

Stephen Dilley

From: Stephen Dilley
Sent: 09 November 2006 08:56
To: 'Richard Morgan'
Cc: Tom Beezer; Thomas Bourne
Subject: Castleton's offer - further thoughts
Attachments: LETTER_1096127.DOC

Richard and Tom,

I've been thinking about Mr Castleton's offer overnight and I still think we should go back with a counter proposal (nothing ventured, nothing gained). However, some points to bear in mind before we speak to Mandy:

1. On 5 January 2006 we made a CPR part 36 offer (copy attached) to accept payment of £24,750 in full and final settlement of the claim and counterclaim, inc interest and costs. On 17 January, Rowe Cohen replied and stated the offer was rejected. CPR 36.12(2)(b) states that if the defendant does not accept a Part 36 offer and the parties do not agree the costs liability, he may only accept the offer with the permission of the court (unless the parties agree costs) and the court will make an order as to costs. This raises the question of whether Mr Castleton can apply to Court to accept the rejected CPR Part 36 offer, or whether that section only covers Part 36 offers not accepted i.e not expressly rejected w/in 21 days. If he can apply to accept the offer, his worst case scenario is paying £24,750 plus our costs from 26 January onwards. Although we could seek indemnity costs, my understanding is that the Court is more likely to order standard costs to be paid.
2. The difference between Castleton's proposal to pay £22,350 and the full amount of the claim is £3,508.95. From now to trial, I can easily see the P.O incurring a further £130,000 (Bond Pearce, expert and Counsel). Even if the P.O wins, the costs will be assessed and the irrecoverable element of costs on £130,000 could be around 30% on a good day i.e. £39,000. This dwarfs the "gain" of the extra £3,508.95 the P.O might make. In other words, the P.O's net costs position by rejecting this offer and winning at trial may deteriorate by at least £35,491.05. The question this raises is how important is it to get the judgment?
3. If Castleton is serious about going back to the city, he may well resist judgment being entered against him because even we produce a joint letter saying we're not alleging dishonesty, a judgment doesn't look good for him. If he raises this point, we could say that upon payment of the judgment debt and costs, there is a mechanism for showing the judgment as being satisfied (I think that is right but can check if needs be).
4. I think the way to go back to Castleton's barrister on costs is not to say "Our costs to date are £x" because we don't know what the exact figure is. Better instead to say that "as they know from the costs estimate previously served, we anticipated that the costs of going to trial would be c.£223,000, we're now less than 4 weeks from trial and we think that estimate is light."
5. Richard, I'll come back to you separately with the reasons why they are wrong to discount the claim by £3,508.95, so you have some ammunition to use if you want it.

Kind regards.

Stephen Dilley
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for and on behalf of Bond Pearce LLP
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