

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/07/2022 8:01:40 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Non-Prescribed Pleading
File Number: VID243/2020
File Title: KELVIN MCNICKLE v HUNTSMAN CHEMICAL COMPANY
AUSTRALIA PTY LTD & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 4/07/2022 8:11:29 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Second Further Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

Amended on 4 July 2022 and filed pursuant to an order made on 20 June 2022

No. VID 243 of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

KELVIN MCNICKLE

Applicant

**HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD (ACN 004 146 338) and
others named in the Schedule**

First Respondent and others according to the Schedule

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date: 4 July 2022 - ~~10 February 2022~~

Signed by an officer acting with the authority
of the District Registrar

Details of claim

On the grounds stated in the accompanying ~~Fourth Third~~ Further Amended Statement of Claim (and adopting the definitions therein), the Applicant claims, on his own behalf and on behalf of group members:

1. Declarations that:
 - (a) Roundup Products had a defect within the meaning of s 74AC of the *Trade Practices Act 1974* (Cth) (***Trade Practices Act***), and/or a safety defect within the meaning of section 9 of the *Competition and Consumer Act 2010* (Cth) *Schedule 2 – The Australian Consumer Law* (the ***Australian Consumer Law***);
 - (b) Roundup Products were not of merchantable quality within the meaning of sections 74D(1) and 74D(3) of the *Trade Practices Act*, and/or were not of acceptable quality within the meaning of section 54 of the *Australian Consumer Law*; and/or
 - (c) The Respondents, and each of them, were negligent; and
 - (d) The Third and Fourth Respondents, and each of them, were deceitful.
2. Orders that the Respondents pay the Applicant and group members statutory compensation for loss and damage pursuant to:
 - (a) Sections 74D(1), 75AD and/or 75AE of the *Trade Practices Act*; and/or
 - (b) Sections 138, 139, 271, and/or 272 of the *Australian Consumer Law*.
3. Orders that the Respondents pay the Applicant and group members damages at common law.
4. Interest pursuant to section 51A of the *Federal Court of Australia Act 1976* (Cth).
5. Costs.
6. Such further or other relief as the Court determines is appropriate.

Questions common to claims of group members

The questions of law or fact common to the claims of the Applicant and the group members or subgroup members are:

1. Were each of Monsanto Company US (Old), Monsanto Australia (Old), Monsanto Australia (New) and/or Monsanto Company US (New) manufacturers of the Roundup Products within the meaning of section 74A of the *Trade Practices Act* and/or section 7 of the *Australian Consumer Law*?
2. Were glyphosate, glyphosate-based formulations and Roundup Products carcinogenic?
3. When Roundup Products made contact with the skin, did surfactants increase absorption into the bloodstream?
4. Did use of or exposure to Roundup Products increase an individual's risk of developing NHL?
5. Did the Roundup Products:
 - (a) have a defect within the meaning of section 75AC of the *Trade Practices Act*; and/or
 - (b) have a safety defect within the meaning of section 9 of the *Australian Consumer Law*?
6. Were the Roundup Products:
 - (a) not of merchantable quality within the meaning of sections 74D(1) and 74D(3) of the *Trade Practices Act*, and/or
 - (b) not of acceptable quality within the meaning of section 54 of the *Australian Consumer Law*?
7. Did Monsanto Company US (Old), Monsanto Australia (Old), Monsanto Australia (New) and/or Monsanto Company US (New) owe the Applicant and group members:
 - (a) a duty to exercise reasonable care to prevent harm from the Roundup Products; and/or
 - (b) a duty to inform them of the matters alleged in paragraphs 26 and/or 27, further and alternatively paragraphs 26 to 29, further and alternatively paragraphs 30 and 57 and/or the matters alleged in paragraphs 26 and/or 27 combined with the matters alleged in paragraphs 28 and/or 29 and/or the matters alleged in paragraph 30 and/or the matters alleged in paragraph 30 combined with the

matters alleged in paragraphs 28 and/or 29?

