



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID268/2022

PAUL TIBOR HORSKY and another named in the schedule
Applicants

MESOBLAST LIMITED (ACN 109 431 870)
Respondent

ORDER

JUDGE: Justice Beach

DATE OF ORDER: 13 December 2024

WHERE MADE: Melbourne

OTHER MATTERS:

A. In these orders:

“Act” means the *Federal Court of Australia Act 1976* (Cth).

“Deed” means the Deed of Settlement at Confidential Exhibit DP-1 to the First Pan Affidavit.

“Fund Administrator” means WRL, or such other person as the Court may appoint, as a Court-appointed administrator of the settlement fund.

“Funders” means:

- (a) Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd (OBL); and
- (b) ICP Funding Pty Ltd (ICP).

“Group Members” has the meaning given to it in paragraph 2 of the Amended Consolidated Statement of Claim filed on 22 December 2023 (save for any person or entity who has opted out of this proceeding).



“Joint Applicants” means the First Applicant and the Second Applicant.

“First Pan Affidavit” means the affidavit of Ding Pan affirmed on 29 August 2024.

“PFM” means Phi Finney McDonald Pty Ltd.

“Second Pan Affidavit” means the affidavit of Ding Pan affirmed on 15 November 2024.

“Registered Group Member” has the meaning given to that term in order 3 of the orders made by this Court on 6 September 2024.

“Settlement Scheme” means the Settlement Scheme at pages 365 to 404 of Exhibit DP-3 to the Second Pan Affidavit.

“WRL” means William Roberts Pty Ltd.

- B. The amounts in order 6 of these orders adopt the costs assessed as reasonable by the Court appointed costs referee, save for the amounts in order 6(a)ii and 6(c)ii which include, as applicable, the value of the “Disputed Reductions” as that term is defined in paragraph 19 of the affidavit of Timothy Michael Luke Finney affirmed on 15 November 2024.

THE COURT ORDERS THAT:

Approval of the settlement

1. Pursuant to s 33V of the Act, the settlement of this proceeding on the terms set out in:
 - (a) the Deed; and
 - (b) the Settlement Scheme,be approved.
2. Pursuant to s 33ZF of the Act, the Joint Applicants are authorised, nunc pro tunc, to enter into and give effect to the Deed and all transactions contemplated by it for and on behalf of the Group Members.



3. Pursuant to s 33ZB of the Act, the persons affected and bound by the settlement of this proceeding are the Joint Applicants, the Respondent and Group Members.

Appointment of Fund Administrator

4. Pursuant to ss. 33ZF and 23 of the Act, WRL be appointed as the Fund Administrator and is to act in accordance with the Settlement Scheme and is to have the powers and immunities conferred by the Settlement Scheme, subject to any direction of this Court.
5. The Fund Administrator has liberty to apply in relation to any matter arising under the Settlement Scheme including for the purposes of seeking orders consequential to or in connection with the Deed and/or the Settlement Scheme.

Approval of amounts to be deducted pursuant to the Settlement Scheme

6. Pursuant to s 33V of the Act, the following amounts are approved for the purposes of the Settlement Scheme:
 - (a) the amount of \$6,202,989.96 (incl. GST) in respect of Project Costs, being legal costs paid or agreed to be paid by the Funders (excluding the costs referee's fees), to be paid to the Funders in the following proportions:
 - (i) the amount of \$2,813,783.94 to be paid to ICP in respect of WRL's professional fees and disbursements; and
 - (ii) the amount of \$3,389,206.02 to be paid to OBL in respect of PFM's professional fees and disbursements;
 - (b) the amount of \$5,886,132.91 (incl. GST) in respect of funding commission to be shared equally by the Funders as follows:
 - (i) the amount of \$2,943,066.45 to be paid to ICP; and
 - (ii) the amount of \$2,943,066.46 to be paid to OBL;



- (c) the amount of \$2,000,327.31 (incl. GST) in respect of the Joint Applicants' lawyers' legal costs for work not funded by the Funders (including 25% uplift on deferred fees) to be paid to the lawyers in the following proportions:
 - (i) the amount of \$832,120.75 to be paid to WRL; and
 - (ii) the amount of \$1,168,206.56 to be paid to PFM;
- (d) the amount of \$11,000 to be paid to the costs referee, Mr Ian Ramsey-Stewart in respect of his fees as costs referee;
- (e) the amount of \$316,718.05 to be paid to the Fund Administrator for its role in administering the Settlement Scheme;
- (f) the amount of \$35,000 to be paid to each of the Joint Applicants in the following proportions to reimburse them for their time in acting as a representative party in these proceedings:
 - (i) \$17,500 to be paid to the First Applicant; and
 - (ii) \$17,500 to be paid to the Second Applicant.

