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Case No: KB-2023-000252
KB-2022-005017
KB-2023-002200
KB-2023-002201
KB-2023-000437

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/09/2026

Before:
Mrs Justice Lambert DBE

- -

Between :

ALAME and Others: KB-2023-000252
CHIEF MINAPAKAMA and Others: KB-2022-005017
OKPABI and Others: KB-2023-002200
EJIRE AWALA and Others: KB-2023-002201
OKOCHI NWOKO ODODO and Others: KB-2023-000437

Claimants

- and -

(1) SHELL PLC (formerly known as ROYAL DUTCH SHELL PLC)
(2) RENAISSANCE AFRICA ENERGY COMPANY LIMITED (formerly known as THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD)

Defendants

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Phillippa Kaufmann KC, Anneliese Day KC, Joshua Jackson, Catherine Arnold and Abe Chauhan (instructed by Leigh Day) for the Claimants
James Willan KC (instructed by Debevoise and Plimpton LLP) for the Defendants

Hearing dates: 14, 15 and 29 July 2026

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Approved Judgment

This judgment was handed down remotely at 2pm on Thursday 10th September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LAMBERT

Mrs Justice Lambert DBE:

Introduction

1. Following a case management hearing in July 2026 two issues remained for my determination. The first arises from the Defendants' objection to the Claimants' amendment to their statement of case to raise what was described as the Claimants' "primary" or "all-spills" claim. The second concerns the Claimants' application to amend their claim for aggravated damages where the issue is not the claim in principle but whether the evidence relating to the amendment should be heard during the liability trial which I have listed to start on 4 May 2027.

2. The applications arise in litigation which has a long history and which, as the Court of Appeal observed in its judgment of 6 December 2024 [2024] EWCA Civ 1500, has been fiercely contested from the outset. The underlying claims concern crude oil spillage from pipelines, wellheads and associated infrastructure operated by the Defendants in the Niger Delta region of Nigeria between 2011 and 2013. As a result of the oil spills, natural water sources were contaminated and extensive areas of mangrove forests destroyed. Four sets of proceedings were issued between June 2015 and January 2017: two sets of claims brought by individuals from the affected Bille and Ogale areas (the "Individual Claims") and two claims brought on behalf of the respective Bille and Ogale communities by nominated representatives (the "Community Claims"). This decision pertains only to the Bille Community and Individual claims. Although the Bille Community and Bille Individual claims differ in respect of damages and remedies, their pleading of the Defendants' liability for the oil spills and the allegations of breach is materially identical.

3. The first 4 years of the litigation were taken up with the Defendants' unsuccessful jurisdictional challenge which was finally resolved by the Supreme Court in *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3. Since then, disclosure, the linked question of the adequacy of the Claimants' pleaded case on causation and the characterisation of the Claimants' claims as global claims have been recurring sources of contention in the case management of the claims by O'Farrell J and then May J, who was managing judge of the group litigation in the King's Bench Division until I took over in November 2025.

4. The application of the label "global claims" to describe the Claimants' case dates back to the judgment of O'Farrell J of April 2022 [2022] EWHC 989 (TCC) where she observed at para. 65 that the pleadings represented a global claim. By this term she was referring to the fact that the Claimants had not pleaded a causal connection between oil spillages and damage sustained by individual Claimants. Such a claim was, she stated, permissible but carried an "*inherent degree of risk… because it depends on establishing the matters of which complaint is made in their entirety*." If not, then the claim as a whole fails. In this sense, a global claim is an "all or nothing" claim. In her November 2023 judgment May J also determined that the Claimants' pleading on causation was deficient to the extent that she concluded that there was no practical alternative but to view and case manage the claims as global claims unless or until a more particular case is identified.

5. The Claimants have always and consistently resisted the characterisation of their claims as global claims and May J's Order of 15 March 2024 giving effect to her approach of treating the claims as global claims was the subject of their appeal ([2024] EWCA Civ 1500).

Stuart-Smith LJ gave the lead judgment. In allowing the appeal, he observed that the Claimants had stated that they were not advancing a global claim and that it would be wrong (and impermissible) for the court to impose a case management regime predicated on the basis that the claims were global claims. He recorded that Mr Hermer KC (for the Claimants) had stated at the hearing before May J in July 2023 that the Claimants intended to assert and prove a link between their loss and damage and a specific event for which the Defendants are alleged to be responsible. Although at the time of the Court of Appeal hearing the Claimants were not in a position to prove the link it was anticipated that with further disclosure and expert evidence then the causation case could be pleaded "*adopting conventional principles of causation*." The court stressed the asymmetry of information between the parties, highlighting the Defendants' access to relevant information not shared with the Claimants, but commented that "*before this litigation or any part of it can be brought to trial, the Claimants will be required to plead their case with sufficient particularity so that the Defendants know what case they have to meet and have a fair opportunity to meet it*." [82]-[83].

6. In the light of the judgment of the Court of Appeal, May J made an order (dated 11 April 2025) providing for disclosure. The order also provided that by 10 April 2026 the Claimants should file: Individual Particulars of Claim which must (in light of the disclosure provided) set out full and proper particulars of: (i) the Claimants' case on causation; (ii) any allegations of fault on the part of the Defendants; and (iii) the basis on which the First Defendant is alleged to be subject to a duty of care. The deadline for the Defendants' provision of disclosure was extended twice, first to 28 November 2025, then to 17 January 2026. The Claimants obtained extensions for service of their amended pleadings first to 8 May 2026 and then to 13 May 2026 when the Individuals Re-Re Amended Particulars of Claim was served in purported compliance with the order of May J.

