



Neutral Citation Number: [2018] EWHC 1178 (OB)

Case No: HQ16X03625, HQ16X00241, HQ17X01315, HQ17X02995

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/03/2018

Before :

**SENIOR MASTER FONTAINE**

Between :

**Anthony Joseph Champion Crossley & Others**

**Claimant**

- and -

**(1) Volkswagen Aktiengesellschaft**  
**(2) Audi Aktiengesellschaft**  
**(3) Skoda Auto**  
**(4) SEAT S.A**  
**(5) Volkswagen Group United Kingdom Ltd**  
**(6) Volkswagen Financial Services (UK) Ltd**  
**(7) Inchcape Retail Ltd**

**Defendant**

Mr Andrew Onslow QC, Mr Thomas Goodhead, Mr Benjamin Williams QC and Mr Shail Patel (instructed by **Your Lawyers**)  
Mr Oliver Campbell QC and Mr Adam Heppinstall (instructed by **Slater & Gordon**)  
Mr Tom De La Mare QC and Mr Adam Kramer (instructed by **Leigh Day**)  
Mr P Engleman (instructed by **E. Rex Makin**)  
Charles Gibson QC, Prashant Popat QC, Geraint Webb QC, Kathleen Donnelly, Lucy McCormick, Thomas Evans, Noel Dilworth, Nick Bacon QC (instructed by **Freshfields Bruckhaus Deringer LLP**)

**Hearing dates 27-29 March 2018**

Hearing date: 29 March 2018

**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.

**Senior Master Fontaine:**

1. This is a judgment in relation to the matter of which firm or firms of solicitors should be on the Steering Committee, as recorded in the Group Litigation Order, if approved.
2. There is an issue in relation to which solicitors are to be included as members of the steering committee, proposed at present to be Your Lawyers, Slater & Gordon and Leigh Day. There are three firms of solicitors that are the likely candidates: Slater & Gordon, with over 45,000 clients; Your Lawyers, with over 10,000 clients; and Leigh Day, with over 2,000 clients. The remaining solicitors' firms have clients representing approximately 5 per cent or less of the total cohort of prospective claimants.
3. There has been substantial explanation provided in the witness statements from representatives of each of the three main firms, and addressed in the skeleton arguments submitted, as to their being committed to working together for the interests of all prospective claimants in this litigation.
4. The draft GL order provides a mechanism for liaison between them and for a steering committee for the division of work and dissemination of information.
5. E Rex Makin would like to be represented on the steering committee. They explain that they have a discrete cohort of clients; I think originally it was about 67, I'm told now it is about 35, but, in any event, it is a very small proportion compared to the 57,000 that the three proposed members of the steering committee have.
6. That in itself is not a bar to membership of the steering committee. As Mr Engelman has submitted, Mr Justice Turner in *Hutson v Tata Steel* made reference to the fact that whoever is either the lead solicitor or on the steering committee is not a matter of proportional representation, but it is a factor in the determination.
7. Generally speaking, the components of a steering committee in group litigation is not a matter that the court interferes with. It's a matter generally for agreement by the claimants themselves, unless there is a dispute. So the only reason I deal with this is because of the issue raised by E Rex Makin.
8. The legal authorities relied upon for the submission are, first, that individuals are entitled to be represented by a solicitor of their choosing. I am referred to the case of *Maltez v Lewis* before Mr Justice Neuberger, as he then was, 27 April 1999.
9. I accept submissions on behalf of Your Lawyers and Slater & Gordon that the clients of E Rex Makin have, of course, the solicitor of their choosing, and the solicitors' group that has been provided for in the draft order provides a mechanism for E Rex Makin and the other smaller non-steering group firms to be informed of information and kept advised of developments. It is, of course, the case that a GL order does not preclude claimants from having separate representation, as found by Mr Justice Hildyard in *Greenwood v Goodwin* [2014] EWHC 227 (Ch) and in this case there are many different solicitors' firms who have clients who will be claimants in this litigation.
10. Again, *Greenwood v Goodwin*, at [2013] EWHC 2785 (Ch), Mr Justice Hildyard also said that the making of a GLO does not require itself that the lead solicitor should be

the only solicitor on record in terms of the claimants, or be in control of the case for any other reason. I am not really sure that that assists my determination because there are many firms on the record and there is intended to be joint lead solicitors and three solicitors on the steering group.

