



LITIGATION FUNDING

Adina Thorn

Class actions give voice to victims

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Class actions are on the rise in New Zealand but they are not as common as they are in Australia where there are around 14 significant class actions launched each year.

These are often seen as David and Goliath events where many distressed consumers band together to seek redress for the actions of organisations with deep pockets

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and access to considerable legal and expert resources.

Some of these actions will require those seeking justice for their perceived losses to bear the costs involved themselves, while others involve outside litigation funders, who agree to pick up the costs of an action in return for a share of any rewards (typically between 30-40%).

Litigation funders are interested because the stakes can be high. They are also selective because of the high risk. Current and planned actions here include a \$170 million plus claim against directors and promoters of Feltex; bank fees claims against ANZ and other major banks; and the kiwifruit growers' negligence claim against Biosecurity NZ for losses estimated at \$280 million.

Most recently, more than 40 customers are banding together to seek compensation against Southern Response over earthquake damage in Christchurch and a class action is being taken against the James Hardie Group as well as possibly other plaster cladding manufacturers. (Disclosure: the author's firm is handling this case.)

Not all legal claims will ever be successful but the costs involved can be high. It is not just a matter of the legal fees. Court costs and expert witnesses must also be paid.

In many cases, the defendants seek to have the claimants put up security against the costs they will have incurred should they successfully defend the class action. This security can amount to millions of dollars.

These costs are in addition to the massive uncertainty, inconvenience and stress that are inherent in litigation.

My own motivation in the plaster cladding class action flows from years of approaches from owners of leaky buildings, who have pretty much lost everything.

Their losses can easily amount to a lifetime of earnings. These owners do not have the resources, or even the inclination, to bring a legal action unless it is funded. This is their only real opportunity to

achieve justice.

To this group of building owners, the appeal of participating in a class action that does not involve them in any out-of-pocket expenses can be appealing.

So when enough of their claims are banded together, the economics change considerably, especially when a litigation funder agrees to pick up the costs and risks of litigation in return for a share of any rewards.

This puts claimants in a more fortunate position that is fairly unique in the litigation world. The playing field becomes more level. The corporate facing the action can no longer just play for time and be selective with any out of court settlements it chooses to make.

International litigation funders also have substantial financial and intellectual resources needed to bring to an action. Unfortunately, they also impose strict requirements, which may mean not all who want to be part of a class action are eligible to join.

That's simply because consistency is an essential part of building a solid statement of claim.

Adina Thorn is principal of Adina Thorn Lawyers, which is leading the \$180 million-plus plaster cladding class action. This is being funded by Europe's largest litigation funder, Harbour Litigation Funding

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