

From: Brian Little [<mailto:brian@fortfield.com>]
Sent: 25 November 2011 14:12
To: 'lcameron@uk.ey.com'
Cc: 'David Moody'
Subject: FW: Magellan two follow up points - solicitor certification and PinsentMasons governance.

Ms Cameron - the other email I referred to just now Regards Brian Little

From: Brian Little [<mailto:brian@fortfield.com>]
Sent: 25 November 2011 14:03
To: 'David Moody'
Cc: 'JIM SHANNON'
Subject: FW: Magellan two follow up points - solicitor certification and PinsentMasons governance.

Mr Moody The other email I referred to in my email just now re E&Y UK complaint. Thanks Brian

From: Brian Little [<mailto:brian@fortfield.com>]
Sent: 26 December 2009 13:40
To: 'RAE Charles'
Cc: 'david.ryan@pinsentmasons.com'; 'Andrew.Hornigold@pinsentmasons.com'
Subject: RE: Magellan two follow up points - solicitor certification and PinsentMasons governance.

FOR THE RECORD

Charles – I have just read your reply in the email below. A few initial points only as a matter of record until my formal reply and other documents in week commencing 18 January 2010.

1. As to your Point 1 Q1 reply - I am NOT asking you about your client's position on the board meeting/ minutes.

I am asking about PinsentMasons position. Someone (perhaps you) certified the MALUK Board General and Special Resolutions in question as at 28 April 2005. To do so either Mr Dekker and /or Mr Smith was untruthful, misled and misrepresented the actual position about Notice of , and minutes of that Board Meeting and those MALUK Board written resolutions and their consequent implications to you or to your firm. This, combined with the lack of basic due diligence processes required of a solicitor in these circumstances, led to the "certified" copy of those Board resolutions eighteen months later/after my termination OR alternatively that solicitor and your firm were complicit in certifying those Board as a "True and Complete Copy of the Original" Resolutions as at 28 April 2005 in the midst of my whistle blowing case and court orders for documents disclosure. As others have just now pointed out to me this seems to be a remarkably analogous situation to that of PwC and E&Y on the A340- 500/600 and my protected disclosures PD22,PD23 and PD24.

2. As I stated in my email below I now, by copy of this email to your Mr David Ryan, will let him formally pursue the internal PinsentMasons governance processes to ascertain who and what was actually done within PinsentMasons in July 2007 to permit such certification as an Original

by a solicitor and on which E&Y have practically relied for the public filing. This is a relevant matter for the tribunal and it is of course already included in my Closing Submissions.

You are also correct that the documents have been in the bundle since 2007 after the Tribunal Orders etc . But what was not clear, until very recently, **was that E&Y UK wholly relied, in practical terms, on the solicitor certification from you, or at least, your firm on 11 July 2007** from MALUK to complete and sign off the MALUK FY2005 statutory financial statements later that day and return to Mr Smith for transmission to Companies House. Without your firm's certification of those Board written resolutions as Original – attached doc506 - all the other various documents (as examples – the 31 Dec. FY2005 management accounts (attached), the draft statutory accounts for FY2005 (attached), the 23 October 2006 General and Special Resolutions filing with Companies House (doc.481.attached) , no Board minutes etc etc etc) which E&Y UK had accessed or in their possession as part of their audit processes for FY2005 pointed to NO capitalization of the £10m intercompany loan from MAC (the Special Resolution) and the wider implications of that for MAC Group and banking arrangements in FY2005 and 2006. It is of course also now relevant to other matters and prior public reporting in the Companies Registry and outside the Tribunal's restricted remit and that process now begins with this email trail and my request to your Mr David Ryan, as the person with ultimate responsibility for your firm's corporate governance, to fully investigate how any why this was executed by one of your firm's solicitors.

3. As to Point 2 I note that you do not wish to engage on this matter. You also note that you believe that the Tribunal should not do so either – is this because you also consider this to be in part outside their remit?

Brian Little
www.fortfield.com

From: RAE Charles [<mailto:Charles.Rae@pinsentmasons.com>]
Sent: 23 December 2009 21:09
To: Brian Little
Subject: RE: Magellan two follow up points

Brian

As you have noted, I am currently on annual leave. I am only very occasionally reading emails, and now that Christmas is upon us I expect to be reading them even less frequently.

I previously expressed to you my hope that, given the stage of the case and the clear direction given by the ET, there would be no need for further correspondence between the parties other than, perhaps, to check some document references. Despite this, I note that I have received several emails from you, none of which relate to document references.

As to your "Point 1 Q1" below, your question relates to a document that has been in the bundle of documents since the outset of this case in 2007. We have already explained to you (many months ago) our client's position on the board meeting/minutes. All evidence relevant to the matter is already before

the Tribunal. It is immaterial who at Pinsent Masons was the person who signed the certified copy stamp on the document you refer to. I note your threat, again, to "write on the Point 1 matters to the relevant parties" which, of course, is a matter for you.

