



Neutral Citation Number: [2023] EWHC 3173 (KB)

Case No: QB-2022-0002405 & Others

NO_x EMISSIONS GROUP LITIGATION
IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice

Strand, London

WC2A 2LL

Date: Friday, 8th December 2023

Before:

THE PRESIDENT OF THE KING'S BENCH DIVISION

MRS. JUSTICE COCKERILL

MR. JUSTICE CONSTABLE

SENIOR MASTER COOK

Between:

VARIOUS CLAIMANTS

Claimants

- and -

MERCEDES-BENZ GROUP AG AND OTHERS

VOLKSWAGEN AG AND OTHERS

DR.ING.H.C.F. PORSCHE AG AND OTHERS

AND OTHERS

Defendants

Hearing date: 8th December 2023

MR. OLIVER CAMPBELL KC, MR. TOM DE LA MARE KC, MR. DAN OUDKERK KC, MR. ADAM KRAMER KC and MR. GARETH SHIRES, MR. OGNJEN MILETIC MS. JOANNA BUCKLEY and MS. KATE BOAKES (instructed by **Pogust Goodhead, Leigh Day, Milberg London LLP, Hausfeld & Co LLP, Slater and Gordon UK Limited, Keller Postman UK Limited, Charles Lyndon Limited, SJS Legal Limited, Harcus Parker Limited, Bond Turner Limited, Hagens Berman EMEA LLP, James Hutcheon Solicitors, Your Lawyers Limited, TLW Solicitors Limited Bingham Solicitors, Venus Legal Limited, Johnson Law Group, Law Room Solicitors Limited**) for the **Various Claimants**

MS. LEIGH-ANN MULCAHY KC and MS. CHARLOTTE TAN (instructed by **Cleary Gottlieb Steen & Hamilton LLP**) for the **Stellantis Defendants**

MR. CHARLES DOUGHERTY KC and MR. THOMAS FAIRCLOUGH (instructed by **Hogan Lovells International LLP**) for the **BMW Defendants**

MR. LAURENCE RABINOWITZ KC, MR. PRASHANT POPAT KC and MS. KATHLEEN DONNELLY KC (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Volkswagen Defendants**

MR. MALCOLM SHEEHAN KC and MR. JAMES PURNELL (instructed by **Herbert Smith Freehills LLP**) for the **Defendants in the Mercedes-Benz NOx Emissions Group Litigation**

MR. GERAINT WEBB KC (instructed by **Hogan Lovells International LLP**) for the **Porsche Defendants**

MR. NEIL MOODY KC, MS. SONIA NOLTEN KC and MR. BEN PHELPS (instructed by **Hogan Lovells International LLP**) for the **Ford Defendants**

MR. STEPHEN AULD KC, MR. NOEL DILWORTH and MR. JOE JOHNSON (instructed by **Hogan Lovells International LLP**) for **Mazda Motors UK Limited, Santander Consumer (UK) Plc** and represented **Mazda authorised dealerships**

MR. DANIEL TOLEDANO KC, MS. ANNELI HOWARD KC, MR. JAMES WILLIAMS and MR. SIMON GILSON (instructed by **Hogan Lovells International LLP**) for the **Nissan Defendants NOx Emissions Group Litigation**

MS. SONIA TOLANEY KC (instructed by **Quinn Emanuel Urquhart & Sullivan LLP**) for the **Hyundai-Kia Defendants**

APPROVED JUDGMENT

THE PRESIDENT OF THE KING'S BENCH DIVISION:

