IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2025-454-20
[2026] NZHC 1697

UNDER	The Fair Trading Act 1986 and The Contract and Commercial Law Act 2017
BETWEEN	SILLSCO LIMITED First Plaintiff
	EPG DAVIES HOLDING COMPANY LIMITED Second Plaintiff
	Continued…
AND	HINO MOTORS LIMITED First Defendant
	Continued…

Hearing:	2 June 2026
Appearances:	D Cooper KC, H R Gwynne and C Z Coates for the plaintiffs J K Goodall KC, J W S Baigent and E A Keall-Ross for the first defendant S V East for the second defendant
Judgment:	16 June 2026

JUDGMENT OF BLANCHARD J

This judgment was delivered by me on 16 June 2026 at 2.00 pm pursuant to Rule 11.5 of the High Court Rules 2016

Registrar/Deputy Registrar

Solicitors:
Shine Lawyers NZ Ltd, Auckland
Simpson Grierson, Auckland
Bell Gully, Auckland

AND	IAN WILDMAN CARRIERS LIMITED Third Plaintiff METHOD LOGISTICS LIMITED Proposed Fourth Plaintiff MOKE LAKE PROPERTY SERVICE LIMITED Proposed Fifth Plaintiff T L NEWMAN DEVELOPMENTS LIMITED Proposed Sixth Plaintiff
AND	HINO DISTRIBUTORS (NZ) LIMITED Second Defendant MOTOR TRUCK DISTRIBUTORS (NZ) LIMITED Third Defendant

[1] The plaintiffs apply for orders approving settlement and discontinuance and for ancillary orders in relation to this class action (**approval application**). The application follows a deed of settlement being executed by the parties on 9 February 2026. The application is supported by the defendants.

The plaintiffs and class members

[2] The six plaintiffs all purchased Hino vehicles manufactured in Japan by the first defendant (**Hino Japan**). The plaintiffs and those on whose behalf they sue as representatives of a defined class (**the class members**) purchased those vehicles either as new vehicles from the second defendants (**Hino New Zealand**) or as second-hand vehicles from a third party.

[3] The class members were defined in orders I made on 23 March 2026 (**the representative orders**). Under the representative orders, the class members are persons who, during the period from 4 March 2010 until 3 March 2025, acquired any Hino vehicle fitted with a diesel engine, with a build date from 1 January 2010 to 22 August 2022 (**relevant vehicle**). The class members must have acquired the relevant vehicle for use in New Zealand other than for the purpose of resupply.

[4] The plaintiffs have identified 10,384 relevant vehicles. Of these, it is estimated that 8,243 were imported into New Zealand by the defendants and 2,141 were imported as second-hand vehicles.

The alleged misconduct and misrepresentations

[5] The relevant vehicles were all certified by New Zealand Transport Authority (**NZTA**) for entry into New Zealand pursuant to emissions rules. The emissions rules are contained in the Land Transport Rule: Vehicle Exhaust Emissions 2007, which were made under s 152 of the Land Transport Act 1998.

[6] The plaintiffs allege that the certification of the relevant vehicles arose from the defendants providing NZTA with misleading information as to the emissions and fuel efficiency of the vehicles. The plaintiffs also allege that the same misleading

information was represented (directly or indirectly) to all persons purchasing, leasing, or dealing with the vehicles.

[7] The genesis of those allegations and this proceeding are acknowledgments made by Hino Japan in 2022 of misconduct in the certification of emissions and fuel consumption testing. Hino Japan publicly released a report by an independent special investigative committee dated 1 August 2022. The report found misconduct by Hino Japan in emissions and fuel efficiency testing and that some vehicles which were certified to comply with certain emissions standards may in fact have exceeded their permitted emissions levels.

Causes of action

[8] The plaintiffs make claims under ss 9, 10, and 13 of the Fair Trading Act 1986, in deceit, for precontractual misrepresentation under s 35(1) of the Contract and Commercial Law Act 2007 (**CCLA**), and for breach of implied term of merchantable quality under s 139 of the CCLA.

