

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
File Number:	VID243/2020
File Title:	KELVIN MCNICKLE v HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 28/10/2020 12:45:52 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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Form 33

Rule 16.32

**SECOND RESPONDENT'S DEFENCE TO SECOND FURTHER AMENDED  
STATEMENT OF CLAIM**

Federal Court of Australia

No. VID 243 of 2020

District Registry: Victoria

Division: General

**KELVIN MCNICKLE**

Applicant

**HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD & ORS**

Respondents

In answer to the Second Further Amended Statement of Claim (2EASOC), the Second Respondent (**Monsanto Australia**) states as follows:

**Part A – The Applicant and Group Members**

**Group Members**

1. In answer to paragraph 1, it says:

~~(a) the definition of Roundup Products is vague and embarrassing;~~

~~(b) under cover of that objection;~~

(a) it admits that the Applicant has ~~purported to~~ commenced this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**);

(b) it admits that the products listed in **Schedule A** to the Defence hereto are herbicide products which:

Filed on behalf of Monsanto Australia Pty Ltd ACN 006 725 560, Second Respondent

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[Form approved 01/08/2011]

- (i) contain glyphosate; and
- (ii) include either 'Roundup' or 'Monsanto' in the product name registered with the Australian Pesticides and Veterinary Medicines Authority (APVMA); and
- (iii) were or are sold in Australia,

**(Monsanto Roundup Products);**

- (c) it says further that:

~~A. what is meant by 'glyphosate' where that word is used throughout the ASOC is vague and embarrassing~~

- (i) the manufacture of Monsanto Roundup Products involves conversion of intermediate products (**Glyphosate Intermediate**) to glyphosate acid (also known as Glyphosate technical), (**Glyphosate**), which in turn is further converted to Glyphosate salts for use in formulation of the Monsanto Roundup Products; and
- (ii) N-(phosphonomethyl) glycine is the International Union of Pure and Applied Chemistry name of glyphosate, the active ingredient;

- ~~(iv) it says further that:~~

~~A. the Commonwealth and State and Territory governments have established legislative schemes, and the Commonwealth Government has established a regulatory approval process for the registration and sale of agricultural and veterinary chemical products, being the National Registration Scheme for Agricultural and Veterinary Chemicals (**National Registration Scheme**) that is now administered by the APVMA, an independent statutory authority;~~

~~B. the National Registration Scheme is embodied in the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) (**Agvet Code Act**), in delegated legislation and standards made under the Agvet Code Act and in other legislation and delegated legislation including the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth) (**Agvet Code**~~

~~Regulations), the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994 (Cth) (Agvet Levy Act), the Agricultural and Veterinary Chemicals (Administration) Act 1992 (Cth) (Agvet Admin Act), the Agricultural and Veterinary Chemicals Regulations 1999 (Cth) (Agvet Regulations), the Agricultural and Veterinary Chemical Products (Collection of Levy) Regulations 1995 (Agvet Levy Regulations) and the Agricultural and Veterinary Chemicals (Administration) Regulations 1995 (Cth) (Agvet Admin Regulations);~~

~~C. prior to the National Registration Scheme, each of the various states and territories regulated agricultural chemical products;~~

~~D. under the Commonwealth legislative scheme:~~

~~(1) agricultural chemical products are, and have been since 1995, included on a Register of Agricultural and Veterinary Chemical Products (**Register**); and~~

~~(2) approved active constituents are included on a Record of Approved Active Constituents for Chemical Products (**Record**);~~

~~E. the Monsanto Roundup Products:~~

~~(1) were at various times included on the Register as a herbicide containing glyphosate; and~~

~~(2) had active constituents which were recorded in the Record; and~~

~~(v) it denies that the Applicant has an alleged claim in respect of, or arising out of, the same, similar or related circumstances as those alleged by all Group Members as each individual claim relies on entirely different facts and injuries; and~~

(d) it otherwise does not know and therefore cannot admit the allegations in paragraph 1.

2. It does not know and therefore cannot admit the allegations in paragraph 2.

3. ~~It denies the allegations contained in paragraph 3. In answer to paragraph 3, it: refers to and repeats paragraph 1 above; and otherwise denies the allegations contained in paragraph 3.~~

**The Applicant – Mr Kelvin McNickle**

- 4. It does not know and therefore cannot admit the allegations in paragraph 4.
- 5. It does not know and therefore cannot admit the allegations in paragraph 5.
- 6. It does not know and therefore cannot admit the allegations in paragraph 6.
- 7. It does not know and therefore cannot admit the allegations in paragraph 7.
- 8. It does not know and therefore cannot admit the allegations in paragraph 8.
- 9. It does not know and therefore cannot admit the allegations in paragraph 9.
- 10. It does not know and therefore cannot admit the allegations in paragraph 10.
- 11. It does not know and therefore cannot admit the allegations in paragraph 11.
- 12. It does not know and therefore cannot admit the allegations in paragraph 12.
- 13. It does not know and therefore cannot admit the allegations in paragraph 13.
- 14. It does not know and therefore cannot admit the allegations in paragraph 14.

**THE RESPONDENTS**

- 15. In answer to paragraph 15, it:
  - (a) admits that the First Respondent:
    - (i) was and is a corporation incorporated in Australia and capable of being sued;
    - (ii) was a wholly owned subsidiary of Monsanto Company US (Old) between 1974 and 1987; and
    - (iii) between 29 July 1976 and 17 April 1988, had the name Monsanto Australia Limited;
  - (b) says further that the First Respondent:
    - (i) was called Huntsman Chemical Company Australia Limited from 6 July 1993 to 15 April 1996; and

- (ii) has been called Huntsman Chemical Company Australia Pty Ltd since 16 April 1996; and
  - (c) otherwise does not plead to paragraph 15 as the Applicant makes no allegations against it.
16. In answer to paragraph 16:
- (a) it admits sub-paragraph (a);
  - (b) it admits sub-paragraph (b) and says that it was known as Monsanto Australia Limited from 19 April 1988 to 23 August 2018;
  - (c) it admits sub-paragraph (c);
  - (d) in relation to sub-paragraph (d) it says ~~that in the absence of particulars of the specific products alleged to have been imported or caused to be imported into Australia for distribution, or the specific products alleged to have been manufactured, distributed and marketed or promoted, and given the matters referred to in paragraphs 1(a) and 1(b)0 above, the allegation is vague and embarrassing. Under cover of that objection it says:~~
    - (i) in relation to sub-paragraph 16(d)(i):
      - A. it denies importation of the products defined by the Applicant as ‘Roundup Products’;
      - B. it says further that as currently known, at various times between 1996 and 2020, it imported or caused to be imported into Australia for distribution various Monsanto Roundup Products from various international Monsanto affiliates or related entities as follows:
        - (1) between 1 October 1999 and 2018, for distribution by Scotts Australia Pty Ltd, Roundup Herbicide (White) Concentrate, Roundup Ready to Use, Roundup Sure Shot, Roundup Professional Strength Concentrate, Roundup Promotional Pack, Roundup Biactive Concentrate and Roundup Xtra Concentrate;

- (2) between 1 March 2013 and 2019 for distribution by Sinochem Australia Ltd, Roundup Ultramax Herbicide, Roundup Dura, Roundup Biactive Herbicide by Monsanto, Roundup Ready Herbicide with Plantshield by Monsanto, Roundup Powermax Herbicide by Monsanto and Roundup CT Broadacre Herbicide by Monsanto;
  - (3) in 2017, Roundup Herbicide by Monsanto, Roundup Ready to Use Weedkiller, Fast Action Roundup Ready to Use Weedkiller, Concentrate Advance Roundup Weedkiller, Concentrate Roundup Powermax Weedkiller, Tough Roundup Ready to Use Weedkiller, Fast Action Roundup Path & Drive Weedkiller, Roundup Biactive, Roundup CT Broadacre, Roundup Ultramax, Sting, Roundup 360 Pro, Roundup Renew, Roundup Dura and Roundup Ready PL;
  - (4) in 2017, 2018 and 2019, Roundup Ready Herbicide with Plantshield; and
  - (5) in September 2016 and May 2019, Roundup Ready PL;
- C. it otherwise does not know whether it imported or caused to be imported into Australia for distribution the Monsanto Roundup Products prior to 1996 and therefore cannot admit this allegation. Further particulars will be provided when available following discovery and evidence;
- (ii) in relation to sub-paragraph 16(d)(ii):
- A. it denies the importation or manufacture of the products defined by the Applicant as ‘Roundup Products’;
  - B. it says further that:
    - (1) it refers to paragraphs ~~4(b)~~ 1(a), 1(c) and 16(d)(i) above;

