WBON0000712

From: Anthony de Garr Robinson <GRO>
To: Andrew Parsons <GRO>, "Simon Henderson (GRO) (GRO)" <GRO>
Cc: Jonathan Gribben <GRO>, Katie Simmonds <GRO>, Lucy Bremner <GRO>
Subject: RE: Third report [WBDUK-AC.FID26896945]
Date: Fri, 26 Apr 2019 13:48:21 +0000
Importance: Normal
Inline-Images: image001.png; image002.png; image003.png

What an interesting email. I'm not sure it is worth debating with Robert, though. Taking the points one by one:

1. The content of the expert's duty is determined by the judge, not the expert. In good faith, Robert has formed the view he has. I would be very disappointed of the judge thought it was not his good faith view – and although I wouldn't put it past Green to XX Robert on the point in the hope of persuading the judge to think this, I don't think we should decide on our strategy on the basis of this consideration.
2. Robert has a habit of looking for contradictions when arguing with us. There is no contradiction between the judge refusing us permission to rely on the report that Robert produced and Green being able to cross examine him on any points in that report that might reveal bias or some flaw in Robert's way of approaching this case or some other matter touching on his credibility as an expert.
3. In this context, our concern is not that the judge will find that Robert is a PO stooge (although that is what the judge may be hoping to find it his final judgment and it is always possible that he may rely on this exercise as one of his grounds for doing so). Our concern is that the judge will characterise our application to rely on the new report as an exercise in oppression by us.
4. This is barmy. We do not want to make a difficult, time consuming and distracting application to adduce evidence, with all its attendant risks and dangers we have discussed, unless there is a prospect of obtaining some benefit or series of benefits which are sufficiently substantial to justify the time, distraction and dangers involved. I don't see the "benefit" Robert identifies as a benefit at all, since (1) if the judge excludes the new report, he will do so without saying anything about the merits of a numerical approach and (2) I don't see myself redesigning my cross examination to exclude the numerical approach whatever happens. But even if I have got tunnel vision about that, no-one could call that benefit substantial.
5. See 2 above.

Does anyone see any point in debating this further with Robert?

The critical point that emerges from this email is in 4. As I see it, the two main options we face are (1) not making any application and letting Robert write to the judge, possibly asking for directions, and (2) making an application to rely on some or all of the report.

On (2), the critical question is whether there is a prospect of obtaining some benefit or series of benefits from it which are sufficiently substantial to justify the time, distraction and dangers involved. What do others think about this?

Tony

From: Andrew Parsons <GRO>
Sent: 26 April 2019 13:42
To: Anthony de Garr Robinson <GRO>; Simon Henderson

WBON0000712

(GRO) (GRO) < GRO >
Cc: Jonathan Gribben < GRO >; Katie Simmonds < GRO
GRO >; Lucy Bremner < GRO >
Subject: FW: Third report [WBDUK-AC.FID26896945]
Importance: High

FYI

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

d:
m: GRO
t:
e: GRO

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From: robert worden < GRO >
Sent: 26 April 2019 10:52
To: Andrew Parsons < GRO >
Cc: 'Chris Emery' < GRO >; 'Nick Masterson-Jones' < GRO
GRO >
Subject: Third report
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.

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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

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