WBON0001755

From: Amy Prime <GRO>
To: Tom Beezer <GRO>, Andrew Parsons <GRO>
GRO
Subject: RE: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE.
Date: Sat, 16 Mar 2019 07:20:33 +0000
Importance: Normal
Inline-Images: image001.png; image002.png; image003.png; image95f7cb.PNG; image6b382d.PNG; image9b45bd.PNG

Andy, TB

I have dropped Counsel as I think this is an internal point only.

On the Q of "*what do we achieve by an appeal* ?" This feels like something that has come from Al Cameron.

Al is pushing POL internally to make some big changes to the way they investigate losses and communicate with SPM – there are new teams being set up who will being undertaking similar investigations to what POL have being doing for us as part of the lit. It may be that there is a view inside POL that they are working towards complying with the judgment as is, so why would we overturn this and go back to the old regime?

The answer to this is that at the moment we do not know whether the operational amendments POL are putting in would be enough to satisfy the new position – this is what Nick B and Rachel are working on. A good example is how are they going to prove real loss? If they can't do so then POL either need to amend the contract or appeal.

On amending the contract has anyone asked POL if they are definitely going to amend the contracts? It may just be that because I am focussed on the lit side, I haven't seen the commercial/op stuff, but from being at POL I got the feeling that they were trying to meet the obligations which the judgment placed on them, rather than use a contractual variation to solve the issue. This may all be in hand, but might be worth checking with Nick B that POL are going ahead with the contractual variation route.

On the appeal, we need the appeal for Trial 3. Trial 3 will be looking at the finding in Trial 1 and ask "did POL breach these". Because the judge has set the bar so high in Trial 1, the chances to meet this in Trial 3 I think will be very hard. Andy may have a different / better view on this, but I would have thought not appealing Trial 1 will cause serious issues for the merits of Trial 3.

Thanks

A

Amy Prime
Solicitor
Womble Bond Dickinson (UK) LLP

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m:
t:
e: GRO

From: Tom Beezer
Sent: 16 March 2019 04:38
To: Andrew Parsons; David Cavender
Cc: Gideon Cohen; Amy Prime
Subject: RE: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. [WBDUK-AC.FID26896945]

Also…going back over some notes of my calls with Jane, the following may be relevant for this current draft note and/or for any discussions that may ensue on Monday with the Board:

- Jane ponders how the recusal concept plays into the wider appeal strategy. That is covered in the LNQC note and picked up in the AP note too. It is the "inconsistency" point. If procedural unfairness is to be put forward with vigour as part of the appeal then the recusal issue is the other side of that same coin. We cover that in the draft.

- Jane wonders "*if there is no recusal application do we narrow the range of the appeal* ?" Answer "yes". We cover that.

- Jane also poses the question, for debate at the Board really, "*what do we achieve by an appeal* ?" Where I think this is coming from is as follows:

    - The current CIT Judgment causes POL to make contractual changes now on a reactive basis. Those will be done before any appeal is finalised (says Jane).

    - If changes consequential to the CIT Judgment have already been made, then what is the further possible upside of future and uncertain appeal findings to POL ?

    - Jane, of course, knows the 'macro' answers to this point, being we say it is not a relational contract and no wide duty of good faith should be there etc, but I think her point is more of a practical one at the day to day level of the business. I suppose it could be put this way – if POL has reacted to this adverse CIT Judgement already and arranged it affairs so that it can continue on a day to day basis under the regime suggested by the CIT Judgment then why have the trouble, risk and PR fall out from an appeal (and indeed a recusal application) ? The answer to this lies both:

        1) in the real world difficulties that may/will be encountered in seeking to manage contracts with SPMs under that "new CIT regime"; and

        2) the impact the CIT Judgment will have on trials 2, 3 and 4 and that lasting impact sounds in:

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a. money (damages…and we don't know (or at least I don't think we know ?) what a max' downside could be to POL); and

b. ongoing adverse judicial comment throughout the trial(s) already underway and yet to come. This is a PR point.

I just thought it worth capturing the above musings so that we are all in a common position when we seek to think about where the client is coming from generally.

No specific answers needed to the above bullets but general thinking over the coming days would be useful as we may be debating such topics on Monday evening.

T

Tom Beezer
Partner
Womble Bond Dickinson (UK) LLP

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e: GRO

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WOMBLE BOND DICKINSON

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From: Tom Beezer
Sent: 16 March 2019 03:59
To: Andrew Parsons; David Cavender
Cc: Gideon Cohen; Amy Prime
Subject: RE: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. [WBDUK-AC.FID26896945]

Nice ! Like it.

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David – if you could whiz through AP's version (attached here again for ease of ref') then I'll get a version to Jane this morning.

As to recommendations…I am unsure. My current feeling is we simply set matters out and then let POL Board discuss rather than pushing them one way (which the note already does to be fair, as it has to as we have to point out the "inconsistency" risk etc) as we know there are competing views around the Board so I don't want us looking fully partisan.

