From: Mason, Fenella
Sent: 14 March 2006 20:00
To: 'Gerry Henderson'; 'Ian Kendall'
Cc: Gaskell, Jonathan; Fitchie, Andrew
Subject: RE: SDSCommission

Strictly Confidential and subject to legal privilege

Further to my email of 10 March, I confirm that Jon and I will meet Willie and Chris Reid on Thursday to discuss the aspects of failure in greater detail.I will revert to you following that meeting with further thoughts on contractual implications of these failures.

Kind regards

Fenella
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From: Fitchie, Andrew
Sent: 10 March 2006 16:16
To: 'Gerry Henderson'; 'Ian Kendall'
Cc: Mason, Fenella; Gaskell, Jonathan
Subject: SDSCommission

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Gerry

Further to our meeting earlier this week, we summarise in brief terms the advice which Fenella and I gave.

We agreed that, given the performance of Parsons Brinckerhoff (**"PB"**) to date, it would be appropriate to serve a under Clause 24 of the Agreement (**"Persistent Breach Notice"**). This would essentially serve as a warning notice, giving them the opportunity to improve their performance, or risk a determination of the Agreement.

Attached is a draft Persistent Breach Notice, which needs completion once we have details of the specific breaches which we understand from you Jim Cahill is collating.

Following service of the Persistent Breach Notice, if the failures continue after 30 days, and before the expiry of one year, from the date of service of the notice then **tie** may service a further notice (**"Final Persistent Breach Notice"**). If the failures are not remedied within 7 days of the Final Persistent Breach Notice, or if remedied but occur again within 180 days of that date, then **tie** may terminate the Agreement.

If the Agreement is terminated, then there would be scope for **tie** to recover any quantifiable and direct losses which may suffer as a result of the determination - for example, increased tender costs caused by late delivery of information. However, it would not be possible for **tie** to recover any loss which is defined by the Agreement as an "Indirect Loss", which includes business interruption costs and loss of management time.

It would also be possible to instruct a "Client Change" omitting certain Services from the scope. This requires careful analysis and it may be that a negotiated and surgical agreed release of scope by PB is what is the best solution.

Our view is that such an instruction might lead to PB insisting that they should still be paid for their profits and overheads in connection with the omitted Services. PB may also seek to argue that any "Client Change" which is not a genuine omission i.e. where the omitted Services are subsequently carried out by an alternative consultant is in fact a "Client Default" event, entitling it to terminate the Agreement and seek to recover its own losses from **tie**. However, we consider that any claim by PB for payment in these circumstances could be resisted by **tie** strongly**,** given that the Agreement provides that PB is not entitled to any relief etc. where it could, by the exercise of reasonable foresight and diligence, have prevented or materially reduced the requirement for such a "Client Change".

The issue of the Notice is, in our view, the correct contractual house-keeping at this point, even the situation is retrieved.

We trust that the above is on target. We will contact you again upon receiving word back from Jim Cahill which we take it will be early next week so that the letter can be dispatched. Could you speak direct to either Fenella or Jon when progressing.

Kind regards

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