claims ***on behalf of the company***. Article 3(3) could not have been specifically intended to cover derivative actions because when Article 3(3) was inserted into the articles sometime prior to 2000, derivative actions seeking damages like this action did not yet exist under the German Stock Corporation Act. Article 3(3) does not apply to the claims asserted derivatively in this action ***on behalf of Bayer*** against Bayer's Supervisors, Managers, Banks and Law Firms because this lawsuit does not present a "dispute ***between*** the Company and stockholders." This suit presents claims for Bayer, asserted derivatively, where the "dispute" is ***between Bayer and its Managers, Supervisors, the Banks and Law Firms***. They are the defendants/adverse parties from whom recovery of damages/disgorgement of fees is sought for the benefit of Bayer, the

"true plaintiff." Bayer is not an actual or real defendant only a passive beneficiary of the recoveries in this action. Claims asserted for Bayer against the Banks and the Law Firms are not covered by Article 3(3), and none of them have offices in Leverkusen, Germany.

269. The types of disputes covered by the express language of Article 3(3) include, for example, (i) failure to pay or properly calculate a dividend check; (ii) failure to properly process or record the shareholder's vote; and (iii) failure to properly transfer shares and other types of matters impacting an individual shareholder's ordinary relation with the company.

270. Even if the language of Article 3(3) applied to this derivative lawsuit, application of Article 3(3) to bar this suit in New York state court would be unreasonable, unjust, invalid or in contravention of public policy because, among other things, Article 3(3) was obtained by false statements, omissions or overreaching.

271. The provisions of Article 3(3) were not bargained for by Bayer's shareholders, as in a commercial contract between negotiating parties. At the time that Bayer Supervisors and Managers last obtained shareholder approval of its Amended Articles of Incorporation they did not make full and complete disclosures as they were required to do. Therefore, any shareholder consent based on any vote is void.

272. Article 3(3) purporting to oust "foreign courts" of jurisdiction and force Bayer shareholders to go to Leverkusen, Germany to sue does not bar this action. The Supervisors and Managers of a huge international corporation that

operates all over the world with a fleet of private jet aircraft for its executives with shareholders all over the world have no sovereign power to unilaterally restrict the jurisdiction of "foreign courts," *i.e.*, the courts of the countries where they operate, get billions of dollars in revenues, have thousands of shareholder/debt holders and where they constantly access those foreign nations courts as plaintiffs when it suits their interests, and capital markets when it benefits them. Courts determine their own jurisdictional reach — not potential defendants.

273. New York is the greatest, largest and most important financial and commercial center in the world. It is the heart of U.S. and world financial markets. The Bayer corporate enterprise (which Plaintiff owns and the Supervisors and Managers oversee and operate on their behalf) has overwhelming contacts with the United States in general and New York in particular — economically and legally both with respect to its operations and litigations (by and against it), as well as the Monsanto Acquisition — the subject of this derivative lawsuit. In fact, the Agreement and Plan of Merger for the Acquisition states it is governed by Delaware law, and that the "Chosen Courts" for any dispute between the signatories are the federal and state courts of Delaware.

274. Bayer's ADS/ADRs trade here in the U.S. through BNY Mellon (as depositary), and are owned by thousands of U.S. citizens and residents. They represent and are the equivalent of shares of Bayer common stock (at the ratio of 4:1) with a current market value of about $20 per ADR and over $70 billion in market capitalization. About 400,000 ADS/ADRs trade in the U.S. over-the-counter market each day. The outstanding Bayer ADR/ADSs are registered by Bayer AG

with the SEC on Form F-6 and Bayer's Supervisors and Managers that signed that registration statement are bound to comply with U.S. laws regarding them. In fact, Bayer AG has consented to the jurisdiction of state and federal courts in New York County in all actions arising from the ADRs.

