

ENGLAND AND WALES / JUDGMENT

Ahmed v The Bread Roll Company Ltd

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Neutral Citation Number: [2009] EWHC 90141 (Costs) IN THE HIGH COURT OF JUSTICE
SUPREME COURT COSTS OFFICE Case No: 08. A.2063 Clifford's Inn, Fetter Lane London, EC4A
1DQ Date: 12 February 2009 Before : MASTER O'HARE, COSTS JUDGE

- ----- Between: ZULFIQUAR AHMED
- and - THE BREAD ROLL COMPANY LIMITED Claimant Defendant
- -----
- ----- Mrs Victoria Williams (instructed by Ess Ess Bilan, Solicitors) for
the Claimant Mr Stephen Cottrell (instructed by Debenhams Ottaway, Solicitors) for the
Defendant Hearing date: 20 November 2008
- -----

Judgment

Master O'Hare: 1. 2. 3. A consent order dated 14 April 2008 and made in the Willesden County Court transferred to the Costs Office the Claimant's "applications for directions to determine the issue of enforceability of the conditional fee agreement ... [to] be listed for hearing in accordance with [the SCCO's] directions". From this I deduce that this matter has been assigned to me sitting as a Deputy District Judge of the Willesden County Court, to undertake, subject to my rulings on preliminary issues herein, the detailed assessment of this bill. At the hearing before me both sides were represented by counsel. The Claimant was represented by Mrs Victoria Williams and the Defendants were represented by Mr Stephen Cottrell. I received skeleton arguments from each side and a witness statement from Mr Suki Bilan, the Claimant's solicitor, on the basis of which Mr Bilan gave evidence and was cross-examined. This is my decision on the preliminary issues which were argued before me. Put very simply the problems arise here because the conditional fee agreement ("CFA") in question was made on 20 December 2001 but is dated some seven months earlier, 22 May 2001. Issues also arise as to compliance with the CFA Regulations 2000 in respect of the CFA and in respect of the information given as to after the event insurance. As happens all too frequently in costs cases, it is necessary to set out at length some of the relevant statutory material, and I must also summarise some of the guidance given in the two important Court of Appeal cases concerning them. 4. Section 58 of the Courts and Legal Services Act 1990 permits legal representatives to enter into CFAs. As amended by the Access to Justice Act 1999 it provides: A conditional fee agreement which satisfies all of the "(1) conditions applicable

to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable. (2) (a) (b) For the purposes of this section and section 58A- a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and a conditional agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances. The following conditions are applicable to every (3) conditional fee agreement – it must be in writing; it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and it must comply with such requirements (if any) as may be prescribed by the Lord Chancellor. (a) (b) (c)

- (4) ...” 5. The Conditional Fee Agreements Regulations 2000, which came into force on 1st April 2000 include the following provisions: "Information to be given before conditional fee agreements made 4 (1) Before a conditional fee agreement is made the legal representative must – (a) (b) (2) (a) inform the client about the following matters, and if the client requires any further explanation, advice or other information about any of those matters, provide such further explanation advice or other information about them as the client may reasonably require. Those matters are: the circumstances in which the client may be liable to pay the costs of the legal representative in accordance with the agreement, (b) (c) (d) (e) the circumstances in which the client may seek assessment of the fees and expenses of the legal representative and the procedure for doing so, whether the legal representative considers that the client's risk of incurring liability for costs in respect of the proceedings to which the agreement relates is insured against under an existing contract of insurance, whether other methods of financing those costs are available, and, if so, how they apply to the client and the proceedings in question; whether the legal representative considers that any particular method or methods of financing any or all of those costs is appropriate and, if he considers that a contract of insurance is appropriate or recommends a particular contract: (i) his reasons for doing so, and (ii) whether he has an interest in doing so; Before a conditional agreement is made the legal (3) representative must explain its effect to the client (5) Information required to be given under paragraph (1) about the matters in paragraph 2 (a) to (d) must be given orally (whether or not it is also given in writing), but information required to be so given about the matters in paragraph 2 (e) and the explanation required by paragraph (3) must be given both orally and in writing". 6. In *Hollins v Russell* [2003] 1 WLR 2487 the Court of Appeal decided that, in determining whether Regulation 4 has been complied with, the Court must ask itself: "Has the particular departure from a regulation pursuant to section 58 (3)
- (c) of the 1990 Act or a requirement in section 58, either on its own or in conjunction with any other departure in this case, had a materially adverse effect either upon the protection afforded to the client or upon the proper administration of justice?" 7. In *Garrett v Halton BC* [2007] 1 WLR 554 the Court of Appeal held [in para 19] that: "The "protection afforded to the

