

Message

From: Andrew Parsons [REDACTED] **GRO**
Sent: 04/11/2019 13:14:36
To: Rodric Williams [REDACTED] **GRO**; Ben Foat [REDACTED] **GRO**
CC: Emanuel, Catherine [REDACTED] **GRO**; Lerner, Alex [REDACTED] **GRO**; Watts, Alan [REDACTED] **GRO**; Jonathan Gribben [REDACTED] **GRO**; Michael Wharton [REDACTED] **GRO**
Subject: KEL audit [WBDUK-AC.FID26896945]
Attachments: 624 Bates Letter to Freeths 4 November 2019 - KEL Disclosure.docx

Rod, Ben

Please find below our advice on the KEL audit, which in summary is that the attached letter should be sent to the Claimants and copied to the Court.

1. A&M's investigations are nearly complete. They have verbally confirmed that FJ has given complete disclosure of the KELs, save for 12 KELs that should have possibly been disclosed in earlier rounds of disclosure but which fell outside of FJ's searches. This is only a possibility at this stage and this point should be bottomed out today. They currently have a high degree of confidence that this is the full extent of any non-disclosure of KELs that PO was required to give. (Please note – there are many non-disclosed KELs that were created after December 2018 but the Cs were always aware of this during the trial. Ultimately, the parties had to draw a line somewhere on the KEL disclosure otherwise rolling disclosure would be continuously given as new KELs are produced weekly). A&M's investigations should be completed today and their written report should be available early next week.
2. As there is a possibility that further disclosure (albeit very limited) may be required and as the judgment is imminent, Tony, HSF and WBD all agree that PO should notify the Cs and the Court that A&M are undertaking an audit. Our proposed draft letter is attached. This letter invites the Cs to express a view on whether the judgment should be delayed and states that PO is agnostic on this question. This has been crafted so to avoid the allegation that PO is looking to delay the judgment.
3. Thought has been given to indicating to the Cs that the outcome of A&M's review is likely to yield only a handful of additional KELs so to demystify the work being done. However, given the risks of misinformation on KELs in the past, we believe it better to keep silent on this. This may then provoke the Cs to respond saying that they cannot possibly know whether the judgment should be delayed without more information. That scenario presents two risks:
 - a. It leads to a chain of enquiry that ultimately results in A&M's final report being disclosed, when we may prefer to keep the report confidential as it will not be giving PO a perfectly clean bill of health.
 - b. This may play out in front of the Judge who could be irritated by what he sees as the parties squabbling.

Despite this risk, we still believe that it is correct to notify the Claimants and the Court of the A&M audit.

4. A&M's enquiries have crept beyond their original scope of work which was to determine if all available KELs have been extracted and disclosed. They have started to explore the scale of historically deleted KELs, which by its very nature does not concern the completeness of the disclosure of available documents because it is looking at deleted documents that are not available. The Cs were already aware (before the trial) that these deletions have happened and that the disclosed KELs are not a complete set. A&M's work goes one step further and looks at how many KELs have been irretrievably deleted over the years. We are concerned however that this work might show that there are very large numbers of deleted KELs which could undermine the sampling exercise undertaken by the experts that broadly showed only a small number of problems in Horizon. We have therefore asked A&M to consider whether this work is necessary for them to answer their instructions and, if not, that they should stop this work.

I should be grateful for your instructions as soon as possible that the attached letter may be sent.

Kind regards
Andy

Andrew Parsons
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m:
t:
e:
GRO

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