- (2) at various times from April 1988 until around 2002, it imported or caused to be imported into Australia one or other of Glyphosate Intermediate and/or Glyphosate;
  - (3) between 1 April 1988 and November 1993, the First Respondent produced Glyphosate for the Second Respondent pursuant to an operating agreement between Legis No 20 Ltd and the ~~Second~~First Respondent dated 31 March 1988; and
  - (4) at various times between 1992 and 2002, depending on the product, the Second Respondent manufactured Roundup Herbicide 360 (also known as Roundup Herbicide and Roundup Herbicide (white)), Roundup CT 450 (also known as Roundup CT Broadacre Herbicide by Monsanto), Roundup Biactive Herbicide, Roundup Dry Herbicide by Monsanto, Roundup CT Xtra Broadacre Herbicide By Monsanto and Roundup Max Herbicide by Monsanto; and
- C. it otherwise does not yet know and is currently unable to admit the allegations in paragraph 16(d)(ii). Further particulars will be provided when available following discovery and evidence;
- (iii) in relation to sub-paragraph 16(d)(iii):
- A. it denies distribution of the products defined by the Applicant as 'Roundup Products';
  - ~~B. —under cover of that objection, it refers to and repeats paragraph 16(d)(ii) above;~~
  - B. it says further that in relation to the Monsanto Roundup Products, it admits that at various times from 1988 to 2002, it distributed Roundup Herbicide 360 (also known as Roundup Herbicide and Roundup Herbicide (white)), Roundup CT 450 (also known as Roundup CT Broadacre by Monsanto); Roundup Biactive Herbicide, Roundup Dry Herbicide by



Monsanto, Roundup CT Xtra Broadacre Herbicide By Monsanto and Roundup Max Herbicide by Monsanto;

C. it says further that it or affiliates or related entities of the Second Respondent appointed distributors of the Monsanto Roundup Products, being:

- (1) from 1999 to 2020, Evergreen Garden Care Australia Pty Ltd (formerly known as Scotts Australia Pty Ltd) or its affiliates/related entities;
- (2) from 2002 to 2013, Nufarm Australia Limited; and
- (3) from 2013 to 2019, Sinochem International Crop Care (Overseas) Pte. Ltd;

through which various Monsanto Roundup Products were distributed via a network of re-sellers.

D. it otherwise does not yet know and is therefore currently unable to admit the allegations in paragraph 16(d)(iii). Further particulars will be provided when available following discovery and evidence.

(iv) in relation to sub-paragraph 16(d)(iv), it:

A. admits that from 1988 to 3 May 2002, at various times, it promoted and marketed in Australia Roundup Herbicide 360 (also known as Roundup Herbicide and Roundup Herbicide (white)), Roundup CT 450 (also known as Roundup CT Broadacre Herbicide by Monsanto), Roundup Biactive Herbicide, Roundup Dry Herbicide by Monsanto, Roundup CT Xtra Broadacre Herbicide By Monsanto and Roundup Max Herbicide by Monsanto and engaged in activities related to marketing;

### **PARTICULARS**

The promotion and marketing activities included preparation of marketing programs and marketing strategies; conducting promotions; preparation of media

schedules. Further particulars may be provided following discovery and evidence.

- B. says further that insofar as it, or affiliates or related entities of the Second Respondent, provided Monsanto Roundup Products to Evergreen Garden Care Australia Pty Ltd (formerly known as Scotts Australia Pty Ltd) or its affiliates/related entities, Nufarm Australia Limited and Sinochem International Crop Care (Overseas) Pte. Ltd, such entities marketed and promoted in Australia the Monsanto Roundup Products; and
  - C. otherwise does not currently know, and therefore cannot admit, the allegations in this sub-paragraph. Further particulars will be provided when available following discovery and evidence;
- (v) in relation to sub-paragraph 16(d)(v), it says that:
- ~~A. in the absence of particulars, the reference to marketing and other materials is vague and embarrassing;~~
  - A. ~~under cover of that objection it says further that~~ its name was used in some information sheets, FAQ sheets, letters, flyers and labels related to the Monsanto Roundup Products between 1988 and 2002; and

### PARTICULARS

The Second Respondent published information sheets and FAQ sheets, and distributed marketing letters and flyers and labels referring to its name (Monsanto Australia Limited) at various times.

- B. otherwise it does not otherwise currently know whether it caused or permitted its name (Monsanto Australia Limited up to 24 August 2018 and thereafter Monsanto Australia Pty Ltd) to be used in other marketing materials related to the Monsanto Roundup Products and therefore currently cannot admit further the allegations in this sub-paragraph. Further

particulars will be provided when available following discovery and evidence; and

- (vi) in relation to sub-paragraph (d)(vi), it admits that until 7 June 2018, it was an indirect wholly owned subsidiary of Monsanto Company US (Old) and Monsanto Company US (New) (as defined in paragraph 17 below) and thereafter of Bayer Aktiengesellschaft (AG) (**Bayer AG**);
- (e) to relation to sub-paragraph (e), it:
  - (i) refers to and repeats sub-paragraph 16(d) above;
  - (ii) says further that it does not currently know and therefore cannot admit that, for the purposes of the *Trade Practices Act 1974* (Cth) (**TPA**) and/or the *Australian Consumer Law (ACL)* being Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**), it was a manufacturer of the Roundup Products or the Monsanto Roundup Products. Further particulars will be provided when available following discovery and evidence; and
  - (iii) otherwise denies the allegations contained in sub-paragraph (e); and
- (f) it otherwise denies the allegations contained in paragraph 16.

17. It does not plead to paragraph 17 as it makes no allegation against it.

## **ROUNDUP PRODUCTS**

18. In answer to paragraph 18, it:

- (a) refers to and repeats paragraphs 1 and 16 above;
- (b) says further that:
  - (i) the first registration was for Roundup Herbicide from at least November 1976;

## **PARTICULARS**

Roundup Herbicide is recorded by the APVMA in the register of Agricultural and Veterinary Chemical Products (Register) as first registered:

- (i) in Victoria on 29 July 1994;
- (ii) in South Australia on 11 November 1976;

- (iii) in Australia Capital Territory on 28 September 1990;
- (iv) in Northern Territory on 5 January 1988;
- (v) in Queensland on 30 June 1988; and
- (vi) with the APVMA on 11 November 1995.

Roundup Herbicide is recorded by the New South Wales Pesticide Registration Section, Department of Agriculture and Fisheries in its Notification of Registration and Approval of a New Product, as first registered for use on 28 September 1981.

- (ii) each of the products encompassing the Monsanto Roundup Products was registered for use in Australia at various and different points in time thereafter; and
  - (c) otherwise does not know and therefore cannot admit the allegations contained in paragraph 18 of the 2FASOC.
19. In answer to paragraph 19, it:
- (a) refers to and repeats paragraphs 1 and 16 above;
  - (b) says that the Monsanto Roundup Products were marketed for use as an herbicide at various and different points in time; and
  - (c) otherwise denies the allegations contained in paragraph 19 of the 2FASOC.
20. In answer to paragraph 20, it:
- (a) admits that glyphosate was an active ingredient in the Monsanto Roundup Products; and
  - (b) otherwise denies the allegations contained in paragraph 20.
21. In answer to paragraph 21, it says:
- (a) that since 24 March 1987, at least some of the Monsanto Roundup Products have (when supplied), been supplied in Australia in a variety of formulations, with a variety of concentrations of glyphosate; and with glyphosate in the form of salts, with one salt form being glyphosate isopropyl amine salt; and
  - (b) that it otherwise denies the allegations contained in paragraph 21.
22. In answer to paragraph 22, it:

- (a) admits that some of the Monsanto Roundup Products contained surfactants; and
- (b) otherwise denies the allegations contained in paragraph 22.

### **PROPERTIES OF ROUNDUP**

- 23. It denies the allegations contained in paragraph 23.
- 24. In answer to paragraph 24, it:
  - (a) refers to and repeats paragraphs ~~1, 15~~, 16, 17 above, and paragraph 35 below; and
  - (b) otherwise denies the allegations contained in paragraph 24.
- 25. In answer to paragraph 25, it:
  - (a) admits that, generally, surfactants:
    - (i) are surface acting agents which are designed to lower the surface tension of the medium in which they are dissolved;
    - (ii) may assist in removal of lipids from the epidermal surface;
    - (iii) may increase the hydration state of the skin (under closed exposure conditions);
    - (iv) may decrease evaporation of water from droplets;
    - (v) may increase sub-epidermal blood flow; and
    - (vi) may aid in intra-epidermal and sub-epidermal intercellular water accumulation;
  - (b) says that it refers to and repeats the matters pleaded in ~~paragraph 1 above and~~ paragraphs 26 and 35 below;
  - (c) says further and alternatively, that even if there is an interaction between glyphosate and human skin (which is denied), such interaction is likely to be very limited and of negligible effect on humans;
  - (d) says that the matter of surfactants is a matter for expert evidence at trial; and
  - (e) otherwise denies the allegations contained in paragraph 25.
- 26. In answer to paragraph 26, it:

- (a) refers to and repeats ~~paragraph 1 (in particular the fact that the group member definition is limited to persons diagnosed with NHL and does not extend to persons with cancer), and~~ paragraph 25 above and paragraph 35 below;
- (b) otherwise denies the allegations contained in paragraph 26;
- (c) says further and alternatively, that even if Roundup Products or the Monsanto Roundup Products are carcinogenic (which is denied), when used as intended they do not increase an individual's risk of developing, nor cause, NHL, having regard to:
  - (i) the matters referred to in paragraphs 28 and 35 below;
  - (ii) the fact that the causes of NHL are many and varied;
  - (iii) the many objective factors and matters personal to the Applicant or particular Group Members which impact upon whether NHL will develop; and

### **PARTICULARS**

1. the Second Respondent relies upon matters including the matters referred to in the particulars to paragraph 35 below and says that further particulars may be provided following lay and expert evidence.
2. The types of objective factors include:
  - A. methods of application of the Monsanto Roundup Products;
  - B. the location where the glyphosate was sourced and quality of the product;
  - C. interactions between adjuvants and organic material within the environment;
  - D. water quality and quantity; and
  - E. metabolism and rates of excretion of glyphosate from the human body.
3. The types of matters personal to the Applicant include:

- A. age;
- B. personal medical history;
- C. allergy de-sensitisation injections;
- D. history of cancer;
- E. family medical history (including history of cancer);
- F. body weight;
- G. diet;
- H. alcohol consumption;
- I. smoking;
- J. weakened immune system (including from medications, human immunodeficiency virus (HIV), genetically inherited syndromes);
- K. autoimmune diseases including rheumatoid arthritis, systemic lupus, erythematosus, Sjogren disease or celiac disease;
- L. infections including infections that directly transform lymphocytes, including Epstein-Barr virus (EBV), human herpesvirus 8 or human T-cell lymphotropic virus; infections that weaken the immune system, HIV, infections that cause chronic immune stimulation such as *Helicobacter pylori*, *Chlamydia psittaci*, hepatitis C or *Campylobacter jejuni*;
- M. exposure to certain medications, including chemotherapy and rheumatoid arthritis medications;
- N. radiation exposure;
- O. gender;
- P. race/ethnicity;
- Q. exposure to chemicals including benzene;
- R. exposure to outdoor pollution;

- S. exposure to engine exhaust and diesel;
- T. exposure to combustion of biomass fuels;
- U. exposure to other herbicides, insecticides, fungicides and pesticides;
- V. solar and ultraviolet radiation; and
- W. occupational circumstances including shift work.