Loss

[9] The plaintiffs claim that they, and class members, suffered loss of two types. First, the difference between the consideration paid by them for the relevant vehicles and the true value of those vehicles. Second, consequential loss suffered as a result of owning the vehicles. The plaintiffs' losses have not been quantified.

Defences

[10] While Hino Japan accepts the findings of the special investigation committee, the defendants deny that they have any liability to the plaintiffs. They also deny that the plaintiffs or class members have suffered any loss. Both defendants also rely on contractual limitation and exclusion clauses which they say were recorded in the terms of sale with Hino New Zealand.

The proposed settlement

[11] The parties commenced a settlement process in September 2025, which led to a heads of agreement being concluded on 10 December 2025 and a full written deed of settlement being executed on 9 February 2026. The settlement came about through a facilitated process.

Facilitation process

[12] On 25 September 2025, the parties entered into a facilitation agreement by which they appointed Miriam Dean KC to act as a facilitator in a structured settlement process. That process ran for 16 weeks from 20 August to 20 December 2025. The process was very similar to the one followed in the equivalent class action proceeding in Australia in *McCoy v Hino Motors Ltd.*[1] The key features of the process were:

(a) There were two meetings, each of approximately three hours, on 26 September 2025 and 31 October 2025, that were attended by the lawyers for the plaintiffs and Hino Japan and Ms Dean KC at which Hino Japan set out its and Hino New Zealand's position on the claims.

(b) Following each disclosure meeting, Hino Japan's lawyers provided the plaintiff's lawyers with tranches of disclosure documents.

(c) The plaintiffs' lawyers submitted a series of written questions arising from the presentations and disclosure materials, to which Hino Japan's lawyers responded in writing.

(d) The representations made by Hino Japan during the process were provided on the basis that Hino Japan would, as part of any settlement, provide a warranty to the effect that the representations were accurate and complete.

(e) The parties then exchanged written position papers.

1 *McCoy v Hino Motors Ltd* [2025] VSC 447.

Settlement meeting and heads of agreement

[13] A full day settlement meeting was held on 10 December 2025. The meeting was attended by four of the six plaintiffs (with the other two receiving regular updates by phone during the course of the meeting) and their lawyers, representatives of both defendants and their lawyers, and Ms Dean.

[14] The meeting concluded with a conditional agreement to settle the claim for a total payment of NZ$10,900,000. That was recorded in a provisional heads of agreement, which was conditional on, among other things, the defendants obtaining board approval and the parties recording the full settlement terms in a settlement deed.

Settlement deed

[15] The deed of settlement was executed on 9 February 2026. Key terms of the deed are:

(a) Hino Japan is to pay the sum of NZ$10,900,000 (including GST if any). That sum has been paid into Simpson Grierson's trust account and becomes payable to the "Settlement Distribution Fund" following court approval of the settlement.

(b) That payment is made without any admission of liability.

(c) The payment is made in full settlement of all claims by class members, other than those who elect to opt out of the proceeding.

(d) The agreement is conditional on both the Court making the representation orders, which occurred on 23 March 2026, and the Court making the approval orders, which are the subject of this application.

(e) If the Court declines to approve the settlement, the deed will terminate and the settlement sum will be returned to Hino Japan.

Settlement distribution scheme

[16] The settlement distribution scheme (**SDS**) provides for:

(a) the "Loss Formula", which is the methodology by which eligible class members' entitlement to a share of the settlement sum is proposed to be calculated; and

(b) the procedure for distributing the settlement sum to class members.

Loss Formula

[17] In broad terms, the Loss Formula allocates compensation by categorising relevant vehicles into three categories based on value: high value (**HV**), medium value (**MV**), and low value (**LV**). Compensation payable for an HV vehicle is 200 per cent of that payable for an LV vehicle. The compensation payable for an MV vehicle is 150 per cent of that payable for an LV vehicle. Worked examples have been provided which show hypothetical compensation figures of NZ$1,440 per HV vehicle, NZ$1,080 per MV vehicle, and NZ$720 per LV vehicle.