As to your "Point 1 Q2", it is not appropriate for you to be seeking my comments. If you consider the matter to be sufficiently relevant to your case then you may, of course, include it in your submissions.

As to "Point 2", I do not believe these are matters for me to comment on. Our position on your protected disclosures is clear and the points you make below are ones for you to consider in relation to how you draft your submissions. I do not believe it is appropriate for us, or the Tribunal, to engage in discussions about those points with you.

Regards

Charles Rae
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From: Brian Little [<mailto:brian@fortfield.com>]
Sent: 19 December 2009 11:09
To: RAE Charles
Cc: HORNIGOLD Andrew
Subject: RE: Magellan two follow up points

Charles

I am aware that you read my email below on Sunday 13 December 2009 at 23.01 (Andrew Hornigold at 19.01) where I had asked for your response by last Friday, before writing to the Tribunal for clarification on certain matters.

I note that I have not received a response to the questions in Point 1 or any views/perspective on Point 2. As you know I planned and will now stop work on my Closing Submissions (the 175 pages are very largely completed drafting) until 3 December 2009. I also believe a number of people may not be available next week so I plan to write to the Tribunal in order my queries or with the Bristol Employment Tribunal on Monday 4 January 2009. In the meantime I will write on the Point 1 matters to the relevant parties, as I told you I would in my email below dated 17 November 2009, by the end of December 2009. This obviously provides this incoming week now to reply to my email points below before I do so. I will be checking my emails on a daily basis but intend to be with my family throughout most of the next fortnight.

Kind Regards

Brian Little

P.S. As per my other email to you last Sunday our website has now been fully updated.

From: Brian Little [<mailto:brian@fortfield.com>]
Sent: 13 December 2009 18:31
To: 'RAE Charles'
Cc: 'Andrew.Hornigold@pinsentmasons.com'
Subject: RE: Magellan two follow up points

Point 1 and previously Point 5 in the email trail For the Record

Charles -

Point 1 - With regard to my Point below on the certified as true and complete written Board resolutions. You are aware that I have been considering this matter. I have made further inquiries from others on specific evidence and sought legal experience in these matters. It would seem that the implications are broader than I had previously understood.

As a result in preparing my file on this subject for January 2010 , which I referred to below, I now must put two direct questions to you.

You were aware of the Tribunal CMD4 hearing on 6 June 2007 which listed at request 22

“All Notices to Directors’ convening and minutes of Magellan Aerospace UK Board meetings between January 2004 and 17 November 2006.” The disclosure of documents made following CMD4 did not contain, as you have already told us in prior correspondence any Notice (in accordance with the specific MALUK Articles of Association at para 16.5) or MALUK Board meeting minutes as NO MALUK Board meeting took place on that day. At precisely the same time as collating these specific documents for disclosure in July 2007 the Respondents and yourselves received a request from Mssrs Dekker/Smith, indirectly emanating from ms Barbara Hadfield of Ernst and Young UK requiring proof of the written Board Resolutions on 28 April 2005 to enable their approval of the FY2005 statutory accounts and notes 13,17 and 18 later that day. My question 1 is very simple.

Q1. Were you the qualified solicitor who signed off, on behalf of PinsentMasons, those Written Ordinary and Special Resolutions of the MALUK Board as “Certified to be a True and Complete Copy of the Original dated this 11th day of July 2007”- Yes or No? If No, on what date did you become aware that one of your PinsentMasons colleagues had certified as Original these 28 April 2005 MALUK Board resolutions and which I understand were specifically relied on by E&Y in their opinion on the MALUK FY2005 financial statements.

Whilst both the Ordinary and Special Resolution are very relevant I will concentrate on the Special Resolution – “That the capitalisation of the loan in the aggregate sum of £10,000,000 from Magellan

Aerospace Corporation into 10,000,000 shares in the Company of £1 each at a price of £1.00 per share be approved.” This change was obviously not reflected in the draft financial statements submitted by Mr Smith of MALUK to E&Y in October 2006 (doc 3553/3556). You will be aware a number of my protected disclosures are based on my belief that I considered MALUK entered a period of “doubtful solvency” from 15 August 2006 – based on my training/learning and practical experience from Pinsents over the ten month period to September 2003 – and assessment at that time. My question 2 is therefore also very simple

Q2. Do you agree that the position of the trade creditors of Magellan Aerospace UK Limited fundamentally changed, in relation to their position in the event of MALUK insolvency, if the Magellan loan had in fact been converted into shareholder equity on 28 April 2005 as certified by Pinsent Masons in that Special Resolution. If you do not agree, can you state why and whether you consider the MALUK FY 2005 statutory accounts as publicly filed with the Companies Registry, and in particular the numbers and text in Notes 13, 17 and 18 are a correct legal representation of the facts for MALUK.

Point 2 - As you are also aware I am well advanced on our Closing Submissions initial draft document - concentrating now on the legal and post termination detriments section. Whilst I have been away I have received a number of inputs / considerations on these subjects which I consider that, after my initial review of these, I will need to write to the Tribunal Chairman about for some clarification before Christmas.

