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4 record.

5 **IN THE COMPETITION** CaseNo: 1437/7/7/22, 1529/7/7/22, 1530/7/7/22, 1531/7/7/22,
6 1592/7/7/23

7 **APPEAL TRIBUNAL**

8
9
10 Salisbury Square House
11 8 Salisbury Square
12 London EC4Y 8AP

13 Thursday 19th March 2026

14
15 Before:

16
17 The Honourable Mrs Justice Bacon

18
19 (Sitting as a Tribunal in England and Wales)

20
21
22 BETWEEN:

23
24 **Elisabetta Sciallis**

25 **Proposed Class Representative**

26
27 And

- 28
29 (1) **Fender Musical Instruments Europe Limited and Another**
30 (2) **Korg (UK) Limited and Korg Inc.**
31 (3) **Roland Europe Group Limited and Roland Corporation**
32 (4) **Yamaha Music Europe GmbH and Yamaha Corporation**
33 (5) **Casio Electronics Co. Limited and Casio Computer Co., Limited**

34
35 **Proposed Defendants**

36
37
38 **A P P E A R A N C E S**

39 David Cavender KC on behalf of Elisabetta Sciallis (Instructed by Pogust Goodhead)

40 Brian Kennelly KC and Hugo Murphy on behalf of Fender Musical Instruments Europe
41 Limited and Another (Instructed by Gibson, Dunn & Crutcher UK LLP)

42 Aqeel Kadri on behalf of Korg (UK) Limited and Korg Inc. (Instructed by Osborne Clarke
43 LLP)

44 Sarah Ford KC on behalf of Roland Europe Group Limited and Roland Corporation
45 (Instructed by Herbert Smith Freehills Kramer LLP)

46 Emily Neill on behalf of Yamaha Music Europe GmbH and Yamaha Corporation (Instructed
47 by Dentons UK and Middle East LLP)

48 Alan Bates on behalf of Casio Electronics Co. Limited and Casio Computer Co., Limited
49 (Instructed by Sheppard Mullin (UK) LLP)

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Thursday, 19 March 2026

4 (10.30 am)

5 Case management conference

6 MRS JUSTICE BACON: Good morning. Some of you are joining us live stream on
7 our website, so I will start with the customary warning: an official recording is being
8 made and an authorised transcript will be produced. But it is strictly prohibited for
9 anyone else to make an unauthorised recording, whether audio or visual, of the
10 proceedings and breach of that provision is punishable as a contempt of court.

11 Good morning, Mr Cavender.

12 MR CAVENDER: I appear in this matter for the proposed class representative,
13 Elisabetta Sciallis. This is the first CMC in this matter. In terms of representation, to
14 my right representing Fender is Brian Kennelly Kings Counsel --

15 MRS JUSTICE BACON: I think I know everyone.

16 MR CAVENDER: You know everyone? I won't bore you with that any further.

17 My Lady, as I say, this is the first CMC. On receipt of skeleton arguments, you have
18 indicated on a preliminary basis your view that there should be a preliminary hearing,
19 effectively, to deal with three matters. Firstly, the representation of my client.

20 Secondly, the funding and thirdly insurance arrangements. You have asked the
21 parties to focus their attention and submissions on those matters.

22 So that is the first of the two matters you have identified you want submissions on
23 today.

24 The second is the attendance at that hearing, that preliminary hearing, of the
25 potential defendants and whether it is necessary for them each to have separate
26 representation or whether a single firm, a set of solicitors and counsel, would be
27 sufficient.

1 MRS JUSTICE BACON: Yes. But should we, first, deal with some procedural
2 formalities, like forum and confirmation of position of Casio?
3 MR CAVENDER: Yes.
4 MRS JUSTICE BACON: What I proposed to do was, firstly, to address those issues.
5 Then we will get to the representation and funding position and, as part of that,
6 consider whether what we should do today is give directions for a preliminary
7 hearing on that.
8 MR CAVENDER: Very well.
9 MRS JUSTICE BACON: Forum. Does anyone have any observations or is
10 everyone agreed the forum should be England and Wales? Does anyone disagree?
11 Mr Cavender?
12 MR CAVENDER: No.
13 MRS JUSTICE BACON: You agree. Secondly, the position of Casio. I think that is
14 for you to address, and I will just see if anyone has any comments on that.
15 MR CAVENDER: My Lady, yes. You know the history of that. Our attempts to
16 serve out extensions of time, including to November 2025. In December, we sent
17 a letter saying we no longer intend to serve Casio, due to the expense of all the
18 translations.
19 MRS JUSTICE BACON: Yes.
20 MR CAVENDER: So that is all the history. The question is formally how to deal with
21 this. We deal with this in our skeleton argument.
22 MRS JUSTICE BACON: Yes. I have read that.
23 MR CAVENDER: Yes.
24 MRS JUSTICE BACON: Your position is that you don't think that any permission is
25 required to "withdraw" because proceedings were never served.
26 MR CAVENDER: Correct.

