



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

No.

Case: S ECI 2022 03869

Filed on: 19/10/2022 02:30 PM

B E T W E E N

Dominic Maglio, First Plaintiff
and Moledina Transport Services Pty Ltd (ACN 622 441 025), Second Plaintiff

Plaintiffs

-and-

Hino Motor Sales Australia Pty Ltd (ACN 064 989 724), First Defendant
and Hino Motors, Ltd, Second Defendant

Defendants

AMENDED SUMMARY STATEMENT

1. What is a group proceeding?

1.1. A group proceeding (otherwise known as a “class action”) is a means whereby the Court can hear and determine the claims of multiple persons against the same defendant(s), rather than requiring each and every person to pursue their own individual claim against the defendant(s). A group proceeding may be commenced where seven or more persons have claims against the same defendant(s), those claims arise out of the same, similar or related circumstances, and those claims give rise to a substantial question of law or fact which is common to all those persons (**Common Questions**). The Court typically determines the Common Questions in the group proceeding at the time of determining the claims of the lead plaintiff(s). It may be necessary for there to be a separate determination of any questions which are particular to individual group members.

2. What is the Hino Group Proceeding?

2.1. The Hino Group Proceeding (*Dominic Maglio and Moledina Transport Services Pty Ltd v Hino Motor Sales Australia Pty Ltd and Hino Motors, Ltd*) was commenced by Mr Dominic Maglio and Moledina Transport Services Pty Ltd (together, the **Lead Plaintiffs**) on their own behalf and on behalf of the Group Members. Mr Maglio and Moledina Transport Services Pty Ltd purchased Hino trucks in 2020 and 2017-2014 respectively. The Hino Group Proceeding claims damages and other remedies against Hino Motor Sales Australia Pty Ltd (**Hino Australia**) and Hino Motors, Ltd (**Hino Japan**) (together, the **Defendants**) arising out of misconduct in relation to certification of various Hino engines as meeting regulatory standards for emissions and fuel efficiency. The Lead Plaintiffs allege that the engines did not, in fact, meet the requirements that Hino Australia and Hino Japan said they did.

2.2. The Lead Plaintiffs have filed an Amended Statement of Claim. Neither Hino Australia nor Hino Japan has yet filed a Defence to the allegations made by the Lead Plaintiffs in the Amended Statement of Claim.

3. Who are the Group Members in the Hino Group Proceeding?

3.1. The Group Members are:

3.1.1. Group A: Any persons (including companies) who purchased or leased a Hino-branded diesel vehicle mounting the an engine manufactured by Hino Japan, including but not limited to

those models listed in paragraph 1 of the Amended Statement of Claim, on or after 01 January 2003 and who still owns or leases the vehicle as at 30 September 2022.

3.1.2. Group B: Any persons (including companies) who purchased or leased a Hino branded diesel vehicle manufactured by Hino Japan mounting the engine models listed in paragraph 3 of the Statement of Claim on or after 01 January 2003 and who ceased to own or lease the vehicle before 30 September 2022.

3.2. Different remedies are sought in respect of Group A Members and Group B Members.

3.3. In Australia, group proceedings operate on an opt-out basis: that is, Group Members are included in the group proceeding unless they personally opt out of participating in the group proceeding. The Court will make orders, in due course, about the deadline and mechanism to be followed for any Group Member who wishes to opt out of participation in the Hino Group Proceeding. The Court will also, in due course, make any necessary orders about any other action to be taken by Group Members, and notice will be given to Group Members of this.

4. What is the role and responsibility of the Lead Plaintiffs?

4.1. Mr Maglio and Moledina Transport Services Pty Ltd are responsible for the conduct of the Hino Group Proceeding.

4.2. Group Members are not required to take an active role in the conduct of the Hino Group Proceeding.

5. Who is the law firm acting for the Lead Plaintiffs?

5.1. The law firm acting for the Lead Plaintiffs is Gerard Malouf & Partners (**GMP**). The Lead Plaintiffs give instructions to GMP about the conduct of the case.

6. How are legal fees and disbursements charged?

6.1. The costs that the Lead Plaintiffs and the Defendants are likely to incur in the course of the Hino Group Proceeding are likely to be substantial if the action is defended.

6.2. GMP intends to apply to the Court, at the appropriate time, for the making of a Group Costs Order (**GCO**). If the Court makes a GCO, it will allow GMP to recover a percentage of any sum the Court orders the Defendants to pay, or which the Defendants agree to pay by way of settlement. This will compensate GMP for its own fees and disbursements it has to pay to others (such as barristers' fees), and for the risk and up-front money commitment on GMP's part in running the matter to successful conclusion. As part of a GCO, GMP would become liable for any order that may be made to pay the Defendants' costs, and would be responsible for providing any security for costs that may be ordered by the Court.

6.3. The Group Members are not required to pay any legal costs to GMP while the matter is running, nor are they exposed to any order to pay the Defendants' costs, nor would they be responsible for providing any security for costs because GMP has agreed to do so in the event that a GCO is made. In the event that a GCO is made and the Lead Plaintiffs and Group Members are successful in the Hino Group Proceeding (because the Court gives judgment for them or there is an agreed settlement payout with the Defendants), GMP will be paid out of the sum ordered or agreed to be paid by the Defendants, subject to the approval of the Court, in accordance with the terms of the GCO or any variation thereof.

6.4. There is no litigation funder engaged by GMP in connection with the Hino Group Proceeding.

7. Are there currently any other group proceedings against Hino Australia or Hino Japan?

7.1. GMP is not aware of any other group proceedings in Australia which have been commenced against Hino Australia and/or Hino Japan that relate to the same subject matter as the Hino Group Proceeding.

8. Whom can Group Members contact for further information about the Hino Group Proceeding?

8.1. Group Members may obtain further information by contacting GMP, at no out-of-pocket cost, using the details below:

Website: <https://www.hinoclassaction.com.au/>

E-mail: reception@gmp.net.au

Telephone: 02 9630 4122

Post: Hino Diesel Class Action
Gerard Malouf & Partners
Level 8, 350 Collins Street
Melbourne VIC 3000

Date: 19 October 2022