

# Victorian Law Reform Commission (VLRC) review of access to justice and the class actions regime.

## My experience of being involved in a class action

Shareholders, myself included, through Maurice Blackburn took action over **Leighton Holdings** \$1.1 billion in write-downs and \$427 million full-year loss announced on April 11 2011, which saw the company's share price plunge 14 per cent.

The result was \$907 million less than had been forecast only two months earlier on February 14 2011.

Maurice Blackburn filed a claim in October 2010 alleging the company knew of the write-downs months ahead of the decision and so deceived or misled investors.

Maurice Blackburn claimed Leighton's conduct contravened the continuous disclosure rules, the Corporations Act, the Australian Securities and Investments Commission Act and the Australian Consumer Law.

My experience in this matter was positive. I was keen to hold Leighton Holdings to account. I was more concerned the company had not followed ASX continuous disclosure rules and seemingly had allowed larger investors and/or directors an opportunity to offload their shares than to recover some of my losses.

## The result of the class action and its effect for you

The recovery of some of my losses was welcomed. In addition, I, for the first time, became somewhat familiar with class action legal proceedings as provided by Maurice Blackburn using a litigation funder. I also became aware that ASIC, while it can and did impose a fine on Leighton Holdings, was unable to secure compensation to shareholders affected as this aspect was not within the authority of ASIC. The fine by ASIC was paltry compared to the loss by shareholders. It was just \$300,000 for disclosure breaches. So, there is a need for another legal avenue that is cost effective and open to small shareholders via a class action to seek justice and fair compensation.

I give the management of a company a much higher rating when I look to invest than in the past but have still been disappointed with companies such as Newcrest Mining, QBE, CBA and others in how they seem to lack management accountability, lack transparency and have poor corporate governance practices, checks and balances.

## Whether or not you understood the communication from Maurice Blackburn about the case

In essence I understood that Maurice Blackburn would administer and manage the court action. That there would be a fee paid to Maurice Blackburn for legal costs. There were also fees for administration costs in working out the individual amounts of compensation and the payment of that compensation. I cannot remember if the fees paid were a percentage of the compensation received or fixed amount. I assume it was the former.

I also understood that I would not be liable for any legal fees or court costs in the event the court action against Leighton Holdings was unsuccessful.

I also remember that options were given to shareholders such as joining in the class action, doing nothing or opting out.

Whether or not you have any opinion on the fees that Maurice Blackburn were paid or the disclosure of those fees to group members

I have no opinion in relation to this matter except to say that I expected that legal costs and administration fees should be paid.

Whether or not you have an opinion on the 'no-win, no-fee' arrangements

I support the concept of 'no win, no fee' arrangement as without this arrangement small shareholders would not be financially able to afford to take court action against large well-funded companies (or in other compensation matters State or Federal agencies). As such the opportunity to seek and obtain justice and to hold companies to account would be denied to most people. The alternative is to vastly increase funding to legal aid organisations and to broaden the scope of their work.

I would be concerned if there was evidence that some class actions were deemed to be too small to be of interest to funding litigation companies. Again, this would mean that some potential grievances cannot be heard in Court.

Whether or not you were you satisfied with the outcome of the class action process

I was satisfied with the class action process. I see it as supporting the action by ASIC to fine Leightons Holdings. Hopefully the court action and the ASIC fine had an impact on that company and others who may have read the court's judgement or newspaper articles that were covering the matter.

David Kanaley