I'll ask Jane about how far she wants us to go in making a recommendation in my covering e mail.

Cheers AP

From: Andrew Parsons
Sent: 15 March 2019 23:47
To: Tom Beezer; David Cavender
Cc: Gideon Cohen; Amy Prime
Subject: RE: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. [WBDUK-AC.FID26896945]

Tom

I've had a good go at this. My version attached.

Did Jane want us to offer a recommendation on whether to do this or not? It seems like we are sitting on the fence slightly, but sometimes she prefers that.

A

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

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From: Tom Beezer
Sent: 15 March 2019 20:46
To: David Cavender
Cc: Gideon Cohen; Amy Prime; Andrew Parsons
Subject: RE: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. [WBDUK-AC.FID26896945]

All

See attached.

I may be on Jane's wavelength – I may not be…

I took Jane's few questions verbatim and addressed them as best I could with the info know to me or that I can ferret out. I limited myself to two pages.

All comments welcomed.

Andy, I followed Nick B's format and warning at the header of the doc. Normal ? Useful ?

All - be as harsh as you like. I am not proud.

I would like to get something out to Jane early tomorrow – 10am or earlier.

I hope I have broken the back of it for you and it is quick and easy to comment…

Cheers

T

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Andy/Primer – note this is NOT a doc' on the system yet it is from my desktop…

Tom Beezer
Partner
Womble Bond Dickinson (UK) LLP

d:
m:
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GRO

From: David Cavender [mailto: GRO
Sent: 15 March 2019 19:24
To: Tom Beezer
Cc: Gideon Cohen; Amy Prime; Andrew Parsons
Subject: Re: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. [WBDUK-AC.FID26896945]

Tom,

Many thanks for this. Sounds like a plan.

I can attend the board meeting if necessary.

Best

D.

Sent from my iPhone

On 15 Mar 2019, at 18:50, Tom Beezer <GRO <mailto:GRO >> wrote:

David, Gideon

The plan is that I cobble together a short note addressing Jane's points (see below – addressing the first set of points anyway, perhaps not the financial impact questions on which I have no info') and then send that out to

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you & Andy P later tonight or early tomorrow morning.

Andy will be in the land of the living again tomorrow am and so will comment and make into the kind of note we would actually send to POL (as I am new into all of this and kind of shooting blind) and it would be great if you could cast your eve over it too. It won't be long as it needs to be really punchy and accessible for non-legal Board members. Either AP or I will send to Jane by (say) 10am tomorrow. This e mail is just to give you a heads up on that, and if you are around to review, then great. If not then no worries.

David – there is talk of a POL Board Meeting on Monday afternoon at some point. 5pm has been mentioned. Jane has not said it yet (and may not) but I can see the request coming that you (and perhaps me too) join that meeting. If that request comes, are you free to do that ? I think this is the meeting at which they decide yes/no on recusal application.

I have asked Rob at OEC (at Jane's request) to see if Lord Neuberger were available in theory to dial in.

I'll be in touch with a draft later.

Kind regards

Tom Beezer
Partner
Womble Bond Dickinson (UK) LLP
d:
m:
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e: GRO
GRO
GRO <mailto: GRO

From: Tom Beezer
Sent: 15 March 2019 15:52
To: Andrew Parsons; David Cavender GRO <mailto: GRO)
Cc: Amy Prime; Gideon Cohen GRO mailto: GRO)
Subject: RE: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. [WBDUK-AC.FID26896945]

Parson…lets discuss this when you surface at some point.

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David – copied to you too as we may need some input from you as my bank of historic knowledge on all this is thin to put it kindly !

Jane says:

We are setting up a board call for 5pm Monday, and I will need to issue a 'plain English' paper to the Board over the weekend to get them familiarised with the issue. In particular that will need to address:

• Why we are considering a recusal application

• What the application (if successful) will achieve

• Risks of not proceeding

• Prospects of success: what advice have we received, who from

• Process & timing

In addition, the following Monday (25th) we have a scheduled Board meeting and I will need to be able to brief in more detail on an appeal, recognising that it will still be a work in progress. However as we don't have another scheduled Board until end May, it is likely that we will need the Board to endorse the appeal strategy at end March, with a further approval meeting/call once the appeal grounds are finalised and we can assess 'risk'.

As mentioned I think that as part of the initial Appeal discussion, the board will want to understand the scale of the financial risk of:

(a) not appealing (and therefore how many existing & historic contracts will be affected by the judgement?)

(b) appealing and losing (same as above?)

(c) appealing and winning – restores contracts to pre-judgement position

Recognising in each case that the consequences apply not just to the claimant group but to all postmasters on those contracts types, and potentially, all those on other contract types but who have substantially the same provisions.

I copy this to us all at this point to get us all thinking.
t

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