Form 10
[Rule 3.25]

COURT FILE NUMBER	1903 14698
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF(S)	BARRY W. MILLER AND THOMAS PENNER
DEFENDANT(S)	MONSANTO CANADA ULC, MONSANTO COMPANY, BAYER AG, BAYER INC., BAYER CANADIAN HOLDINGS INC., BAYER CROPSCIENCE INC., BAYER CROPSCIENCE HOLDINGS INC., INTERTEK INC., INTERTEK GROUP PLC, CANTOX HEALTH SCIENCES INC..
DOCUMENT	**STATEMENT OF CLAIM**

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

THE NATURE OF THE ACTION

1. This action concerns the product Roundup®, an herbivore that has been found to be a cause or material contributor in developing cancer. The defendants concealed studies from regulatory authorities in Canada and the world that proved Roundup® was causing or materially contributing to developing cancer.

2. In response to an IARC report, the defendants hired a Canadian research company to

produce studies that falsely showed that Roundup® was safe for its intended use.

3. Monsanto wrote introductions, conclusions, scientific abstracts and other information to mislead Health Canada and the public. Monsanto chose whose name the studies would be put in, in consultation with Intertek, the consultancy firm with whom it colluded in the studies. Monsanto also changed content when it did not adhere to what was "expected." The email record between Monsanto and Intertek was produced and filed as part of the US litigation.

4. Monsanto has continued to disseminate information to its consumers that Roundup® is safe, persuading Health Canada (before the collusion was known) to extend its reapproval of Roundup® to 2032. The scientists responsible have admitted there were errors and omissions in its materials provided to Health Canada. To date, Health Canada has not changed its position, however.

5. Canadians continue to get cancer from glyphosate in Roundup®.

INTERNATIONAL AGENCY FOR RESEARCH ON CANCER

6. The International Agency for Research on Cancer ("IARC"), an agency of the World Health Organization ("WHO"), reclassified glyphosate as a group 2A, which means that it is probably carcinogenic to humans.

7. The evaluation was performed by a panel of international experts, who collected and reviewed the body of literature and scientific research. The report summarized the research which showed a positive association between cancers such as non-Hodgkin Lymphoma and glyphosate exposure in humans. IARC's evaluation of glyphosate also found that glyphosate caused DNA and chromosomal damage in mammals.

8. A vast number of studies have found that Roundup® causes or materially contributes

to the development of cancer in humans. As a result, Monsanto sought to dissuade regulatory authorities from limiting or banning its use, which resulted in, among other things, ghostwriting studies with Intertek, as will be described hereunder.

THE PARTIES

A. PROPOSED REPRESENTATIVE PLAINTIFFS

9. Barry W. Miller resides in the City of Edmonton, in the Province of Alberta. He has leukemia. He is 76 years of age and used Roundup® on properties that he owned and farmed in Alberta and in British Columbia. In January of this year, 2019, Mr. Miller was diagnosed with leukemia. As late as 2018, he was using Roundup® several times a year at his residence as well, in addition to the previous years where he used it on his property in British Columbia and his property in Alberta.

10. Thomas Penner resides in the City of Lethbridge, Alberta. He has been diagnosed with non-Hodgkin Lymphoma. He is 35 years of age and is in remission. Mr. Penner comes from a farming family, and has worked on the farm for years. Roundup® was widely used on the farm. Mr. Penner was only 30 years of age when he was diagnosed.

11. Mr. Miller used Roundup® in accordance with the specific instructions and directions, provided by the defendant, Monsanto, on both of his properties. Mr. Penner and his family also used Roundup® on their farm in accordance with the specific instructions and directions, provided by the defendant, Monsanto.

B. THE DEFENDANTS

12. The Defendant, Monsanto Canada ULC is the Canadian defendant subsidiary of Monsanto, and is an Alberta corporation with its registered office in Edmonton, Alberta.

13. The defendant, Monsanto Company is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri. It conducts business in Canada and throughout the world. Throughout this pleading, the Monsanto group of defendants will be identified as "Monsanto."

14. The defendant, Bayer AG is a German pharmaceutical and life sciences company, with its headquarters located in Leverkusen, Germany, and is one of the largest pharmaceutical companies in the world.

15. The defendant, Bayer Inc. is a corporation incorporated pursuant to the Canada Business Corporations Act. Its head office is located at 2920 Matheson Boulevard East, Mississauga, Ontario.