7. At a CMC before me on 18 May 2026, there were a number of applications by both sides, including those arising from the Defendants' objections to the state of the Claimants' pleadings on causation and their lack of particularity. The Defendants once again raised the issue of global claims. The Defendants issued an application on 1 June pursuant to CPR 3.1(3), 3.4(2) and CPR 17.1(2) seeking declarations and an unless order on the basis that the pleadings failed properly to particularise the Claimants' case and/or failed to comply with the order of May J. The issue was adjourned to be determined substantively, along with other outstanding matters, at a later CMC, held before me on 14-15 and 29 July 2026. By the time of that hearing much had been resolved between the parties and much else was resolved during the hearing itself. Two issues remain for my decision. The first concerns the Claimants' causation pleading. The second is the case management of the claim for aggravated damages. I deal first with the causation pleading.

The Pleadings

8. By the date of the resumed CMC in July 2026 there were several versions of the Claimants' pleadings before me. The first was the Re-Re-Amended Particulars of Claim ("2RAPOC"). The Community 2RAPOC was served on 8 May 2026 and the Individuals 2RAPOC was served on 13 May 2026 in response to the Court of Appeal's judgment and the Order of May J of 11 April 2025 (see above). The Claimants also served at the same time a Re-Re-Re-Amended Particulars of Claim ("3RAPOC") with draft amendments relating to a new claim of accessory liability of the First Defendant and new allegations in support of their claim for aggravated damages. In this first iteration of the 3RAPOC, the pleading on causation was exiguous. What was said was simply this at para. 408:

> *"By reason of the matters aforesaid the Community has suffered loss and damage as a consequence of the 2011-13 Spills (and/or any spills from locations to which oil abstracted by TPI from the Bille Pipelines and Infrastructure had been taken)."*

9. On 26 June 2026, the Claimants provided a further version of the 3RAPOC with additional amendments. The most recent version of the 3RAPOC was served on 29 June 2026 ("the June 3RAPOC"). This document contained substantial proposed amendments to the Claimants' causation case. See below.

The June 3RAPOC

10. The June 3RAPOC runs to over 400 pages and 426 paragraphs. The Defendants' liability is set out in paragraphs 366–389 (Second Defendant) and in paragraphs 391-406 (First Defendant). In respect of both Defendants, liability is alleged under the Oil Pipelines Act 1990, under s. 37 of the First Schedule of the Petroleum Act 1969 and in the torts of negligence, nuisance and under the rule in *Rylands v Fletcher*. The breaches alleged in the June 3RAPOC are systemic and relate to structural deficiencies in the Defendants' operating regime in the region.

11. The June 3RAPOC contains a substantial new amendment to the section on causation which had been inserted following the Defendants' application of 1 June and intended, no doubt, to address the Defendants' criticisms of the causation pleading. The section sets out (by way of preamble) the Defendants' responsibility for all of the oil pipelines and associated infrastructure; the inherent nature of the risk of oil spillage and environmental damage in the Defendants' activities; the systemic nature of the failures alleged which applied across the Defendants' management of the pipelines and infrastructure; the eventuation of the inherent risk of spillage between 2011 and 2013. The pleading on causation continues at para. 5A and para. 407:

> *"5A. The Defendants' systemic failures and wrongful actions caused all the 2011-2013 Spills and consequential damage in and around Bille (as particularised in* ***Part G*** *below). Alternatively, those failings (or combinations of the same) significantly increased the frequency, duration and volume of, and the damage caused by, the 2011-2013 Spills.*
>
> *…*
>
> *407B. In the premises:*
>
> *407B.1. All or substantially all of the spilled oil in and around Bille at the material times emanated from the Bille Pipelines and Infrastructure, whether directly or via illegal connections and attachments thereto, or from illegal refineries and/or other locations to which oil abstracted by TPI from the Bille Pipelines and Infrastructure was taken (i.e. the 2011-2013 Spills);*
>
> *407B.2. The causative effect of the Systemic Failures was as set out at paragraph 407D below;*

> *407B.2. The 2011-2013 Spills were the foreseeable consequence of and were caused by the Systemic Failures; and*
>
> *407B.3. All the environmental damage to the Bille Community Land which occurred in the period of 2011 and 2013, which has yet to be remediated, was the foreseeable consequence of and was caused by the 2011-2013 Spills.*
>
> *…*
>
> *407D. The causative effect of the Systemic Failures by the Defendants was as follows:*
>
> *407D.1. The Systemic Failures identified above at paragraphs 370, 377 and 404 (or combinations of the same) caused all 2011-2013 Spills, and the Defendants are liable for the environmental damage resulting therefrom.*
>
> *407D.2. Further or alternatively, the Systemic Failures identified above at paragraphs 370, 377 and 404 (or combinations of the same) increased the frequency, duration and volume of, and the damage caused by, the 2011-2013 Spills than would otherwise have been the case, and the Defendants are liable for the environmental damage resulting therefrom. Without prejudice to the generality of this and by reference to the specific categories of systemic failures that occurred:*
>
> *…*
>
> *407F. In the premises, but for the Systemic Failures (cumulatively and/or individually), all, or alternatively applicable categories, of the 2011-2013 Spills would not have occurred or, alternatively, the frequency, duration, volume of and/or the environmental damage caused by the 2011-2013 Spills would have been significantly reduced."*