- (d) says further that in the absence of allegations of material fact as to how Roundup Products, or the Monsanto Roundup Products, are said to increase an individual's risk of developing NHL, it is unable to plead further to paragraph 26.

## **E. INJURIES**

- 27. In answer to paragraph 27, it:

- (a) does not know and therefore cannot admit the allegations in paragraph 27; and
- (b) says further that not all the Monsanto Roundup Products were registered in 1976 and/or were available for use from 1976.

- 28. In answer to paragraph 28, it:

- (a) refers to and repeats paragraphs 23 to 26 above and paragraph 35 below;
- (b) otherwise denies the allegations contained in paragraph 28; and
- (c) says further that there are numerous reasons why the Applicant and NHL Group Members may have developed NHL other than by reason of use of, or exposure to, Roundup Products or the Monsanto Roundup Products including:
  - (i) genetic predisposition;
  - (ii) gene changes and DNA mutations caused by factors unrelated to Roundup Products or the Monsanto Roundup Products including:
    - A. abnormal cell division;
    - B. biological or internal factors such as age, gender, inherited genetic defects;



- C. environmental exposure including through radiation and smoke;
- D. occupational risk factors;
- E. life-style related factors including obesity, lack of exercise, diet;
- F. personal and family medical history including viruses, hormones, chronic inflammation; and
- G. matters referred to in the particulars to paragraph 26 above;
- (iii) interaction of gene mutations;
- (iv) random chance;
- (v) the aetiology of NHL; and
- (vi) the number of sub-types of NHL.

**F. DEFECTIVE GOODS/SAFETY DEFECT**

- 29. It does not plead to paragraph 29 as it makes no allegations against it.
- 30. In answer to paragraph 30, ~~it says that in the absence of particulars of the specific products alleged to have been imported or caused to be imported into Australia for distribution, or specific products alleged to have been manufactured, distributed and marketed or promoted, and given the matters referred to in paragraphs 1(a) and 1(b) above, the allegation is vague and embarrassing. Under cover of that objection it:~~
  - (a) refers to and repeats paragraphs 16 and 17 above; and
  - (b) otherwise does not currently know and therefore cannot admit the allegations in paragraph 30. Further particulars will be provided when available following discovery and evidence.
- 31. In answer to paragraph 31, it:
  - (a) refers to and repeats paragraphs ~~1(a) and 1(b),~~ 16, 17 and 30 above; and
  - (b) ~~under cover of that objection, it:~~
    - (i) ~~refers to and repeats the matters pleaded in paragraphs 16, 17 and 30 above; and~~

(ii) otherwise denies the allegations contained in paragraph 31.

32. In response to paragraph 32, it:

- (a) says that it understands the intention of paragraph 32(a) of the 2FASOC to be a reference to “Monsanto Australia (Old)” and paragraph 32(b) of the 2FASOC to be a reference to “Monsanto Australia (New)” and hereafter pleads on that basis;
- (b) says that it was not incorporated until 24 March 1987, consequently, it has no knowledge about, and therefore cannot admit, whether importation of Roundup Products, Glyphosate or Glyphosate Intermediate (or Monsanto Roundup Products) for use in manufacture of Roundup Products or Monsanto Roundup Products occurred prior to 24 March 1987;
- (c) refers to and repeats the matters in paragraph 16(d)(iii) above;
- (d) says further that it, or affiliates or related entities of the Second Respondent, appointed distributors of the Monsanto Roundup Products, being:
  - (i) from 1999 to 2020, Evergreen Garden Care Australia Pty Ltd (formerly known as Scotts Australia Pty Ltd) or its affiliates/related entities;
  - (ii) from 2002 to 2013, Nufarm Australia Limited; and
  - (iii) from 2013 to 2019, Sinochem International Crop Care (Overseas) Pte. Ltd;

through which various Monsanto Roundup Products were distributed via a network of re-sellers at various times after 1999.

- (e) otherwise does not yet know and is currently unable to admit the allegations in paragraph 32. Further particulars will be provided when available following discovery and evidence.

33. In answer to paragraph 33, it:

- ~~(a) — says the plea is vague and embarrassing as to what is meant by ‘the supply by the Australian Suppliers to the Intermediary Suppliers’; and~~
- ~~(b) — under cover of that objection it:~~
- (a) refers to and repeats paragraphs ~~1~~, 15 to 17 and 30 to 32 above;

- (b) says it does not know and therefore cannot admit what Monsanto Australia (Old) was supplying to Intermediary Suppliers (if anything); and
  - (c) otherwise denies the allegations contained in paragraph 33.
34. In answer to paragraph 34, it:
- (a) refers to and repeats paragraphs ~~1, 26~~ and 28 above and paragraph 35 below; and
  - (b) otherwise denies the allegations contained in paragraph 34.
35. In answer to paragraph 35, it:
- (a) refers to and repeats paragraphs ~~1 and~~ 16 above;
  - (b) otherwise denies the allegations contained in paragraph 35;
  - (c) says further that:
    - (i) some of the Monsanto Roundup Products were marketed for lawn and garden, agricultural, commercial and/or industrial uses respectively in Australia;

### PARTICULARS

The Monsanto Roundup Products were marketed via preparation of marketing programs and marketing strategies; conducting promotions; preparation of media schedules. Further particulars may be provided following discovery and evidence.

- (ii) the respective class of persons to whom the Monsanto Roundup Products were directed would have expected that the Monsanto Roundup Products, being products intended to be used for lawn and garden, agricultural, commercial and/or industrial uses, would be used only for such purposes and would not be used for any other purpose;
- (iii) the Monsanto Roundup Products were registered for use in Australia according to the following general registration process—~~generally described in paragraph 1 above~~, and could be safely used according to prescribed label directions;

A. the Commonwealth and State and Territory governments have established legislative schemes, and the Commonwealth Government has established a regulatory approval process for the registration and sale of agricultural and veterinary chemical products, being the National Registration Scheme for Agricultural and Veterinary Chemicals (National Registration Scheme) that is now administered by the APVMA, an independent statutory authority;

(1) the National Registration Scheme is embodied in the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) (**Agvet Code Act**), in delegated legislation and standards made under the Agvet Code Act and in other legislation and delegated legislation including the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth) (**Agvet Code Regulations**), the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* (Cth), the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cth), the *Agricultural and Veterinary Chemicals Regulations 1999* (Cth), the *Agricultural and Veterinary Chemical Products (Collection of Levy) Regulations 1995* and the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* (Cth);

(2) prior to the National Registration Scheme, each of the various states and territories regulated agricultural chemical products;

(3) under the Commonwealth legislative scheme:

- i. agricultural chemical products are, and have been since 1995, included on the Register; and
- ii. approved active constituents are included on the Record;

B. the Monsanto Roundup Products:

- (1) were at various times included on the Register as a herbicide containing glyphosate; and
  - (2) had active constituents which were recorded in the Record.
- (iv) further, at the point in time when the Monsanto Roundup Products were supplied in Australia, they were supplied with available information, including labels and warnings which complied with the applicable laws, which included information with respect to relevant poisons scheduling, first aid, safety directions detailing personal protective equipment required to be used when handling and/or using products containing glyphosate;

### PARTICULARS

- Information, including warnings, is included in the label directions and in product summaries included on the APVMA website and material safety data sheets published in various locations including on Monsanto Company US (New)'s website, on the website <https://www.crop.bayer.com.au>, and on the website [www.roundup.com.au](http://www.roundup.com.au).
- (v) all the Monsanto Roundup Products supplied were supplied with information and it was reasonable for it to expect that:
- A. prior to use of any of the Monsanto Roundup Products, the Applicant and Group Members would review all information, including warnings, and appreciate for themselves a variety of pertinent matters including that:
    - (1) subject to legislation, the Monsanto Roundup Products had signal words if required by the Poisons Standard;
    - (2) the Monsanto Roundup Products should not be swallowed, or inhaled, and steps should be taken to protect against being absorbed through the skin, eyes or mouth; and

- (3) there was a need when using and/or being exposed to Monsanto Roundup Products, to follow all safety directions including requirements to use personal protective equipment and to ensure that the application equipment is not faulty and used correctly;
  - B. prior to use of any of the Monsanto Roundup Products in an employment context, the Applicant and/or Group Members would be informed by their respective employer(s), about the content of all information, including warnings, and appreciate for themselves a variety of pertinent matters including that:
    - (1) subject to legislation, Monsanto Roundup Products supplied had signal words if required by the Poisons Standard;
    - (2) the Monsanto Roundup Products should not be swallowed, or inhaled, and steps should be taken to protect against being absorbed through the skin, eyes or mouth; and
    - (3) there was a need when using and/or being exposed to Monsanto Roundup Products, to follow all safety directions including requirements to use personal protective equipment and to ensure that the application equipment is not faulty and used correctly; and
  - C. the Monsanto Roundup Products would be used and applied only to plants for lawn and garden, agricultural, commercial and/or industrial uses;
- (d) says further that having regard to all relevant circumstances including:
  - (i) the matters set out in s 75AC (2) of the TPA;
  - (ii) prevailing scientific knowledge identifying the absence of any reasoned basis to conclude that glyphosate is carcinogenic;

## PARTICULARS

The scientific knowledge will be the subject of expert evidence at trial. The Second Respondent relies upon the matters including those detailed in **Schedule B**.

