



## FEDERAL COURT OF AUSTRALIA NOTICE MESOBLAST SHAREHOLDER CLASS ACTION

*Horsky & Anor v Mesoblast Limited (ACN 109 431 870) (VID268 of 2022)*

---

### 1. WHAT IS THIS NOTICE?

---

- 1.1 This notice relates to a class action commenced by Mr Paul Tibor Horsky and Oil Surveillance Australia Pty Ltd (ACN 092 979 498) (as trustee for the D.A. Lynch Superfund) (together, the **Joint Applicants**) in the Federal Court of Australia (the **Court**) against Mesoblast Limited (**Mesoblast**) (this class action is referred to as the **MSB Class Action**).
- 1.2 The Court has ordered that this notice be sent for the information of persons who might be members of the class on whose behalf the MSB Class Action has been brought and who may be affected by the action.
- 1.3 If you purchased securities in MSB between 22 February 2018 to 17 December 2020 (inclusive), **you should read this notice carefully as it may affect your rights**.
- 1.4 As explained below, you may do 1 of 3 things in response to this notice:
  - (a) **Register** for the class action **before 4pm (AEST) on 19 April 2024** (being the **Registration Deadline**), if you have not done so already, and remain in the class action; or
  - (b) **Do nothing** and remain a group member but risk losing the opportunity to receive monies if a settlement is reached; or
  - (c) **Opt Out** of the class action **before 4pm (AEST) on 19 April 2024** (being the **Opt Out Deadline**) if you do not wish to participate. If you opt out, you will lose a right to any money compensation available in this class action (but keep your right to try and get compensation in an action you may start yourself).
- 1.5 Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, please use the contact details in Section 4 below, or alternatively seek your own legal advice.

---

### 2. WHY IS THIS NOTICE IMPORTANT?

---

- 2.1 This notice provides important information about:
  - (a) who is eligible to participate in the MSB Class Action;
  - (b) what you need to do if you do not wish to participate in the MSB Class Action, and instead wish to remove yourself (**opt out**) from being a group member in the MSB Class Action; and
  - (c) if you are eligible to participate, and do not wish to opt out from being a group member, how you can register for the MSB Class Action.
- 2.2 While registration is not mandatory, **failure to do so could have significant consequences for your legal rights**. If there is a settlement agreed between the parties, the parties intend to seek, at the stage of seeking the Court's approval of the settlement, an order that group members who do not register by the Registration Deadline will not be entitled to participate in any settlement that may be reached between the Joint Applicants and Mesoblast without leave of the Court.

---

### 3. AM I A GROUP MEMBER?

---

#### Group membership

- 3.1 You are a group member in the MSB Class Action if during the period from 22 February 2018 until the close of trading on 17 December 2020 (inclusive) (the **Claim Period**) you:
- (a) acquired '**Mesoblast Securities**' being:
    - (i) an interest in fully paid ordinary shares in Mesoblast on the Australian Securities Exchange (**ASX**); or
    - (ii) an interest in American Depository Receipts (**ADR**'s) traded on the NASDAQ exchange under the symbol "MESO"; or
    - (iii) an interest in securities traded over the counter in the United States with the symbol "MEOBF"; or
    - (iv) long exposure to MSB shares by entering into equity swap confirmations in respect of MSB Shares;
  - (b) suffered loss or damage (other than any '**Excluded ADR Loss**' as defined below) by reason of the conduct of MSB, as alleged in the Amended Statement of Claim; and
  - (c) do not fall into the category of persons excluded from the MSB Class Action as set out at paragraph 3.2 below.
- 3.2 The Joint Applicants' Amended Statement of Claim excludes some persons from being group members in the MSB Class Action. Those persons are:
- (a) a director or officer, a close associate, a related party, a related body corporate, or an associated entity of MSB (as defined by the *Corporations Act*) or a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia;
  - (b) an officer, employee, or legal practitioner of either William Roberts Lawyers or Phi Finney McDonald; or
  - (c) an expert or consultant engaged in relation to the MSB Class Action.

