Neutral Citation Number: [2016] EWHC 3031 (QB)

Case No: HQ15A05254

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/07/2016

Before:

SENIOR MASTER FONTAINE

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Between:

MAURICE HUTSON AND OTHERS	**Claimants**
- and -	
TATA STEEL UK LIMITED	**Defendant**
(formerly Corus UK Limited, successors in title and holders of the liabilities of British Steel Corporation and its predecessor companies)	

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Mr Robert Weir QC and Mr Ivan Bowley Counsel for the **Claimants**
(instructed by **Irwin Mitchell LLP and Hugh James**)
Mr David Platt QC counsel for the Defendant (instructed by **BLM LLP**)
Mr Brian D Cummins, Counsel for other Intended Claimants
(instructed by **Collins Solicitors**)

Hearing dates: 27th July 2016

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SENIOR MASTER FONTAINE

Senior Master Fontaine:

1. This is the application of the Claimants dated 17 December 2015 for a Group Litigation Order ("GLO") pursuant to CPR 19.11. In support of the application the Claimants rely upon the statements of Roger Maddocks dated 17th December 2015 ("Maddocks 1") and 21st July 2016 ("Maddocks 2"). The Defendant ("Tata Steel") opposes the application and relies on statements of Matthew Harrington dated 8th July 2016 ("Harrington 1") and 25th July 2016 (Harrington "2").

2. The Claimants are represented by Irwin Mitchell LLP and Hugh James. The Claimants are all former living or deceased employees of Tata Steel or their predecessors who worked at various Coke Works throughout England and Wales. It is alleged that they were exposed to a range of harmful emissions, principally coal dust and polyaromatic hydrocarbons generated by the high temperature processing of coal to make coke. Their claims concern a total of twenty-five coke plants. It is alleged that the Claimants sustained one or more of the following injuries: chronic obstructive pulmonary disease ("COPD"), chronic bronchitis ("CB"), lung cancer, temporary exacerbation of asthma ("TEA") and/or skin cancer. The overwhelming majority of claims are for respiratory disease.

3. There are other potential claims against Tata Steel in respect of the same alleged torts and the same range of injuries by former employees who are represented by Collins Solicitors. I refer to them in this judgment for the sake of convenience as the "Collins Claimants". Irwin Mitchell/Hugh James have been in correspondence with Collins before the hearing of the application but there was no indication from Collins until the very last minute (either the day before or the morning of the hearing) as to what the position of the Collins Claimants would be. At the hearing the Collins Claimants were represented by Counsel, and the court was told by Counsel on their behalf that no claims have yet been issued by them, which the Claimants' solicitors in this action had not previously been made aware of. The position of the Collins Claimants is that although there are persuasive arguments ventilated by both Applicants and Respondents, on balance a GLO may not be appropriate, without refinement of significant complicating features. No witness statements were submitted on behalf of the Collins Claimants.

Potential Claimants

4. Mr Maddocks deals with the number of claimants and potential claimants in his most recent Witness Statement. There are 280 Applicant Claimants who have been risk assessed by Irwin Mitchell/Hugh James, and a further 110 who have not yet been risk assessed (Maddocks 1 Paragraph 6). Some 600 potential Claimants have been rejected after screening (Maddocks 2, para 55). Mr Maddocks sets out the nature of the risk assessment carried out (Maddocks 2, para 27), and it is submitted that it is a measure of the strength of the cases remaining that such a large number have been rejected.

5. There was no evidence before the court in respect of the number of the Collins Claimants, but the court was informed by Counsel that Collins solicitors represented 42 potential claimants who had worked at Tata Steel coke plants in England (principally or entirely Corby) and 126 potential Claimants who had worked at the Ravenscraig Plant in Scotland.

Legal Framework

6. CPR 19.10 provides that the purpose of the GLO is to provide for the case management of claims which give rise to common or related issues of fact or law. CPR 19.11 provides for the establishment of a register for all claims managed under the GLO, specifies GLO issues which will identify the claims to be managed as a group under the GLO and specifies the management court that will manage the claims on the group register. A judgment or order made in respect of a GLO issue is binding on all claims on the register (CPR 19.12).

7. Once the application satisfies the test in CPR 19.10 the decision whether to grant a GLO is a matter for the court's discretion. (***Austin & Ors –v- Miller Argent (South Wales) Ltd*** [2011] EWCA Civ 928 per Jackson LJ at 35).

8. Once a GLO is made the management court controls the litigation, exercising case management powers, including but not limited to those listed in CPR 19.13-19.15.