- (iii) the fact that regulatory approval has been given for use of the Monsanto Roundup Products and glyphosate in Australia and elsewhere throughout the world;

### **PARTICULARS**

Regulatory approvals given for use of the Monsanto Roundup Products within Australia and elsewhere throughout the world will be the subject of lay and expert evidence at trial. The Second Respondent relies upon regulatory approvals given for use of the Monsanto Roundup Products in Australia; registrations and approvals given by the United States Environmental Protection Agency (**US EPA**); and regulatory evaluations of the carcinogenicity of glyphosate, including those published by:

- A. the APVMA;
- B. the US EPA;
- C. the European Food Safety Authority;
- D. the European Chemicals Agency;
- E. the Health Canada Pest Management Regulatory Agency; and
- F. the Environmental Protection Authority of New Zealand.

- (iv) the fact that the APVMA, in its ‘Final regulatory position: Consideration of the evidence for a formal reconsideration of glyphosate (March 2017)’ (**APVMA 2017 Regulatory Position**), concluded that ‘the scientific weight-of-evidence indicates that: exposure to glyphosate does not pose a carcinogenic or genotoxic risk to humans’ and on that basis declined to formally re-consider glyphosate’s registration in Australia;

- (v) the fact that on 22 June 2020 the US District Court (Eastern District of California) in *National Association of Wheat Growers et al v Becerra, Attorney General of California* found that the statement that glyphosate is ‘known to the state of California to cause cancer’ is ‘misleading’ and ‘the great weight of evidence indicates that glyphosate is not known to cause cancer’;

### PARTICULARS

The Second Respondent relies upon pages 4 to 7 and 18 to 21 of the decision in *National Association of Wheat Growers et al v Becerra, Attorney General of California* (ED Cal, No. 2:17-cv-2401 WBS EFB, 22 June 2020).

- (vi) the fact that:
- A. as part of the APVMA evaluation process of an agricultural chemical product, the APVMA receives input where required regarding human and environmental safety from several government agencies including the Australian Government Department of Health, the Australian Government Department of Agriculture, Water and Environment and Food Standards Australia New Zealand;
  - B. when an agricultural chemical product is approved for registration by the APVMA, the APVMA must also approve each active constituent for the product (before or at the same time as the agricultural chemical product) and the label text of containers for the product (at the same time as the agricultural chemical product) in accordance with s 14 of the *Agricultural and Veterinary Chemicals Code (Agvet Code)*, as set out in the Schedule to the Agvet Code Act;
  - C. the approval of the label is subject to the conditions of approval or registration as set out in s 23 of the Agvet Code and the conditions prescribed by the Agvet Code Regulations including the labelling standards and requirements set out in regulation 18E of the Agvet Code Regulations;



- D. pursuant to sub-regulations 18F(1)(a) and (b) of the Agvet Code Regulations, a label must not contain misleading or deceptive information about either the information required by sub-regulation 18D(1) to be stated on the label; or the use, safety, environmental impact or efficacy of the chemical product to which the label relates;
  - E. further, pursuant to sub-regulation 18F(2), if the label is, or is required to be, attached to a container, information must not accompany or be placed on the container, including in the form of another label, if the information expressly or impliedly negates or varies information required by sub-regulation 18D(1) to be stated on the label; or qualifies or minimises the substance or effect of the information required by sub-regulation 18D(1) to be stated on the label;
  - F. further, pursuant to sub-regulation 18G(1) of the Agvet Code Regulations, the holder of the approval of the label in relation to the label must not make any claim, or cause or permit any claim to be made about a registered chemical product or a chemical product which contains a registered chemical product that is inconsistent with an instruction on the label for a container for the chemical product;
  - G. the APVMA 2017 Regulatory Position concluded that the weight of the scientific evidence indicated that exposure to glyphosate does not pose a carcinogenic or genotoxic risk to humans; and
  - H. in the premises, if labels for the Monsanto Roundup Products included information that glyphosate was carcinogenic this would be inaccurate or otherwise misleading and would not meet prescribed Australian labelling requirements pursuant to regulations 18F and/or 18G of the Agvet Code Regulations;
- (vii) the matters referred to in paragraph 26 above;

- (viii) the fact that the risk of any substance causing NHL is dependent upon a wide range of factors including:
  - A. the chemical composition of the substance said to cause the NHL;
  - B. the dose;
  - C. the duration of exposure (including whether it is short or long-term exposure);
  - D. the route of exposure including environmental, intentional consumption or administration;
  - E. the concentration of the exposed substance having regard to absorption and distribution within the body;
  - F. the rate of excretion; and
  - G. individual susceptibility including the matters referred to in the particulars to paragraph 26(c)(ii) and 28 above; and
- (ix) the availability of other herbicides and similar products to the Monsanto Roundup Products in the marketplace;
- (x) the use of and/or exposure to glyphosate and glyphosate-based formulations within the Monsanto Roundup Products, when used in their intended application, did not, and do not, increase an individual's risk of developing NHL;
- (e) by reason of the matters referred to in sub-paragraphs 35(c) and (d) above, pursuant to s 75AC(1) of the TPA the safety of the Monsanto Roundup Products was such as persons using such products in the manner intended were generally entitled to expect;
- (f) says further that, in the premises referred to in sub-paragraphs 35(c) and (d) above the Monsanto Roundup Products did not have a defect within the meaning of s 75AC of the TPA or a safety defect within the meaning of s 9 of the ACL;
- (g) says further, pursuant to s 142(a) of the ACL, the safety defect which is alleged to have caused the loss or damage – the increased risk of developing

NHL – did not exist at the time that the Monsanto Roundup Products were supplied by the actual manufacturer; and

- (h) says further and alternatively, that even if the increased risk of NHL (which is denied) was a defect or alternatively a safety defect (which is denied), and compensable as such, then:

- (i) pursuant to s 75AK(1)(c) of the TPA; and
- (ii) alternatively, s 142(c) of the ACL,

the state of scientific knowledge at the time when the particular Monsanto Roundup Products were supplied by their actual manufacturer is not such as to enable that defect, alternatively safety defect, to be discovered. Accordingly, s 75AK(1)(c) provides a complete defence to the claim under s 74AD of the TPA and s 142 of the ACL affords a complete defence to the claim under s 138 of the ACL.

### PARTICULARS

The scientific knowledge will be the subject of expert evidence at trial.  
The Second Respondent also relies upon the particulars provided under paragraph 35 and the matters detailed in **Schedule B**.

36. In answer to paragraph 36, it:

- (a) refers to and repeats paragraphs 23 to 26 and 35 above;
- (b) otherwise denies the allegations contained in paragraph 36;
- (c) says that to the extent that the Applicant and/or Group Members have suffered loss and damage because NHL is a disease of unknown aetiology and the causes of the development of NHL are many and varied, loss and damage:
  - (i) cannot be causatively linked to the alleged fact of the Roundup Products or the Monsanto Roundup Products having a defect and or a safety defect as alleged in paragraph 35; and
  - (ii) depends upon a variety of objective factors as well as matters personal to the Applicant or particular Group Members including the matters referred to in the particulars subjoined to paragraph 26 above;

- (d) says further that after the expiry of the last relevant commercial patent relating to glyphosate in Australia held by Monsanto Technology LLC in approximately 2000, to the extent that the Applicant and/or Group Members used glyphosate sourced from other suppliers, and consequently suffered loss and damage, such loss and damage did not arise by reason of the Monsanto Roundup Products having a safety defect; and
- (e) says further, that if the Roundup Products or the Monsanto Roundup Products did have a defect as alleged (which is denied), then if the Applicant's and Group Members' injury and loss in the liability action was caused by reason of the Roundup Products having a defect and/or a safety defect, the amount of the Applicant's and/or Group Members' loss and damage is to be reduced to such extent as the court thinks fit, having regard to the Applicant's and/or Group Members' share in causing the loss pursuant to s 75AN of the TPA.

