

Message

From: Jane MacLeod [jane.macleod@[REDACTED] GRO]
Sent: 31/01/2018 18:31:17
To: Thomas P Moran [thomas.p.moran@[REDACTED] GRO]; Rodric Williams [rodric.williams@[REDACTED] GRO]
CC: Andrew Parsons [andrew.parsons@[REDACTED] GRO]; Mark Underwood1 [mark.underwood1@[REDACTED] GRO];
Melanie Corfield [melanie.corfield@[REDACTED] GRO]
Subject: RE: Postmaster Group Litigation - Disclosure CMC Skeleton Arguments - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

I will share with Paula & AI, however just to reassure you, I had long discussions with Paula over the weekend about the hearing, and briefed the Board on it on Monday.

Jane



Jane MacLeod

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From: Thomas P Moran
Sent: 31 January 2018 18:25
To: Rodric Williams <rodric.williams@[REDACTED] GRO>; Jane MacLeod <jane.macleod@[REDACTED] GRO>
Cc: Andrew Parsons <andrew.parsons@[REDACTED] GRO>; Mark Underwood1 <mark.underwood1@[REDACTED] GRO>;
Melanie Corfield <melanie.corfield@[REDACTED] GRO>
Subject: RE: Postmaster Group Litigation - Disclosure CMC Skeleton Arguments - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Thanks, Rod

From a brief read this is a very helpful note, showing we are well prepared but can expect the unexpected.

I think it would be useful for you or Jane to share this with the GE/Paula and AI before Friday as it sets the context and would remind them this is happening.

Mel – do we have a statement ready?

Tom

From: Rodric Williams
Sent: 31 January 2018 18:21
To: Jane MacLeod <jane.macleod@[REDACTED] GRO>; Thomas P Moran <thomas.p.moran@[REDACTED] GRO>
Cc: Andrew Parsons <andrew.parsons@[REDACTED] GRO>; Mark Underwood1 <mark.underwood1@[REDACTED] GRO>;
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SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Jane, Tom,

Friday's Disclosure CMC has been listed for **9:15am**. We will be told which Courtroom before close of play tomorrow.

In advance of the CMC I attach the parties' "Skeleton Arguments", which rehearse the legal positions the barristers will be taking. The headline points are:

- Both parties acknowledge the constructive and cooperative approach taken since the last CMC, which has resulted in substantial agreement between the parties.
- This includes agreement on the following matters which we proposed:
 - o The March 2019 hearing should be abandoned in favour of a Lead Cases trial in 2019/2020;
 - o Disclosure should be approached in discrete stages; and
 - o Disclosure should be approached using the Court's new proposed protocols for disclosure (the scope of disclosure within those protocols remains disputed).
- Patrick Green QC does however level some criticisms at us concerning:
 - o the delivery of a witness statement, "Parsons 6", which provides evidence about the practical effects of the parties' competing disclosure options (he says it's "tendentious" and calculated to ambush; we believe it was necessary and filed as soon as possible);
 - o the availability of Horizon data (he says we did not inform the Claimants that only post-October 2007 data was available until *after* Lead Claimants were selected; this is not the case, and have correspondence which shows that);
 - o tinkering with the court timetable (he says we were wrong to try to agree facts before disclosure, when the timetable provides for the other way around; we say we asked for an indicative draft of the facts they would want to agree to help narrow disclosure).
- David Cavender QC aims not to rise to the bait, which he does not think will impress Mr Justice Fraser or advance our cause.
- The main area of dispute will be the scope of evidence to be disclosed:
 - o The Claimants continue to seek wide ranging disclosure covering matters which include (at a very general level) how postmaster contracts operate in practice.
 - o They say this is necessary to determine the "true meaning" of the contract and whether it should be rewritten as they contend.
 - o We say that established legal principles restrict evidence on issues of contract construction (the main purpose of the November 2018 trial) to what was known *before* the parties made their contract.
 - o Nevertheless, so as to be cooperative we have also offered to disclose documents relating to how the 12 Lead Claimants dealt with us *after* the contract was made.
- This issue should turn on how far Mr Justice Fraser wants:
 - o to let the Claimants develop their case on the "true meaning" of the contract, or to follow the more orthodox approach to contract construction; and/or
 - o to embrace the principles of the new disclosure protocols.
- It is also possible that the Court will consider timetabling for a Lead Cases trial to follow the November 2018 trial:
 - o The Claimants propose no directions to trial, except that we provide disclosure for it in October 2018 (i.e. immediately before the November 2018 trial).
 - o We have proposed a timetable setting out the steps which need to be taken to a trial in May or October 2020.
- Progress on this issue will largely depend on how much court time is available.

Please let me know if you have any questions or comments.

Kind regards, Rod



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