12. In addition to the June 3RAPOC, the Claimants served an amended version of a document referred to as "Annex A" which contains 106 individual spill annexes (the "Annexes"). These Annexes refer to the 60 spills between 2011-2013 which were identified by the Defendants and given incident numbers, and a further 46 spills which had not been identified by the Defendants (and therefore not reported nor given incident numbers) but which had been identified by the Claimants during the forensic process. Each of those individual spill annexes was the subject of a proposed amendment alleging the systemic failures said to have caused or contributed to the particular spill and/or subsequent escapes in the manner identified in paragraph 407D.

13. Following service of the June 3RAPOC, the Defendants narrowed their objections, seeking an Order that the Claimants are not entitled to advance the case pleaded in the causation paragraphs above, in particular 407D.1 and 407D.2 which contain the two iterations of the Claimants' case on causation: the "liability for all spills" variant and the alternative, the

Defendants' liability for the increased spill frequency, duration, volume and consequential damage.

The Claimants' Primary and Secondary Cases

14. The Claimants' primary case is that the Defendants are liable for all oil spills in the region during the relevant time; their secondary case is that the Defendants are liable only for the 106 identified spills referred to in Annex A.

15. Ms Kaufmann KC confirmed that, in respect of both her primary and her secondary cases, the Claimants will seek to establish breach of duty through the factual and expert evidence which will be called at trial. Damage, both individual and community, will also be established via direct evidence. The causation case will however be established by the court drawing the necessary inferences from the evidence as a whole. The Claimants intend to establish widespread systemic failings by the Defendants. Those alleged failings cover (in effect) all aspects of the operation and include, the integrity of the infrastructure, the systems (or lack of) for detecting and repairing leaks and remediating damage caused by leaks. The failings cover the security of the infrastructure from third party intervention and illegal oil bunkering. The nature and extent of the Defendants' failings and the foreseeable risk of oil spillage in the event of such failings lead Ms Kaufmann to characterise the inferences which she will invite the court to draw as "common sense" and "obvious." In respect of the secondary case the court will be invited to infer that each of the 106 identified spills has been caused by one or more of the Defendants' systemic breaches. In respect of the primary case the court will be invited to infer that such oil spill damage as suffered by Claimants which cannot be explained by reference to the 106 identified oil spills was caused by further (not identified) oil spills, again caused by the Defendants' breaches and for which the Defendants are liable.

16. Ms Kaufmann stated that the Claimants' case on unidentified spills is similar evidentially and causally to the case of identified spills. Both claims are conventional tortious claims in which the Claimants are required to prove breach, causation and thereby liability. Both rely upon the court drawing the necessary inference to establish causation. Such a case, she submits, is by no means unusual. The causal link between proven wrongful conduct and proven damage can be inferred without having to prove each and every linking event in between. She drew my attention to *Drake v Harbour* [2008] EWCA Civ 25 where at para. 28 the court observed that: "*where a claimant proves both that a defendant was negligent and that loss ensued which was of a kind likely to have resulted from such negligence, this will ordinarily be enough to enable a court to infer that it was probably so caused, even if the claimant is unable to prove positively the precise mechanism. That is not a principle of law nor does it involve an alteration in the burden of proof; rather, it is a matter of applying common sense*." Also, *Eurasian Natural Resources Corporation Ltd and others v Dechert LLP and Another* [2023] EWHC 3280 (Comm), where Waksman J observed "*if the result of those acts of wrongdoing is a large number of dead fish it is not going to be possible to identify one particular act leading to the death of one particular fish. But this does not mean that all of the acts of the polluters did not cause the totality of the dead fish*".

17. Ms Kaufmann further submitted that the requirement that the Claimants must prove their cases by inference rather than on direct evidence arises substantially because of the Defendants' own conduct. One of the Defendants' major system failures was the absence of any reasonable system for detecting leaks. She reminded me that over 40 of the leaks which form part of Annex A are leaks which had been identified by the Claimants' team during the

forensic process and had not been identified or documented by the Defendants. In conjunction with the absence of a proper system to identify oil leaks was a failure to maintain records of leaks and the destruction of relevant material. It would therefore be wholly unfair if the Defendants were able to rely upon their own failings in an effort to prevent the claims proceeding and the Defendants should not be entitled to obtain any forensic advantage from their own failings. See *Roadrunner Properties Ltd v Dean* [2003] EWCA Civ 1816.

18. The primary claim is, she submits, straightforward. It reflects only that, if damage in a particular area cannot be attributed to one of the 106 identified spills on the secondary case, then inferentially it must have been due to an unidentified spill or oil also caused by the Defendants' widespread and systemic failures. This is a proper question for trial and for the court's resolution after hearing the evidence.

The Defendants' Objections to the Claimants' Primary Case

19. Mr Willan KC raises no objections to the Claimants' secondary claim. He accepts that the Claimants are entitled to bring an action based upon the 106 known spills in which the court will be invited to infer the relevant causal link between breach and damage. He objects to the Claimants' primary case not because it is based upon inference but because the Claimants have not identified the relevant spills causing damage. This feature has, he submits, two consequences.

