

# 'This Isn't MTV Unplugged': Guitar Banned At Supertramp Trial

By **Craig Clough**

Law360 (February 23, 2024, 9:58 PM EST) -- A California federal judge on Friday denied a request by former Supertramp member Roger Hodgson to play his guitar on the witness stand in a trial over a songwriting royalty dispute with his former bandmates, saying it isn't relevant in a breach of contract case and that the trial "isn't MTV Unplugged."

U.S. District Judge André Birotte Jr. appeared surprised when Hodgson's lawyer, Alan S. Gutman of Gutman Law, said at the start of the day that Hodgson had brought an acoustic guitar to the courthouse and wanted to demonstrate his songwriting process for the jury.

The case centers on **allegations** that Hodgson in recent years breached a decades-old agreement to **share** some of his songwriting royalties with nonwriting members of the band.

After his "MTV Unplugged" remark, the judge asked what the purpose of the guitar playing would be, because "no one is disputing that he wrote these songs."

Gutman responded it was to refute testimony from plaintiffs John Helliwell, **Robert Siebenberg** and Douglas Thomson that they helped bring the songs "to life" in the recording studio.

David M. Given of Phillips Erlewine Given & Carlin LLP, who represents the plaintiffs, strenuously objected and said the guitar "never should have been brought to the courthouse" because jurors may have seen it passing through security.

"All right, relax," Judge Birotte said. "Look, no disrespect to your client, but in any other form, I'd love to see it happen, but I'm just not sure of the relevance, because no one is disputing that he wrote the songs, and I'm not sure because he plays in front of the jury — what? We obviously know he can play, he's a creative. I don't think there's any testimony that he didn't create the songs, is there?"

Gutman said there was testimony from the plaintiffs about "all the contributions that they made to make these songs happen on a record," but Judge Birotte denied the request, saying he would then have to allow the plaintiffs to get up and play their instruments and that it "goes to something that isn't in dispute."

"He wrote the songs. He created them. No one's disputing it," Judge Birotte said.

Gutman then pivoted to a request to show a video of Hodgson performing some of the songs, in part because he said many of the jurors are on the younger side and likely not aware of Supertramp's music, but Judge Birotte shot that request down as well, reminding Gutman that he ordered jurors not to seek the band's music out in any way and the case "is about a breach of contract."

The judge also said, "If they hear the song, who cares?"

Witnesses playing instruments on the stand at federal trials are **not unheard of**, but it tends to happen in copyright and songwriting disputes.

Ed Sheeran **pulled out a guitar** on the stand in a New York federal trial last year and sang portions of his Grammy-winning 2014 song "Thinking Out Loud" to demonstrate how it differs from Marvin

Gaye's "Let's Get It On." Sheeran **won the case.**

And pop star Robin Thicke **played the piano** to a 2015 Los Angeles federal jury scrutinizing his song "Blurred Lines" before **losing the case.**

Helliwell, Thomson and Siebenberg filed their lawsuit in Los Angeles Superior Court in 2021 against Hodgson, former Supertramp member Rick Davies, Delicate Music, Universal Music Corp., Universal Publishing Group and The American Society of Composers, Authors and Publishers. The suit was later moved to federal court.

The Universal entities and ASCAP were eventually dismissed from the suit. Davies reached a settlement with the plaintiffs in 2023 and is not expected to testify at the trial, which began on Feb. 20.

The case is focused on several written agreements in which Davies and Hodgson, who were Supertramp's songwriters, agreed to share their songwriting royalties with the rest of the band. That the agreements were reached and signed is not in dispute, but Hodgson asserts the deals allowed him to stop the payments, which he did several years ago.

Hodgson testified in the afternoon as the first defense witness, telling the jury about growing up in England, learning to play the guitar as a child and starting Supertramp with Davies.

Helliwell, Thomson and Siebenberg have already testified, recounting own memories of joining Supertramp in the early 1970s and reaching success with hit records and world tours, peaking with 1979's "Breakfast in America," which hit No. 1 on the American charts.

Like the other members who testified, Hodgson agreed the 1977 royalty-sharing agreement was reached to help the nonwriting members financially, because despite the band's success on the charts, their record company still took back most of the money the band made.

Despite the massive popularity of "Breakfast in America," the subsequent tour caused friction in the band, and after all achieving financial freedom they started to drift apart, according to Hodgson. He also said he chafed at the growing involvement of Davies' wife, Susan Davies, who eventually became the band's manager in 1983, the same year Hodgson departed from the group.

Hodgson insisted he was forced out, which conflicted with the testimony of some of his bandmates, who told the jury Hodgson left to pursue a solo career.

Hodgson was often limited in what he could say on the stand, as a pretrial ruling by Judge Birotte did not allow him to give any "subjective intent" about his view of the royalty agreements. When asked at one point why he didn't terminate the royalty payments to his bandmates, Hodgson said all along it "was my intention to," before Given objected and Judge Birotte sustained the objection.

Hodgson did say that at various key points in the band's career, including the success of "Breakfast in America" and his 1984 departure agreement, he opted not to terminate their royalties because he had other priorities in life and that he didn't want to "create what we're going through now."

Then, around 2018, some of his copyrights reverted to him from the record company, and since he needed to renegotiate a number of deals as a result, it "felt like it was time," Hodgson said.

He also said Davies made public statements around the time that Supertramp was never going to tour again, so the timing seemed right to address the royalties issue, Hodgson said.

"I wanted them to succeed," Hodgson said, adding that he only started the process of terminating the royalty agreement after it became clear that "Supertramp was over."

During opening statements, neither side told the jury how much the plaintiffs may be seeking in damages. According to a 2023 ruling by Judge Birotte, the plaintiffs said they routinely received around \$100,000 each per year in royalties from 1977 through 2018.

The trial is scheduled to resume Monday.

The plaintiffs are represented by David M. Given, Nicholas A. Carlin, Robert Carroll III and Kyle P. O'Malley of Phillips Erlewine Given & Carlin LLP.

The defendants are represented by Alan S. Gutman and Matthew E. Hess of Gutman Law.

The case is Douglas Campbell Thomson et al. v. Charles Roger Pomfret Hodgson et al., case number 2:21-cv-08124, in the U.S. District Court for the Central District of California.

--Additional reporting by Rachel Scharf. Editing by Alanna Weissman.