

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/06/2020 4:03:13 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID243/2020
File Title:	KELVIN MCNICKLE v HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 16/06/2020 4:29:13 PM AEST

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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



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

Amended on 16 June 2020 and filed pursuant to an order made on 9 June 2020

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: 16 June & April 2020

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

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Filed on behalf of:	Kelvin McNickle (Applicant)		
Prepared by:	Andrew Watson, Maurice Blackburn		
Tel:	(03) 9605 2718	Fax	(03) 9258 9610
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## Details of claim

On the grounds stated in the accompanying 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.
2. Orders that the Respondents pay the Applicant and group members statutory compensation for loss and damage pursuant to:
  - (a) Sections 74D(1), ~~and/or~~ 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) ~~the Respondents~~ 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. Did the Roundup Products have the Roundup Cancer Risk?
3. 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*?
4. Were the Roundup Products:
  - (a) not of merchantable quality within the meaning of section 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*?
5. Did Monsanto Company US (Old), Monsanto Australia (Old), Monsanto Australia (New) and/or Monsanto Company US (New) ~~the Respondents~~ 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 Roundup Cancer Risk?
6. What was the applicable standard of care in relation to:
  - (a) manufacture of the Roundup Products; and/or
  - (b) promotion and marketing of the Roundup Products?
7. Did Monsanto Company US (Old), Monsanto Australia (Old), Monsanto Australia (New) and/or Monsanto Company US (New) ~~the Respondents~~ breach their duties of care in:
  - (a) manufacturing the Roundup Products;
  - (b) distributing and supplying for sale the Roundup Products;



- (c) promoting or marketing, facilitating the promotion or marketing of, the Roundup Products without warning or adequate warning about the Roundup Cancer Risk, and/or
- (d) failing to make available information disclosing the Roundup Cancer Risk?

### 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 the date of commencement of this proceeding (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 Amended Statement of Claim is filed (**deceased NHL Group Members**) ~~commencement of this proceeding;~~ or
  - (ii) the dependents (howsoever described or referred to in the legislation set out in Schedule A to the Amended Statement of Claim) of NHL Group Members or deceased NHL Group Members;

where, by reason of the matters pleaded in the accompanying Amended Statement of Claim, a cause of action had vested in or may be brought by that person ~~the executor or administrator of the deceased~~ (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: AWatson@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: 16 June & ~~April~~ 2020

A handwritten signature in blue ink, appearing to read 'Andrew Watson'.

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Signed by Andrew Watson  
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