1 MRS JUSTICE BACON: Does anyone disagree with that?
2 No? All right. So that is the end of that claim.
3 MR CAVENDER: Yes.
4 MRS JUSTICE BACON: All right. So that means we can then get to the
5 representation and funding arrangements. Do you want to say what your position is
6 at the moment, including your position on whether there should be, without much
7 further ado, a preliminary hearing at which that can be dealt with before the
8 proceedings go further?
9 MR CAVENDER: My Lady, yes. In principle, I have no objection to that course.
10 The directions that I sought in my skeleton, if you recall, were to give us a period of
11 three months in order to make such minor amendments as they wanted to the claim,
12 produce evidence, particularly of the funding, and deal with any other ancillary
13 matters. So the fact it is now suggested we have a hearing at that stage would seem
14 sensible.
15 MRS JUSTICE BACON: No, before that stage, because I don't want anybody to go
16 through the expense of amending the claim, and anyone to consider that until we
17 have established you do have funding; can you provide an update as to the position
18 on funding and representation now?
19 MR CAVENDER: Other than those negotiations and discussions are ongoing --
20 MRS JUSTICE BACON: Right. So no funding yet?
21 MR CAVENDER: No funding.
22 MRS JUSTICE BACON: No representation?
23 MR CAVENDER: There is representation.
24 MRS JUSTICE BACON: Other than Pogust Goodhead on a temporary basis?
25 MR CAVENDER: No replacement has been identified.
26 MRS JUSTICE BACON: Right. So no replacement representative, no funding. No

1 ATE insurance yet?

2 MR CAVENDER: Yes, there is ATE insurance, my Lady.

3 MRS JUSTICE BACON: All right. There seemed to be some doubt about that.

4 MR CAVENDER: I think there was a query raised by Casio as to whether we had
5 paid the premium. We had. We sent a letter last night confirming it. Here is the
6 letter, if you wish.

7 MRS JUSTICE BACON: Can I see that? So you do have ATE insurance?

8 MR CAVENDER: Indeed.

9 MRS JUSTICE BACON: All right.

10 MR CAVENDER: Then there are some complaints about the redactions to that in
11 the normal way. But there is ATE insurance, although, you know, various points are
12 made for us to justify each of the redactions in the traditional way.

13 MRS JUSTICE BACON: All right.

14 MR CAVENDER: So that's the position.

15 MRS JUSTICE BACON: Okay. So you don't object to having a hearing at which the
16 Tribunal can consider representation and funding and then, if any further complaints
17 are made about the ATE insurance, the ATE insurance arrangements?

18 MR CAVENDER: Yes. I would anticipate that we would seek to, in our evidence,
19 justify the various redactions that have been made and various complaints made
20 about it. I would imagine that would be part of our justification for our position at the
21 preliminary hearing, in order to go forwards.

22 MRS JUSTICE BACON: Yes.

23 MR CAVENDER: In terms of timing, my Lady, obviously I would seek as much time
24 as you were willing to give us.

25 MRS JUSTICE BACON: We have indicated how much time we are willing to give.
26 That fits in with the Tribunal's timetable. I don't think this really should drag out

1 further. If there is -- if there are fundamental problems with the funding and
2 representation arrangements, then those need to be dealt with quickly and, if not,
3 then the claim won't be able to proceed. It is better -- in everyone's interests -- to
4 avoid incurring further costs, for that to happen sooner rather than later. If that is
5 resolved, we can move quickly to a CPO hearing.

6 MR CAVENDER: My Lady, I don't dissent from any of that. In order to give us the
7 best chance of the final push to get funding and/or representation, that's different.
8 Those two may be connected in the real world.

9 MRS JUSTICE BACON: Well, you're having that final chance now. The
10 proceedings have been ongoing for some years. I don't think it is necessary for
11 there to be any further delay. The Tribunal has indicated the first available date after
12 2 June. Does anybody -- I mean, I hear your point, Mr Cavender. But I don't think
13 we are willing to delay the hearing beyond that.

14 Does anyone have particular problems with the listing of the hearing in the first
15 weeks of June?

16 MR KADRI: My Lady, I'm afraid I do (several inaudible words).

17 MRS JUSTICE BACON: Right. Can you be replaced? I mean, this is a very early
18 stage in the proceedings.

19 MR KADRI: I would address my Lady later in the context of the question about joint
20 representation. I can deal with it now.

21 MRS JUSTICE BACON: No, we will come to that. Right.

22 Does anyone else have -- bearing in mind my point about potential joint
23 representation; are there any particular reasons why a hearing should not be listed in
24 the first couple of weeks of June?

