
From: Fitchie, Andrew
Sent: 23 September 2010 08:30
To: 'rush_aj@[REDACTED]'
Subject: Re: Proposal letter

Apologies- on MUDFA al I meant was that there are???? In the text.

Kind regards
Andrew Fitchie
Partner
DLA Piper Scotland LLP
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From: Anthony Rush <rush_aj@[REDACTED]>
To: Fitchie, Andrew; Richard.Jeffrey@tie.ltd.uk <Richard.Jeffrey@tie.ltd.uk>; david_mackay@[REDACTED] <david_mackay@[REDACTED]>; steven.bell@tie.ltd.uk <steven.bell@tie.ltd.uk>
Cc: Glover, Joanne; Jim Molyneux <jim.molyneux@gordonharris.co.uk>
Sent: Thu Sep 23 05:46:18 2010
Subject: RE: Proposal letter

Thanks Andrew,

Noted what you say about “earnest” but my use of “sensible” is aimed at their behaviour not ours.

I have made a change to it to reflect what Richard tells me about DRP’s – we need to check the facts:

“You wrongly deem what on your part are assumptions to be corroboration of our motives, for example the Preliminaries dispute. You ignore that the Infraco Contract proscribes waiver of our rights in the event that we have taken a certain course of action which may have been favourable to you. Whatever you may care to misrepresent, misinterpret or threaten, be assured it will not deflect us from taking and in some cases accelerating the rights we have to obtain resolution of your misconduct

Your letter exaggerates and misrepresents the status of DRP’s decided by Adjudicators. There have been [? not 15 as you claim]. Of the [?] [?] have been required to obtain a valuation of a tie Change and the record shows that the results have been a substantial reduction in the payment you claimed. The other two, by Lord Dervaird and Mr. Howie QC., have addressed important contractual principles. Mr Howie found against the manner in which you have sought to claim extension of time and to programme your works. Lord Dervaird decided on one narrow part of the implementation of Clause 80. As you are aware, we are in the process of reviewing all INTC’s submitted by you and are applying Lord Dervaird’s narrowly focused decision as part of that wider exercise. It is wholly misleading to assert that Lord Dervaird’s decision affects all or even more than a small minority of the INTC’s you have notified.

For our part we do not demur from you doing no more than you are obligated to. Our concern is that your conduct is such that it amounts to requiring a process of attrition to get you to accept your obligations. The RTN’s you refer to are an unfortunate but necessary manifestation of our frustration with your conduct. .

We are encouraged that despite the confused message in your letter that you accept that it is time to reach a conclusion on Project Carlisle. We share those sentiments and are of course prepared to make representatives of our choice available to discuss such a conclusion.”

It is difficult to knock down their triumphalism when it can be said we have lost heavily on so many DRP’s – we can only ignore their tone by not responding as though it concerns us.

Not certain what you refer to with MUDFA etc.

Regarding your sentiments at the end – I think this is a time to “keep your cool when those about you may lose theirs”. Our response has to support the twin track approach we have been asked to follow not to detract from its logic.

I agree that the letter from BSC shows that they are “worried” – it may even have a “it can’t do us any harm to send it” about it. Who knows?

Tony

PS [REDACTED]

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 22 September 2010 23:45
To: rush_aj@[REDACTED] Richard.Jeffrey@tie.ltd.uk; david_mackay@[REDACTED] steven.bell@tie.ltd.uk
Cc: Glover, Joanne
Subject: Re: Proposal letter

Legally privileged and FOISA exempt

Tony

I support what you have done at the end.

Suggest putting it at the front. Strong statement to the effect: "Forget your word play, grandstanding and dishonesty, are you ready to deal or not?"

I judge that they (BSC management) remain on the brink of engagement but are worried. I do not think that closure is possible without Kitzman and without Mannheim/Wiesbaden/Erlangen.

Try "earnest" instead of "sensible" ; everything Carlisle has done is logical.

Some of the supporting contractual plays have been sporting but Carlise is deadly earnest. BSC letter remains in the comfort zone of triumphalism.

MUDFA ??? and square brackets - clean out.

I know I am stepping beyond my remit but what would be good would be a spontaneous CEC signal on affordability ie " We know that the parties are swallowing pride and we will back and fund a "value for money" resolution."

Is there a case for coverage on parties on the edge of a solution but serious repercussions for non outcome?

Kind regards
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From: Anthony Rush <rush_aj@[REDACTED]>
To: Fitchie, Andrew
Cc: david_mackay@[REDACTED] <david_mackay@[REDACTED]>; Richard Jeffrey <Richard.Jeffrey@tie.ltd.uk>; Steven Bell <Steven.Bell@tie.ltd.uk>; Jim Molyneux <jim.molyneux@gordonharris.co.uk>; Glover, Joanne
Sent: Wed Sep 22 21:27:54 2010
Subject: Proposal letter

Ignore last email – obvious typo corrected.

Tony

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