
From: Nolan, Brandon [Brandon.Nolan@mcgrigors.com]
Sent: 21 February 2010 19:06
To: Fitchie, Andrew; Williamson, Simona
Subject: Re: Witness evidence

Andrew,

Many thanks for this. It is most helpful and we will arrange for this to be passed on to RSK.

As you indicate, the evidence of MC and GG will be of considerable importance.

Kind regards

Brandon

----- Original Message -----

From: Fitchie, Andrew <Andrew.Fitchie@dlapiper.com>
To: Nolan, Brandon; Williamson, Simona
Sent: Sun Feb 21 18:25:41 2010
Subject: Witness evidence

Brandon
Simona

I was able to reach Willie Gallagher today and have an hour with him, focused exclusively on the Wiesbaden meeting in December 07 and the product of the meeting. He had seen both your useful time line and the salient extracts from Geoff Gilbert's e-mail traffic assembled by Stewart McGarrity.

I will send out a briefing note tomorrow on our conversation - for obvious reasons this will not be an actual signed statement but the gist of WG's evidence is in essence. And this email can perhaps serve in order to have Senior Counsel see the colour of the evidence quickly):

1. The main purpose (from WG's perspective) of Wiesbaden had not been to discuss design status and detailed contractual matters. He had wanted the meeting in order to get BBS to fixing their price and remove contingencies/provisional sums- as it was now one over a month from PB downselect. WG had become frustrated with the impasse regarding BSC including unsubstantiated contingencies in their price, without tie seeming to be able to get the bottom of what these covered and how they could be converted into a fixed price.

2. Wille does not recall ever seeing an actual Wiesbaden agreement- this was left to Matthew Crosse and Geoff Gilbert to draft and settle. So far as WG knows, there was no BBS external legal advice and he never saw or heard either BB internal or external counsel being consulted. On his return to Edinburgh on about the 16th Dec, WG was immediately engaged in trying to deal with a Euro hedging contract expiry issue- where CAF (who had been sitting since August 07 as tram supply PB) said that they would require reimbursement by tie of any new hedge as a result of currency fluctuation. This was an appreciable and unbudgeted amount.

3. Matthew Crosse had taken detailed notes from the meeting in Wiesbaden attended by him and WG representing tie and by Messrs Walker, Flynn, Joachim Enekel (of BB AG) and a senior Siemens executive (WG has forgotten the name but has the card). In all, the meeting lasted about 3-4 hours, with MC doing the majority of the negotiation from an outstanding issues list and pricing spread sheets that he brought with him.

4. WG was satisfied that he and MC had made progress in extracting clarity from BBS. There were further and late discussions at the hotel bar- WG remembers these carrying on as he retired for the night, after the main meeting, on how to document matters s they had been resolved. WG said that MC then used his meeting notes to brief Geoff Gilbert to prepare the Wielded Agreement and this may have been faxed/emailed to and fro. WG believes these MC notes should on the tie archive but he himself played not role in settling the exact terms of the Wiesbaden Agreement and had never seen the email traffic between GG and RW where the exclusionary language is added in.

5. WG regards the Wiesbaden Agreement as something of a 'red herring' as far as price is concerned- because of the later series of cash grab attacks on this position mounted by both Siemens and BB. When those happened, WG's trust in Richard Walker, in particular, and Michael Flynn was seriously compromised and further incidents resulted in WG asking for Richard Walker to be removed from the project. Wiesbaden only the second occasion that WG had met Walker and Flynn.

6. If he had been asked if Wiesbaden had resulted in an acceptance by tie that any change to SDS design, no matter how trivial, should be paid for by tie and create entitlement to programme relief for BB WG would have categorically stated that nothing of that sort was

discussed in the meeting and that this was arrant none sense. There was disquiet voiced about SDS's general performance but nothing detailed or contractual was tabled by BSC about design when WG was present in the meeting and nor would he have expected it to be..

7. While WG agrees that the language of Pricing Assumption 1 is ambiguous, he had no visibility of this at the time in Wiesbaden as it was not discussed or written down in the meeting session. WG is clear that its meaning (or possible meaning as a trapdoor for BSC to escape through) was never drawn to his or the tie Board's attention before the pricing arrangement was approved by the tie Board on December 20th '07 or afterwards as part of the tie commercial and legal QA during the run up to contract award.

So far as Wiesbaden is concerned, the evidence of Geoff Gilbert and Matthew Crosse remains critical. I will redouble efforts to establish contacts on Monday.

Kind regards
Andrew Fitchie
Partner
DLA Piper Scotland LLP
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