[18] Some relevant vehicles will have been owned by more than one eligible class member over the relevant period (4 March 2010 to 3 March 2025). That would occur, for example, if one eligible class member purchased a relevant vehicle as a new vehicle and then sold it as a second-hand vehicle to another eligible class member. The Loss Formula provides for the amount payable in respect of such a relevant vehicle to be allocated between those eligible class members based on their respective periods of ownership.

Procedure for distribution

[19] The procedure in the SDS is broadly based on the distribution scheme in the *McCoy* proceeding, though it is simplified in some respects. The plaintiffs say the SDS is intended to create a procedure which ensures all eligible class members receive the allocated share of the settlement sum and is also as efficient and cost effective as possible.

[20] Under the SDS, an eligible class member is a class member who registers a claim in accordance with the representative orders and who satisfies the other requirements in the SDS. The SDS provides for the following process:

(a) The scheme administrator determines the eligibility of registered class members and advises all eligible class members of the estimated distribution amounts based on the Loss Formula. The scheme administrator does so following the procedure set out in the SDS.

(b) A "review" procedure allows any registered class member to require the scheme administrator to review their eligibility or estimated distribution amounts.

(c) Following that review process, the scheme administrator calculates the distribution amounts and pays those into the bank account nominated by eligible class members.

(d) Any residual sum remaining after the distributions is then distributed to eligible class members or, if it is uneconomic to distribute, it is donated to charity.

(e) The SDS also provides for deductions from the settlement sum of reimbursement payments of NZ$6,000 for each to the six plaintiffs and of legal and administrative costs.

Responses from class members

[21] Notice of the settlement was given to class members by email, post, phone calls and public advertising by radio, social media, mainstream media, and trade publications. The steps taken comply with and in fact go further than was required by the notification order I made on 23 March 2026.

[22] The plaintiffs' solicitors, Shine Lawyers NZ Ltd (**Shine**), identified 8,115 class members. The period for class members to register or opt out closed at 5.00 pm on 18 May 2026. At the close of that period, Shine had received registrations from

2,144 class members, opt-out notices from 31 class members, and objection notices from two class members. The total registered class members corresponded to a total of 7,006 relevant vehicles.

[23] Shine also received late notices from some class members. Although those notices were received outside of the specified notice period, the plaintiffs seek a direction that those late notices be treated as valid notices for the purpose of the SDS. Taking into account the late registrations, Shine has received registration from 2,209 class members and opt-out notices from 35 class members. The number of objection notices (two) has not changed.

[24] The opt-out notices represent only 1.56 per cent of total responses received.

[25] Both objectors essentially say the same thing, that the settlement sum is too low. Shine wrote to both objectors advising them of their right to file documents and appear in opposition to the approval application. Neither objector took any steps to appear in opposition.

Legal test

[26] The settlement and discontinuance of representative proceedings conducted on an opt-out basis under r 4.24 of the High Court Rules 2016 are subject to the Court's approval.[2] The Court assesses whether the settlement and discontinuance are a fair and reasonable compromise of the claims that have been brought. In doing so, the Court will consider whether the proposed settlement has been undertaken in the interests of the members of the settlement group as a whole, both as between the plaintiffs and the defendant, and as between the plaintiffs themselves.[3] When considering the fairness of the settlement between the group members, the Court will be concerned to ensure that the interests of the lead plaintiffs are not being preferred over the interests of other group members. The arrangement should be framed

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2 *Southern Response Earthquake Services Ltd v Ross* [2020] NZSC 126, [2021] 1 NZLR 117 at [83]; and *Ross v Southern Response Earthquake Services Ltd* [2021] NZHC 3497 at [41].

