



HINO CLASS ACTION
James Kendall McCoy v Hino Motors Ltd & Anor

Case: S ECI 2023 01521
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Supreme Court of Victoria

SECOND AMENDED GROUP PROCEEDING SUMMARY STATEMENT

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Filed on behalf of:	The Plaintiff		
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1. What is a class action?

Where seven or more people have claims that arise out of similar circumstances (such as in this case), a class action can be brought by a lead plaintiff on their own behalf and as a representative of others. The class action will resolve the common issues of fact or law for the class through the vehicle of the lead plaintiff's case. This is an efficient way for the Court to determine the common issues that apply to claims involving large numbers of people.

2. Who is the Hino Class Action against, and what is the claim for?

The claim is against Hino Motors Ltd and Hino Motor Sales Australia (together, **Hino**) in relation to misreporting and misrepresenting the fuel efficiency and emissions performance of certain Hino diesel vehicles. The Hino Class Action seeks compensation on behalf of group members with affected vehicles who suffered loss and damage, resulting from Hino's alleged misconduct and breaches of Australian consumer laws.

On 4 March 2022, in a press release, Hino admitted that it had falsified engine performance data in applications for vehicle certification in Japan as far back as 2016. On 11 March 2022, Hino announced that a Special Investigation Committee, composed of outside experts, would be commissioned to investigate the issue, and, on 2 August 2022, Hino published the Committee's findings. The Committee concluded that Hino had misreported the engine performance of various diesel vehicles from as far back as 2003.

An investigation by the Japanese Ministry of Land, Infrastructure, Transport and Tourism then revealed that misconduct had also related to a light-duty engine produced by Hino. This additional finding was published by Hino in a press release on 22 August 2022.

3. Who is a group member in the Hino Class Action?

The Hino Class Action is on behalf of persons who, by 17 April 2023 have purchased, leased or otherwise acquired an interest in Australia in a Hino branded vehicle fitted with a diesel engine that was manufactured during the period from 1 January 2003 to 22 August 2022.

A complete definition of group members is available in paragraph 1 of the Statement of Claim.

4. What is the role and responsibility of the lead plaintiff?

The role of the lead plaintiff is to be the representative for the class. They will give instructions to Maurice Blackburn 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 James Kendall McCoy.

5. Who is the law firm acting for the lead Plaintiff?

Maurice Blackburn Lawyers.

6. How is the Hino Class Action funded?

The lead Plaintiff and group members will not be asked to pay anything upfront. Costs will only be payable in the event of a successful settlement or judgment and then only as approved by the Court.

The lead Plaintiff made an application for a Group Costs Order in the Hino Class Action. On 15 December 2023, Justice Osborne of the Supreme Court of Victoria granted the Group Costs Order, and that order will govern the legal costs to be charged by Maurice Blackburn.

A Group Costs Order is an order of the Court in which the legal costs payable to the law practice representing the lead plaintiff and the group members are calculated as a percentage of the amount of any award or settlement. The percentage is determined by the Court.

Maurice Blackburn has entered into a Costs Sharing agreement with Fortress (formerly CF FLA Australia Investments 3 Pty Ltd, Vannin).

It is important to note that the Costs Sharing agreement with Fortress will not affect the amount of any recovery that is returned to group members pursuant to any Group Costs Order.

7. How are legal fees and disbursements charged?

The lead Plaintiff's legal fees and disbursements are 'conditional', meaning that they are only recoverable by Maurice Blackburn if there is a successful outcome in the class action. Amounts recoverable by Maurice Blackburn for legal fees and disbursements must be approved by the Court as reasonable, before being deducted from the money to be paid to group members. Those deductions will never exceed a group member's recovery.

If there is a successful outcome, the lead Plaintiff's legal fees and disbursements will be determined by the Court.

On 15 December 2023, the Court ordered that the legal costs payable to Maurice Blackburn will be calculated as a percentage of the amount of any award or settlement that may be recovered in the proceeding, in accordance with the following table:

For each dollar of any award or settlement that is recovered:	The applicable percentage (including GST) is:
Between \$0 to \$75,000,000	25%
Between \$75,000,001 to \$150,000,000	22.5%
Between \$150,000,001 to \$225,000,000	20%
Over \$225,000,000	17.5%

The effect of the GCO is that the legal costs payable by group members to Maurice Blackburn cannot exceed 25% of any resolution sum, subject to any further orders by the Court. There may also be separate but smaller deductions such as costs arising from administering and distributing any settlement sum but any such costs will also have to be approved by the Court.

If there is a successful outcome, the liability for the lead Plaintiff's legal fees and disbursements will be shared among the lead Plaintiff and all group members.

If there is not a successful outcome the lead Plaintiff and group members will not be asked to pay Maurice Blackburn's costs or disbursements. Also, group members cannot be pursued for costs by Hino Motors Ltd or Hino Motor Sales Australia Pty Ltd as the *Supreme Court Act 1986 (Vic)* prohibits orders for costs against group members unless and until a group member takes their own individual action.

8. Are there currently any other class actions against Hino?

On 15 December 2023, Justice Osborne of the Supreme Court of Victoria ordered that a competing proceeding filed by another law firm called the Maglio proceeding, should be permanently stayed (that is, no longer continue) and the Maurice Blackburn-led McCoy proceeding should continue. The consequence of this is that Maurice Blackburn's proceeding is now the sole class action which is progressing against Hino.

The reasons for Justice Osborne's judgment can be found on Austlii (<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2023/757.html>).

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

Group members may contact Maurice Blackburn, at no out of pocket cost, via:

Email Hino@mauriceblackburn.com.au
Phone 1800 161 343
Post Maurice Blackburn
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