9. If this court considers that it would be appropriate for the court to exercise its discretion to make a GLO, it would make an order subject to the consent of The President of the Queen's Bench Division.

10. There is no real dispute between the Applicants and Respondents that the jurisdiction in r.19.10 is satisfied. The issue between the parties is whether the court should exercise its discretion to grant a GLO.

Summary of the Claimant's Submissions

11. In the context of CPR 19.11 the Claimants contend that the following are `common or related' issues of fact or law relevant to these cases but that the list is not exhaustive:

    i) Breach of duty:

        a) Date of guilty knowledge of the risk of injury to men exposed to coke oven emissions (lung cancer and/or non-malignant respiratory disease and/or skin cancer);

        b) What amounts to a foreseeable risk for the purposes of sections 47and 63 of the Factories Acts 1937 and 1961 respectively;

        c) What amounts to a `substantial' quantity of dust for the purposes of sections 47and 63 of the Factories Acts 1937 and 1961 respectively;

        d) The steps that British Steel, as a national organisation, could and should have taken to prevent or reduce exposure;

        e) Practicability;

f) The identification and implication of 'consistent policies' throughout its organisation (Maddocks 2, para 28);

g) The management of `common factors' relevant to atmospheric pollution in its plants (Maddocks 2, para 29);

h) The identification, distribution and provision of suitable respiratory protective equipment;

i) The provision of information, advice and instruction on the risk of injury and precautionary measures.

j) The legal content of the statutory duties owed.

ii) Exposure levels:

a) How the Court is to determine the assessment of exposure to coke oven emissions across a range of plants and jobs.

iii) Causation:

a) The correct test for causation of lung cancer in men exposed to coke oven emissions;

b) If doubling the risk is the correct test, the level of exposure necessary to achieve that in a smoker and non-smoker;

c) The correct test for causation of COPD and/or CB in men exposed to coke oven emissions;

d) The requirements for recovery of damages in respect of temporary exacerbation of asthma in men exposed to coke oven emissions;

e) The correct test for causation of different types of skin cancer in men exposed to coke oven emissions.

iv) Apportionment:

a) The correct approach to apportionment for non-tortious exposure and/or other tortious exposure and/or smoking.

v) Irreducible Minimum: -

a) Whether it is appropriate to allow for an irreducible minimum level of exposure for men exposed to coke oven emissions;

b) If so, how that assessment should be applied across a range of plants/jobs/injuries;

vi) Quantification of Loss:

a) Awards of damages in respect of each of the injuries claimed;

b) How the court should approach the existence of co-morbid respiratory and/or non-respiratory conditions;

c) Provisional damages in respect of skin cancer.

vii) Limitation:

a) Those common factors relevant to the determination of section 33 of the Limitation Act 1980 (including the availability of witnesses and documents);

b) Section 2 of the Limitation Act 1939 and ***Arnold –v- CEGB*** [1988] AC 228.

12. The Claimants contend that a GLO has the following obvious advantages:

i) Comprehensive case management by a single managing judge;

ii) Proportionate use of Court time and resources;

iii) Avoids duplication of disclosure/witness evidence/expert evidence;

iv) Avoids inconsistent findings in separate Courts;

v) A judgment which automatically binds all participants in respect of common or related issues;

vi) A framework for the resolution of non-lead claims;

vii) Effective and comprehensive costs management;

viii) Costs sharing, enabling meritorious but lower value claims to be included without the risk of a disproportionate costs burden on any individual;

ix) It allows the parties to ascertain the scope of the litigation and organise their resources accordingly;

x) Avoids the risk of `privileged bystander' claims waiting for the outcome of other cases.

13. The Claimants also remind the Court that a Group Action is already under way in respect of claims brought by or on behalf of former Coke Oven Workers employed by British Coal, in respect of which this court made a GLO in July 2015 with the consent of The President of the Queen's Bench Division (the British Coal Coke Workers litigation). That litigation is being managed by The Hon. Mr Justice Turner.

