

MONASH IVF CLASS ACTION
Danielle Bopping v Monash IVF Pty Ltd & Ors
(Supreme Court of Victoria Case No. S ECI 2020 04761)
GROUP PROCEEDING SUMMARY STATEMENT

1. What is the Monash IVF Class Action about, and who is the claim against?

The Monash IVF Class Action is a case seeking compensation for financial loss and psychiatric injury on behalf of persons who were provided the service of cell-free non-invasive pre-implantation genetic testing (“niPGT-A testing”) of their live embryos between May 2019 and October 2020.

The claim is against Monash IVF Pty Ltd, Adelaide Fertility Centre Pty Ltd (trading as Repromed) and Monash IVF Group Limited (“the defendants”).

The claim alleges that patients of the defendants were provided the service of niPGT-A testing of their live embryos instead of biopsy testing to determine the aneuploid status of embryos. Some patients had their embryos classified as abnormal (aneuploid) and unsuitable for transfer as a result of this niPGT-A testing.

The claim alleges that niPGT-A testing should not have been provided by the defendants because there was a substantial risk, not disclosed to patients, that the niPGT-A testing might produce false positive results and therefore an erroneous determination that an embryo was aneuploid and not suitable for transfer.

In or about October 2020, affected patients received notification from the defendants that the niPGT-A testing of embryos by or on behalf of the defendants has been suspended.

The claim alleges that the group members suffered financial loss and psychiatric injury as a result of the niPGT-A testing.

The lead plaintiff, Ms Danielle Bopping, claims financial compensation from the defendants, for herself and on behalf of all the group members.

2. The law firm acting for the plaintiff?

Margalit Injury Lawyers.

3. The role and responsibilities of the plaintiff in the proceeding?

The lead plaintiff brings the claim on her 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’.

The lead plaintiff will provide instructions to Margalit Injury Lawyers regarding the conduct of the case and may give evidence during the proceeding.

In hearing the lead plaintiff's case, the Court will be asked to make findings in relation to questions of fact and/or law that are common to all group members.

In this case the lead plaintiff is Ms Danielle Bopping.

4. The identity of any litigation funder, and how group members may obtain further information about the Litigation Funder and the terms of any funding being offered.

Margalit Injury Lawyers is currently funding the Class Action. There is currently no third-party litigation funder involved in the case.

Group members may obtain further information about the terms of funding being by contacting Margalit Injury Lawyers on the contact details contained at the end of this document.

5. Whether any other group proceedings have been, or are likely to be, filed that relate to the same subject matter as the present group proceeding?

Margalit Injury Lawyers and the lead plaintiff are not aware of any other group proceedings that have been, or are likely to be, filed that relate to the same subject matter as the present group proceeding.

6. How legal fees and disbursements will be charged, including the impact of any funding arrangement?

Margalit Injury Lawyers is running this Class Action on a no win no fee basis, meaning that the legal costs and the disbursements incurred by Margalit Injury Lawyers are 'conditional'. These legal costs and disbursements are only recoverable by Margalit Injury Lawyers if there is a successful outcome to the Class Action. Unless there is a successful outcome to this Class Action (such as a settlement that is approved by the Court or a judgment by the Court awarding damages to group members), Margalit Injury Lawyers will not charge for the legal costs and the disbursements it has incurred in running this Class Action.

In the event of a successful outcome, any amounts due to Margalit Injury Lawyers must be first approved by the Court before they can be deducted from the money to be paid to group members

In the event of a successful outcome to the Class Action, Margalit Injury Lawyers will charge for its Professional Fees, which will be calculated using time-based billing.

In addition to Professional Fees, Margalit Injury Lawyers' legal costs also include an 'Uplift' success fee. This fee is equal to 25% of Margalit Injury Lawyers' Professional Fees, which will only be payable by group members upon a successful outcome. The Uplift success fee is not calculated as a percentage of the compensation.

In the event of a successful outcome to the Class Action, Margalit Injury Lawyers will also charge, at cost, for the disbursements incurred in running this Class Action.

If, either by way of a settlement or successful Court trial, compensation is payable to group members, it is likely that the Defendant(s) will be required to pay some, but not all, of Margalit Injury Lawyers' Legal Costs. Margalit Injury Lawyers will seek an order at the time of the approval application from the Court to allow for some of the compensation to be used to pay for a share of the Legal Costs, to the extent those Legal Costs are not able to be recovered from the Defendant(s).

In the event that the Class Action claim fails, the lead plaintiff may be ordered to pay part of the Defendant(s) costs. However, if there is a real risk of this happening, Margalit Injury Lawyers shall inform the lead plaintiff about the same without any delay and shall advise the lead plaintiff and group members on their options.

7. Who can group members contact for further information about the case?

For further information about the Class Action, group members may contact Margalit Injury Lawyers, at zero out of pocket cost, via:

Email classaction@margalitlawyers.com.au
Website Margalitlawyers.com.au
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