



HOTEL QUARANTINE CLASS ACTION
5 BOROUGHES NY PTY LTD (ACN 632 508 304) v STATE OF VICTORIA & ORS

Supreme Court of Victoria Case

Case: S ECI 2020 03402

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CLASS ACTION SUMMARY STATEMENT

1. What is a class action?

A class action is a legal proceeding commenced by a 'lead' or 'representative' plaintiff against one or more defendants, seeking to obtain a legal remedy such as compensation. The lead plaintiff brings the claim on their own behalf and on behalf of other claimants who have claims against the defendant(s) arising from similar or related circumstances. The other claimants that are represented by the lead plaintiff in the class action are known as 'group members'.

In a class action, the lead plaintiff's claim is used to resolve legal and factual issues that are common to group members' claims. This allows those common issues to be considered and resolved once in a way that will apply to the claims of all group members affected by that issue, rather than needing to be determined individually for each group member.

2. Who is the Hotel Quarantine Class Action against, and what is the claim for?

The Hotel Quarantine Class Action seeks compensation for loss suffered by businesses alleged to have been caused by negligence in relation to the hotel quarantine program in Victoria.

The plaintiff is seeking compensation from the State of Victoria, which is the first defendant to the proceeding. The other defendants to the proceeding are:

- (a) the Minister for Health and Minister for the Coordination of Health and Human Services: COVID 19;
- (b) the Minister for the Coordination of Jobs, Precincts and Regions: COVID 19;
- (c) the Secretary of Department of Health and Human Services; and
- (d) the Secretary of the Department of Jobs, Precincts and Regions.

The plaintiff alleges that these Ministers and Secretaries were negligent in their actions and/or failures to act concerning the hotel quarantine program. The plaintiff also alleges that the State of Victoria is vicariously liable for the negligence of the Ministers and Secretaries referred to above.

The class action is brought on behalf of the plaintiff and the group members identified below.

3. Who is a group member in the Hotel Quarantine Class Action?

You are a group member if:

- (a) as at 1 July 2020 you carried on a business involving the supply of goods or services to members of the general public from one or more premises physically located within Victoria;
- (b) your ability to supply goods or services to members of the general public from those premises was adversely affected by one or more of:
 - i the "stage 3" restrictions put in place in certain postcodes of Melbourne from 2 July 2020, and in Melbourne and the Mitchell Shire local government area from 9 July 2020;

- ii the “stage 4” restrictions put in place in Melbourne from 2 August 2020, including the workplace closures put in place from 6 August 2020; and
- iii the regional “stage 3” restrictions put in place in Victoria outside of Melbourne from 6 August 2020; and

(c) you have suffered economic loss by reason of one or more of the above-mentioned matters.

4. Who is the law firm acting for the plaintiff?

Quinn Emanuel Urquhart & Sullivan (**Quinn Emanuel**).

5. What is the role and responsibility of the plaintiff?

The plaintiff is the representative for the class and will provide instructions to Quinn Emanuel regarding the conduct of the case and may give evidence during the proceeding. In hearing the plaintiff's case, the Court will be asked to make findings in relation to questions of fact and/or law that are common to group members. In this case the plaintiff is 5 Boroughs NY Pty Ltd (ACN 632 508 304).

6. How is the Hotel Quarantine Class Action funded?

Quinn Emanuel is acting on the basis that its fees will not be payable until and unless there is a successful resolution of the class action, by Court approved settlement or judgment. Quinn Emanuel has a portfolio finance arrangement in place with Regency V Funding Pty Ltd (**Financier**) for disbursements, such as barristers' fees, expert witness fees, and court fees for this class action and other proceedings. This arrangement also provides an indemnity for potential adverse costs.

Quinn Emanuel will be responsible for payment of any amounts to the Financier under the portfolio arrangement, out of any amounts that Quinn Emanuel may be paid pursuant to a group costs order if the class action is successful. Group members are not required to pay any money up-front in order to be involved in the case or to receive any compensation that they are entitled to from it.

7. How are legal fees and disbursements charged?

The plaintiff's legal fees and disbursements are 'conditional', meaning that they are only recoverable by Quinn Emanuel if there is a successful outcome. The plaintiff in this case intends to request the Court to make a group costs order. This would mean that in the event of a successful outcome, the plaintiff's legal fees and disbursements will be calculated as a percentage of the amount of any judgment award or settlement sum, to be shared among the plaintiff and all group members. The percentage is ultimately determined by the Court. If a group costs order is made, that group costs order is inclusive of all the plaintiff's legal fees and disbursements of running the class action, including any amounts to be paid by Quinn Emanuel to the Financier.

In the event that there is not a successful outcome in this class action, group members cannot be pursued for costs by the defendants as the *Supreme Court Act* prohibits orders for costs against group members.

8. Are there any other class actions that relate to the Hotel Quarantine Program?

As at 25 August 2020, the Hotel Quarantine Class Action is the only class action in Australia that has been commenced against the named defendants in respect of the Hotel Quarantine Program.

Two other law firms, Phi Finney McDonald and Arnold Thomas & Becker, have announced that they are investigating a class action in respect of the Hotel Quarantine Program, but have not commenced proceedings. It is not known if proceedings will be commenced by those law firms, or if they will cover the same group members as in this proceeding.

9. Where can group members obtain further information about the case?

For further information about the Hotel Quarantine Class Action, group members may contact Quinn Emanuel by email at, HQclassaction@quinnemanuel.com; or by phone, (02) 9146 3500. Group members will not be charged for any such enquiries.