20. First, a procedural objection. Such a case constitutes a material departure from the claims which the Claimants have consistently advanced would be pleaded following disclosure. The Claimants have always assured the court that they were (or would be, following disclosure) advancing an "events-based claim" in which particular spills would be identified, rather than a claim based upon liability for all damage from oil in the region. Mr Willan drew my attention to various statements made by the Claimants in previous hearings. For example, at a hearing before May J in July 2023, Mr Hermer for the Claimants had said: "*Can I make our position as plain as I can? In order to prove their case, a claimant will need to demonstrate that particular spills, for which Shell is legally responsible, caused the damage complained of."* May J recorded in her judgment of November 2023 that Mr Hermer had repeatedly stated that each Claimant intended to *"assert and prove a link between their loss and damage and a specific event(s) for which Shell is alleged to be responsible.*" They also highlight his further submission that disclosure and expert analysis would ultimately permit the Claimants to say, in relation to particular claimants, "*This spill or these spills caused the damage complained of*".

21. It is the Defendants' case that the Court of Appeal proceeded upon the same understanding. They place particular emphasis on Stuart-Smith LJ's observation at para. 77 that the Claimants intended to "*assert and prove a link between their loss and damage and a specific event for which the Defendants are alleged to be responsible*". Mr Willan submits that it was precisely because of this assurance that the Court of Appeal declined to become embroiled in questions concerning the validity of global claims in this environmental context.

22. The Claimants' primary case now seeks recovery for damage caused by all (undifferentiated) spills within the area irrespective of whether those spills can be individually identified and linked to specific wrongdoing. This was not the case advanced before the Court of Appeal and in these circumstances, the Claimants require permission. They submit that the court should refuse such permission. It is now too late to advance an undifferentiated or global

claim. The trial date has been set and permits no time for a preliminary hearing concerning global claims, what they are, whether they exist outside the field of construction law and, importantly, whether they are recognised in Nigerian law. There had been provision for these issues to be considered by the court as part of the list of preliminary issues before May J. But following the judgment of the Court of Appeal, this topic was removed from the list.

23. In addition to this first, procedural, objection, the Defendants submit that there are other substantive reasons to do with fairness why the court should refuse to permit the primary claim to continue to trial. Mr Willan describes the primary case as a case without a target. This is unfair. The Defendants must be able to seek to rebut a claim on a case-by-case basis by examining the specific facts of a given spill and identifying why they are not liable for it. Even where causation is to be inferred from systemic breaches, they must remain entitled to investigate and demonstrate that a particular spill was caused by some other factor or would have occurred in any event. Mr Willan referred to the diversity of infrastructure and incidents potentially encompassed within the primary case. Pipelines, flow stations and wellheads are different assets. Operational failures, theft, artisanal refining and illegal connections involve different considerations. The amount of oil released from each spill and where it travelled is relevant. The Defendants submit that the primary case impermissibly seeks to bypass those distinctions by asserting liability for all resultant pollution. The Defendants wish to be able to show not only that systemic failures did not occur, but also that even if they did occur they did not affect particular assets or particular incidents.

24. The Defendants contend that the primary case is incompatible with the proper operation of limitation principles. Relying upon May J's preliminary issues judgment, they state that the limitation period (for claims under both statute and at common law) was five years and runs from the point at which oil first enters a Claimant's land in trespass or, for other causes of action, from when it causes actionable damage. They submit that some claims arising from spills occurring and concluding in 2011 or early 2012 would therefore be time-barred in the Community Claims which were issued in 2017. But paragraph 407D.1 of the June 3RAPOC seeks an undifferentiated finding that the Defendants are liable for all spills occurring during the entire 2011-2013 period. Such a finding is impossible if some of those spills are time-barred and others are not. Further, Mr Willan submits that limitation is an issue upon which the Defendants bear a burden and they cannot meaningfully investigate or advance a limitation defence unless they know when the relevant spills or pollution events occurred.

25. The Defendants also submit that the primary case ignores important distinctions arising from the existence of different legal causes of action and different categories of infrastructure affecting the liability of the Second Defendant. Claims arising from pipeline spills are governed by the Oil Pipelines Act 1990 whereas claims relating to non-pipeline infrastructure are governed by common law. The scope of duties and remedies to be awarded are different under those regimes, and the nature of the assets concerned is different. Accordingly, they submit that the court cannot determine liability on an undifferentiated, "all-spills" basis without first deciding what category of asset was involved and which legal regime applies.

26. The Defendants further submit that the alternative allegation, that systemic failures increased the frequency, duration, volume and damage caused by spills, fails to identify a workable basis upon which liability could be determined. They argue that a finding that there was an increased incidence of spills does not answer the question which the court must ultimately determine, namely whether particular Claimants or particular Community assets

suffered actionable damage as a result of wrongdoing by the Defendants. The pleading does not identify which additional spills the Defendants are said to be responsible for, nor how liability could be developed from a general finding of increased pollution to determining whether those spills caused some specific damage.

The Claimants' Response

27. The Claimants submit that the Defendants have repeatedly mischaracterised the primary case. The Claimants' position is that their primary case has been consistently advanced throughout the litigation. Their case has always been that the Defendants' systemic failures caused widespread oil pollution throughout Bille and that the Defendants are liable for all resulting damage, while also accepting that particular spills would be identified and pleaded where evidence permitted. Permission is not needed. The causation amendments comply with the order of May J.

