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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: 24/12/2020 12:52:29 PM AEDT

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.

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Rejoinder

No. VID 243 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

KELVIN MCNICKLE

Applicant

HUNTSMAN CHEMICAL COMPANY AUSTRALIA LTD & ORS and others named in the Schedule

By way of rejoinder to the Reply filed on behalf of the Applicant on 25 November 2020 (**Reply**), the Second Respondent pleads as follows, adopting the defined terms from the Defence filed by the Second Respondent filed on 28 October 2020 (**Defence**), unless otherwise indicated:

1. It does not plead to the allegations in paragraph 1 as the Applicant makes no allegations against it.
2. Save to say that it refers to and repeats paragraph 35(d)(ii) of the Defence, it does not plead to the allegations in paragraph 2 as the Applicant makes no allegations against it.

A. SCIENTIFIC AND OTHER MATERIAL AFFECTED BY IMPROPER PRACTICES AND/OR GHOST AUTHORED BY MONSANTO EMPLOYEES

3. It admits the allegation in paragraph 3.
4. In answer to paragraph 4, it:
 - (a) admits that the paper by Gary M Williams, Robert Kroes and Ian C Munro titled '*Safety Evaluation and Risk Assessment of the Herbicide Roundup and its Active Ingredient, Glyphosate, for Humans*' (**Williams 2000 Paper**) did not name Monsanto employees as authors;
 - (b) otherwise denies the allegations in paragraph 4;
 - (c) says further that:

Filed on behalf of Monsanto Australia Pty Ltd (Second Respondent)

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- (i) subject to production by the Applicant of the Williams 2000 Paper and reference at trial to its full terms and effect, the Williams 2000 Paper stated, among other things, that:
- (A) *'Reviews on the safety of glyphosate and Roundup herbicide that have been conducted by several regulatory agencies and scientific institutions worldwide have concluded that there is no indication of any human health concern';*
 - (B) *'[Glyphosate and AMPA] are eliminated essentially unmetabolized. Dermal penetration studies with Roundup showed very low absorption';*
 - (C) *'No significant toxicity occurred in acute, sub-chronic and chronic studies';*
 - (D) *'There was no convincing evidence for direct DNA damage in vitro or in vivo, and it was concluded that Roundup and its components do not pose a risk for the production of heritable/somatic mutations in humans';*
 - (E) *'Multiple lifetime feeding studies have failed to demonstrate any tumorigenic potential for glyphosate. Accordingly, it was concluded that glyphosate is noncarcinogenic';*
 - (F) *'The balance of the credible data from in vitro and in vivo test results confirms the safety of glyphosate and Roundup as nongenotoxic and conforms to the fact that glyphosate is noncarcinogenic';*
 - (G) *'It was concluded that, under present and expected conditions of use, Roundup herbicide does not pose a health risk to humans';*
- (ii) to the best of the Second Respondent's knowledge, this paper (in draft form or otherwise) was not seen or reviewed by the Second Respondent prior to its publication; and
- (iii) it otherwise refers to and repeats paragraph 4 of the rejoinder filed by the Third Respondent in this proceeding.

5. It admits the allegations in paragraph 5.

6. In answer to paragraph 6, it:

- (a) admits that the paper by Amy Williams, Rebecca Watson and John DeSesso titled '*Developmental and Reproductive Outcomes in Humans and Animals after Glyphosate Exposure: A Critical Analysis*' published in the Journal of Toxicology and Environmental Health (**Williams 2012 Paper**) did not name Donna Farmer or David Saltmiras as authors;
- (b) otherwise denies the allegations in paragraph 6;
- (c) says further that:
 - (i) subject to production by the Applicant of the Williams 2012 Paper and reference at trial to its full terms and effect, the Williams 2012 Paper stated, among other things, that:
 - (A) '*An extensive, in-depth analysis of the available literature provides no apparent evidence to indicate that exposure to glyphosate is associated with the potential to produce adverse developmental and reproductive effects in humans.*'
 - (B) '*In conclusion, a thorough evaluation of the available data demonstrates that exposure to environmentally relevant glyphosate concentrations is not anticipated to produce adverse developmental and reproductive effects in humans.*'
 - (ii) to the best of its knowledge, it first received the Williams 2012 Paper from the Third Respondent on 27 October 2018 and this paper (in draft form or otherwise) was not seen or reviewed by the Second Respondent prior to its publication;
 - (iii) it provided a copy of the Williams 2012 Paper to the APVMA on 26 November 2018; and
 - (iv) it otherwise refers to and repeats paragraph 6 of the rejoinder filed by the Third Respondent in this proceeding.

