



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID243/2020

**KELVIN MCNICKLE**

Applicant

**HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD** and others named in  
the schedule

Respondent

## ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 28 May 2021

**WHERE MADE:** Sydney

### THE COURT ORDERS THAT:

#### Opt Out

1. Pursuant to ss 33X(1)(a) and 33Y(2) of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the form and content of the notices set out in Annexure A, being the “Group Member Notice” and “Attachment A to Notice” (**Opt Out Notice**), be approved.
2. Pursuant to ss 33X(1)(a) and 33Y(3) of the Act, the Opt Out Notice is to be given to group members on or before 8 June 2021 (**Notice Date**) according to the following procedures:
  - a. The solicitors for Mr McNickle will cause a copy of the Opt Out Notice to be displayed in downloadable form on the website maintained by them in relation to these proceedings, [www.mauriceblackburn.com.au/roundup](http://www.mauriceblackburn.com.au/roundup), continuously until the date specified in order 4 below (**Opt Out Date**);
  - b. The solicitors for Mr McNickle will cause the Opt Out Notice to be sent to each person who has registered their contact details with Mr McNickle’s solicitors, such Opt Out Notices to be sent by email where an email address is available, or failing that by ordinary mail;



- c. The solicitors for Mr McNickle will cause the Opt Out Notice to be sent via email where an email address is available, or failing that by ordinary mail, to each person who:
    - i. in response to the notices sent pursuant to orders made in this proceeding on 9 June 2020, elected to opt out of the Fenton proceeding (Federal Court of Australia Proceeding NSD1971/2019) and to remain in this proceeding; and
    - ii. as at the Notice Date, have not registered their contact details with Mr McNickle's solicitors;
  - d. The solicitors for Mr McNickle will make the Opt Out Notice available for inspection at each of the solicitors' offices throughout Australia continuously until the Opt Out Date;
  - e. The District Registrar of the Victorian District Registry of the Federal Court of Australia shall cause the Opt Out Notice to be posted on the Federal Court of Australia website, and made available for inspection at the District Registry of the Federal Court of Australia in Melbourne, Sydney, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin.
3. The costs of, and incidental to, the procedure set out in Order 2 above are to be paid by Mr McNickle, and such costs will be costs in the cause. For the avoidance of doubt, addressing inquiries by group members and members of the public in relation to the Opt Out Notice is work that is incidental to Order 2 above.
  4. Pursuant to s 33J(1) of the Act, the day 6 weeks after the Notice Date, being 20 July 2021 (**Opt Out Date**) be fixed as the date by which group members may opt out of this proceeding.
  5. If, on or before the Opt Out Date, the solicitors for any party receives a notice purporting to be an Opt Out Notice referable to this proceeding, the solicitors must file a copy of the Opt Out Notice with the Federal Court of Australia, Victorian District Registry, within seven (7) days after receiving it, and the Notice shall be treated as an Opt Out Notice received by the Court at the time it was received by the



solicitors.

6. The solicitors for the parties be granted leave to inspect the Court file from time to time and to copy any Opt Out Notices filed.

Date that entry is stamped: 28 May 2021

*Sia Lagos*  
Registrar



**Annexure A**  
(Group Member Notice)

**ROUNDUP CLASS ACTION**

*Kelvin McNickle v Huntsman Chemical Company Australia Pty Ltd & Anor*

(VID 243/2020)

**1. Why is this notice important?**

A class action has been commenced in the Federal Court of Australia by Kelvin McNickle (**Mr McNickle**) against Huntsman Chemical Company Australia Pty Ltd, Monsanto Australia Pty Ltd and Monsanto Company (**Monsanto**).

The class action, known as the Roundup Class Action, seeks compensation (that is, money) for individuals who have been diagnosed with non-Hodgkin lymphoma (**NHL**) by reason of their use of and/or exposure to the herbicide product or products which contained glyphosate and were branded as 'Roundup' or which contained glyphosate and were otherwise branded with the name 'Monsanto' (**Roundup Products**) within Australia at any time between July 1976 and October 2020. These individuals are **Group Members**, as explained in more detail below.

Mr McNickle's solicitors are Maurice Blackburn Lawyers.

