

Message

From: Andrew Parsons [redacted] **GRO**
Sent: 20/01/2019 12:07:33
To: Rodric Williams [redacted] **GRO**; Angela Van-Den-Bogerd [angela.van-den-bogerd@wbdug.ac.uk] **GRO**; Mark Underwood1 [redacted] **GRO**
CC: Jonathan Gribben [redacted] **GRO**; Katie Simmonds [redacted] **GRO**
Subject: Supplemental expert report - privileged [WBDUK-AC.FID27032497]
Attachments: Supplemental Report d28.docx; Supplemental Report - Appendices d28.docx

Rodric, Angela, Mark.

Earlier this week, we received a draft supplemental report from Robert Worden (copy attached). This report, and a supplemental report from Mr Coyne, are both due on 25 January. This email is to highlight a material risk arising from RW's draft supplemental report.

General risk

Supplemental reports are generally used to update a primary expert report to take into account new information. They should not really be used as an opportunity to add new arguments or redo previous work.

RW's draft report has with great rigour updated his first report, adding in new analysis and documents he has now reviewed. This new work is generally in PO's favour (but not always – see below). However the overwhelming impression given by this report is that it is correcting, rather than supplementing, RW's first report. This gives the reader the distinct feeling that the first report was incomplete or wrong. The legal team (including Counsel) worry that, as currently drafted, the supplemental report takes our case backwards rather than forwards.

Of particular concern is RW's desire to refine further the statistical analysis in his main report. RW relies heavily on various statistical models to show that the only a very small percentage of the Claimant's losses could be the result of bugs in Horizon (a maximum of 0.135%). As flagged previously, there is a risk that all these stats may go over the judge's head, but RW is convinced that this analysis is sound and a proper methodology to follow. In his words: he is a software engineer and engineers deal in probabilities not fluffy language like lawyers!

The difficulty with RW's further statistical analysis is not the logical of the analysis but rather that it highlights that statistics are by their very nature a product of estimation and assumption. We expect the Claimants will seek to attack at trial the very usefulness of stats (as well as the logic applied). Their aim will be to have the entire statistical analysis thrown out as unsound. RW's supplemental report may help them do this. By looking to tweak bits of the stats he is highlighting the flexible (or uncertain) nature of using stats.

We have impressed this risk on RW very firmly, through several cons with Counsel, setting a structure for his supplemental report before he started drafting and on a long 1-2-1 call I had with him on Friday. He has now become stubborn and we fear he is no longer listening to us. As a reminder, this is RW's report and one that neither PO nor the legal team can draft on his behalf – if we did that we would undermine his credibility as an expert which would be fatal. My confidence in being able to persuade RW (within acceptable boundaries) to re-draft his supplemental report is, at the moment, pretty low.

We will continue this week to try to get the supplemental report back on track. There is little that PO can do to assist at the moment other than recognise the risk. To be clear, RW's overall opinion is still that Horizon is robust. This is about how best to convey that message to the Court.

Specific risks

RW feels obliged (and indeed he has a duty) to highlight that he does not believe that the level of cooperation and coordination between PO and Fujitsu was up to standard (see section 3.3 attached). His view is that Horizon could have been more robust with better coordination. This does not mean that there is a problem with Horizon but nevertheless will be spun by the Cs as an adverse point. It also gives the Cs easy ammo for cross-examination of FJ's witnesses. I would recommend that you read section 3 of the draft report as there are several similar points made about other areas of Horizon.

The view of the legal team is that these points are inadequately evidenced and should not be made by RW. RW is applying sloppy logic, which is not like him at all. RW's motivation for including this half-baked analysis appears to have developed from an odd understanding of his duty to be impartial. He feels that due to the vast majority of his work being

in PO's favour, he needs to flag every point that goes against PO. This is not what impartial means. These adverse points have also been poorly presented in such a way that makes them seem like major problems when in fact they are minor issues or issues unsupported by sufficient evidence.

We will try to persuade RW to change this but cannot guarantee to be successful. Again, there is little PO can do to assist save for acknowledging the risk.

I will keep you updated during the course of the week. Happy to discuss.

Kind regards
Andy

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