14. The Claimants also refer the court to the ***Phurnacite Litigation*** [2012] EWHC 2936 (QB), where Swift J gave judgment on claims brought in respect of respiratory injury and/or cancers caused by exposure to emissions at the Phurnacite Plant. That litigation was also managed under a GLO. The defendant to that action, The Department for Energy and Climate Change, is also a defendant in the British Coal Coke Workers Litigation. At least 237 claims covering 22 coke works have now

been entered on a GLO Register in respect of respiratory injury and skin cancer sustained by former employees at British Coal's coke works. The Claimants submit that the single material distinction from the British Coal Coke Oven Workers litigation is that the Department had already made significant generic admissions by the time the GLO was made, narrowing the scope of the prospective litigation. In contrast this Defendant had made only one admission, on the day before the hearing, by letter of 26th July 2016, so that there exist a greater number of communal related issues to be tried in this proposed GLO.

15. The partial admission produced by Tata Steel in the letter of 26th July 2016, demonstrates that there are serious claims to be met and the Claimants who have been risk assessed do seriously intend to proceed. Furthermore, the fact that some of the Claimants are deceased is not a determination of the merits as can be seen from the ***Phurnacite*** decision.

16. It is very relevant that there is a single defendant in these cases responsible for all exposure over the entire period which suggests that a GLO would be workable. It would also be in Tata Steel's interest because there would be a cut-off date in a GLO which would prevent any future claims outside the GLO being made. By comparison in the Nottinghamshire Noise Induced Deafness cases referred to by Tata Steel there were multiple defendants. Here, there was a common company policy which would have applied throughout all coke plants. It is clear from Harrington No. 2 Exhibit MH2 (page 103) that the basic method of processing was the same at all plants as were the methods for controlling the levels of emissions and exposure. Control was centralised.

17. The letter of admission makes it clear that there will be a number of common issues in relation to the provision of respiratory protection equipment ("RPE"), namely: -

    i) Whether respirators were provided;

    ii) Whether the respirators were appropriate, and what standard was required;

    iii) When respirators should have been provided;

    iv) What level of protection was provided by different types of respirators;

    v) What steps there were to enforce the wearing of respirators.

    There will be a need for expert evidence in relation to these issues which would be common to all claims.

18. With regard to the number and types of lead claimants the court can determine the issues of breach of duty with the assistance of witnesses of facts and expert evidence. There would be qualitative evidence overall in respect of the extent of the atmosphere in given plants which could then be applied across to non-lead claimants. The lead claimants could consist of a range of people doing different jobs. The numbers and types of lead claimants would be a matter for the managing judge to decide. This would be a practical approach so that the question of related issues as well as common issues of fact could be dealt with.

19. With regard to causation the Claimants do not accept that ***Heneghan v Manchester Dry Docks Ltd*** [2016] EWCA Civ 86 applies in respect of the doubling of the risk, and it is submitted that the amount of exposure is relevant so this is a matter that would have to be considered which would be a common issue.

20. With regard to the amount of exposure, Tata Steel have performed a very limited assessment of the exposures only for a limited period (see Institute of Occupational Medicine Research report August 2012 RJM 11 pages 373-376) so the court will have only very limited evidence and will have to decide that issue. It is not sensible for a number of different judges to decide that issue which is properly a generic and common issue. The managing judge can also decide the level at which exposure causes disease for the non-cancerous illnesses.

21. In respect of the question of apportionment, it is accepted that many Claimants would have been smokers, and there will have to be a determination of how apportionment would be attributed between smoking and non tortious exposure. In ***Phurnacite***, Swift J made an assessment and applied this across all cases.

22. With regard to limitation there will be some common issues such as prejudice to Tata Steel, or what steps were taken by them to reduce exposure, such as in ***Phurnacite***.

23. Again, on the law because of the reference in the letter of 26 July 2016 to the Supreme court decision in ***McDonald v NGET*** [2014] 3 WLR 1197 there will be an issue as to what is the remit of the statutory protection afforded to whom. For example, many of the Claimants are very old. It will be by reference to judgments on issues in respect of the lead Claimants as other cases will then be able to be resolved.

24. Without a GLO there would be no common expert evidence so that it would be unlikely that the Claimants would be allowed expert evidence in each case, because it would not be proportionate for claims of modest value, so there is an access to justice issue (see White Book Volume 1, r.19.10, Note 19.10.0(c)). There would otherwise likely to be incompatible judgments on the same and related issues. For the claims brought in County Courts, one County Court judgment does not bind another and does not bind the High Court. Equally, a decision in the District Registry does not bind the High Court in another District Registry or at the Central Office.

25. There would be less room for tactical manoeuvres if the claims were case managed by one managing judge. For example, there would be no possibility of getting stronger cases on first to obtain judgment, which could then be relied on in negotiations with weaker cases. Such an approach would cause additional time and expense.

