

## 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: 10/07/2020 3:48:27 PM AEST

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

Registrar

### Important Information

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

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



## First Respondent's Defence to the Amended Statement of Claim

No. VID243 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

### **KELVIN MCNICKLE**

Applicant

### **HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD (ACN 004 146 338) and others**

First Respondent and others according to the Schedule

To the Applicant's Amended Statement of Claim dated 16 June 2020, the First Respondent says by way of defence as follows (adopting the headings and defined terms contained therein unless otherwise specified below):

#### **A. THE APPLICANT AND GROUP MEMBERS**

##### **Group Members**

1. As to paragraph 1, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
2. As to paragraph 2, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
3. As to paragraph 3, it does not plead to the paragraph as it does not make any allegation against the First Respondent.

##### **The Applicant – Mr Kelvin McNickle**

4. As to paragraph 4, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
5. As to paragraph 5, it does not plead to the paragraph as it does not make any allegation against the First Respondent.

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Filed on behalf of (name & role of party) Huntsman Chemical Company Australia Pty Ltd, First Respondent  
Prepared by (name of person/lawyer) Janet Whiting  
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(include state and postcode)

6. As to paragraph 6, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
7. As to paragraph 7, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
8. As to paragraph 8, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
9. As to Paragraph 9, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
10. As to paragraph 10, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
11. As to paragraph 11, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
12. As to paragraph 12, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
13. As to paragraph 13, it does not plead to the paragraph as it does not make any allegation against the First Respondent.
14. As to paragraph 14, it does not plead to the paragraph as it does not make any allegation against the First Respondent.

**B. THE RESPONDENTS**

15. As to paragraph 15:
  - a. The First Respondent admits sub-paragraph (a);
  - b. As to sub-paragraph (b) the First Respondent states that:
    - i. On 31 March 1988, Monsanto Australia Old was sold by the Third Respondent to Panimo Pty Ltd pursuant to a Share Sale Agreement;
    - ii. Pursuant to clause 3.2 of that Share Sale Agreement, Monsanto Australia Old's Agricultural business (including all of the tangible and intangible assets and liabilities of Monsanto Australia Old primarily used in the agricultural chemicals business) was transferred by the Third Respondent to Legis (No. 20) Pty Ltd prior to the close of the sale;
    - iii. Pursuant to clause 5.4 of the Share Sale Agreement the Third Respondent indemnified the purchaser from and against all liabilities, claims, damages and losses with respect to any claim by any third party solely arising out of the sale of products of the agriculture business or the

Resale Business or any claim by any third party solely arising out of the operation of the agriculture business or the resale business;

- iv. On 18 April 1988, Monsanto Australia Old was re-named Chemplex Australia Limited;
  - v. In around June 1993, Chemplex Australia Limited was re-named Huntsman Chemical Company Australia Pty Limited; and
  - vi. Otherwise, denies the allegations in sub-paragraph (b).
- c. As to sub-paragraph (c), it refers to and repeats paragraph 15(b)(ii) of this defence and states further that it has no corporate knowledge of the alleged conduct of Monsanto Australia Old's agriculture business between 1976 and 1988 as the agriculture business did not form part of the sale of Monsanto Australia Old in 1988, and therefore the First Respondent cannot plead to this sub-paragraph (c); and
- d. As to sub-paragraph (d), it refers to and repeats paragraphs 15(b)(ii) and 15(c) above and says that it does not have the corporate knowledge of the allegation and cannot plead to this sub-paragraph (d).

### **Particulars**

A copy of the 1988 Share Sale Agreement is available for inspection at the offices of the solicitors for the First Respondent on request.

