

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/08/2022 3:48:42 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: 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: 2/08/2022 3:59:10 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.



Form 33

Rule 16.32

First Respondent's Defence to the ~~Third~~ Fourth Further 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

Respondents

Notes:

- i. Where the First Respondent adopts the defined terms or headings used in the ~~Third~~ Fourth Further Amended Statement of Claim, it does so for convenience only, and by doing so, does not admit any factual assertions contained in, or in any way implied by, any defined term used in the ~~Third~~ Fourth Further Amended Statement of Claim.
- ii. Headings are used in this Defence for ease of reference only. They do not form part of this Defence.

In answer to the ~~Third~~ Fourth Further Amended Statement of Claim (**43FASOC**), the First Respondent states as follows:

A. The Applicant and Group Members

Group Members

1. As to paragraph 1, it says:

Filed on behalf of Huntsman Chemical Company Australia Pty Ltd, First Respondent

Prepared by Peter Butler AM RFD/Peter Holloway

Herbert Smith Freehills

Tel + 61 2 9225 5686

Email Peter.Butler@hsf.com

Address for service

ANZ Tower
161 Castlereagh Street
SYDNEY NSW 2000

Fax + 61 2 9322 4000

Ref 82691702

[Form approved 01/08/2011]

- (a) the Applicant has not sought and has not been granted leave of the court to amend the definition of NHL Group Members or deceased NHL Group Members definition;
- (b) the amendment to the definition of NHL Group Members in paragraph 1(1) is inconsistent with the definition of NHL Group Members in the Second Further Amended Originating Application filed on 4 July 2022;
- (c) in the premises, the amendments to paragraphs 1(a) and 1(b)(i) are liable to be struck out;
- (d) the Applicant has commenced this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (FCAA);
- (e) the products listed in **Schedule A** to this Amended Defence hereto are herbicide products which:
 - (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 sold in Australia before April 1988,
(Pre-1988 Monsanto Roundup Products);
- (f) it says further that:
 - (i) the manufacture of Pre-1988 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 Pre-1988 Monsanto Roundup Products; and
 - (ii) N-(phosphonomethyl)glycine is the International Union of Pure and Applied Chemistry name of glyphosate, the active ingredient;
- (g) it otherwise does not know and therefore cannot admit the allegations in paragraph 1.

2. As to paragraph 2, it does not know and therefore cannot admit the allegations.

3. Save where this Defence distinguishes between Group Members and deceased Group Members, the First Respondent does not plead to paragraph 3 as the Applicant makes no allegations against it.

The Applicant – Mr Kelvin McNickle

4. As to paragraph 4, it does not know and therefore cannot admit the allegations.
5. As to paragraph 5, it does not know and therefore cannot admit the allegations.
6. As to paragraph 6, it does not know and therefore cannot admit the allegations.
7. As to paragraph 7, it does not know and therefore cannot admit the allegations.
8. As to paragraph 8, it does not know and therefore cannot admit the allegations.
9. As to Paragraph 9, it does not know and therefore cannot admit the allegations.
10. As to paragraph 10, it does not know and therefore cannot admit the allegations.
11. As to paragraph 11, it does not know and therefore cannot admit the allegations.
12. As to paragraph 12, it does not know and therefore cannot admit the allegations.
13. As to paragraph 13, it does not know and therefore cannot admit the allegations.
14. As to paragraph 14, ~~it does not know and therefore cannot~~ it admits the allegations.

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) On 18 April 1988, Monsanto Australia (Old) was re-named Chemplex Australia Limited;
 - (iii) In around June 1993, Chemplex Australia Limited was re-named Huntsman Chemical Company Australia Limited;
 - (iv) In around April 1996, the First Respondent was re-named Huntsman Chemical Company Australia Pty Ltd; and

- (v) Otherwise, the First Respondent denies the allegations in sub-paragraph (b).
- (c) As to sub-paragraph (c), it says:
 - (i) In relation to sub-paragraph 15(c)(i):
 - A. it denies importation of the products defined by the Applicant as ‘Roundup Products’;
 - B. it says further that it otherwise does not know whether it imported or caused to be imported into Australia for distribution the Pre-1988 Monsanto Roundup Products between July 1976 and around April 1988 and therefore cannot admit this allegation;
 - (ii) In relation to sub-paragraph 15(c)(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 and repeats paragraph 1 and 15(c)(i) above;
 - (2) at various times between 1983 to April 1988, depending on the product, the First Respondent manufactured Roundup Herbicide and Roundup CT which contained glyphosate; and
 - (3) it otherwise does not know and is unable to admit the allegations in paragraph 15(c)(ii);
 - (iia) In relation to sub-paragraph 15(c)(iia), the First Respondent admits that 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 First Respondent dated 31 March 1988 but that it otherwise does not know and is unable to admit the allegations in sub-paragraph 15(c)(iia);
 - (iii) In relation to sub-paragraph 15(c)(iii):

- A. it denies distribution of the products defined by the Applicant as ‘Roundup Products’;
 - B. in relation to the distribution of Pre-1988 Monsanto Roundup Products, it admits that at various times between 1983 and 1988 it distributed various Pre-1988 Monsanto Roundup Products via a network of re-sellers, including:
 - (1) distribution of Roundup Herbicide and Roundup CT by Ciba-Geigy Australia Limited at various times in 1983 to 1985;
 - (2) distribution of Roundup Herbicide and Roundup CT by Elders Pastoral at various times in 1983 to April 1988;
 - (3) distribution of Roundup Herbicide by Bayer Australia Limited at various times in 1985 and 1986; and
 - (4) distribution of Roundup Herbicide and Roundup CT by a Nufarm entity at various times in 1986 and 1987; and
 - C. it otherwise does not know and is unable to admit the allegations in paragraph 15(c)(iii);
- (iv) In relation to sub-paragraph 15(c)(iv):
- A. it denies that it marketed or promoted in Australia the products defined by the Applicant as ‘Roundup Products’;
 - B. it admits that from 1979 to 1987, at various times, it promoted and marketed in Australia Roundup Herbicide and Roundup CT and engaged in activities related to marketing;

Particulars

The promotion and marketing activities included conducting promotions, educational publications and programs, product demonstration programs and print advertisements.

- C. says further that insofar as it, or affiliates or related entities of the First Respondent, provided Pre-1988 Monsanto Roundup Products to Ciba-Geigy Australia Limited, Bayer Australia Limited and Elders Pastoral for distribution, such entities marketed and promoted in Australia the Pre-1988 Monsanto Roundup Products;

Particulars

The promotion and marketing activities carried out by Ciba-Geigy Australia Limited included print advertisements. The promotion and marketing activities carried out by Elders Pastoral include providing selling aids and promotional materials and organising farmers' nights and field days to advertise Pre-1988 Monsanto Roundup Products.