25 You don't have to all stand up and say no. If anyone has any particular problems.

26 Right, Mr Cavender, leaving aside your request for more time -- which is

1 refused -- are there any particular reasons why the first couple of weeks of June
2 won't work?

3 MR CAVENDER: My Lady, no.

4 MRS JUSTICE BACON: No?

5 MR CAVENDER: In terms of timing, it has not been indicated yet how much time
6 you are going to give me to put in my evidence, really.

7 MRS JUSTICE BACON: No, we will come to that.

8 MR CAVENDER: Which is the same as the amount of time I have to try to secure
9 funding. Because you would not expect the defendants need much time to put in
10 their evidence when the evidence --

11 MRS JUSTICE BACON: No. I am not expecting -- no, I'm expecting the evidence to
12 come from you.

13 MR CAVENDER: So, if we could have the majority of the time, until, say, a week
14 before or whatever when you want the skeleton arguments --

15 MRS JUSTICE BACON: No, you're not going to get that because the position on
16 funding and representation should have been sorted out long ago.
17 My proposal is that you will have until around the end of April, start of May, to put in
18 evidence on this.

19 MR CAVENDER: Could I ask for 14 May, which is 56 days from today? That is --

20 MRS JUSTICE BACON: That is very close up on the hearing.

21 MR CAVENDER: Well, it is two or, perhaps, three weeks before the hearing.

22 MRS JUSTICE BACON: That doesn't give the defendants the time to address that
23 evidence. This should have been dealt with long ago. These are long standing
24 proceedings. It is not as if you filed yesterday. These are proceedings that have
25 been ongoing for several years and, frankly, there is no good reason why
26 proceedings should have been ongoing for that long without funding and

1 representation being sorted out.

2 Does anyone have any objection to an order that the evidence is filed around the
3 end of April, start of May, on the defendant's side?

4 MR KENNELLY: Madam, at the very latest. We need the time that follows your
5 initial indication because we anticipate heavily redacted and inadequate
6 documentation from the PCR, and we will need to go back to them and challenge the
7 redactions. Without that step, we can't formulate our response. So we respectfully
8 agree with the Tribunal's indication that that is the minimum we need to respond.

9 MRS JUSTICE BACON: Yes. I'm going to say 1 May.

10 That needs to be full evidence from the PCR as to representation, funding
11 arrangements, and ATE arrangements, with all of the agreements with the minimum
12 possible redactions. I am not going to require the PCR to respond to all the
13 questions, set out in the letter from Dentons, for example. But if the PCR doesn't
14 deal fully with all of the points set out in Dentons' letter, then the PCR can expect
15 that there will be questions raised at the hearing by the defendants, because they
16 are entitled to know what the funding arrangements are; what the arrangements for
17 ATE are; and what the legal representation arrangements are.

18 If by the time of the hearing the PCR is not able to satisfy the Tribunal that it has
19 adequate legal representation, funding, and ATE cover, then the consequence is
20 very likely to be, at that point, without more, that the application for certification will
21 be refused. Because this is not a regime in which one puts in an application for
22 certification with "funding TBC". That should be dealt with at the outset, not left in
23 abeyance, because that is one of the issues which the Tribunal will be wanting to
24 consider as soon as there is a substantive hearing on certification. Likewise, ATE
25 cover, likewise, representation.

26 So it is really important that the PCR's evidence is full and candid as to what

1 | arrangements are being made.

2 | I have in mind that by a date perhaps a week or so later, the proposed defendants
3 | should indicate whether they want to cross-examine the PCR at the hearing. If I
4 | specify 8 May; is that workable?

5 | MS FORD: Those behind me have pointed out, simply, that week is a week with
6 | a bank holiday Monday in it, which means there are only four working days to make
7 | that decision from receipt of the proposed class representative's evidence. Could I
8 | ask, perhaps: could we have the following Monday?

9 | MRS JUSTICE BACON: Yes. Well, the problem is I need to allow the PCR to
10 | respond, if they consider that cross-examination isn't necessary, and for the Tribunal
11 | to make a ruling on that. And to be fair to the PCR, she will need to have
12 | a reasonable period in which she can prepare for being cross-examined, if the
13 | Tribunal's ruling is for her to be cross-examined.

14 | If I say the 11th, and then give the PCR another week to respond to that, then I
15 | suppose the Tribunal -- I mean, we can make a decision reasonably quickly. The
16 | problem is I'm in a trial that week, the week of the 18th. I think that that would be just
17 | about -- that would just about give enough time, because if the Tribunal then makes
18 | a decision during the course of the week of the 18th that will still give approximately
19 | two weeks.

20 | All right. So, Mr Cavender, do you have any comments on that proposed timetable?

