
From: Anthony Rush [rush_aj@[REDACTED]]
Sent: 03 September 2010 12:49
To: Fitchie, Andrew
Subject: Re: Norwegian Silence

We've served the RTN

Sent using my BlackBerry® from Orange

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BoW Tel [REDACTED]
Mobile [REDACTED]
email [rush_aj@\[REDACTED\]](mailto:rush_aj@[REDACTED])

-----Original Message-----
From: "Fitchie, Andrew" <Andrew.Fitchie@dlapiper.com>
Date: Fri, 3 Sep 2010 12:32:08
To: <[rush_aj@\[REDACTED\]](mailto:rush_aj@[REDACTED])>
Subject: Norwegian Silence

Legally privileged and FOISA exempt

Tony

I am giving serious thought to the refusal to hand over the clandestine agreement. PB have a very heavy responsibility for where things are.

Proposition to discuss depending on Carl isle position:

1. Tie is invited by BSC in their Dervaird submission to apply for specific implement as a normal means of unlocking contractual impasse.
2. Tie issues an RTN on the clandestine agreement - but the remedy sought is not disclosure but a full explanation of why the agreement was entered into, how it has been used and what it has generated.
3. Tie makes simultaneous application under specific implement to the court for disclosure of the document itself on the grounds that:
4. the non disclosure of the document is a breach which should be rectified and at no cost - other than photocopying- to BSC. Its existence is admitted and no confidentiality is asserted.
5. tie requires to understand and is entitles to information on all Permitted Variations on an Open Book basis. The BSC- SDS clandestine agreement deals with payment for design issues. Non disclosure is a failure on Open Book commitment.
6. The audit provision requires to be complied with and the agreement is within the ambit of tie's audit on BSC management of SDS

7. RTNs are in play in respect of which the designers' performance is central and tie is entitled to know what BSC have agreed with SDS regarding design development.

8. Tie is publicly accountable and has reason to believe that services paid for with public funds may have manipulated to negate best value and conceal poor contractual performance.

9. Tie wish to have the agreement to assess whether or not its interests have been damaged by delictual collusion and/or a possible Prohibited Act.

Views?

A

Andrew Fitchie
Partner
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