Summary of Tata Steel's Submissions

26. The primary purpose of a GLO is to obtain benefit from the litigation of common issues, the resolution of which will be binding on the participating parties. In this litigation there is simply an insufficiency of commonality. The primary objection is that the cases involve between 280 and 390 claims from former British Steel ("BSC") employees undertaking a wide range of different tasks over many decades at 25 different plants across England and Wales and one in Scotland. Each of those plants has a different site history. Each employee will have a different exposure history and dose estimate. It is the total lifetime/occupational dose which will be the central

issue in determining whether an individual's cancer or respiratory problem was caused by work, was idiopathic and/or otherwise sustained.

27. It is unclear how many of these cases have real merit. A GLO requires a sufficient number of credible cases to oust the presumption that litigation should be undertaken in a conventional fashion. In 99 of the cases, the Claimant died in the last century and the chances of the claim being successful must be viewed as remote. The Claimants' solicitors have been unable to obtain ATE insurance for at least 21 of the claims and have been forced to take out a speculative application to change the basis of their clients' funding. Only a small percentage appears to have been retained from prior to April 2013. Large numbers of claims (over 600) have evidently been rejected. Undertaking a detailed review of those which remain has not been possible as the Claimants' solicitors have not disclosed sufficient details to allow this to occur.

28. A GLO risks becoming a costs behemoth. It will increase costs and be used by the Claimants' solicitors as a vehicle for higher hourly rates and fees. It will be used as a shield for weak cases. Cases will not settle early.

29. Tata Steel refers to the commentary in the White Book to Rule 19.10 at Note 19.10.1:

> "The rule refers to "issues" within litigation that are common, whether of fact or law and the purpose of the GLO is to ensure that any such issues are decided so that the decision binds all claims on the register. Hence, in a situation in which (1) many claimants have similar claims, even against the same defendant, but each of them is in law a separate claim (though it may arise out of the same circumstances) in which individual liability and quantum need to be proved and (2) there is no common issue which if decided would be binding in each case, it is unlikely that a GLO will be appropriate……The question of whether one defendant is in fact liable to multiple claimants, when each claimant's claim is separate as a matter of liability as well as quantum of damages, is not a common issue and not a GLO issue".

30. Tata Steel also relies on the decision in ***Austin –v- Miller Argent,*** an application by 549 residents of Merthyr Tydfil who contended that dust and noise generated by coal extraction and associated works at the Flos-y-Fran open-cast mining site constituted a private nuisance. The GLO was refused and the Court of Appeal set out the following guidance:

> "(a) The decision whether to make a GLO is a matter for the Court's discretion, but I must be recognised that it commits both the parties and the Court" to the allocation of substantial resources to the conduct of group litigation [35]. It has the status of a case management decision [43].
>
> "(b) The Court must not make a GLO before it is clear that there is a sufficient number of claimants, who seriously intend to proceed and those claims raise common or related issues of fact and law [35]"

> "(c) That a relevant basis for assessing if there were a sufficient number of claimants seriously intending to proceed was whether ATE insurance had been taken out [36]"
>
> "(d) The mere fact that there are common issues of fact and law which existed in a particular set of cases could only be considered after the question of whether there was a sufficient number of serious cases directed to those issues. Commonality is not sufficient *ipso facto* [39, 43]".

31. In particular, Tata Steel says that there is insufficient commonality because the litigation involves 24 plants in England and Wales and one in Scotland, each of which throws up potentially different factual issues. The number of Claimants associated with any particular plant is not substantial, with the exception of the Ravenscraig plant in Scotland where 126 claims have been notified. In contrast four plants have only one claim each (Consett, Cargo Fleet, Dawes Lane and Grangetown). A further seven have five or fewer claims (Acklam, Cleveland, East Moors, Grant (Port Talbot), Hartlepool, Redbourn and Stanton). Apart from the Collins Claimants, at the time of Mr Harrington's second witness statement only Morfa (Port Talbot) had more than 20 claims. Tata Steel takes issue with the numbers ascribed by Mr Maddocks (Maddocks 2 Paragraph 5), because he has included all claims including those not yet risk assessed and has also combined the separate Port Talbot plants of Grange, Margam and Morfa to demonstrate a figure of 113 potential claimants.