275. Bayer's owners and businesses are much more heavily concentrated in the U.S. than in Germany. Close to 30% of Bayer shares are held by U.S. residents, compared with just 20% in Germany. Bayer has 15 offices/operations in the U.S. compared to 14 in Germany. Bayer has about 22,500employees in the U.S. Bayer's 2019 net sales in the U.S. exceeded €13.5 billion — more than 31% of its total worldwide sales. In contrast, Bayer had 2019 net sales in Germany of only €2.4 billion. Similarly, Bayer's assets in the U.S. are 350% greater than in Germany. It spends hundreds of millions of dollars on U.S. advertising — much of it to boost its image as a "good corporate citizen" in the U.S. Bayer is involved in thousands of litigations in the U.S. both as defendant and plaintiff. Bayer's Supervisors and Managers are already involved in defending — not only the 45,000-plus Roundup cancer suits — but hundreds of other individual, class action and mass tort lawsuits pending all over the United States. As Baumann says "***we have quite a bit of experience in U.S. products litigation***."

276. The Monsanto Acquisition was centered in the U.S. — and in New York specifically. Monsanto was headquartered in St. Louis and was a U.S. company. Its securities were registered with the SEC and traded on the NYSE. To the extent due diligence was done on the Monsanto Acquisition the due diligence was done in significant part out of New York, including the New York offices of Sullivan &

Cromwell, Linklaters, Bank of America and Credit Suisse. The Roundup cancer litigations at the center of this case and the incriminating evidence of Monsanto's (Bayer's) potential liability and financial exposure, which the Defendants failed to obtain and analyze, is 90% located here in the U.S.

277. As part of financing the Monsanto Acquisition, the Supervisors, Managers and Banks directly accessed the U.S./New York capital markets, including the $50-plus billion bridge loan, one of the largest in history, making investor and/or shareholder presentations in New York City and elsewhere and selling billions of securities — ***proceeds in U.S. dollars*** — here. This included $15 billion in new bonds in a Reg. 144a offering using Bayer's U.S.-based subsidiary, Bayer Corporation, a controlled affiliate as the issuer of bonds backed by a Bayer AG guarantee, and in refinancing some 16 outstanding issuances of Monsanto bonds here in the U.S. for $7 billion via exchange offers.

278. Leverkusen is an inconvenient and inappropriate forum where plaintiffs cannot receive the kind of "trial" necessary to assure the fair access to justice this situation requires, and is available to them under New York judicial and court procedures. Leverkusen, Germany is "a company town," where what Bayer's top executives say carries much:

> Its headquarters, just north of Cologne in the sleepy midsize city of Leverkusen, are marked by a 164-foot-tall illuminated logo known as the Bayer Cross. It recently sold the sprawl of chemical plants along the Rhine River, but it still owns Bayer Leverkusen, a soccer team started for employees in 1904 that now competes in Europe's Champions League, along with the team's 30,000 seat stadium. Other holdings around town also include an 800-seat "rest and recuperation house" that hots theater productions and concerts by the company-sponsored Bayer Philharmonic Orchestra, plus restaurants, a four-star hotel, and an 80,000-bottle wine cellar.