11. It is correct that the court has power to make regulations regulating the relationship between the persons interested, and that is what I am doing at this hearing. That was also stated by Mr Justice Hildyard in *Greenwood v Goodwin*.
12. He also stated in the same decision that a balance should be struck between a cohesive presentation and the qualified right of the parties to assert representation and argument of their choice. In any group litigation, that is a balance that has to be struck, the balance between ensuring that all parties are properly and appropriately represented, and the efficient conduct and case management of the litigation, which includes ensuring the efficiency and proportionality of costs that are incurred.
13. I accept the representations on behalf of the other main solicitors' group that the draft order that appears before me today has been the subject of substantial negotiation between those advising those claimants or prospective claimants. It has taken a considerable time to get to this point and, subject to the issues which I have to decide, it has been carefully crafted. I consider the structure of joint lead solicitors, a steering committee and a solicitors' group, the latter being for solicitors who have 20 or more clients, is a sensible balance to strike in terms of distribution of work and involvement of all claimants or prospective claimants.
14. It has been submitted that it would be of assistance to the steering group and to claimants generally for an independent voice to be on the steering committee and that, on that basis, E Rex Makin have made suggestions in the past which have been different to those made on behalf of all other claimants.
15. However, that might be a stronger point if the other smaller firms, who represent less than 2,000 clients, were in agreement with E Rex Makin's proposal that it should represent all those firms with a smaller cohort of clients on the steering committee. That is not the case. Those smaller firms, who communicate with the court and the other parties through Mr Hutcheon, have raised no objection to the proposed three main firms constituting the steering committee or to the proposed draft GLO, and have not sought to attend court to make any submissions in that regard.
16. In those circumstances, it seems to me that the balance of efficiency and proportionality in terms of costs is properly dealt with in the draft GLO before me. Leigh Day are an independent voice in addition to the lead solicitors. Those firms with the majority of claimants are, it seems to me, the most properly and appropriately placed to be on the steering committee, so the application of E Rex Makin in that regard is dismissed.
17. There were some other issues that were raised before me. One is with regard to the schedule of information and the different categories that are proposed. The first was in relation to section A10. I think that was thoroughly ventilated in my discussion during submissions. The other parties are satisfied that that includes all the information which is required to be known at present, and the point which Mr Makin also made, that it does not provide for the particular individual defendants against

whom individual claims are made be included, that is a matter that is included or intended to be included by virtue of the draft order on the register, so that will be known.

18. It seems to me that section A10 is drafted clearly and simply. It simply has two tick boxes. The claimants have to identify whether they are pursuing all causes of action in the generic particulars of claim and, if not, identify which paragraphs or sections of the generic particulars of claim on which they are not relying. I do not consider that in those circumstances and where the claims against individual defendants are to be included on the group register that the matrix which Mr Makin proposes is necessary. If that is intended to be helpful to the clients of Mr Makin, then there is nothing to prevent that being done, but that does not necessarily mean that the costs of doing so will be recovered, when the court is satisfied that the schedule of information and the information on the register is sufficient for the parties at this stage.
19. It has to be remembered that the schedule of information is meant to provide the minimum information which the parties require to manage the claims at this stage and is not intended to be a substitute for any individual statements of claim that may be ordered in due course or any schedules of loss.
20. That brings me to section A13. The claimants are asked to identify, by a tick box, which claims for alleged loss as identified in the generic particulars of claim are included. Mr Makin has suggested another box added to say "Other" in case there are other claims that are not identified, such as car hire claims. The other parties do not consider that is necessary at the moment. They make the point that schedules of loss, in due course, by, presumably, lead claimants, will be provided.
21. The issues of quantum are a long way down the line at the moment. It seems to me that to add another unidentified category will only cause, or have potential to cause, confusion. It is preferable to limit those categories to the identified losses in the draft generic particulars of claim for the moment.
22. The final issue is the matter of ATE insurance. I accept submissions on behalf of Mr Jaffey that this is not an issue for the court to be involved with. The name of the ATE insurance provider for either all of the other claimants or some of them has been known for some time. It is a matter for negotiation between the different claimant solicitors as to whether the ATE insurance offered by them under one policy can be extended to other claimants, or whether other claimant solicitors can negotiate separately with that insurance provider or another separate cover. It is not a matter that the court should interfere with.