32. In Harrington 1 Paragraph 7, the differences between the various sites and the interplay with the activities of the various Claimants are explained. It is submitted that these variables are important because they constitute the basis upon which any dose calculation can be undertaken. It is the dose that will be the basis for any assessment of medical causation and therefore of liability in a particular case. In contrast, in the ***Phurnacite*** decision, a dose relationship was established between the incidence of exposure and the development of lung cancer. The application of such a figure requires a detailed analysis of how that emission level could be reached in any particular case. This involved establishing the level of emissions from a particular oven in a particular location relating to the working activities of a particular employee over a particular period. The wide differential in the periods over which various employees worked on the ovens (and their differential distance from source), made each case unique. It is submitted that although such an exercise was just about feasible in the case of one site (as in ***Phurnacite***) it would be extremely complex over 24 or 25 sites.

33. In relation to non-malignant respiratory disease cases the position is even more complex because a calculation of how the dose is made up is highly site specific and involves the allocation of units of exposure relevant to whether the employee was working on the oven or shuttle floors, the briquetting plant, the quenching car floor, ramps, screen house and pitch bays, and/or the coal sampling rooms.

34. It is submitted that the sort of variables which the Court will have to look at when estimating emissions and dose in respect of only one Plant are as follows:

i) The age and construction of the ovens. Emissions will vary depending on the age of the plant. Each plant has a unique history of when it was built, the relevant technology, when modernised and (ultimately) when closed;

ii) The chemical nature of the emissions. There is no guarantee that these will be the same-an assumption which could be made in ***Phurnacite***. The differing natures of the production process given the above site issues prevent simplistic assumptions;

iii) The number of ovens/batteries;

iv) Any modifications to the original plant;

v) Emission control technologies used at any particular time;

vi) General plant and oven battery maintenance (door cleaning etc);

vii) The size and construction of the oven doors;

viii) The nature and maintenance of the seals (e.g. with regard to PAH, emissions from tall ovens with modern self-sealing doors were only 1-2% of that from older plants);

ix) The task being undertaken by the employee and his proximity to the operations (e.g. those working on the oven tops would sustain a higher dose than other workers);

x) The duration/time period for such employment and how that varied throughout the period employed;

xi) Whether and when Respiratory Protective Equipment (RPE) was issued and then worn.

35. The Court is referred to the calculations necessary on pages 232 and following of the judgment in ***Phurnacite*** where what is termed an "occupancy matrix" is set out in respect of just one litigant. It is submitted that over 25 sites this exercise becomes unmanageable. Lead sites would have to be taken from each of the plants and possibly more than one lead case, so that the large number of lead cases would not render the litigation cost-effective in the context of a GLO. It is submitted that the complexities for any Judge trying such a matrix of fact would be immensely burdensome.

36. Further the findings of fact in relation to one plant would not be binding on another, and it is the requirement that findings in lead cases be binding on others.

37. It is submitted that the GLO issues identified by the Claimants do not give rise to true commonality, but rather they raise issues common in any disease litigation. With regard to those issues the Defendant comments as follows: -

i) <u>The content of legal duties</u> – this is now academic given the admission on breach of duty in the letter of 26th July 2016. This admission is in the following terms:

> "For the purposes of this litigation only and subject to the application of the Factories Acts to each of the relevant coke works, our Clients admit that from 1947 until an individual was provided with an appropriate respirator (infra) that they were in breach of statutory duty, namely Section 47 of the Factories Act 1937 and Section 63 of the Factories Act 1961. Given the potential anomalies created by the decision of the Supreme Court in *McDonald –v- NGET* [2014[3WLR 1197 in relation to employees far removed from the site of relevant emission, our Clients reserve the right to argue impracticability in any particular individual case."

ii) Date of Knowledge – it is accepted that this could be a generic issue but is now academic given the admission mentioned at (i) above.

iii) Exposure Level - This is site-specific.

iv) Preventative Steps, including RPE – this is largely site-specific.

v) Medical causation - this is interplay between emission levels and dose levels, both of which are entirely site and person-specific. There is no commonality. It is true that for a given carcinogen a generic epidemiological dose necessary to double the risk of a particular disease could be ascertained. However, that is only one small part of the total question.

vi) Legal Causation - This is not a generic issue outwith the normal requirements of disease litigation.

vii) Apportionment – Again this is not a generic issue outwith the normal requirements of disease litigation. The decision of the Court of Appeal in ***Heneghan*** (see above) will apply to lung cancer and it is fanciful to suggest that decision could be challenged. ***Holtby v Brigham & Cowan (Hull) Ltd*** [2000[EWCA Civ 111 to respiratory disease. ***Badger v Ministry of Defence*** [2005] EWHC 2941 (QB) will apply in relation to contributory negligence and lung cancer.

