

FEDERAL COURT OF AUSTRALIA NOTICE
MESOBLAST SHAREHOLDER CLASS ACTION
NOTICE OF PROPOSED SETTLEMENT

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

This notice contains important information about the proposed settlement of the class action proceeding commenced by Mr Paul Tibor Horsky and Oil Surveillance Australia Pty Ltd (ACN 092 979 498) ATF D.A. Lynch Superfund (together, the **Joint Applicants**) against Mesoblast Limited (**Mesoblast**) in the Federal Court of Australia (the **Court**), *Horsky & Anor v Mesoblast Limited (ACN 109 431 870) (VID268 of 2022)* (**MSB Class Action**).

Please read it carefully. If you are a group member in the MSB Class Action, your legal rights will be affected by the proposed settlement if approved by the Court. It is proposed that only Registered Group Members will be entitled to share in the benefits from the proposed settlement. To work out whether you are a group member or a Registered Group Member, see section C below.

SUMMARY OF YOUR OPTIONS

1. If you **do not object** to the Proposed Settlement, you do not need to do anything.
2. If you wish to **object** to the Proposed Settlement then you **must**, by no later than **4:00pm (AEDT) on 11 October 2024**, fill in the form entitled '**Notice of Objection** to Proposed Settlement' annexed to this notice, duly execute it, and file it with the Court by sending it to the address on the form and sending it to the Lawyers by email to: msbclassaction@williamroberts.com.au. Any group member who has filed a Notice of Objection with the Court **must** at the same time send any evidence and written submissions they wish to rely upon in support of the Notice of Objection to the Court by sending it to the address on the form and to the Lawyers by email to msbclassaction@williamroberts.com.au.

A. WHAT IS THIS NOTICE ABOUT?

1. This notice provides important information about a proposed settlement of AU\$26.5 million (**Settlement Sum**) between the Joint Applicants and Mesoblast to resolve the claims of all group members that are the subject of the MSB Class Action. The settlement needs to be approved by the Court and is referred to in this notice as the “**Proposed Settlement**”. The Proposed Settlement (inclusive of interest and costs) includes no admission of liability.
2. The Joint Applicants (who bring the action on their own behalf and on behalf of the group members) are represented jointly by solicitors, William Roberts Lawyers (**WRL**) and Phi Finney McDonald (**PFM**) (together, the **Lawyers**) and the MSB Class Action is funded by ICP Funding Pty Ltd and Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd (together, the **Funders**).
3. A previous Court notice was issued on 1 March 2024 (**2024 Registration and Opt Out Notice**). In accordance with that notice, it is proposed that only Registered Group Members will be entitled to share in the benefits from the Proposed Settlement. You are a Registered Group Member if:
 - (a) on or before 19 April 2024, you entered into a retainer with either of the Lawyers or a funding agreement with either of the Funders; or
 - (b) you registered for the MSB Class Action by 19 April 2024 in accordance with the orders of the Honourable Justice Beach dated 20 December 2023 and the 2024 Registration and Opt Out Notice.
4. The Proposed Settlement requires Court approval. The Court must assess whether any class action settlement is fair and reasonable in the interests of group members. The Court has been asked to approve the Proposed Settlement at a hearing to be held at 9:30 am on 13 December 2024. You are entitled to attend the hearing if you wish to.
5. The settlement approval hearing will take place in the Victorian Registry of the Federal Court of Australia located at the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000.
6. If there is anything in this notice that you do not understand or if you have any questions, you should seek independent legal advice or contact Omni Bridgeway using the contact details available at <https://portal.omnibridgeway.com/cases/register/mesoblast-overview> or email mesoblast@omnibridgeway.com. Please do **not** contact the Court.