Although for example in the Legals Section aspect, whilst we have identified a total of eleven relevant cases up to 6 August 2009, it is manifestly clear to some of those assisting me that it was Pinsent, Curtis, Bindle advice and meetings (as noted by Gavin Crick and which I have on doubtful solvency) and Engineering management employment contracts in 2002 / 2003 and Q1/2005 which formed my “reasonable belief” in what represented legal obligations for me and MALUK. I am told that my submissions whilst including aspects of case law should not entirely be around precise law as an advocate mindset/raison d’être is never to agree -- but should be largely around my objective and subjective reasonable belief – what is reasonable for someone in my functional and director role supplemented with my actual experience and training.

Yet some of these “legal” breaches are now stated as NO in the Respondents PD schedule Column 3 (1) at PD2, PD8 , PD9. After re-reading Mr Lynch QC’s document on “reasonable belief” does this mean that Mr Lynch QC is stating that these are NOT ACTUAL legal obligations – and very particularly when in doubtful solvency?? We consider that they factually are and therefore it is considered that the specific advice and practical guidance which Andrew Hornigold, Jamie White, Duncan Reid and others of your firm gave us in 2003 should be substantively documented in the legals section as driving my “reasonable belief” - e.g part of that in doc 366-379 on doubtful solvency or the Pinsents flyer in January 2005 (document 830F) for discretionary bonuses. Likewise my IOD training courses on directors delegation (as

per IoD handbook etc) in 1996 and 2002 for PD10 and 11 and the overall subject of public interest etc. Do you have any view or any example of how these matters would normally be presented in Closing Submissions before I ask the Tribunal as part of my other queries.

Although I believe you are on annual leave (email out of office just now) and may only occasionally pick up your emails can you please respond to both of these matters this week before I write to the Tribunal on these further matters before next weekend.

Kind regards

Brian

From: Brian Little [<mailto:brian@fortfield.com>]
Sent: 17 November 2009 14:22
To: 'RAE Charles'
Cc: 'Andrew.Hornigold@pinsentmasons.com'
Subject: RE: Magellan

Charles

Noted re the documentation - why should that surprise me. I will note that in Closing Submissions re the relevant docs.

I am satisfied as to what the Q&A says on Q4 (as are 6 out of 6 other people when I asked for their interpretation). I do not propose to say anything further as that is for Closing Submissions etc.

I note your comment on the PD schedule and the inconsistency with which Mr Lynch QC proceeds with his arguments at different points in this case – May 2007 and November 2007 on MALUK “doubtful solvency” and reasonable belief. It is also quite clear from the oral evidence that Mr Dekker and Mr Lynch QC were “caught out” on PD15 by reference to R13 rather than a simple mistake on their part. I will proceed accordingly by stating that and then addressing same in Closing Submissions.

As regards the 28 April Board meeting I was aware of what you have said before in that regard. But to be absolutely clear no communication of any Notice or change in the loan/equity shareholder structure of MALUK took place until 18 October 2006- and certainly not with me . The first I knew was when the filing was made in Companies House – doc 481 – when we were checking on the filing of the UK statutory accounts for FY2005 by the statutory deadline of end October 2006.

A Board meeting , though whilst still a Director was held on 18 October 2006 (doc 477/478) and no – one other than Mr Smith and Mr Dekker were aware of it. No Notice was given in accordance with the Articles of Association at para 16.5 (358/359) . Clearly that knowledge and information prior to 18 September 2006 would have been highly relevant in “doubtful solvency” and I will ask for a finding of fact as it quite clearly relevant to my actions – not least from your own firm’s advice to me throughout the Mayflower Aerospace experience in 2003.

A qualified solicitor in your organisation certified as true and complete those 28 April 2005 MALUK Board written resolutions (506) based on a representation by Mr Dekker that Notice of and such a MALUK Board meeting on 28 April 2005 took place. That was obviously without the proper checks on Notice and Board minutes by that solicitor and in light of this whistleblowing case on solvency etc very clearly wrong. Even the draft statutory accounts submitted by Mr Smith for FY2005 to E&Y at the end of October 2006 shows the situation clearly (at doc 3553,3555,3556) So I am not insinuating anything I am presenting you with the evidence and you will know the consequences for Mr Dekker, as the MALUK Director signatory and the PinsentMasons solicitor who signed that off in the midst of my whistleblowing case of their actions.

I discussed this very recently with a senior person in the Law Society and they concurred that I should bring it to the attention of one of your Senior Partners, definitely the Tribunal – as noted already for Closing Submissions and also lodge a letter with supporting documents and information to Companies House for their records. As I indicated in my email below I will do so before the end of December 2009.

I have proceeded to circulate my A340 On the Record Final Report to Mr Dekker (confirmed Read last night) and Mr Butyniec (confirmed Read just now) and others. You did not wish to receive a copy so I have not sent it to you. That was and will be my final communication directly from me.

I concur that I do not expect any further correspondence between us now – other than perhaps occasionally on the basis you describe. I expect to send my (up to 175 pages) Closing Submissions to you by 5 pm on 15 January 2010.