viii) Scottish Cases - The large number of prospective Scottish cases create their own distinct problems (Harrington 1, para 81). There is the obvious geographical separation with witnesses and documents and the difficulty of applying different Scottish legal principles, particularly to fatal damages and limitation. It is noted that the Collins Claimants do not suggest that these be included in a GLO.

ix) Limitation –

a) Limitation is strongly contested by Tata Steel given the stale nature of many of the cases.

b) In 99 claims the Claimants died in the last century. Eight died in the 1950s.

c) In the British Coal Coke Oven Workers Litigation, the government did not wish to take this point save in exceptional individual cases.

d) The position in ***Phurnacite*** was different as can be seen from the findings in the judgment. Swift J undertook a very detailed localised review of the knowledge of the plant workers, unions and the local community in determining what any particular "date of knowledge" would be for pulmonary or carcinogenic injury at that site. It was entirely site-specific. She stressed at [12.73] that "the date of knowledge in any individual case will depend on the specific facts and circumstances of that case". She held that the claims were prima facie statute barred as litigants were (or should have been aware) many years before of the risks of pulmonary injury associated with coal dust, and that the risks of lung cancer would have been known around 1990. These findings meant that the claims were out of time and only survived because she exercised her discretion in the Claimants' favour under S33 of the Limitation Act 1980. In none of the lead cases did death occur prior to 2000 in contrast to the large number of the Claimant cohort in the current litigation who died in the last century.

e) It is clear that there will need to be a site-specific determination of date of knowledge combined with an assessment of such knowledge for each litigant in each case. This will create immense complexity, in contrast to **Phurnacite**, where there was only one site and one history to determine, and one set of management witnesses and documents etc. In exercising her discretion under Section 33, Swift J stressed again that the question of delay was specific to each case [12.78]. She found that the Defendants had not taken the steps they should have done to locate witnesses [12.91]. This and other reasons led to her exercising her discretion to allow the claims to continue. It is submitted that a fact-sensitive exercise of judicial discretion the decision of Swift J does not bind any future court when determining the issue of limitation in these cases. Limitation will be fully contested in this litigation so the ***Phurnacite*** decision is only of peripheral relevance.

x) British Coal Respiratory Disease Litigation – It should be noted that this was not a formal GLO but was centrally managed litigation by the appointed Judge, Turner J. The issued cases all had medical evidence and there was no commonality of pleadings. In that case there were 579,075 claims so that the only reasonable option was a centralised form of litigation management. The trial on the common issues alone took 102 days of full time. Claims were solely for respiratory disease caused by single agent coal dust, and there was not the complex mix of carcinogens nor any cancer claims. However, it was possible to isolate key issues of commonality such as breach of duty and medical causation in principle which are lacking in this litigation. Damages were not dealt with in a conventional way but the subject of a scheme set out in a "Handling Agreement". In the present cases, damages will need to be assessed individually.

xi) Nottinghamshire and Derbyshire Deafness Litigation – this is an example of disease litigation where the GLO approach was not taken. 700 cases were case

managed out of the Nottingham District Registry by HHJ Inglis via a number of lead cases. The local court was used to determine a number of matters of general application to Noise Induced Hearing Loss claims.

xii) Size and Strength of the Cohort - It is submitted that the number of claims which it is suggested will come under the umbrella of a GLO has varied considerably. In December 2015, some 241 cases were said to be under investigation, with a further 74 enquiries having been received (Maddocks 1, para 3). The Schedule of claims received in February 2016 ran to only 192 Claimants. The number has now increased to 280, with a further 110 not yet risk assessed. (Maddocks 2, para 5). It is submitted that prospects for the very stale claims are remote. It will be very difficult if not impossible to obtain proof of medical diagnosis/medical causation unless the medical records are available which is most unlikely for the cases where Claimants died in the 1960s and 1970s. It is also very difficult to see how the Claimants can possibly succeed on limitation.

38. Tata Steel's alternative proposals for management of the claims are for the claims to be litigated locally and not centrally. This would result in cluster litigation at County Courts local to the 25 plants where site-specific matters of dose and causation can conveniently be litigated. Prior decisions of the County Courts will appear to be of a persuasive force, or if litigated in the High Court binding on a County Court elsewhere. At the hearing a slightly different approach was taken whereby it was suggested that proceedings relating to the South Wales plants be issued first, before other claims, in Cardiff and those claims be dealt with as "pathfinder litigation" to drive some of the initial findings before other claims in relation to other sites are pursued.