28. Ms Day KC referred the court to excerpts from judgments and transcripts of hearings, relying for example upon exchanges before O'Farrell J and Mr Hermer in December 2021 CMC in which he said that "*our case is ... the defendants are liable for all the oil that's in the creek*". Likewise, at the May 2022 CMC before May J, Mr Hermer described the case as one of "*systemic organisational failure to prevent spills and clear-up*". At the July 2023 CMC, Mr Hermer said "*Our case is, this is a systemic, wholesale failure…the court can infer that, when oil is taken, that is as a result of a systemic failure by the defendants*." He continued: "*The case will turn on its individual facts down the line, but it is certainly permissible, on an events-based basis, to have a case in which we can say, "Well, we can't identify precisely when the oil was tapped or taken from an open well, but we can see when the damage occurred. It's bang in the region. The court has had all the evidence about systemic failures. The court can properly reach conclusions on the balance of probabilities that the claimants can demonstrate their damage was caused by oil for which the defendant legally responsible*". Ms Day gave substantially the same explanation of the case in the Court of Appeal. The Court of Appeal itself recognised that the claim included allegations of systematic failures and at para. 91 (and in the context of third party interference) said this: "*…it may be impossible to identify with precision the source of any particular waste product which is subsequently dumped. Whether that is fatal to the claim will depend upon the facts: for example, it will not necessarily be fatal if all of the oil received by the refinery is ultimately derived from Shell and if the Claimants are able to prove a systemic negligent failure by the Defendants to prevent third-party interference*."

29. The Claimants therefore reject the Defendants' suggestion that the Court of Appeal have confined them to a case based solely on identified spills. Whilst they have consistently disavowed a global claim in the construction-law sense or as an "all-or-nothing" claim, they have never jettisoned their broader contention that the Defendants' systemic failures caused all oil escapes and pollution in Bille during the relevant period. Their case has always included this strand, now referred to as the "primary" case, and the "secondary" case based on specific spills that they have been able to plead individually after the Defendants' disclosure. References in later proceedings to an "events-based claim" never signified that they were abandoning a systemic-failures case or limiting themselves to proving only identified spills. Their position is that the Defendants have retrospectively imposed an unduly narrow meaning upon the phrase.

30. The Claimants accordingly maintain that the same systemic-failures case that has always been advanced is simply now pleaded in substantially greater detail following disclosure

and supplemented by identified spill claims which operate as both standalone claims and evidential support for the wider inferential primary case. There is no need therefore for permission. The Claimants have complied with the Order of May J.

31. The Claimants do not accept any of the substantive fairness objections to their primary claim. In summary:

    a. The Defendants' complaint that the primary case lacks a target is not apt. The Defendants wrongly elide spills and damage. Damage is a necessary ingredient of all of the causes of action advanced and the Claimants intend to establish damage directly using factual and expert evidence. The expert evidence will enable the court to draw conclusions about the nature, extent and location of damage and this will provide the Defendants with a target. The Defendants will know where the damage is located and they will be able to establish the location of assets relative to that damage
    b. The limitation objection wrongly elides spill and damage. Time does not run from the date of the oil spill but from the likely date when damage occurred. Damage will not be inferred but will be proven by factual and expert evidence and the question of limitation can be determined by reference to specific damage suffered by each Claimant. In any event, any difficulties in proving limitation will impact on the Claimants more than the Defendants given that the burden of proving that the claims were brought on time is on the Claimants.
    c. As for the objection that different legal regimes apply to different assets, the Claimants submit that the court will have a variety of tools and evidence at its disposal to determine the relevant legal regime. If the court is unable to make any determination Ms Day submits that it could apply the legal regime most favourable to the Defendants.

Discussion/Conclusion

32. The first question for me is whether the causation amendments, introducing the so-called primary claim, require the court's permission and if so whether that permission should be granted.

Is Permission Needed?

33. I am not satisfied that the Claimants' primary "all-spills" case, based upon proof of systemic breaches, proof of damage and inferential causation, represents a material departure from the claims which the Claimants have historically advanced either in the High Court or Court of Appeal. Both sides have taken me to various statements from counsel, including counsel previously instructed, to illustrate their differing arguments - either that only an "events-based" claim based upon identified spills was intended by the Claimants or that the proposed claim would or may include a broader "all-spills" claim. The varying statements to which I have been directed only serve to illustrate the obvious point that statements made in court may vary in emphasis depending on context. Those made in the context of disclosure arguments are bound to emphasise the intention of the Claimants to establish an identified spill-based claim wherever possible in the light of disclosure to be given. But the statement by Mr Hermer in July 2023 captures exactly the case that the Claimants have recently set out in the causation amendment in the June 3RAPOC. He made it clear in his submissions to May J that the Claimants may be able to prove systemic breach and damage "*bang in the region*" and on that basis the court could "*properly reach conclusions on the balance of*

probabilities that the claimants can demonstrate their damage was caused by oil for which the defendant legally responsible."