3 *Southern Response Earthquake Services Ltd v Ross*, above n 2, at [67]–[82], in particular [71]; *Ross v Southern Response Earthquake Services Ltd*, above n 2, at [3], [48]–[52], and [130]; *Livingstone v CBL Corporation Ltd (in liq)* [2023] NZHC 2712 at [40]; *McCoy v Hino Motors Ltd*, above n 1, at [54]–[58].

to achieve a broadly fair division of the proceeds, treating like group members alike, as cost-effectively as possible.[4]

[27] But it is not the Court's role to second guess the decision made by the plaintiffs' legal representatives, tactical or otherwise.[5] Rather, the Court's task is to satisfy itself that the decision to settle the proceeding is within a reasonable range of decisions open to the plaintiffs, having regard to the circumstances "knowable to the plaintiffs and their legal representatives, and a reasonable assessment of those risks based on those circumstances."[6] Reasonableness, for the purposes of the enquiry, is "a range rather than a single point."[7] It is not an enquiry of whether the proposed settlement is the best outcome that might have been achieved.[8]

[28] Similarly, the methodology for distributing the fixed pool of settlement funds must be "within the bounds of fairness and reasonableness in its attempts to balance what are, unavoidably, conflicts between the interests of certain group members at the expense of others".[9] The Court's role "is simply to determine whether the methodology is within the range of reasonable sharing methodologies."[10]

McCoy v Hino Motors Ltd

[29] This proceeding follows and has many similarities with the Australian class action in *McCoy*. That action involved claims against Hino Japan and Hino Motors Sales Australia Pty Ltd that are substantially similar to the claims in this proceeding. The parties to the *McCoy* proceeding entered into a conditional settlement that was approved by Delany J in the Supreme Court of Victoria on 23 July 2025.[11]

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4 *Camilleri v Trust Company (Nominees) Ltd* [2015] FCA 1468 at [5(e)]; *McCoy v Hino Motors Ltd*, above n 1, at [73]–[78].
5 *Simons v ASB Bank Ltd* [2026] NZHC 11 at [13]; and *Livingstone v CBL Corporation Ltd (in liq)*, above n 3, at [39(c)].
6 *Simons v ASB Bank Ltd*, above n 5, at [13]; and *Livingstone v CBL Corporation Ltd (in liq)*, above n 3, at [39(c)], *citing Camilleri v Trust Company*, above n 4, at [5(c)].
7 *Ross v Southern Response Earthquake Services Ltd*, above n 2, at [53].
8 At [53].
9 *Camilleri v Trust Company (Nominees) Ltd*, above n 4, at [41], cited in *Livingstone v CBL Corporation Ltd (in liq)*, above n 3, at [71]. See also *Re Tetro* [2025] NZHC 189 at [31]–[35].
10 *Re Tetro*, above n 9, at [33].
11 *McCoy v Hino Motors Ltd & Anor*, above n 1.

[30] The class definition in *McCoy* was broadly equivalent to that in this case. There were 95,340 vehicles within the class definition.[12] The allegations in respect of the relevant vehicles were substantially the same as those in this proceeding and were again based on Hino Japan's admissions of misconduct in the certification of vehicle emissions in Japan.[13] As in this proceeding, the defendants denied liability.[14]

[31] The settlement process in the Australian proceeding was also similar to that followed in this proceeding. There was a joint conferral process held between August and December 2024, followed by a mediation on 10 and 11 December 2024, with a heads of agreement executed on 12 December 2024 and a settlement deed on 14 February 2025.[15] The settlement sum was AU$87 million.

[32] The plaintiffs gave warranties that, in the course of the conferral process, they had disclosed all relevant information that they considered or ought to reasonably consider critical to the settlement or resolution of the dispute between the parties. The terms of the warranty in *McCoy*[16] are materially the same terms in the warranty given in this case.

[33] The principles for approval of a class action set out by Delany J[17] are essentially the same as those adopted by the New Zealand courts. Delany J then applied those principles and was satisfied that the settlement was fair and reasonable.[18]

[34] Delany J separately considered whether the proposed settlement was fair as between class members.[19] That assessment largely involved consideration of a loss formula which remained confidential and is therefore not disclosed or discussed in the judgment (but which fulfils the same function as the Loss Formula in this case).