The Federal Court has ordered that this notice be published to alert Group Members that they must decide by **20 July 2021** whether they wish to opt out of these proceedings. The opt out process is an important step in the proceeding. Information about opting out of the proceedings is explained in more detail below.

**You should read this notice carefully, as it concerns your rights. If there is anything in it that you do not understand, you should seek independent legal advice.**

**THE OPT OUT DATE IS 20 JULY 2021**

**2. What is a class action?**

A class action is an action that is brought by one person (in this case Mr McNickle) on his own behalf and on behalf of a class of people (these are the Group Members, which may include you) against another person or persons (in this case, Monsanto) where the Applicant and the Group Members have the same or similar claims against the Respondents.

The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf. Anyone who falls within the group definition is automatically included. However, persons can cease to be Group Members by "opting out" of the class action. This is done by filling out a form.

Group Members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either (i)



a judgment following a trial, or (ii) a settlement at any time. If there is a judgment or a settlement of a class action Group Members will not be able pursue the same claims and may not be able to pursue similar or related claims against any of the Respondents in other legal proceedings.

If you consider that you have claims against Monsanto which are based on your individual circumstances or otherwise additional to the claims described in the class action (for example you have suffered a different kind of loss), then it is important that you seek independent legal advice about the potential binding effects of this class action **before** the deadline for opting out (see below). If you stay in this proceeding, and it is determined by a judge, then you may not be able to issue separate proceedings on different, but related, grounds later on.

### **3. What is the Roundup Class Action about?**

Mr McNickle alleges that, by reason of the use of and/or exposure to Roundup Products within Australia between July 1976 and October 2020, he and Group Members have been diagnosed with NHL and as a result have suffered loss and damage.

Mr McNickle alleges that glyphosate, glyphosate-based formulations and Roundup Products were carcinogenic and that when Roundup Products contacted the skin, any surfactants present increased absorption into the bloodstream. Mr McNickle alleges that by reason of Roundup Products being carcinogenic and the presence of surfactants, use of and/or exposure to Roundup Products increased an individual's risk of developing NHL.

Mr McNickle alleges that Monsanto was negligent, that the Roundup Products had a defect and/or a safety defect, and that the Roundup Products were not of merchantable and/or acceptable quality.

Monsanto does not admit the allegations and is defending the class action.

### **4. Are you a Group Member?**

You are a Group Member if you:

- a. Used or were exposed to Roundup Products within Australia between July 1976 and October 2020; and
- b. Have been diagnosed with NHL.

Alternatively, you are also a Group Member if you are:

- a. An executor/administrator, beneficiary or a person with an interest in the estate of a deceased person who met the above criteria before they passed away; or
- b. A dependent of a person who currently meets or previously met the above criteria.

If you are unsure whether or not you are a Group Member, you should contact Maurice Blackburn on the number or email below, or seek your own legal advice without delay.



## 5. Is a Group Member liable for any costs and charges?

Group Members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only Mr McNickle is responsible for the legal costs associated with bringing the class action. The costs of running the Roundup Class Action are being borne in the first instance by Maurice Blackburn to be distributed upon the resolution of this proceeding.

**You will not be liable for any legal costs simply by remaining as a Group Member.**

If the class action is **successful**:

- a. If any money becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that money be used to help pay a share of the costs which are incurred by Mr McNickle in running the class action but which are not able to be recovered from the Respondents. Any costs payable by Maurice Blackburn will be deducted from, and will not exceed, any money that you are entitled to receive. **You will not be exposed to any out of pocket costs;**
- b. If the preparation or finalisation of your **personal claim** requires work to be done in relation to issues that are specific to your claim, you can engage Maurice Blackburn or other solicitors to do that work for you.

If the class action is **unsuccessful**, you will not be exposed to any out of pocket costs.

## 6. What do you need to do?

If you are a Group Member in this proceeding, you have two options:

	<b>Option</b>	<b>Deadline</b>	<b>More information</b>
1.	Stay in the class action	20 July 2021	Section 6(a) below
2.	Opt out of the class action	20 July 2021	Section 6(b) below

### a. **Option 1: Stay in the class action**

**If you wish to remain a Group Member** in the Roundup Class Action there is nothing you need to do at the present time.

