

THE USES AND ABUSES OF GROUP LITIGATION: Back in the Box, Brockovich?

Ross Fentem
Guildhall Chambers



The Rationale for Group Litigation

- **Definition of GLO:** “an order made ... to provide for the case management of claims which give rise to common or related issues of fact or law” (CPR r.19.10)
- **Effect of GLO:** “Where a judgment or order is given or made in a claim on the group register in relation to one or more GLO issues- (a) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the court orders otherwise” (r.19.12(1))
- “The absolute necessity for the identification of the issues”: **Hobson v Ashton Morton Slack** [2006] EWHC 1134 (QB) at [23]



The Criteria for Group Litigation

Mulheron, Research Paper for CJC, 2008

- **Number:** a number of claims
- **Commonality:** common or related issues of fact or law
- **Suitability:** overriding objective
- **Screening:** consent of LCJ, Vice-Chancellor or Head of Civil Justice
- **Superiority:** appropriateness of consolidation / representative proceedings



The Suitability of Group Litigation

- **Environmental GLOs:** 15% of GLOs 2000-2007 (Mulheron, 2008)
- **Procedure:** PD 19B
- **Opt-in and Maintenance of Register**
- **Opt-in Range** 2% – 80%



The Limits of Group Litigation

- ***Hobson v Ashton Morton Slack*** [2006] EWHC 1134 (QB)
- ***Green Wood & McLean v Templeton Insurance Ltd*** [2009] EWCA Civ 65
- ***Strydom v Vendside Ltd*** [2009] EWHC 2130 (QB)



Hobson: What Went Wrong (1)

- **Too Precipitous:** *"The court has not been persuaded that any thought was given to alternative means of adjudication"*
- **Too Indistinct:** *"No group litigation issue has been sufficiently or precisely identified"*
- **Too Wide:** *"[T]here is no justification for the inclusion of any of the solicitor Respondents"*
- **Too Narrow:** *"There are other unions ... who are not involved in the present application, which if it had validity ought to have been joined"*



Hobson: What Went Wrong (2)

- **Too Different:** *“The only unifying feature is that all Respondents are solicitors and all claimants are miners”*
- **Too Expensive:** *“The gross imbalance between the costs incurred and to be incurred and the sums to be recovered.”*
- **Too Fact-Specific:** *“Resolution of the validity and enforceability of the contract ... is a fact sensitive enquiry”*
- **Too Uncertain:** *“The lack of any certainty about the sufficiency of the ATE insurance”*



The Future of Group Litigation

- **Civil Justice Council**
 - Generic Collective Action
 - Opt-Out / Opt-In
 - Certification of Suitability
- **European Commission**
 - Competition not Environmental litigation
 - Representative Action