Kind regards

PS I do not know whether Andrew Hornigold is still the MALUK liaison person for the account but have copied this information on the Solicitor certification point for his information.

From: RAE Charles [<mailto:Charles.Rae@pinsentmasons.com>]
Sent: 17 November 2009 12:57
To: Brian Little
Subject: RE: Magellan

Brian

I do not intend to respond to the full breadth of your (very lengthy and detailed) email below. I shall deal with some specific matters.

I was unsurprised to note that you have adopted the approach that you have taken to throughout this litigation when any document is disclosed to you, in that it has prompted from you a number of new requests, questions, comments and submissions.

The Tribunal made clear that, other than the documents that we agreed to provide to you at the last hearing, which we have now provided, no further documents are to be added to the bundle. To do otherwise would mean that there is a potentially infinite regress of document disclosure. The Tribunal, rightly in our view, has drawn a line under the matter of document disclosure requests by you. In light of such a clear direction by the Tribunal, we will not be considering any further disclosure requests from you.

I do not propose to debate with you all that you believe is and is not revealed by the "Questions and Answers" document that we agreed to, and have, disclosed to you. The place for that, if anywhere, is the written Submissions. All I would note is that your comment about the writer's knowledge of other external forecasters in the response to Q.4 is plainly not what that response reveals. The question asked about source data upon which Forecast International based their estimates. The response to Q.4 clearly replies to that particular matter (i.e. what do Forecast International base their figures on) rather than any suggestion by the writer that they lack knowledge of other publications that are available.

As to the PD Schedule, the **only** manuscript amendment made to the Schedule is that Column 1 for PD 15 reads "YES" rather than "NO". Otherwise, the Schedule has remained as initially drafted.

As to you raising the (old) matter of whether or not there was a Board Meeting on 28 April 2005, we dealt with that matter almost a year ago. I would refer you to my letter of 9 December 2008 where I addressed this point under the heading "Requests 4 and 14" which stated: "*In regard to your reference to a Board Meeting of MALUK on 28 April 2005, there was no board meeting on that date. The board meeting of 18 October 2006 was the meeting that ratified the resolution. This is covered in the first paragraph of the resolution which is in the bundle at pages 477-478.*"

I note your (rather sinister) threat that you "*will pursue with a senior person within [your] Firm and the relevant third party (ies) responsible for the ethics and regulation of the same before the end of December 2009*". Obviously that is a matter for you, but I would make clear that your insinuation that there is some kind of ethical or regulatory concern is wholly misplaced and inappropriate.

I also note your stated intention to continue to make direct contact with my client, other than, it seems, Mr Neill. I can do no more than repeat our reasonable request that you stop contacting our clients direct when we are on the record as acting for them in this matter.

Going forward, our view is that there should be little need for any further correspondence between the parties (other, perhaps, than checking some document references), now that the evidence is practically completed and the Tribunal has set down clear directions for the preparation and exchange of Submissions.

Regards

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From: Brian Little [<mailto:brian@fortfield.com>]

Sent: 11 November 2009 19:45

To: RAE Charles

Cc: 'Robert Beckett'
Subject: RE: Magellan

Charles reference the email trail below

Point 1 Noted

Point 2 Thankyou for providing a copy of the three page "Question and Answer" document created by Mr Furbay and authorized/ forwarded by Mr Neill to PwC on 22 March 2007 at doc.3598. As regards numbering the original sheet is 3598 and as there are three sheets here Q1-Q5 = 3598A . Q5 contd and Q6 = 3598B and the schedule about labour hours reduction =3598C. This is what I suggest as I have referenced 3598 in a number of other documents in the past and there are now three sheets in this disclosure. I do not know whether you have studied the contents of this document (dated 22 March 2007) but there are a number of other questions including re other documents disclosure which arise.

For example why, in an document dated 22 March 2007, is there no reference to the documents disclosed to PwC and E&Y on 1 March 2007 – 3605B/D (EY) and 3605 E/G (PwC) and provided (late) to the Tribunal by Mr Dekker just before Mr Bobbi gave his evidence on 8 June 2009, reducing the time I had available in re-examination in order that he could catch his flight home. I find this an extraordinary oversight by Mr Furbay in his response. Then at Q 4 there is a reference to **another email from Mr Neill sent the previous day (21 March 2007) referring to a Feb 2007 Forecast international build of a further 188 aircraft from 2007 to 2016** This email/document from Mr Neill has never been disclosed – can you please disclose it forthwith and we will number it document 3598D etc . it is also possible that as he was re-interviewed by PwC on 21 march 2007 that he simply handed the documents across the table. In either event can you please clarify.

What is also now clear is that whilst Mr Furbay had no awareness of any of the other six external forecasters (q4 answer), and therefore only Forecast International, we know that Mr Neill did. That from his own evidence and knowledge of that "pessimistic" forecast, Teal etc . It seems to me that Mr Neill decided not to bring that to PwC's Canada attention when he forwarded the answers drafted by Mr Furbay. In fact Mr Neill having reviewed and considered the Q& A document did not amend or add any further information to that entire document at 3598A-3598C..