21 | So there would be a working week effectively, after your evidence, for the
22 | defendants to indicate whether they wish to cross-examine the --

23 | MR CAVENDER: Yes, my Lady. Yes.

24 | MRS JUSTICE BACON: Then you would have another week to respond.

25 | Obviously, if you consent, then there is not much more to be done. But if you
26 | objected, then the Tribunal would need to consider that objection. All right.

1 That would then lead into the hearing. I think probably in the usual way, the registry
2 can send directions as to when skeleton arguments should be provided. But that
3 will -- that will hopefully give you enough time for skeleton arguments to be provided
4 a week or so ahead of the hearing.

5 Are there any other particular directions which need to be made to prepare for that
6 hearing? Let me start with Mr Cavender.

7 MR CAVENDER: One point of clarification. In terms of the content of our evidence,
8 you mention this letter from Dentons that is in the supplementary bundle.

9 MRS JUSTICE BACON: Yes.

10 MR CAVENDER: If you look at that letter carefully, you will see a large number of
11 the questions, particularly in 4(b)(ii), relate to historical matters.

12 MRS JUSTICE BACON: Yes.

13 MR CAVENDER: Are you saying you want all that to be dealt with in the evidence?
14 I understood you to be dealing with full evidence as to the position, the current
15 position, rather than the history.

16 MRS JUSTICE BACON: Yes. Yes. Exactly.

17 MR CAVENDER: I'm right about that?

18 MRS JUSTICE BACON: You are. I don't think we need to go all the way through
19 the history, but I do want full explanations of the current arrangements.

20 MR CAVENDER: I'm obliged.

21 MRS JUSTICE BACON: And the Dentons' letter will give you an idea of the kind of
22 questions that they have.

23 Does anyone want to address me on whether there is a particular need for us to
24 delve into history? Especially given everyone's comments about the need for this to
25 be dealt with quickly and at least cost to everyone.

26 MR KENNELLY: Madam, from our perspective, in terms of other directions that

1 | might be needed, we were going to ask you for an unless order because until today's
2 | hearing it was far from clear that any ATE at all was in place and it would have been
3 | unfair to require the defendants to conduct the preliminary issues hearing at risk.

4 | MRS JUSTICE BACON: Yes. But I was really asking in terms of the question raised
5 | by Mr Cavender in terms of his evidence. Is there any reason why he needs to get
6 | into the archaeology of these proceedings or can he, in his evidence -- can the PCR
7 | focus on what is the current position?

8 | MR KENNELLY: From Fender's perspective -- and for this I think I do speak for all
9 | the proposed defendants -- it is not necessary to get into the archaeology. What
10 | matters, from our perspective, is what is in place now.

11 | MRS JUSTICE BACON: What's in place now.

12 | MR KENNELLY: And for that, we respectfully echo the indication of the Tribunal that
13 | transparency is critical in relation to funding and the ATE insurance.

14 | MRS JUSTICE BACON: Yes.

15 | MR KENNELLY: We cited the Hammond authority in our skeleton argument. We
16 | expect minimal redactions at a high level of candid engagement from the PCR in
17 | view of, if I may say so, the less than accurate and candid engagement so far.

18 | MRS JUSTICE BACON: I'm not going to make comments on whether the
19 | engagement so far has been accurate and candid. That will be a matter for the
20 | Tribunal to consider at the hearing. I have made clear I expect there to be a full and
21 | candid explanation of the current arrangements, but I don't think there is a need,
22 | Mr Cavender, for you to go into the history. Unless Ms Ford is going to jump up and
23 | say there is something about the history she wants to address.

24 | MS FORD: Madam, we don't dissent from that for the purposes of the preliminary
25 | issue hearing. We agree that needs to be very narrow. However, we would simply
26 | put down the marker it is conceivable these matters would be relevant to the

1 authorisation condition more broadly, therefore they might arise at any CPO hearing
2 if there were to be one.

3 MS NEILL: We, again, agree with the submissions that in due course it may be
4 relevant. It may be an issue as to fullness and frankness in relation to the service
5 out application, but that's not necessary for today.

6 MRS JUSTICE BACON: For this hearing. All right. Thank you.

7 Yes, so that answers your question, Mr Cavender.

8 MR CAVENDER: My Lady, yes.

9 MRS JUSTICE BACON: Before I turn to the defendants: are there any other
10 directions that you think I should be making to enable your case to be fully presented
11 at that hearing?

12 MR CAVENDER: No, my Lady.

13 MRS JUSTICE BACON: All right. Can I then turn to the defendants? Now, before
14 we get into your point regarding an unless order, Mr Kennelly, can I just consider the
15 question of representation of the defendants because the Tribunal is, as you will
16 have appreciated, concerned to ensure that the preliminary issue hearing is
17 conducted with least expense to all, given that the issues are going to be very
18 narrowly focused. You will have seen that we recommended a hearing at which the
19 defendants could be represented by a single team. Have you been able to discuss
20 with your colleagues and your instructing solicitors whether that is likely to work?

