

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
Federal Court of Australia Act 1976 - Form 19 - Rule 9.32

Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)

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File Number: VID268/2022

File Title: PAUL TIBOR HORSKY AND OIL SURVEILLANCE AUSTRALIA PTY
LTD ATF D.A LYNCH SUPERFUND v MESOBLAST LIMITED ACN 109
431 870

Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Reason for Listing: To Be Advised

Time and date for hearing: To Be Advised

Place: To Be Advised



Sia Lagos

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.

Form 19
Rule 9.32



Amended Consolidated originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

No. VID 268 of 2022

Federal Court of Australia
District Registry: Victoria
Division: General

PAUL TIBOR HORSKY

First Applicant

OIL SURVEILLANCE AUSTRALIA PTY LTD (ACN 092 979 498) ATF D.A LYNCH SUPERFUND

Second Applicant

MESOBLAST LIMITED (ACN 109 431 870)

Respondent

To the Respondent

Paul Tibor Horsky, and Oil Surveillance Australia Pty Ltd (ACN 092 979 498) ATF D.A Lynch Superfund (**Applicants**) apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia
305 William St, Melbourne VIC 3000

Date:

Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of	Paul Tibor Horsky, First Applicant
Prepared by	Oil Surveillance Australia Pty Ltd (ACN 092 979 498) ATF D.A Lynch Superfund, Second Applicant
Law firm	Ding Pan and Diana Clare Forbes Young
Tel	William Roberts Lawyers/Phi Finney McDonald
Email	(02) 9552 2111/(03) 9134 7100
Address for service	msbclassaction@williamroberts.com.au
	Level 3, 325 Flinders Lane, Melbourne VIC 3000



A. Details of claim

Terms used in the Amended Consolidated Statement of Claim have the same meaning when used in this application. On the grounds stated in the accompanying Amended Consolidated Statement of Claim the Applicants claim for themselves and on behalf of the Group Members:

1. A declaration that the Respondent contravened s 1041H(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and/or section 12DA of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**) and/or section 18 of the *Australian Consumer Law* (**ACL**) by the conduct alleged in the Amended Consolidated Statement of Claim.
2. Damages pursuant to section 1041I(1) of the *Corporations Act* and/or section 12GF(1) of the *ASIC Act* and/or section 236 of the *ACL* on behalf of the Applicants and the Group Members, for loss or damage suffered by reason of the Respondent's contraventions referred to in the paragraph immediately preceding.
3. A declaration pursuant to section 1317E(1) of the *Corporations Act* that the Respondent contravened section 674(2) of the *Corporations Act* and ASX Listing Rule 3.1 by the conduct alleged in the Amended Consolidated Statement of Claim.
4. An order pursuant to section 1317HA(1) of the *Corporations Act* that the Respondent compensate the Applicants and the Group Members for the loss or damage suffered by them as a result of the Respondent's contraventions of section 674(2) of the *Corporations Act*.
5. An order for an aggregate amount of damages in a sum determined by the Court as being the total principal monetary amount of damages to be paid to the Applicants and Group Members by the Respondent pursuant to section 33Z(1)(e), further or alternatively section 33Z(1)(f), further or alternatively section 33Z(1)(g), of the *Federal Court of Australia Act 1976* (Cth) (**Aggregate Damages**), and the formula by which each individual Group Member's loss is to be determined and satisfied from the Aggregate Damages.
6. Interest, including interest on statutory compensation.
7. Costs.
8. Such further or other relief as the Court may deem appropriate.

B. Questions common to claims of Group Members

The questions of law or fact common to the claims of the Applicants and the Group Members are:

1. When did the Respondent become aware (within the meaning of Listing Rule 19.12) of:
 - (a) the SR-aGVHD Trial Deficiencies Information;
 - (b) the SR-aGVHD Approval Application Deficiencies Information;