7. In answer to paragraph 7, it:

- (a) says that to the best of the Second Respondent's knowledge, the email from Professor Chassy to Professor A. Wallace Hayes dated 26 September 2012 [MONGLY00900629] was not seen or reviewed by Monsanto Australia prior to receipt of the Applicant's Reply;
- (b) admits that, having now reviewed the email, it appears on its face that the email to Professor A. Wallace Hayes dated 26 September 2012

[MONGLY00900629] was sent to the editor of the journal Food and Chemical Toxicology by Professor Bruce Chassy following the publication by that journal of a paper by Gilles-Eric Séralini, Emilie Clair, Robin Mesnage, Steeve Gress, Nicolas Derrge, Manuela Malateste, Didier Hennequin and Joel Spiroux de Vendomis titled '*Long term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize*' (**Séralini 2012 Paper**); and

- (c) otherwise denies the allegations in paragraph 7 and refers to and repeats paragraph 7 of the rejoinder filed by the Third Respondent in this proceeding.

8. In answer to paragraph 8, it:

- (a) denies the allegations in paragraph 8;
- (b) says further that:
 - (i) subject to production by the Applicant of the Séralini 2012 Paper, and reference at trial to its full terms and effect, the Séralini 2012 Paper as originally published stated, among other things, that:
 - (A) '*Metastases were observed in only 2 cases; one in a group fed with 11% GM maize, and another in the highest dose of R treatment group*'; and
 - (B) '*These results can be explained by the non-linear endocrine-disrupting effects of Roundup, but also by the overexpression of the transgene in the GMO and its metabolic consequences.*'; and
 - (ii) it otherwise refers to and repeats paragraph 8 of the rejoinder filed by the Third Respondent in this proceeding.

9. In answer to paragraph 9 and subject to production by the Applicant of the written correspondence to the editor of the journal Food and Chemical Toxicology from Professor Bruce Chassy referred to in paragraph 7 of the Applicant's Reply and reference at trial to its full terms and effect:

- (a) it admits that, having now reviewed the written correspondence referred to in paragraph 7 above, it appears on its face that:
 - (i) the written correspondence was sent to the editor of the journal Food and Chemical Toxicology from Professor Bruce Chassy;

- (ii) the written correspondence to the editor of the journal Food and Chemical Toxicology from Professor Bruce Chassy stated, among other things, that:
- (A) *‘Séralini’s mockery of science could have a profoundly negative impact on the journal, on the perceptions of the peer review process, and on science in general’;*
 - (B) *‘the process of peer-review has abjectly failed in this instance’;*
 - (C) *‘I will not take space here to detail the flaws in design, execution and analysis found in the paper in question’;*
 - (D) *‘the paper reports exactly what one might have expected to see for any similarly sized group of Sprague Dawley rats. There is simply nothing unusual about what is reported in the paper. There has been accordingly an outpouring of critical comment from the scientific community’;*
 - (E) *‘I am in particular concerned that the journal has accepted a paper in which the authors have committed both scientific misconduct and have themselves documented unethical practices’;*
 - (F) *‘[the authors] compound the problem by refusing to release detailed information on protocols, materials, and results’.*
- (b) the written correspondence to the editor of the journal Food and Chemical Toxicology from Professor Bruce Chassy, referred to in paragraph 7 of the Applicant’s Reply, stated on its face that Professor Chassy *‘sincerely hope[d] that the journal will take immediate action by retracting [the Séralini 2012 Paper]’;*
- (c) otherwise denies paragraph 9; and
- (d) says further that it refers to and repeats its response to paragraph 8 above and paragraphs 8 and 9 of the rejoinder filed by the Third Respondent in this proceeding.
10. It admits the allegation in paragraph 10 and says further that, to the best of the Second Respondent’s knowledge, the article by Henry Miller titled *‘Scientists Smell a Rat in*

Fraudulent Study published in Forbes in 2012 (**2012 Forbes Article**) was not seen or reviewed by the Second Respondent prior to receipt of the Applicant's Reply.

11. In answer to paragraph 11, it says:

- (a) the 2012 Forbes Article was not seen or reviewed by the Second Respondent prior to receipt of the Applicant's Reply;
- (b) it otherwise refers to and repeats paragraph 11 of the rejoinder filed by the Third Respondent in this proceeding;
- (c) it admits that, having now reviewed the 2012 Forbes Article, it appears on its face that it did not name Monsanto employees as authors of, or contributors to the article;
- (d) it otherwise denies the allegations in paragraph 11;
- (e) it says further that having now reviewed the 2012 Forbes Article:
 - (i) the 2012 Forbes Article stated, among other things, that:
 - (A) *'There is so much wrong with the experimental design that the conclusion is inescapable that the investigators intended to get a spurious, preordained result'*;
 - (B) *'mortality rates and tumor incidence in all experimental groups fall within historical norms for this strain of laboratory rats'*;
 - (C) *'the statistical methods employed were unconventional and appeared to be selected specifically in order to give a certain result'*;
 - (D) *'absence of statistical analysis for mortality or tumor incidence'*;
 - (E) *'inappropriate, unnecessary suffering of the rats, which should have been euthanized long before the tumors became so huge – an especially egregious ethics violation'*;
 - (F) *'the reported results conflict with innumerable experiments conducted by laboratories around the world on both genetically engineered corn and glyphosate, and also with vast real-world experience'*; and

(G) *'the publication of this article represents an abject, egregious failure of peer-review and editorial competence at Food and Chemical Toxicology, the journal in which it appeared.'*;

(ii) it will otherwise refer at trial to the full terms and effect of the 2012 Forbes Article.