Summary of Submissions of the Collins Claimants

39. It was accepted that there are sufficient common and related issues of fact and law, and that the imposition of a GLO was a matter of discretion for the court. On balance it was considered that a GLO may not be appropriate without refinement of significant complicating features, in particular, quantum, applicable quantum law and limitations.

40. It was submitted that there will be difficulties in relation to the factual evidence because each site would need some degree of evidence and representation. The expert witnesses would have to consider individual plants otherwise a handful of sites would determine all cases. The same concern was expressed over the individual sites and the variables, such as the different stages of modernisation in each plant and the different configurations and different levels of exposure in each plant and by each type of occupation, as were expressed by Tata Steel.

41. With the regard to the Scottish claims it was accepted that neither liability nor causation was very different under Scottish law, but quantum would be assessed on a different basis under Scottish law than under English law. Scottish Claimants could not consent to the application of English law to quantum, and the application of English law would be unfair in the denial of just compensation. Equally limitation, although very similar to English law principles, would have to be addressed separately under Scottish law.

Costs Issues

42. The Claimants submit that a GLO would have the merits of costs sharing enabling meritorious but lower value claims to be included without the risk of a disproportionate costs burden on any individual. Only about 25% of Claimants do not have the benefit of ATE insurance, because they worked at plants where there were few other workers affected so the risk factors are less advantageous. The 75% of potential Claimants who are in receipt of ATE insurance worked at only four plants, so the evidence in those cases would be limited to those four plants. Costs could be centrally budgeted by the court.

43. Tata Steel submits that GLO litigation has historically been very expensive. Claimants' solicitors use it as a vehicle for arguing for higher hourly rates and fees. (Harrington No. 1, paras 90 and following). In ***Phurnacite*** the cost in respect of workers at one site alone costs £10 million, (although this included CFA uplifts and ATE premiums). But the costs to Tata Steel will remain the same, and they have little prospect of recovering costs even if successful. Tata Steel are largely not insured for such claims, so third party costs would fall upon them directly. There is no problem of access to justice because litigants are protected by QUOCS, and that rather than the GLO is their protecting factor. The fact that lower value weak claims may fall away if the claims are required to litigate locally is a positive benefit.

CONCLUSION

44. I accept, for all the reasons relied on by Mr Platt QC on behalf of Tata Steel, that the question of whether to make a GLO in these particular potential claims is not straight forward, and as submitted by Mr Cummins on behalf of the Collins Claimants, the issue is "finely balanced". However, I have come to the conclusion that a GLO would be the most appropriate method of managing these claims and that the court should exercise its discretion in favour of granting the application, subject to the consent of The President of the Queen's Bench Division, for the reasons that follow.

Number of Claimants

45. The rule does not specify a minimum number of claimants, but clearly the court will not exercise its discretion to make a GLO unless satisfied that there exist sufficient number of claimants or potential claimants with viable claims to make the exercise worthwhile. I am so satisfied by the evidence. Clearly there will be significant issues of limitation, and as Mr Platt submits, some of the claims will be weak in terms of success because of their age. But Mr Maddocks gives evidence that a substantial culling exercise has occurred to weed out weaker claims, and I have no other evidence to suggest that there will be other than claims in the low hundreds, which is more than sufficient for a GLO to be the appropriate method of case management.

Central Management

46. It is clear that these claims will most effectively be dealt with by some form of central management. At the end of his submissions Mr Platt QC effectively conceded that this would be the case. Indeed, Mr Platt's proposed solution of "pathway litigation" commenced by deciding the South Wales cases in Cardiff District Registry would be impossible without some form of Order affecting all claims, absent agreement from

all Claimants and potential Claimants. Although this is possible without the imposition of a GLO, and has been done in some cases, such as the British Coal Respiratory Litigation and the Iraqi Civilian Litigation, both those groups of litigation, as far as I am aware, (I have had direct involvement in only the Iraqi Civilian Litigation), have been case managed by a managing judge in exactly the same manner as if a GLO had been in place. But the advantages of a GLO register and a cut off date, which provide advantages to both parties, mean that if there is to be some form of central case management then a GLO would be the most appropriate method of imposing this.

47. The prospect of some (on the present figures) 500 claims issued at some 15-20 County Courts or District Registries around the country would cause far more difficulties, in my view, than centrally controlled management. The risk of inconsistent judgments is self evident.