- 16. As to paragraph 16, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
- 17. As to paragraph 17, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

### **C. ROUNDUP PRODUCTS**

- 18. As to paragraph 18, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
- 19. As to paragraph 19, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
- 20. As to paragraph 20, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
- 21. As to paragraph 21, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

22. As to paragraph 22, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

**D. CARCINOGENIC PROPERTIES OF ROUNDUP**

23. As to paragraph 23, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

24. As to paragraph 24, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

25. As to paragraph 25, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

26. As to paragraph 26, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

**E. INJURIES**

27. As to paragraph 27, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

28. As to paragraph 28, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

**F. SAFETY DEFECT**

29. As to paragraph 29, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

30. As to paragraph 30, the First Respondent denies the allegations.

31. As to paragraph 31, the First Respondent denies the allegations.

32. As to paragraph 32, the First Respondent denies the allegations.

33. As to paragraph 33, the First Respondent denies the allegations.

34. As to paragraph 34, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

35. As to paragraph 35, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

36. As to paragraph 36, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

37. As to paragraph 37, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

38. As to paragraph 38, the First Respondent:

- a. denies subparagraph (c);
- b. says further and or in the alternative that if the First Respondent is liable to compensate Mr McNickle and the Safety Group Members for any loss and damage (which is denied), then the First Respondent refers to and repeats paragraph 15(b)(iii) above and says that the Third Respondent has indemnified it against all such liabilities and losses; and
- c. otherwise does not plead to the balance of the allegations in paragraph 38 insofar as the allegations do not relate to the First Respondent.

**G. NOT OF ACCEPTABLE QUALITY**

39. As to paragraph 39, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
40. As to paragraph 40, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
41. As to paragraph 41, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
42. As to paragraph 42, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
43. As to paragraph 43, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
44. As to paragraph 44, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
45. As to paragraph 45, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
46. As to paragraph 46:
  - a. The First Respondent denies sub-paragraph (b); and
  - b. does not plead to the balance of the paragraph insofar as the allegations do not relate to the First Respondent.
47. As to paragraph 47, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
48. As to paragraph 48, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
49. As to paragraph 49, it does not plead to the paragraph as it does not contain any allegation against the First Respondent.

50. As to paragraph 50:
- a. The First Respondent denies subparagraph (c) and refers to and repeats paragraph 38 of this defence; and
  - b. does not plead to the balance of the paragraph insofar as the allegations do not relate to the First Respondent.
51. As to paragraph 51, it does not plead to the paragraph as it does not make any allegations against the First Respondent.

## **H. NEGLIGENCE**

### **Duty of Care**

52. As to paragraph 52, the First Respondent:
- a. does not have knowledge of the matters the subject of the allegations in subparagraph (b), and therefore cannot plead to that sub-paragraph 52(b); and
  - b. otherwise does not plead to the balance of the paragraph insofar as it makes no allegations against the First Respondent.
53. As to paragraph 53, the First Respondent:
- a. does not have knowledge of the matters the subject of the allegations in subparagraph 53(b), and therefore cannot plead to the sub-paragraph 53(b); and
  - b. otherwise does not plead to the balance of the paragraph insofar as it makes no allegations against the First Respondent.
54. As to paragraph 54, the First Respondent:
- a. does not have knowledge of the allegations in sub-paragraph 54(b), and therefore cannot plead to the sub-paragraph; and
  - b. otherwise does not plead to the balance of the paragraph insofar as it makes no allegations against the First Respondent.
55. As to paragraph 55, the First Respondent:
- a. does not have knowledge of the allegations in sub-paragraph 55(b), and therefore cannot plead to the sub-paragraph; and
  - b. otherwise it does not plead to the balance of the paragraph insofar as it makes no allegation against the First Respondent.

### **Standard of Care**

56. As to paragraph 56, it does not plead to the paragraph as it does not make any allegations against the First Respondent.

57. As to paragraph 57, it does not plead to the paragraph as it does not make any allegations against the First Respondent.
58. As to paragraph 58, it does not plead to the paragraph as it has no knowledge of the matters alleged insofar as the allegation relates to the First Respondent and otherwise it does not plead to the balance of the paragraph as it makes no allegations against the First Respondent.
59. As to paragraph 59, it does not plead to the paragraph as it has no knowledge of the matters alleged insofar as the allegation relates to the First Respondent and otherwise it does not plead to the balance of the paragraph as it makes no allegations against the First Respondent.