8. What was the applicable standard of care in relation to:
 - (a) Manufacture, distribution and/or supply of the Roundup Products and/or glyphosate or glyphosate intermediate which was used in the manufacture of the Roundup Products; and/or
 - (b) promotion and marketing of the Roundup Products?
9. Did Monsanto Company US (Old), Monsanto Australia (Old), Monsanto Australia (New) and/or Monsanto Company US (New) breach their duties of care in:
 - (a) manufacturing the Roundup Products and/or glyphosate and/or glyphosate intermediate which was used in the manufacture of the Roundup Products;
 - (b) distributing and supplying for sale the Roundup Products and/or glyphosate and/or glyphosate intermediate which was used in the manufacture of the Roundup Products;
 - (c) promoting or marketing, facilitating the promotion or marketing of, the Roundup Products without warning or adequate warning about the matters alleged in paragraphs 26 to 30 and 27, further and alternatively paragraphs 26 to 29, further and alternatively paragraphs 30 and 57; and/or
 - (d) failing to make available information disclosing the matters alleged in paragraphs 26 to 30, including to regulatory authorities and 27, further and alternatively paragraphs 26 to 29, further and alternatively paragraphs 30 and 57; and/or
 - (e) failing to ensure that adequate scientific testing and/or evaluation of the matters alleged in paragraphs 26 to 30 was undertaken; and/or
 - (f) failing to ensure that the Labels, including the 'Directions for Use' and the Safety Directions, and the Marketing Material referred to in paragraphs 23, 24 and 25 contained warnings or adequate warnings.
10. Did Monsanto Company US (Old) and/or Monsanto Company US (New) engage in the Concealing Conduct?
11. Did Monsanto Company US (Old) and/or Monsanto Company US (New) make the Not Carcinogenic Representation and the Does Not Cause NHL Representation?
12. Were the Not Carcinogenic Representation and the Does Not Cause NHL Representation false?

13. Did Monsanto Company US (Old) and/or Monsanto Company US (New) know that the Not Carcinogenic Representation and the Does Not Cause NHL Representation were false or alternatively, were reckless as to whether they were true or false?
14. Did Monsanto Company US (Old) and/or Monsanto Company US (New) intend for consumers of Roundup Products to rely on the Not Carcinogenic Representation and the Does Not Cause NHL Representation?
15. Did Monsanto Company US (Old) and/or Monsanto Company US (New) know, or were reckless, as to whether the Roundup Products were carcinogenic and/or increased an individual's risk of developing NHL?
16. Did Monsanto Company US (Old) and/or Monsanto Company US (New) not disclose to regulatory authorities, consumers and potential consumers of Roundup Products that those products were carcinogenic and/or increased an individual's risk of developing NHL?
17. Was the Concealing Conduct, together with the matters addressed in the preceding two paragraphs, deceitful?
18. Did the Concealing Conduct deprive Mr McNickle and group members of the ability to discover that the Roundup Products were carcinogenic and/or increased an individual's risk of developing NHL?
19. Did Monsanto Company US (Old) and Monsanto Company US (New) show conscious and contumelious disregard for the rights of Mr McNickle and group members, which conduct is deserving of punishment by an award of exemplary damages?
20. Did Monsanto Company US (Old), Monsanto Company US (New), Monsanto Australia (Old) and Monsanto Australia (New) aggravate Mr McNickle and the group members' suffering so as to warrant an award of aggravated damages?

Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976* (Cth).

The group members to whom this proceeding relates are persons who:

- (a) have been diagnosed with non-Hodgkin Lymphoma (**NHL**) by reason of the use of and/or exposure to, at any time between July 1976 and 10 February 2022, being

the date ~~the~~ is further amended originating application was filed (the **Relevant Period**), the herbicide product or products which contained glyphosate and were branded as 'Roundup' or which contained glyphosate and were otherwise branded with the name 'Monsanto' (**Roundup Products**) (**NHL Group Members**); or

(b) are:

- (i) the executors or administrators of, or beneficiaries of or persons with an interest in, the estates of deceased persons who would be NHL Group Members had they not died prior to the date the Fourth ~~Third~~ Further Amended Statement of Claim is filed (**deceased NHL Group Members**);
or
- (ii) the dependents (howsoever described or referred to in the legislation set out in Schedule A to the Fourth ~~Third~~ Further Amended Statement of Claim) of NHL Group Members or deceased NHL Group Members;

where, by reason of the matters pleaded in the ~~accompanying~~ Fourth ~~Third~~ Further Amended Statement of Claim, a cause of action had vested in or may be brought by that person (together the **Estate and Dependency Group Members**).

Applicant's address

The Applicant's address for service is:

Place: Maurice Blackburn Lawyers

Level 21, 380 La Trobe St

Melbourne VIC 3000

Email: LTaylor@mauriceblackburn.com.au

The Applicant's address is:

c/o Maurice Blackburn Lawyers

Level 21, 380 La Trobe St

Melbourne VIC 3000

Service on the Respondents

It is intended to serve this application on the Respondents.

Date: 4 July 2022 ~~10 February 2022~~

A handwritten signature in black ink, appearing to be 'Lee Taylor', written over a horizontal line.

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Signed by Lee Taylor
Lawyer for the Applicant

Schedule

No. VID 243 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

Respondents

Second Respondent: Monsanto Australia Pty Ltd (ACN 006 725 560)

Third Respondent: Monsanto Company

Fourth Respondent: Pharmacia LLC