37. In answer to paragraph 37, it:

- (a) admits that pursuant to s 146 of the ACL and s 75AI of the TPA, it is not liable in respect of loss and damage comprising an amount which has been or could have been recovered under a law of the Commonwealth, a State or a Territory that relates to workers' compensation;
- (b) otherwise denies the allegations contained in paragraph 37;
- (c) says further that the Applicant has no entitlement to commence a defective goods action insofar as:
  - (i) pursuant to s 143(1) of the ACL, at the date of commencement of this proceeding, more than 3 years had elapsed since the Applicant became aware, or ought reasonably to have become aware, of all of the following:
    - A. the alleged loss or damage;
    - B. the safety defect of the goods; and
    - C. the identity of the person who manufactured the goods; and
  - (ii) more than 10 years had elapsed between the supply by the manufacturer of the goods to which the action relates and the date of commencement of this proceeding;

- (d) alternatively, if the Applicant and Group Members are entitled to commence a defective goods action and the manufacturer of goods is liable to compensate the Applicant or the Group Members pursuant to s 138(1) of the ACL, then pursuant to s 138(2) of the ACL, the amount of compensation which the Applicant and/or Group Members may recover is limited to the amount of the loss or damage suffered by the individual and does not include an amount for personal injury damages;
- (e) further and alternatively, if the amount of compensation which the Applicant and/or Group Members may recover pursuant to s 138(2) of the ACL includes an amount in respect of personal injury damages, then to the extent that the Applicant and Group Members seek an award of personal injury damages which does not result from smoking or other use of tobacco products, by virtue of s 87E of the CCA, Part VIB of the CCA applies to the Applicant's and Group Members' claims brought under Part 3-5 of the ACL;
- (f) further and alternatively, insofar as Part VIB applies pursuant to s 87F of the CCA:
  - (i) where the Applicant and Group Members' alleged injuries, to which the personal injury damages relate, were discoverable more than 3 years before commencement of this proceeding; or
  - (ii) after the end of the long-stop period for that death or injury (which pursuant to s 87H is the period of 12 years following the act or omission alleged to have caused the death or injury),

the court must not award personal injury damages to the Applicant and/or Group Members;
- (g) further and alternatively, if an award of damages may be made, any award of damages is subject to the bars and limitations in respect of personal injury damages set out in Part VIB of the CCA including:
  - (i) for non-economic loss, set out in s 87L to s 87T of the CCA;
  - (ii) for loss of earning capacity, set out in s 87U and s 87V of the CCA;
  - (iii) for loss of gratuitous attendant care services, set out in ss 87W and 87X of the CCA;

- (iv) for future economic loss, set out in s 87Y of the CCA;
  - (v) for loss of superannuation entitlements, set out in s 87Z of the CCA;
  - (vi) for interest on awards of damages, set out in s 87ZA of the CCA; and
  - (vii) should be reduced pursuant to s 146 of the ACL and s 75AI of the TPA, in respect of loss and damage comprising an amount which has been or could have been recovered under a law of the Commonwealth, a State or a Territory that relates to workers' compensation; and
- (h) further, where the Applicant brings the defective goods action on behalf of an individual who has died because of alleged injuries, then pursuant to s 138(3) of the ACL, a law of a State or a Territory about liability in respect of the death of individuals applies as if:
- (i) the action was an action under the law of the State or Territory for damages in respect of the injuries; and
  - (ii) the safety defect was the manufacturer's wrongful act, neglect or default.

38. In answer to paragraph 38, it:

- (a) denies the allegations contained in paragraph 38;
- (b) says that:
  - (i) any award of damages is subject to s 75AD of the TPA save that s 75AD does not apply to a loss in respect of which an amount has been, or could be, recovered under workers' compensation law pursuant to s 75AI of the TPA;
  - (ii) insofar as this liability action (as defined in s 75AA of the TPA as an action having been commenced under s 75AD of the TPA) was not commenced within 3 years after the time the Applicant became aware, or ought reasonably to have become aware, of the alleged loss, the defect and the identity of the person who manufactured the action goods; or within 10 years of the supply by the manufacturer of the

action goods, the Applicant has no entitlement to commence this action pursuant to s 75AO of the TPA; and

- (iii) in the premises referred to in the preceding paragraphs, the Applicant's claim is, and/or the Group Members' claims may be, statute barred;
- (c) further and alternatively, if the Applicant and/or Group Members are entitled to commence this action, and are seeking an award of personal injury damages which does not result from smoking or other use of tobacco products, by virtue of s 87E of the TPA, Part VIB of the TPA applies to the Applicant's and Group Members' claims;
- (d) insofar as:
  - (i) pursuant to s 87F(1)(a) of the TPA, a period of more than 3 years has elapsed after the date of discoverability for the Applicant's injury to which the personal injury damages relates; and
  - (ii) pursuant to s 87F(1)(b) of the TPA, the proceeding was commenced after the end of the long-stop period for the Applicant's injury,
 the court must not award personal injury damages to the Applicant;
- (e) further, to the extent that any of the Applicant's claims under the TPA relate to a contravention alleged to have occurred before 13 July 2004, the limitation period may not be extended; and
- (f) further and alternatively, if an award of damages may be made, any award of damages is subject to the bars and limitations in respect of personal injury damages:
  - (i) for non-economic loss, set out in s 87L to s 87T of the TPA;
  - (ii) for loss of earning capacity, set out in s 87U and s 87V of the TPA;
  - (iii) for loss of gratuitous attendant care services, set out in ss 87W and 87X of the TPA;
  - (iv) for future economic loss, set out in s 87Y of the TPA;
  - (v) for loss of superannuation entitlements, set out in s 87Z of the TPA;
 and

(vi) for interest on awards of damages, set out in s 87ZA of the TPA.

**G ACCEPTABLE QUALITY**

39. It does not plead to paragraph 39 as it makes no allegations against it.
40. It does not know and therefore cannot admit the allegations in paragraph 40.
41. It denies the allegations contained in paragraph 41.
42. It does not know and therefore cannot admit the allegations in paragraph 42.
43. It does not know and therefore cannot admit the allegations contained in paragraph 43.
44. It does not know and therefore cannot admit the allegations contained in paragraph 44.
45. In answer to paragraph 45, it:
  - (a) refers to and repeats the matters pleaded in paragraphs 1 and 31 above; and
  - (b) otherwise denies the allegations contained in paragraph 45.
46. In answer to paragraph 46, it:
  - (a) says that it understands the intention of paragraph 46(a) of the 2FASOC to be a reference to 'Monsanto Australia (Old)' and paragraph 46(b) of the 2FASOC to be a reference to 'Monsanto Australia (New)' and hereafter pleads on that basis;
  - (b) says that it was not incorporated until 24 March 1987, Consequently it has no knowledge about, and therefore cannot admit, whether Monsanto Australia (Old) or Monsanto Australia (New) acquired Roundup Products or Monsanto Roundup Products prior to 24 March 1987;
  - (c) refers to and repeats paragraphs 1, 15 to 17 and 32 above;
  - (d) admits that it acquired some Monsanto Roundup Products for distribution to distributors as pleaded in paragraph 16(d)(iii) above;
  - (e) says further that at least some of the Monsanto Roundup Products acquired for provision to distributors appointed by it or its related entities or affiliates, were acquired from international Monsanto affiliates or related entities other than Monsanto Company US (New) or Monsanto Company US (Old);



- (f) says further that it does not know whether it or its related entities or affiliates, acquired any of the Roundup Products or Monsanto Roundup Products from Monsanto Company US (New) or Monsanto Company US (Old) and therefore cannot admit this allegation; and
- (g) otherwise denies the allegations contained in paragraph 46.

47. In answer to paragraph 47, it:

- (a) denies the allegations contained in paragraph 47 of the 2FASOC;
- (b) says further that it refers to and repeats the matters set out above in paragraphs ~~4~~, 16(d), 26, 28 and 35; and
- (c) says further that:
  - (i) the defects alleged to have rendered the goods unacceptable did not exist at the time of delivery as the ~~Roundup Cancer Risks risk~~ described in paragraph 26 of the 2FASOC, (if ~~it~~ they existed, which is denied) ~~, by definition in paragraph 26 of the ASOC~~, required action to be taken by the Applicant in the form of use and/or exposure by the Applicants and/or Group Members to the Roundup Products after delivery; and
  - (ii) alternatively, if the defects existed at the time of delivery, the goods were as fit for the purpose that goods of that type are commonly supplied.

48. In answer to paragraph 48, it:

- (a) denies the allegations in paragraph 48;
- (b) says further that it refers to and repeats the matters set out above in paragraphs ~~4~~, 16(d)(ii), 26, 28 and 35;
- (c) says that pursuant to s 74D(3) of the TPA the Monsanto Roundup Products were of merchantable quality because they were as fit for the purpose or purposes for which goods of that kind are commonly bought as it was reasonable to expect having regard to:
  - (i) the description applied to the Monsanto Roundup Products by it;
  - (ii) the price received by it for the goods; and

(iii) all the other relevant circumstances including:

A. the state of scientific knowledge;

#### **PARTICULARS**

The scientific knowledge will be the subject of expert evidence at trial. It also relies upon the particulars provided under paragraph 35 and the matters detailed in **Schedule B**.