- D. otherwise does not currently know, and therefore cannot admit, the allegations in this sub-paragraph;
- (v) in relation to sub-paragraph 15(c)(v):
- A. admits that from 1979 to 1987, it used "Monsanto" and "Roundup" trademarks registered to Monsanto Company US (Old) in promotion and marketing materials for Roundup Herbicide and Roundup CT in Australia; and
- B. otherwise does not currently know, and therefore cannot admit, the allegations in this sub-paragraph;
- (vi) in relation to sub-paragraph 15(c)(vi):
- A. denies that it caused or permitted its name (Monsanto Australia Ltd) to be used in marketing or other materials related to the Roundup Products as defined by the Applicant;
- B. says that, from 1976 to 1988, the First Respondent permitted the words "Roundup" and "Monsanto" to be used on product labels of

the Pre-1988 Monsanto Roundup Products, including for Roundup Herbicide;

- C. says further that its name was used in some informational booklets, technical newsletters and flyers related to Roundup Herbicide by Monsanto and Roundup CT between 1979 and 1987;

Particulars

The First Respondent published informational booklets and distributed technical newsletters and flyers referring to its own name which was Monsanto Australia Limited between 29 July 1976 and 17 April 1988.

- D. otherwise it does not otherwise currently know whether it caused or permitted its name (Monsanto Australia Limited between 29 July 1976 and 17 April 1988) to be used in other marketing materials related to the Pre-1988 Monsanto Roundup Products and therefore currently cannot admit further the allegations in this sub-paragraph;

(vii) in relation to sub-paragraph 15(c)(vii), admits that it was a wholly owned subsidiary of Monsanto Company US (Old) between 1974 and 1987.

(d) As to sub-paragraph (d), it:

- (i) refers to and repeats the sub paragraph 15(c) 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)*, it was a manufacturer of the Roundup Products or the Pre-1988 Monsanto Roundup Products.

16. As to paragraph 16, it does not know and therefore cannot admit as the Applicant makes no allegations against the First Respondent.

17. As to paragraph 17, it does not know and therefore cannot admit as the Applicant makes no allegations against the First Respondent.

C. Roundup Products

18. As to paragraph 18, it:

- (a) refers to and repeats paragraph 1 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 in 28 September 1981.

- (ii) each of the product encompassing the Pre-1988 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 in paragraph 18.

19. As to paragraph 19, it:

- (a) refers to and repeats paragraphs 1 and 15 above;
- (b) otherwise denies the allegations in paragraph 19.

20. As to paragraph 20, it:
- (a) admits that glyphosate was an active ingredient in the Pre-1988 Monsanto Roundup Products; and
 - (b) otherwise denies the allegations in paragraph 20.
21. As to paragraph 21, it says:
- (a) that prior to 1988 at least some of the Pre-1988 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 in paragraph 21.
22. As to paragraph 22, it:
- (a) admits that some of the Pre-1988 Monsanto Roundup Products contained surfactants; and
 - (b) otherwise denies the allegations in paragraph 22.

C.1 Labels and Marketing

23. As to paragraph 23, it does not know and therefore cannot admit the allegations.
24. As to paragraph 24, it does not know and therefore cannot admit the allegations.
25. As to paragraph 25, it:
- (a) refers to and repeats paragraph 1547 and 19 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in paragraph 25.

D. Carcinogenic Properties of Roundup

26. It denies the allegations in paragraph 26 and refers to and repeats paragraphs 30, 32 and 40 below. ~~In answer to paragraph 26:~~
- ~~(a) — it says that the allegations in paragraph 26:~~
 - ~~(i) — do not plead the material facts supporting the pleaded conclusion that glyphosate and glyphosate-based formulations are carcinogenic;~~

~~(ii) — do not plead material facts to establish what is meant by carcinogenic and in particular:~~

~~A. — whether what is meant by carcinogenic is capable of causing cancers generally, or just NHL;~~

~~B. — whether what is meant by carcinogenic is in the sense of a hazard, or in the sense of a risk to humans;~~

~~C. — whether what is meant by carcinogenic is capable of causing cancer in humans, and which particular cancers in humans;~~

~~D. — the circumstances in which it is alleged that glyphosate and glyphosate-based formulations can cause cancer in humans (including the types of cancer);~~

~~(iii) — as a consequence of the preceding two sub-paragraphs, the allegations:~~

~~A. — plead a conclusion from unstated facts;~~

~~B. — are ambiguous; and~~

~~C. — are likely to cause embarrassment and a delay in the proceeding;~~

~~(iv) — in the premises, the allegations should be struck out.~~

~~(b) — It otherwise denies the allegations contained in paragraph 26.~~

27. It denies the allegations in paragraph 27 and refers to and repeats paragraphs 30, 32 and 40 below. In answer to paragraph 27:

~~(a) — it says that the allegations in paragraph 27:~~

~~(i) — do not plead the material facts supporting the pleaded conclusion that glyphosate and glyphosate-based formulations are carcinogenic;~~

~~(ii) — do not plead material facts to establish what is meant by carcinogenic and in particular:~~

~~A. — whether what is meant by carcinogenic is capable of causing cancers generally, or just NHL;~~

~~B. — whether what is meant by carcinogenic is in the sense of a hazard, or in the sense of a risk to humans;~~

~~C. whether what is meant by carcinogenic is capable of causing cancer in humans, and which particular cancers in humans;~~

~~D. the circumstances in which it is alleged that glyphosate and glyphosate based formulations can cause cancer in humans (including the types of cancer);~~

~~(iii) as a consequence of the preceding two sub paragraphs, the allegations:~~

~~A. plead a conclusion from unstated facts;~~

~~B. are ambiguous; and~~

~~C. are likely to cause embarrassment and a delay in the proceeding;~~

~~(iv) in the premises, the allegations should be struck out.~~

~~(b) it otherwise refers to and repeats paragraph 15 above, and paragraph 40 below;
and~~

~~(c) it otherwise denies the allegations contained in paragraph 27.~~

28. As to paragraph 28, it:

(a) says that, depending on the manner in which Roundup Products are used, it is possible but not inevitable that users of Roundup Products or individuals exposed to Roundup Products whilst being used may come into contact with Roundup Products; and

(b) otherwise denies the allegations.

29. As to paragraph 29, 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 paragraphs 30 and 40 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 29.

30. As to paragraph 30 ~~In answer to paragraph 30:~~

- (a) ~~it says that the allegations in paragraph 30:~~
 - (i) ~~do not plead the material facts supporting the pleaded conclusions that:~~
 - A. ~~Roundup Products being carcinogenic; or~~
 - B. ~~use of and/or exposure to Roundup Products increased an individual's risk of developing NHL;~~
 - (ii) ~~do not plead material facts establishing what is meant by carcinogenic and in particular:~~
 - A. ~~whether what is meant by carcinogenic is capable of causing cancers generally, or just NHL;~~
 - B. ~~whether what is meant by carcinogenic is in the sense of a hazard, or in the sense of a risk to humans;~~
 - C. ~~whether what is meant by carcinogenic is capable of causing cancer in humans, and which particular cancers in humans;~~
 - D. ~~the circumstances in which it is alleged that glyphosate and glyphosate based formulations can cause cancer in humans (including the types of cancer);~~
 - (iii) ~~as a consequence of the preceding two sub-paragraphs, the allegations:~~
 - A. ~~plead a conclusion from unstated facts;~~