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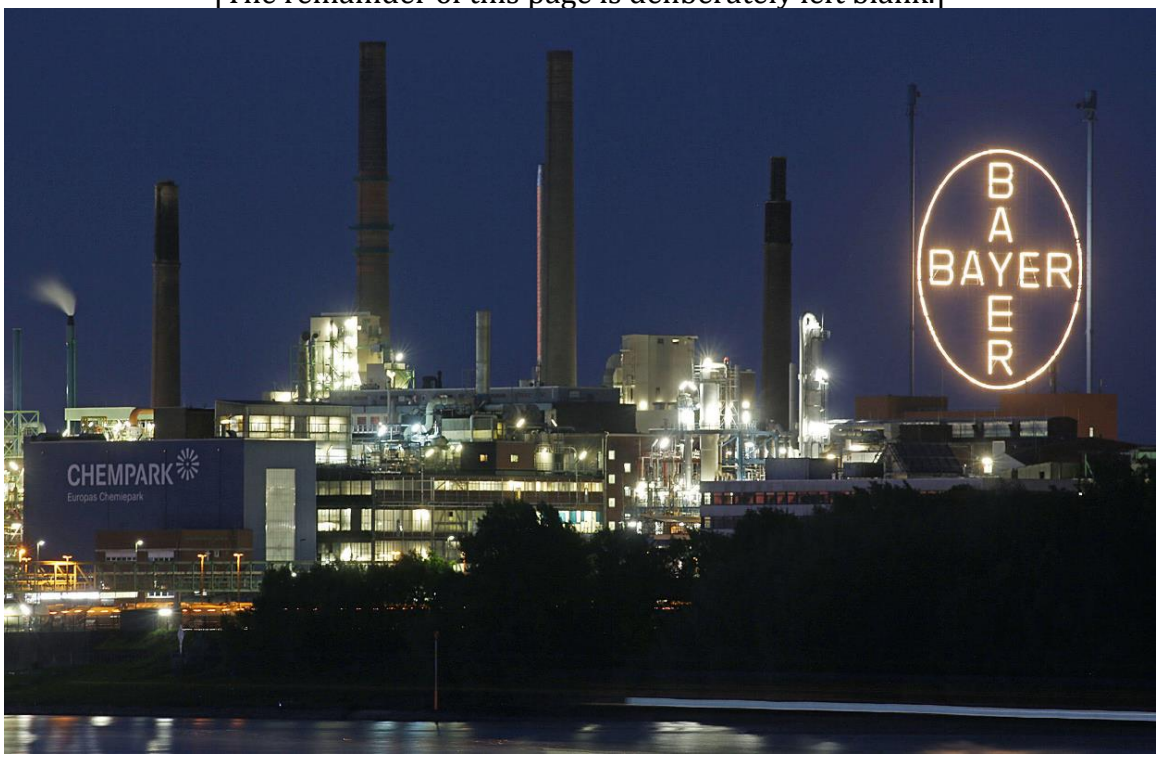

Caroline Winter & Tim Loh, *With Each Roundup Verdict Bayer's Monsanto Purchase Looks Worse — Facing Billions of Dollars in Glyphosate Lawsuits, the Company May Not Survive a Self Inflicted Wound*, BLOOMBERG BUSINESSWEEK, Sept. 18, 2019.

279. Litigating this "dispute" in a "trial" of these claims in Leverkusen, Germany would be gravely difficult — a practical impossibility which would deprive those named plaintiffs who are U.S./New York residents/citizens of their rights as U.S./New York citizens, to access civil justice in the U.S./New York legal systems with the procedural rules and remedies applied in legal proceedings in the United States, while depriving the non-U.S. resident plaintiffs of access to the U.S. civil justice systems to which they are also entitled under the circumstances of this case.

280. There are no jury trials in civil cases in Germany as in New York. As citizens of New York and of the United States, plaintiffs have a constitutional right to

a jury trial. In New York, plaintiffs in a derivative suit are entitled to a jury trial. N.Y. CONST. ART I, § 2 ("[t]rial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever"); *see also* N.Y. C.P.L.R. § 4101 (mandating a jury trial in "an action in which a party demands and sets forth facts which would permit a judgment for a sum of money only").

281. There is also no possible recovery of punitive damages in a Leverkusen "trial" as such damages do not exist in Germany. Punitive damages are permitted under New York law, prayed for in this complaint and justified due to the conflicts of interest and the reckless, willful violations of the diligence failures alleged herein.

282. There is very limited, if any, pretrial discovery under German Civil Procedure. Plaintiff will likely not be able to force the production of documents from Bayer, the Supervisors, Managers, Banks or third parties as effectively and efficiently as will be the case with a New York forum. As to how to conduct needed third-party discovery against the United States-based Law Firms and United States-located Monsanto executives and the other United States-based witnesses in this case via a proceeding in Leverkusen regional court is anybody's guess.

283. Plaintiff cannot hire German lawyers to prosecute the claims asserted in Germany on a contingency fee basis, advancing the costs of the suit without recourse to the named plaintiff as is necessary for any vigorous full prosecution of a case like this to be forcefully prosecuted toward trial. However, contingent representation and expense advancement is permissible in New York — and is viewed as indispensable to assure access to the courts for the presentation of meritorious claims.

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Against the Bayer Supervisors and Managers for Breaches of Duties to Bayer

284. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above.