B. WHAT IS THE MSB CLASS ACTION ABOUT?

7. The MSB Class Action is brought on behalf of group members who acquired Mesoblast Securities (as defined below at paragraph 12 of this notice) during the period from 22 February 2018 until the close of trading on 17 December 2020 (**Claim Period**).
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 or 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:

- (a) paediatric patients suffering from steroid-refractory acute graft versus host disease; and
- (b) patients with acute respiratory distress syndrome caused by the COVID-19 virus.
9. The Joint Applicants further allege that they and the group members suffered loss as a result of those alleged breaches.
10. The allegations are denied by Mesoblast. Mesoblast defended the MSB Class Action. The Proposed Settlement acknowledges that Mesoblast makes no admissions as to liability.
11. Full details of the allegations made by the Joint Applicants and of Mesoblast's defence against those allegations are set out in the Amended Consolidated Statement of Claim and the Amended Defence to the Amended Consolidated Statement of Claim, which can be obtained by:
- (a) downloading them from <https://www.williamroberts.com.au/class-actions/mesoblast-ltd/> or <https://phifinneymcdonald.com/action/mesoblast-class-action/>; or
- (b) contacting a District Registry of the Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee.

C. GROUP MEMBERS AND REGISTERED GROUP MEMBERS

12. You are a group member in the MSB Class Action if you:

- (a) acquired '**Mesoblast Securities**' during the Claim Period 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 (**ADRs**) 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 Mesoblast shares by entering into equity swap confirmations in respect of MSB shares;
- (b) suffered loss or damage (other than '**Excluded ADR Loss**' as defined below at paragraph 13) by reason of Mesoblast's alleged conduct, as pleaded in the Amended Consolidated Statement of Claim;

- (c) did not opt out of the MSB Class Action in accordance with the orders of the Honourable Justice Beach dated 20 December 2023 and the 2024 Registration and Opt Out Notice; and
 - (d) are not a person excluded in the definition of group member in paragraph 2 of the Amended Consolidated Statement of Claim, such as a director, officer, close associate, or a related party/body corporate/entity of MSB (as defined by the *Corporations Act*).
13. 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*.
14. All group members will be bound by the terms of the Proposed Settlement, if approved by the Court. However, as noted in paragraphs 2.2 and 5.1 of the 2024 Registration and Opt Out Notice, the parties intend to seek an order from the Court which, if made, would have the effect that group members who were not registered for the MSB Class Action by 19 April 2024 will not be entitled to participate in the Proposed Settlement without leave of the Court.
- 15. To reiterate, you are a Registered Group Member if:**
- (a) **on or before 19 April 2024, you entered into a retainer with either of the Lawyers or a funding agreement with either of the Funders; or**
 - (b) **you registered for the MSB Class Action by 19 April 2024 in accordance with the terms of the 2024 Registration and Opt Out Notice.**

D. KEY TERMS OF THE PROPOSED SETTLEMENT

16. The key terms of the Proposed Settlement which the Court will be asked to approve are as follows:
- (a) Mesoblast will pay the Settlement Sum of AU\$26.5 million to settle the MSB Class Action. This payment is an "all in" amount which means it is a fixed and final amount to cover all claims the subject of the MSB Class Action, legal costs, funding commission and all costs associated with the settlement.
 - (b) The settlement covers the Joint Applicants and all group members.
 - (c) The payment of the Settlement Sum is in exchange for releases in favour of Mesoblast that are commonly agreed in class action settlements. Those releases are in respect of the claims made by the Joint Applicants on their own behalf and on behalf of the group members in this proceeding, including any claims which directly relate to the matters or issues the subject of this proceeding. This will prevent you from bringing any future claims against Mesoblast in relation to the subject matter of the MSB Class Action, regardless of whether you are a Registered Group Member and whether or not you receive any benefit from the Proposed Settlement.

17. If the Proposed Settlement is not approved by the Court, the MSB Class Action will continue and there will be no distributions of any monies to group members unless and until the Joint Applicants are successful in the proceeding, or a further settlement is reached.

