

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

S ECI 2024 00234

BETWEEN

KRISOULA EL-HELOU

Plaintiff

and

MERCEDES-BENZ AUSTRALIA/PACIFIC PTY LTD
(ACN 004 411 410)

First Defendant

MERCEDES-BENZ GROUP AG

Second Defendant

MERCEDES-BENZ AG

Third Defendant

ORDER

JUDGE: The Honourable Justice Nichols

DATE MADE: 21 October 2024

ORIGINATING PROCESS: Writ filed 22 January 2024

HOW OBTAINED: By consent

ATTENDANCE: Not applicable

OTHER MATTERS: The Court notes that:

A Two overlapping proceedings have been issued against the defendants, being:

- i. this proceeding (the **El-Helou Proceeding**); and
- ii. the proceeding issued by Paul Wawryk and others (S ECI 2022 04768) (the **Wawryk Proceeding**),

(together, the **Proceedings**).

B An agreement has been reached between the plaintiffs in the Proceedings to resolve the multiplicity of overlapping proceedings, pursuant



to which:

- i. the El-Helou Proceeding is continuing, and the Wawryk Proceeding is to be permanently stayed save in respect of costs;
- ii. the solicitors for the applicant in the Wawryk Proceeding (**GMP**) will be engaged to act as agents of the solicitors for the plaintiff in the El-Helou Proceeding (**Piper Alderman**), with Piper Alderman to remain the solicitor on the record in that proceeding and the legal work to be allocated between those firms at a proportion of 60% for Piper Alderman and 40% for GMP;
- iii. the litigation funder for the plaintiff in the El-Helou Proceeding, Woodsford Litigation Funding 29 LLP, will continue to fund the El-Helou Proceeding.

C On 22 April and 23 April 2024, costs orders were made in favour of the defendants in the Wawryk Proceeding (**Costs Orders**) in relation to the plaintiffs' unsuccessful attempts to amend their pleading (**Amendment Applications**) and in relation to subpoenas which the plaintiffs caused to be issued (**Subpoenas**).

D On the basis of the evidence filed in support of these orders, including the affidavit of Martin del Gallego of Piper Alderman sworn 6 June 2024, the court is satisfied that the agreement to resolve the multiplicity issue (described in item B) and its implementation in these orders, is in the best interests of group members in both these proceedings and the Wawryk proceedings, and is



consistent with the principles governing the resolution of multiplicity in group proceedings (see *Wigmans v AMP Limited* (2021) 270 CLR 623; *Kajula Pty Ltd v Downer EDI Ltd* [2024] VSCA 236).

THE COURT ORDERS BY CONSENT THAT:

Multiplicity issue

1. Pursuant to s 33ZF of the *Supreme Court Act 1986* (Vic) (the Act), Piper Alderman is to remain the solicitor on the record in the El-Helou Proceeding and GMP may act as an agent for Piper Alderman in the El-Helou Proceeding.
2. All correspondence to and from the plaintiff in the El-Helou Proceeding be with Piper Alderman.
3. One set of counsel, experts, and consultants act for the plaintiff in the El-Helou Proceeding.
4. The costs of any work performed in the El-Helou Proceeding that is performed by reason of two firms performing work for the plaintiff rather than one:
 - (a) not be recoverable against group members in the El-Helou Proceeding;
 - (b) not be recoverable against the defendants in the El-Helou Proceeding.
5. The costs of any work performed by the plaintiffs in the Wawryk Proceeding prior to the date of these orders are not recoverable against group members or the defendants in the El-Helou Proceeding unless:
 - (a) the work is unrelated to the Amendment Applications and Subpoenas the subject of the Costs Orders; and
 - (b) the work is “Beneficial Work Product” as that term is defined in the proposed Agency Retainer Agreement exhibited to the affidavit of Mr Martin de Gallego sworn on 6 June 2024; and
 - (c) those costs are approved as recoverable by the Court.
6. For the avoidance of doubt, order 5 does not have the effect that reserved costs in the Wawryk Proceeding become reserved costs in the El-Helou Proceeding.



Costs referee

7. Pursuant to r 50.01 of the Supreme Court (General Civil Procedure) Rules 2015 and s 33ZF of the Act, an independent costs referee (the **costs referee**) be appointed for the purpose of:
 - (a) conducting inquiries every six months (commencing one month from the date of these orders) on whether there is any, and if so what, work being performed for the plaintiff:
 - i. is resulting in costs incurred by reason of two firms performing work rather than one (**Duplicated Work**) and making any recommendations on how Duplicated Work may be avoided;
 - ii. is unreasonable and would not be recoverable on a solicitor client taxation (**Unreasonable Costs**);
 - (b) providing confidential written reports to the Court, Piper Alderman and GMP every six months (within one month of the completion of each inquiry), which state the cost referee's opinion on the matters in [7(a)] of this order, identifying and describing any Duplicated Work or Unreasonable Costs in sufficient detail, and retaining such records from the costs referee's inquiries, to enable the quantification of the costs relating to any such work, at a later time (**Costs Referee Reports**).
8. Ms Kerrie-Ann Rosati is nominated as the costs referee.
9. The costs referee may indicate acceptance of the nomination by filing with the commercial court registry, within 7 days of the date of this order, a written consent to act. The costs referee must thereupon deliver to Piper Alderman and GMP a copy of the consent to act.
10. Piper Alderman and GMP must provide such information, access to personnel and access to documents as the costs referee may reasonably require.
11. The reasonable fees of the costs referee shall be borne by the plaintiff in the El-Helou Proceeding and shall not be recoverable against the defendants in the El-Helou Proceeding.
12. In the event and at the time at which the quantification of the plaintiffs' costs to be deducted from any settlement or payable by the defendants arises for determination, any party to this proceeding may make an application:
 - (a) regarding the adoption of the Costs Referee Reports, including, in the case of the defendants, application for disclosure of those Reports; or

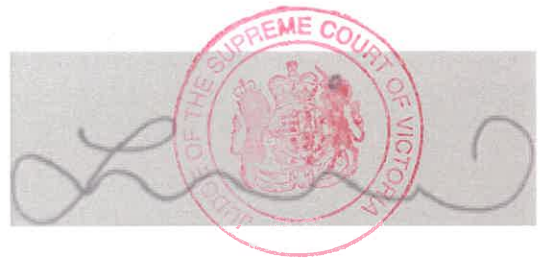


- (b) challenging or objecting to any aspect of the Costs Referee Reports, including but not limited to the characterisation of any costs as Duplicated Costs or Unreasonable Costs.

Other matters

13. Costs be reserved.

DATE AUTHENTICATED: 21 October 2024



The Honourable Justice Nichols