Late Registrants & Post-Mediation Objectors

7. The persons referred to at paragraph 70(a), (b) and (c) of the Second Pan Affidavit are to be treated as Registered Group Members for the purposes of the Settlement Scheme.
8. The persons referred to at paragraph 70(d) and (e) of the Second Pan Affidavit are not to be treated as Registered Group Members for the purposes of the Settlement Scheme.
9. Any Group Member who is not a Registered Group Member or treated as such by the effect of these orders, will remain a Group Member for all purposes of this proceeding but shall not be permitted to seek any benefit pursuant to the settlement approved by this Court.



Confidentiality

10. Until further order, pursuant to ss. 37AF and 37AG(1)(a) of the Act, and in order to prevent prejudice to the proper administration of justice, the material referred to in Schedule A to these orders is:

(a) not to be published or disclosed without the prior express consent of the Joint Applicants and/or prior leave of this Honourable Court to any person or entity other than:

(i) this Court;

(ii) the Joint Applicants;

(iii) the Funders and their respective legal advisors; and

(b) not to be disclosed to the Respondent or its legal representatives, other than to the extent that the material identified in Schedule A has previously been disclosed to them during this proceeding.

11. Until 49 days from the date of any order approving the proposed settlement in these proceedings under s 33V of the Act, pursuant to ss. 37AF and 37AG(1)(a) of the Act, and in order to prevent prejudice to the proper administration of justice, the material referred to in Schedule B to these orders is:

(a) not to be published or disclosed without the prior express consent of the Joint Applicants and/or prior leave of this Honourable Court to any person or entity other than:

(i) this Court;

(ii) the Joint Applicants;

(iii) the Funders and their respective legal advisors; and



- (b) not to be disclosed to the Respondent or its legal representatives, other than to the extent that the material identified in Schedule B has previously been disclosed to them during this proceeding.

Other Orders

12. All deeds of indemnity provided to the Respondent by the Funders in accordance with orders 3 and 4 of the orders made by this Court on 5 April 2023 be returned to the Joint Applicants' solicitors or be destroyed within 14 days of the date of these orders.
13. Pursuant to r 2.43(1) of the *Federal Court Rules 2011* (Cth), the AU\$25,000 paid by ICP into Court on 6 April 2023 as security for the Respondent's costs be returned by transferring it into WRL's trust account.
14. All costs orders made to date in the proceeding be vacated.
15. No order as to costs.
16. The proceeding be dismissed upon notification by the Fund Administrator to this Court of the completion of the implementation of the Settlement Scheme, on the basis that the dismissal is a defence and absolute bar to any claim (either direct or indirect) or proceeding by the Joint Applicants or any Group Member which is in respect of, or arises out of, the same, similar or related circumstances raised in this proceeding.

Date orders authenticated: 13 December 2024


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



SCHEDULE A – Confidential until further order

1. Exhibit DP-4 to the affidavit of Ding Pan affirmed 15 November 2024 (Counsel’s Opinion)

Page(s)	Part claimed	Basis for confidentiality
1-65	Whole.	Legal professional privilege (including legal advice privilege and/or litigation privilege) (Privilege) .

2. Affidavit of Ding Pan affirmed 15 November 2024 (Material incorporating Counsel’s Opinion, or confidential integers to it and solicitor’s opinion)

Item	Para(s)	Part claimed	Basis for confidentiality
1.	[41(b)(i)-(ii)]	The words following “based on:” until the end of subparagraph (b)ii.	Privilege and Prejudicial if no approval.
2.	[42]-[56]	Whole.	Privilege and Prejudicial if no approval.
3.	[93]	The words following “within the Claim Period” to the end of the second sentence.	Privilege and Prejudicial if no approval.
4.	[107]	The words following “loss to be reasonable” to the end of the paragraph.	Prejudicial if no approval.
5.	[108(b)]	The words following “by the Joint Applicants” until the end of (b)i. and ii.	Privilege and Prejudicial if no approval.
6.	[139(c)]	The words following “there has been” to the end of the subparagraph.	Privilege and Prejudicial if no approval.
7.	[182(b)]	The whole of the subparagraph.	Privilege and Prejudicial if no approval.
8.	[182(d)]	The whole of the subparagraph.	Privilege and Prejudicial if no approval.
9.	[182(f)]	The whole of the subparagraph.	Privilege and Prejudicial if no approval.
10.	[182(g)]	The whole of the subparagraph.	Privilege and Prejudicial if no approval.
11.	[182(h)]	The whole of the subparagraph.	Privilege and Prejudicial if no approval.