#### Excluded ADR Loss

- 3.3 The Joint Applicants do not claim for loss or damage arising from the acquisition of an interest in ADRs traded on the NASDAQ exchange under the symbol "MESO" within the period of 13 December 2018 to 5 April 2020 (inclusive) where the purchaser did not submit a request for exclusion that was accepted by the US District Court for the Southern District of New York in the proceeding titled *Kristal v. Mesoblast Limited, et; al.*

#### Further assistance

- 3.4 If you need help determining whether you're a group member, please refer to the 'Group Member Checklist' appearing at section 7 of this Notice.
- 3.5 Otherwise, you can contact Omni Bridgeway using the contact details available at <https://portal.omnibridgeway.com/cases/register/mesoblast-overview> or email [mesoblast@omnibridgeway.com](mailto:mesoblast@omnibridgeway.com) for further assistance.

---

### 4. INFORMATION ABOUT THE CLASS ACTION

---

#### What is a class action?

- 4.1 A class action is a proceeding that is brought by one or more persons (the **applicant/s**) on their own behalf and on behalf of a group of other people (**group members**), against respondent/s where the applicant/s and the group members have similar claims against the respondent/s.
- 4.2 An applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf. However, group members can cease to be group members by "opting out" of the class action.



- 3 -

- 4.3 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, a *judgment* following a trial, or a *settlement* at any time.
- 4.4 If there is a judgment or settlement of the class action, group members will not be able to pursue the same claims against the respondent and may not be able to pursue similar or related claims against the respondent in other legal proceedings.
- 4.5 It is important that a group member seeks independent legal advice if they consider that they have claims against a respondent which are based on individual circumstances or are in addition to the claims described in the class action.

#### **What is the MSB Class Action?**

- 4.6 The MSB Class Action is brought on behalf of group members who acquired Mesoblast Securities during the Claim Period.
- 4.7 The Joint Applicants in the MSB Class Action are represented by William Roberts Lawyers and Phi Finney McDonald (the **Lawyers**), and the class action is funded by Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd and ICP Funding Pty Ltd (together the **Funders**).
- 4.8 The Joint Applicants allege that during the Claim Period, Mesoblast:
  - (a) breached its continuous disclosure obligations under the *Corporations Act 2001 (Cth)*; and
  - (b) engaged in misleading and deceptive conduct in contravention of the *Corporations Act*, the *Australian Securities and Investments Commission Act 2001 (Cth)* and the *Australian Consumer Law*,by failing to disclose information regarding the application of Remestemcel-L for the treatment of:
  - (c) paediatric patients suffering from steroid-refractory acute graft versus host disease; and
  - (d) patients with acute respiratory distress syndrome caused by the COVID-19 virus.
- 4.9 The Joint Applicants further allege that they and group members suffered loss as a result of those alleged breaches.
- 4.10 Mesoblast has denied the allegations made against it and is defending the action.
- 4.11 The allegations made in the MSB Class Action are set out in full in the Joint Applicants' Amended Statement of Claim. Mesoblast's defences of those allegations are set out in full in its Amended Defence. Both the Statement of Claim and Defence are available at the website listed in section 4.12(a) below.

#### **Where can I obtain more information?**

- 4.12 Copies of relevant documents filed in the MSB Class Action, including the Amended Consolidated Statement of Claim and the Amended Defence, may be obtained by:
  - (a) downloading them from the website of the Lawyers; or
  - (b) 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.
- 4.13 Please consider the above matters carefully. If there is anything about this notice you do not understand, or which you are unsure of, you should seek your own legal advice or contact Omni Bridgeway using the contact details provided <https://portal.omnibridgeway.com/cases/register/mesoblast-overview> or email [mesoblast@omnibridgeway.com](mailto:mesoblast@omnibridgeway.com).

## 5. WHAT ARE MY OPTIONS?

- 5.1 If you are a group member, and have not already registered your claim, you have 3 options. There may be different consequences depending on which option you choose.