E. PROPOSED DISTRIBUTION AND DEDUCTIONS FROM THE SETTLEMENT SUM

18. At the settlement approval hearing, the Joint Applicants will seek orders from the Court to approve a proposed settlement scheme (**Settlement Scheme**) which will establish how Registered Group Members' entitlements are to be calculated, and the process to distribute the Settlement Sum.
19. The process by which the Settlement Sum is proposed to be distributed will be outlined in the Settlement Scheme. The Settlement Scheme is subject to Court approval.
20. The Settlement Scheme proposes that after making deductions (see paragraph 22 below) the balance of the Settlement Sum will be distributed between Registered Group Members. A confidential "Loss Assessment Formula" contained in the Settlement Scheme will detail how each Registered Group Member's entitlement will be calculated.
21. At this stage it is not possible to provide an estimate of how much Registered Group Members will receive from the settlement. That is because the amount of monies to be distributed to each Registered Group Member under the Settlement Scheme will depend on a number of factors, such as the number of Mesoblast Securities purchased, the date of purchase, whether any of those Mesoblast Securities were sold, the overall losses of all Registered Group Members sharing in the Proposed Settlement, the total amount of the deductions from the Settlement Sum which are approved by the Court and any interest earned on the Settlement Sum prior to final distributions. Please note that no money is proposed to be distributed to group members who are not Registered Group Members.
22. Under the Settlement Scheme, the Joint Applicants propose that the following amounts (each of which is subject to Court approval) will be deducted from the Settlement Sum before it is distributed to Registered Group Members, shared in accordance with the Loss Assessment Formula:
- (a) legal costs paid by the Funders by the time of the settlement approval hearing (**Project Costs**), in an estimated amount of approximately \$6,475,738.61, inclusive of GST. This represents approximately 24% of the gross Settlement Sum.
 - (b) Funding commission in an estimated amount of \$5,807,035.80 paid to the Funders, representing 29% of the Net Settlement Sum (the Project Costs and funding commission are explained further below under the heading 'Litigation Funding').
 - (c) The Lawyers' legal costs for work not funded by the funders, up to and including the settlement approval hearing, which total an estimated amount of \$2,225,457.99 (including a 25% uplift fee chargeable on deferred fees).
 - (d) A costs referee will be appointed to assess the reasonableness of the deductions in (a) and (c) above, and the costs referee's fees in an estimated amount of \$11,000 will be deducted from the Settlement Sum. This represents approximately 0.04% of the gross Settlement Sum.
 - (e) Costs of administering the Settlement Scheme, in an estimated amount of \$290,000.00. It is proposed that WRL be appointed as settlement fund administrator

under Court supervision.

- (f) Not more than \$17,500.00 to be paid to each of the Joint Applicants (totalling not more than \$35,000.00) to reimburse them in recognition of their time in acting as a representative party in the MSB Class Action.

23. The final amount of the legal costs that the Joint Applicants seek to have deducted from the Settlement Sum may vary from this estimate, because at the present time it is not possible to predict the exact amount of legal costs that will be incurred to the finalisation of the proceedings. It will ultimately be a matter for the Court to determine the amount of legal costs which it considers is fair and reasonable, and which may then be deducted from the Settlement Sum.

24. As part of the settlement approval process, the Court has appointed an independent costs referee to provide an opinion to the Court on the reasonableness of the amount of legal costs and disbursements that the Joint Applicants propose be deducted from the Settlement Sum.

25. A copy of the Settlement Scheme will be available well before the settlement approval hearing. You may request a copy by contacting the Lawyers by email at msbclassaction@williamroberts.com.au. Some parts of the Settlement Scheme may be confidential, and you may be asked to agree to keep those parts confidential.

Further Explanation as to Project Costs and Funding Commission

26. The Funders provided litigation funding for the Joint Applicants' prosecution of the MSB Class Action on behalf of group members pursuant to the Joint Funding Terms annexed to the Court orders dated 19 October 2022.

27. Under this arrangement, the Funders:

- (a) indemnified the Joint Applicants against any adverse costs orders;
- (b) paid Project Costs comprising legal costs and other costs incurred in prosecuting the proceeding, such as the cost of solicitors, barristers, and experts, and GST where applicable;
- (c) paid, in addition to the Project Costs, other costs and/or provided other financial support ancillary to the provision of security for the Respondent's costs, for which no reimbursement is sought to be deducted from the Settlement Sum;
- (d) provided client liaison team services to group members; and
- (e) as against the Joint Applicants and group members who have entered into a funding agreement, are contractually entitled to be paid a commission of 29% of the Net Settlement Sum for providing funding and other financial support prior to the commencement of and during the proceedings.

