



**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

Case: S ECI 2023 01227

Filed on: 11/12/2023 10:35 AM

No. S ECI 2023 01227

BETWEEN

ROBERT LAIRD KILAH

First plaintiff

BRENDAN FRANCIS SINNAMON

Second plaintiff

AND

MEDIBANK PRIVATE LIMITED (ACN 080 890 259)

Defendant

REPLY

Date of document: 11 December 2023

Filed on behalf of: the plaintiffs

Prepared by: the joint solicitors for the plaintiffs

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NOTE: In this Reply, the plaintiffs adopt the defined terms used in the Consolidated Statement of Claim dated 3 October 2023 (**CSOC**) unless otherwise indicated.

In reply to Medibank's Defence dated 22 November 2023 (**Defence**), the plaintiffs say as follows:

1. The plaintiffs admit paragraphs 2(a), 81(a), 89(a), 91(a), 93(a), 93(b), 95(b), 97(b), 99(b), 103(b), 105(b), 107(c), 109(b), 111(b), 113(b), 117(a), 149(a), 149(b) and 151(b) of the Defence.
2. In reply to paragraph 3 of the Defence:
 - (a) the plaintiffs deny that the sale transaction pleaded in paragraph 3(b)(ii) of the Defence settled on 3 January 2020 and say instead that it settled on 6 January 2020; and
 - (b) the plaintiffs otherwise admit the paragraph.
3. In reply to paragraph 118 of the Defence:
 - (a) the plaintiffs deny that the representation made by Medibank by reason of the matters pleaded in paragraph 101(f) of the CSOC was to the effect alleged in paragraph 118(b) of the Defence;
 - (b) alternatively, if any such representation was made by Medibank, the plaintiffs:
 - (i) say that Medibank did not have a reasonable basis for the opinion that it was compliant with CPS 234 by reason of the matters pleaded in paragraphs 143 to 148 of the CSOC;
 - (ii) refer to and repeat the matters pleaded in paragraphs 125, 126 and 132 of the CSOC and say that those matters also apply to the representation alleged in paragraph 118(b) of the Defence;
 - (iii) say further that, by reason of (i) and (ii) above, from 10 September 2020 to the end of the Relevant Period, in making, maintaining and/or failing to correct the representation alleged in paragraph 118(b) of the Defence, Medibank engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the *Corporations Act*, s 12DA(1) of the *ASIC Act* and/or s 18 of the *ACL*; and

- (iv) refer to and repeat Section I of the CSOC and say that the matters pleaded therein also apply in relation to the contraventions alleged in (iii) above.
- 4. In reply to paragraph 121 of the Defence:
 - (a) the plaintiffs deny paragraph 121(c) of the Defence;
 - (b) alternatively, if Medibank's Cyber Security Representations constituted a statement of opinion, the plaintiffs:
 - (i) say that Medibank did not have a reasonable basis for that opinion by reason of the matters pleaded in paragraphs 127 to 131 of the CSOC;
 - (ii) refer to and repeat paragraphs 125, 126 and 132 of the CSOC; and
 - (iii) by reason of (i) and (ii) above, refer to and repeat the allegations of contravention made in paragraph 136 of the CSOC.
- 5. In reply to paragraph 122 of the Defence:
 - (a) the plaintiffs deny paragraph 122(c) of the Defence;
 - (b) alternatively, if Medibank's Appropriate Access Representation constituted a representation of opinion, the plaintiffs:
 - (i) say that Medibank did not have a reasonable basis for that opinion by reason of the matters pleaded in paragraphs 127 to 131 of the CSOC;
 - (ii) refer to and repeat paragraphs 125, 126 and 132 of the CSOC; and
 - (iii) by reason of (i) and (ii) above, refer to and repeat the allegations of contravention made in paragraph 138 of the CSOC.
- 6. In reply to paragraph 123 of the Defence:
 - (a) the plaintiffs deny paragraph 123(c) of the Defence;
 - (b) alternatively, if Medibank's Standards Consistency Representation constituted a representation of opinion, the plaintiffs:
 - (i) say that Medibank did not have a reasonable basis for that opinion by reason of the matters pleaded in paragraphs 127 to 131 of the CSOC;
 - (ii) refer to and repeat paragraphs 125, 126 and 132 of the CSOC; and

(iii) by reason of (i) and (ii) above, refer to and repeat the allegations of contravention made in paragraph 140 of the CSOC.

7. In reply to paragraph 124 of the Defence:

(a) the plaintiffs deny paragraph 124(c) of the Defence;

(b) alternatively, if Medibank's Privacy Laws Compliance Representation constituted a representation of opinion, the plaintiffs:

(i) say that Medibank did not have a reasonable basis for that opinion by reason of the matters pleaded in paragraphs 127 to 131 of the CSOC;

(ii) refer to and repeat paragraphs 125, 126 and 132 of the CSOC; and

(iii) by reason of (i) and (ii) above, refer to and repeat the allegations of contravention made in paragraph 142 of the CSOC.

8. Otherwise, save as expressly set out above, the plaintiffs join issue with Medibank.

Dated: 11 December 2023

A. M. HOCHROTH

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