<p><b><u>Option 1</u></b> <b><u>Register</u></b></p>	<ul style="list-style-type: none"> <li>• If you wish to register for the MSB Class Action, you may do so now by completing the online registration process available at <a href="https://portal.omnibridgeway.com/cases/register/mesoblast-overview">https://portal.omnibridgeway.com/cases/register/mesoblast-overview</a> by the Registration Deadline on 4pm (AEST) on 19 April 2024. Registrations received after this time will not be accepted with the result that you will be treated as having not registered for the class action.</li> <li>• If you wish to remain a group member and you have already entered into a retainer with Phi Finney McDonald or William Roberts Lawyers, or a funding agreement with Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd or ICP Funding Pty Ltd, in relation to the MSB Class Action, then you do not need to take any further steps in relation to this notice. If any further information is required from you and you have already provided your contact details to Phi Finney McDonald or William Roberts Lawyers, for the MSB Class Action, you will be contacted directly.</li> <li>• While registration is not mandatory, if you do not register it could have <u>significant consequences for your legal rights</u>. This is because the parties intend to seek an order which, if made, has the effect that group members who fail to register by the Registration Deadline will not be entitled to share in any benefits from any settlement that may be agreed. Such an order is proposed to be sought as part of a settlement approval application should a settlement be reached.</li> <li>• If you register, you will be bound by any settlement reached and will have the opportunity to share in any benefit resulting from the settlement. The settlement will be subject to Court approval and you may have to satisfy certain conditions before your entitlement to share in this benefit arises. You will also be bound by any final judgment and have the opportunity to share in the benefit of any favourable judgment.</li> <li>• As part of your registration, you will be asked to supply details of your trades in MSB securities between 22 February 2018 to 17 December 2020 (inclusive).</li> <li>• If you do successfully register:             <ul style="list-style-type: none"> <li>○ your claim will be included for consideration at a mediation which has been ordered to take place in the MSB Class Action;</li> <li>○ you will be eligible to share in any benefits from any settlement; and</li> <li>○ you will receive updates about the progress of the MSB Class Action, including any further notification approved by the Court if any further steps are required in order for you to receive a distribution from any settlement or judgment.</li> </ul> </li> <li>• If you are unable to register online or if you are unsure whether you have already signed up for the MSB Class Action, you can contact Omni Bridgeway using the contact details available at <a href="https://portal.omnibridgeway.com/cases/register/mesoblast-overview">https://portal.omnibridgeway.com/cases/register/mesoblast-overview</a> or email <a href="mailto:mesoblast@omnibridgeway.com">mesoblast@omnibridgeway.com</a>.</li> </ul>
----------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<p><b><u>Option 2</u></b> <b><u>Do Nothing</u></b></p>	<ul style="list-style-type: none"><li>• If you do nothing before the Registration Deadline on <b>4pm (AEST) on 19 April 2024</b> you will remain a group member and you will be bound by any orders made in the class action, and any judgment or approved settlement agreement in the proceeding as a group member.</li><li>• However, you should note that by not registering in accordance with Option 1 outlined above, your legal rights could be adversely impacted. This is because, as explained above, the parties intend to seek an order which, if made, has the effect that group members who fail to register by the Registration Deadline will not be entitled to share in any benefits from any settlement that may be agreed..</li><li>• If such an order is made, you will not receive any payment from the settlement and you will be prohibited from bringing a further claim against MSB in relation to the same issues.</li><li>• If no settlement is agreed, or the Court declines to make the order, you will not lose your rights to participate in the class action.</li></ul>
<p><b><u>Option 3</u></b> <b><u>Opt Out</u></b></p>	<ul style="list-style-type: none"><li>• If you <b>do not</b> wish to be involved in the MSB Class Action you must complete an Opt Out Form in the form appearing at Schedule 1 to this notice and submit it directly to the Court using the details provided at the bottom of that Opt Out Form before the Opt Out Deadline on <b>4pm (AEST) on 19 April 2024</b>.</li><li>• Opt out notices received after this time will not be accepted and you will be treated as having not responded to this notice, and you will remain a group member.</li><li>• By opting out of the MSB Class Action, you will:<ul style="list-style-type: none"><li>○ cease to be a group member in the MSB Class Action and will not be affected by, or entitled to the benefit of, any judgment or orders made in the MSB Class Action;</li><li>○ not be entitled to receive any compensation for any damages award or settlement secured in the MSB Class Action; and</li><li>○ be able to bring your own separate claim against MSB, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against MSB, you should seek your own legal advice about your claim and the applicable time limit prior to opting out.</li></ul></li><li>• Each group member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g., director or partner).</li></ul>



