



## TOYOTA ADD-ON INSURANCE CLASS ACTION

**Tracey Leigh Hepi & Anor v Toyota Finance Australia Limited & Anor**  
Supreme Court of Victoria

### CLASS ACTION SUMMARY AND FUNDING INFORMATION STATEMENT

Case: S ECI 2024 05243

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#### 1. What is a class action?

Where seven or more people have claims that arise out of similar circumstances, a class action can be brought by one plaintiff on their own behalf and representing others.

#### 2. Who is the Toyota Add-on Insurance Class Action against, and what is the claim for?

The claim is against Toyota Finance Australia Limited (ACN 002 435 181) (**Toyota**) and Aioi Nissay Dowa Insurance Company Australia Pty Ltd (ACN 132 524 282) (**the Defendants**) concerning insurance which was sold with, or added on, loans for the purpose of motor vehicles at car dealerships (**Dealers**).

The insurance products include Toyota branded:

- (a) Payment Protection or Finance Protection Insurance;
  - (b) Finance Gap Insurance; and
  - (c) Factory Approved Extended Warranty Insurance,
- (together, the **Toyota Insurance**).

Toyota Insurance was distributed to consumers by Dealers on behalf of the **dDefendants**.

It is alleged that the **dDefendants**:

- (a) engaged in misleading or deceptive conduct contrary to the *Corporations Act 2001* (Cth) (**Corporations Act**) and *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (b) provided "personal" advice that was inappropriate for and not in the best interests of consumers, contrary to the *Corporations Act*;
- (c) engaged in unconscionable conduct in breach of the *ASIC Act*;
- (d) **that** by including the Toyota Insurance in consumers' finance agreements, the finance agreements were unjust transactions and the defendants engaged in unfair conduct, contrary to the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and National Credit Code which formed Schedule 1 of the *NCCP Act* (the **Credit Code**); and
- (e) issued Toyota Insurance to consumers when they were under one or more mistaken beliefs.

#### 3. Who is a group member in the **Toyota Add-on Insurance** Class Action?

You may be a group member if you:

- (a) entered into a finance agreement for the purchase of a car issued under Toyota's credit licence facilitated by a ~~Toyota car dealer~~ Dealership;
- (b) were issued one or more Toyota Insurance policies;
- (c) in the period:
  - i. between 1 January 2010 and 31 October 2018, a flex commission in relation to your finance agreement was paid to a Dealer and you were issued one or more Toyota Insurance policies; or
  - ii. between 1 November 2018 and 5 October 2021, you were issued one or more Toyota Insurance policies.

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

**4. Who is the law firm acting for the plaintiff?**

Echo Law.

**5. What is the role and responsibility of the plaintiff?**

The role of the lead plaintiff is to be the representative for the class. They will give instructions to Echo Law 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, Ms Tracy Hepi and Mr Eru Hepi (the **Plaintiffs**) are the representative plaintiffs.

**6. Are there any other class actions that relate to Toyota car loan practices?**

At the date of filing this document, Echo Law is unaware of any other representative proceedings which relate to the sale of Toyota Insurance.

A separate claim is being conducted by the Plaintiffs against Toyota in relation to the payment of flex commissions to Dealers. Those claims are being advanced in proceeding *Tracey Leigh Hepi and Eru Martin v Toyota Finance Australia Limited* (S ECI 2023 02581) (the **Toyota Flex Class Action**).

~~The Plaintiffs intend to have the claims of group members (as set out in sections 2 and 3 above) advanced through the Toyota Flex Class Action.~~

~~Echo Law is unaware of any other filed class action as at the date of filing this class action that relates to the sale of the Toyota Insurance to consumers.~~

**7. How is the Class Action being funded?**

The Plaintiffs are not able to pay their "own costs", provide any security for costs or pay any substantial order for adverse costs that might be made in the course of the class action.