21 If not, what other proposals do you have for minimising the expense, bearing in mind
22 I'm not going to be expecting to be addressed by five sets of counsel at that hearing.

23 MR KENNELLY: Indeed not. The proposed defendants submit that it is still
24 necessary to have at least some representation from each of the solicitors' firms
25 because of potential conflicts that exist. We fully understand the Tribunal's indication
26 in relation to rationalising the team at the hearing. Mr Kadri has a particular

1 submission to make about that, so I will hand over to him and come back if I need to.

2 MRS JUSTICE BACON: Yes.

3 MR KADRI: My Lady, just returning to the themes touched on earlier, in terms of my
4 availability. I think that is going to evaporate because of the timetable, I think. The
5 hearing of the first week of June may be too soon. I don't have any difficulties after
6 5 June.

7 In terms of representation, the point Mr Kennelly has just made about position of
8 solicitors because there are deeper conflicts because of the attribution claim. We
9 say that can't simply be put to one side for all the defendants to instruct one firm. Of
10 course, we understand that the Tribunal does not wish to be addressed by five sets
11 of advocates. But we say that is the usual exhortation. Defendants are required to
12 liaise. There's certainly no intention for five people to say the same thing.

13 There are some issues, though, that may require individual submissions. So, for
14 example, we have five separate ATE policies. The question of adequacy will be fact
15 specific to each set of proceedings and from my client, Korg's, perspective this is
16 particularly sensitive because Korg is by some distance the smallest of the
17 defendants. If we look at the way -- I don't intend to take my Lady through the
18 bundle. But, if we look at the way the size of the claim is expressed in respect of
19 Korg it is expressed as being in the region of 10 million. We say that is wildly
20 optimistic.

21 Leaving that to one side. In respect of Fender, Roland and Yamaha, it is expressed
22 to be in the tens of millions, so multiples greater. So we say there will be some
23 issues around adequacy that may be different for Korg, as opposed to the other
24 defendants. But, also, at the moment we simply have no information about the
25 nature of the funding arrangements: what is the structure?

26 If there are -- these are five separate applications. It is not a cartel case. Even if it

1 was, there would still be five separate applications. There may be five sets of
2 funding arrangements. We simply don't know. If there are, then clearly there may
3 be fact specific matters to address.

4 Even if there is one set of funding that will raise other issues as to how the funders'
5 return is structured because, following on from what I said about the relative size of
6 the claims, it must follow that in a combined funding arrangement, in essence, the
7 funders' return in respect of the claim against Korg must be subsidised by the
8 funders' return in respect of the larger claims and that gives rise to potential perverse
9 incentives for the PCR when it comes to settlement. Those are matters we may
10 need to address. We don't know at the moment.

11 We say the normal expectation of the Tribunal that always prevails; that there should
12 be coordination; absence of duplication -- I think we have done that today -- that
13 should be sufficient. Of course, all the proposed defendants are strongly
14 incentivised to keep their costs to a minimum because we all have concerns about
15 the adequacy, the level of ATE cover, up to CPO stage. Now we are in a position
16 where we have to have two hearings. We need to make sure we stay within that.
17 (Inaudible) money. Korg is very sensitive to that.

18 Finally, they have ATE insurance. We say they don't need any additional protection
19 from the Tribunal. The defendants will ensure the hearing doesn't run on
20 unnecessarily; that the Tribunal is not overly burdened. We say the PCR does not
21 require any further protection.

22 MRS JUSTICE BACON: So what is the proposal then? That you have some
23 separate representation, but that counsel will ensure there is no duplication? Are
24 you still proposing to come with a battalion of counsel?

25 MR KADRI: We say that is a matter that we will have to consider when we see what
26 the arrangements are. As I said, it will be different. If there are five separate funding

1 | arrangements, that position will be different to if there's one.

2 | I think it is generally understood that the likelihood is that, at the very least, one
3 | advocate would take the lead on submissions and any supplementary submissions
4 | would be limited to anything that is fact specific to a particular defendant in question.

5 | MRS JUSTICE BACON: Well, I should say at this point that we do not need
6 | necessarily to hear from counsel if the only point to be made is one that can be put in
7 | writing.

8 | MR KADRI: Well, my Lady, I stand here without the assistance of counsel. I
9 | appreciate I may well be making the advert for instructing counsel in doing that. But
10 | we say we are fully on board with that for that reason. Of course, from Korg's
11 | perspective there is an obvious cost saving.

12 | MRS JUSTICE BACON: Absolutely.

