‘Texas Two-Step’ — Bayer weighs new Roundup suit strategy as costs of cancer litigation mount

Bayer AG is weighing whether to use a controversial legal maneuver known as the Texas Two-Step bankruptcy to try to resolve tens of thousands of US lawsuits claiming its Roundup weedkiller causes cancer, according to people familiar with its thinking.

Faced with a recent string of costly jury verdicts over the herbicide, Bayer executives are consulting with law firms and advisers about how to prompt a bankruptcy judge to halt further trials scheduled for this year. The object is to wrangle a settlement of more than 50,000 cases, said the people, who asked not to be identified discussing a confidential matter.

The bankruptcy maneuver gets its name from the use of a Texas state law that lets companies split their assets and liabilities into separate units, then place the unit loaded with liabilities into bankruptcy to drive a global settlement.

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While the chances of success with the Texas Two Step are slim, Bayer should leave no stone unturned as it seeks to stop the flood of claims for damages on Roundup, Markus Manns, a portfolio manager at Frankfurt-based Union Investment, a top Bayer shareholder, said in an email.

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Ralph Brubaker, a University of Illinois professor who teaches bankruptcy law, said bankruptcy could give Bayer time to come up with a settlement proposal.

“Even if Texas Two-Steps are ultimately repudiated” by the courts, “the strategy allows defendants to shut down all tort litigation indefinitely,” Brubaker said.

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