~~B. — are ambiguous; and~~

~~C. — are likely to cause embarrassment and a delay in the proceeding;~~

~~(iv) — in the premises, the allegations should be struck out;~~

~~it refers to and repeats paragraph 29 above and paragraph 40 below;~~

- (b) otherwise denies the allegations contained in paragraph 30; and
- (c) says further and alternatively, that ~~even if Roundup Products or the Pre-1988 Monsanto Roundup Products are carcinogenic (which is denied),~~ when Roundup Products are 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 32 and 40 below;
 - (ii) 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 First Respondent relies upon matters including the matters referred to in paragraphs 32 and 40 below and says that further particulars may be provided following expert evidence.
2. The types of objective factors include:
 - A. methods of application of the Pre-1988 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. history of cancer;
- D. family medical history (including history of cancer);
- E. body weight (including history of obesity);
- F. diet;
- G. alcohol consumption;
- H. smoking;
- I. inherited genetic defects;
- J. autoimmune diseases or condition or immune deficiency affecting the immune system including Hashimoto thyroiditis, hemolytic anemia, myasthenia gravis, pernicious anemia, rheumatoid arthritis, Sjögren's syndrome/disease, and systemic lupus erythematosus, celiac disease, immune thrombocytopenic purpura, inflammatory bowel disorder (including Crohn's disease, ulcerative colitis), multiple sclerosis, polymyositis or dermatomyositis, psoriasis, sarcoidosis, systemic sclerosis or scleroderma, and type 1 diabetes
- K. atopic (an exaggerated immune response) disorders including asthma, eczema, and hay fever;
- L. infections including Glandular Fever (also known as Epstein-Barr virus (EBV)) or Hepatitis A, Hepatitis C, Human Herpes Virus 8, Human Immunodeficiency Virus (HIV), Human T-cell leukemia/lymphoma virus, Human T-cell lymphotropic virus, or any other viruses not otherwise listed;
- M. stomach inflammation or gastritis or gastric ulcers;
- N. hereditary conditions carrying a risk of blood abnormality, such as Wiskott-Aldrich Syndrome;
- O. congenital or acquired immunodeficiency disorders such as AIDS or Common Variable Immunodeficiency (CVID);
- P. exposure to medications and treatment, including chemotherapy, radiotherapy, other forms of cancer treatment,

radiation (including solar and ultraviolet radiation and ionizing radiation), rheumatoid arthritis medications, and immunosuppressant medication, blood transfusion, allergen immunotherapy/de-sensitisation injections, and hormone therapy;

Q. gender;

R. race/ethnicity;

S. exposure to external mutagens including chemicals (including benzene), outdoor pollution, engine exhaust and diesel and combustion of biomass fuels;

T. exposure to herbicides, insecticides, fungicides and pesticides other than glyphosate, Roundup Products and Monsanto Roundup Products; and

U. occupational circumstances including shift work.

(d) says further that in the absence of allegations of material fact as to how Roundup Products, or the Pre-1988 Monsanto Roundup Products, are said to increase an individual's risk of developing NHL, it is unable to plead further to paragraph 30.

(e) says further that an increased risk of developing NHL for an individual:

(i) is not actionable damage in the tort of negligence; and

(ii) in the absence of actual damage is insufficient to establish the tort of negligence.

E. Injuries

31. As to paragraph 31, it:

(a) does not know and therefore cannot admit the allegations in paragraphs 31; and

(b) says further that not all the Pre-1988 Monsanto Roundup Products were registered in 1976 and/or were available for use from 1976.

32. As to paragraph 32, it:

(a) refers to and repeats paragraphs 26 to 30 above and paragraph 40 below;

- (b) otherwise denies the allegations contained in paragraph 32; 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 Pre-1988 Monsanto Roundup Products including:
 - (i) genetic predisposition;
 - (ii) gene changes and DNA mutations caused by factors unrelated to Roundup Products or the Pre-1988 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 30 above;
 - (iii) interaction of gene mutations;
 - (iv) random chance;
 - (v) the aetiology of NHL; and
 - (vi) the number of sub-types of NHL; and
- (d) says further that in the event the Applicant establishes that his use of or exposure to Roundup Products as pleaded in paragraphs 4 – 14 of 43FASOC was a cause of his NHL (which the First Respondent denies), then:
 - (i) the relevant use of or exposure to Roundup Products which was causative of his NHL occurred in the course of his employment with PL & CV McNickle Pty Ltd and Kim Perkins Earthmoving & Clearing Contractor;
 - (ii) he contracted the NHL in the course of employment;

- (iii) employment was the main contributing factor to him contracting NHL, within the meaning of s.4(b)(i) of the *Workers Compensation Act 1987* (NSW);
- (iv) such employment was connected with New South Wales, within the meaning of s.9AA(1) of the *Workers Compensation Act 1987* (NSW);
- (v) by operation of s.3(1AA) of the *Workers Compensation Act 1987* (NSW) and s.4(1) of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW), the Applicant was, with respect to the aforementioned employment, a “worker”; and
- (vi) by operation of s.9(1) of the *Workers Compensation Act 1987* (NSW) he has received an injury and is entitled receive to compensation under that Act.

F. Safety Defect

33. As to paragraph 33, it refers to and repeats paragraph 15 above, but otherwise it does not plead to the paragraph as it does not contain any allegation against the First Respondent.
34. In answer to paragraph 34, it:
- (a) refers to and repeats paragraphs 15, 16 and 17 above; and
 - (b) otherwise denies the allegations in paragraph 34.
35. As to paragraph 35, the First Respondent:
- (a) refers to and repeats paragraphs 1(b), 15, 16 and 17 above;
 - (b) says further that in the absence of specification of the identities of the Third Parties, it does not know and cannot admit the allegations;
 - (c) otherwise denies the allegations in paragraph 35.
36. As to paragraph 36, the First Respondent:
- (a) refers to and repeats paragraph 15 above;
 - (b) says that in the absence of specification of the identities of the Third Parties, it does not know and cannot admit the allegations;
 - (c) otherwise denies the allegations in paragraph 36.
37. As to paragraph 37, the First Respondent:

- (a) refers to and repeats paragraph 15 above; and
 - (b) otherwise denies the allegations.
38. As to paragraph 38, it:
- (a) refers to and repeats paragraphs 15 to 17 and 35 to 37 above;
 - (b) says further that in the absence of specification of the identities of the Third Parties, it does not know and cannot admit the allegations;
 - (c) otherwise denies the allegations contained in paragraph 38.
39. As to paragraph 39, it:
- (a) refers to and repeats paragraphs 23 to 30 and 32 above and paragraph 35 below;
and
 - (b) otherwise denies the allegations contained in paragraph 39.
40. As to paragraph, it:
- (a) denies the allegations in paragraph 40;
 - (b) refers to and repeats paragraphs 15 and 23 to 30 and 32 above;
 - (c) says further that:
 - (i) the respective class of persons to whom the Pre-1988 Monsanto Roundup Products were directed would have expected that the Pre-1988 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;
 - (ii) the Pre-1988 Monsanto Roundup Products were registered for use in Australia and could be safely used according to prescribed label directions;
 - (iii) further, at the point in time when the Pre-1988 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;

- (iv) all the Pre-1988 Monsanto Roundup Products were supplied with information and it was reasonable for it to expect that:
- A. prior to use of any of the Pre-1988 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) the Pre-1988 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
 - (2) there was a need when using and/or being exposed to Pre-1988 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 Pre-1988 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) the Pre-1988 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
 - (2) there was a need when using and/or being exposed to Pre-1988 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 Pre-1988 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:

- (i) numerous companies other than the Third Respondent have conducted, or engaged contract research laboratories to conduct on their behalf, their own toxicology studies with glyphosate, surfactants, glyphosate-based formulations and/or metabolites of glyphosate (including long-term rodent carcinogenicity studies on glyphosate), in respect of which the vast majority of study reports were provided (either individually or as part of a joint taskforce) to one or more regulators and/or international organisations, either in the form of copies of study reports or summaries of study reports.