13 | MR KADRI: If we were required to contribute to the cost of joint counsel, from Korg's
14 | perspective that may involve an increase in costs.

15 | MRS JUSTICE BACON: Yes. I think I should make clear that we, on this side, are
16 | not expecting every party to be represented and speaking at the hearing. Obviously,
17 | we will leave it to the parties to liaise and work out who is going to be the lead
18 | advocate or lead advocates. If it is simply the case that one or other party wants to
19 | make a few short points that can be made in writing, such as on your part, Mr Kadri,
20 | you don't want to incur expenses of attending or instructing counsel, perhaps. If you
21 | choose, you could simply put your points in writing for them to be considered by the
22 | Tribunal. It will be regarded as no disrespect on the part of any party if they choose
23 | to say to us: we are not going to send along separate representation to the hearing,
24 | but here are the points we would like the Tribunal to consider.

25 | MR KADRI: (Several inaudible words).

26 | MRS JUSTICE BACON: Yes. All right. So that deals with representation. Then

1 I will just leave you to liaise.

2 But just so I understand your availability, Mr Kadri, you said if it is in the first week
3 of June there is not a problem, but if it goes further --

4 MR KADRI: No, it's the other way round. I have judicial commitments from the 1st
5 to the 5th. After the 5th, I am available.

6 MRS JUSTICE BACON: We will have to liaise with the registry to see when the
7 hearing will be listed.

8 Mr Kennelly, you had some points you wanted to make about the ATE cover?

9 MR KENNELLY: No. We are not going to press our request for an unless order in
10 view of the clear statement by my learned friend, Mr Cavender, that there is in fact
11 valid ATE cover in place today. We have real concerns about the state of the ATE
12 cover, but we will wait to see.

13 MR CAVENDER: My understanding is certainly in connection to Casio in relation to
14 the application. I think Korg's was sent in correspondence. I'm not sure if the other
15 three have theirs. There is no problem with providing them. They are in exactly the
16 same form.

17 MR KENNELLY: Madam, if you have time, I can show you those ATE. On the face
18 of those documents, they are so heavily redacted. I've been saying -- real problems
19 to suggest those ATE policies, to which my learned friend refers, are not valid as
20 they stand today. So we need to see the current ATE policies with minimal
21 redactions and if they are exactly the same as the ones which have been exhibited
22 to the other, those defendants' evidence, well that's fine and no cost will have been
23 incurred and it will be addressed very quickly.

24 From Fender's perspective, Fender has never received even a redacted copy of an
25 ATE policy.

26 MRS JUSTICE BACON: No. Well, maybe we just need to deal with this now

1 because I don't want time to be wasted by arguing about redactions. Is there
2 a confidentiality ring in place yet?

3 MR KENNELLY: No.

4 MRS JUSTICE BACON: Is there any reason why a confidentiality ring could not be
5 put in place relatively quickly which would enable the unredacted versions of the
6 ATE policies to be provided and then there could be arguments later about what
7 needs to be redacted?

8 MR KENNELLY: Madam, we can establish a confidentiality ring immediately. We
9 can do it --

10 MRS JUSTICE BACON: In a matter of days?

11 MR KENNELLY: Yes. Then move on to see the current ATE policies in respect of
12 each of the proposed defendants, unredacted within the ring.

13 MRS JUSTICE BACON: Right. Mr Cavender, is there any reason why the ATE
14 policies should not be disclosed unredacted into the confidentiality ring?

15 MR CAVENDER: Can I just take instructions?

16 MRS JUSTICE BACON: Yes, of course. (Pause)

17 MR CAVENDER: The slight problem, my Lady, is the classic problem. If you look at
18 the policy, there is a condition it not be disclosed to third parties and the brokers
19 always require certain provisions to be redacted. My understanding is the redactions
20 in this document reflect that instruction. So --

21 MRS JUSTICE BACON: That is not going to be good enough because that could
22 enable there to be exclusions which no one can scrutinise, so --

23 MR CAVENDER: Would not necessarily want our opponents knowing, if it is
24 disclosed to the confidentiality room, which is limited to external legal advisers.

25 MR CAVENDER: Yes, my Lady, I hear what you say. I can't get instructions at the
26 moment as to what form of document -- obviously some of the redactions could

1 clearly, would be covered and the confidentiality agreement would cover that. I am
2 not able to take instructions now as to whether a completely clean version would be
3 possible to put in there or not.

4 MRS JUSTICE BACON: Right. Even if there are personal details in order that
5 everyone can satisfy themselves that they are personal details. It is difficult to see, if
6 you have something blacked out you don't know what it is that has been blacked out.

7 MR CAVENDER: But it can be the justification, as I say, explaining why that that
8 justification is someone's address; is the PCR's address.