28. As part of the Court approval of the Proposed Settlement, the Funders will seek an order for the reimbursement of the Project Costs and, in addition, a "settlement common fund order" for payment of the Funders' commission, representing 29% of the **Net Settlement Sum**, being the Settlement Sum, less the aggregate amount of the Project Costs (as defined in paragraph 22(a)). The Net Settlement Sum is presently estimated to be \$20,024,261.39 and accordingly, the Funders' commission is presently estimated to be \$5,807,035.80.

29. If granted, the order for the reimbursement of the Project Costs and payment of a funding commission would allow a deduction from the Settlement Sum for all Registered Group Members who stand to benefit from the proceeding to contribute to the reimbursement of the Project Costs and payment of the funding commission in a fair manner. Such an order is commonly made – in this regard, the Court’s Class Actions Practice Note (GPN-CA) states that in an open class action (such as the MSB Class Action), class members may expect that if an application is made, and if in all the circumstances it is fair, just, equitable and in accordance with principle, the Court will make an appropriately framed order to prevent unjust enrichment and equitably and fairly distribute the burden of reasonable legal costs, fees and other expenses (including reasonable litigation funding charges and commission) amongst all persons who have benefited from the action.

F. WHAT IS THE PROCESS FOR SETTLEMENT APPROVAL

30. As noted at paragraph 4 above, the Proposed Settlement will only take effect if it is approved by the Court. In deciding whether to approve the Proposed Settlement, the Court will consider whether the Proposed Settlement is fair and reasonable and in the interests of the group members as a whole.

31. The Court will have a hearing on 13 December 2024 to determine whether to approve the Proposed Settlement. You are entitled to attend the hearing if you wish to.

G. YOUR OPTIONS

32. If you **do not object** to the Proposed Settlement, you do not need to do anything. If you are not a Registered Group Member and you do not do anything, then as stated above, if the Proposed Settlement is approved by the Court, you will be prevented from bringing any future claims against Mesoblast in relation to the subject matter of the MSB Class Action and you will not be entitled to share in the benefit from the Proposed Settlement.

33. If you wish to **object** to the Proposed Settlement then you **must**, by no later than **4:00pm (AEDT) on 11 October 2024**, fill in the form entitled ‘**Notice of Objection** to Proposed Settlement’ annexed to this notice, duly execute it, and file it with the Court by sending it to the address on the form and sending it to the Lawyers by email to: msbclassaction@williamroberts.com.au. Any group member who has filed a Notice of Objection with the Court **must** at the same time send any evidence and written submissions they wish to rely upon in support of the Notice of Objection to the Court by sending it to the address on the form and to the Lawyers by email to msbclassaction@williamroberts.com.au.

34. If you are not a Registered Group Member and would like to share in the benefit from the Proposed Settlement, you should state the reasons why you believe you should do so in a Notice of Objection filed in accordance with the above. The Court will then consider your Notice of Objection and decide whether you can share in the Proposed Settlement. There is no guarantee that the Court will allow any person who is not already a Registered Group Member to share in the benefit from the Proposed Settlement.

35. If you object, you are entitled to attend the settlement approval hearing at 9:30 am on 13 December 2024 to explain the basis of your objection to the Judge if you wish to do so. If you do not attend, then the Court may give consideration to your objection and to the approval of

the Proposed Settlement in your absence. You may wish to seek independent legal advice in relation to opposing the Proposed Settlement.

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

No. VID268 of 2022

Federal Court of Australia

District Registry: Victoria

Division: General

Paul Tibor Horsky

First Applicant

Oil Surveillance Australia Pty (ACN 092 979 498) ATF D.A. Lynch Superfund

Second Applicant

Mesoblast Limited (ACN 109 431 870)

Respondent

Complete this form if you wish to submit an objection to the Proposed Settlement.