Particulars

Those companies include: Adama, Agrichem, Agro Trade, Albaugh, Alkaloida, Arysta Life Sciences, Barclay Chemicals, Cheminova, Ciba-Geigy, Dow AgroSciences, DuPont, Excel Industries, Feinchemie Schwebda, Helm, Herbex Produtos Quimicos, Industrias Prodotti, Luxan, Nufarm, Sanachem, Sankyo/Mitsui Chemical, Sinon, Sumisho Agro, Syngenta, Zeneca.

- (ii) the results of the toxicology studies conducted by or on behalf of companies other than the Third Respondent with glyphosate, surfactants, glyphosate-based formulations or metabolites of glyphosate, that were provided to regulators and/or international organisations are consistent with the results of studies undertaken by or on behalf of the Third Respondent in that, taken together, they demonstrate that neither glyphosate nor glyphosate-based formulations are carcinogenic.

Particulars

Reregistration Eligibility Decision – Glyphosate (United States Environmental Protection Agency, September 1993.

EU Monograph of Glyphosate, 2001.

European Commission Review Report for Glyphosate, 21 January 2002.

2004 JMPR and Toxicological Evaluations of the 2004 JMPR. Annex I Renewal Dossier, submitted to EFSA on 25 May 2012 by the European Union Glyphosate Task Force, of which the Third Respondent was a member.

Renewal Assessment Report of the EU Rapporteur Member States, Volume 1 – Report and Proposed Decision, and Volume 3 Section B.6 – Toxicology and Metabolism, dated 18 December 2013 (revised on 29 January 2015 and 31 March 2015).

Proposed Re-evaluation Decision of the Pest Management Regulatory Agency, Canada, 13 April 2015.

Final Addendum to the Renewal Assessment Report of the EU Rapporteur Member States, October 2015.

2016 JMPR and Toxicological Evaluations of the 2016 JMPR. Report of the Food Safety Commission of Japan Regarding Glyphosate, July 2016.

Opinion of the Risk Assessment Committee of the European Chemicals Agency, 15 March 2017.

Re-evaluation Decision of the Pest Management Regulatory Agency, Canada, 28 April 2017.

Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential, of the US EPA's Office of Pesticide Programs, 12 December 2017.

Glyphosate Proposed Interim Registration Review Decision of the US EPA, 23 April 2019.

Annex I Renewal Dossier, submitted to the Rapporteur Member States for the European Union on 8 June 2020 by the Glyphosate Renewal Group, of which the Third Respondent was a member.

Summary of the procedure and outcome of the draft Renewal Assessment Report on glyphosate of the Assessment Group on Glyphosate, 15 June 2021.

- (e) 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 evidence at trial.

- (iii) the fact that regulatory approval has been given for use of the Pre-1988 Monsanto Roundup Products and glyphosate in Australia and elsewhere throughout the world from time to time;
- (iv) the matters referred to in paragraph 30 above;
- (v) 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 30(c)(iii) and 32 above; and
- (vi) the availability of other herbicides and similar products to the Pre-1988 Monsanto Roundup Products in the marketplace;
- (vii) the use of and/or exposure to glyphosate and glyphosate-based formulations within the Pre-1988 Monsanto Roundup Products, when used in their intended application, did not, and do not, increase an individual's risk of developing NHL;
- (viii) by reason of the matters referred to in sub-paragraphs 40(c) and (d) above, pursuant to s 75AC(1) of the TPA the safety of the Pre-1988 Monsanto Roundup Products was such as persons using such products in the manner intended were generally entitled to expect;
- (ix) says further that, in the premises referred to in sub-paragraphs 40(c) and (d) above the Pre-1988 Monsanto Roundup Products did not have a defect within the meaning of s 75AC of the TPA;

- (x) 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 pursuant to s 75AK(1)(c) of the TPA, the state of scientific knowledge at the time when the particular Pre-1988 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.

Particulars

The scientific knowledge will be the subject of evidence at trial.

41. As to paragraph 41, it:

- (a) refers to and repeats paragraphs 23 to 30, 32 and 40 above;
- (b) otherwise denies the allegations contained in paragraph 41; and
- (c) says that to the extent that the Applicant and/or Group Members have suffered loss and damage, because NHL cannot be causatively linked to the Roundup Products or the Pre-1988 Monsanto roundup Products, it cannot be causatively linked to the alleged fact of the Roundup Products or the Pre-1988 Monsanto Roundup Products having a defect and or a safety defect as alleged in paragraph 40; and
- (d) says further, that if the Roundup Products or the Pre-1988 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;
- (e) says further that if the Roundup Products or the Pre-1988 Monsanto Roundup Products did have a defect as alleged, viz. an increased risk of developing NHL (which is denied), then the development by the Applicant and Group Members of NHL was not the materialization of that risk.

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, the First Respondent:
- (a) denies the allegations contained in paragraph 43;
 - (b) says further that:
 - (i) by operation of s.75AI of the TPA, it has no liability in respect of a loss or damage in respect of which an amount could be recovered under a law of the Commonwealth or a State or Territory that relates to workers' compensation;
 - (ii) by reason of the matters pleaded in paragraph 32(d) above, the Applicant's loss or damage is of a kind in respect of which an amount could be recovered under a law of a State that relates to workers' compensation;
 - (iii) in the premises:
 - A. the Applicant has no right to compensation under s.75AD or s.75AE of the TPA;
 - B. those Group Members whose loss or damage is of a kind in respect of which an amount could be recovered under a law of the Commonwealth, or a State or Territory that relates to workers compensation have no right to compensation under s.75AD or s.75AE of the TPA;
 - (iv) says further that:
 - A. 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;
 - B. 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

- C. 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) says further or alternatively, that 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 Member's claim;
- (d) says further that 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) says further and alternatively that, 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 87 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. Not of Acceptable Quality

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 know and therefore cannot admit the allegations.
46. In answer to paragraph 46:
- (a) says that in respect of products intended to be used for lawn and garden, such products were goods acquired for domestic and household use; and
 - (b) It otherwise does not know and therefore cannot admit the allegations in paragraph 46.
47. As to paragraph 47, it does not know and therefore cannot admit the allegations.
48. As to paragraph 48, it does not know and therefore cannot admit the allegations.
49. As to paragraph 49, it does not know and therefore cannot admit the allegations.
50. As to paragraph 50 it:
- (a) refers to and repeats the matters pleaded in paragraphs 1, 36 and 40 above; and
 - (b) otherwise denies the allegations contained in paragraph 50.
51. As to paragraph 51 it:
- (a) refers to and repeats paragraphs 1, 15 to 17, 36 and 37 above;
 - (b) otherwise denies the allegations contained in paragraph 51.
52. As to paragraph 52, it:
- (a) denies the allegations contained in paragraph 52;
 - (b) says further that it refers to and repeats the matters set out above in paragraphs 23 to 30, 32 and 40 above;
 - (c) says further that:
 - (i) the defects alleged to have rendered the goods unacceptable did not exist at the time of delivery as the risk described in paragraph 30 of the 3FASOC, (if it existed, which is denied) 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.