I had also asked at the Tribunal and in my email dated 2 November 2009 at POINT 2B for the disclosure of the covering email from John Furbay to PwC on 14 March 2007 which had attached the document 3605H and to which Mr Neill also referred in his email doc 3597. As you will have noted he also confirmed this in his evidence on 27 July 2007 when he stated "**This data was sent to you on 14th March 2007.**" Could you please disclose that email /covering letter from Mr Furbay (probably copied to Mr Neill) as I requested . I propose we would could then number 3605J etc

As regards the other documents re Directors Representation letters etc I will simply note that Mr Lynch QC once again made an assertion that these existed as standard practice etc – when that is quite simply not so . Hence the reason why you cannot disclose the other "standard " documents to prove me wrong. I know and recall the documents I sign for in these matters. It is a matter for you and the Respondents to try or not and prove me wrong. I will certainly be submitting again that the letter of 11 July 2007 from E&Y, in my experience , and that of three Deloittes partners, is uniquely no standard directors representation letter . Whilst we cannot prove it we believe that at least two lawyers in EY in

London (including Stephen Gate) will have been involved in its construction before sending to the Directors of MALUK on 11 July 2007.

Point 3 Thankyou for the scanned copy of the PD schedule.

My understanding is that for Column 1 -Disclosure was communicated - Yes / No

You accept that PD15 should read YES and not NO - as per Mr Dekker supplementary witness statement etc

Although the original list of factual issues accepted that PD1,PD2 and PD3 was disclosed during the telecom between Mr Dekker and I on 15 August 2006 that is no longer the case and I will have to re-state his oral evidence etc. in Closing Submissions. The same situation applies to PD9 and PD10.

As regards my "Reasonable Belief" Mr Lynch QC provided his document "Submissions" on reasonable belief in July 2009. He made a number of handwritten corrections to it on the 27th July 2009. During which I reminded him that his comments on reasonable belief changing from the outset for the solvency (i.e not the PwC reported matters as he was relying on that) was not consistent. I couldn't remember the actual numbers at the time and think I said the first ten or so to him. I include below an extract from another document that highlights that. I expect that you can confirm that Mr Lynch QC accepts that these are now Yes for column 3 (2)

So as I understand it the changes made to the Respondents PD schedule are

Column 1 - Is it admitted that the alleged disclosure was communicated by the Claimant to the Respondent PD 15 - No becomes YES

And

Column 3 (2) Did Claimant reasonably believe it tended to show breach at time made - PD2,PD3,PD8.PD10,PD11 all now YES rather than NO

As these were no matters subject to the PwC report which has consistently been the reason why the "change in position"

3.1 My "Reasonable Belief" in MAC's Likely Accounting Error / Misstatement in Q3/Q4.2006 (&did)

Throughout my legal claim in the UK for Unfair Dismissal by reason of whistle blowing, I have asserted, amongst other Protected Disclosures, **my continuing belief that the balance sheet of MAC is materially overstated because of the treatment of the A340 capitalised cost. A340 was the single largest project Asset at > C\$40 million on the MAC balance sheet at FY2006.**

3.1A : Whilst there is acceptance (*in the Respondents Protected Disclosure -PD Schedule- in the UK court*) that these matters were disclosed to two MAC Directors (Mr Neill and Mr Edwards) and a Senior Officer (Mr Dekker) in August and September 2006, and would tend to show a breach of the law, their position on my "reasonable belief" was initially expressed in May/June 2007 (6 June 2007-CMD 4**) as "**At present there is no challenge made by the Respondents in regard to the "reasonableness" of****

any beliefs of the Claimant. *If that is not a live issue between the parties, ordering disclosure (of the PwC report) in connection with that non issue would, with respect, be inconsistent with the over-riding objective and would not be necessary for the fair disposal of the case. Naturally, the issues in litigation can shift. Further, if, say, the issue of reasonable belief became a live issue between the parties that would be relevant to consideration of whether the PwC Report was a relevant document for disclosure. However, until such time as the final Report exists, the above cannot be determined.”*
The UK Court/Tribunal then ordered disclosure of the “PwC report” which MAC had relied on for its press release on 11 May 2007. That was the “Final Draft” PwC report. The Final Copy of PwC’s report was then released in Canada / UK, after their seven-month “independent forensic investigation” was completed at the end of August 2007.

3.1B : During the first hearing in the UK court/tribunal on 16/19 November 2007 the Respondents (Magellan) position was on the record as ***“It is right to say that, prior to the receipt of the PwC report, the Respondents envisaged that the issue of reasonable belief might not be a live issue. PWC concluded that the view adopted by the Respondents as to the treatment of those costs and likely sales of the A340 formed no basis for criticism.”***

3.1C : When asked publicly (once again by me) after the final “evidence” stage in the UK court/tribunal on 22 October 2009, the Respondents counsel Mr Lynch QC **restated their change / challenge to my “reasonable belief”** and reiterated **“We stand by the PwC report”**.

