

As the Pendulum Swings—Medical Products Class Actions Litigation in Canada: Recent Developments

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Abstract

During the relatively short history of class proceedings in Canada, developers and manufacturers of medical devices and pharmaceuticals (“medical products”), including medical products designed for patients with diabetes, have found themselves at the receiving end of a significant number of class action claims. As a result, medical products litigation has become the battleground for some of the most significant developments in Canadian class actions law. This article provides a broad overview of some of the most significant developments. The authors pay particular attention to developments regarding the test for class action certification and consider whether high-profile dismissals of certification motions represent a trend toward raising the threshold for plaintiffs seeking to obtain certification of a proposed class action. The authors also consider a decision arising out of a lengthy class action common issues trial in which the medical device company was victorious. In the authors’ view, the class action pendulum in Canada, particularly as it relates to medical products claims, remains in motion. It behooves all affected players to keep their eye on this ball with rapt attention to see where it may move next.

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