



GROUP PROCEEDING SUMMARY STATEMENT

Case: S ECI 2023 01227

Robert Laird Kilah and Brendan Francis Sinnamon v Medibank Private Ltd

Filed on 21/05/2024 11:33 AM

S ECI 2023 01227

Supreme Court of Victoria

1. What is a class action?

Where seven or more people have claims that arise out of similar circumstances (such as in this case), a class action can be brought by a lead plaintiff on their own behalf and as a representative of others.

It is an efficient way for the Court to resolve common questions of fact or law in claims involving large numbers of people.

2. Why are there two lead plaintiffs?

On 6 September 2023, the Court ordered that two separate but overlapping class actions against Medibank Private Ltd (**Medibank**) (*Robert Laird Kilah v Medibank* (S ECI 2023 01227); and *Brendan Francis Sinnamon v Medibank* (S ECI 2023 02833)) be consolidated into one proceeding, jointly conducted by Quinn Emanuel Urquhart & Sullivan (**Quinn Emanuel**) and Phi Finney McDonald (**PFM**) (the **Lawyers**).

3. Who are the lead plaintiffs and what are their roles and responsibilities?

The plaintiffs in the consolidated class action are Mr Robert Kilah and Dr Brendan Sinnamon.

The plaintiffs' role is to represent the claims of all group members and provide instructions to Quinn Emanuel and PFM regarding the conduct of the case. The plaintiffs may give evidence during the proceeding. In hearing the plaintiffs' claim, the Court will consider and determine (at trial) questions of fact and/or law that are common to all group members.

4. Who is the defendant in this class action, and what is the claim about?

The claim against Medibank concerns information available to investors who:

- (a) acquired an interest in, or entered into a contract to acquire an interest in, ordinary shares in Medibank (**MPL Shares**); and/or
- (b) acquired long exposure to MPL Shares by entering into equity swap confirmations in respect of MPL Shares (**MPL Equity Swaps**);

over the period from 1 July 2019 to 25 October 2022 (inclusive) (**claim period**).

In October 2022, Medibank disclosed a major cyber incident that resulted in a threat actor taking the personal data of 9.7 million customers and health claims data of around 480,000 customers.

The claim alleges that Medibank breached relevant provisions of the *Corporations Act 2001* (Cth) and the *Australian Securities and Investment Commission Act 2001* (Cth) by making misleading or deceptive representations and further, failed to comply with its continuous disclosure obligations as an ASX-listed company, in relation to the information it provided (and/or failed to provide) to investors during the claim period about the adequacy of its privacy and information security controls.

The class action alleges that Medibank's share price was inflated by Medibank's alleged misconduct and that as result group members suffered loss and damage. Alternatively, the class action alleges that some group members would not have purchased shares in Medibank had the alleged wrongdoing not occurred.

5. Who is a group member in the class action?

You are automatically a group member if, between **1 July 2019 and 25 October 2022** inclusive, you acquired (a) an interest in ordinary shares in Medibank; and/or (b) long exposure to Medibank shares by entering into equity swap confirmations in respect of Medibank shares.

An exhaustive definition of 'group member' is available in paragraph 1 of the Consolidated Statement of Claim, which can be downloaded at <https://mplshareholderclassaction.com.au/> or <https://phifinney-mcdonald.com/action/medibank-shareholder-class-action/>.

If you do not wish to participate in the class action there will be an opportunity for you to opt out.

A notice will be distributed in the future which will provide group members with information about their participation in the class action, including their right to opt out and any court-ordered registration process.

Group members can register their interest in the class action by visiting the website:

<https://mplshareholderclassaction.com.au/>, or by email:

medibankshareholders@phifinney-mcdonald.com.

6. How is the class action funded?

On 6 February 2024, the Court made a Group Costs Order at the rate of 27.5%. This means:

- The Lawyers collectively will recover a single, fixed percentage of 27.5% (inclusive of applicable GST) of any damages award or settlement that may be recovered in the proceeding, subject to Court approval or further order;
- The liability for that payment would be shared by the plaintiffs and all group members in the proceeding;
- The Lawyers are liable for any adverse costs payable to the defendant in the proceeding that the Court may order; and
- If an order for security for costs is made in favour of the defendant, the Lawyers will provide this security.

In no circumstances will group members ever be out of pocket by participating in the proceeding – whether the case is successful or unsuccessful.

7. What costs are involved?

The plaintiffs and group members will not be asked to pay any upfront or out-of-pocket costs. Costs will only be payable in the event of a successful outcome (by way of settlement or judgment award). As set out above, Lawyers collectively will recover a single, fixed percentage of 27.5% (inclusive of applicable GST), as payment of their legal costs, subject to Court approval or further order. This means that group members will recover at minimum 72.5% of any damages amount agreed or awarded in the proceeding.

If a successful outcome is not achieved in the class action, the representative plaintiffs and group members will not be required to pay any costs or any other amounts to the Lawyers.

8. Are there any overlapping class actions?

Other law firms have commenced class actions on behalf of consumers affected by the cyber-security incident in the Federal Court of Australia or filed representative complaints with the Office of the Australian Information Commissioner.

9. Who can I contact to get further information?

Group members may contact the Lawyers about the class action (including how to register their claim), at no out-of-pocket cost:

Email medibankshareholders@phifinney-mcdonald.com

Phone (02) 9146 3701 (Quinn Emanuel); or (03) 9134 7100 (PFM).