Now for the other matters

Column 1 disclosures although originally accepted (non PwC report items) are now NO for PD1, PD2, PD3, PD9 and PD10 (PD7 and PD8 always NO)

Column 1 disclosures although originally accepted for PwC report items are now NO - PD 14, PD20, PD22 (PD17 always NO)

My understanding for these items is that I need to address these Column 1 items now in the Closing Submissions by reference to the written and oral evidence.

From the 22 October hearing

B Little Re the Respondents PD schedule – I’ve asked several times to get an updated version. I’m reading this as if I have to respond to the PD’s that we’ve already ticked “Yes”

Chairman **That’s right. You can brush over them but you need to deal with the contentious issues**

B Little I'm trying to narrow that case down to pure activity. I submit I've already produced evidence that has not been looked at and ...

Chairman You must proceed with submissions as the schedule as it stands is the Respondents case.

Mr Lynch QC - We stand by the PwC report

Chairman That is what you need to make submissions on.

As Mr Lynch QC is scheduled to complete his three week trial this week I hope you will be able to confirm **my understanding regarding Column 1 PD 15 now Yes and Column 3 (2) PD2,PD3,PD8, PD10 and PD11 are now all YES by the end of next week. I am trying to have my "draft" Closing Submissions document completed by 17 December 2009. Thanks .**

Point 4 Fine

Point 5 I fail to understand why you have said this is not relevant . It is quite clear that the Board meeting and written resolutions never took place on 28 April 2005 that was supposed to change the shareholding structure of MALUK. A matter that in the event of doubtful solvency leading to insolvency or administration would affect the assets available to the creditors . As you will not provide the further information ((when and on what basis and by whom in PinsentMasons certified the written Board Resolutions on 28 April 2005 as Original) I will pursue with a senior person within your firm and the relevant third party (ies) responsible for the ethics and regulation of same before the end of December 2009. It is a nonsense to suggest that this is not relevant to my knowledge and actions at MALUK and I will as I stated in my email of 2 November 2009 request that the Tribunal make a finding of fact on the subject as it clearly is and was a relevant matter in the period leading up to 18 September 2006

Finally I note your comments re communications with Magellan. You will have understood from my conversation on the morning of 21 October 2009 that in the case of Dr Thamburaj I felt honour-bound to ensure that he was aware of what was being represented about his work and documentation both inside and outside this litigation before proceeding any further . I have discharged that self – imposed duty and responsibility .

I note for the record that the other Final Draft document communication Mr Neill, Mr Butyniec and Mr Dekker will not respond to – that is of course their decision and prerogative. As regards your request to cease any further communications with them I would comment as follows. I will not now send any further communications to Mr Neill.

In the case of Mr Butyniec (as the CEO certifying officer for MAC re SEDAR etc for FY2006,FY2007,FY2008 and Q3/2009 and FY2009) and Mr Dekker (as the CFO certifying officer for MAC re SEDAR for FY2006,FY2007,FY2008 and Q3/2009 and FY2009) we are advised that we should send the Final copy of that document after all those invited to contribute have had that opportunity and provide a preliminary release after the Q3/2009 MAC results are released to the TSE.

For the record as Chairman Mr Edwards (Read receipt 12.07 pm Calgary time on 10 November 2007) and Mr Dimma as Chair of the Audit Committee – no read receipt yet- were also provided a copy of that document. My understanding and expectation is that after the FINAL COPY of that document is sent then I will no longer need to provide any further documentary record to the individuals personally

or in their corporate roles and matters will then be left to others to address at a time of their choice around or before 31 March 2010. That will be my final document to them personally at MAC.

Finally I note that my request to disclose and be able to consider the documentary evidence for Requests 16B and 16C, restricted on a confidential basis for Mr Beckett and I, has been considered and then has been denied by those people instructing you.

Kind regards

Brian

From: RAE Charles [<mailto:Charles.Rae@pinsentmasons.com>]
Sent: 10 November 2009 18:28
To: Brian Little
Subject: Magellan

Brian

I am writing in response to your email below:-

"Point 1"

I note your numerous comments in reply to my email to you of 29 October 2009. As we have, I believe, made our position clear on the matter I have nothing to add to what I have already said.

"Point 2"

Mr Lynch did *not* agree that the documents would be produced within 7 days. It was you who made that suggestion. I'm not sure that it really matters, as we agreed to carry out a search for the earlier document/s referred to in the email at page 3597 and to disclose any relevant documents to you once the search was complete. My clients have searched for and identified what they understand to be the documents referred to as being attached to the "earlier email" (i.e. the earlier email on page 3598). These are attached to this email by way of disclosure. I suggest they can be added to the bundle as pages 3598 A - D. Please let me know if you disagree with this suggestion.

These are all of the documents that we agreed to search for and, if they existed, provide to you. As you know, the ET made clear that, aside from these, there must be no further documents added to the bundle. This would cover, for example, your request that "*if Mr Smith does come back I want to see the 'standard' letters*". I am aware that you said that at the hearing and the Tribunal was clear on its position. I reiterate, there are to be no more documents added to the bundle other than those attached to this email.

