
From: Jordan, Stuart [Stuart.Jordan@dlapiper.com]
Sent: 12 March 2009 17:50
To: Steven Bell; Stewart McGarrity; David Mackay
Cc: Fitchie, Andrew; Kilburn, Keith
Subject: FW:
Attachments: 23163413_1_UKMATTERS(DLA Paper on Infraco Default - version 2).DOC; 23455548_1.DOC

LEGALLY PRIVILEGED FOISA EXEMPT

Steven, all

As discussed yesterday, please find attached:

- 1 - Draft notice of default under cl. 90.1.2; and
- 2 - The summary "forensics" paper done previously but not distributed.

Although the forensics paper concludes that there is nothing new or shifted in terms of arguments made by either side (prior to the Princes St DRP where BSC are a moving target) it does usefully set out the "29 defaults" from the original paper by Andrew, and it summarises the material on them from the files reviewed. It is useful at least to look through it in connection with the current exercise which also attempts to gather up all known or arguable defaults.

The draft notice needs to be reviewed and completed/corrected with actual and best evidence. The more we have, the more it will have to be taken seriously as something which BSC need to answer - and the less this will look like an unfocussed general complaint. In particular in section 3, "soft/partnering" I am relying on the instances of breach in the other sections. If we have anything else on general failure to communicate and cooperate, we should indicate it. In sections 1 and 2, ideally we would append tables of each Notified Change (with history on each) and each location where work can commence but has not. To move that forward, we (DLA) can of course go back into the forensics paper and the reviewed files to see which breaches have been raised and argued in correspondence - but I am thinking that your team is better versed and maybe has done some of this collecting of Changes in train and locations not being worked. Please let me know on that.

In addition to the current breaches, Andrew and I discussed the other steps underway, assuming it has been decided to send the instruction to accelerate and to instruct the implementation of Changes with unagreed Estimates (where no other impediment) under c. 80.13. We advise that it will give this notice a lot more strength if failure on those instructions can be included. Currently we have only one implementation instruction (bus lane in Princes St) and I believe that this was both partly implemented and is no longer needed. Failure or refusal to implement instructions has the advantage of being something which is something which is very apparent. We recommend that the instructions are given and that this notice is held back for a sufficient short period in order to include those items.

Kind regards,

Stuart

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