SCHEDULE B – Confidential until 49 days after the date of any order approving the proposed settlement

1. Affidavit of Ding Pan affirmed 15 November 2024

Item	Para(s)	Part claimed	Basis for confidentiality
1.	[34]-[35]	Whole.	Privilege and provides information which has strategic value to the Respondent and may prejudice the Joint Applicants and GMs should settlement not be approved (Prejudicial if no approval) .
2.	[59]	Whole including the preceding heading.	Privilege and Prejudicial if no approval.
3.	[109]	The dollar figures in each of the subparagraphs.	Privilege and Prejudicial if no approval.
4.	[111]	The dollar figures in the paragraph and the words and figures in the parentheses.	Privilege and Prejudicial if no approval.
5.	[115(a)]	The dollar figures.	Privilege and Prejudicial if no approval.
6.	[115(c)]	The dollar figures and the words and figures in the parentheses.	Privilege and Prejudicial if no approval.
7.	[115(d)]	The dollar figures in the first set of parentheses.	Privilege and Prejudicial if no approval.
8.	[118(a)]	The dollar figure in the first sentence and the dollar figure in the parentheses.	Privilege and Prejudicial if no approval.
9.	[118(c)]	The dollar figure and the words and dollar figures in the parentheses.	Privilege and Prejudicial if no approval.
10.	[118(d)]	The dollar figures in the parentheses immediately following the words "Residual Settlement Sum".	Privilege and Prejudicial if no approval.
11.	[121(a)]	The dollar figures.	Privilege and Prejudicial if no approval.
12.	[121(c)]	The dollar figure and the words and dollar figures in the parentheses.	Privilege and Prejudicial if no approval.
13.	[121(d)]	The dollar figures in the parentheses immediately following the words "Residual Settlement Sum".	Privilege and Prejudicial if no approval.
14.	[125(b)]	The words and dollar figures following "Unregistered Known Claimants with Data would be" to the end of the subparagraph.	Privilege and Prejudicial if no approval.
15.	[125(c)]	The dollar figures in the parentheses immediately following the words "Residual Settlement Sum".	Privilege and Prejudicial if no approval.
16.	[179(a)]	The dollar figure and the words in parentheses	Privilege and Prejudicial if no approval.
17.	[182(a)]	The whole of the subparagraph.	Privilege and Prejudicial if no approval.



2. Exhibits to the affidavit of Ding Pan affirmed 15 November 2024

Item	Page(s), where applicable	Part claimed	Basis for confidentiality
Exhibit DP-3 to the affidavit of Ding Pan affirmed 15 November 2024			
1.	11	The dollar figures in the subparagraphs.	Privilege and Prejudicial if no approval.
2.	21	The words and figures in the column to the right of "Project Payments".	Privilege and Prejudicial if no approval.
3.	22	The words and figures in the first row and in the column to the right of "Estimated Total Legal Spend"	Privilege and Prejudicial if no approval.
4.	25	The dollar figures in the definition of "Estimated Total Legal Spend" and the words and figures in subparagraphs (a)-(c) of that definition, and the dollar figure in the definition of "Lawyer's Funded Fees"	Privilege and Prejudicial if no approval.
5.	26	The dollar figures.	Privilege and Prejudicial if no approval.
6.	51	The dollar figures under the heading "Estimate of Legal Costs".	Privilege and Prejudicial if no approval.
7.	167	The dollar figures.	Privilege and Prejudicial if no approval.
8.	168	The dollar figures.	Privilege and Prejudicial if no approval.
9.	185	The dollar figures.	Privilege and Prejudicial if no approval.
10.	195	The dollar figures.	Privilege and Prejudicial if no approval.
11.	196	The dollar figures.	Privilege and Prejudicial if no approval.
12.	213	The dollar figures.	Privilege and Prejudicial if no approval.
13.	233	The dollar figures.	Privilege and Prejudicial if no approval.
14.	234	The dollar figures.	Privilege and Prejudicial if no approval.
15.	237	The dollar figures.	Privilege and Prejudicial if no approval.
16.	250	The dollar figures.	Privilege and Prejudicial if no approval.
17.	251	The dollar figures.	Privilege and Prejudicial if no approval.
18.	267	The dollar figures.	Privilege and Prejudicial if no approval.
19.	278	The dollar figures.	Privilege and Prejudicial if no approval.
20.	279	The dollar figures.	Privilege and Prejudicial if no approval.
21.	296	The dollar figures.	Privilege and Prejudicial if no approval.
22.	316	The dollar figures.	Privilege and Prejudicial if no approval.
23.	317	The dollar figures.	Privilege and Prejudicial if no approval.
24.	320	The dollar figures.	Privilege and Prejudicial if no approval.
25.	324-335	The content of the document following the words "(Consolidated Proceeding)" until the end of page 335.	Privilege and Prejudicial if no approval.
26.	343-360	Whole.	Privilege and Prejudicial if no approval.
27.	378-404	The content of the document following the words "Fund Administrator."	Prejudicial if no approval.
28.	605-608	The content of the document following the words "(Consolidated Proceeding)"	Privilege and Prejudicial if no approval.
29.	611-617	Entire column under the heading "Description"	Privilege and Prejudicial if no approval.