12 At [23].
13 At [26]–[28].
14 At [29].
15 At [33].
16 At [64].
17 At [51]–[61].
18 At [62]–[72].
19 At [73]–[78].

The plaintiffs' confidential submission

[35] In *McCoy*, a confidential opinion of counsel for the plaintiff was filed as an exhibit to an affidavit on behalf of the plaintiff.[20] The filing of a confidential opinion of that nature is a common feature of settlement approval applications in Australia, but it does not form part of the process followed in New Zealand cases. In the present case, no confidential opinion has been provided. Instead, however, the plaintiffs have provided a confidential submission in relation to the reasonableness of the settlement. With the defendants' agreement, the confidential submission has not been provided to them or their solicitors or counsel.

Confidentiality and non-publication orders

[36] A significant amount of confidential material is before me. This material is contained in:

(a) the plaintiffs' submission in relation to the reasonableness of the settlement;

(b) paragraph 19 of the plaintiffs' submissions in support of the approval application;

(c) a confidential affidavit of John Lane on behalf of the defendants dated 15 May 2026; and

(d) the defendants' confidential submissions in support of the approval application.

[37] The plaintiffs seek confidentiality and non-publication orders in relation to (a) above. The defendants seek such orders in relation to (b), (c) and (d). Neither side opposes the orders sought by the other.

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20 At [47](c), [62], and [72](b).

[38] I am satisfied that it is appropriate to make the orders. The material that would be covered by the orders is appropriately confined and clearly confidential. It includes material that is subject to without prejudice privilege.

Fairness and reasonableness of the proposed settlement

Between the plaintiffs and defendants

[39] The settlement has been reached relatively early in the proceeding. Discovery and exchange of briefs of evidence have not occurred. This advantages the class members because the legal costs that have been incurred are substantially less than the costs that would have been incurred if settlement had occurred later.

[40] The early settlement has also advantaged the class members because it has meant that litigation funding has not been required. At the time the settlement process began, the plaintiffs were seeking litigation funding. However, the search for funding was paused once the settlement process began. If a settlement had not been reached, the proceeding would likely have been funded by a litigation funder. The funder would have required payment of a significant percentage of the settlement fund.

[41] A potential disadvantage of an early settlement could be that the plaintiffs are less informed about the prospects of success because they have not had the benefit of discovery. But that risk is mitigated in this case because of the facilitation process between the parties and the terms of the warranty provided by Hino Japan in the deed of settlement.

[42] The settlement was negotiated at arm's length. The parties were represented by senior counsel. They participated in the facilitation meetings and the settlement meeting, and all meetings were facilitated by Ms Dean.

[43] The settlement is also consistent with the settlement reached in the Australian proceedings. The Australian settlement represents AU$912.52 per vehicle. The New Zealand settlement represents NZ$1,049 per vehicle. Using the exchange rate that applied on the day of the settlement meeting and heads of agreement, the

settlement sum represents AU$876.87. This is 96 per cent of the Australian per vehicle settlement amount.

[44] The relevant vehicles in the Australian proceeding were all imported new into Australia. There is no equivalent of the 2,576 second-hand vehicles that constitute 24 per cent of the New Zealand class. This is significant because the second-hand imported vehicles are likely to be lower value. Also, the claim against the defendants in relation to the second-hand vehicles faces additional challenges. Taking these matters into account, the New Zealand settlement can be seen as no less favourable to class members than the Australian one.

[45] I have considered the confidential material. The plaintiffs' confidential submission summarises two matters relevant to the strengths and weaknesses of the claim and defences that the plaintiffs' solicitors and counsel took into account when recommending the settlement. The defendants' confidential submissions also discuss matters that are relevant to the reasonableness of the settlement.