12. In answer to paragraph 12, it:

- (a) admits that the Séralini 2012 Paper was retracted from the journal *Food and Chemical Toxicology* but says this occurred in November 2013;
- (b) otherwise denies the allegations; and
- (c) refers to and repeats paragraph 8 above and paragraphs (8)(b)(ii), (8)(b)(iii), 8(c) and 8(e) of the rejoinder filed by the Third Respondent in this proceeding.

13. It admits the allegations in paragraph 13.

14. In answer to paragraph 14:

- (a) to the best of the Second Respondent's knowledge, the 2012 paper by Mink et al titled '*Epidemiologic studies of glyphosate and cancer: a review*' (the **Mink 2012 Paper**) was not seen or reviewed by the Second Respondent (in draft form or otherwise) prior to its publication;
- (b) it admits that, on its face, the Mink 2012 Paper did not name Donna Farmer or Daniel Goldstein as authors of the paper;
- (c) it otherwise denies the allegations contained in paragraph 14;
- (d) it says further that:
 - (i) subject to production by the Applicant of the Mink 2012 Paper and reference at trial to its full terms and effect:
 - (A) the abstract to the Mink 2012 Paper contains the statement that '*Our review found no consistent pattern of positive associations indicating a causal relationship between total cancer (in adults or children) or any site-specific cancer and exposure to glyphosate.*'
 - (B) the Mink 2012 Paper contains the statements:
 - (1) '*Our review of the currently available epidemiologic literature on glyphosate and cancer found no*

evidence of a consistent pattern of positive associations that would be indicative of a causal relationship between any site—specific cancer and exposure to glyphosate.’

(2) *‘None of the AHS cohort study analyses reported statistically significant positive findings for glyphosate exposure and total cancer or any site—specific cancer in adults or children’;*

(ii) it otherwise refers to and repeats paragraph 14 of the rejoinder filed by the Third Respondent in this proceeding.

15. It admits the allegations in paragraph 15.

16. In answer to paragraph 16:

(a) to the best of the Second Respondent’s knowledge, the 2013 paper by Larry D. Kier and David J. Kirkland titled *‘Review of genotoxicity studies of glyphosate and glyphosate-based formulations’* described in paragraph 15 of the Applicant’s Reply (**Kier and Kirkland 2013 Paper**) was not seen or reviewed (in draft form or otherwise) by the Second Respondent prior to its publication;

(b) it admits that on its face the Kier and Kirkland 2013 Paper did not name David Saltmiras as an author;

(c) it otherwise denies the allegations in paragraph 16;

(d) it says further that:

(i) subject to production by the Applicant of the Kier and Kirkland 2013 Paper, and reference at trial to its full terms and effect, the Kier and Kirkland 2013 Paper stated, among other things, that:

(A) *‘An overwhelming preponderance of negative results in well-conducted bacterial reversion and in vivo mammalian micronucleus and chromosomal aberration assays indicates that glyphosate and typical GBFs [glyphosate-based formulations] are not genotoxic in these core assays’;*

(B) *‘Negative results for in vitro gene mutation and a majority of negative results for chromosomal effect assays in mammalian cells add to the weight of evidence that*

glyphosate is not typically genotoxic for these endpoints in mammalian systems’;

(C) *‘Glyphosate and typical GBFs do not appear to present significant genotoxic risk under normal conditions of human or environmental exposures*’;

(e) it otherwise refers to and repeats paragraph 16 of the rejoinder filed by the Third Respondent in this proceeding.

17. It admits the allegation in paragraph 17.

18. Subject to production of the letter dated 9 October 2015 to Ms Esther Barajas-Ochoa, of the Office of Environmental Health Hazard Assessment from Professor Samuel M. Cohen of the University of Nebraska Medical Centre, referred to in paragraph 18 of the Applicant’s Reply (**OEHHA Letter**) and reference at trial to its full terms and effect, it says:

(a) to the best of the Second Respondent’s knowledge, the OEHHA Letter was not seen or reviewed by Monsanto Australia prior to receipt of the Applicant’s Reply;

(b) admits that, having now reviewed the OEHHA Letter, it appears on its face that the OEHHA Letter was sent to Ms Esther Barajas-Ochoa, of the Office of Environmental Health Hazard Assessment from Professor Samuel M. Cohen of the University of Nebraska Medical Centre on 9 October 2015; and

(c) says further that it otherwise refers to and repeats paragraph 18 of the rejoinder filed by the Third Respondent in this proceeding.

