

MISSOURI CIRCUIT COURT
 TWENTY-FIRST JUDICIAL CIRCUIT
 (ST. LOUIS COUNTY)

KENNETH ADKINS, et al.,

Plaintiffs,

vs.

MONSANTO COMPANY

Defendant.

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Cause No: 18SL-CC01983

**EX-PARTE MOTION TO ESTABLISH 468B
 QUALIFIED SETTLEMENT FUND UNDER SEAL**

Plaintiffs, clients of Andrus Wagstaff, P.C. (“Andrus Wagstaff”), hereby seek the Court’s approval to establish the Andrus Wagstaff Roundup Qualified Settlement Fund (the “Fund”) in accordance with Section 468B of the Internal Revenue Code, and the Treasury Regulations promulgated thereunder. Plaintiffs also seek appointment of ARX Management, LLC (“ARX”) as Fund Administrator of the Fund. In seeking an Order from this Court pursuant to this Motion, Plaintiffs respectfully state the following:

1. The Fund is being established to resolve or satisfy one or more claims that have resulted or may result from injuries and damages sustained by all current and future Andrus Wagstaff clients pursuing claims for exposure to Defendant Monsanto’s glyphosate-based herbicide Roundup (“Andrus Wagstaff Roundup Claimants”).

2. The Fund will receive gross, unallocated proceeds, including attorney fees and expenses, to satisfy claims made by Andrus Wagstaff Roundup Claimants.

3. The Fund will remain subject to continuing jurisdiction of this Court and is intended to qualify as a “Qualified Settlement Fund” as defined in *Treas. Reg. Sec. 1.468B-1*.

4. ARX Management, LLC (“ARX”) possesses extensive experience administering Qualified Settlement Funds in numerous different causes of action. ARX’s address is 1730 Holly Avenue, El Segundo, CA 90245. ARX submits to the jurisdiction of this Court.

5. Ex-Parte is suitable pursuant to Section 468B of the IRS Code and as Defendants have no standing to object, as this Fund merely provides the Andrus Wagstaff Roundup Claimants to have flexibility to plan for the most advantageous use of any settlement proceeds to which they may ultimately be entitled, and it preserves the deductibility of the settlement for the Defendant.

6. The Fund, by and through the Fund Administrator, shall be permitted to make payments to the Andrus Wagstaff Roundup Claimants, Plaintiffs' Counsel, and any entities asserting a claim of subrogation according to the terms of any settlement agreement(s), as well as entities engaged to assist in claims administration and the management of the Fund, including but not limited to the Fund Administrator and Lien Resolution Administrator.

7. The Fund Administrator shall have authority to execute all necessary documents to perform the duties of the Fund Administrator, including but not limited to executing all structured settlement assignment documents and structured attorney fee documents.

8. The claims made by Andrus Wagstaff Roundup Claimants are made on account of physical bodily injury and arise out of alleged liability in tort or violation of law.

9. The gross proceeds paid into the Fund are the sole property of the Fund. No Fund property shall be made available to Andrus Wagstaff Roundup Claimants in any fashion, until such time as the Fund Administrator is directed to disburse funds pursuant to a proper distribution request. Until such time as funds are distributed, the Andrus Wagstaff Roundup Claimants shall

not possess any rights to demand or receive any portion of Fund property or to mortgage, pledge, or encumber the same in any manner. To the extent possible, this Motion shall be construed so as to prevent the Andrus Wagstaff Roundup Claimants from having any actual or constructive receipt of Fund property. Under relevant property laws, no Andrus Wagstaff Roundup Claimant shall be considered to have constructive receipt or economic benefit or cash equivalency of any property of the Fund while such property is under the control of the Fund Administrator, subject to jurisdiction of this Court and distribution subject to future events and agreements. Furthermore, under *Davis v. Commissioner*, T.C. Memo 1978-12, the court established that for income to be constructively received, the funds must be made available to the taxpayer without substantial limitation. While under control of the Fund Administrator, the property of the Fund is not unqualifiedly subject to Andrus Wagstaff Roundup Claimants' demand or withdrawal.