---

## 6. COSTS

---

- 6.1 Group members who remain in the MSB Class Action are not liable to pay any “out of pocket” costs by remaining as a group member.
- 6.2 The legal costs of the MSB Class Action are being funded by the Funders (with a portion being carried by the lawyers). The Funders have also agreed to meet any order requiring the Joint Applicants to pay MSB’s costs for the MSB Class Action.
- 6.3 If the class action is unsuccessful, group members will have no liability.
- 6.4 If the class action is successful, in return for funding the class action, the Funders charge funding fees based on a percentage of the amount recovered in the class action. In the event of a settlement or judgment, the Joint Applicants and the Funders will apply to the Court for an order which will require every group member who is entitled to receive benefits in the MSB Class Action to pay a share of the costs in this class action and to pay the Funders a percentage of the amount of the benefit as commission for funding the proceeding. Such an order will not be made unless the Court is satisfied that it should be made. If such an order is sought, group members will be provided with further information and have an opportunity to object to it should they wish to do so.
- 6.5 **The Court will assess whether any amounts proposed to be deducted are fair and reasonable.** You will be given a notice at that time informing you of the amount which it is proposed to be deducted and given an opportunity to tell the Court if you agree or disagree with what is proposed.
- 6.6 The total amounts deducted for legal costs and the Funders’ commission from any benefits payable to group members will never exceed the amount a group member may be entitled to in the event of a successful outcome.

## 7. GROUP MEMBERSHIP CHECKLIST

#	Question	Answer
1.	Are you: a) a director or officer, a close associate, a related party, a related body corporate, or an associated entity of MSB (as defined by the Corporations Act) or a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; or; b) an officer, employee, or legal practitioner of either William Roberts Lawyers or Phi Finney McDonald; or c) an expert or consultant engaged in relation to the MSB Class Action?	<b>Yes:</b> Go to row 6 <b>No:</b> Go to row 2
2.	Between 22 February 2018 until the close of trading on 17 December 2020 (inclusive), did you acquire an interest in: a) fully paid ordinary shares in Mesoblast on the ASX? b) securities traded over the counter in the United States with the symbol "MEOBF"? c) long exposure to MSB shares by entering into equity swap confirmations in respect of shares in Mesoblast?	<b>Yes:</b> Go to row 7 <b>No:</b> Go to row 3
3.	Between either: 1) 22 February 2018 and 12 December 2018 (inclusive); or 2) 6 April 2020 and 17 December 2020 (inclusive); did you acquire an interest in American Depository Receipts (ADRs) traded on the NASDAQ exchange under the symbol "MESO"?	<b>Yes:</b> Go to row 7 <b>No:</b> Go to row 4
4.	Between 13 December 2018 and 5 April 2020 (inclusive) did you acquire an interest in ADRs traded on the NASDAQ exchange under the symbol "MESO"?	<b>Yes:</b> Go to row 5 <b>No:</b> Go to row 9
5.	Did you submit a request for exclusion that was accepted by the US District Court for the Southern District of New York in the proceeding titled <i>Kristal v. Mesoblast Limited, et; al.</i> ?	<b>Yes:</b> Go to row 7 <b>No:</b> Go to row 8
6.	You are <b><u>NQT</u></b> a group member because you are excluded from the MSB Class Action. This notice does not affect your legal rights and you do not need to take any further action.	
7.	You <b><u>ARE</u></b> a group member, and the Joint Applicants claim loss and damage on your behalf in respect of the Mesoblast Securities you held during the Claim Period.	
8.	You are <b><u>NOT</u></b> a group member if you only acquired an interest in Mesoblast ADRs between 13 December 2018 and 5 April 2020 and did not submit a request for exclusion that was accepted by the US District Court of the Southern District of New York in the proceeding titled <i>Kristal v. Mesoblast Limited, et; al.</i>	
9.	You are <b><u>NOT</u></b> a group member if you did not purchase eligible Mesoblast Securities during the Claim Period.	



SCHEDULE 1

Form 21  
Rule 9.34

**OPT OUT FORM**

*Only complete this form if you wish to OPT OUT of the MSB Class Action*

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

and

**MESOBLAST LIMITED (ACN 109 431 870)**

Respondent

To: The Registrar  
Federal Court of Australia  
Victorian Registry  
305 Williams Street  
Melbourne VIC 3000

..... (Print Name), a group member in  
this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act  
1976* (Cth), that they are opting out of the representative proceeding.

Date: .....

Signature: .....

Signed by (Print Name): .....

Group Member / Lawyer for the Group Member [Circle as appropriate]





**Group Member Details**

Telephone: .....

Email.....

Address:

.....  
.....  
.....

ACN/ABN (If a company or trustee): .....

HIN/SRN: .....

If the securities were acquired on behalf of another person/entity, name of that person/entity:

.....

**If you are signing as the solicitor or representative of the Group Member:**

Name: .....

Capacity in which you are signing: .....

Telephone: .....

Email.....

Address:

.....  
.....  
.....