16. The defendant, Bayer Canadian Holdings Inc. is a corporation incorporated pursuant to the *Canada Business Corporations Act* with its head office located at 2920 Matheson Boulevard East, in Mississauga, Ontario.

17. The defendant Bayer Cropscience Inc. is a corporation incorporated pursuant to the *Canada Business Corporations Act*, with its head office located at 160 Quarry Park Boulevard SE, Suite 200, in Calgary, Alberta.

18. The defendant, Bayer Cropscience Holdings Inc. is a corporation incorporated pursuant to the *Canada Business Corporations Act*. Its registered office is located at 160 Quarry Park Boulevard SE, Suite 200, in Calgary, Alberta. Throughout this pleading, the Bayer group of defendants will be identified as "Bayer."

19. The defendant, Intertek Inc. is corporation incorporated pursuant to the Canada Business Corporations Act, with its head office for Scientific & Regulatory Consultancy located at 2233 Argentia Road, Suite 201, in Mississauga, Ontario.

20. The defendant, Intertek Group PLC is a corporation incorporated in the United Kingdom, with its head office located in London, England, at 33 Cavendish Square in London, United Kingdom. Throughout this pleading, the Intertek group of defendants will be identified as "Intertek."

21. The defendant, Cantox Health Sciences Inc. is a defendant incorporated pursuant to the *Canada Business Corporations Act*, with its head office located at 2233 Argentia Road, Suite 308, in Mississauga, Ontario. All references to Intertek include its predecessor, and the Intertek group of companies is identified as "Intertek" in this pleading.

22. The defendants, their predecessors, affiliated corporations, subsidiaries, agents and employees acted in concert for profit. Wherever a corporation is referenced it includes its predecessors, affiliated corporations, subsidiaries, agents and employees. The plaintiffs and Class also plead and rely upon the doctrine of vicarious liability.

RELATIONSHIP AMONG THE DEFENDANTS

23. On or around June 7, 2018, Bayer AG acquired the defendants Monsanto Company and Monsanto Canada ULC. On or around April 9, 2010, Cantox was acquired by Intertek.

24. Intertek, formerly known as Cantox in Ontario, was retained by Monsanto to set and co-ordinate four "independent expert panels" to publish scientific papers in the journal, *Critical Reviews in Toxicology*. The researchers concluded unanimously but falsely, in studies that were

provided to Health Canada, that glyphosate did not cause or materially contribute to cancer and should be reapproved by Health Canada. Approximately 15 researches appear to have been involved.

25. Intertek was a major factor that led to the continuation of use of Roundup® in the United States and Canada. Health Canada even defended its decision to reapprove the use of glyphosate in 2017 listing among its references, the Intertek conclusions. In fact, it reapproved glyphosate until 2032, unaware that this industry consortium of researchers was ghostwriting for Monsanto.

26. The plaintiffs and Class plead that Alberta is the proper jurisdiction for this action as Monsanto Canada ULC is the Canadian defendant subsidiary of Monsanto, and is an Alberta corporation with its registered office in Edmonton, Alberta. Bayer Cropscience Inc. is a corporation incorporated pursuant to the *Canada Business Corporations Act*, with its head office located in Calgary, Alberta. Bayer Cropscience Holdings Inc. is a corporation incorporated pursuant to the *Canada Business Corporations Act* with its registered office located in Calgary, Alberta.

27. In 2016, U.S. scientists sitting on an independent Environmental Protection Agency panel which was responsible for reviewing the safety of glyphosate, recommended that the EPA look at "relevant papers," including some written as part of the Intertek consortium. The ghostwriting was not known at the time.

NON-DISCLOSURE BY MONSANTO OF THE ROLE OF INTERTEK

28. The researchers involved in the Intertek consortium ultimately agreed to a correction stating that Monsanto reviewed a preliminary and final draft of their review article that criticized the IARC assessment.

29. However, in 2018, the researchers admitted that Monsanto provided a "regulatory history overview" that was not disclosed. The authors also finally apologized for any "errors or omissions."

REAPPROVAL IN CANADA: MONSANTO'S COLLUSION WITH INTERTEK

30. Wholly unknown to Health Canada at the relevant and material time, Monsanto directed Intertek in relation to ghost-written studies in 2016.

31. The plaintiffs and Class plead and rely upon email from William Heydens ("Bill"), Product Safety Assessment Strategy Lead, at Monsanto to Ashley Roberts, Senior Vice President Food & Nutrition Group Intertek Scientific & Regulatory Consultancy, at Intertek, on January 6, 2016, with the subject "RE: Glyphosate Expert Panel Manuscripts."

