HERBERT SMITH FREEHILLS HELPS INDUSTRY UNDERSTAND THE RISE OF COMPETING CLASS ACTIONS

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News

As the phenomenon of “competing” class actions continues to grow in Australia, Herbert Smith Freehills has convened a think-tank including some of Australia’s most influential plaintiff lawyers, litigation funders and in-house counsel to examine the Federal Court's recent judgement in a set of class action proceedings against Australian software company GetSwift and forecast what changes the industry can expect should reform become enshrined in legislation.

The GetSwift decision has implications for plaintiffs’ access to justice, the economics of the litigation funding model and the efficiency of the legal system – and therefore the potential legal costs borne by defendants.

The think-tank included IMF Bentham CEO Clive Bowman, the Australian Law Reform Commission's (ALRC) Matt Corrigan, Investor Claim Partner CEO John Walker, Phi Finney McDonald Director Ben Phi and Herbert Smith Freehills Partner and leading class actions expert Jason Betts.

There were 3 class action claims made against listed company GetSwift after an 80% decline in share price. The cases were largely congruent, but brought by different plaintiff law firms with different litigation funders. In GetSwift, the judge decided to allow only one of three competing class actions to proceed, raising many questions about the system, chief among them: how should the courts manage competing class actions?

“About a quarter of all class actions in Australia are competing claims, and it is now more important than ever for organisations to understand the legal landscape in which these claims arise and are dealt with by the courts,” Mr Betts said.

“Corporate Australia must better understand what the implications of the GetSwift judgement mean for class action proceedings in Australia, and how their own organisations might be impacted in the event they find themselves defending against a class action – or series of class actions – in this new environment.”

Herbert Smith Freehills is supporting a proposal by the ALRC to reform class action laws to limit competing class actions.

The limiting of competing class actions would have a number of potential benefits for those involved in the court process, according to Mr Betts.

“Allowing only one claim clearly provides a benefit to defendants,” he said.

“Forcing a single claim does seem to be generating competition and putting downward pressure on funders’ rates. Reform that limits competing class actions could well lead to price competition and innovation, while limiting funders’ exposure.”

The Australian Law Reform Commission – which first established the class action regime in 1988 – is currently exploring the potential for reforms.

“One thing is for certain – the class action space in Australia will be very interesting over the next 12 months,” Mr Betts said.

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