client" is a reference to the protection afforded by virtue of the 2000 Regulations. If paras 106 and 107 [in Hollins] are read as a whole, the court was saying that, if there has been a failure of substantial compliance or a material departure from what is required by the 2000 Regulations, that failure or departure of itself has a material adverse effect on the protection afforded to the client or upon the proper administration of justice". BACKGROUND FACTS 8. 9. The claim in this case arose out of an accident at work which happened on 10 March

2001. The letter before claim was sent on 21 August 2002 and proceedings were commenced in the Willesden County Court on 4 March 2004. Liability was admitted on 23 May 2005 and the case then proceeded to a trial on quantum, which was listed for two days commencing 6 July 2006. The case in fact settled on 4 July 2006 for damages of £35,000 plus interest and costs. It is not in dispute that the Claimant first met his solicitor, Mr Bilan, at interview on 22 May 2001. In his evidence Mr Bilan states that the topic of the CFA was discussed at that meeting and it was agreed that, if the claim was to proceed under a CFA, that CFA would be backdated to the date of this meeting (para 32). Earlier in his evidence Mr Bilan had described his general practice concerning CFAs: "19. My clients NEVER sign the CFA at the first appointment. Funding options alone is a complicated topic and there is a lot of initial information for my lay client to "digest". The CFA is always sent to my client after the appointment so that my client can read through it at leisure and discuss with me anything that my client still does not understand. 20. Since about 2000 my clients have been offered an option of paying for my time pre execution of the CFA privately or to back date the CFA to the date of my initial instructions. To date, all of my clients have chosen the back dating option." 10. It was not until 6 August 2001, after a telephone conversation with the Claimant, that Mr Bilan drafted a CFA and a retainer letter. On that occasion he also updated the lengthy attendance note he had made following the May interview. Those three documents were sent to the Claimant who signed and returned the retainer agreement and the attendance note (but not the CFA) dating them both 6 September 2001. Under the heading "financing your claim" the retainer letter contains the following sentences: "Other than a conditional fee agreement (CFA) you have no other way of funding this claim. I am pleased to offer you a conditional fee agreement. I am prepared to back date your agreement to the date of my original instructions and in this way, all of the work that I do on your case will be covered under the terms of the CFA." There is a similar passage in the attendance note of the interview: "12. ... We discussed CFA's as the most probable method of funding. If we proceed with the CFA the agreement will be back dated to cover the initial meeting. I said that, unless, at the outset, I can see a good chance of success I do not normally offer CFA's (conditional fee agreement). I explained the difficulties on liability. I said that if I offer a CFA from the outset I will need to do a substantial amount of work (interview witnesses, engineer's reports, etc) on a case where there is a better than even chance of losing. On this particular occasion, I said that I will risk my time under a CFA on condition that we do not incur disbursements until liability has been established and thereafter my firm will only pay for disbursements if Mr Ahmed applies for after the event insurance cover." 11. 12. By letter dated 24 September 2001 Mr Bilan re-submitted the CFA

