



TOYOTA DIESEL EMISSIONS CLASS ACTION

Butterworth v Toyota Motor Corporation Australia Limited

Supreme Court of Victoria S ECI 2022 00313

Case: S ECI 2022 00313

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UPDATED FUNDING INFORMATION SUMMARY STATEMENT

This summary about the funding arrangements for the Toyota Diesel Emissions Class Action should be read together with the 'Second Updated Group Proceeding Summary Statement'.

1. How is the class action being funded?

Mr Butterworth (the "**Lead Plaintiff**") has retained Maddens Lawyers as his solicitor for this class action. Mr Butterworth has entered into an agreement with Maddens Lawyers as well as a 'litigation finance agreement' with Woodsford for the purpose of advancing this class action.

Woodsford is an ESG, access to justice and litigation finance business with offices in Australia, the United Kingdom and the United States. Further information about Woodsford can be viewed via their website www.woodsford.com.

Under the agreements with Mr Butterworth:

- (a) Maddens Lawyers will charge for its work on the class action, according to the time reasonably required to perform the work (**Professional Fees**);
- (b) Woodsford will pay a portion of Maddens Lawyers' time-based charges (**Funded Professional Fees**). To the extent that any legal costs are not covered by funding from Woodsford, those costs will be carried by Maddens Lawyers on a No-Win-No-Fee (**NWNF**) basis.
- (c) In addition to the Funded Professional Fees, Woodsford will also pay all of the disbursements and third-party costs properly incurred by Maddens Lawyers (e.g. Court fees, barristers' fees).
- (d) Woodsford will also facilitate the provision of any security for costs that may be ordered by the Court and Woodsford and/or an after-the-event (**ATE**) insurer would pay any costs order made against the Lead Plaintiff in favour of the defendant or any third party.

The Lead Plaintiff and group members will not be asked to pay anything up front. Costs will only be payable in the event of a successful outcome and then only from any recovery made and as approved by the Court.

2. What charges will there be if the class action is successful?

If the class action is successful (either as a result of a settlement or a judgment) then Mr Butterworth, Maddens Lawyers and Woodsford will seek orders from the Court (including a Common Fund Order) that before compensation is paid to the Lead Plaintiff and group members:

- (a) Woodsford be reimbursed for the expenses it has incurred in funding the class action including with respect to payments made on account of Funded Professional Fees, disbursements and third-party costs, adverse costs, any upfront ATE insurance premiums, and security for costs (including the cost of any deeds of indemnity purchased from ATE insurers);
- (b) Woodsford be paid a '**Success Fee**' in accordance with the terms of the litigation finance agreement with Mr Butterworth, to remunerate it for having carried the 'own-side' costs risk (as distinct from the adverse costs risk, which is discussed further below) of the class action which enabled it to be run to a successful conclusion;

- (c) Any ATE insurer will be paid any further insurance premiums (including deferred or contingent premiums) that will fall due under any ATE insurance policy; and
- (d) Maddens Lawyers be paid for the component of its Professional Fees which were not Funded Professional Fees plus an 'uplift' of 25% on the unfunded component of fees carried by Maddens on the NWNF basis.

Any legal fees or funding fees sought to be charged to group members are required to be approved by the Court.

Pursuant to the litigation finance agreement, the Lead Plaintiff has agreed to apply for a Common Fund Order consistent in amount with Woodsford's Success Fee. The Success Fee is defined in the litigation finance agreement as a maximum starting point of the greater of (a) 27.5% of Gross Proceeds or (b) 3.5x the Cash Outlay, which may increase if Woodsford is required to pay additional action costs (being costs above the costs limit in the litigation finance agreement).

Gross Proceeds are the total amount received (including any settlement sum, or compensation, costs and damages award by the Court and interest) paid or credited to, in favour of, for the benefit of, or to the order of, the Lead Plaintiff or Group Members, by the defendants or any third party which relates to the subject matter of the class action. The Cash Outlay is the total amount of legal and other fees and costs (incl. GST) advanced by Woodsford plus all other fees and costs relating to the class action reasonably incurred by Woodsford. As described in more detail below, if the class action is unsuccessful, the Court may order the Lead Plaintiff (and/or other third parties such as Woodsford) to pay some part of a successful defendant's costs (known as **Adverse Costs**).

To protect against the risk of adverse costs, Woodsford has:

- (a) indemnified the Lead Plaintiff (and group members who participate) against liability for any Adverse Costs order made against the Lead Plaintiff; and
- (b) obtained ATE insurance to:
 - (i) provide the Lead Plaintiff and Group Members with additional protection against the risk of adverse costs (the ATE insurance, provided by an A-rated ATE insurer, expressly covers Adverse Costs payable by the Lead Plaintiff); and
 - (ii) enable the Lead Plaintiff to provide security for the defendant's costs (for example by purchasing deeds of indemnity from the ATE insurer).

In return for this protection against the Adverse Costs risk, the Lead Plaintiff has agreed to apply for a Court order that the cost of any such ATE insurance, including any deferred and contingent ATE insurance premiums, be payable from the Gross Proceeds (in addition to the other costs mentioned above, including Woodsford's Success Fee).

3. What charges will there be if the class action is unsuccessful?

If the class action is unsuccessful, Maddens Lawyers will not be entitled to recover any of its Professional Fees which have not already been paid by Woodsford.

Further, Woodsford will not be entitled to recover any of the payments it has made from group members.

Any adverse costs order would be paid by Woodsford and/or an ATE insurer.

Accordingly, group members will not be charged legal fees or funding fees in the event the class action is unsuccessful.

4. Where is further information available?

For further information about the class action and the funding arrangements, group members can contact Maddens Lawyers by e-mail at toyota@maddenslawyers.com.au, via our website www.maddenslawyers.com.au or via telephone 1800 815 228.