32. The email exchange makes it clear that Monsanto directed and in fact wrote parts of the study by Intertek, and states, among other things, "I am not surprised at the challenges with the Summary chapter! I wanted to update you on what I/we have been doing on our end. Back in mid-December, I forwarded the final Epidemiology & Genotoxicity manuscripts from John & Larry to our resident expert report/manuscript preparation person here at Monsanto to put them in the format (including references) specified by Critical Reviews in Toxicology."

33. Bill also states that "I had already written a draft Introduction chapter back in October/November, but I want to go back and re-read it to see if it could benefit from any 're-freshing' based on things that have transpired over the last 10-12 weeks. I will do that in the next

few days. Then I was thinking I would run it by you for your comments/edits. And then comes the question of who should be the ultimate author - you or Gary? I was thinking you for the Introduction chapter and Gary for the Summary chapter, but I am totally open to your suggestions."

34. Bill also states "That leaves the Exposure chapter from Keith - I am not totally sure where that stands - I vaguely recall that he was still going to make a few changes? I think you and I should talk about how that chapter gets completed, as it is not exactly what I was expecting. Do you have any time Thursday AM.? I have a meeting 7:30-8:00 AM and 9:00-10:00 my time but I could call you before/between/after those meetings. Alternatively, bright & early Friday morning? Let me know what works. Thanks much, Bill."

35. The plaintiffs and Class plead that the consortium of researchers at Intertek colluded with Monsanto to come up with what Monsanto "expected," which was not disclosed to Health Canada or regulators in the United States, in "refuting" the position by IARC, and which ultimately led to reapproval of Roundup® in Canada until 2032.

36. Further, the plaintiffs and Class plead that Monsanto even directed in whose names the studies should appear, and what should be expected:

> And then comes the question of who should be the ultimate author - you or Gary? I was thinking you for the Introduction chapter and Gary for the Summary chapter, but I am totally open to your suggestions. That leaves the Exposure chapter from Keith - I am not totally sure where that stands - I vaguely recall that he was still going to make a few changes? I think you and I should talk about how that chapter gets completed, as it is not exactly what I was expecting.

DUTIES AND OBLIGATIONS OF THE DEFENDANTS

37. The defendants had an obligation to disclose that studies were ghostwritten. In addition, the defendants had an obligation to advise Health Canada that Monsanto had provided a "regulatory history overview" at the time that the papers were submitted, along with the defendants' collusion or ghostwriting.

38. At all relevant and material times, one or more of the defendants, including their affiliated corporations, was involved in the placement of Roundup® into the stream of commerce in Alberta and elsewhere in Canada.

39. Unknown at the time, the defendants and their affiliated corporations which were responsible for providing regulatory authorities with position papers on the IARC findings, were actually working with Monsanto to ghostwrite.

40. Among the defendants is the corporation that discovered glyphosate, manufactured Roundup®, became the world's producer, and ghostwrote studies for reapproval in Canada in 2017. That corporation is Monsanto.

41. The defendants and affiliated corporations were engaged in the design, manufacture, development, approval, processing, testing, of glyphosate, and the submission to regulatory authorities for reapproval of Roundup®.

42. Further, all of the training, labeling, safety claims, and handling instructions, came from the defendants and affiliated corporations, predecessor corporations and subsidiaries, acting separately and together for profit by placing Roundup® in the stream of commerce in Alberta and elsewhere in Canada.

THE DESCRIPTION OF THE CLASS

43. The plaintiffs bring this action on behalf of themselves and the Class of persons in Canada (excluding Quebec) who have been exposed to Glyphosate and are inflicted with cancer, including Leukemia and non-Hodgkin Lymphoma and other cancers.

44. The plaintiffs also bring this action on behalf of themselves and the Class of persons in Canada who are entitled to bring an action, as spouses, siblings, children, grandchildren, parents and grandparents that arise as a result of their family member's injuries or death.

BREACH OF DUTY OF THE DEFENDANT

45. The defendants, Monsanto, Bayer and Intertek owed a duty of care to the Plaintiffs and Class to take reasonable care in placing Roundup® into the stream of commerce in Alberta and elsewhere in Canada, which duty of care encompassed, among other things, that:

(a) it was safe to produce, apply, handle and use as intended, fit for its intended purpose, and of merchantable quality;
(b) it met standards set by regulatory authorities in Canada;
(c) adverse events were reported;
(d) studies were reported accurately and were not biased or "ghostwritten";
(e) it was tested, analyzed, evaluated for safety, and labeled adequately, for use as directed, and would be withdrawn from the stream of commerce in Alberta and Canada if it was not fit for its intended purpose.