34. I am not satisfied that the Court of Appeal gave directions on the basis of a misunderstanding of the likely shape of the claim or that that court intended to restrict the claims to ones involving known spills. Mr Willan has taken me to parts of the judgment in which the court set out its understanding of the Claimants' intention, following disclosure, to "*assert and prove a link between their loss and damage and a specific event for which the Defendants are alleged to be responsible*." Also the intention that "*the benefit of appropriately supportive expert evidence would enable them to plead and prove a case adopting conventional principles of causation….*" and that if the Claimants wished to change their case then they would need permission to do so. Those remarks upon which Mr Willan places emphasis must however be understood in the context of the court's discussion and rejection of the imposition of a global claim upon the Claimants.

35. Ms Day made the Claimants' position clear in her oral submissions. She said that, where possible, the Claimants would attribute damage to a specific leak but that the systemic breaches included a complete failure to maintain and repair pipelines and that it may not be possible to link all damage to a specific leak. The court will have had that position well in mind. Ms Day drew my attention to the observations of Males LJ which confirmed that the court had understood the case. At para. 90 he remarked "*The Claimants have always made it clear that they rely on all oil spills from the Defendants' pipelines and infrastructure during the relevant period, even where they are not at present able to identify a particular spill…*" and his further comments at para. 91 "*it may be impossible to identify with precision the source of any particular waste product which is subsequently dumped. Whether that is fatal to the claim will depend upon the facts…*". Ms Day submits that these comments make clear that the court understood the breadth of the Claimants' case. I agree with this submission.

36. I am not satisfied that the Claimants require permission to advance their primary case on the basis that there has been a material change in their case and/or because they have failed to comply with the order of May J. The order of May J required them to plead their case on causation with full particularity. I have not been taken to any observations by May J which add a gloss to this part of the order and I am satisfied that the Claimants have pleaded their case on causation in accordance with May J's order. They have set out their case with particularity. The Defendants may not like that case and they complain that it generates an unfairness. But they know the case which they have to meet and, as they have accepted, it is not legally bad or unsound. It is a claim based on inference but that does not make it unlawful.

37. The Defendants' fall-back argument here is that it took the Claimants a few "goes" to plead their causation case and that the case which is now under scrutiny only appeared in the final iteration, the June 3RAPOC. This was the third attempt at complying with the order of May J. Mr Willan submits that if they had permission for the first go, they certainly did not have permission for the second or third. I don't agree with this. It is clear that the Claimants' case, in a number of respects, was in a state of evolution in May and June 2026. A variety of amendments were made including a new claim of accessory liability and further allegations in bad conduct in support of the claim for aggravated damages and various draft documents were served. But the new pleading on causation was included for the first time

in the June 3RAPOC. It may have needed permission having been served some weeks after the agreed extension but not on any other basis.

Should Permission be Granted?

38. However I go on to consider whether, if permission had been required, I should grant or refuse permission.

39. The principles to be applied in such an application are well known. Whether to allow an amendment is a matter for the discretion of the court. The discretion is a very broad one but, in its exercise, the overriding objective is of the greatest importance, see *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 at para. 38 where Carr J continued "*Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused and injustice to the opposing party and other litigants in general, if the amendment is permitted*." In that case, Carr J noted that the timing of the application will be a relevant consideration and that very late amendments (which, if permitted, would lose the trial date) impose a particularly heavy burden upon the applicant and the absence of prejudice to the opposing party is a consideration but is by no means the only consideration. Lack of clarity in the amendment; absence of sufficient detail to enable the opposing party to understand the new case; whether the amendment is arguable and shows some prospect of success, are all factors which the court should have in mind when considering whether to allow an amendment.

40. Setting aside questions of fairness, Mr Willan's main point is that it is far too late now for the Claimants to run an undifferentiated all-spills claim. He raised once again the question of whether the claim was a global claim, a topic which had been centre stage in the Court of Appeal. He stated that it was precisely because the Claimants had disavowed the notion of a global claim that a proper analysis of the topic had been removed from the list of preliminary issues for May J. Whether this was a global claim; whether such claims exist in the context of environmental tort law; whether they exist in Nigerian law; their impact are matters which the court would have to resolve before trial. Time did not now permit the court turning back the clock by 12 months or more and, for this reason, the amendment should be refused.

41. I am not persuaded that the fact that the topic of global claims has not been the subject of a preliminary ruling is a reason for refusing permission or that for any other reason the amendment is made too late. The concept of a global claim crept into this litigation at an early stage and appears to have been used variously at times as short-hand for describing a claim in which the Claimants' case on causation had not been pleaded or not sufficiently pleaded. I agree that, given that the topic was removed from the list of preliminary issues following the judgment of the Court of Appeal there has been no analysis of such claims in an environmental tort claim. But the key feature of global claims is that they are "all or nothing" claims. In other words, as O'Farrell J set out in 2022, they are inherently risky for claimants because if the matters of which complaint is made are not proven in their entirety then the claim as a whole fails. This description does not apply to these claims. It does not follow that, say, in the event that the Claimants fail to persuade the court that liability attaches to oil spills due to third party illegal bunkering, that the claims cannot succeed in respect of breaches proven in other respects, such as failure to maintain the integrity of the pipelines or well heads. What breaches are proven and what claims for damages succeed will be a matter for the court's determination at the conclusion of the evidence, together with the proper causation inferences to be drawn from the evidence on breach and damage. But

these are not "all or nothing" claims. If the amendments are allowed then there will be no need for a hiatus and delay in the start of the trial whilst the court rules upon the nature and scope of global claims in this case.