19. In answer to paragraph 19:

(a) subject to production of the OEHHA Letter and reference at trial to its full terms and effect, it admits that, having now reviewed the OEHHA Letter, it appears on its face that the OEHHA Letter was critical of the IARC decision;

(b) it otherwise denies paragraph 19; and

(c) it says further that it otherwise refers to and repeats paragraph 19 of the rejoinder filed by the Third Respondent in this proceeding.

20. It admits the allegations in paragraph 20 and says further that to the best of the Second Respondent’s knowledge, the ‘*op ed*’ article titled ‘*Viewpoint: March Madness from the*

United Nations' was published online in Forbes (**2015 Forbes Article**) was not seen or reviewed by the Second Respondent prior to receipt of the Applicant's Reply.

21. It denies the allegations in paragraph 21 and says further that:
- (a) to the best of the Second Respondent's knowledge the 2015 Forbes Article was not seen or reviewed by the Second Respondent prior to receipt of the Applicant's Reply;
 - (b) to the best of the Second Respondent's knowledge, the 2015 Forbes Article was not seen or reviewed by the Second Respondent (in draft form or otherwise) prior to its publication;
 - (c) having now reviewed the 2015 Forbes Article, it appears on its face to have been published online in Forbes on 20 March 2015;
 - (d) subject to production by the Applicant of the 2015 Forbes Article and reference at trial to its full terms and effect, the 2015 Forbes Article, referred to in paragraph 20 of the Applicant's Reply stated, among other things, that '*The same applies to the IARC's analysis of glyphosate. The data (and a selected set of data, at that) were reviewed to determine whether glyphosate is capable of causing cancer*' and '*So, could any of these new documents have led IARC to their less favourable conclusion? No – because these reviews further affirmed the safety of glyphosate and the absence of linkage between glyphosate and cancer risk*'; and
 - (e) it otherwise refers to and repeats paragraph 21 of the rejoinder filed by the Third Respondent in this proceeding.
22. It admits the allegations in paragraph 22.
23. In answer to paragraph 23:
- (a) it admits that the paper by David Brusick, Marilyn Aardema, Larry D. Kier, David J. Kirkland and Gary Williams titled '*Genotoxicity Expert Panel review: weight of evidence evaluation of the genotoxicity of glyphosate, glyphosate-based formulations, and aminomethylphosphonic acid*' (**Brusick 2016 Paper**) does not name Monsanto employees as authors of the paper;
 - (b) it otherwise denies the allegations in paragraph 23; and
 - (c) says further that:

- (i) subject to production by the Applicant of the Brusick 2016 Paper and reference at trial to its full terms and effect, the Brusick 2016 Paper stated, among other things, that:
- (A) *'The Expert Panel concluded that glyphosate, GBFs, and AMPA genotoxicity response profiles are not consistent with characteristics of genotoxic carcinogens (Table 4)';*
 - (B) *'The Expert Panel concluded that the IARC assessment of classifications regarding strong evidence of genotoxicity and oxidative stress capabilities of glyphosate, GBFs, and AMPA is not supported by the available data';*
 - (C) *'A critical review of the complete dataset by the Expert Panel supports a conclusion that glyphosate (including GBFs and AMPA) does not pose a genotoxic hazard and therefore should not be considered support for the classification of glyphosate as a genotoxic carcinogen';*
 - (D) *'The evidence for oxidative stress/damage as a mechanism or predictor of carcinogenesis is unconvincing';*
 - (E) *'.....A number of published and regulatory approval reviews of the carcinogenic and genotoxic potential of glyphosate, AMPA and GBFs were available prior to the development of the IARC Monograph (Health and Welfare Canada 1991; US EPA 1993; WHO 1994; Williams et al 2000; European Commission 2002; Kier & Kirkland 2013; US EPA 2013). The consensus among these reviews was that proper use of glyphosate and GBFs does not pose a genotoxic or carcinogenic hazard/risk with hazard indicating potential for adverse effects and risk indicating potential for adverse effects under actual conditions and amounts of exposure. As a result, glyphosate-based herbicides have been approved for use in over 160 countries. The recent IARC conclusion was therefore inconsistent with these other reviews. Consequently, the Monsanto Company commissioned Intertek Scientific & Regulatory Consultancy to assemble a panel of experts to conduct a thorough review in the four areas considered by IARC including mechanistic data*

(focused on genotoxicity and oxidative stress). This review section reports the views of the Expert Panel of genetic toxicologists on the genotoxicity of glyphosate, GBFs and AMPA and discusses how they relate to the IARC opinions. The views and conclusions represent those of the Expert Panel of genetic toxicologists as independent scientific consultants and neither employees of the Monsanto Company nor attorneys reviewed this manuscript prior to submission’;

- (ii) to the best of the Second Respondent’s knowledge, this paper (in draft form or otherwise) was not seen or reviewed by the Second Respondent prior to its publication; and
- (iii) it otherwise refers to and repeats paragraph 23 of the rejoinder filed by the Third Respondent in this proceeding.

