

SUPREME COURT OF NEW SOUTH WALES

RICKHUSS & ORS

v

THE COSMETIC INSTITUTE PTY LIMITED & ORS

(2017 / 279308)

IMPORTANT NOTICE

REPRESENTATIVE ACTION CONCERNING BREAST AUGMENTATION SURGERY PERFORMED ON PATIENTS OF THE COSMETIC INSTITUTE

On 14 September 2017, Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands and Ms Knowland (**plaintiffs**) commenced this representative proceeding in the Supreme Court of New South Wales against The Cosmetic Institute Pty Limited (in liquidation), TCI Bondi Pty Limited (in liquidation), The Cosmetic Institute Parramatta Pty Limited (in liquidation), TCI Southport Pty Limited (in liquidation) and Dr Eddy Dona (**defendants**). The proceeding concerns allegations against the defendants about breast augmentation surgery performed at the defendants' premises or by surgeons engaged and trained by the defendants (**TCI Representative Action**). Persons on whose behalf the proceeding has been brought are defined as "**group members**".

The allegations are explained in more detail in section 2 of this notice. Section 3 describes who is a group member in the proceeding.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this representative action is brought and who may be affected by it.

If you think you may be a group member you should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

1. What is a representative proceeding?

A representative proceeding is commonly known as a class action. It is an action that is brought by the plaintiffs on their own behalf and on behalf of group members against the defendants, where the plaintiffs and the group members have similar claims against the defendants.

Group members are bound by any judgment or settlement entered into in the representative proceeding unless they choose not to participate by "opting out" of the proceeding. This means that:

- (a) if the representative action is successful or settles, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the representative action is unsuccessful, group members are bound by that result; and

- (c) regardless of the outcome of the representative action, group members will not be able to pursue their claims against the defendants in separate legal proceedings unless they have opted out.

2. What is the TCI Representative Action?

The TCI Representative Action is brought by each of the plaintiffs on their own behalf and on behalf of all persons who are group members as defined in the proceeding.

The plaintiffs claim that in and from 2012, the defendants devised and implemented a system of breast augmentation surgery from facilities in New South Wales, and later, from a facility in Southport, Queensland. The plaintiffs in the TCI Representative Action allege that the defendants were negligent in the design, implementation, performance and marketing of their system of breast augmentation surgery, including the anaesthesia under which the surgery was performed. The plaintiffs also allege that the defendants' system of breast augmentation surgery was unsafe and not fit for purpose in contravention of the *Australian Consumer Law*.

The plaintiffs claim that they and group members have suffered personal injury, loss and damage as a result of undergoing breast augmentation surgery at the defendants' premises or by surgeons trained by the defendants. They claim that their injury, loss and damage were caused by the defendants' negligence and contravention of the *Australian Consumer Law* and that they are therefore entitled to damages.

The group members also include any "legal personal representatives" of the estates of any deceased person who would otherwise have qualified as a group member.

The plaintiffs' allegations made on their own behalf and on behalf of group members are detailed in the Statement of Claim filed on 14 September 2017. The first to fourth defendants are not defending the allegations in the representative action. No insurer has agreed to indemnify the first to fourth defendants. The fifth defendant denies the allegations and is defending the representative action.

3. Are you a group member?

Group members are persons who at any time before 15 September 2017:

1. had breast augmentation surgery performed by a surgeon employed or otherwise engaged by the defendants at TCI Parramatta, TCI Bondi Junction, TCI Southport, Concord Private Hospital or Holroyd Private Hospital; **AND**,
2. suffered injury as a result of the said breast augmentation surgery, whether it be physical or psychological injury; **OR**
3. are the legal personal representative of the estates of any deceased persons described in (1) **AND** (2) above.

4. What is opt-out?

The plaintiffs in representative proceedings do not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be group members by "opting out" of the representative proceedings. If you have been included as a group member in the TCI Representative Action but you do not want to continue to be a group member, you **must** opt out now.

5. What should group members do?

If you fit the definition of a "group member" in the representative proceeding, the following two options are available to you:

Option 1: Do Nothing

If you do nothing, you will remain a group member and remain bound by any order, judgment or settlement in the representative proceeding. The plaintiffs will continue to bring the proceeding on your behalf up to the point where the Court determines the questions that are common to the claims of the plaintiffs and the group members.

Option 2: Opt Out

If you do not wish to be a group member you should opt out of the proceeding by completing the "Opt Out Notice" below. If you opt out then you will cease to be a group member and will not be affected by any orders made in the representative proceeding.

If you wish to bring your own claim against the defendants, you should seek your own legal advice about your claim and the applicable time limit before opting out.

You must decide what to do BEFORE 15 July 2019. If you want to opt out you must send your "Opt Out Notice" to the Supreme Court so that it arrives **BEFORE** that deadline.

6. Will you be liable for legal costs?

Group members will not become liable for any legal costs simply by remaining or registering as group members. Group members in a representative action **are not legally liable for the legal costs associated with bringing the proceedings** but may in some circumstances be called upon to contribute a sum by way of security for legal costs of the defendants.

However, if the proceedings are successful and there is a judgment or settlement that results in compensation becoming payable to group members, then:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Turner Freeman Lawyers or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim;
- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the representative proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiffs in running the representative proceeding but which are not able to be recovered from the defendants. The plaintiffs will ask the Court to make such an order if the occasion arises; and

- (c) Representative proceedings are often settled out of Court. If this occurs in this proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

7. Limitation Period

Limitation periods are set by statute. If a person with an entitlement to a claim does not commence legal proceedings by the time a limitation period expires, they may be barred from making a claim.

The commencement of this representative action suspended the limitation periods for all group members who have not opted out. Time starts to run again once a person opts out of the representative action. If you opt out of the representative action and the statutory time limit on your claim expires, or is found to have already expired because you are no longer covered by the representative action, you will be barred from bringing proceedings against the defendants in court. This will depend on your particular individual circumstances.

Again, if you wish to bring your own claim against the defendants in court, you should seek your own legal advice about your claim and the applicable time limit opting out.

8. Where can you obtain further information, including copies of relevant documents?

Copies of relevant documents may be obtained by:

- (a) telephoning Turner Freeman Lawyers on (02) 8222 3333 and requesting a copy to be posted;
- (b) by downloading a copy from the Turner Freeman Lawyers website: <https://turnerfreeman.com.au/nsw/opt-out-notice>
- (c) inspecting a copy of the Statement of Claim by visiting the Registry of the Supreme Court in Sydney at Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW;
- (d) by downloading a copy from the Supreme Court website:
http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/The-Cosmetic-Institute-Class-Action.aspx

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact the plaintiffs' solicitors, Turner Freeman Lawyers on (02) 8222 3333, or on the website (<https://www.turnerfreeman.com.au/nsw/cosmetic-institute-class-action/>). You can also seek your own legal advice.

You should not delay in making your decision, as the deadline for opting out is **15 July 2019**.

This notice is published pursuant to Orders made by the Supreme Court on 3 May 2019.