
From: Richard Jeffrey [Richard.Jeffrey@tie.ltd.uk]
Sent: 19 May 2010 11:06
To: Alan Coyle
Subject: FW: Holding the City to Ransom (Legally privileged, may be used in litigation)

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From: Richard Jeffrey
Sent: 23 April 2010 09:23
To: 'Fitchie, Andrew'
Subject: Holding the City to Ransom (Legally privileged, may be used in litigation)

Andrew, some advice please.

At the last meeting with BSC Richard Walker was questioning my continued use of the phrase 'holding the city to ransom'. He has clearly discussed this with Dr Keysberg, who, Richard says, claims he did not say this. I said that if he wished to take issue with this, that I would be prepared to sign an affidavit to the effect, and that I would also seek Dr Schenependahl's input.

I have checked back through my notes, and find that I did not make a file note after the meeting, and that there was no follow up correspondence between myself and Dr Keysberg. I did take notes in my note book during the meeting, which I still have, and using these, and my recollections I now make the following note. My question is how best to ensure the recording of this important meeting so as to be able to rely on it in future. I would be happy to state that the below record, is to the best of my recollection

The meeting took place in my office at 11.30 on 6/7/09.

It was Dr Keysberg (BB)

Dr Schnependahl (Siemens)

Me

I can remember where people sat

Dr S said almost nothing, Dr K did all the talking

It was over a sandwich lunch.

The meeting followed a week of mediation, which in turn followed a meeting on 22/6

We discussed (in the following order)

- EOT1 and 2, especially MUDFA delays
- DR K said that we felt we knew we were liable for 80% of the issues and we were just arguing over the last 20%
- Dr K said that unless we agreed things soon to get the project moving, then they would have to consider partial demobilisation
- He said that BSC had undertaken team changes in order to re-build the relationship, and that we had not, and he felt the personalities in our team were a big part of the problem
- He said that throughout the project we had been under time pressure, and I needed to understand the pressures on tie to sign the contract
- He said that this a great contract form them as it allows them to hold us to ransom
- We discussed the use of clause 80 in preference to clause 65, he stated that they did not need to use clause 65, and that the contract meant they did not need to progress the works
- He said that he felt that last week's mediation the mediators view supported their view of the contract
- He said that we were fully aware of all the extra costs that were expected on this contract even at the time of signature, and for us to deny that now we were acting dishonourably
- He said that we needed to agree to the Rev2 programme, agree to the 17.5% uplift on prelims, and agree their view of the contract
- He said that our continuing to ask for further information was a weakness in our team and that it was simply creating more delays

- He then talked about the 'value engineering nonsense' as another example of where we were being dishonourable, we all knew that was a just a process to get the headline price down
- He finished by saying that our [tie's] only option was to agree with them or litigate

In addition to these notes, I would also refer to an un-recorded private discussion that I had over dinner with David Darcy (I can confirm date) where DD related a conversation between himself and Dr K at a board meeting in Germany. DD said that Dr K had used the phrase 'this is a great contract for us it allows us to hold the client to ransom', and DD had corrected him saying this is a terrible contract because it puts us in conflict with our client). I would also refer to an e-mail I sent to DD in which I confirmed Dr K had used the words 'holding to ransom'. This is the first written use of the words I can find. Copy attached below.

E-mail to David Darcy dated 9/12/09, marked Private and Confidential

David, I understand you are in Australia and travelling and we are scheduled to speak at 3.30 on Friday afternoon.

Given the time pressures and the fact that you mentioned you have a meeting on Friday in preparation for the BB main board next week I thought it might be helpful if I set out the areas I would like to discuss.

Of course the trouble with e-mail is that one cannot convey tone of voice or other subtleties, so maybe a word or two of preface would help. I believe that your arrival on this project offers the possibility of a new type of relationship going forward, and indeed I have reported to the board that I believe your presence is indeed the last chance to save this project for both our organisations, (in fact we call it the 'David Darcy Effect'). As an investment in this relationship, I made certain concessions following our meetings in November, and in return I was looking forward to some signals back from you.

At our last meeting in my office last week you mentioned some hardening of BB's position, and this combined with what I have seen (or not seen) over the last two weeks causes me grave concern.

In particular,

- *I believe BB's approach to the extended supplementary agreement is way off the mark in both cost and programme terms, as of today I can see no way in which I will be able to recommend that we sign such an agreement.*
- *The (almost) complete lack of progress on some of the sites we identified as being key indicators suggests that BB have no intention of mobilising or increasing their work rate (the current average rate of work on this project so far is 0.6% per month, at this rate it will take 15 years to complete the project).*
- *The criticism I made to you on the lack of management ownership on this project has not resulted in any new approach, despite us already having paid you 40% of the contract price with only 11% of the project completed, indeed Steven interpreted Martin's response to this criticism to be one of 'ambivalence'*
- *Additionally, our research from around the world suggests to me that non co-operation (or to use Dr Keysberg's word's 'holding the client to ransom') may not be unique to this project.*

I am now under extreme pressure from my board to withdraw the offer made to you over the extension of time as they believe BB have not delivered on your side of our agreement from November, and I will be expected by my board at our meeting on Wednesday of next week give some clear recommendations as to how we move forward. Clearly I have my own views on this but if you have any ideas I would welcome them!

I must emphasise at a personal level that at no point in this e-mail am I questioning your personal integrity, and please do not interpret my comments as such, I understand that being new in an organisation it is not always easy to assert your personal style.

Look forward to speaking on Friday.

Richard

Thanks Andrew,

Regards

Richard

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