24. In answer to paragraph 24, it:

- (a) admits that the paper by Gary M Williams, Marilyn Aardema, John Acquavella, Sir Colin Berry, David Brusick, Michele M. Burns, Joao Lauro Viana de Camargo, David Garabrant, Helmut A. Greim, Larry D. Kier, David J. Kirkland, Gary Marsh, Keith R. Solomon, Tom Sorahan, Ashley Roberts and Douglas L. Weed titled ‘*A review of the carcinogenic potential of glyphosate by four independent expert panels and comparison to the IARC assessment*’ published in the journal *Critical Reviews in Toxicology*, described in paragraph 24 of the Applicant’s Reply (**Williams (a) 2016 Paper**) does not name Monsanto employees as authors of the paper;
- (b) otherwise denies paragraph 24; and
- (c) says further that:
 - (i) subject to production of the Williams (a) 2016 Paper, and reference at trial to its full terms and effect, the Williams (a) 2016 Paper stated, among other things, that:
 - (A) ‘*Given these differences, even without the data IARC did not include, there is no support for IARC’s conclusion that ‘glyphosate is probably carcinogenic to humans.’;*

- (B) *'Overall, extensive reviews of the genotoxicity of glyphosate, AMPA and GBFs that were available prior to the development of the IARC Glyphosate Monograph all support a conclusion that glyphosate (and related materials) is inherently not genotoxic. Further, evidence indicative of an oxidative stress mechanism of carcinogenicity is largely unconvincing.'*
- (C) *'In summary, the totality of the evidence, especially in light of the extensive testing that glyphosate has received, as judged by the Expert Panels, does not support the conclusions that glyphosate is a 'probable human carcinogen' and, consistent with the previous regulatory assessments, the Expert Panels conclude that glyphosate is unlikely to pose a carcinogenic risk to humans';*

- (ii) to the best of the Second Respondent's knowledge, this paper (in draft form or otherwise) was not seen or reviewed by the Second Respondent prior to its publication; and
- (iii) it otherwise refers to and repeats paragraph 24 of the rejoinder filed by the Third Respondent in this proceeding.

25. In response to paragraph 25, it:

- (a) admits that the paper by Gary M Williams, Colin Berry, Michele Burns, Joao Lauro Viana de Camargo and Helmut Greim titled *'Glyphosate rodent carcinogenicity bioassay expert panel review'* published in the journal *Critical Reviews in Toxicology*, described in paragraph 25 of the Applicant's Reply (**Williams (b) 2016 Paper**) does not name Monsanto employees as authors of the paper;
- (b) otherwise denies paragraph 25; and
- (c) says further that:
- (i) subject to production of the Williams (b) 2016 Paper, and reference at trial to its full terms and effect, the Williams (b) 2016 Paper stated, among other things, that *'Application of criteria for causality considerations to the above mentioned tumor types and given the overall WoE [weight of evidence], the expert panel concluded that glyphosate is not a carcinogen in laboratory animals';*

- (ii) to the best of the Second Respondent's knowledge, this paper (in draft form or otherwise) was not seen or reviewed by the Second Respondent prior to its publication; and
- (iii) it otherwise refers to and repeats paragraph 25 of the rejoinder filed by the Third Respondent in this proceeding.

26. In response to paragraph 26, it:

- (a) admits that the paper by Keith R. Solomon titled '*Glyphosate in the general population and in applicators: a critical review of studies on exposures*' published in the journal *Critical Reviews in Toxicology*, described in paragraph 26 of the Applicant's Reply (**Solomon 2016 Paper**) does not name Monsanto employees as authors of the paper;
- (b) otherwise denies paragraph 26; and
- (c) says further that:
 - (i) subject to production of the Solomon 2016 Paper, and reference at trial to its full terms and effect, the Solomon 2016 Paper stated, among other things, that: '*Based on the current RfDs [current reference doses] and ADIs [acceptable daily intakes], there is no hazard and no intolerable risk from exposure to glyphosate via its normal use in agriculture and management of weeds in landscapes*'; and
 - (ii) to the best of the Second Respondent's knowledge, this paper (in draft form or otherwise) was not seen or reviewed by the Second Respondent prior to its publication; and
 - (iii) it otherwise refers to and repeats paragraph 26 of the rejoinder filed by the Third Respondent in this proceeding.