[46] The deed of settlement provided for the approval orders to include a release of claims by class members (other than those who opt out of the proceeding). The release applies to all claims "arising out of or in connection with the emissions certification or fuel economy of the Relevant Vehicles, including but not limited to any of the allegations or claims made in the Proceeding or anything in any way connected or related to them." This is reflected in the order sought in the approval application. It is consistent with the equivalent provision in the Australian settlement, described in *McCoy* as a release of "claims were or could have been made in the proceeding".

[47] The information that was provided to class members in relation to the proposed settlement gave them a fair summary of the settlement and the options available to them. The responses of the class members to the proposed settlement are a relevant factor as to the fairness and reasonableness of the settlement.

[48] Few class members have elected to opt out. As noted above, only 35 opt-out notices have been received. This means that approximately 98.4 per cent of

responding class members have elected to remain as class members and therefore be bound by the settlement (if it is approved by the Court).

[49] As I have said, two objection notices were received on the basis that the settlement sum was too low. I am sure that all the plaintiffs would have preferred to have a higher settlement sum if that had been possible, but this does not mean that the settlement is not fair and reasonable.

[50] Taking the above matters into account, my conclusion is that the proposed settlement is fair and reasonable as between the plaintiffs and defendants. Having considered the information I have been provided with, including the confidential material, I consider that proposed settlement reflects a realistic assessment of the strengths and weaknesses of the claim. It provides a certain outcome and avoids the litigation risk of pursuing the claim, including the risk that the claim will not succeed. As discussed above, there is no "correct" settlement figure; the issue for the Court is whether the plaintiffs' decision to settle on these terms is within the range of decisions open to the plaintiffs. In my view, the proposed settlement falls within that range.

Between the class members

[51] The Loss Formula seeks to strike a balance between the objectives of achieving an equitable distribution which reflects that some relevant vehicles were significantly more expensive than others and a practical formula which can be applied to a large number of relevant vehicles without unnecessary delay and cost.

[52] The Loss Formula takes into account the value of the relevant vehicles through categorisation of the vehicle types into the three categories, HV, MV, and LV. It treats all second-hand imported vehicles as LV, given that they are likely to have a lower value than the new vehicles and that the claim in respect of those vehicles face additional challenges. Where a relevant vehicle has had multiple owners over the relevant period, the Loss Formula also provides for the equitable sharing of the compensation payment between those multiple owners.

[53] In *McCoy*, Delany J said that the confidential loss assessment methodology was "able to be applied without undue complication in a consistent and fair manner

to the claims of individual group members". He also referred to an earlier case in which it was said that "it would not be reasonable to incur additional costs and delays in seeking a 'more perfect' process to the extent that would be possible".[21]

[54] In this case, the Loss Formula creates a principled basis on which to distribute the settlement sum without undue complications. Although a more precise methodology could be devised, the benefit of this would be reduced by the increased costs of the process. Any formula that relied on the actual purchase price paid by eligible class members would create the problem of verification of the figures. It would likely be a time consuming and costly exercise for the scheme administrator to obtain purchase price information from all eligible class members and to verify that information.

[55] For these reasons, I consider the settlement to be fair and reasonable as between class members.

Appointment of the scheme administrator

[56] The approval application seeks an order appointing Shine as the scheme administrator.

[57] The key tasks of the scheme administrator, which are described in the SDS, are to communicate with class members, identify all eligible class members, calculate the distribution amount payable to eligible class members, consider any applications for review by class members, arrange for payment of the distribution amounts, and manage the disposition of any residual settlement sum. This will involve a significant amount of work given the number of class members.

[58] None of the New Zealand approval cases have involved the appointment of the plaintiffs' solicitor to this role. But it is a common practice in Australia.[22] For

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21 *McCoy v Hino Motors Ltd*, above n 1, at [77], citing *Fuller v Allianz Australia Insurance Ltd & Anor (Settlement Approval)* [2025] VSC 160 at [101].

