

Case No: HT-2018-000204, HT-2018-000205

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

[2019] EWHC 3680 (Comm)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 25 October 2019

Before :

Mr Justice Waksman

Between :

Bombardier Transportation UK Limited v London
Underground Limited and Hitachi Rail Europe Limited

Claimant

- and -

London Underground Limited

Defendant

Philip Moser QC, Anneliese Blackwood and Valentina Sloane QC (instructed by Womble
Bond Dickson and DLA Piper) for the Claimants
Jason Coppel QC, Joseph Barrett and Richard Handyside QC (instructed by Ashurst) for the
Defendants

Hearing dates: **25th October 2019**

APPROVED RULING 2

Mr Justice Waksman
(3:57 pm)

Friday, 25 October 2019

1. My ruling is as follows: I will make an order that the defendant shall not refer in open court to the details of the claimant's claim for damages as set out in its schedule of loss, or other details of that calculation, but the claimant/defendant is entitled to refer to the overall size of the claim.
2. So far as the five documents are concerned, I am prepared to take at face value the contention that each of the five documents is proprietary or could otherwise be regarded as confidential as between Bombardier on the one hand and Hitachi on the other. It is a very small number of documents. So far as that is concerned, I will say that they should not be referred to in open court.
3. The claimant/defendant will be entitled to cross-examine experts in relation to those documents with appropriate confidentiality safeguards put in place.
4. So far as any question of the defendant wishing to cross-examine a Hitachi witness in relation to those documents, before any such cross-examination is to take place, the defendant should indicate the area of cross-examination to the trial judge who will then rule in advance as to whether that cross-examination is permitted, or permitted with certain safeguards.
5. The relevant test here is not, does the public need to know it? The test is whether there is good reason to make it necessary for the public not to know it, and I am satisfied that that test can be met here to the limited extent referred to above.
6. This order both as a whole and any part thereof, will be subject to any further direction which the trial judge may make one way or the other because it would be wrong for me to tie the trial judge's hands irreversibly at this stage.