27. In response to paragraph 27, it:

- (a) admits that the paper by John Acquavella, David Garabrant, Gary Marsh, Tom Sorahan and Douglas L. Weed titled '*Glyphosate epidemiology expert panel review: a weight of evidence systematic review of the relationship between glyphosate exposure and non-Hodgkin's lymphoma or multiple myeloma*' published in the journal *Critical Reviews in Toxicology*, described in paragraph 27 of the Applicant's Reply (**Acquavella 2016 Paper**) does not name Monsanto employees as authors of the paper;
- (b) otherwise denies paragraph 27; and

- (c) says further that:
- (i) subject to production of the Acquavella 2016 Paper and reference at trial to its full terms and effect, the Acquavella 2016 Paper stated, among other things, that: *'Our review of the glyphosate epidemiological literature and the application of commonly applied causal criteria do not indicate a relationship with glyphosate exposure and NHL'*;
 - (ii) to the best of the Second Respondent's knowledge, this paper (in draft form or otherwise) was not seen or reviewed by the Second Respondent prior to its publication; and
 - (iii) it otherwise refers to and repeats paragraph 27 of the rejoinder filed by the Third Respondent in this proceeding.

28. In answer to paragraph 28:

- (a) it denies the allegations in paragraph 28 and:
- (b) it otherwise refers to and repeats paragraphs 3 to 27 above and paragraphs 3 to 28 of the rejoinder filed by the Third Respondent in this proceeding.

29. It denies the allegations in paragraph 29 and otherwise refers to and repeats paragraphs 4, 6, 9, 11, 14, 16, 19, 21, 23 to 28 above and paragraphs 4, 6, 9, 11, 14, 16, 19, 21, 23 to 28 of the rejoinder filed by the Third Respondent in this proceeding.

B. MONSANTO'S CONDUCT IN UNDERMINING AND INVALIDATING SCIENTIFIC RESEARCH

B.1 The Scientific Outreach Plan

30. It denies the allegations in paragraph 30 and otherwise refers to and repeats paragraph 30 of the rejoinder filed by the Third Respondent in this proceeding.

B.2 Conduct in relation to the Séralini 2012 Paper

31. In response to paragraph 31, it:

- (a) admits that Monsanto planned and adopted a strategy for responding to the Séralini 2012 Paper;
- (b) otherwise denies the allegations in paragraph 31; and
- (c) says further that it refers to and repeats paragraphs 8 to 11 above and paragraphs 8 to 11 and 31 of the rejoinder filed by the Third Respondent in this proceeding.

B.3 Conduct in relation to IARC

B.3.1. Pre-IARC decision conduct

32. It admits the allegations in paragraph 32.
33. It does not know and therefore cannot admit the allegations in paragraph 33 and says further that:
- (a) subject to production by the Applicant of the paper by Larry D. Kier titled '*Review of genotoxicity biomonitoring studies of glyphosate-based formulations*' published in the journal *Critical Reviews in Toxicology* (**Kier 2015 Paper**) and reference at trial to its full terms and effect:
 - (i) the abstract to the Kier 2015 Paper contains a statement that '*The results of the biomonitoring studies do not contradict an earlier conclusion derived from experimental genotoxicity studies that typical GBF's do not appear to present significant genotoxic risk under normal conditions of human or environmental exposures*'; and
 - (b) it otherwise refers to and repeats paragraph 33 of the rejoinder filed by the Third Respondent in this proceeding.
34. It does not know and therefore cannot admit the allegations in paragraph 34 and otherwise refers to and repeats paragraph 34 of the rejoinder filed by the Third Respondent in this proceeding:
35. It admits the allegations contained in paragraph 35.
36. In answer to paragraph 36 it:
- (a) denies the allegations in subparagraph (a);
 - (b) does not know and therefore cannot admit the allegations in subparagraphs (b), (c), (d) and (e); and
 - (c) says further that:
 - (i) the conclusion in the paper by Helmut Greim, David Saltmiras, Volker Mostert and Christian Strupp titled 'Evaluation of carcinogenic potential of the herbicide glyphosate, drawing on tumor incidence data from fourteen chronic / carcinogenicity rodent studies' published in the journal *Critical Reviews in Toxicology* (**Greim 2015 Paper**) is contained in the statement that '*The lack of a plausible mechanism, along with published epidemiology studies, which fail to demonstrate clear,*

statistically significant, unbiased and non-confounded associations between glyphosate and cancer of any single etiology, and a compelling weight of evidence, support the conclusion that glyphosate does not present concern with respect to carcinogenic potential in humans’;

- (ii) it otherwise relies on the Greim 2015 Paper for its full terms and effect;
- (iii) it otherwise refers to and repeats paragraph 36 of the rejoinder filed by the Third Respondent in this proceeding.