22 See *Ellis v Commonwealth* [2023] NSWSC 550, (2023) 411 ALR 578 (Shine Lawyers appointed Administrator in a Stolen Generations class action); *Hillman v Mayne Pharma Group* [2024] VSC 786 (Phi Finney McDonald appointed Administrator in a shareholder class action); *Shimshon v MLC Nominees Pty Ltd* [2025] VSC 249 (Maurice Blackburn appointed Administrator in a class action concerning trustee obligations for superannuation products); *Stallard (as trustee for the*

example, in *McCoy*, the plaintiff's solicitors were appointed as a scheme administrator.[23]

[59] Shine are well placed to administrate the settlement scheme efficiently given their familiarity with the proceedings. They have been solicitors for the plaintiffs throughout and to date have managed all communications with class members. The evidence indicates that Shine have the capacity and experience to undertake this role. They also have the ability to share the expertise and resources of their Australian colleagues at Shine Lawyers Pty Ltd, which has considerable experience with Australian class actions.

[60] For these reasons, I am satisfied it is appropriate to appoint Shine as the scheme administrator.

Deductions from the settlement sum

[61] The approval application seeks an order for the deduction of various costs from the settlement sum. The deductions are in two main categories. First, reimbursement payments to the plaintiffs. Second, legal and administrative costs and disbursements.

Reimbursement payments to the plaintiffs

[62] It is common for the plaintiffs in representative proceedings to receive an additional payment from the settlement sum in recognition of their commitment and time as representative plaintiffs. For example, in *Livingstone v CBL Corporation Ltd (in liq)* Gault J approved a reimbursement payment of NZ$6,700 to the plaintiff.[24] In *Simons v ASB Bank Ltd*, Venning J approved a total payment of NZ$30,000 among the seven plaintiffs.[25] In *McCoy*, Delany J held that a reimbursement payment of AU$20,000 to the plaintiff was "appropriate having regard to the time, trouble and inconvenience occasioned … in acting as the lead plaintiff in the proceeding".[26]

Stallard Superannuation Fund) v Treasury Wine Estates Ltd [2025] VSC 368 (Slater and Gordon appointed Administrator in a securities class action); *Lieberman v Crown Resorts Ltd* [2025] VSC 596 (Maurice Blackburn appointed administrator in a shareholder class action).

23 *McCoy v Hino Motors Ltd*, above n 1, at [79]–[81].

24 *Livingstone v CBL Corporation Ltd (in liq)*, above n 3, at [94] and [99(g)].

25 *Simons v ASB Bank Ltd*, above n 5, at [38]–[49].

26 *McCoy v Hino Motors Ltd*, above n 1, at [111].

[63] The approval application seeks approval for a payment of NZ$6,000 to each plaintiff and therefore a total of NZ$36,000. The reimbursement amount is consistent with that approved in other New Zealand cases, and I approve it.

[64] Recently, an issue has arisen between the second plaintiff and Shine. The second plaintiff has failed to provide information required by Shine to deal with anti-money laundering requirements. This has resulted in Shine terminating their retainer with the second plaintiff. The termination will come into effect on 12 June 2026. This means that, at the time that the settlement funds will be distributed, Shine will no longer be the solicitors for the second plaintiff. In correspondence with the second plaintiff, Shine advised that an order may be sought to exclude the second plaintiff from receiving its payment of NZ$6,000. However, at the hearing before me, Mr Cooper KC, who appeared for the plaintiffs, having explained the issue to me, did not make a submission either for or against the second plaintiff being compensated.

[65] My conclusion is that the second plaintiff should receive a payment of $6,000. Although the second plaintiffs' recent actions will have caused some inconvenience, it is still the case that overall the second plaintiff will have had to make a significant commitment in terms of time and effort, and it should be compensated for that.

Legal and administrative costs

[66] The legal and administrative costs are in three categories. The first is legal fees and disbursements to 28 February 2026 (the end of the month which the settlement deed was entered). The total costs in this category are NZ$1,354,064.53. The major component is Shine's fee of NZ$707,446.60 with an uplift of 25 per cent in GST, being a total (including the uplift and GST) of NZ$1,016,945.49.