42. Delay or the timing of the proposed amendment is not therefore a ground for my refusing permission. Mr Willan's further arguments focus upon the alleged unfairness of the amendment. I am not clear whether this is a matter which he invites me to consider in connection with the refusal of permission if required or as a free-standing objection under CPR 3.4(2)(b) on the grounds that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of proceedings. I consider them both below.

Unfairness

43. The nub of the Defendants' substantive objections is that it would be unfair for them to face an undifferentiated claim for liability arising from all spills, including unknown spills. It deprives them of a target. It may deprive them of a limitation defence and different legal regimes apply to different assets. The claim based on an increase in frequency, duration, volume and damage caused by spills is untriable.

44. I do not consider that it is open to me to refuse to permit the amendments on this basis. I reach this conclusion for the following reasons.

45. Ms Kaufmann informed the court that the liability trial due to start in May 2027 would cover each of the 106 known spills. The 106 known spills would be used by the Claimants to illustrate their primary case on causation by way of sample (or example). The evidential platform from which the Claimants will be seeking to establish its primary claims will therefore include the evidence relevant to all of the 106 known spills. 106 known spills is a relatively large cohort, even if it is a sample cohort. Within the 106 known spills, spills from different types of infrastructure, in different locations, for different reasons and at different times will be examined. Those 106 spills will include spills from various different assets subject to different liability regimes and raising different limitation issues. They cover spills due to unlawful third party intervention. The Defendants will be able to challenge the Claimants' primary case by reference to this cohort of 106 known spills and direct theirquestioning relevant to the primary case through a large spread of evidence relevant to the lead cases, sample areas and known spills.

46. The primary case advanced by the Claimants is not unclear or imprecise. It starts with specific damage in a particular location and, to the extent that this damage cannot be attributed to a specific spill, relies on an inference that it must have been caused by an unidentified spill for which the Defendants are responsible. Whether such an inference can properly be drawn will depend on the evidence. If, for example, the evidence about the 106 identified spills shows that the Defendants were responsible for all or a large majority of them, and the Defendants' evidence does not establish any other likely source of the damage pleaded, there may be a sound basis for drawing the inference. If, on the other hand, the evidence shows a more mixed picture, with some damage attributable to the Defendants and other damage not, the inference may be much more difficult to draw.

47. The Defendants complain that they have no target to address. I do not agree. As Ms Day reminds the Court, the Claimants intend to prove damage (as opposed to spills) in the usual way by reference to sample areas and damage to individuals. This provides a target, in that the Defendants will know the location of infrastructure relative to that area of damage and

be able to call evidence and direct their questioning to that topic. The court will be astute to consider throughout the trial whether the evidence truly supports the Claimants' primary case, including whether inferences can fairly be drawn from the known spills as suggested. In considering whether inferences can fairly be drawn, the court may properly take into account any limitations in the evidence as a basis for inferences and any inherent difficulties which the Defendants may have faced in calling positive evidence to rebut the inferences suggested.

48. The Defendants complain that they may be deprived of a limitation defence. I note that Ms Day appears to accept that the burden lies on the Claimants in which case any prejudice will fall on the shoulders of the Claimants. But in any event, following a liability trial covering the Lead Claimants and sample areas and using those 106 spills as samples or examples, the court will be in a good position at its conclusion to judge the relevance or importance of the limitation defence in this litigation. Likewise the relevance and importance of the different liability regimes attaching to different assets. These are all fact sensitive issues which will inform the court's evaluation of the evidence when considering where the Claimants' primary case can be inferred.

49. Mr Willan submitted that I should not grant permission for the proposed amendments setting out the primary case; alternatively I should defer consideration of the question of permission until after the liability trial. The latter course has an attraction in that the Claimants may never mount their primary case. As discussed during the hearing, the parties are in agreement that following the liability trial I will hand down my liability decisions on the lead cases and sample areas and my findings in respect of the 106 spills before hearing submissions on inferences to be drawn. The Claimants may fail to establish breach, or establish breach only in connection with certain assets and not others, or in respect of certain failings and not others.. If liability were to be established for none or only a small number of the 106 known spills, then this would be, as the Claimants accepted, a very unpromising basis for seeking to persuade the court that wider inferences relating to unknown spills should be drawn. It is also possible that the Claimants will never need to advance their primary case in the absence of evidence of environmental damage or damage to individual interests which is not explicable by the 106 known spills.

50. I am, however, not persuaded that I should defer the question of permission. Leaving the parties in a state of uncertainty as to the scope of the Claimants' case seems to me to be a recipe for potential misunderstanding and confusion. However superficially attractive it may be to defer consideration of the issue, the question of the scope of the Claimants' case should be resolved now.

51. For the reasons above, I am not satisfied that I should refuse permission for the proposed amendment. The primary claim is not unlawful (and this is accepted by the Defendants). I find no delay and the amendment, if allowed, will not threaten case management in the run up to trial or the trial date itself. I find that the amended case is sufficiently particularised (as I have observed above, the Defendants may not like it but they know the Claimants' case). I do not find that the amendment would cause such serious unfairness that permission, if required, should not be granted: the burden remains on the Claimants; any potential unfairness can be accommodated by the court's case management and trial management tools; any unfairness caused to the Defendants by their having to address an inferential case in respect of unknown spills and their inability to call specific rebuttal

evidence can be factored into the court's common sense assessment of whether the Claimants have discharged the burden of establishing the necessary inference.