53. As to paragraph 53, it:

- (a) denies the allegations contained in paragraph 53;
- (b) says further that it refers to and repeats the matters set out above in paragraphs 23 to 30, 32 and 40 above;
- (c) says that pursuant to s 74D(3) of the TPA the Pre-1988 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 Pre-1988 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 evidence at trial.

- B. the manner in which the Pre-1988 Monsanto Roundup Products have been marketed;
 - C. instructions for, or warnings with respect to, the Pre-1988 Monsanto Roundup Products;
 - D. the ordinary or usual risk of harm in other herbicides and similar products to the Pre-1988 Monsanto Roundup Products in the marketplace; and
 - E. the sophistication of the customers purchasing the Pre-1988 Monsanto Roundup Products;
- (d) says further that if the Pre-1988 Monsanto Roundup Products were not of merchantable quality (which is denied), this occurred after the Pre-1988 Monsanto Roundup Products left its control and occurred by reason of:

- (i) the manner of use of, or exposure to, the Pre-1988 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.

54. As to paragraph 54, it:

- (a) refers to and repeats paragraphs 23 to 30, 32, 40, 52 and 53 above;
- (b) otherwise denies the allegations contained in paragraph 54; and
- (c) says further that if the Applicant and/or Group Members suffered loss and damage, it did not occur by reason of the Pre-1988 Monsanto Roundup Products not being of merchantable quality.

55. As to paragraph 55, it:

- (a) refers to and repeats paragraphs 52 to 54 above;
- (b) otherwise denies the allegations in paragraph 55;
- (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.

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

H. Negligence

57. As to paragraph 57, the First Respondent:

- (a) refers to and repeats paragraph 15 above;
- (b) save that it says that it owed the Applicant and Group Members a duty to exercise reasonable care to avoid physical injury as a result of the use of Pre-1988 Monsanto Roundup Products, glyphosate and/or glyphosate intermediate used in the manufacture of Pre-1988 Roundup Products:
 - (i) which it manufactured, distributed or supplied; and
 - (ii) when used in accordance with the directions for use;
 it otherwise denies the allegations contained in paragraph 57.

58. In answer to paragraph 58, the First Respondent denies the allegations and says further as follows:

- (a) as to sub-paragraph 58(a):
 - (i) one of the studies that had been conducted by IBT was a mouse oncogenicity study, by MS Reyna and DE Gordon called “18-Month Carcinogenic Study with CP67573 in Swiss White Mice”, 1973 (**Reyna & Gordon 1973**);
 - (ii) following its investigation into IBT, the US EPA determined that Reyna & Gordon 1973 was not a valid study;
 - (iii) the Third Respondent replaced Reyna & Gordon 1973 with a two-year mouse study by AL Knezevich and GK Hogan called “A chronic feeding study of glyphosate in mice”, 1983 (**Knezevich & Hogan 1983**);
 - (iv) the conclusion of Knezevich & Hogan 1983 was that despite a slight increased incidence of renal tubule adenomas observed, this was unrelated to glyphosate;
 - (v) it did not know and could not have known about matters after April 1988;

- (b) as to sub-paragraph 58(b):
 - (i) animal studies have not demonstrated evidence of carcinogenicity in rodents;
 - (ii) it did not know and could not have known about matters after April 1988;
- (c) as to sub-paragraph 58(c), before April 1988, the First Respondent did not know and could not have known about epidemiological studies relevant to glyphosate that would appear from 1999 onwards;
- (d) as to sub-paragraph 58(d), before April 1988, the First Respondent did not know and could not have known about mechanistic studies relevant to glyphosate that would appear from 1999 onwards;
- (e) as to sub-paragraph 58(e), the extent of personal contact of Roundup Products is dependent on a variety of factors, including the nature of the product, the use of personal protective equipment, the quality of the tools used to apply the Roundup Products and the care taken by the person applying or exposed to the Roundup Products to minimize personal contact;
- (f) as to sub-paragraph 58(f), before April 1988, the First Respondent did not know and could not have known about the results of the TNO draft report;
- (g) as to sub-paragraph 58(g), before April 1988, the First Respondent did not know and could not have known about the IARC monograph on glyphosate;
- (h) as to sub-paragraph 58(h):
 - (i) the Third Respondent has conducted the testing of glyphosate and glyphosate-based formulations in compliance with the requirements of regulators;
 - (ii) long term animal carcinogenicity studies of glyphosate-based formulations have not been required, and are not required, by regulators such as the US EPA;
 - (iii) long term animal carcinogenicity studies of glyphosate-based formulations would be of no, or very limited, utility in contributing to the state of scientific knowledge concerning the carcinogenic potential of glyphosate or glyphosate-based formulations because:

- A. the most appropriate animals to be used in long term carcinogenicity studies are rodents and such studies typically last for 18 months (in the case of mice) or 24 months (in the case of rats);
- B. administering a glyphosate-based formulation reflecting the limit dose level to rodents over the period of a long-term study would result in severe damage to the gastro-intestinal tract of the rodents, by reason of the surfactant, such that the rodents would in all likelihood die as a consequence before the end of the study such that the study could not be completed;
- C. administering a glyphosate-based formulation reflecting the limit dose level to rodents would require the administration of an excessive volume of test material to the rodents such that their stomachs would likely rupture, causing them to die before the end of the study such that the study could not be completed;
 - (i) refers to and repeats the matters in paragraphs 30, 32 and 40 above.

59. As to paragraph 59, the First Respondent:

- (a) denies the allegations contained in paragraph 59; and
- (b) refers to and repeats the matters contained in paragraphs 26 to 30, 40 and 58 above.

60. As to paragraph 60, the First Respondent:

- (a) refers to and repeats paragraphs ~~1517~~, 26 to 30, 40, 57 and 58 above;
- (b) save that it says that it owed the Applicant and Group Members a duty to exercise reasonable care to avoid physical injury as a result of the use of Pre-1988 Monsanto Roundup Products, glyphosate and/or glyphosate intermediate used in the manufacture of Pre-1988 Roundup Products:
 - (i) which it manufactured, supplied or distributed; and
 - (ii) which used in accordance with the directions for use,
 it otherwise denies the allegations contained in paragraph 60.

I. Standard of Care

61. As to paragraph 61, it:

- (a) ~~It~~ denies the allegations in paragraph 61; and
 - (b) refers to and repeats paragraphs 26 to 30, 40 and 58 above.
62. As to paragraph 62, it:
- (a) refers to and repeats the paragraphs 26 to 30, 40, ~~and~~ 58 and 61 above; and
 - (b) otherwise denies the allegations in paragraph 62.
63. It denies the allegations in paragraph 63.
64. As to paragraph 64, it:
- (a) refers to and repeats paragraphs ~~2326~~ to 30, 40 and 58 above;
 - (b) says further that:
 - (i) the Third Respondent has conducted comprehensive testing and evaluation of the alleged carcinogenic potential of glyphosate and glyphosate-based formulations;
 - (ii) the allegations made in by the Applicant in this proceeding concerning the alleged carcinogenic potential of glyphosate and glyphosate-based formulations are known to the APVMA;
 - (iii) by reason of the large volume of litigation in the USA concerning the alleged carcinogenic potential of glyphosate and glyphosate-based formulations, allegations of that nature are, and for several years have been, well known to regulators such as the US EPA;
 - (c) it otherwise denies the allegations in paragraph 64.

