

COMPETING CLASS ACTIONS ARE AGAIN IN THE SPOTLIGHT

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Legal Briefings - By **Ruth Overington and Jason Betts**

The Full Federal Court has confirmed that the Court has the power to solve the growing problem of competing class actions and stop copycat class actions in their tracks.

Class actions are designed to provide a mechanism through which multiple claims can be dealt with efficiently. However, with the increase in capital available to fund class actions, and the advent of common fund orders which obviate the need to do a 'bookbuild', in recent times¹ we have seen the re-emergence of multiple class actions being commenced in quick succession against the same defendant.

While there is no suggestion that commencing a competing claim is inherently inappropriate, it does undermine one of the fundamental objectives of the regime - namely the efficient resolution of multiple claims. That leads to prejudice for defendants who need to deal with the extra costs and inefficiency of combatting with multiple sets of plaintiffs lawyers and funders.

Courts and defendants have grappled with this issue for several years. Options available include letting matters unfold in the ordinary course (the "wait and see" approach), or limiting the class in one or more claims, allowing all to proceed but ensuring there is no overlap. Neither of these approaches is particularly attractive to defendants, who must respond to multiple sets of pleadings and multiple sets of solicitors and counsel, in relation to largely the same allegations and substratum of facts.

However, in the latest GetSwift decision, the Full Federal Court has confirmed that another option is to pick one of the class actions as the "winner" and allow only that claim to proceed. This approach has the advantage of limiting the burden on the resources of both the Court and the defendant while maintaining the claimant's rights to have their claims heard - albeit in one proceeding, with one set of legal advisers.

The GetSwift decision itself involved three competing funded shareholder class actions. In determining which class action should proceed, the Court received substantial evidence and submissions from each of the plaintiffs and their advisers on all matters, including the funds and resources available to prosecute the claims. This approach is unlikely to be repeated, with the Full Federal Court commenting that the production of such information may give defendants an unfair insight into the 'war chest' available to fight the claims, with the potential for such knowledge to be misused.

While the Court has confirmed a willingness to address the problem that competing class actions raises, inevitably the solution in each situation will depend upon the individual issues involved. As a result, defendants facing multiple class actions must raise these issues on each occasion and the result is not entirely predictable.

In these circumstances the current review into these matters by the ALRC is timely. A legislative fix may be the best solution to this particular class action issue.

If you would like to discuss these issues in further detail, or would like us to conduct a health check of your business' exposure to a potential class action, please contact us on the details below.

ENDNOTES

[Competing Class Actions: Permanent Stays and Claim Selection.](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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