B. the manner in which the Monsanto Roundup Products have been marketed;

C. instructions for, or warnings with respect to, the Monsanto Roundup Products;

D. the ordinary or usual risk of harm in other herbicides and similar products to the Monsanto Roundup Products in the marketplace; and

E. the sophistication of the customers purchasing the Monsanto Roundup Products;

(d) says further that if the Monsanto Roundup Products were not of merchantable quality (which is denied), this occurred after the Monsanto Roundup Products left its control and occurred by reason of:

(i) the manner of use of, or exposure to, the Monsanto Roundup Products by the Applicant and/or Group Members and/or another person, or an act or default of the Applicant and/or Group Members or another person not being it or a servant or agent of it; and/or

(ii) a cause independent of human control,

and accordingly, by reason of s 74D(2) of the TPA, it is not liable to compensate the Applicant and or the Group Members for loss and damage pursuant to s 74D(1) of the TPA;

(e) says further that the Monsanto Roundup Products were:

(i) fit for all purposes for which goods of that kind are commonly supplied;

(ii) acceptable in appearance;

(iii) free from defect;

(iv) safe and durable,

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods) would have regarded as acceptable having regard to the matters in s 54(3) of the ACL;

(f) says further that, in the premises, pursuant to s 54(2) of the ACL, the Monsanto Roundup Products were of acceptable quality having regard to a variety of matters including:

(i) the matters set out in s 54(3) of the ACL which include:

A. the nature of the goods;

B. the price of the goods (if relevant);

C. any statements made about the goods on any packaging or label on the goods;

D. any representation made about the goods by the supplier or manufacturer of the goods; and

E. any other relevant circumstances relating to the supply of the goods including the state of scientific knowledge; and

### **PARTICULARS**

The scientific knowledge will be the subject of expert evidence at trial. It also relies upon the particulars provided under paragraph 35 and the matters detailed in **Schedule B**.

(ii) the matters set out in paragraph 48(c) above; and

(g) says further and alternatively, if the Monsanto Roundup Products were not of acceptable quality (which is denied), they did not become of unacceptable quality as a result of anything inherent in the Monsanto Roundup Products and accordingly, pursuant to s 54(6) of the ACL, the Monsanto Roundup Products did not fail to be of acceptable quality.

49. In answer to paragraph 49, it:

(a) refers to and repeats paragraphs 26, 35, 47 and 48 above;

- (b) otherwise denies the allegations contained in paragraph 49; and
- (c) says further that:
  - (i) if the Applicant and/or Group Members suffered loss and damage, it did not occur by reason of the Roundup Products or Monsanto Roundup Products not being of merchantable quality; and
  - (ii) says further that after the expiry of the last relevant commercial patent relating to glyphosate in Australia held by Monsanto Technology LLC in approximately 2000, to the extent that the Applicant and/or Group Members used glyphosate sourced from other suppliers, and consequently suffered loss and damage, such loss and damage did not arise by reason of the Monsanto Roundup Products having a safety defect.

50. In answer to paragraph 50, it:

- (a) refers to and repeats paragraphs 47 to 49 above;
- (b) otherwise denies the allegations contained in paragraph 50; and
- (c) says further that:
  - (i) pursuant to s 74J(1) of the TPA, any action by the Applicant and/or Group Members was required to be commenced within 3 years after the day on which the cause of the action accrued;
  - (ii) pursuant to s 74J(2) of the TPA, a cause of action is deemed to have accrued on the day the consumer or a person who acquired the goods from, or derived title to the goods through or under, the consumer first became aware, or ought reasonably to have become aware that the goods were not of merchantable quality;
  - (iii) pursuant to s 74J(3) of the TPA, it is a defence to an action brought under s 74D, being a provision within Division 2A of the TPA, that an action was not commenced within 10 years after the time of first supply to a consumer of the goods to which the action relates;

- (iv) the Applicant's claim was not commenced within the time period required pursuant to ss 74J(1) and 74J(2) of the TPA and is statute barred; and
  - (v) insofar as the date this proceeding was commenced, Group Members had not commenced claims within the timeframes referred to in the preceding paragraphs, they will be statute barred notwithstanding s 33ZE(1) of the FCAA;
- (d) says further that insofar as the Applicant and Group Members are entitled to commence this action, and are seeking an award of personal injury damages which does not result from smoking or other use of tobacco products, by virtue of s 87E of the TPA, Part VIB of the TPA applies to the Applicant's and Group Members' claims and the court must not award personal injury damages to the Applicant and Group Members where Part VIB applies if:
- (i) pursuant to s 87F(1)(a) of the TPA, a period of more than 3 years has elapsed after the date of discoverability for the Applicant's injury to which the personal injury damages relates; and
  - (ii) alternatively, pursuant to s 87F(1)(b) of the TPA, the proceeding was commenced after the end of the long-stop period for the Applicant's injury and s 87F(1A) does not apply;
- (e) says further that, to the extent that any of the claims under the TPA relate to a contravention alleged to have occurred before 13 July 2004 the limitation period may not be extended; and
- (f) says further and alternatively, if an award of damages may be made, any awards of damages are subject to the bars and limitations in respect of personal injury damages:
- (i) for non-economic loss, set out in s 87L to s 87T of the TPA;
  - (ii) for loss of earning capacity, set out in s 87U and s 87V of the TPA;
  - (iii) for loss of gratuitous attendant care services, set out in ss 87W and 87X of the TPA;
  - (iv) for future economic loss, set out in s 87Y of the TPA;

- (v) for loss of superannuation entitlements, set out in s 87Z of the TPA;  
and
- (vi) for interest on awards of damages, set out in s 87ZA of the TPA.

51. In answer to paragraph 51, it:

- (a) refers to and repeats paragraphs 47 to 49 above;
- (b) says that the guarantee under s 54 of the ACL was complied with;
- (c) otherwise denies the allegations contained in paragraph 51 of the 2FASOC;  
and
- (d) says further and alternatively:
  - (i) if the guarantee under s 54 of the ACL was not complied with (which is denied), then pursuant to s 273 of the ACL, the Applicant and/or Group Members may not commence an action for damages under this Division where more than 3 years has elapsed after the day on which they first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates had not been complied with;
  - (ii) if the guarantee was not complied with and the Applicant's and/or Group Members' claims are not statute barred by reason of s 273 of the ACL, then pursuant to s 271(2) of the ACL, the Applicant and/or Group Members may not recover damages from it because the guarantee in s 54(1) of the ACL was not complied with only because of a cause independent of human control, namely the development of NHL, that occurred after the goods left the control of the manufacturer;
    - A. the Applicant and Group Members, to the extent that they are affected persons, may only recover damages from the manufacturer in accordance with s 271 of the ACL;
    - B. the damages recoverable under s 271 of the ACL are limited in accordance with s 272 of the ACL; and

- C. sections 271 and 272 of the ACL do not entitle the Applicant to recover personal injury damages; and
- (iii) if the Applicant and/or Group Members are not precluded under ss 271 to 273 of the ACL from recovering personal injury damages, the Applicant and Group Members are nevertheless not entitled to be compensated for any loss and damage suffered by them because of the failure to comply with the guarantee to which the action relates, because it was not reasonably foreseeable that the Applicant and/or Group Members, assuming them to be affected persons, would suffer NHL as a result of such a failure;
- (e) says further that any claim in respect of such personal injury damages, pursuant to s 87E of the CCA, is subject to Part VIB of the CCA which applies to proceedings taken under the ACL that relate to Division 2 of Part 5-4 of the ACL;
- (f) says that insofar as:
- (i) pursuant to s 87F(1)(a) of the CCA, a period of more than 3 years has elapsed after the date of discoverability for the Applicant's injury to which the personal injury damages relates; and
- (ii) pursuant to s 87F(1)(b) of the CCA, the proceeding was commenced after the end of the long-stop period for the Applicant's injury,
- the court must not award personal injury damages to the Applicant; and
- (g) says further and alternatively, if an award of personal injury damages may be made, any award is subject to the bars and limitations in respect of personal injury damages:
- (i) for non-economic loss, set out in s 87L to s 87T of the CCA;
- (ii) for loss of earning capacity, set out in s 87U and s 87V of the CCA;
- (iii) for loss of gratuitous attendant care services, set out in ss 87W and 87X of the CCA;
- (iv) for future economic loss, set out in s 87Y of the CCA;

- (v) for loss of superannuation entitlements, set out in s 87Z of the CCA;  
and
- (vi) for interest on awards of damages, set out in s 87ZA of the CCA.

