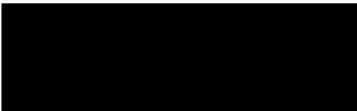

From: Colin McLauchlan
Sent: 03 April 2008 12:44
To: Graeme Bissett (external contact); Willie Gallagher
Cc: Mike Connelly
Subject: RE: Update

Other than it was a bit of a dejavu teleconference and our need to remind people that the Business Support Scheme is NOT compensation nor does it displace or replace compensation Graeme covers the points nicely

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From: Graeme Bissett [<mailto:graeme.bissett@>
Sent: 03 April 2008 12:03
To: Willie Gallagher
Cc: Colin McLauchlan; Mike Connelly
Subject: Update

Cow – the statutory defence is not sufficiently clear-cut in terms of linkages between Tram Acts, specific delegation of powers to tie and MUDFA works to convince a Sheriff in the small claims court. A proper analysis would support the linkages but the Sheriff next week will not examine the linkages in detail and there is a risk he / she takes a superficial view. The tactic agreed is :

- 1) assume we will not table the statutory defence in the submission tomorrow or in court on Tuesday, and rely on the more general defence – it is highly unlikely that the Sheriff will determine matters on Tuesday because we will not settle and he will call for more detailed support in 6–8 weeks ; if he did seek to determine on Tuesday we have a strong defence without relying on the statutory defence (D&W advice) so it may be thrown out.
- 2) I am not convinced by 1 yet, so we will examine all the relevant documents which would support a statutory defence over the next 24 hours and conclude tomorrow whether we deploy it or not. A

further consideration is that currently the claimant has the onus of proof – if we introduce a statutory defence the onus of proof falls to us.

I'm also going to get the new Operating Agreement (which does confirm the statutory linkage) ready for your signature tomorrow, assuming Gill has already signed it. It is useful background for the Cow case but cuts off any similar claims in future.

I spoke privately to Lorna Sibbald after the call to emphasise the need for their full attention on this and to get her views on our strength of case. She is well aware that this must be won and is very confident that the Sheriff could not award in Cow's favour next Tuesday based on their submission. However, subject to seeing some additional documents today, she does not believe that we will have a sufficiently clear statutory linkage to convince the Sheriff in a summary hearing to throw the claim out on those grounds.

I have more confidence in D&W after this morning's call and the discussion with Lorna, so I recommend we retain them. My reading is that we'll not be able to achieve a knock-out on Tuesday ; it will move forward and we'll prepare the detailed statutory linkage which will be presented at the follow up hearing, alongside the general defence. The Cow claim is weak and is likely to be thrown out when the detail is presented, either on the grounds of its lack of substance, or on the basis of the statutory defence, or both. For any claim for a period after tomorrow we'll have a much better statutory basis for defence.

We have a follow up call at 4 to keep things moving.

Colin and Mike may want to add views.

De-briefs – I've spoken to Susan and Steven and we will make appropriate arrangements later today.

Regards

Graeme

Graeme Bissett

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