J. Breach of Duty

65. As to paragraph 65, it:
- (a) refers to and repeats paragraph 15 above; and
 - (b) otherwise denies the allegations in paragraph 65.
66. As to paragraph 66, it:
- (a) refers to and repeats paragraphs 23 to 30, 40 and 58 above;
 - (b) denies the allegations in paragraph 66;

- (c) says that if the Pre-1988 Monsanto Roundup Products are found to present the risk pleaded in paragraph 30 (which is denied), the state of scientific knowledge was not such as to enable it to discover that risk and accordingly it did not breach any duty of care owed at common law; and

Particulars

The scientific knowledge will be subject of evidence at trial.

- (d) says further that by adhering to and complying with the regulatory requirements as in force until April 1988 concerning glyphosate, glyphosate-based formulations and surfactants, and the labelling of glyphosate-based formulations, the First Respondent discharged its duty of care to the Applicant and Group Members.

K. Causation

67. As to paragraph 67, it:

- (a) it denies the allegations in paragraph 67;
- (b) it refers to and repeats paragraph 32, 40 and 58 above; and
- (c) says further that:
- (i) there is no causal connection between use of or exposure to Roundup Products, glyphosate and/or glyphosate intermediate used in the manufacture of Roundup Products and NHL; and
- (ii) any use of or exposure to Roundup Products or Pre-1988 Monsanto Roundup Products by the Applicant and Group Members had no effect on their development of NHL.

68. In answer to paragraph 68: -

- (a) it denies the allegations in paragraph 68;
- (b) it refers to and repeats paragraphs 32, 40, 58 and 64 above;
- (c) it says further that the matters alleged in paragraphs 26 to 27, 26 to 29 and 30 of ~~43~~FASOC do not represent the true position;
- (d) it says further that:
- (i) numerous companies other than the Third Respondents have conducted, or engaged contract research laboratories to conduct on their behalf, their own

toxicology studies with glyphosate, surfactants, glyphosate-based formulations and/or metabolites of glyphosate, in respect of which the vast majority of study reports were provided (either individually or as part of a joint taskforce) to one or more regulators and/or international organisations, either in the form of copies of study reports or summaries of study reports.

Particulars

Those companies include: Adama, Agrichem, Agro Trade, Albaugh, Alkaloida, Arysta Life Sciences, Barclay Chemicals, Cheminova, Ciba-Geigy, Dow AgroSciences, DuPont, Excel Industries, Feinchemie Schwebda, Helm, Herbex Produtos Quimicos, Industrias Prodotti, Luxan, Nufarm, Sanachem, Sankyo/Mitsui Chemical, Sinon, Sumisho Agro, Syngenta, Zeneca.

- (ii) the results of the toxicology studies conducted by or on behalf of companies other than the First, Second and Third Respondents with glyphosate, surfactants, glyphosate-based formulations or metabolites of glyphosate, that were provided to regulators and/or international organisations are consistent with the results of studies undertaken by or on behalf of the Third Respondent in that, taken together, they demonstrate that neither glyphosate nor glyphosate-based formulations are carcinogenic.

Particulars

1. Reregistration Eligibility Decision – Glyphosate (United States Environmental Protection Agency, September 1993).
2. EU Monograph of Glyphosate, 2001.
3. European Commission Review Report for Glyphosate, 21 January 2002.
4. 2004 JMPR and Toxicological Evaluations of the 2004 JMPR.
5. Annex I Renewal Dossier, submitted to EFSA on 25 May 2012 by the European Union Glyphosate Task Force, of which the Third Respondent was a member.

6. Renewal Assessment Report of the EU Rapporteur Member States, Volume 1 – Report and Proposed Decision, and Volume 3 Section B.6 – Toxicology and Metabolism, dated 18 December 2013 (revised on 29 January 2015 and 31 March 2015).
7. Proposed Re-evaluation Decision of the Pest Management Regulatory Agency, Canada, 13 April 2015.
8. Final Addendum to the Renewal Assessment Report of the EU Rapporteur Member States, October 2015.
9. 2016 JMPR and Toxicological Evaluations of the 2016 JMPR.
10. Report of the Food Safety Commission of Japan Regarding Glyphosate, July 2016.
11. Opinion of the Risk Assessment Committee of the European Chemicals Agency, 15 March 2017.
12. Re-evaluation Decision of the Pest Management Regulatory Agency, Canada, 28 April 2017.
13. Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential, of the US EPA’s Office of Pesticide Programs, 12 December 2017.
14. Glyphosate Proposed Interim Registration Review Decision of the US EPA, 23 April 2019.
15. Annex I Renewal Dossier, submitted to the Rapporteur Member States for the European Union on 8 June 2020 by the Glyphosate Renewal Group, of which the Third Respondent was a member.
16. Summary of the procedure and outcome of the draft Renewal Assessment Report on glyphosate of the Assessment Group on Glyphosate, 15 June 2021.

69. In answer to paragraph 69:

- (a) it denies the allegations in paragraph 69;

- (b) it refers to and repeats paragraph 68 above;
- (c) it says further that after the publication by IARC of its Monograph concerning glyphosate in 2015, numerous regulators and international organisations and bodies specifically examined the IARC Monograph and have again concluded that exposure to glyphosate does not pose a carcinogenic risk to humans.

Particulars

1. Australian Pesticides and Veterinary Medicines Authority:
 - Regulatory position: consideration of the evidence for a formal reconsideration of glyphosate, September 2016.
 - Review of IARC Monograph 112 (Glyphosate): Tier 1, 2016.
 - Review of IARC Monograph 112 (Glyphosate): Tier 2, 2016.
 - Final regulatory position: consideration of the evidence for a formal reconsideration of glyphosate, March 2017.
2. Canadian Pest Management Regulatory Authority, Proposed Re-evaluation Decision, April 2015.
3. European Chemicals Agency, Committee for Risk Assessment's Opinion proposing harmonised classification and labelling at EU level of glyphosate, March 2017.
4. European Food Safety Authority, Conclusion on the peer review of the pesticide risk assessment of the active substance glyphosate, October 2015.
5. German Federal Institute for Occupational Safety and Health (BAuA), CLH Report for Glyphosate: Proposal for Harmonised Classification and Labelling, May 2016.
6. German Federal Institute for Risk Assessment (BfR)
 - Renewal Assessment Report – Glyphosate Addendum 1 to Renewal Assessment Report – Assessment of IARC Monographs Volume 112, 31 August 2015.

7. New Zealand Environmental Protection Agency, Review of the Evidence Relating to Glyphosate and Carcinogenicity, August 2016.
8. United States Environmental Protection Agency (US EPA):
 - Glyphosate: Report of the Cancer Assessment Review Committee, October 2015.
 - Glyphosate Issue Paper: Evaluation of Carcinogenic Potential, September 2016.
 - Transmission of Meeting Minutes and Final Report of the December 13-16, 2016 FIFRA SAP Meeting Held to Consider and Review Scientific Issues Associated with EPA's Evaluation of the Carcinogenic Potential of Glyphosate, March 2017.
 - Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential, December 2017.
 - Glyphosate: Response to Comments on the Human Health Draft Risk Assessment, April 2018.
 - Glyphosate: Response to Comments on the Proposed Interim Decision Regarding the Human Health Risk Assessment, January 2019.
 - Glyphosate: Proposed Interim Registration Review Decision Case Number 0178, April 2019.
70. In answer to paragraph 70:
 - (a) it denies the allegations in paragraph 70; and
 - (b) it refers to and repeats paragraphs 64, 68 and 69 above;
 - (c) says further that:
 - (i) there is no causal connection between use of or exposure to Roundup Products and NHL;
 - (ii) there is no causal connection between the matters alleged in paragraph 69 of 43FASOC and NHL;

- (iii) any use of or exposure to Roundup Products or Pre-1988 Monsanto Roundup Products by the Applicant and Group Members had no effect on their development of NHL.