## NEGLIGENCE

52. In answer to paragraph 52, it

- (a) refers to and repeats paragraph 16 above;
- (b) says it was reasonable for it to expect that:
  - (i) prior to use of any of the Monsanto Roundup Products, the Applicant and Group Members would review all information, including warnings, and appreciate for themselves a variety of pertinent matters including that:
    - A. given the intended application of the Monsanto Roundup Products, the Monsanto Roundup Products would not be expected to be free from all risk even if used in the manner expected;
    - B. the Monsanto Roundup Products should not be swallowed, or inhaled, and steps should be taken to protect against being absorbed through the skin, eyes or mouth; and
    - C. there was a need to follow all safety directions including requirements to use personal protective equipment and to ensure that the application equipment is not faulty and used correctly;
  - (ii) prior to use of any of the Monsanto Roundup Products in an employment context, the Applicant and/or Group Members would be informed by their respective employer(s) about the content of all information, including warnings, and appreciate for themselves a variety of pertinent matters including that:
    - A. subject to legislation, Monsanto Roundup Products supplied had signal words if required by the Poisons Standard;



- B. the Monsanto Roundup Products should not be swallowed, or inhaled, and steps should be taken to protect against being absorbed through the skin, eyes or mouth; and
    - C. there was a need to follow all safety directions including requirements to use personal protective equipment and to ensure that the application equipment is not faulty and used correctly; and
    - (iii) the Monsanto Roundup Products would be used and applied only to plants in lawn and garden, agricultural, commercial and/or industrial uses; and
  - (c) says that as a consequence of the matters pleaded in paragraphs 52(a) and (b), it:
    - (i) denies that it owes the Applicant and/or Group Members a duty of care;
    - (ii) alternatively, says that it satisfied the applicable standard of care; and
    - (iii) otherwise denies the allegations contained in paragraph 52 of the 2FASOC.
- 53. In answer to paragraph 53, it:
  - (a) denies the allegations contained in paragraph 53; and
  - (b) refers to and repeats the matters in paragraphs 26 and 35 above.
- 54. In answer to paragraph 54, it:
  - (a) denies the allegations contained in paragraph 54; and
  - (b) refers to and repeats paragraphs 26 and 35 above.
- 55. In answer to paragraph 55, it:
  - (a) refers to and repeats paragraphs 24, 35 and 52 above;
  - (b) says further that having regard to the existence of factors including those set out in paragraphs 26, 28 and 35 above as well as:
    - (i) the steps taken by it to provide information, including warnings and labels in relation to the Monsanto Roundup Products;

**PARTICULARS**

The warnings and safety directions are contained in the labels provided with the product and in the safety data sheets available on the manufacturer's website.

- (ii) the fact that it was reasonable for it to expect that:
  - A. prior to use of any of the Monsanto Roundup Products, the Applicant and Group Members would review all information, including warnings, and appreciate for themselves a variety of pertinent matters including that:
    - (1) given the intended application for the Monsanto Roundup Products, the Monsanto Roundup Products would not be expected to be free from all risk even if used in the manner expected;
    - (2) the Monsanto Roundup Products should not be swallowed, or inhaled, and steps should be taken to protect against being absorbed through the skin, eyes or mouth;
    - (3) there was a need to follow all safety directions including requirements to use personal protective equipment and to ensure that the application equipment is not fault and used correctly; and
    - (4) save as excepted by any relevant legislation (if any), Monsanto Roundup Products must be used in a manner consistent with all directions for use.
  - B. prior to use of any of the Monsanto Roundup Products in an employment context, the Applicant and/or Group Members would be informed by their respective employer(s), about the content of all information, including warnings, and appreciate for themselves a variety of pertinent matters including that:

- (1) subject to legislation, Monsanto Roundup Products supplied had signal words if required by the Poisons Standard;
  - (2) given the intended application for the Monsanto Roundup Products, the Monsanto Roundup Products would not be expected to be free from all risk even if used in the manner expected;
  - (3) the Monsanto Roundup Products should not be swallowed, or inhaled, and steps should be taken to protect against being absorbed through the skin, eyes or mouth;
  - (4) there was a need to follow all safety directions including requirements to use personal protective equipment and to ensure that the application equipment is not faulty and used correctly; and
  - (5) save as excepted by any relevant legislation (if any), Monsanto Roundup Products must be used in a manner consistent with all directions for use; and
- C. the Monsanto Roundup Products would be used and applied only to plants in agricultural, commercial, industrial and/or lawn and garden uses;
- (iii) the inability of it to control the acts and/or omissions of the Applicant and/or the Group Members in their use of, and exposure to, the Monsanto Roundup Products;
  - (iv) that it had no control over the source of risk of harm of NHL developing;
  - (v) the existence of factors beyond the control of the Second Respondent which have a critical bearing on the risk and process of development of NHL; and
  - (vi) the fact that from at least 15 March 1995 (when the Agvet Code Act commenced) the matters about which information and warnings could

be provided on labels affixed to Monsanto Roundup Products were prescribed by the Agvet Code Act and the Agvet Code Regulations,

no duty of care of the type alleged was owed; and

(c) otherwise denies the allegations in paragraph 55.

#### **STANDARD OF CARE**

56. It denies the allegations in paragraph 56.

57. In answer to paragraph 57, it:

(a) refers to and repeats paragraphs 26, 28 and 35 above; and

(b) otherwise denies the allegations in paragraph 57.

58. It denies the allegations in paragraph 58 of the 2FASOC.

59. In answer to paragraph 59, it:

(a) refers to and repeats paragraph 35 above; and

(b) otherwise denies the allegations in paragraph 59.

#### **BREACH OF DUTY**

60. In answer to paragraph 60, it:

(a) refers to and repeats paragraphs 16(d)(ii) and 16(d)(iii) above; and

(b) otherwise denies the allegations in paragraph 60 of the 2FASOC.

61. In answer to paragraph 61, it:

(a) refers to and repeats paragraph 35 above;

(b) denies the allegations in paragraph 61; and

(c) says that if the Monsanto Roundup Products are found to present the risk pleaded in paragraph 26 (which is denied) ~~have had the Roundup Cancer Risks (which is denied)~~, the state of scientific knowledge was not such as to enable it to discover ~~the Roundup Cancer Risks~~ that risk and accordingly it did not breach any duty of care owed at common law; and

#### **PARTICULARS**

The scientific knowledge will be the subject of expert evidence at trial.  
The Second Respondent also relies upon the particulars provided under paragraph 35 above and the matters detailed in **Schedule B**.

~~(c) — otherwise denies the allegations in paragraph 61.~~

## CAUSATION

62. In answer to paragraph 62 it:

- (a) refers to and repeats paragraphs 28(c) and 35(c) above; and
- (b) otherwise denies the allegations contained in paragraph 62.

63. It denies the allegations in paragraph 63 ~~of the ASOC and~~.

~~64. —~~ It says further that after the expiry of the last relevant commercial patent relating to glyphosate in Australia held by Monsanto Technology LLC in approximately 2000, to the extent that the Applicant and/or Group Members used glyphosate sourced from other suppliers, and consequently suffered loss and damage, such loss and damage did not arise by reason of the Monsanto Roundup Products having a safety defect.

## LOSS AND DAMAGE

64. In answer to paragraph 64, it:

- (a) denies the allegations contained in paragraph 64;
- (b) says further that to the extent that the Applicant's alleged cause of action in negligence accrued in NSW:
  - (i) insofar as:
    - A. pursuant to s 51 of the *Limitation of Actions Act 1969* (NSW) the Applicant's claim is brought after the expiration of a limitation period of 30 years running from the date from which the limitation period for the cause of action runs;
    - B. alternatively, pursuant to s 50C of *Limitation of Actions Act 1969* (NSW), more than 12 years has elapsed from the date of the act or omission which allegedly resulted in the injury (the 'long-stop limitation period'),

the Applicant's cause of action cannot be maintained unless the Court extends the long-stop limitation period pursuant to ss 62A and 62B of the *Limitation of Actions Act 1969* (NSW); and

- (ii) further and alternatively, if these proceedings were commenced more than 3 years after the date of discoverability (as defined in s 50C of *Limitation of Actions Act 1969* (NSW)), these proceedings cannot be maintained unless the Court extends time in accordance with s 60G of the *Limitation of Actions Act 1969* (NSW);
- (c) says further that, to the extent that the alleged cause of action accrued in Queensland, if more than 3 years has elapsed since the date on which the cause of action arose these proceedings cannot be maintained, pursuant to s 11 of the *Limitation of Actions Act 1974* (Qld);
- (d) says further that, to the extent that the alleged cause of action accrued in the Northern Territory, if more than 3 years has elapsed since the date on which the cause of action arose these proceedings cannot be maintained pursuant to s 12(1)(b) of the *Limitation Act 1981* (NT), unless the Court extends time pursuant to s 44(1) of the *Limitation Act 1981* (NT);
- (e) says further and alternatively, that the common law does not relevantly operate to impose obligations that are more onerous or extensive than those imposed on it by ss 74D, 75AC and 75AD of the TPA and ss 9, 54, 138, 271 and 272 of the ACL;
- (f) says further, that the Applicant's common law cause of action and claims for damages and compensation must be determined in accordance with the *Civil Liability Act 2002* (NSW), alternatively the *Civil Liability Act 2003* (Qld), further and alternatively the *Personal Injuries (Liability and Damages) Act 2003* (NT), (or such other applicable Acts as may apply depending on where the Applicant's causes of action accrued) as well as Part VIB of the TPA and Part VIB of the CCA; and
- (g) says further and alternatively, that if it was negligent (which is denied) and to the extent that the Applicant is entitled to an award of damages, such award of damages is required to be reduced by such sum as is just and equitable having regard to the Applicant's contribution to the loss and damage suffered.

## COMMON QUESTIONS OF LAW OR FACT

65. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 65 as it makes no allegations against it.
66. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 66 as it makes no allegations against it.
- 66A Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 66A as it makes no allegations against it.
- 66B Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 66B as it makes no allegations against it.
67. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 67 as it makes no allegations against it.
68. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 68 as it makes no allegations against it.
69. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 69 as it makes no allegations against it.
70. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 70 as it makes no allegations against it.
71. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 71 as it makes no allegations against it.