to the Claimant asking him to sign and return it. He still did not do so. On 15 October 2001 there was a further interview between solicitor and client but no mention was made of the fact that the CFA was still unsigned. By letter dated 3 December 2001 Mr Bilan sent to the Claimant a draft liability statement and confirmed the arrangements for a meeting on 20 December at which he was to see as many witnesses as were able to attend on that day. There is an attendance note of a six minute telephone call from the Claimant on 13 December 2001 at which he raised several matters requiring amendment in the statement. That attendance note then states as follows: "I still do not have a signed CFA from Mr Ahmed! Instead of him signing and returning the copy that he has got I said that the Law Society had brought out a new version of the agreement. I will discuss this new version with him at our appt." 13. In order to deal with these amendments to the liability statement, an additional interview was arranged to take place on 18 December 2001, that is, a couple of days before the date the solicitor was to interview the witnesses. An attendance note on 18 December 2001, which was not challenged in cross-examination, confirms that the new version of CFA was gone through, and finishes with the following sentences: "Either the CFA can be backdated to the original meeting or Mr Ahmed can pay for my time to date privately. Agreement to be backdated." 14. I turn now to describe the CFA which is dated 22 May 2001 but it is accepted by both sides was not signed and therefore not completed before 20 December 2001. The CFA, which is very much in standard form, contains the usual definition of "basic costs": "These are for work done from now until the review date 1 January 2002. Our hourly rates are ..." ISSUES CONCERNING THE DISCREPANCY OF DATES 15. Counsel for the Claimant invites me to view the contractual documents in this case as comprising the retainer letter signed and dated by Mr Bilan on 6 August 2001 and by the Claimant on 6 September 2001 together with the CFA signed by the Claimant on 20 December 2001 but dated 22 May 2001 (it is not yet in evidence, I think, the date upon which Mr Bilan signed the CFA). In her submission these documents indicate that the CFA made in this case can properly be regarded as a CFA which had retrospective effect. The special terms of the retainer letter which I have quoted concerning "back dating" are of such importance as to require a qualified interpretation to be given to the CFA terms costs "from now" or to regard the words "from now" as being surplusage. This is the agreement which has always been explained to the Claimant and was understood by him to have retrospective effect. 16. 17. Counsel for the Defendants challenge the enforceability of this CFA in a variety of ways. First, he argued that an agreement is not made retrospective merely by mis-stating the date upon which it was made. Deliberately back dating a document for this reason indicates an intention to create a document which gives a false impression and therefore falls within the strongest form of criticism given by Stanley Burnton J (as he then was) in the well known case *Holmes v McAlpine* [2006] EWHC 110 (QB): "19. 22. 23. [counsel for the Claimant] submitted that the agreement was, on its face, retrospective. That is incorrect. It was not retrospective: it was back-dated, which is a very different thing. ... The written agreement in this case was misleading. Anyone who saw it would assume that it had been executed on the agreement date, that is, ... in fact it was not ... Whether the back-dating of the agreement had a material effect on the administration of

justice is a separate question. An allegation that the agreement was deliberately back-dated in order to mislead the Defendant or its solicitors or the court into believing that it was entered into on the date it bore ... would be a serious allegation of impropriety (indeed of dishonesty) which, if established, would certainly lead to unenforceability of the agreement. However the Defendant has disclaimed any allegation of impropriety on the part of Mr Dench. The fact that the agreement had been back-dated was apparent from the files provided to [the Costs Judge] and was noticed by him. In these circumstances there is no basis for a conclusion that the agreement is unenforceable on the ground that its back-dating had a material effect on the administration of justice. I would emphasise, however, that the back-dating of documents as was done in this case is generally wrong. It is wrong to seek to give an agreement retrospective effect by back-dating it. If it is agreed that a written agreement should apply to work done before it is entered into, it should be correctly dated with the date on which it was signed and expressed to have retrospective effect, ie, to apply to work done before its date. Back-dating is liable to mislead third parties, and is liable to lead to the suspicion that it was done in order to mislead third parties, including a court before which the agreement is to be placed. The dangers may be seen in the Claimant's bill of costs. ... The costs draftsman seems to have taken the date of entering into the agreement as the date it bore ... Back-dating is at best due to incompetence or lack of thought, and at worst to dishonesty. It should not be done." 18. Counsel for the Defendant states, in the alternative, that if the agreement in this case does have retrospective effect, it fails for non compliance with statutory obligations in various ways. There is a breach of Section 58(3)(a) in that the agreement is not written but is instead partly written and partly oral. This is because the words used in the retainer letter are not sufficiently clear to achieve the retrospective effect desired. Alternatively, if those words are sufficiently clear and are incorporated so as to form part of the contract, there is no written explanation as to what the start date of liability for costs is. In the further alternative the solicitor has failed to comply with Regulation 2(1)(a) in that the agreement fails to specify, or fails to specify clearly, the particular proceedings or parts of them to which it relates: the agreement includes the standard words: "What is covered by the agreement: your claim for damages for personal injury suffered on 10 March 2001 and also the words which I have previously quoted which define the term "basic costs": "These are for work done from now until the review date 1 January 2002 ..." MY DECISION ON THE DATE DISCREPANCY ISSUE 19. I must decide four questions here: i) whether the CFA comprises one document (the December CFA) or two (the December CFA and the September retainer letter). ii) The period covered by that contract, iii) Whether the solicitor has complied with the regulations relevant to that contract and, iv) If he has not, whether his departure is material or immaterial. In case there is a successful appeal from my decision on the second of these questions, I shall give alternative decisions on each of the subsequent ones. The contractual document(s) 20. Had the September retainer letter been signed contemporaneously with the December CFA, there would be no doubt that both of them would have formed the contract in this case. I have come to the conclusion that, despite the lack of contemporaneity between them, both of those documents do form the