71. In answer to paragraph 71:

- (a) it denies the allegations in paragraph 71; and
- (b) it refers to and repeats paragraphs 23-30, 64, 66, 68 and 69 above;
- (c) says further that:
 - (i) there is no causal connection between use of or exposure to Roundup Products and NHL;
 - (ii) any use of or exposure to Roundup Products or Pre-1988 Monsanto Roundup Products by the Applicant and Group Members had no effect on their development of NHL.

L. Loss and damage

72. As to paragraph 72, the First Respondent:

- (a) denies the allegations contained in paragraph 72;
- (b) says further that the ~~43~~FASOC fails to plead what dose is said by the Applicant to have been necessary or sufficient to have caused his NHL or the NHL of Group Members;
- (c) says further that in the event the Applicant establishes that his use of or exposure to Roundup Products was a cause of his NHL (which the First Respondent denies), then:
 - (i) compensation is payable under the *Workers Compensation Act 1987* (NSW) in respect of the Applicant's NHL (whether or not a claim for compensation is or has been duly made);
 - (ii) the Applicant's claim for damages is subject to s.151Z(2) of the *Workers Compensation Act 1987* (NSW);
 - (iii) by operation of s.151Z(2)(c), the damages that the Applicant may recover against the First Respondent are to be reduced;

- (iv) the amount of the reduction is the amount by which the contribution which the First Respondent would, but for Part 5 of the *Workers Compensation Act 1987* (NSW), be entitled to recover from PL & CV McNickle Pty Ltd and/or Kim Perkins Earthmoving & Clearing Contractor as a joint tortfeasor or otherwise exceeds the amount of contribution recoverable;
 - (v) by operation of s.151Z(2)(d), the amount of the contribution that the First Respondent is entitled to recover from PL & CV McNickle Pty Ltd and/or Kim Perkins Earthmoving & Clearing Contractor as a joint tortfeasor or otherwise is to be determined as if the whole of the damages were assessed in accordance with the provisions of Division 3 of Part 5 of the *Workers Compensation Act 1987* (NSW) as to the award of damages;
- (d) 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'),
 - (ii) 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
 - (iii) 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);

- (e) 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);
- (f) 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);
- (g) 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;
- (h) 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
- (i) 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.

M. Deceit

- 73. It does not plead to paragraph 73 as no allegations are made against it.
- 74. It does not plead to paragraph 74 as no allegations are made against it.
- 75. It does not plead to paragraph 75 as no allegations are made against it.
- 76. It does not plead to paragraph 76 as no allegations are made against it.
- 77. It does not plead to paragraph 77 as no allegations are made against it.
- 78. It does not plead to paragraph 78 as no allegations are made against it.
- 79. It does not plead to paragraph 79 as no allegations are made against it.

80. It does not plead to paragraph 80 as no allegations are made against it.
81. It does not plead to paragraph 81 as no allegations are made against it.
82. It does not plead to paragraph 82 as no allegations are made against it.
83. It does not plead to paragraph 83 as no allegations are made against it.
84. It does not plead to paragraph 84 as no allegations are made against it.
85. In answer to paragraph 85:
- (a) it denies the allegations in paragraph 85;
 - (b) it refers to and repeats paragraphs 40, 41, 58, 64, 68 and 69 above; and
 - (c) says further that:
 - (i) there is no causal connection between use of or exposure to Roundup Products or Pre-1988 Monsanto Roundup Products and NHL;
 - (ii) there is no causal connection between the matters alleged in paragraphs 80 to 84 of 43FASOC and NHL;
 - (iii) any use of or exposure to Roundup Products or Pre-1988 Monsanto Roundup Products by the Applicant and Group Members had no effect on their development of NHL.

N. Exemplary and Aggravated Damages

86. It does not plead to paragraph 86 as no allegations are made against it.
87. It denies the allegations in paragraph 87 insofar as they relate to the First Respondent and says further as follows:
- (a) no material facts are pleaded in support of the claim for aggravated damages against the First Respondent and for that reason the allegations in paragraph 87 should be struck out insofar as they relate to the First Respondent;
 - (b) by operation of s.87ZB(1) of the *Trade Practices Act* 1974 (Cth), the court cannot award exemplary damages or aggravated damages in respect of death or personal injury;
 - (c) by operation of s.87ZB(1) of the *Consumer and Competition Act* 2010 (Cth), the court cannot award exemplary damages or aggravated damages in respect of death or personal injury;

- (d) by operation of sections 11A and 21 of the *Civil Liability Act 2002* (NSW), the court cannot award aggravated, exemplary or punitive damages where the act or omission that caused the injury or death was negligence;
- (e) no claim in deceit is made against the First Respondent;
- (f) by operation of s.52(1) of the *Civil Liability Act 2003* (Qld), the court cannot award exemplary, punitive or aggravated damages in relation to a claim for personal injury damages;
- (g) by operation of s.19 of the *Personal Injuries (Liabilities and Damages) Act 2003* (NT), the court must not award aggravated damages or exemplary damages in respect of a personal injury;
- (h) it says further that 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 and that:
 - (i) by operation of section 2(2) of the *Law Reform (Miscellaneous Provisions) Act 1944* (NSW), the damages recoverable for the benefit of the estate of a deceased person shall not include exemplary damages;
 - (ii) by operation of section 66(2)(d) of the *Succession Act 1981* (Qld), the damages recoverable for the benefit of the estate of a deceased person shall not include exemplary damages;
 - (iii) by operation of section 29(2)(c) of the *Administration and Probate Act 1958* (Vic), the damages recoverable for the benefit of the estate of a deceased person shall not include exemplary damages;
 - (iv) by operation of section 4(2)(c) of the *Law Reform (Miscellaneous Provisions) Act 1941* (WA), the damages recoverable for the benefit of the estate of a deceased person shall not include exemplary damages;
 - (v) by operation of s.16(2) of the *Civil Law (Wrongs) Act 2002* (ACT), the damages recoverable for the benefit of the estate of a deceased person do not include exemplary damages;
 - (vi) by operation of section 27(3)(c) of the *Administration and Probate Act 1935* (Tas), the damages recoverable for the benefit of the estate of a deceased person shall not include exemplary damages;

- (vii) by operation of section 3(1)(d) of the *Survival of Causes of Action Act* 1940 (SA), the damages recoverable for the benefit of the estate of a deceased person shall not include exemplary damages;
- (viii) by operation of section 6(1)(a) of the *Law Reform (Miscellaneous Provision) Act* 1956 (NT), the damages recoverable for the benefit of the estate of a deceased person shall not include exemplary damages.