## GROUP MEMBER CLAIMS

72. Further, it states that the Group Members' causes of action, including claims for damages brought by the executors or administrators of the estates of deceased persons, will be subject to, and it relies upon, the limitation periods prescribed by state and territory legislation including:

- (a) *Limitation of Actions Act 1969* (NSW);
- (b) *Limitation of Actions Act 1974* (Qld);
- (c) *Limitation of Actions Act 1958* (Vic);
- (d) *Limitation Act 2005* (WA);
- (e) *Limitation Act 1935* (WA);

- (f) *Limitation Act 1985* (ACT);
- (g) *Limitation Act 1974* (TAS);
- (h) *Limitation of Actions Act 1936* (SA);
- (i) *Limitation Act 1981* (NT);
- (j) *Fatal Accidents Act 1959* (WA);
- (k) TPA including ss 74J, 75AO, 87F, 87G and 87H;
- (l) CCA including ss 87F, 87G and 87H and s 143 and s 273 of the ACL.

73. Further, the Group Members' causes of action and claims for damages and compensation, including claims for damages brought by the executors or administrators of the estates of deceased persons, must be determined in accordance with the applicable laws of a state or territory:

- (a) *Civil Liability Act 2002* (NSW);
- (b) section 2(2) of the *Law Reform (Miscellaneous Provisions) Act 1944* (NSW);
- (c) *Civil Liability Act 2003* (Qld);
- (d) section 66(2)(d) of the *Succession Act 1981* (Qld);
- (e) *Wrongs Act 1958* (Vic);
- (f) section 29(2)(c) of the *Administration and Probate Act 1958* (Vic);
- (g) *Civil Liability Act 2002* (WA);
- (h) section 4(2)(c) of the *Law Reform (Miscellaneous Provisions) Act 1941* (WA);
- (i) *Civil Law (Wrongs) Act 2002* (ACT);
- (j) *Civil Liability Act 2002* (Tas);
- (k) section 27(3)(c) of the *Administration and Probate Act 1935* (Tas);
- (l) *Civil Liability Act 1936* (SA);
- (m) section 3(1)(d) of the *Survival of Causes of Action Act 1940* (SA);
- (n) *Personal Injuries (Liability and Damages) Act 2003* (NT);
- (o) section 6(1)(c) of the *Law Reform (Miscellaneous Provision) Act 1956* (NT);
- (p) Part VIB of the TPA and Part VIB of the CCA.



Date: ~~10 July~~ 27 October 2020

A handwritten signature in black ink, appearing to read 'H. Smith Freehills', followed by a small dash.

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**Herbert Smith Freehills**

Solicitors for the Second Respondent

This pleading was prepared by Steven Finch SC, Robert Craig SC and Anna Robertson, counsel for the Second Respondent.

**Certificate of lawyer**

I ~~Peter Butler~~ Jason Betts certify to the Court that, in relation to the defence 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: ~~10 July~~ 27 October 2020



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**Herbert Smith Freehills**

Solicitors for the Second Respondent

Federal Court of Australia  
 District Registry: Victoria  
 Division: General

No. VID 243 of 2020

**KELVIN MCNICKLE**

Applicant

**HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD & ORS**

Respondents

**Schedule A to the Defence of the Second Respondent**

<u>Product name</u>	<u>Registration date</u>
Concentrate Advance Roundup Weedkiller	<u>2000-08-11</u>
Concentrate Roundup Path Weedkiller	<u>2014-07-17</u>
Concentrate Roundup Powermax Weedkiller	<u>2003-05-22</u>
Concentrate Roundup Weedkiller	<u>2003-05-27</u>
Concentrate Tough Roundup Weedkiller	<u>2012-11-28</u>
Fast Action Roundup G Ready to Use Weedkiller	<u>2017-12-19</u>
Fast Action Roundup Ready to Use Weedkiller	<u>2008-11-27</u>
Pacer Herbicide By Monsanto	<u>NSW, WA (date unknown)</u> <u>QLD (no application - date unknown)</u> <u>SA, VIC (archived - date unknown)</u> <u>NT, ACT, TAS (not included in APVMA list of states)</u>
Pacer Sol-Tech Herbicide By Monsanto	<u>NSW, QLD, SA, TAS, VIC, WA (date unknown)</u> <u>NT and ACT (not included in APVMA list of states)</u>
Regular Roundup G7.2 Ready to Use Weedkiller	<u>2017-12-20</u>
Regular Roundup Ready to Use Weedkiller	<u>2013-08-07</u>
Roundup AP Weedkiller	<u>2018-08-13</u>
Roundup Biactive Herbicide	<u>1996-05-29</u>
Roundup Complete Herbicide	<u>2014-08-15</u>

Roundup CT Broadacre Herbicide by Monsanto	<u>1990-09-28 ACT</u> <u>NSW, SA, TAS, VIC and WA (date unknown)</u> <u>1988-01-06 NT</u> <u>1988-06-30 QLD</u> <u>1985-01-17 SA</u>  <u>1995-04-13 APVMA All States &amp; Territories</u>
Roundup CT Xtra Broadacre Herbicide By Monsanto	<u>1997-11-24</u>
Roundup Dry Herbicide by Monsanto	<u>1996-05-16</u>
Roundup Dura Herbicide	<u>2014-03-31</u>
Roundup Herbicide	<u>1995-11-11 APVMA</u> <u>1976-11-11 SA</u> <u>1988-01-05 NT</u> <u>1988-06-30 QLD</u> <u>1990-09-28 ACT</u> <u>1994-07-29 VIC</u> <u>NSW, TAS and WA (date unknown)<sup>1</sup></u>
Roundup M Concentrate Weedkiller	<u>2018-10-08</u>
Roundup Max Herbicide by Monsanto	<u>2001-01-08</u>
Roundup Power Max Herbicide by Monsanto	<u>2003-01-10</u>
Roundup Ready Herbicide With Plantshield	<u>2001-08-13</u>
Roundup Ready PL Herbicide	<u>2016-10-28</u>
Roundup Ready to Use Weedkiller	<u>2007-07-11</u>
Roundup Ready to Use Weedkiller Gel	<u>2013-03-26</u>
Roundup Spot Weed Killer Sure Shot Foam	<u>1998-09-25</u>
Roundup Ultra Max Herbicide	<u>2013-05-08</u>
Squadron Herbicide By Monsanto	<u>1997-02-26 NSW, QLD, SA, TAS, WA</u> <u>NT, VIC (date unknown)</u> <u>ACT (not included in APVMA list of states)</u>
Tillmaster CT Herbicide By Monsanto	<u>1990-04-06 SA</u> <u>ACT, NSW, QLD, TAS, VIC, WA (date unknown)</u> <u>NT (not included in APVMA list of states)</u>
Tillmaster Herbicide By Monsanto	<u>1986-04-14 SA</u> <u>QLD (date unknown)</u> <u>VIC (date unknown)</u>

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	<u>ACT, NT, NSW, TAS, WA (not included in APVMA list of states)</u>
Tough Roundup Ready to Use Weedkiller	<u>2013-04-02</u>

Federal Court of Australia  
 District Registry: Victoria  
 Division: General

No. VID 243 of 2020

## KELVIN MCNICKLE

Applicant

## HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD & ORS

Respondents

### Schedule B to the Defence of the Second Respondent

1.	Australian Pesticides and Veterinary Medicines Authority – Final regulatory position: Consideration of the evidence for a formal reconsideration of glyphosate (March 2017)
2.	United States Environment Protection Agency ( <b>US EPA</b> ) – Evaluation of the Carcinogenic Potential of Glyphosate (Final Report) (1 October 2015)
3.	US EPA – Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential (12 December 2017)
4.	US EPA – Letter from the EPA to registrants regarding label requirements for glyphosate products (7 August 2019)
5.	US EPA – Glyphosate Interim Registration Review Decision Case Number 0178 Glyphosate (22 January 2020)
6.	Health Canada – Re-evaluation decision Glyphosate (28 April 2017)
7.	New Zealand Environmental Protection Agency – Review of the Evidence Relating to Glyphosate and Carcinogenicity (August 2016)
8.	US District Court (Eastern District of California) decision in <i>National Association of Wheat Growers et al v Becerra, Attorney General of California</i> (ED Cal, No. 2:17-cv-2401 WBS EFB, 22 June 2020)
9.	Andreotti et al. (2018). Glyphosate Use and Cancer Incidence in the Agricultural Health Study, <i>Journal of the National Cancer Institute</i>
10.	US EPA – Glyphosate: Epidemiology Review of Zhang et al. (2019) and Leon et al. (2019) publications for Response to Comments on the Proposed Interim Decision (6 January 2020)
11.	Hohenadel et al. (2011). Exposure to Multiple Pesticides and Risk of Non-Hodgkin Lymphoma in Men from Six Canadian Provinces, <i>International Journal of Environmental Research and Public Health</i>
12.	Orsi et al. (2009). Occupational exposure to pesticides and lymphoid neoplasms among men: results of a French case-control study, <i>Journal of Occupational and Environmental Medicine</i>
13.	Kier (2015) Review of Genotoxicity Biomonitoring Studies of Glyphosate-Based

Formulations, *Critical Reviews in Toxicology*

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| 14. | Oltmanns et al. (2016). Effectiveness of personal protective equipment against dermal exposure – a comparative study |
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| 15. | Solomon (2016). Glyphosate in the General Population and In Applicators: A Critical Review of Studies on Exposures. |
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| 16. | Tomasetti et al. (2017). Stem cell divisions, somatic mutations, cancer etiology, and cancer prevention, <i>Science</i> 355, 1330–1334 (2017) |
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| 17. | Word et al. (2012). Advances in the Diagnosis and Management of Lymphoma. <i>Blood and Lymphatic Cancer: Targets and Therapy</i> 2012:2 29–55 |
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