contract binding the solicitor and client in this case. I accept that, in September 2001, the client withheld his signature from the CFA which was then offered to him. That is, of course, indicative of an unwillingness on his part to commit himself to any liability for costs. It is likely that, by December 2001, he had forgotten all about the September letter. However, he signed the December CFA having been told that, if he did not, he would have to pay all the earlier costs, win or lose, and there is every reason to think that the agreed terms as to “backdating” were then described again. It seems to me appropriate to deduce from that fact an agreement or willingness by both solicitor and client to commit themselves to something more than was in the document then being signed. The period covered 21. 22. 23. 24. The relevant legal principles for the construction of a contract have been extensively considered by the courts in and after the decision in *Investors Compensation Scheme*

- v. *West Bromwich Building Society* [1998] 1 WLR 896: the court is to put itself in the position of a reasonable reader trying to ascertain the meaning of the document intended by its authors. That reader needs to be equipped with the relevant knowledge of the context in which the agreement was made - the "matrix of fact", as it is called. In *Investors Compensation Scheme* the House of Lords decided that, in all the circumstances of that case, the words "Any claim (whether sounding in rescission for undue influence or otherwise)" meant "Any claim sounding in rescission (whether for undue influence or otherwise)". Whilst, in the Court of Appeal, Leggatt L. J. said, on the authority of *Alice Through the Looking Glass*, that such an interpretation was "not an available meaning of the words" the House of Lords, by a majority, disagreed. "The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* <http://www.bailii.org/uk/cases/UKHL/1997/19.html> [1997] 2 WLR 945" (Lord Hoffman). Given my finding that the signed retainer letter dated 6 September 2001 and the CFA form signed by the client in December 2001 both form the contract binding the solicitor and client in this case, it follows that the contract in this case did have retrospective effect. Words can mean what the parties intend them to mean even if such a meaning is "not an available meaning of the words" according to the dictionaries. I reject each of the alternative challenges which counsel for the Defendants made (see paragraph 18, above). All of the terms of the contract are in writing; its start date is "the date of my original instructions" (see paragraph 10, above) and the words "from now" have to be construed as meaning "from the date inserted above". Whether the solicitor in this case has departed from the regulations 25. 26. Regulations 4(3) and 4(5) of the Conditional Fee Agreements Regulations 2000 provide that, before the

agreement was made, the solicitor is required to explain its effect to the client, and must do so both orally and in writing. The contract in this case being retrospective, I find that the solicitor has fully complied with those regulations. Retrospectivity was explained clearly enough in the retainer letter, and was also explained orally at the December interview. Had I found that the agreement in this case was not retrospective I would have found that the solicitor had departed from regulations 4(3) and 4(5) of the Conditional Fee Agreements Regulations 2000 because the client would have been given wrong information, both orally and in writing, as to the start date of his liability for costs.

