

01-MAR-1999 14:58 FROM BIRD & BIRD

TO GRO

P.01/03

FAX TRANSMISSION

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Fax No: GRONick Gray & Paul Lam-Po-Tang, Slaughter & May
Fax No: GROPat Kelsey, BA/POCL Programme
Fax No: GRORon Powell, DSS
Fax No: GROFrom: Howard Rubin
Account No: BPOCL/001
Date: 1 March 1999

Time:

Number of pages (including this page):

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GRO

Dear Mr Miller

As you are aware Hamish is in the United States at present. I have, with him, drafted a response to the letter from John Bennett for your consideration.

Hopefully my draft speaks for itself however should you wish to discuss the draft please do not hesitate to contact me.

If I am not in the office I can be contacted on my mobile phone which GRO

GRO

Yours sincerely

GRO

HOWARD RUBIN

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TO GRO

P.02/03

HXR/SJB

1 March 1999

DRAFT

Without Prejudice and Subject to Contract

Thank you for your letter of 25 February. I am disappointed - and somewhat puzzled that you should wish, at this point, to change the basis of our discussions that have served us well over the life of the project to date.

As I read your letter, it would appear that you wish to establish that a contractually binding project plan was agreed in correspondence following the Corbett discussions of last year. This ignores, however, that those discussions were without prejudice to the notice of breach of 24 November 1997 and were, in any event, by necessity subject to contract. What this meant, as we have repeatedly made clear, is two things. First, by discussing a revised project plan, the Authorities did not waive any of their rights and remedies with respect to earlier project delays including in particular, ICL Pathway's failure to complete the Operational Trial by the due date of 21 November 1997 (which was agreed in CCN105). Second, unless and until formally agreed in accordance with our change control procedures, any revised project plan arising from these discussions is informal and not contractually binding.

~~Thus your assertion that~~
~~You also state that the DSS has unilaterally varied the multi-benefit testing programme, this is not the case. In the first place, for the reasons already explained, i.e.~~
~~the current testing programme has no contractual status. Secondly, quite apart from that, and as pointed out in George's earlier letter of 16 February, the failure to start Model Office Testing by the promised date of December 1998, must mean that we~~
~~review the remainder of the testing programme, including the multi-benefit testing.~~

Continued...../

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TO

GRO

P.03/03

Tremendous progress has been made by all parties in moving towards a resolution of these matters. As you acknowledge in your letter this can only progress if matters are to proceed on a "without prejudice" and "subject to contract" basis. I believe it is in all our interests to establish an agreed and practicable basis for taking forward the day to day work on the project, while discussions on the wider aspects of the project's future continue.

I hope you will consider that this is a constructive way forward and will agree to resume our meeting on this basis.

Yours sincerely

Dave Miller

cc: Vince Gaskell, BA Project Director