52. This is also the case in respect of the Defendants' objections to the Claimants' case that the Defendants' failures led to an increase in frequency, duration and volume of oil spillage and consequential damage. The Defendants submit that this case is untriable because the court will never be able to judge whether an increase in spill volume (as opposed to the spill itself) caused the damage complained of. I do not agree that the issue is untriable. It may be difficult for the Claimants to prove that an identifiable and cognisable portion of the damage was attributable to the increase in frequency or duration or volume of a spill but that is a question for trial and not a reason to prevent the case being litigated. The burden will be on the Claimants and, if the Defendants are correct, then they may not be able to discharge the burden. But the court will not know this until the evidence has been given. The claim is not unarguable or bad in law. It should be allowed to proceed to trial.

Is the proposed amendment likely to obstruct the just disposal of the proceedings?

53. Mr Willan did not address this specific question or explain how the amendment might obstruct the just disposal of the proceedings. No authority was cited. A fully pleaded cause of action is set out in the Claimants' statement of case and as Mr Willan accepts, the primary claim is sound in law. I decline to strike out the amendment on this ground.

Aggravated Damages Amendment

54. The remaining issue for the court's determination is the Claimants' application for permission to pursue a claim for aggravated damages on the basis of:

   a. the Defendants' jurisdiction challenge (see above, para. 2) on the basis that the challenge was "*calculated to impede the Claimants' ability to pursue the claims*";
   b. the Defendants' knowing reliance upon false and/or misleading factual assertions with the intention that those assertions would prevent the claims from continuing;
   c. the Defendants' widespread deletion of data of key disclosure custodians and the destruction of relevant documentation and evidence.

55. The Defendants take no point of principle about the amendment, recognising that the claim is one which the Claimants are entitled to bring and if successful in establishing liability then they will have to defend the claim on its merits. The argument before me concerns the timing of the application for permission and the case management decisions.

56. The Defendants submit that there is a strong case to defer consideration of the topic of aggravated damages until the quantum phase of the trial which is likely to take place towards the end of 2027. By this stage, on our current provisional trial model, the court will have determined whether the Claimants have succeeded in respect of any or all of their claims. In other words, by this stage, the court and the parties will know whether there is to be an award of damages at all, a necessary prequel to the award of aggravated damages. Mr Willan submits that deferring the permission decision until that stage and then making the necessary case management directions is logical and proportionate. The claim is for a relatively modest 5% uplift on damages. It represents a very small element of the claim. Postponing the issue until a decision has been made on liability may involve some delay in the quantum

module of the trial but he submits the delay will be relatively short, particularly given that there will be a need to obtain updated quantum evidence for the purpose of that module in any event.

57. Mr Willan submits that, if however I accede to the Claimants' argument that I should give permission now and make directions for evidence to be called on the point during the liability trial, then the parties and the court will become involved in a resource draining "mini-trial" at a time when the litigation will be better served by the parties focussing upon meeting the deadlines for the liability trial starting in May 2027. Mr Willan emphasises that, whilst not disputing that as a matter of principle the Claimants are entitled to bring the claim for aggravated damages, the claim will be robustly defended. The Claimants allege iniquity: that the Defendants have knowingly sought to mislead the court in the jurisdiction challenge. It will be the Claimants' case that the Defendants have thus lost legal professional privilege over communications with internal and external lawyers in relation to the jurisdiction challenge. The resolution of this issue will be fiercely contested and will need to be resolved by the court (and almost certainly by another judge) before disclosure is given.

58. I am satisfied that I should grant permission now and that the issue should be covered during the liability trial. I reach this conclusion for the following reasons.

    a. First, I am persuaded that, in the event of my postponing the issue, it will or may delay the quantum trial. Even if the delay is restricted to a matter of 6 to 8 months, this would be strongly undesirable in the context of litigation which has been ongoing for many years and in which both the Court of Appeal and the Supreme Court have commented upon the need for urgent progress. I have already pushed the trial start date back by 2 months in order to adopt a realistic case management course. This case must be managed in such a way as to keep delay to an absolute minimum.
    b. Second, postponing the issue until the quantum phase will involve recalling witnesses who have already given evidence in the liability trial. This in itself is undesirable. However Ms Day also pointed out that witness credibility may be in issue in the liability trial and I may in resolving liability issues have to reach conclusions concerning the reliability of some, albeit few, of the Defendants' witnesses. She was careful not to overstate the point but she observed that it would be "unfortunate" to put it neutrally if following disclosure for the purpose of the claim for aggravated damages at the quantum phase, I was to have access to material which might shed a different light on my assessment of the witness.

59. I am conscious that this decision will involve both sides deploying significant additional resource at a time when focus must be on preparing the case for trial. It is unfortunate that the amendment is sought at this late stage but this is no one's fault and the Claimants have pleaded the point at the first opportunity following disclosure. But there is, as Mr Willan accepts, no ideal solution here. Taking all circumstances into account, I am satisfied that the overriding objective is best served by dealing with the issue now rather than deferring it until after the liability trial. Given the relatively small added value of the claim for aggravated damages it is important that both in its case management and at trial a proportionate approach is taken.

60. I am grateful to all counsel and their respective teams for their assistance. I invite the parties to draw up the order.