B.3.1. Post-IARC decision conduct

37. In answer to paragraph 37, it:

- (a) admits that Monsanto planned and adopted a strategy for responding to the IARC decision;
- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 37; and
- (c) otherwise refers to and repeats paragraph 37 of the rejoinder filed by the Third Respondent in this proceeding.

38. It denies the allegations in paragraph 38 and refers to and repeats paragraphs 28 and 30 to 37 above and paragraphs 28 and 30 to 38 of the rejoinder filed by the Third Respondent in this proceeding.

MONSANTO’S CONDUCT IN FAILING TO UNDERTAKE TESTING OR UNDERTAKE ADEQUATE TESTING

39. It does not know and therefore cannot admit the allegations in paragraph 39.

40. It does not know and therefore cannot admit the allegations in paragraph 40 and otherwise refers to and repeats paragraph 40 of the rejoinder filed by the Third Respondent in this proceeding.

41. In answer to paragraph 41:

- (a) to the best of the Second Respondent’s knowledge, it did not see the Parry Reports (as defined in paragraph 40 of the rejoinder filed by the Third Respondent in this proceeding) until they were seen for the first time when the Applicant filed his Reply;
- (b) it otherwise denies paragraph 41 and says further that:

- (i) it relies on the Parry Reports (as defined in the rejoinder filed by the Third Respondent) for their full terms and effects; and
- (ii) it otherwise refers to and repeats paragraph 41 of the rejoinder filed by the Third Respondent in this proceeding.

42. In response to paragraph 42:

- (a) to the best of the Second Respondent's knowledge, it did not see the Parry Reports (as defined in paragraph 40 of the rejoinder filed by the Third Respondent in this proceeding) until they were seen for the first time when the Applicant filed his Reply;
- (b) it otherwise does not know and therefore cannot admit the allegations in paragraph 42 and says further that:
 - (i) it relies on each of the Parry Reports (as defined in the rejoinder filed by the Third Respondent) for their full terms and effects; and
 - (ii) it otherwise refers to and repeats paragraph 42 of the rejoinder filed by the Third Respondent in this proceeding.

43. In response to paragraph 43:

- (a) to the best of the Second Respondent's knowledge, it did not see the Parry Reports (as defined in paragraph 40 of the rejoinder filed by the Third Respondent in this proceeding) until they were seen for the first time when the Applicant filed his Reply;
- (b) it otherwise does not know and therefore cannot admit the allegations in paragraph 43 and says further that:
 - (i) it relies on each of the Parry Reports (as defined in the rejoinder filed by the Third Respondent) for their full terms and effects; and
 - (ii) it otherwise refers to and repeats paragraph 43 of the rejoinder filed by the Third Respondent in this proceeding.

44. In answer to paragraph 44:

- (a) to the best of the Second Respondent's knowledge, it did not see the Parry Reports (as defined in paragraph 40 of the rejoinder filed by the Third Respondent in this proceeding) until they were seen for the first time when the Applicant filed his Reply;

- (b) it refers to and repeats paragraph 40 above and paragraph 40 of the rejoinder filed by the Third Respondent in this proceeding;
 - (c) having now reviewed the Parry Reports (as defined in paragraph 40 of the rejoinder filed by the Third Respondent in this proceeding), it otherwise admits that the Parry Reports contained recommendations of further testing, evaluation and provision of data, including with respect to testing of glyphosate and glyphosate based formulations; and
 - (d) it relies on each of the Parry Reports for their full terms and effects; and
 - (e) it otherwise refers to and repeats paragraph 44 of the rejoinder filed by the Third Respondent in this proceeding.
45. In answer to paragraph 45:
- (a) it denies paragraph 45;
 - (b) it says further that it :
 - (i) relies on each of the Parry Reports for their full terms and effects; and
 - (ii) otherwise refers to and repeats paragraph 45 of the rejoinder filed by the Third Respondent in this proceeding.
46. It does not know and therefore cannot admit the allegations in paragraph 46 and otherwise refers to and repeats paragraph 46 of the rejoinder filed by the Third Respondent in this proceeding.
47. In answer to paragraph 47:
- (a) to the best of the Second Respondent's knowledge, it did not know of or see the unaudited draft report named '*In vitro percutaneous absorption study with [14C]glyphosate using viable rat skin membranes*' (**TNO Draft Report**) , described in paragraph 47 of the Applicant's Reply, until it was seen for the first time when the Applicant filed his Reply;
 - (b) it otherwise does not know as it has no record of this, and therefore cannot admit the allegation in paragraph 47; and
 - (c) it says further that it otherwise refers to and repeats paragraph 47 of the rejoinder filed by the Third Respondent in this proceeding.
48. In answer to paragraph 48, it:
- (a) says that:

- (i) at trial it will refer to the full terms and effect of the TNO Draft Report;
 - (ii) says that the Roundup formulation MON 0139 70% was composed of the isopropylamine salt of glyphosate (ca. 62% w/w) and water (ca. 38%);
 - (iii) to the best of the Second Respondent's knowledge, the TNO Draft Report was not seen or reviewed by Monsanto Australia prior to its publication and was only seen for the first time when the Applicant filed his Reply;
- (b) otherwise does not know as it has no record of this, and therefore cannot admit the allegations in paragraph 48; and
- (c) says further that it otherwise refers to and repeats paragraph 48 of the rejoinder filed by the Third Respondent in this proceeding.
49. It does not know and therefore cannot admit the allegations in paragraph 49 and refers to and repeats paragraph 49 of the rejoinder filed by the Third Respondent in this proceeding.
50. It does not know and therefore cannot admit the allegations in paragraph 50 and refers to and repeats paragraphs 48 and 49 above and paragraphs 48, 49 and 50 of the rejoinder filed by the Third Respondent in this proceeding.
51. It denies the allegations in paragraph 51 and otherwise refers to and repeats paragraph 51 of the rejoinder filed by the Third Respondent in this proceeding.
52. It denies the allegations in paragraph 52, repeats paragraphs 39 to 51 above and otherwise refers to and repeats paragraphs 39 to 51 of the rejoinder filed by the Third Respondent in this proceeding.
53. It admits the allegations in paragraph 53 and otherwise refers to and repeats paragraph 53 of the rejoinder filed by the Third Respondent in this proceeding.
54. It denies the allegations in paragraph 54 and repeats paragraphs 39 to 51 above and otherwise refers to and repeats paragraphs 39 to 51 and paragraph 54 of the rejoinder filed by the Third Respondent in this proceeding.
55. It denies the allegations in paragraph 55 and repeats paragraphs 3 to 54 above and 3 to 54 of the rejoinder filed by the Third Respondent in this proceeding.
56. In answer to paragraph 56, it:

- (a) says that it refers to and repeats paragraphs 35(d)(iii) of the Defence to the 2FASOC;
 - (b) it otherwise does not plead to paragraph 56(a) and 56(c) as they make no allegations against it;
 - (c) insofar as paragraph 56(b) raises allegations against it, it refers to and repeats paragraphs 28 and 38 above and paragraphs 28 and 38 of the rejoinder filed by the Third Respondent in this proceeding and otherwise denies the allegations in paragraph 56(b).
57. In answer to paragraph 57, it:
- (a) refers to and repeats paragraphs 35(d)(iv) and 35(vi)(G) of the Defence to the 2FASOC;
 - (b) it does not plead to paragraphs 57(a) and 57(c) as they make no allegations against it; and
 - (c) insofar as paragraph 57(b) raises allegations against it, it refers to and repeats paragraphs 28 and 38 above and paragraphs 28 and 38 of the rejoinder filed by the Third Respondent in this proceeding and otherwise denies the allegations in paragraph 57(b).
58. Save to say that it refers to and repeats paragraphs 35(h), 48(c)(iii)(A), 48(f)(i)(E) and 61(c) of the Defence and paragraphs 3 to 55 above and paragraphs 3 to 55 of the rejoinder filed by the Third Respondent in this proceeding, it does not plead to paragraph 58 as the Applicant makes no allegations against it.
59. It says further, that as the paragraphs 3 to 55 of the Reply are pleaded responsively to the allegations of scientific knowledge pleaded in paragraph 35(d)(ii) of the Defence, the allegations in paragraphs 3 to 55 of the Reply (if proved) are irrelevant to:
- (a) the state of scientific knowledge prevailing at any time prior to each of the allegations made; and
 - (b) the claims made by any group member exposed to glyphosate or Roundup Products in the time prior to the period traversed in paragraphs 3 to 55 of the Reply.
60. Save for any positive admissions in the Reply or in the Rejoinder above, the Second Respondent joins issue with each and every allegation in the Reply.

Date: 24 December 2020

A handwritten signature in blue ink, appearing to read "Peter Mark Butler". The signature is fluid and cursive, with a large initial "P" and "B".

Signed by Peter Mark Butler AM RFD

Lawyer for the Second Respondent

This pleading was prepared by Herbert Smith Freehills, solicitors for the Second Respondent, and Anna Robertson, counsel for the Second Respondent, and settled by Robert Craig QC for the Second Respondent.

Date: 24 December 2020

Certificate of lawyer

I, Peter Mark Butler AM RFD, certify to the Court that, in relation to the rejoinder filed on behalf of the Second Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 24 December 2020

A handwritten signature in blue ink, appearing to read 'Peter Mark Butler', with a stylized flourish at the end.

Signed by Peter Mark Butler AM RFD

Lawyer for the Second Respondent

Schedule

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