If you support the proposed settlement, you do **NOT** need to return this form.

Please note that if you submit a Notice of Objection to Proposed Settlement, your name and your specific circumstances (including transaction details and grounds of objection) may be read out in Court and/or referred to in orders and/or judgments of the Court.

Your Notice of Objection will be considered by the Court when it is determining whether to approve the Proposed Settlement.

If you wish to object to the Proposed Settlement, or any aspect of it, by **4.00 pm (AEDT) on 11 October 2024** you must file this form and any evidence/submissions in support by sending these documents to the Victorian Registry of the Court at the address below **and** to the Lawyers by email to msbclassaction@williamroberts.com.au.

Any Notice of Objection received after this deadline may not be considered by the Court when it is determining whether to approve the Proposed Settlement.

Address of Victorian Registry of the Federal Court of Australia

To: Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

The person identified below gives notice pursuant to order 13 of the orders of the Court made on 6 September 2024 that the person is a group member in the MSB Class Action and **OBJECTS** to the Proposed Settlement of this proceeding, for the reasons outlined.

A. DETAILS OF OBJECTING GROUP MEMBER

- on or before 19 April 2024, I entered into a funding agreement with one of the Funders; or
- on or before 19 April 2024, I entered into a retainer one of the Lawyers; or
- I registered in the MSB Class Action by 19 April 2024; or

If you have done any of the above, you are a **Registered Group Member**.

- I have not done either of the above and therefore am not a Registered Group Member.

Details of the group member, being the person or entity that acquired an interest in Mesoblast Securities:

Name of Group Member	
ACN/ABN [<i>if company</i>]	
Person completing this form	
Capacity [<i>e.g., individual, partnership, trustee/agent</i>]	
Telephone	
Email	
Postal address	

B. RELEVANT TRANSACTIONAL INFORMATION

If you are not a registered group member, you are required to provide the following information. Further, you are required to provide documentary evidence from a third party (e.g. contract notes or transaction receipts) in support of each acquisition and disposal of Mesoblast

Securities during the period from 22 February 2018 until the close of trading on 17 December 2020 (inclusive).

If you are a registered group member, you are **not** required to provide the following information. Please proceed to Sections C, D and E below.

HIN/SRN under which Mesoblast Securities were traded	
Number of Mesoblast Securities held as at close of trade on 21 February 2018	
Total number of Mesoblast Securities acquired by the objector during the period 22 February 2018 until close of trading on 17 December 2020 (inclusive)	
Total number of Mesoblast Securities disposed of by the objector during the period 22 February 2018 until close of trading on 17 December 2020 (inclusive)	

C. ATTENDANCE AT HEARING AT 9:30 AM (AEDT) on 13 DECEMBER 2024

- I do not intend to appear, but wish for my submissions to be considered in my absence
- I intend to appear before the Court at the hearing at 9:30 am on 13 December 2024

[please tick one]

If you intend to appear, please complete the following:

- I will appear on my own behalf
- I will be represented by a lawyer

[please tick one if you intend to appear]

D. GROUND(S) OF OBJECTION

Please state the reasons in support of your objection to the Proposed Settlement [*set out in the space below any submissions you wish to make, attach additional pages if necessary*]: If you are not a Registered Group Member and you would like to share in the benefit from the Proposed Settlement, please state the reasons why you believe you should do so.

E. EXECUTION OF NOTICE

If you are completing the Notice of Objection on behalf of an individual shareholder you must sign and have your signature witnessed.

If you are completing the Notice of Objection on behalf of a company with a sole director or as the sole trustee, the sole director or sole trustee must sign and have their signatures witnessed.

If you are completing the Notice of Objection on behalf of a company or trust (with more than one director or trustee), two directors of the company, a director and a company secretary of the company, or two trustees must sign. A witness signature is not required.

By signing below, I confirm that the information I have provided in this form is true, complete and correct:

Signed:	
Name	
Position	
Date	
Witness Signature	
Name of Witness	

Second signature:	
Name	
Position	
Date	
Witness Signature	
Name of Witness	