### **Breach of Duty**

60. As to paragraph 60, it does not plead to the paragraph as it has no knowledge of the matters alleged insofar as the allegation relates to the First Respondent and otherwise it does not plead to the balance of the paragraph as it makes no allegations against the First Respondent.
61. As to paragraph 61, it does not plead to the paragraph as it has no knowledge of the matters alleged insofar as the allegation relates to the First Respondent and otherwise it does not plead to the balance of the paragraph as it makes no allegations against the First Respondent.

### **Causation**

62. As to paragraph 62, it refers to and repeats paragraphs 60 to 61 above and does not plead to the paragraph as it has no knowledge of the matters alleged as against the First Respondent and otherwise the balance of the paragraph does not make allegations against the First Respondent.
63. As to paragraph 63, refers to and repeats paragraphs 61 and 62 above and does not plead to the paragraph as it has no knowledge of the matters alleged as against the First Respondent and otherwise the balance of the paragraph does not make allegations against the First Respondent.

### **Loss and damage**

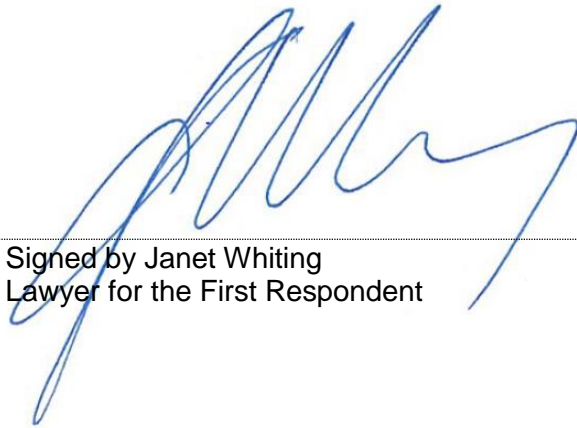
64. As to paragraph 64, the First Respondent denies the allegations, refers to and repeats paragraph 38 above and states further that to the extent the First Respondent is liable for any loss and damage incurred by the Applicant and group members (which is denied), such liability for loss and damage is payable by the Third Respondent.



**I COMMON QUESTIONS OF LAW OR FACT**

As to the common questions of law or fact in paragraphs 65 to 71 of the Amended Statement of Claim, the First Respondent refers to and repeats the matters in paragraph 15 and the above defence. The First Respondent is unable to further comment on the proposed common questions of law or fact to the claims of Mr McNickle and group members at this stage and says it reserves the right to further address any proposed amendments or changes to the common questions of law or fact until such time as all pleadings of all respondents have been filled and served in the proceeding.

Date: 10 July 2020

A handwritten signature in blue ink, appearing to be 'Janet Whiting', written over a horizontal dotted line.

Signed by Janet Whiting  
Lawyer for the First Respondent

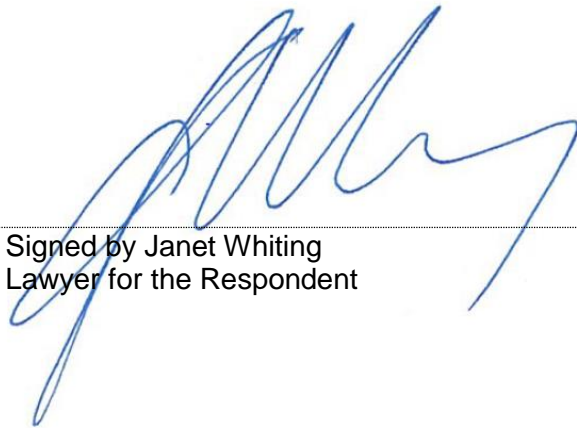
This pleading was prepared by Janet Whiting, lawyer

**Certificate of lawyer**

I Janet Whiting certify to the Court that, in relation to the defence filed on behalf of the 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 2020

A handwritten signature in blue ink, appearing to be 'Janet Whiting', written over a horizontal dotted line.

Signed by Janet Whiting  
Lawyer for the Respondent

**Schedule**

No. VID243 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