285. The Supervisors and Managers, by the actions and inactions alleged herein, did not employ the care of a diligent and conscientious manager, failed to obtain adequate information regarding the Monsanto Acquisition and breached their duties to Bayer, and its shareholders, including their duties of loyalty, candor and truthful communications.

286. Bayer has sustained and will continue to sustain significant damages due to these Defendants' conduct for which defendants are liable including the damage penalty under Section 117 of the German Stock Corporation Act.

287. These Defendants' actions and failures to act were a substantial factor in causing the damages alleged herein, both those that have occurred and will in the future.

288. As a result of the conduct alleged herein, these Defendants are jointly and severally liable to Bayer for damages in an amount to be proven at trial.

289. In addition to, and as an alternative of, Plaintiff's claim for compensatory damages, Plaintiff asserts a claim for punitive damages against three Supervisors and Managers — Wenning, Baumann and Condon — whose wrongdoing is intentional or deliberate, has circumstances of aggravation or

outrage, and is in such conscious disregard of the rights of another that it is deemed willful and wanton.

290. Specifically, Wenning, Baumann and Condon committed intentional wrongdoing or conscious acts that willfully and wantonly disregard the rights of Bayer and its pubic shareholders under aggravating and outrageous circumstances.

291. Wenning, Baumann and Condon had actual knowledge of the existence of each other Defendants' duties to Bayer, acted with extreme recklessness with malice in callous disregard of Bayer's rights and their own obligations to Bayer, acting with intent and actual knowledge that their actions would harm Bayer. As a result, Bayer has been damaged and Bayer is entitled to punitive damages from them.

292. The damages alleged in this count are applicable to each of the FIRST, SECOND, THIRD AND FOURTH CAUSES OF ACTION, and consist of any and all provable damages to Bayer.

SECOND CAUSE OF ACTION
Against the Bayer Supervisors and Managers,
Banks and Law Firms for Breaches of Duties to Bayer

293. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above.

294. Under applicable law, and also because (i) their roles gave them constant access to non-public information of Bayer, (ii) they held themselves out to be highly sophisticated, qualified experts with extensive experience and expertise in their respective fields, (iii) they knew the Bayer Supervisors and Managers would be unusually dependent upon their professed, superior experience, expertise, and

sophistication in their respective areas of expertise, and (iv) they were also acting as investment advisors and/or investment managers and/or legal counsel, the Banks and Law Firms were fiduciaries to Bayer.

295. Each of the Banks and Law Firms, by their actions and inactions as alleged herein, influenced the Supervisors and Managers to act to the disadvantage of Bayer, and acted in a negligent manner and failed to exercise due care and failed to fulfill their duties to Bayer.

296. Bayer and its shareholders have sustained and will continue to sustain significant damages, as alleged in the FIRST CAUSE OF ACTION.

297. In addition to, and as an alternative of, Plaintiff's claim for compensatory damages, Plaintiff asserts a claim for punitive damages against the Banks — whose wrongdoing is intentional or deliberate, has circumstances of aggravation or outrage, and is in such conscious disregard of the rights of another that it is deemed willful and wanton.

298. Specifically, the Banks committed intentional wrongdoing or conscious acts that willfully and wantonly disregarded the rights of Bayer and its pubic shareholders, under aggravating and outrageous circumstances.

299. The Banks had actual knowledge of the existence of each other Defendants' duties to Bayer, acted with extreme recklessness with malice in callous disregard of Bayer's rights and their own obligations to Bayer acting with intent and actual knowledge that their actions would harm Bayer. As a result, Bayer has been damaged and Bayer is entitled to punitive damages.

300. The Banks and Law Firms' actions and failures to act were a substantial factor in causing the damages alleged herein.

301. As a result of the conduct alleged herein, the Banks are jointly and severally liable to Bayer for damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
Against Bayer Supervisors and Managers, Bayer Corporation, Banks and Law Firms for Participating in a Common Course of Conduct and Concerted Action Influencing, Inducing or Permitting the Acts That Damaged Bayer

302. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above.