46. The defendants, Monsanto, Bayer and Intertek, breached the duty of care.

NEGLIGENCE

47. The plaintiffs and Class claim that the aforementioned injury resulting in Leukemia, non-Hodgkin Lymphoma and related cancer, was caused and/or materially contributed to, as a result of the joint and/or several negligence of the defendants, Monsanto Bayer, and Intertek, and/or the employees or agents of the defendants, for whose negligence the defendants are in law

responsible, the particulars of which are as follows:

(a) they failed to produce a product that was safe for human use, and made false and misleading statements to deceive the regulatory authorities and public;
(b) they placed into the stream of commerce in Alberta and elsewhere in Canada a product that caused or materially contributed to cancer;
(c) they failed to undertake studies to determine whether Roundup® was fit for its intended use, and of merchantable quality;
(d) they produced, developed, marketed and sold and/or distributed Roundup® without any, or any adequate, pre- and post-market testing, and denied the findings by IARC preferring to have studies ghostwritten to "refute" IARC;
(e) they knew or ought to have known that by "ghostwriting" studies, including introductions, conclusions, and scientific abstracts, and then choosing the author, that they had significantly biased the outcomes, distorted and concocted the results, and misled the regulatory authorities including Health Canada's Pest Management Regulatory Agency;
(f) they knew or ought to have known that by paying for research papers to be ghostwritten where they could change results which were "not expected," as Monsanto did with Intertek, they were deceiving Health Canada and the public;
(g) they failed to conduct independent studies that would have shown the product was unsafe, and instead conducted industry studies by colluding with Intertek to mislead Health Canada;
(h) they failed to use reasonable and prudent care in the design, production, and the manufacture of Roundup®, to prevent serious risk of harm, at the same time knowing that its use was prevalent in Canada;
(i) they failed to provide adequate instructions, guidelines, and safety precautions, especially given that the product was hazardous and unsafe to begin with;
(j) they failed to produce Roundup® in a manner that was at least equal to the safety profile as other herbicides;
(k) they failed to warn the plaintiffs and Class of the cases of cancer that were reported, studied, and believed to have been caused or materially contributed to by Roundup®;
(l) they failed to conduct any or any adequate, independent studies or reviews and did not advise Health Canada of adverse events, adequately or at all;
(m) they failed to meet the statutory requirements in the collection, retention and disclosure of adverse events;
(n) they failed to label Roundup® in a manner which might otherwise have increased the use of precautions given the toxicity, under the circumstances, and might therefore have decreased the risks even though it was inherently dangerous;
(o) they failed to warn that the product was inherently dangerous, that the risks could ultimately not be mitigated, and that the danger was too extreme to outweigh any benefits;
(p) they failed to warn that the plaintiffs and Class needed to wear protective clothing, face masks, goggles, to avoid inhalation, and to shower immediately after use;

(q) they failed to advise the regulatory authorities and customers that Roundup® was unsafe even if used as directed;
(r) they failed to have adequate policies, protocols and procedures in place to train the representatives and agents to provide training in "safer use" of the product;
(s) they failed to implement policies, procedures and protocols, to stop the use of Roundup® when it was known to be unsafe;
(t) they failed to disclose the health effects to the responsible regulatory agencies, to the authorities, and to the public at large, instead hiring ghostwriters even after the IARC findings;
(u) they produced and marketed and sold and distributed Roundup® while concealing the results of studies that showed a serious risk of exposure to glyphosate;
(v) they allowed and enabled and facilitated the continual use of a product that gave or materially contributed to Canadians getting cancer and caused loss of life and shortened lifespan; and
(w) they failed to adequately monitor, investigate, evaluate and follow up on reports of harm caused Roundup®.

FAILURE TO WARN

48. The plaintiffs and Class claim that the defendants placed Roundup® into the stream of commerce in Alberta and elsewhere in Canada and failed to warn of its inherent risks.

49. At the time that it was in preapproval, the defendants knew or ought to have known that Roundup® had a lower safety profile than other herbicides. In the alternative, when they knew or ought to have known that Roundup® caused or materially contributed to cancer, they failed to withdraw it from the Canadian market.