Item	Page(s), where applicable	Part claimed	Basis for confidentiality
30.	619	Entire column under the heading "Description"	Privilege and Prejudicial if no approval.
31.	627-634	Entire column under the heading "Description"	Privilege and Prejudicial if no approval.
32.	638	Entire column under the heading "Description"	Privilege and Prejudicial if no approval.
33.	640-642	Entire column under the heading "Description"	Privilege and Prejudicial if no approval.
34.	644-646	Entire column to the right of the column under the heading "date"	Privilege and Prejudicial if no approval.
35.	802	The entire content of the document immediately following the word "subject:" other than the email signature.	Privilege and Prejudicial if no approval.
36.	803	The words immediately following "subject:", the words immediately following "Attachments:" and the entire content of the document following the words "Strictly confidential" other than the email signature.	Privilege and Prejudicial if no approval.
Exhibit DP-5 to the affidavit of Ding Pan affirmed 15 November 2024			
37.	6	The dollar figure.	Privilege and Prejudicial if no approval.
38.	7	The dollar figure.	Privilege and Prejudicial if no approval.
39.	24-35	The content of the letter following the email address until the end of page 35.	Privilege and Prejudicial if no approval.
40.	43-60	Whole.	Privilege and Prejudicial if no approval.
41.	61	The entire content of the letter following the words "(VID2685/2022)" other than the signature.	Privilege and Prejudicial if no approval.
42.	62-64	The entire content of the letter following the words "Mr Ramsey-Stewart,".	Privilege and Prejudicial if no approval.
43.	65	The entire contents of the email following the words " <i>Privileged & Confidential</i> " other than the email signature.	Privilege and Prejudicial if no approval.
44.	76-77	The dollar figures.	Privilege and Prejudicial if no approval.
45.	94	The dollar figures.	Privilege and Prejudicial if no approval.
46.	104-105	The dollar figures.	Privilege and Prejudicial if no approval.
47.	122	The dollar figures.	Privilege and Prejudicial if no approval.
48.	142-143	The dollar figures.	Privilege and Prejudicial if no approval.
49.	146	The dollar figures.	Privilege and Prejudicial if no approval.
50.	169-170	The dollar figures.	Privilege and Prejudicial if no approval.
51.	173	The dollar figures.	Privilege and Prejudicial if no approval.
Exhibit DP-6 to the affidavit of Ding Pan affirmed 15 November 2024			
52.	9-10	The entire content of the letter following the words "Mr Ramsey-Stewart,".	Privilege and Prejudicial if no approval.
53.	"Unassessed WRL fees" spreadsheet	The content in the column under the heading "Description" from rows 3 to 20.	Privilege and Prejudicial if no approval.



Item	Page(s), where applicable	Part claimed	Basis for confidentiality
Exhibit DP-7 to the affidavit of Ding Pan affirmed 15 November 2024			
54.	Tab 1 WRL Assessed Fees	The content in the column under the heading "Description" from rows 2 to 2465.	Privilege and Prejudicial if no approval.
55.	Tab 2 WRL Unassessed Fees	The content in the column under the heading "Description" from rows 2 to 1612 and from rows 1621 to 3245.	Privilege and Prejudicial if no approval.
56.	Tab 3 PFM Assessed Fees	The content in the column under the heading "Description" from rows 2 to 5076.	Privilege and Prejudicial if no approval.
57.	Tab 4 PFM Unassessed Fees	The content in the column under the heading "Description" from rows 2 to 4667 and from rows 4676 to 6786.	Privilege and Prejudicial if no approval.

3. Affidavit of Timothy Michael Luke Finney affirmed 15 November 2024

Item	Page(s)	Part claimed	Basis for confidentiality
1.	10-27	Whole.	Privilege and Prejudicial if no approval.



Schedule

No: VID268/2022

Federal Court of Australia

District Registry: Victoria Registry

Division: General

Second Applicant

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