

From: robert worden <GRO>
To: Andrew Parsons <GRO>
Cc: 'Chris Emery' <GRO>, 'Nick Masterson-Jones' <GRO>
GRO

Subject: Third report

Date: Fri, 26 Apr 2019 09:51:55 +0000

Importance: High

Andy

It was a rather gruelling session yesterday - not that I mind a bit of gruelling - but in some places I was standing my ground on principle and instinct. I now see there are better reasons, which you should know about.

I understand that the PO decision whether to make an application to submit report 3 is out of my hands; but in my view there is at least one good reason for making the application, which we did not discuss on the call - and it is described below.

Firstly, I disagree with Tony's analysis of CPR 35, where it applies to changes in expert opinion. Tony was saying that if the Issue 1 number (0.4%) does not change materially, then my opinion has not changed, so from a CPR 35 perspective there is no duty to tell the court. From an engineering perspective, this is not valid. If an engineer initially has one good way to establish a number (which is the core and essence of his opinion), and then later he has two independent ways, from an engineering perspective that is without doubt a material change. (also, btw, it strengthens his position, rather than weakens it, as was implied on the call)

As CPR 35 applies to experts, it is to be interpreted from the expert - i.e. engineering - perspective. It relates to my personal duty to the court. Therefore, I should be the person who interprets CPR 35 before the judge. Tony could present this as part of the application.

Second, you contested my wish to submit the entire report, from two viewpoints which I believe have an element of contradiction. You were saying two things:

- Judge will reject the report because he and Green are in lockstep
- The report will be a gift to Green.

You can see the contradiction. If report 3 is a gift to Green, he will not object to it, and the report will go through on the nod. We believe that the claimants will oppose it, based on Coyne/Green's response so far.

Third, you were stressing that Judge is massively biased against PO. This does not imply to me that he is massively biased against PO's expert. He believes strongly in neutrality and cooperation of experts, and I have striven to deliver this at every stage. My reports are peppered with assumptions which favour the claimants. Surely, as expert I am entitled to be considered innocent of bias until proven guilty, which has not happened yet. Judge cannot reject report 3 by saying I am a PO stooge.

Now we come to the main reason to make the application - which I believe PO should consider before you and they decide.

- Judge has had Coyne's and my reports for several months. He can surely see the difference between Coyne's anecdote-based approach and my numbers-based approach. We do not yet know which approach he prefers, or why.
- Sending report 3 to him, with an application, will be a litmus test of his attitude to numbers. If - as you all suppose - he hates numbers, he will reject the 3rd report. If, as I suppose, he is a bit of a geek and fancies his techie expertise, he will not dismiss it out of hand - and may welcome a simpler route to deciding the issues.

- Submitting report 3 and an application is a highly effective way to probe Fraser's mindset, weeks before the expert XX. Whatever the answer is, it gives Tony and me vital intelligence to prepare for our respective XX. For that reason alone, it should be done.

Finally, I do not believe that Cs will be able to get report 3 rejected, and then cross-examine about it. If Green tries to, I shall expect Tony to be on his feet immediately. So, making the application to submit a report is all potential upside, and no downside.

Please ring any time you would like to discuss.

Robert