88. It does not plead to paragraph 88 as no allegations are made against it.

O. Common Questions of Law or Fact

- 89. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 89 as it makes no allegations against it.
- 90. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 90 as it makes no allegations against it.
- 91. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 91 as it makes no allegations against it.
- 92. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 92 as it makes no allegations against it.
- 93. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 93 as it makes no allegations against it.
- 94. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 94 as it makes no allegations against it.
- 95. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 95 as it makes no allegations against it.
- 96. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 96 as it makes no allegations against it.
- 97. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 97 as it makes no allegations against it.
- 98. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 98 as it makes no allegations against it.

99. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 99 as it makes no allegations against it.
100. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 100 as it makes no allegations against it.
101. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 101 as it makes no allegations against it.
102. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 102 as it makes no allegations against it.
103. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 103 as it makes no allegations against it.
104. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 104 as it makes no allegations against it.
105. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 105 as it makes no allegations against it.
106. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 106 as it makes no allegations against it.
107. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 107 as it makes no allegations against it.
108. Save to say that it does not agree with the formulation of all common questions, it otherwise does not plead to paragraph 108 as it makes no allegations against it.

P. Monsanto Company US (Old)

109. As to paragraph 109, it does not know and therefore cannot admit as the Applicant makes no allegations against the First Respondent.
110. As to paragraph 110, it does not know and therefore cannot admit as the Applicant makes no allegations against the First Respondent.

QP. Group Member Claims

- ~~1109~~. 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.

1120. 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.*

1134. Further, to the extent that use of or exposure to Roundup Products is established as a cause of a Group Member's NHL or a deceased NHL Group Member's NHL (which is denied):

- (a) where the circumstances of such use or exposure are such that compensation is payable under the *Workers Compensation Act 1987* (NSW) in respect of their NHL (whether or not a claim for compensation is or has been duly made), then s.151Z(2)(c) of that Act applies to the assessment of common law damages;
- (b) where the circumstances of such use or exposure give rise, or would (in the case of deceased Group Members) have given rise, to an entitlement to compensation under the *Accident Compensation Act 1985* (Vic) and/or the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) for injury arising out of, or in the course of, or due to the nature of, employment, claims for common law damages are subject to the provisions of those Acts as in force from time-to-time, and in particular:
 - (i) where the injury arose before 12 November 1997:
 - A. any action for damages in respect of that injury is subject to s.135A and s.135AC of the *Accident Compensation Act 1985* (Vic);
 - B. by operation of s.135A, any right of action to recover damages for that injury has been contingently extinguished;
 - C. in the absence of compliance with s.135A and s.135AC of the *Accident Compensation Act 1985* (Vic), any right of action remains extinguished, such that no action to recover damages can be maintained; and
 - D. where a Group Member has died, no cause of action and no right to apply for leave to commence proceedings pursuant to s.135A(4)(b), vested in his or her legal personal representative for the benefit of the estate upon his or her death;

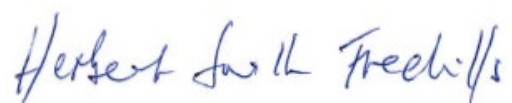
- (ii) where the injury arose on or after 12 November 1997 and before 20 October 1999, any right of action to recover damages for that injury has been abolished by s.134A(1) of the *Accident Compensation Act 1985* (Vic), such that:
- A. no action to recover damages can be maintained; and
 - B. where a Group Member has died, no cause of action vested in his or her legal personal representative for the benefit of the estate upon his or her death;
- (iii) where the injury arose on or after 20 October 1999:
- A. any action for damages in respect of that injury is subject to sections 134AA and 134AB of the *Accident Compensation Act 1985* (Vic) or (in the case of injury arising on or after 1 July 2014) Part 7 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic);
 - B. by operation of s.134AA and s.134AB of the *Accident Compensation Act 1985* (Vic), and (in the case of injury arising on or after 1 July 2014) s.326 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), any right of action to recover damages for that injury has been contingently extinguished;
 - C. in the absence of compliance with s.134AA and s.134AB of the *Accident Compensation Act 1985* (Vic), or (in the case of injury arising on or after 1 July 2014) Part 7 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), any right of action remains extinguished, such that no action to recover damages can be maintained;
 - D. where a Group Member has died, no cause of action and no right to apply for leave to commence proceedings pursuant to s.134AB(16)(b) of the *Accident Compensation Act 1985* (Vic) or (in the case of injury arising on or after 1 July 2014) s.335(2)(d) of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), vested in his or her legal personal representative for the benefit of the estate upon his or her death;

- (c) where the circumstances of such use or exposure are such that compensation has been paid under the *Workers Rehabilitation and Compensation Act 1988* (Tas), the damages which may be recovered from the Third Respondent at common law shall be reduced by the payment of compensation pursuant to s.133(1) of that Act.

1142. Further, to the extent that use of or exposure to Roundup Products is established as a cause of the NHL of any deceased NHL Group Members (which is denied), where the circumstances of such use or exposure give rise, or would give rise, to an entitlement to compensation under the *Accident Compensation Act 1985* (Vic) and/or the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) for injury arising out of, or in the course of, or due to the nature of, employment:

- (a) a claim for damages under Part III of the *Wrongs Act 1958* (Vic) in respect of injury arising before 12 November 1997 is subject to s.135A(8) and s.135A(9) of the *Accident Compensation Act 1985* (Vic);
- (b) a claim for damages under Part III of the *Wrongs Act 1958* (Vic) in respect of injury arising on or after 12 November 1997 and before 1 July 2014 is subject to s.135C of the *Accident Compensation Act 1985* (Vic);
- (c) a claim for damages under Part III of the *Wrongs Act 1958* (Vic) in respect of injury arising on or after 1 July 2014 is subject to s.366 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

Date: 2 August 2022



Herbert Smith Freehills

Solicitors for the First Respondent

This pleading was prepared by ~~Raph Ajzensztat and Daniel Habashy~~, and settled by ~~Steven Finch SC and Robert Craig QC~~, Kateena O’Gorman and Raph Ajzensztat, counsel for the First Respondent.

Certificate of lawyer

I **Peter Butler**, Australian Legal Practitioner and Partner of Herbert Smith Freehills, certify to the Court that, in relation to the amended Defence filed on behalf of the First 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: 2 August 2022



Peter Butler
Partner
Herbert Smith Freehills
Solicitors for the First Respondent

Filed on behalf of Huntsman Chemical Company Australia Pty Ltd, First Respondent

Prepared by Peter Butler AM RFD/Peter Holloway

Herbert Smith Freehills

Tel + 61 2 9225 5686

Email Peter.Butler@hsf.com

Fax + 61 2 9322 4000

Ref 82691702

Address for service ANZ Tower
161 Castlereagh Street
SYDNEY NSW 2000

[Form approved 01/08/2011]

Schedule A to the Amended Defence of the First Respondent

No. VID243 of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

| Product Name | Registration date |
|--|---|
| Roundup Herbicide | 1976-11-11 SA 1988-01-05 NT NSW, TAS and WA (date unknown) |
| Roundup CT Broadacre Herbicide by Monsanto | NSW, SA, TAS, VIC and WA (date unknown) 1988-01-06 NT 1985-01-17 SA |
| Tillmaster Herbicide By Monsanto | 1986-04-14 SA QLD (date unknown) VIC (date unknown) |