10. Plaintiffs request that no bond be required, provided that all monies received by the Fund, which include all principal and interest earned thereon, shall be deposited in a custody account held at U.S. Bank (the "Custody Bank"), a financial institution doing business in Minneapolis, MN, for the benefit of and titled in the legal name of the Settlement Fund and invested in instruments/securities comprised of (a) any obligations of, or any obligations guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof; (b) cash equivalent securities including SEC registered money market funds and collateralized money market accounts; (c) short-term investment-grade securities; and/or (d) deposit and similar interest-bearing, or non-interest bearing accounts, and certificates of deposit subject to Federal Depository Insurance Corporation protections as available, which may be held within the custody account or at the issuer bank. The Custody Bank shall follow the instructions of the Fund Administrator and/or its investment advisor pursuant to these terms and

conditions, such that a principal preservation policy is implemented. Notwithstanding the foregoing, the Custody Bank shall not be allowed to distribute any income or principal from the Settlement Fund except upon instructions of the Fund Administrator, or, if requested, upon the order of this Court upon the joint motion of the parties. The Fund Administrator retains the right to remove the Custody Bank, and may designate a replacement bank, upon the written consent of Plaintiffs' Counsel. In the event of such replacement, the terms and conditions of this Paragraph including, without limitation, those addressing bond requirements, investments, and distributions from the Settlement Fund-shall apply to any such replacement bank. The Fund Administrator shall not be liable for any losses as a result of investing the Deposit as outlined herein and directed by the Court. Any such losses shall not be recoverable from the parties, and the parties and their counsel shall have no responsibility for the Fund Administrator's performance. Receipt and/or investment of any Deposit shall be confirmed to Plaintiff Counsel by the Fund Administrator as soon as practicable by account statement or other reasonable method.

11. The Fund Administrator shall be indemnified and held harmless by Andrus Wagstaff Roundup Claimants and their attorneys from any claims made by any alleged lien holder, or other person or entity that attempts to assert a right of payment, reimbursement or garnishment against the Settlement Fund. Should the Fund Administrator be named as a party to, or threatened to be made a party to, any threatened, pending or completed action, suit or proceeding of any kind, whether civil, administrative or arbitative, and whether brought by or against or otherwise involving the Fund, by reason of the Fund Administrator having served in any capacity on behalf of the Settlement Fund, the Fund Administrator shall be indemnified and held harmless by the Plaintiffs and their attorneys against reasonable expenses, costs and fees (including attorneys' fees), judgment, awards, costs, amounts paid in settlement, and liabilities of all kinds

incurred by the Fund Administrator in connection with or resulting from such actual or threatened action, suit or proceeding; except to the extent that it is finally determined by this Court that the Fund Administrator was grossly negligent or acted with willful misconduct in connection with the administration of this Fund.

12. Plaintiff Counsel shall be indemnified and held harmless by the Fund Administrator from any claims, which arise from the negligence or willful misconduct of the Fund Administrator as determined by this Court. Should Plaintiff Counsel be named as a party to, or threatened to be made a party to, any threatened, pending or completed action, suit or proceeding of any kind, whether civil, administrative or arbitrative, by reason of the Fund Administrator's negligence or willful misconduct, Plaintiff Counsel shall be indemnified and held harmless by the Fund Administrator against reasonable expenses, costs and fees (including attorneys' fees), judgment, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by Plaintiff Counsel in connection with or resulting from such actual or threatened action, suit or proceeding.

13. The Fund Administrator shall be authorized to distribute all attorney fees and litigation expenses to Plaintiffs' counsel, consistent with existing contingency fee contracts and to the extent required by law.

14. All taxes on the income of the Fund and expenses and costs incurred in connection with the taxation of the Fund (including, without limitation, the expenses of tax attorneys and accountants) shall be paid out of the Fund, shall be considered to be a cost of administration of the settlement, and shall be paid as instructed by the Fund Administrator.

15. Upon request, the Fund Administrator will prepare and deliver Fund Statements ("Statements") to counsel for the Plaintiffs and/or this Court. The Statements shall include a

statement of receipts, investment earnings, interest, and disbursements. The Fund Administrator shall provide the Statement no later than ten (10) business days following the request.

16. The Fund Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document believed by the Fund Administrator to be genuine and sufficient, and upon any other evidence believed by the Fund Administrator, in its reasonable judgment, to be genuine and sufficient, which may be provided to the Fund Administrator by Plaintiff Counsel.

17. Upon final distribution of all monies paid into the Fund, the Fund Administrator shall take appropriate steps to wind down the Fund and thereafter be discharged from any further responsibility with respect to the Fund.

18. The Fund Administrator will obtain a Federal Taxpayer Identification Number for the Andrus Wagstaff Roundup Qualified Settlement Fund.

WHEREFORE, Plaintiffs respectfully request that the Court order the establishment of the Andrus Wagstaff Roundup Qualified Settlement Fund and appoint ARX Management, LLC as Fund Administrator pursuant to this Motion and Treas. Reg. Section 1.468B-1, and issue an Order in the form attached hereto. Plaintiffs further respectfully request that this Motion and Proposed Order be filed under seal.

DATED this 11th day of September 2020.

Respectfully submitted,

/s/David J. Wool

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