



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

No.

Case: S ECI 2022 04768

Filed on: 21/11/2022 04:31 PM

**B E T W E E N**

Paul Wawryk, First Plaintiff  
and Craig Stubbings, Second Plaintiff

Plaintiffs

-and-

Mercedes-Benz Australia/Pacific Pty Ltd (ACN 004 411 410), First Defendant  
and Mercedes-Benz Group AG, Second Defendant

Defendants

**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 Mercedes-Benz Emissions Group Proceeding?**

2.1. The Mercedes-Benz Emissions Group Proceeding (*Paul Wawryk and Craig Stubbings v Mercedes-Benz Australia/Pacific Pty Ltd and Mercedes-Benz Group AG*) was commenced by Mr Paul Wawryk and Mr Craig Stubbings (together, the **Lead Plaintiffs**) on their own behalf and on behalf of the Group Members. Mr Wawryk and Mr Stubbings purchased Mercedes-Benz vehicles in 2016 and 2013 respectively. The Mercedes-Benz Emissions Group Proceeding claims damages and other remedies against Mercedes-Benz Australia/Pacific Pty Ltd (**Mercedes-Benz Australia/Pacific**) and Mercedes-Benz Group AG (**Mercedes-Benz Group**) (together, the **Defendants**) arising out of the use of alleged ‘defeat devices’ (or defeat device-equivalents) in obtaining the certification of various Mercedes-Benz diesel engine models as meeting regulatory standards for emissions. The Lead Plaintiffs allege that the engines did not, in fact, meet the requirements that Mercedes-Benz Australia/Pacific and Mercedes-Benz Group said they did.

2.2. The Lead Plaintiffs have filed a Statement of Claim. Neither Mercedes-Benz Australia/Pacific nor Mercedes-Benz Group has yet filed a Defence to the allegations made by the Lead Plaintiffs in the Statement of Claim.

### 3. Who are the Group Members in the Mercedes-Benz Emissions Group Proceeding?

3.1. The Group Members are any persons (including companies) who, between 01 January 2009 and 21 November 2022, purchased or leased in Australia a diesel vehicle which meets the specifications in the table below:

Make	Engine Model	Model Years
Mercedes-Benz	OM 607	2009–2016
Mercedes-Benz	OM 622	2009–2016
Mercedes-Benz	OM 626	2009–2016
Mercedes-Benz	OM 640	2009–2016
Mercedes-Benz	OM 642	2009–2016
Mercedes-Benz	OM 651	2009–2016 (generally)
		2009–2018 (Sprinter vans)

3.2. 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 Mercedes-Benz Emissions 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 Wawryk and Mr Stubbings are responsible for the conduct of the Mercedes-Benz Emissions Group Proceeding.

4.2. Group Members are not required to take an active role in the conduct of the Mercedes-Benz Emissions 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 Mercedes-Benz Emissions 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 financial 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 in progress, 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 Mercedes-Benz Emissions 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 Mercedes-Benz Emissions Group Proceeding.

**7. Are there currently any other group proceedings against Mercedes-Benz Australia/Pacific or Mercedes-Benz Group?**

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

**8. Whom can Group Members contact for further information about the Mercedes-Benz Emissions 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.dieselemissionsclaims.com.au/mercedes-class-action>

E-mail: [reception@gmp.net.au](mailto:reception@gmp.net.au)

Telephone: 02 9630 4122

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

Date: 21 November 2022