

NOTICE OF FILING

Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 18/10/2024 2:48:13 PM AEDT
Date Accepted for Filing: 18/10/2024 2:48:20 PM AEDT
File Number: NSD1010/2022
File Title: LEAH MAREE GREENTREE & Ors v JAGUAR LAND ROVER
AUSTRALIA PTY LTD ACN 004 352 238
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Reply

No. NSD 1010 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: General

Leah Maree Greentree and others

Applicants

Jaguar Land Rover Australia Pty Ltd (ACN 004 352 238)

Respondent

- 1 This is the Applicants' reply (**Reply**) to the defence filed on behalf of the respondent on 4 October 2024 (**Defence**) to the consolidated statement of claim filed on behalf of the applicants on 8 August 2024 (**CSOC**). In this Reply, capitalised terms that are not otherwise defined herein bear the same meanings ascribed to those terms in the CSOC, unless stated otherwise.
- 2 The applicants join issue with the Defence, save to the extent:
 - (a) the Defence contains admissions; or
 - (b) allegations in the Defence are admitted in this Reply.
- 3 In respect of subparagraph 6(b) of the Defence, the applicants:
 - (a) admit that a diesel combustion engine generates carbon dioxide;
 - (b) admit that carbon dioxide is the primary gaseous emission generated by a diesel combustion engine;
 - (c) admit that the emission of carbon dioxide by motor vehicles is not presently restricted by emissions standards regulations in Australia; and
 - (d) otherwise do not know and cannot admit the subparagraph.

13225-00001/15320480.1

Filed on behalf of	The Applicants
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- 4 In respect of subparagraph 7(c) of the Defence, the applicants admit that the limits for Pollutant Emissions set by the “Euro 5” emissions standards are higher than the limits for Pollutant Emissions set by the Euro 6 Standards.
- 5 In respect of subparagraph 8(c) of the Defence, the applicants:
 - (a) deny that the Affected Vehicles were fitted with a diesel exhaust after-treatment system designed to comply with the Australian Vehicle Standards (as defined in the Defence); and
 - (b) say further that the Affected Vehicles were each fitted with a diesel exhaust after-treatment system designed to comply with the Euro 6 Standards (as pleaded in subparagraph 7(c) of the Defence).
- 6 In respect of subparagraphs 9(b), 9(e) and 9(g) of the Defence, the applicants:
 - (a) admit that the Affected Vehicles employ an electronic device called a control module to control the operation of the diesel combustion engine and DPF System in those vehicles using software and inputs from models and sensors;
 - (b) admit that the physical components of the DPF System in the Affected Vehicles work together with each other and with the control module and software it utilises in the operation of the DPF System in those vehicles;
 - (c) refer to and repeat paragraphs 29 and 30 of the CSOC; and
 - (d) otherwise do not know and cannot admit those subparagraphs.
- 7 In respect of subparagraph 9(f)(ii) of the Defence, the applicants say that:
 - (a) a LNT (as defined in the Defence) is a honeycomb flow-through monolith substrate with a catalyst coating containing precious metals, typically including platinum, palladium and rhodium;
 - (b) a LNT is primarily designed to decrease the level of NO_x in the exhaust emitted by a vehicle fitted with a diesel combustion engine;
 - (c) a LNT decreases the level of NO_x in the exhaust through a two phase process;
 - (d) in the first phase, known as the adsorption phase, NO_x chemically binds to active sites on the catalyst surface of the LNT;
 - (e) in the second phase, known as the regeneration phase, the NO_x chemically bound to the active sites on the catalyst surface of the LNT is removed to prevent the LNT from becoming saturated (saturation occurring when there are no more active sites on the catalyst surface of the LNT to which NO_x contained in the exhaust can chemically bind);

- (f) a LNT must be frequently “regenerated” to prevent it becoming saturated and to thereby enable it to perform the function described in subparagraph (b) above;
- (g) “regeneration” of a LNT is typically achieved by a vehicle’s ECM causing temporary changes in the engine settings to increase the ratio of fuel to air in the exhaust leaving the exhaust manifold;

Particulars

- (i) The increase in the ratio of fuel to air in the exhaust leaving the exhaust manifold is typically achieved through the use of late cycle injection, whereby additional diesel fuel is injected into the engine cylinders after the main combustion event, with this late cycle injection sometimes being supplemented by the amount of air allowed into the engine cylinders during the combustion cycle also being restricted.
 - (ii) The ratio of fuel to air is typically increased for a period of around 5 to 10 seconds every 2 to 5 minutes while the vehicle’s engine is operating.
 - (iii) The applicants presently do not know the manner in which any LNT fitted to Affected Vehicles is regenerated.
 - (iv) Further particulars may be provided following discovery and expert evidence.
- (h) increasing the ratio of fuel to air in the exhaust leaving the exhaust manifold increases the amount of particulate matter contained in that exhaust, with a consequent increase in the amount of particulate matter which must be removed from any DPF fitted to that vehicle during regeneration of the DPF;
 - (i) during Active Regeneration, the amount of NO_x contained in the exhaust generated by a diesel combustion engine is typically increased, with a consequent increase in the amount of NO_x which must be removed from any LNT fitted to that vehicle during regeneration of the LNT; and
 - (j) due to the matters pleaded in subparagraphs (a) to (i) above:
 - (i) the presence of a LNT in a diesel vehicle upstream of any DPF fitted in that vehicle decreases the rate of passive regeneration of that DPF; and
 - (ii) Active Regeneration increases the need to regenerate the LNT and thus the frequency of LNT regeneration events.

- 8 The applicants admit subparagraph 21(b) of the Defence.
- 9 In respect of subparagraph 42(g) of the Defence, the applicants admit that the third applicant received:
- (a) a letter from the respondent dated 21 November 2022 in which the respondent offered to make “[a]n ex-gratia payment representing two (2) months of [the third respondent’s] vehicle lease payments, for the amount of \$3227.70”; and
 - (b) a payment of \$3,227.70 from Ian Weigh Motors Weigh Auto Group on about 19 December 2022.

Date: 18 October 2024



Signed by Matt Mackenzie
Agent of the lawyers for the applicants for the
limited and sole purpose of conducting this
proceeding

This pleading was prepared by Matt Mackenzie of Quinn Emanuel, Ronald Koo of Maurice Blackburn and Patrick Meagher and Peter Strickland of Counsel and settled by Stephen Free SC of Senior Counsel.

Certificate of lawyer

I Matt Mackenzie, certify to the Court that, in relation to the reply filed on behalf of the applicants, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 18 October 2024



Signed by Matt Mackenzie, agent of the lawyers for the applicants for the limited and sole purpose of conducting this proceeding