9 MRS JUSTICE BACON: Right. Right. I think then what I will order is for there to be
10 a confidentiality ring established. I would suggest at this stage limited to external
11 legal advisers. We can then discuss if necessary in future whether that needs to be
12 broader.

13 Is there anyone who would disagree, for these purposes only, for a ring on those
14 terms?

15 MR KENNELLY: Unless I am told by my learned friends otherwise, no. My Lady,
16 that seems to be the best way of dealing with this as quickly as possible.

17 MRS JUSTICE BACON: All right. Then the ATE policies to be disclosed into that
18 ring and I am not going to wait until end of April. I would suggest that is disclosed
19 within a week of today. Let's say by -- yes, by 27 March.

20 Mr Cavender, is there any reason why that cannot be done: disclosure of all of the
21 ATE policies into the ring? Now, do we need to have separate rings for each of the
22 defendants or is it sufficient for there to be one ring into which all of the ATE policies
23 are disclosed?

24 MR CAVENDER: May I take instructions? Yes.

25 MR KENNELLY: While my learned friend is taking instructions, from our perspective
26 there is no need for separate rings.

1 MRS JUSTICE BACON: No. But Mr Cavender may say there's a particular reason.

2 MR CAVENDER: I am asked to ask for Friday of next week to do this.

3 MRS JUSTICE BACON: Yes.

4 MR CAVENDER: Also, to ask for separate rings for each one.

5 MRS JUSTICE BACON: All right. Why do you need separate rings for each one?

6 MR CAVENDER: Well, I am assuming so that the confidentiality remains between

7 each party, rather than between the parties.

8 MRS JUSTICE BACON: But what is -- why is there an interest for there to be -- for,

9 say, Mr Kennelly not to know what the ATE cover in respect of Mr Bates' client is?

10 There has to be a reason for it, because you are asking for an additional layer of

11 complexity.

12 MR CAVENDER: Well, I don't think much thought has been given to this, obviously.

13 MRS JUSTICE BACON: Okay. Can it be given to it now? (Pause)

14 MR CAVENDER: As long as this is just for these old ones. Because there might be

15 replacements in different situations going forwards --

16 MRS JUSTICE BACON: We are not talking about the old ones: we are talking about

17 the current ones.

18 MR CAVENDER: Yes, exactly: the existing ones.

19 MRS JUSTICE BACON: So that's the existing ATE policies?

20 MR CAVENDER: Yes.

21 MRS JUSTICE BACON: All right. So that's a single ring by 27 April. Any redactions

22 need to be of the nature of, for example, personal information and need to be clearly

23 explained and not generically explained. There needs to be a specific explanation

24 given, for example, this is the home address of the PCR.

25 MS FORD: My Lady, you did just say 27 April. I believe you might have meant

26 27 March.

1 MRS JUSTICE BACON: Sorry, I did mean 27 March. Thank you. I was suggesting
2 a week's time and I have given a week and a day. Yes. 27 March.

3 MS FORD: My Lady, given that that requires the ring to be in place within a week, it
4 might be prudent to have a structure for that to be agreed. Perhaps the PCR to
5 provide a draft, that is to be provided on it and then either agreement by a certain
6 date or --

7 MRS JUSTICE BACON: PCR to provide a draft of what, the ring?

8 MS FORD: Yes.

9 MRS JUSTICE BACON: The ring that Mr Kennelly says can be got up and running
10 within days?

11 MS FORD: Well, certainly we wouldn't look for anything other than days but it might
12 make sense to have a structure by which the parties agree the terms of the ring
13 within the week.

14 MRS JUSTICE BACON: Well, no, we will have the parties agree the terms of the
15 ring by the end of tomorrow. I mean, it is pretty simple.

16 MR KENNELLY: We definitely have one of those in the can, madam.

17 MRS JUSTICE BACON: So provided to the Tribunal by close of business tomorrow.

18 MR KENNELLY: I am obliged.

19 There is one other matter, madam, in terms of transparency of the ATE. My learned
20 friend said in that letter yesterday, or his solicitors did, that the premia had been
21 paid. Obviously, the validity of the ATE depends on the premium being paid, but
22 there was nothing documenting that assertion in the letter that the premia had been
23 paid.

24 Now, we are not even asking for the amount of the premium, but a receipt or
25 something -- along with the ATE policy unredacted -- demonstrating that it has, in
26 fact, been paid. Because that is a condition precedent for the validity of the policy.

1 MRS JUSTICE BACON: Yes.

2 MR KENNELLY: I would be obliged if Mr Cavender could confirm that could also be
3 provided by this deadline.

4 MR CAVENDER: My Lady, you would normally expect a solicitor's letter, having
5 specifically asked the question answered, to be sufficient. But if you order us to
6 provide it, we will provide it.