1. On 16th November 2023 all identifiable parties to the NOx Emissions Group Litigation were sent a letter by me indicating that it is essential that the NOx Emissions Group Litigation is actively managed by the Court. This letter is at Appendix 1. The present indication is that there will be well over 1 million claimants and over 1500 defendants. The scale of the litigation is unprecedented. The cases will involve legal, factual and technical issues which will, at one extreme, overlap to the point of being actually or virtually identical and at the other be unique to the particular claim and relevant group of defendants.
2. This Court is acutely aware that the potential costs involved are enormous and, without active case management, have the potential to become wholly disproportionate to the sums actually involved or in particular the sums (if any) ultimately recoverable by any individual claimant.
3. Finally, the Court has also to be mindful of the potential for these cases, were they each to be permitted to take their own course through the court system with no common management strategy, to place an unacceptable burden upon the Court's own time and resources and significantly to affect the ability of other litigants to have access to the civil justice system.
4. The letter therefore laid the ground for what might be described as a pan-NOx emissions hearing and sought representations in that regard.
5. Having regard to various submissions received, an Order dated 23rd November 2023 was made, as set out (without Schedules) at Appendix 2. That Order required amongst other things that the parties co-operate grouped as claimants and defendants, each group providing a single written submission, jointly prepared, with representation at the hearing limited to no more than four representative firms for each side.
6. It was also ordered that there be a one-day hearing before myself, Cockerill J and Constable J, who are the managing judges of the Mercedes litigation and Senior Master Cook who has been chiefly responsible for hearing and dealing with the various group litigation order applications.
7. This court does not underestimate the level of co-operation from a practical perspective that the joint preparation for the convened hearing required, and we are all extremely grateful to the parties and their representatives for the way in which the hearing has been approached and has been conducted before us today.
8. We have as Appendix 3 the written submissions submitted jointly by the Claimant Group and the principal written submissions jointly submitted by the Defendant Group is Appendix 4 (without Appendices). Having heard oral submissions, the key areas of disagreement are clear.

9. The Defendant Group's principal contention is to require the two-day CMC Hearing presently listed on 5-6 March 2024 in the Mercedes group litigation order as ordered by Fraser J in July 2023 ('the March Hearing'), to be entirely repurposed for a further pan-NOx emissions CMC with a view to making directions for the first substantial hearing or hearings. The purpose of this would be to determine a series of issues said to be common pan-NOx Emissions Group Litigation questions of law and statutory or regulatory construction, which will not require any significant factual or technical investigation. The detailed investigation of the application of the outcome of the common issues, the particular alleged prohibited defeat devices ('PDDs') in the Mercedes litigation would then be left to the hearing presently listed for ten-weeks, to commence October 2025 at the earliest.
10. This approach was opposed by the Claimant Group. Their focus was on ensuring that the Mercedes litigation remains the lead litigation to be advanced substantively by reference to a sample of vehicles as soon as possible and, in particular, with a factual and technical investigation of a sample of alleged PDDs taking place in the presently listed 10-week hearing commencing February 2025.
11. As already indicated, we have now heard detailed submissions over the course of one day through counsel for both groups. We are conscious of the fact that not all defendants or defendant groups were separately represented or made oral representations. We are also conscious of a need for procedural fairness.
12. Bearing those factors in mind, we have concluded that:
 - (1) the March Hearing remains the appropriate time finally to determine the scope and content of the hearings which are currently timetabled to take place in accordance with the order of Fraser J made in July;
 - (2) we are not today in a position to take any firm decisions as to the content of what is to be dealt with in the existing trial periods. The Order which follows does not prejudge the outcome of the March hearing and all options remain open for consideration at that stage;
 - (3) the purpose of the Order which follows is to enable the court to be provided with the appropriate level of information, and "granularity" in order to proceed in a most appropriate way in March;
 - (4) the shape of both the Mercedes GLO and the wider NOx litigation is not necessarily to be determined solely by reference to the specific trial or hearing periods the court has presently set aside.
13. Before turning to the terms of the Order, I should make it clear that although each anticipated GLO application must be considered separately, I consider that such orders will be likely to be appropriate in this litigation as a matter of principle. I can also now approve the GLO in the Ford litigation. All existing GLO applications and any prospective GLO applications intended to be made by any party with an existing issued Claim Form(s) are to be heard at a three-day consolidated hearing before

Senior Master Cook on 17th-19th January 2024, with the 14th and 15th February 2024 to be in reserve for additional time, if required.

[The President then read out the substance of the terms of the Order, which in its approved form is now attached to this judgment as Appendix 5]