"Point 3"

I attach an un-annotated copy of the PD Schedule. As I have mentioned to you previously, I do not have a soft copy of this document, therefore this copy has not been updated since it was initially produced (note it is dated 16 November 2007). You are aware of the change that has been made to this schedule since it was initially produced, but if you need me to repeat that, please let me know.

"Point 4"

Noted.

"Point 5"

This is not a relevant request. We will not be responding to it.

Subsequent emails

Separately, I am aware that since your email below, you have been emailing my client direct, including you sending emails to Messrs. Dekker, Butyniec and Neill and to Dr Thamburaj. My clients do not intend to respond to such emails sent direct to them. Indeed, they do not wish you to continue emailing them direct in this manner. I would, again, repeat to you our reasonable request that you do not email my clients direct on such matters and would ask that you respect that request. I would also repeat what I say above about documents and the Tribunal's clear direction. In particular, referring to your email to Messrs. Dekker, Butyniec and Neill (on the 8th of November), my clients do not agree to search for, and disclose to you, further documents so that you can "*satisfy [your]self*" as to concerns that you say you have.

Regards

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From: Brian Little [<mailto:brian@fortfield.com>]
Sent: 02 November 2009 10:19
To: RAE Charles
Subject: FW: Magellan

1. Charles -
- 2.
3. **Point 1**
- 4.
5. Further to your response in your email dated 29 October 2009 below on the document entitled BL:Magellan Aerospace Corporation (MAC) on A340 – 500/600 : Embargoed 31 October 2009 (“Final draft”). Your response is noted that you will not be replying to what you identify and call those “allegations and statements”, which you believe are not supported by the evidence. I

formally record that I have provided the opportunity to you and the Respondents (outside of a litigation mindset) to identify any parts of that document which you consider I should recheck and reconsider my analysis/evidence as part of finalizing that document.

6.

7. You will recall that I was denied a similar opportunity in July 2007, on what I consider was poor advice, to provide our comments on the factual accuracy of the Final Draft PwC Report. I will leave it at that and expect to complete the complete document imminently. I had never intended my request to become a subject of debate- solely that I could double-check (as I have been doing with others) the substance of the primary facts/evidence. In a way it was a checklist for me – as by now you will have realized I am strong on memory, detail and support. Not what Mr Neill said in part of his witness statement at RAN54 when he asserted I was poor on detail.

I note that you consider on behalf of the Respondents that this is SOLELY a matter for Closing Submissions now. I do realize that some of the substance of some of this document will form part of those Closing submissions, but as Mr Lynch QC and you have consistently stated – and I have understood throughout - the role of the Tribunal is to consider the principal reasons for my summary dismissal in the period up to and including 18 September 2006. The Tribunal does not pass judgement per se on the A340 accounting matters as being true or not. That is appropriately destined for elsewhere.

Having re read the notes from Wednesday 21 October 2009 I am satisfied that the Tribunal's need for further evidence and documentation as regards my "reasonable belief", as defined in case law and understood by us all (I think), for PD22, PD23 and PD24 have been fulfilled. I can see now that is why they no longer required any further evidence from me, as I had amongst other points stated that 95% of the reason for my Witness recall was to deal further with "reasonable belief" on these A340 PD's. Although Mr Lynch QC would have accepted a limited recall they did not consider that necessary.

Unless I now therefore hear to the contrary I assume you do not wish to directly receive a copy of my Final Report on PwC A340. Mr Lynch QC and you will both await that in my Closing Submissions in January 2010.

I note also your comment re sending the document to third parties. All the evidence has been heard in a public court over 40 days and the Respondents have stated on multiple occasions in public that they rely on PwC. Also that whilst initially there was no issue as to my reasonable belief (May / June 2007) the disclosure and contents of the PwC report in some way changed that. For my part I will issue my Report to interested parties and you or the Respondents can thoughtfully pursue as you consider fit. I will not be the subject of a continuing "gagging" mindset by MAC/MALUK. In any event that would seem to just simply accelerate a wider public attention to the A340 matter – something which I have consistently avoided, but my family and I have now come to terms with if this becomes appropriate. I also intend to provide, as appropriate, my SWS 2 public story, which you were given and had the choice as to whether you wished to cross examine me on any part of it in January/March 2009, to those third parties who have expressed an interest in our view of the case and our family situation over the last three years.

Can I finish by re- stating that MAC have had the opportunity to provide me with documentation that would show me that there is no basis for any further concerns on A340. Telling me that E&Y say it is fine and audited it wholly inadequate after FY2006/FY2007.

PwC , E&Y and Mr Dimma have all also had the opportunity to comment on the factual accuracy of my “Draft report” on substantive A340 matters.. In other words everyone had had an opportunity to show me evidence that I am wrong or have not fully considered some aspect of the A340 In my judgement, even after three years, it does not seem that the collective wisdom to demonstrate this to me has yet been recognized. Mr Beckett explicitly told Mr Dekker in conversation that MAC should sensibly do so in April 2009. That simply causes a move to the next stage in the total process. I make this point now as my FINAL effort to have MAC and yourselves consider where we are all at now.