- (c) the Study 001 No Support for ARDS Treatment Information;
 - (d) the COVID-19 Trial Deficiencies Information; and
 - (e) the Actual COVID-19 Trial Results Information.
2. Whether the:
- (a) the SR-aGVHD Trial Deficiencies Information;
 - (b) the SR-aGVHD Approval Application Deficiencies Information;
 - (c) the Study 001 No Support for ARDS Treatment Information;
 - (d) the COVID-19 Trial Deficiencies Information; and
 - (e) the Actual COVID-19 Trial Results Information.
- was:
- (f) material information; and
 - (g) not generally available,
- within the meaning of ASX Listing Rule 3.1 or Chapter 6CA of the Corporations Act that the Respondent was obliged to disclose, but failed to disclose such that the Respondent contravened section 674(2) of the Corporations Act?
3. Whether the Respondent contravened section 1041H of the Corporations Act or section 12DA(1) of the ASIC Act or s 18 of the ACL by making, maintaining and/or failing to qualify each or any of the:
- (a) SR-aGVHD Representations;
 - (b) COVID-19 ARDS Representations; and/or
 - (c) the Cleansing Notice Representation?
4. Whether the Market Contraventions had the effect that the price of acquisition for MSB Shares was greater than their true value and/or the market price that would have prevailed but for the Market Contraventions, and if so, to what extent, and:
- (a) whether statutory compensation is recoverable by the Applicants and the Group Members?
 - (b) the correct measure of the statutory compensation for which the Respondent may be liable to the Applicants and the Group Members?
 - (c) the aggregate quantum of any compensation or damages to which the Applicants and Group Members are entitled?
5. Whether any, and if so what, relief other than monetary relief should be granted in favour of the Applicants and the Group Members?



C. Representative action

1. The Applicants bring this application as representative parties under Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The Group Members to whom this proceeding relates are all persons who:
 - (a) during the period from 22 February 2018 until the close of trading on 17 December 2020 inclusive (**Claim Period**) acquired:
 - (i) an interest in fully paid ordinary shares (**MSB Shares**) in the Respondent (**Mesoblast**) listed as “MSB” on the Australian Securities Exchange (**ASX**);
 - (ii) an interest in American Depository Receipts traded on the NASDAQ exchange under the symbol “MESO” (**MESO ADRs**);
 - (iii) an interest in securities traded over the counter in the United States with the symbol “MEOBF” (**MEOBF OTCs**); and/or
 - (iv) long exposure to MSB Shares by entering into equity swap confirmations in respect of MSB Shares (**MSB Equity Swaps**),

(together, **Mesoblast Securities**);
 - (b) suffered loss and damage by or resulting from the conduct of the Respondent as described in the Amended Consolidated Statement of Claim (other than those who have only suffered Excluded ADR Loss as defined at paragraph [158] of the Amended Consolidated Statement of Claim); and
 - (c) are not or were not during the Claim Period:
 - (i) directors or officers or a close associate (as defined in section 9 of the Corporations Act) of the Respondent;
 - (ii) a related party (as defined in s 228 of the Corporations Act) of the Respondent; or
 - (iii) a related body corporate (as defined in s 50 of the Corporations Act) of the Respondent; or
 - (iv) an associated entity (as defined in s 50AAA of the Corporations Act) of the Respondent; or
 - (v) a Chief Justice, Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; or
 - (vi) an officer, employee, or legal practitioner engaged by either William Roberts Lawyers or Phi Finney McDonald in relation to the class action; or
 - (vii) an expert or consultant engaged in relation to the class action.



Applicants' address

The Applicants' address for service is:

Phi Finney McDonald
Level 3, 325 Flinders Lane
Melbourne VIC 3000

Email:

msbclassaction@williamroberts.com.au

The First Applicant's address is:

Paul Tibor Horsky
C/- William Roberts Lawyers
Level 22, 66 Goulburn Street
Sydney, NSW 2000

The Second Applicant's address is:

Oil Surveillance Australia Pty Ltd
C/- Phi Finney McDonald
Level 3, 325 Flinders Lane
Melbourne VIC 3000

Service on the Respondent

It is intended to serve this application on the Respondent.

Date:

A handwritten signature in blue ink, appearing to be "Ding Pan".

.....
Signed by Ding Pan

Date: 20 December 2023

A handwritten signature in blue ink, appearing to be "Diana Clare Forbes Young".

.....
Signed by Diana Clare Forbes Young

Lawyers for the Applicants