

HAVE WE OPENED THE DOOR TO MARKET BASED CAUSATION?

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Legal Briefings

Recent Australian court decisions are also helping create fertile ground for class action litigation.

In July 2015, the acceptance into Australian law of 'market-based causation' was advanced following a full Federal Court decision allowing investors to argue they do not have to show they directly relied on a company's announcements to the market in order to prove their case.

The extent to which a plaintiff can rely on this causation theory in arguing they suffered loss, is an unsettled and highly contentious aspect of shareholder class action law. Market based causation accepts that shareholders will suffer loss by purchasing shares on an inflated market, during a period of non-disclosure of material information.

The indirect theory does not require an individual to plead reliance on a particular announcement or piece of material information. The argument is that the market itself, which incorporates all available material information into a company's share price rapidly and accurately, can be sufficiently relied upon.

Most Australian shareholder class actions have traditionally pleaded direct causation – in other words, the plaintiff read and relied on a piece of information leading to decisions to trade in a company's securities – alongside indirect causation.

If market based causation is successful at a final hearing, a major precedent for shareholder class actions will be set. It will mean shareholders will no longer need to establish that they read and relied on a company's announcement when deciding to trade in a company's securities.

This development will no doubt encourage shareholder class actions in 2016, adding to what is already a hot market.

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