48. The common and/or related factors in relation to liability and causation (including the 'irreducible minimum' issue), (see Paragraph 11 above) would most conveniently and proportionately be dealt with by central management.

Case Management

49. In relation to primary liability and causation issues, where expert evidence will be required, Mr Platt QC had no real answers as to how this could be managed if cases are brought in individually without some form of central management. The expert witnesses in the fields of occupational hygiene and epidemiology will be relying largely on historical evidence where there will be large measures of similarity in relation to all sites, given that they were all managed and run by the same employer at any one time. On the basis of Tata Steel's proposal there would otherwise have to be at least 25 experts dealing with these issues, one for each site. For some modest value claims this may not be proportionate even though it may be reasonably required to enable such Claimants to prove their cases. I accept Mr Weir's submissions, on the basis of Mr Maddocks' evidence, that there will be a large measure of commonality between sites and that experts will be able to identify the differences between them in terms of different oven manufacturers, different stages of modernisation between plants, and the extent to which emissions affected different types of workers.

50. Again, the issue of RPE is an important factor, where there will be many common and/or related issues as a result of common policy, and witness evidence of fact will be available to deal with where there are differences in types of and dates of introduction of RPE. That will then enable identification of common areas between different sites and different workers. All of these, if not common, are clearly related issues which should be possible to be dealt with more proportionately and at lesser expense through a GLO than individually, if carefully managed.

51. Equally on limitation, although the common issues may be fewer there are related issues, and it would be a matter for the managing judge to determine which of these can be dealt with together and which would have to be dealt with separately and direct accordingly.

52. Apportionment may not be a generic issue, but there may be related factors for groups of claimants. The managing judge can take a view on that and direct accordingly.

Issues of quantum are more likely to be individual rather than common issues, but again, there may be heads of damage which could be addressed by way of lead claims. This is no different a position than in most cases of personal injury group litigation.

53. I accept that in this case there are many areas and issues where different considerations apply, and there are not common or related issues, but it would be a matter for the managing judge to determine how to deal with such areas. The managing judge can decide where issues can be determined through the use and identification of lead claimants, and where they cannot he or she could direct that certain issues be dealt with on an individual basis where appropriate. Subject to the directions of the managing judge, once the common and/or related issues have been determined, it will still be possible for the judge to direct that certain issues, such as medical causation, limitation and quantum be determined at local County Court/District Registry level or by assigned Master in the High Court Central Office. For example, the quantum issues on the Scottish claims could all be determined separately under Scottish law by one judge. It is not necessary for the managing judge alone to make all determinations on all issues, but the managing judge can make the strategic decisions and direct overall how the cases are to be managed.

54. I consider it most likely that as identified common or related issues have been determined that individual or groups of claims are more likely to be settled than if all claims were issued and dealt with separately.

Impracticability of managing the claims individually

55. I have concluded that it would be untenable to attempt to deal with all the claims individually at different local courts. The alternative method proposed by Mr Platt QC at the hearing, in terms of Cardiff being the leading court would not offer any of the advantages of a GLO, where one judge would case manage all claims, and would leave many claims in relation to the other 20 sites undecided. The South Wales Claimants consist of about half the claims on current figures, and it would seem pointless to deal with only half leaving the rest to be dealt with subsequently. It would lead to unnecessary delay for those other claims, and a lack of direction as to how they would be determined. That would be avoided by one managing judge directing the entirety of the claim. In any event, if I am wrong about that and the managing judge considers that the South Wales claims should be dealt with first, he or she can direct accordingly.

Costs

56. I accept that GLOs are capable of producing high levels of Claimant costs e.g., ***Phurnacite*** litigation, and the ***Iraqi Civilian*** litigation. However, those cases for different reasons are not directly comparable with the present claims. These claims are brought when the costs management regime in CPR 3EPD is in place, and costs budgeting can be put into effect at an early stage. In the British Coal Coke Oven Workers litigation, I am told that Mr Justice Turner has sat with the Senior Costs Judge when making Costs Management Orders and has controlled costs by that method. On balance I consider that costs managing claims of this number means that costs are likely to be more strictly controlled and be lower overall than by the issue of individual claims.

57. A GLO will also be a method of enabling those Claimants without the benefit of ATE insurance and those with low value claims to have access to justice.

Final conclusion on the application

58. Accordingly, the Claimants' application for a GLO is granted, subject to the formulation of the terms of the GLO and the consent of the President of the Queen's Bench Division. I shall write to the President seeking that consent when I have approved the terms of the proposed GLO.