50. Instead, they engaged in the promotion, marketing, manufacture and production of Roundup®, along with its sale and distribution, when they knew or ought to have known of its dangers, which became increasingly apparent over decades of use.

51. Even when the risks were apparent, the defendants preferred to hire a firm to mislead Health Canada and the public rather than to withdraw Roundup® or even to warn Canadians.

BREACH OF WARRANTY

52. The plaintiffs and Class claim that the defendants warranted that Roundup® was fit for its intended use and of merchantable quality.

53. They expressly warranted that Roundup® was safe. Nothing in the Material Safety Data Sheets indicated that Roundup® was unsafe for use when used for its intended purpose. In fact, the defendants concealed the dangers and falsified the studies.

54. The plaintiffs and Class plead that they relied, directly or indirectly (through the regulatory approval of the product), upon the expertise of Monsanto and its publications provided to Health Canada, and later on, Bayer, along with the studies by Intertek. Nothing in the studies showed that the handling and application of the product would cause or materially contribute to cancer and death.

55. The defendants placed the product into the stream of commerce in Alberta and elsewhere in Canada on the basis that it was of merchantable quality, fit for its intended use, and safe to use. The warranties and representations were false and misleading. The studies purporting to show safety and gain reapproval were false and ghostwritten by Monsanto.

56. In addition to breach of warranty, the representations made were in contravention of consumer protection law in Canada.

STATUTORY BREACH

A. CONSUMER PROTECTION ACT

57. The plaintiffs and Class claim that the defendants misled consumers in relation to Roundup®.

PROVISIONS UNDER THE CONSUMER PROTECTION ACT

58. Pursuant to the *Consumer Protection Act*, which governs unfair practices, in respect of false, misleading or deceptive representation, s. 6(1) provides that in relation to a material fact which is defined as "any information that would reasonably be expected to affect the decision of a consumer to enter into" a consumer transaction, it is an offence for a supplier to engage in an unfair practice. Sections 6(2) and 6(3) state that it is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction, among other things:

(a) to exert undue pressure or influence on the consumer to enter into the consumer transaction;
(b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction; and
(c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction.

59. Additionally, it is an unfair practice for a supplier:

(a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
(b) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided; and
(c) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.

60. The following are deemed unfair practices if they are directed at one or more consumers or potential consumers:

(a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
(b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;
(c) a supplier's representation that goods or services have sponsorship, approval, performance, characteristics, accessories, ingredients, quantities, components, uses, benefits or other attributes that they do not have;
(d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;
(e) a supplier's representation that goods or services are available for a reason that is different from the fact;

(f) a supplier's representation that goods or services have been made available in accordance with a previous representation if they have not; and
(g) a supplier's representation about the performance, capability or length of life of goods or services unless (i) the representation is based on adequate and proper independent testing that was done before the representation is made, (ii) the testing substantiates the claim, and (iii) the representation accurately and fairly reflects the results of the testing.

61. In addition to failure to warn, and breach of warranty, the statements made by the defendants were in contravention of consumer protection law in Canada, in particular in that:

(a) they failed to act in accordance with s. 6(1) of the *Consumer Protection Act*;
(b) they directed Intertek to ghostwrite studies in response to IARC;
(c) they did not advise consumers or Health Canada that they were providing studies with "errors and omissions," which they later admitted;
(d) they misled consumers in that they failed to adequately produce, test, develop, design, market and distribute a safe product, or to withdraw the product; and
(e) they misled consumers in their labeling, product monographs, and ghostwritten studies that falsely claimed that Roundup® was safe and fit and proper for its intended use.

62. In particular, in relation to unfair practices in respect of false, misleading or deceptive representation, s. 6(2) provides that it is an unfair practice for a person to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction.

63. The plaintiffs and Class plead that, pursuant to s. 6 of the Consumer Protection Act, RSA 2000, c C-26.3, including subsections 2(a)-(c), 3(a),(c),(d), 4(a)-(f), (r), t(1) the defendants engaged in the following unfair practices, in that, among other practices:

(a) they made a representation that Roundup® had approval and benefits or qualities that it does not have;
(b) they made a representation that Roundup® was of a particular standard when it was not and was inherently dangerous;
(c) they made a false, misleading or deceptive representation in relation to a representation that the goods or services had been supplied in accordance with a previous

representation, if they have not, in that Roundup® was not safe at the approval phase or reapproval;

(d) they made a representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive;

(e) they made a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive;

(f) they made representations where the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors, when the danger of Roundup® was concealed;