Mr McNickle will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of Mr McNickle and the Group Members. If you stay as a Group Member you will be bound by the outcome of the class action, as described in Section 2 above. If it is successful, you will be eligible to benefit from any favourable outcome that is reached in the class action and may need to provide evidence to substantiate your claim as a Group Member. You will also be bound by any orders that the Court



makes in relation to the payment of costs including legal fees. As explained in Section 5 above, **you will not be exposed to any out of pocket costs.**

Although you do not need to do so, you are invited to contact Maurice Blackburn to **register** your contact details so that you can receive updates about the class action. This will also assist Maurice Blackburn to consider your details and circumstances in order to consider and advance your claim specifically for any settlement talks that may occur in the future.

Please note that if you opted out of the Fenton Proceeding you were not automatically registered with Maurice Blackburn. Although you do not need to do so, you are also invited to register your contact details with Maurice Blackburn.

If you would like to sign up to the Roundup Class Action, you can do so by registering your details with Maurice Blackburn at [www.mauriceblackburn.com.au/roundup](http://www.mauriceblackburn.com.au/roundup).

**b. Option 2: Opt out and cease to be a Group Member**

**If you do not wish to remain** a Group Member you must opt out of the class action. If you opt out you will not be bound by the outcome of the class action, as described in Section 2 above. If you opt out, you may decide to:

- (i) Take no further action against Monsanto; or
- (ii) Commence your own proceedings against Monsanto. If you want any claim you have against Monsanto to be pursued you will need to take steps to bring it, and fund it, yourself, which you are free to do provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Monsanto, you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

To opt out of this class action you need to complete an "Opt Out Notice" in the form shown at Attachment A to this Notice, then return it to the Registrar of the Federal Court of Australia at the address on the form by no later than **20 July 2021**.

Each Group Member seeking to opt out should fill out a separate form.

**IMPORTANT: The Notice must reach the Registrar by no later than 20 July 2021, otherwise it will not be effective.**

**7. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the originating application, the statement of claim, the defences, the replies and the rejoinders may be obtained by:

- a. Downloading them from [www.mauriceblackburn.com.au/roundup](http://www.mauriceblackburn.com.au/roundup);
- b. Contacting Maurice Blackburn for a copy:



- (i) By email: [Roundup@mauriceblackburn.com.au](mailto:Roundup@mauriceblackburn.com.au), or
  - (ii) By telephone: 1800 519 743.
- c. Inspecting them by prior appointment at an office of Maurice Blackburn. An appointment can be made by emailing [Roundup@mauriceblackburn.com.au](mailto:Roundup@mauriceblackburn.com.au) or calling 1800 519 743. Please note that Maurice Blackburn has offices located throughout metro and regional Australia.
- d. By contacting a District Registry of the Federal Court (contact details are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au) ) and paying the appropriate inspection fee.

Please consider the above matters carefully.

If there is anything of which you are unsure, you should contact Maurice Blackburn on 1800 519 743 or email [Roundup@mauriceblackburn.com.au](mailto:Roundup@mauriceblackburn.com.au), or seek your own legal advice.



**“Attachment A to Group Member Notice”**

Form 21

Rule 9.34

**OPT OUT NOTICE**

No. VID 243 of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

**KELVIN MCNICKLE**

Applicant

**HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD (ACN 004 146 338)  
and others named in the Schedule**

First Respondent and others according to the Schedule

To: The Registrar  
Federal Court of Australia  
Victorian District Registry  
Owen Dixon Commonwealth Law Courts Building  
305 William Street, Melbourne, Victoria, 3000

The person named below, as a Group Member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the person is opting out of the proceeding.

<b>Name of Group Member</b>	
<b>Postal address of Group Member</b>	
<b>Telephone contact</b>	



<b>Email address</b>	
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If you are signing as the solicitor or representative of the Group Member:

<b>Person completing this form</b>	
<b>Authority of person completing this form</b>	
<b>Postal address of person completing this form</b>	
<b>Telephone contact</b>	
<b>Email address</b>	

Date:

Signed by: (print name)

Circle Capacity: Group Member / Lawyer for Group Member / Group Member Representative



**Schedule**

No: VID243/2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

Second Respondent      MONSANTO AUSTRALIA PTY LTD

Third Respondent      MONSANTO COMPANY

**CROSS CLAIM**

Cross-Claimant      HUNTSMAN CHEMICAL COMPANY AUSTRALIA PTY LTD