For completeness I have also been advised that with the UK half term holidays last week it would be appreciated (if I was prepared to do so) to provide a further week for inputs on my Final Draft. Having considered this I will do so and advise the relevant parties accordingly later today..

Point 2 In your email you also have pointed to the Witness recall of Mr Smith on 23 February 2010. We are both fully aware of the limited scope of that recall. You will also have noted my request that the Respondents provide any other “standard” representation letters to E&Y signed by the Magellan UK directors – including myself - for any of the FY2004 and FY 2005 accounts. -- Noted BL Well if Mr Smith does come back I want to see the “standard” letters

And the other document which from our notes on Thursday 22 October

BL - I will have one more document – that voluntary disclosure 1b
Chairman - That’s to go in the bundle
BL - When can I expect that
Mr Lynch - Within seven days

8. This was- Email from John Furbay to Rich Neill on “Response to PwC”. I submit that PwC have written a document with a series of questions – including bringing to the attention of Mr Furbay and Mr Neill that the latest Forecast International market report for A340 (April 2007) shows a substantial reduction to that provided by Magellan on 1 March 2007 and discussed with Mr Neill on 7 March 2007. Mr Furbay has sought Mr Neill’s approval and any further inputs to that response to those PwC questions before forwarding that to PwC. Mr Neill then amends or leaves unchanged that document and forwards those answers directly to PwC shortly thereafter on 22 March 2007.

A. I interpret this that there were a number of written questions from PwC to Mr Furbay/Mr Neill and a written answer response from Mr Neill . I am asking for

disclosure of those documents as Mr Neill referred to them in his evidence and also in his other conversations he had with PwC.

B I also now believe that the doc 3605H was sent to PwC (based on RAN email on 14 March 2007) and the Respondents should have Mr Furbay provide the written evidence that doc 3605H was sent to PwC and his covering email/letter.

For completeness Mr. Neill was interviewed by PwC on 7 and 21 March 2007 (PwC doc 724)

Point 3 I also asked that you provide me with a clean copy of the Respondents PD schedule of 16/19 November 2007 . Whilst I have a copy it is heavily annotated by me. You stated that there was no electronic copy readily available but you would send a scanned copy. Thankyou

Point 4 during the discussions on Closing Submissions there was some discussion about the cases to be cited and I had asked that you , perhaps , could provide the copies if I listed them. Thank you for that offer but I will not require that assistance now as others will be able to provide these to me and the Tribunal.

Point 5 You will recall that I raised the matter of a Solicitor in Pinsentmasons signing as Original MALUK Board Resolutions dated 28 April 2005 and the requisite Notice (as per the MALUK Articles) and Board minutes of that date. Can you please advise me when and on what basis and by whom in Pinsentmasons signed these before their submission to Companies House by MALUK on 12 July 2007. You will recall this was the subject of the Tribunal Order Request 4 on 28 November 2008 and prior correspondence as well as being relevant to the case on “UK solvency” . As I indicated to the Tribunal Chairman as part of our discussions on the Closing Submissions on 22 October 2009 I intend to include this as part of my Closing Submissions and request a finding of fact given its relevance to the “UK solvency/ shareholder structure” case and subsequent statutory financial statements filing for FY2005.

Many thanks and kind regards

Brian Little

From: RAE Charles [<mailto:Charles.Rae@pinsentmasons.com>]
Sent: 29 October 2009 18:54
To: Brian Little
Subject: Magellan

Brian

On day 2 of the hearing last week you handed me a document entitled "*BL:Magellan Aerospace Corporation (MAC) on A340 /500.600 : Embargoed 31 October 2009 ("Final Draft")*". This, apparently, is an updated version of a document that you sent us previously. You said to me that you invited a response to the document.

All I can say is that your document contains a number of allegations and statements that we do not agree with. As you know, we have on several previous occasions stated to you our position on the matter. Indeed, you narrate in the document itself a number of occasions when we have done so.

As you know, the evidence in this case (save for the recall evidence of Mr Smith) is now complete. We do not believe that it will assist the Tribunal process, which has now moved to written submissions, if we accede to your request and become drawn into a debate with you on this matter. This is especially so when we have previously made our position clear. If the points are, in your view, sufficiently relevant for you to refer to them in your submissions then you may, of course, do so.

I would close by saying that I observe that you describe the document as being "embargoed". It may be that such a reference by you is supposed to indicate that you envisage "releasing" the document. No doubt you will see the good sense of this document not being sent to third parties. As you may know, sending such a document to third parties differs from when you send it to us, as it would have no any immunity against suit that may attach to correspondence between the parties about the case. This is so, even when you have sent it to us first. I only mention this to remind you that my clients reserve the right to take appropriate steps if allegations, such as you make in the document, are repeated to third parties.

Regards

Charles Rae

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