(g) they made representations in the consumer transaction which are excessively one-sided in favour of someone other than the consumer;

(h) they provided statements of opinion and misleading studies where the consumer is likely to rely on it to his or her detriment;

(i) they made representations where the consumer is not reasonably able to protect his or her interests because of ignorance, illiteracy, inability to understand the language of an agreement or similar factors;

(j) they made representations where the consumer is unable to receive a substantial benefit from the subject-matter of the representation;

(k) they made representations where the consumer transaction is excessively one-sided in favour of someone other than the consumer;

(l) they made representations wherein the terms of the the consumer transaction are so adverse to the consumer as to be inequitable;

NOTICE

64. The plaintiffs and Class plead, pursuant to s. 7(1) that notice is hereby given under the *Consumer Protection Act,* RSA 2000, c C-26.3.

B. STATUTORY BREACH

SALE OF GOODS ACT

65. The plaintiffs and Class plead, pursuant to s. 16 of the *Sale of Goods Act*, RSA 2000, c S-2, there is an implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, where goods are bought by

description from a seller who deals in goods of that description. There is an implied condition that the goods will be of merchantable quality.

66. Further, even if the plaintiffs and Class examined the product, subject to s. 16(5) there is no way that the examination could have revealed the inherent danger, especially based upon the representation by the defendants that Roundup® was of merchantable quality.

RES IPSA LOQUITER

67. The plaintiffs and Class Members plead and rely upon the doctrine of *res ipsa loquiter*.

DAMAGES

68. The plaintiffs have cancer.

69. Mr. Miller was exposed to Roundup® on properties in Alberta and BC and even used it at his residence. Mr. Penner was exposed to Roundup® on the family farm and on working on the family farm in Alberta.

70. The acts and omissions and false information provided to regulatory authorities and the public, including ghostwriting studies, concealing adverse events, manipulating control groups at the preapproval stage, and ignoring the mounting evidence, are the cause of, or the materially contributing factor in, the plaintiffs' illnesses, including their suffering and shortened lifespan.

71. In addition, they are undergoing treatment that is painful and makes their life untenable, intolerable, and difficult.

72. Their families have suffered, both from seeing Mr. Miller and Mr. Penner become ill and from having to face the prospect of the future, and may lose the care and companionship that they previously brought into their lives.

73. Their painful medical treatment has caused them economic loss, and has caused the Provincial health insurer to incur costs that it otherwise would not have.

74. The misconduct, outright wrongdoing, negligence and statutory breaches of the defendants caused these losses to Mr. Miller and Mr. Penner and to the Class. The defendants placed an inherently dangerous product into the stream of commerce in Alberta and Canada.

75. The losses incurred include cancer, economic loss including out of pocket expenses for monitoring, treatment, drug costs, future care costs, loss of employment and other opportunities, loss of enjoyment of life, shortened lifespan, severe pain and a difficult treatment protocol.

76. The plaintiffs and Class suffered harm as a result of the defendants' unwillingness, strictly for motives of profit, to alert the regulatory authorities and Canadian public of the risks of Roundup®.

77. Not only that but the defendants also went to great lengths to deceive and mislead Health Canada, seeking reapproval of Roundup® until 2032. In doing so, the defendants colluded and engaged in a scheme to ghostwrite studies which they themselves have admitted contain errors and omissions.

78. This pattern of conduct occurred at the earliest stages as well, with manipulation of control groups and concealing the risks of Roundup® from Health Canada. The response to IARC was typical in that the defendant Monsanto hired Intertek to produce studies that affirmed safety, advising that parts were not as "expected," ghostwriting parts, writing the introductions and conclusions themselves and even the scientific abstracts, and even determining in whose names at Intertek the studies should ultimately be authored in.

79. This intentional interference in the process was indicative of the scheme and extent to which the defendants went to conceal the risks and inherent danger.

80. The callous and reckless disregard for Mr. Miller and Mr. Penner and the Class was reflected in the failure to warn.

81. The families have suffered loss of care and companionship and have to watch their loved ones suffer horrendously.

82. The Provincial health insurers have to pay for medical monitoring, diagnosis, and treatment, including but not limited to surgery, radiation, chemotherapy and palliative care.

83. The misconduct and wrongdoing of the defendants have caused or materially contributed to cancer. The plaintiffs and Class are required to undergo painful procedures and tests, including loss of their life and livelihoods, shortened lifespan, painful tests and procedures.