7 MRS JUSTICE BACON: Yes. All right. By the same date, evidence of the premia
8 for all five, or however many policies you have got, to be --

9 MR CAVENDER: By which date, my Lady?

10 MRS JUSTICE BACON: By the same date as you are providing the ATE policies.

11 MS NEILL: Madam, we are very grateful for those indications because we were very
12 concerned about the validity of the ATE policies --

13 MRS JUSTICE BACON: Yes.

14 MS NEILL: -- you will recall our letter of 17 March which at paragraph 4(a)(i)(B)
15 asked a number of questions about the validity and existence of this policy and
16 a response simply that the premia had been paid. It is not sufficient. So we do have
17 concerns and we would like, to the extent that those questions were not answered
18 on the face of the insurance document, we would like them to be answered.

19 MRS JUSTICE BACON: Yes. Well, I'm not directing a response to an RFI, but I'm
20 saying that the evidence of payment of the premium, premium or premia, needs to
21 be provided by the same date, ie close of business on 27 March. No doubt then full
22 details and explanations will be given in narrative form in the witness evidence that is
23 going to be provided by the class representative.

24 Are there any other matters that from the defendants' part the Tribunal needs to deal
25 with?

26 MR KENNELLY: Not from our perspective, my Lady. Thank you.

1 MRS JUSTICE BACON: Costs.

2 MR KENNELLY: This hearing, we would ask for our costs of this hearing because it
3 is an extraordinary situation that we have been brought here in circumstances where
4 even today we have not been given the ATE policy, the insurance and evidence of
5 future representation.

6 Madam, you saw in our skeleton argument our proposal that these directions be
7 made and in a very limited way, and if -- if -- my learned friend's clients had provided
8 to us before today ATE policies, evidence of insurance and applying for
9 representation this hearing would have been unnecessary. Or at least if you agree
10 the directions, it would have been unnecessary.

11 So we have been brought here at expense to, in some cases, small companies and
12 there ought to be a cost consequence for that.

13 MRS JUSTICE BACON: What I am wondering, Mr Kennelly, because this has been
14 a very short hearing. It has not perhaps gone the way that the PCR thought it was
15 going to go. I was wondering about making an order for costs reserved, because it
16 won't be very long before this will all be dealt with.

17 MR KENNELLY: If that is all we can get, then that is what we will have to take from
18 the Tribunal. But there is real injustice --

19 MRS JUSTICE BACON: No. I understand.

20 MR KENNELLY: -- in circumstances where we made a very sensible proposal. We
21 could have asked for a much harsher order from the Tribunal (inaudible) skeleton,
22 and it was not accepted by the PCR. It was obviously what the Tribunal was going
23 to order, since it was the obvious and sensible path to resolving these prior
24 questions.

25 MRS JUSTICE BACON: Yes. Mr Cavender, do you have any submissions on
26 costs?

1 MR CAVENDER: My Lady, obviously it is a hearing about case management. It is
2 case management in somewhat odd circumstance because of the delays, et cetera,
3 and I have to accept that. But this hearing was set up at the volition of the Tribunal,
4 understandably, to try and get a grip of the situation, which it has now done and has
5 given directions to ensure proper progress.

6 In my submission, in the usual way, the costs should be in the case. There is
7 nothing so outrageous or out of norms for a claimant in situations like this to be
8 punished. So my submission would be that costs would be in the case, in the normal
9 way.

10 MRS JUSTICE BACON: All right. Does anyone else want to say anything that is not
11 repetitive of what has already been said?

12 MR KADRI: My Lady, my only proposal would be that it be defendants' costs in the
13 applications. That way the claimant's costs are disallowed and the defendants can
14 recover the costs if they prevail on certification.

15 MRS JUSTICE BACON: All right. So you would like the defendants' costs in the
16 applications?

17 MR KADRI: I say that may be preferable to simply reserving the issue, so that we
18 have to argue about it all over again.

19 MRS JUSTICE BACON: Well, my proposal was that we argue it with the benefit of
20 having further information.

21 MR KADRI: I certainly don't resist that.

22 MRS JUSTICE BACON: Yes. Does anyone else have anything to say? No. All
23 right. I'm going to make an order for costs reserved to the next hearing. I will,
24 unless there is something very unforeseeable, be dealing with that at the hearing
25 then. I will have well in mind the points that you have made and you may wish to
26 make other points on costs then.

1 Right. Is there any other order that needs to be made or anything else that needs to
2 be dealt with in preparation for the hearing that I have ordered will take place?

3 MR KENNELLY: No. No.

4 MRS JUSTICE BACON: All right. Mr Cavender?

5 MR CAVENDER: My Lady, no.

6 MRS JUSTICE BACON: No. All right. Thank you very much, everyone. I will look
7 forward to seeing you in June.

8 (11.11 am)

9 (The hearing adjourned)

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Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?