27. Whether or not the agreement is held to be retrospective, counsel for the Defendants argued that the solicitor has failed to comply with regulation 4(2)(d) of the Conditional Fee Agreements Regulations 2000 which required him to inform the client orally about “whether any other method of financing [the costs of this claim] are available, and, if so, how they apply to the client and the proceedings in question”. By the time the client signed the retainer letter in September 2001 the solicitor had undertaken a substantial amount of work in this matter and indeed was to undertake substantially more in the next few months, before the interview in December 2001. In my view, until the completion of the CFA, there was no contractual obligation upon the client to pay for any of that work and (unless he entered into a retrospective agreement) there would have been no obligation upon him to pay for it. However, both the retainer letter in September and the interview in December would have given the client the false impression that, if he did not sign, he would have to pay for this work, win or lose.
28. At the hearing before me counsel for the Claimant argued that, when entering into a retrospective agreement with a client, regulation 4(2)(d) did not require the solicitor to point out that it might be cheaper for the client to start afresh with a new firm of solicitors, just as the solicitor was not required to point out to the client that another firm might also charge lower hourly rates or even undertake the case pro bono. I largely accept that submission: the other methods of funding referred to in the regulation are methods other than by CFA. In cases to which the regulations apply, solicitors were required to point out to the client other ways of funding legal costs, for example, by way of legal aid, or via a trade union, or with the benefit of any available before the event insurance cover. They were not required to inform the client that other firms of solicitors might undertake the work on less onerous CFA terms. Whether any such departure is material or immaterial.
29. 30. On the facts as I have found them, there has been no departure from the regulations and therefore this point does not arise. However, if I had found that the CFA was not retrospective I would then have found that the solicitor had materially departed from regulations 4(3) and 4(5) of the Conditional Fee Agreements Regulations 2000. In some respects this case is similar to the case found in *Holmes v McAlpine* [2006] EWHC 110 (QB) (as to which, see paragraph 17, above). There is no suggestion of dishonesty here, and, indeed, none was put to Mr Bilan in cross examination. Counsel for the Defendants did submit that, the backdating being deliberate, there was here a deliberate intention to create a document giving a false impression and this has led to a materially adverse effect upon the proper administration of justice. I reject this submission totally: there is no reason at all why

I should treat an honest mistake in the same way as I would treat a dishonest deception. However, in at least one respect, the circumstances were quite different in Holmes: there it appeared that the solicitor had not given any explanation at all about the client's liability for earlier costs and so the client would have assumed there was no such liability (see paragraph 20 of the judgment). In this case, a failure by the solicitor to explain the contract correctly (had he done so) and the giving of false information as to the client's liability for earlier costs (had it been given) would have had a materially adverse effect upon the protection afforded to the client. In those circumstances there would have been a potential risk of the client being made to pay these earlier costs even if they were disallowed as against the Defendants.

31. Had the solicitor mistakenly described the CFA as retrospective when it was not, I would have been unable to characterise that mistake as only a minor defect or a trivial irregularity: substantial work on the case had been undertaken before the CFA was completed. It would have been of no help to the solicitor in this case to say that, once his error as to retrospectivity had been pointed out, he would not have charged the client for that work. It is the potentiality of harm which makes the mistake material even where that potentiality is more theoretical than practical.

ISSUES AS TO ADVICE CONCERNING ATE INSURANCE

32. In earlier stages of this costs dispute the Defendants have queried whether the Claimant had been given advice on insurance before completing the CFA and queried whether the solicitor had a financial interest in the policy purchased which had not been declared to the client. By the time of the hearing before me both these points had been withdrawn and instead Counsel for the Defendant sought to challenge whether the solicitor had stated his reasons for recommending a particular policy in this case. This requirement of the Regulations is one which must be given to the client, both orally and in writing (see Regulations 4(2)(e) and 4(5)). In his evidence Mr Bilan describes his standard practice as to after the event ("ATE") insurance. Unlike some solicitors, he does not recommend paying for ATE insurance at the outset, but only once some information has been gathered and the Defendant's response on liability is known. However, his standard practice is to discuss ATE with the client before the CFA is signed and the information given often specifies the names of two particular insurance providers with whom Mr Bilan has previously sought cover: Litigation Protection Ltd and Capita.

