

Group Proceedings Update

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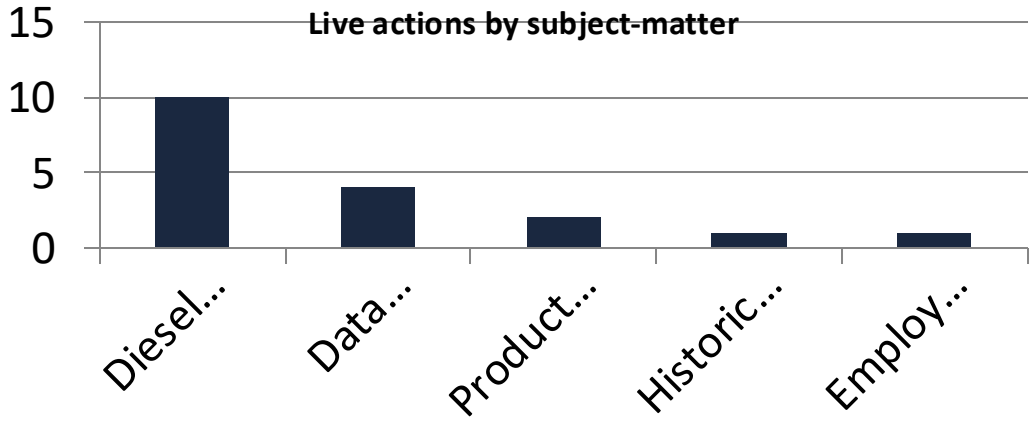
OVERVIEW

Four Themes — and the Frontier

- Getting a group action off the ground
- Jurisdiction and forum
- The substantive law catching up
- What's coming: the opt-out question
- Plus: causation and quantum at scale

Where We Are Now

- 18 live group actions (and more to come!)
- SCTS website list is incomplete
- 100,000+ individuals affected



- Settled: Celtic; Volkswagen (wave 1)
- 10 Diesel Emissions Cases
- 4 Data breach: fastest-growing category
- 2 product liability
- 1 historic abuse
- 1 employers liability

Two Applications, One Low Bar

- Authorisation of a representative party
- Permission to bring the proceedings
- Both decided before the summons is signeted
- Feared chokepoint — became case management

Bridgehouse v BMW (2024)

- Ordinary owner, no litigation experience
- “Same position as any litigant”
- A deliberately benign view of suitability
- Advisory council: refused

Mackay v Nissan — the Inner House Speaks

- Nissan & Renault: “nothing in common”?
- Permission granted on slim evidence
- Discretion only — appeals face an uphill struggle
- Prima facie case: a genuinely low bar

Milligan v Jaguar Land Rover

- The low bar is not no bar
- Dominus litis: an argument for another day
- Caution remains available later

Leave to Reclaim — Settled, Then Unsettled

- Bridgehouse (2024): leave assumed necessary
- Mackay & Milligan: two separate proceedings
- Donnelly (2026): a final interlocutor
- No leave required, after all

Donnelly v McKenzie: A Tale of Two Mesh Cases

	Donnelly v J&J	McKenzie v Covidien
Claimants	17	83
Products	5 mesh products	Several mesh products
Common issue?	Not demonstrated	Additional features beyond flat mesh
Outcome	**Permission refused**	**Permission granted**
On appeal	Refusal upheld	Reclaiming motion dropped

Campbell v James Finlay (Kenya)

- 4,000+ Kenyan tea harvesters
- WIBA: the exclusive route to a remedy?
- Jurisdiction retained; not forum non conveniens
- Inner House: sist pending WIBA claims in Kenya
- Watch this space — Proof, February 2027

Adamson v Arnold Clark

- Forum non conveniens — at the permission stage?
- Refused: a question for later, not now
- 95%+ of the group already Scottish
- Postscript: should reclaiming need leave?

Prescription: Conduct, Not Effect

- Section 11(2): the clock and continuing acts
- Misrepresentations can themselves “continue”
- Certificates never withdrawn — never safely relied on
- Section 6(4): no “reasonable person” gloss

Conspiracy & Misrepresentation

- Conspiracy: directed at consumers generally
- No need to know who, specifically
- Misrepresentation: a two-part test
- Factual content + a sale in mind
- Distributors & financiers often excluded

The French Blocking Statute

- Urquhart v Stellantis; Batchelor v Opel
- English approach: “real risk of prosecution”
- Scottish approach: proportionality
- Solution: a Hague Convention commissioner

Hill v Johnson & Johnson

- A vulnerable petitioner, evidence at risk
- Preliminary applications not yet heard
- No live proceedings
- The Inner House: nobile officium

Causation & Quantum at Scale

- Data breach: liability often admitted
- Defenders propose: 15,000 statements, lead cases
- Pursuers propose: “Vioxx questions”
- Lord Sandison's hybrid: sample + questionnaire, evidence from statstician
- Hearing : mid-December

The Opt-Out Question

Against — premature	For — closes the gap
DLA Piper, GC100, UK Finance, Morton Fraser	Class Reps Network, Thompsons, Law Society (pursuer side)
CAT experience: funder-driven, <2% take-up	CAT experience: works with safeguards (Apple: 36m)
Carve-outs sought: CCA claims, JR, PI/clin. neg.	Safeguards: certification, oversight, transparency

CLOSING

Questions & Discussion

- A gateway, not a wall
- Clear lines on who may represent the group
- A body of substantive law taking shape
- Real inventiveness, when the rules run short
- Opt-out: watch this space



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