84. Like the others, Mr. Miller and Mr. Penner had no reason to be fearful of Roundup® or to believe that it was so hazardous that its risks outweighed any benefits. They were wholly unaware, as they were never warned, of the dangers of Roundup® and exposure to glyphosate.

85. The defendants exercised a callous and reckless disregard for Mr. Miller and Mr. Penner and other Canadians. They made deliberate and intentional decisions to hide the risk of cancer and to thwart the finding of IARC. They failed to warn and instead chose to hire Intertek to enable them to maintain the profits of Roundup®.

86. The plaintiffs and Class will be required, in different degrees, to undergo surgery, radiation and chemotherapy. The defendants' conduct as described in the aforementioned was high-handed, outrageous, reckless, willful, in contumelious disregard of the interests of the plaintiffs and Class, indifferent to the consequences and motivated by economic considerations, , and as such renders the defendant liable to pay aggravated, exemplary and punitive damages.

THE RELEVANT STATUTES

87. The plaintiffs and Class plead and rely upon, and the amendments made thereto and the regulations thereunder and the Provincial equivalents:

(a) *Alberta Health Care Insurance Act*, RSA 2000, c A-20;

(b) *Class Proceedings Act,* SA 2003, c C-16.5;

(c) *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

(d) *Consumer Protection Act*, RSA 2000, c C-26.3;

(e) *Consumer Protection Act*, 2002, S.O. 2002, Chapter 30, Schedule A;

(f) *Contributory Negligence Act*, RSA 2000, c C-2;

(g) *Family Compensation Act*, RSBC 1996, c 126, ss 2 and 3(8)-(9);

(h) *Family Law Act*, RSO 1990, c F 3, ss 61(1)-(2);

(i) *Fatal Accidents Act*, RSY 2002, c 86, ss 2-3;

(j) *Fatal Accidents Act*, RSNWT 1988, c F-3, ss 2-3;

(k) *Fatal Accidents Act*, RSA 2000, c F-8, ss I, 2, and 3(1);

(l) *The Fatal Accidents Act*, RSS 1978, c F-11, ss 2, 3(1), and 4(1)-(3);

(m) *Fatal Accidents Act*, SNu 2010, c 14, s 6, ss 2-3;

(n) *The Fatal Accidents Act*, CCSM c F50, ss 2-3;

(o) *Fatal Accidents Act*, RSNL 1990, c F-6, ss 2-4;

(p) *Fatal Accidents Act*, SNB 2012, c 104, ss 3, 4, and 7;

(q) *Fatal Injuries Act*, RSNS 1989, c 163, ss 2-3 and 5;

(r) *Fatal Accidents Act*, RSPEI 1988, c F-5, ss 1-2 and 6;

(s) *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31;

(t) *Hospitals Act*, RSA 2000, c H-12;

(u) *Negligence Act*, R.S.O. 1990, c. N.1;

(v) *Pest Control Products Act,* SC 2002, c 28;

(w) *Sale of Goods Act*, RSA 2000 c S-2;

(x) *Sale of Goods Act*, R.S.O. 1990, c. S.1;

(y) *Survival of Actions Act*, RSA. 2000, c. S-27, ss. 2, 5(1), 5(2);

(z) *The Survival of Actions Act*, S.S. 1990, c. S-66.1, ss. 3 and 6(1)-(3);

(aa) *Survival of Actions Act*, R.S.N.S.1989, c. 453, ss. 2(1)-(2) and 5;

(bb) *Survival of Actions Act*, R.S.N.B. 2011, c. 227, ss. 3(1)-(2) and 6(1)-(2);

(cc) *Survival of Actions Act*, R.S.P.E.I. 1988, c. S-11, ss. 2 and 5; and

(dd) *Survival of Actions Act*, R.S.N.L. 1990, c. S-32, ss. 2 and 4.

88. The plaintiffs and Class Members plead and rely upon the provisions of Rule 11.25 of the *Alberta Rules of Court*, in support of such service: 11.25(3) the tort was committed in Alberta, and some of the defendants carry on business in Alberta.

89. In addition, subject to Rule 11.26, the plaintiffs and Class Members plead that a party to a proceeding may, without a court order, be served outside Alberta with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims. Some of the parties are in England and Germany. Subject to Rule 11.26, an originating process or other document to be served outside Alberta in a jurisdiction that is not a contracting state may be served in the manner provided by these rules for service in Alberta, or in the manner provided by the law of the jurisdiction where service is made. An originating process or other document to be served outside Alberta in a contracting state shall be served through the central authority in the contracting state; or in a manner that is permitted by the Convention and that would be permitted by these rules if the document were being served in Alberta.