34. ATE insurance is mentioned in the retainer letter signed and dated September 2001 as follows: "I will arrange for an insurance policy to be taken out which will cover any liability you may have for outlays (third party expenses) and also the costs of your opponent, if the claim is unsuccessful. There is a premium for the policy, the cost of which I will let you know as soon as I can. If you win, that premium will be sought from your opponent. I will try to take out insurance that also covers the premium. You are unlikely to be offered an insurance policy until such time as I have obtained sufficient evidence to suggest that you have a better than 60% chance of winning your case."

35. An attendance note which is also signed by the Claimant and dated 6 September 2001 mentions ATE insurance as follows: "Under a CFA the opponent's costs can be insured, as can disbursements, however, until a supportive engineer's report and other witness evidence is available an after the event insurer (Capita/Litigation Protection) is unlikely to consider going on risk. It is a chance Mr Ahmed will take. I will do all that I can to take the

Defendant's involvement to a minimum pending my enquiries. If sufficient supportive witness evidence is unobtainable we will review the wisdom of continuing with this case. Once the supportive witness evidence is available then at that stage we would make an application for the after the event insurance to be put in place." 36. There are two substantial references to ATE insurance in the CFA form signed by the Claimant in December 2001. The first appears on the third page under the heading "Other Points", as follows: "(vii) We believe it is desirable for you to insure your opponent's costs and disbursements to safeguard the risk of you losing your case and becoming liable to pay your opponent's costs and disbursements and/or any disbursements that may occur in your case. We recommended that you take out a policy with Litigation Protection and/or Capita. We do not have an interest in recommending Litigation Protection Ltd or Capital or any of their products. We are not insurance brokers and cannot advise you on the range of products that these companies offer. We simply recommend a standard after the event insurance policy to safeguard you against the risk of you losing your case and having to pay your own disbursements and/or your opponent's costs and disbursements." 37. The second substantial reference to ATE insurance in the CFA form appears in the schedule entitled "Schedule of Law Society Conditions". In those conditions paragraph 3 is headed "Explanation of Words Used" and, ordinarily, the first paragraph is sub-titled "Advocacy". In this particular case a sub-paragraph has been inserted above the Advocacy sub-paragraph as follows: "Litigation Protection Ltd or Capita An insurance policy is available through Litigation Protection Ltd/ Capita. If there is any risk of you losing your case we will advise you to take out the insurance. If your insurance is accepted by Litigation Protection Ltd/ Capita and you lose your case the insurance policy will cover our disbursements, your barrister's fees and your opponent's costs and disbursements. The minimum cover is £25,000 although this can be extended by paying additional premiums." 38. I am in no doubt at all that the challenge which Counsel for the Defendants has made here does not succeed. It is plain to me that the solicitor did give reasons why he considered that a contract of insurance was appropriate and gave such reasons both orally and in writing. His recommendation to take out a policy with one or other of the two providers named is not a recommendation to take out a particular contract of insurance: as I understand it the two providers named would each offer several different types of insurance products. The totality of the references to ATE insurance make it plain to me that the solicitor's advice was that the client should take out "a standard after the event insurance policy". The naming of possible sources of such insurance and the suggestion that the minimum cover is likely to be £25,000 are descriptive of general insurance only and, in all likelihood, were probably specified in order to explain to the client that standard policies are available from different sources and to explain the amount of cover which is generally thought to be the minimum to cover the cost risks which the solicitor had described.

CONCLUSION

39. 40. It follows that I determine both of the preliminary issues in Claimant's favour. However, I would strongly suggest to Mr Bilan that, if he has not done so already, he should reconsider the dictionary definitions of the terms "back-dating" and "retrospective effect" as explained in *Holmes v McAlpine* [2006] EWHC 110 (QB) (as to which, see paragraph 17, above) and, for future cases, re-draft his standard form of CFA accordingly. I invite the parties to agree suitable terms as to permission to appeal, costs and any consequential orders after the formal delivery of this judgment. My provisional view is that the Defendants should have permission to appeal, the costs of the preliminary issues should be reserved to the detailed assessment and the Claimant should be directed to file a request for a detailed assessment hearing within a specified time, with an unlimited extension of time if, before he does so, an appellant's notice is filed by the Defendants. However, if necessary, I will hear argument as to these points.

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