For that reason, the Plaintiffs have made agreements with their solicitors, Echo Law, and a commercial litigation funder, LLS Australia Funding Pty Ltd (**LLS**). Under those agreements:

- (a) Echo Law will charge for its work on the class action, according to the time reasonably expended in performing the work;

- (b) LLS will pay 75% of the solicitor's time-based charges, plus all of the expenses properly incurred in the proceeding (such as barristers' fees, witness costs and Court fees);
- (c) LLS will indemnify the Plaintiffs (and group members who participate) against liability for any adverse costs order made against them by the Court;
- (d) LLS have or will obtain after-the-event insurance (**ATE Insurance**) to:
  - i. provide the Plaintiffs and group members with additional protection against the risk of adverse costs; and
  - ii. assist the Plaintiffs to provide security for the defendant's costs.
- (e) if the class action is unsuccessful, Echo Law will not be entitled to the remaining 25% of its fees incurred, and LLS will not be able to recover its costs or any remuneration; but
- (f) if a settlement of claims covered by the class action, or a judgment, results in compensation being payable to the plaintiffs and group members, then the Plaintiffs, Echo Law and LLS will seek orders from the Court that, before the compensation is paid to the group members:
  - i. a portion of the compensation be used to pay Echo Law's remaining 25% of its fees, plus an "uplift" of 25% which is only applied to that remaining 25% amount; and
  - ii. a further portion of the compensation be used to reimburse LLS for the expenses it incurred, and to remunerate it for having carried the financial risk of the litigation.

The court will decide whether or not to make any orders sought by the Plaintiffs, Echo Law or LLS.

## 8. What success fee will LLS be paid?

If there is a successful outcome (such as a settlement that is approved by the Court or a judgment by the Court awarding damages to group members), under its funding agreement LLS is entitled to recover the following:

- (a) the legal costs and disbursements LLS have paid during the course of the proceeding, including any upfront insurance premiums relating to ATE Insurance, any adverse costs and security for costs (including the cost of any deeds of indemnity purchased from ATE insurers);
- (b) any other insurance premiums under any ATE Insurance policy; and
- (c) a funding commission that is a percentage of any gross proceeds (that is, the amount of resolution proceeds before deducting the above amounts), ~~to be as set by~~ set out in the Court at the time funding agreement. The amount of the funding commission contained in the funding agreement varies between 25% to 30% of any gross proceeds, depending on when a successful outcome occurs. This is to be paid as remuneration for LLS having carried the financial risk that enabled the class action to be run to a successful conclusion.

Before any of the above amounts can be deducted from any resolution sum, those amounts must first be approved by the Court. The Plaintiffs will also seek a Common Fund Order so that all group members will contribute to the costs and the funding

commission without having to enter into any funding agreement with LLS.

The Court will decide whether or not to make any order remunerating LLS, including whether any percentage of the compensation to group members should be paid to LLS. The Plaintiffs' own agreement with LLS provides for a remuneration rate depending on factors identified in the funding agreement. That funding agreement also provides for further increases in the remuneration rate to LLS in certain circumstances, such as if there is an appeal or additional defendants are added to the class action.

#### **9. Changes to the funding arrangements**

If there are material changes to the funding arrangements, notices about the changes will be sent to group members.

#### **10. What happens if there is not a successful outcome?**

If there is not a successful outcome, LLS will pay any adverse costs orders that are made. The Plaintiffs and group members will not be asked to pay Echo Law's costs or disbursements. LLS will not seek and are not entitled to recover from group members any costs they have paid in relation to the case.

The Plaintiffs and group members will never be 'out of pocket' whether or not the proceeding has a successful outcome.

#### **11. Are group members liable for costs?**

The class action rules in the Supreme Court make clear that group members cannot be ordered to pay any costs in relation to a class action, other than by having a portion of any eventual compensation deducted at the end of the action, and used to reimburse or remunerate the plaintiffs, their solicitors and the funder in the manner described above.

In rare situations, a group member might choose to play an active role in a particular hearing during the course of a class action. The class action rules provide that such a group member might be liable for costs incurred by other parties in relation to the particular hearing. This is rare however, and if it becomes relevant to any group member, further information will be given to the group member(s) involved before they make any such choice.

#### **12. Who can group members contact for further information about the case?**

For further information about the class action, group members may contact Echo Law, at no out of pocket cost, via the following methods:

**Email** enquiries@echolaw.com.au

**Phone** 1800 571 241

**Website** <https://www.echolaw.com.au/home/#contact>

**Post** Toyota Add-On Insurance Class Action  
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