The plaintiffs and Class Members propose that this action be tried in the City of Edmonton, in the Province of Alberta.

RELIEF SOUGHT

90. The plaintiff and Barry Miller and Thomas Penner, CLAIM on their own behalf and on behalf of the Class:

(a) an order pursuant to the *Act* certifying this proceeding as a class proceeding and appointing them as representatives of the Class;

(b) damages in the amount of $500,000,000.00;

(c) damages to be assessed for Alberta and other Provincial insurers in a subrograted claim for health care costs and any monitoring deemed appropriate;

(d) an interim, interlocutory and permanent order, pursuant to s.13 of the Alberta *Rules of Court*, Alta Reg 124/2010 and the *Judicature Act*, RSA 2000, c. J-2, requiring the defendants to fund a past and ongoing programme for Provincial health plans supervised by the Court for the treatment, diagnosis, monitoring of cancers for patients, and for the ongoing review of studies for health care insurance plans, to the benefit of the plaintiffs and Class;

(e) damages for negligence as described hereunder, and/or including the following declarations:

i. a declaration that the defendants negligently placed Roundup® into the stream of commerce in Alberta and elsewhere in Canada;

ii. a declaration that the defendants withheld the risks of cancer and other health risks, including by secretly "ghostwriting" scientific journal articles provided to Health Canada;

iii. a declaration that the defendants negligently tested Roundup® and acted with reckless disregard to the safety of Canadians;

iv. a declaration that the defendants provided studies on Roundup® to regulatory authorities in relation to the safety that were falsified, misleading, hid crucial information, and where the control groups were manipulated;

v. a declaration that the defendants "ghostwrote" studies that assured regulatory authorities of the safety of Roundup® in Canada to obtain reapproval;

vi. a declaration that the defendants failed to warn of the risk, and failed to provide adequate warnings on use of the product;

vii. a declaration that the defendants violated s. 6 of the *Consumer Protection Act*, including subsections 2(a)-(c), 3(a),(c),(d), 4(a)-(f), (h)-(j), (q)-(r), (x) and (z); and

viii. a declaration that the defendants are strictly liable to the plaintiffs and Class;

(f) an order for the production of all relevant documentation in relation to Roundup®;

~~(g)~~ an order that notice is hereby given by the plaintiffs and Class under s. 7.1(1) of the *Consumer Protection Act*, RSA 2000, c C-26.3 to a supplier to request a remedy or that notice is waived or not required;

(h) aggregate assessment of monetary relief and distribution, and/or a reference to assess same, at the defendants' expense;

(i) the costs of administering the plan of distribution of the recovery in this action in the sum of $10,000,000.00 or such other sum as this Honourable Court finds appropriate;

(j) an accounting of all profits realized by the defendants;

(k) an accounting of all profits received by the defendants directly or indirectly related to the profits earned, and an order requiring the defendants to disgorge these amounts;

(l) an order that the defendants hold all proceeds received from the profits realized, and any other profits or income received relating directly or indirectly to profits, in a constructive trust for the benefit of the Class;

(m) aggravated damages, exemplary damages and punitive damages in the amount of $50,000,000.00, or such other sum as the Honourable Court finds appropriate;

(n) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;

(o) prejudgement interest pursuant to the *Judgement Interest Act*, RSA 2000, c J-1;

(p) post-judgement interest pursuant to the *Judgement Interest Act*, RSA 2000, c J-1;

(q) costs of this action pursuant to the *Act*, and on a substantial indemnity basis plus applicable taxes;

(r) costs of this action on a solicitor/client scale; and

(s) such further and other relief as to this court seems just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

TO: MONSANTO CANADA ULC
c/o Dentons Canada LLP
2900 Manulife Place
10180-101 Street
Edmonton, Alberta
T5J- 3V5

AND TO: MONSANTO COMPANY
800 North Lindbergh Boulevard
St Louis, Missouri
USA, 63167

AND TO: BAYER AG
51368 Leverkusen
Germany

AND TO BAYER INC
2920 Matheson Boulevard East,
Mississauga, Ontario
L4W-5R6

AND TO: BAYER CANADIAN HOLDINGS INC.
2920 Matheson Boulevard East,
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AND TO: BAYER CROPSCIENCE INC.
160 Quarry Park Boulevard SE
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