303. Each Defendant played an important and indispensable part in a concerted, common course of conduct, for their own and their joint, economic gain, to the damage of Bayer. Defendants worked together, knowing the roles of the others and each taking the specific overt acts alleged herein within their special areas of expertise and knowledge to further the civil conspiracy. Each Defendant profited from participation in the scheme. In order for the scheme to become the course of conduct as it did, it required the continuing mutually supportive and overt acts of each Defendant. Had any one of them complied with their duties to Bayer, the damages could have been mitigated or avoided.

304. Bayer and its shareholders have sustained and will continue to sustain significant damages, as alleged in the FIRST CAUSE OF ACTION.

305. Defendants' actions and failures to act were made with knowledge of the facts, and Defendants' negligent actions and failures to act were all substantial factors in causing the damages alleged herein.

306. As a result of the misconduct alleged herein, these Defendants are jointly and severally liable to Bayer for damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
Against the Bayer Supervisors and Managers, Bayer Corporation, Banks, Law Firms and Strenger for Aiding and Abetting Breaches of One Another's Duties to Bayer

307. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above.

308. Each of the Defendants named in this count (the Supervisors, Managers, Banks, Law Firms and Strenger) knew that they all owed obligations to Bayer.

309. Each of the Defendants knew that the conduct of the other Defendants as alleged in this complaint breached those duties to Bayer.

310. Each of the Defendants gave substantial assistance or encouragement in effectuating such other Defendants' breaches of duties by the actions or failures to act as alleged in this complaint.

311. Defendants named in this count had actual knowledge of the existence of each other Defendant's duties to Bayer, and knowingly provided substantial assistance to these Defendants in the breach of their duties to Bayer.

312. As a direct and proximate result of the breaches of duties aided and abetted by the Defendants named in this count, Bayer has been damaged.

313. Bayer has sustained and will continue to sustain significant damages, as alleged in the FIRST CAUSE OF ACTION.

314. As a result of the misconduct alleged herein, these Defendants are jointly and severally liable to Bayer for damages in an amount to be proven at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of and derivatively for Bayer, demands judgment as follows:

A. Declaring that Plaintiff may maintain this action on behalf of Bayer and that Plaintiff is an adequate representative of and for Bayer;

B. Enjoining or otherwise ordering suspended the so-called "voluntary special audit" until the conclusion of this lawsuit;

C. Declaring that Defendants have breached their respective duties to Bayer;

D. Determining and awarding to Bayer the damages sustained by it as a result of the violations set forth above from each of the Defendants, individually, jointly and severally, together with interest thereon, as appropriate under the law;

E. Punitive damages against Wenning, Baumann, Condon and the Banks;

F. Ordering a full and complete accounting of fees or other payments made to any person in connection with the Acquisition;

G. Imposing a constructive trust upon and/or ordering disgorgement of all fees or compensation paid to or profits earned by the Banks and Law Firms and all compensation paid to the Supervisors and Managers in connection with the Acquisition;

H. Awarding Plaintiff's Counsel reasonable fees and expenses, honoring the fee agreements with the named Plaintiff who has brought this action on behalf of and for the benefit of Bayer;

I. Awarding each named Plaintiff an appropriate incentive award for having the courage and initiative to bring the action to benefit Bayer to be paid out of the recovery;

J. Exercising the Court's equity power to fashion such relief as is justified and necessary to benefit Bayer and to which it is entitled; and

K. Awarding such other legal and equitable relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York
March 2, 2020

Respectfully submitted,

s/ Clifford S. Robert
Clifford S. Robert

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Counsel for Plaintiff

VERIFICATION

I, Rebecca R. Haussmann, state as follows:

1. I am Trustee of the Konstantin S. Hussmann Trust, which owns shares of Bayer AG common stock.
2. I have reviewed the allegations made in this Verified Derivative Complaint (the "Complaint").
3. As to the allegations in the Complaint of which I have personal knowledge, I believe them to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and believe them to be true.
4. Having received a copy of this Complaint, having reviewed it with my counsel, I authorize its filing.
5. I affirm under penalties of perjury under the laws of California and New York that the foregoing is true and correct, and that this document may be filed in an action or proceeding in a court of law.

Dated: March 2, 2020
at Berkeley, California

Rebecca R. Haussmann, as Trustee
of the Konstantin S. Hussmann Trust