[67] Those fees are charged pursuant to a conditional fee agreement between Shine and the plaintiffs. The agreement provides that Shine's fee is payable only if there is a "Successful Outcome", which includes "resolution by settlement agreement", and provides for a 25 per cent "Premium Fee". The premium fee reflects the fact that Shine's fee is "at risk" on the outcome of the proceeding and is not payable until a successful outcome is achieved. The premium is calculated as a percentage of fees, not as a percentage of the settlement sum.

[68] The first category also includes counsel's fees of NZ$177,838 (plus GST).

[69] The balance of the costs in this category is for other disbursements, including court costs and the plaintiffs' share of the facilitator's costs.

[70] The second category is legal fees and disbursements for the period from 28 February 2026 to the conclusion of this application. The total is estimated to be NZ$436,064.39 (including GST).

[71] Some of these costs have not yet been invoiced or incurred. The actual amount may vary from this estimate, but the plaintiffs say any variation is likely to be minor because the significant majority of the costs are known.

[72] These costs cover the steps taken since the entry into the settlement deed. These include compiling an amended statement of claim, filing the approval application and supporting affidavit, drafting and preparing the SDS, filing an amended representative application, appearing at a telephone conference, sending the notice of proposed settlement to class members, arranging for advertising of the settlement, receiving and collating all responses from class members, preparing submissions and further affidavits in support of the approval application, and appearing in support of the approval application.

[73] The majority of the costs in this category are Shine's estimated fees of NZ$268,059.48 (including GST). That amount does not include a premium fee. Shine does not intend charging a premium fee for its attendances over this period.

[74] The third category is for the prospective costs of administering the SDS. The amount proposed is NZ$731,124 (including GST). A budget has been prepared to calculate this figure. There is no premium included in Shine's fees for this work.

[75] The estimated costs take into account the extent of the administrative tasks required to complete the steps in the SDS, including the need to receive and verify the compensation claims relating to approximately 7,000 vehicles, to apply the

Loss Formula to those claims, and to administer payments to the eligible class members.

[76] By way of comparison in *McCoy v Hino Motors Ltd*, the Court approved administrative costs of AU$2,785,244.55 for the equivalent steps, albeit in the context of a settlement involving a materially higher settlement sum and class size.

[77] Although the above sums are large, they are fair and reasonable having regard to the considerable amount of work involved in managing a proceeding and settlement of the kind involved here. Shine's premium fee is justified in view of the risk it took and the delay in it being paid. As I have said, Shine's willingness to have a conditional fee agreement (as well as the early settlement) meant that a litigation funder was not required. This significantly advantaged the plaintiffs. I therefore approve the above amounts.

Result

[78] I make the following orders:

(a) All the material at [36] above is confidential and not to be published.

(b) Registrations or opt-out notices of class members whose notices were received after 5.00 pm on 18 May 2026 but before 5.00 pm on 31 May 2026 are to be treated as if those notices had been received prior to 5.00 pm on 18 May 2026.

(c) Settlement on the terms set out in the SDS is approved.

(d) Discontinuance of the proceeding on the terms set out in the approval application is approved. This includes release of all "claims" (as defined in the deed of settlement) by class members, other than those who have opted out.

(e) Shine Lawyers NZ Ltd is appointed as scheme administrator for the purposes of the SDS.

(f) Reimbursement payments of NZ$6000 to each of the plaintiffs and the following legal and administration costs are approved:

   (i) the plaintiffs' legal fees and disbursements of NZ$1,354,064.53 (including GST);

   (ii) the plaintiffs' estimated further legal costs and disbursements of NZ$436,064.39 (including GST); and

   (iii) administration costs of NZ$731,124, or such lesser amount as is actually incurred.

(g) Leave is granted for any party to apply to vary these orders or for the scheme administrator to seek directions from the Court as to the administration of the SDS.

Blanchard J