

IN THE ROYAL COURTS OF JUSTICE before Master Leslie 21 April 2011

Baker Tilly fails to provide forensic assurance report blowing the whistle on PwC resignation without explaining the removal of its adverse report on books and records

Extracts from transcript

MISS MAKAR:

“The position on the debt, I agree with you it looks terribly complicated unless you have a bird’s eye view. There was no debt at the start of 2005, which is the relevant year when certain events took place which involved irregularities in a public company, the issue of false accounts by PwC, the need to stop them. So during 2005 that is when things started to happen.”

MISS MAKAR:

“During 2005, the debt started to arise because Allen & Overy accepted certain instructions in the financial irregularities that had happened, and then did a volte face and essentially were working against the exposures and disclosures and it became necessary for me, as CEO and finance director of a public company, to instruct Herbert Smith, who is the first of the creditors on the list. That was 7 February 2005.

Herbert Smith were instructed in the matter of market abuse, stopping (inaudible) issuing false accounts, dealing with the conflict of Allen & Overy, proceedings to gain access, which is on the public record, November 2005, points of claim. These are in evidence in this action. They were kept out of the trial bundle, however, although they were a disclosed item. That was the reason why Baker Tilly was instructed in 2006.

So we have the appointment of Herbert Smith, the public knowledge that Herbert Smith had come on the record, and the points of claim which was filed in November 2005 and was the subject of a number of press releases and what information was in the public domain and was one of the things that was concerning Baker Tilly the following year when they sought to become auditor.

Herbert Smith asked for £25,000 on account and then they were billing me on average £100,000 per month. There were other fees due to the other creditors and I say this now because they are the people who are the witnesses to these events and also on the creditors list.

Month by month it was £100,000, £100,000. Then they came to June 2005 and at that point they said, “We have a commercial conflict with PwC because we have big commercial interests with them”, they were doing Tajikistan Aluminium case, I think it was 85 million that was billed on that and I think it was 25 people from PwC.”

MISS MAKAR:

“Blowing the whistle on PwC was the task in hand for Baker Tilly in order to be able to say “Herbert Smith, you have failed in your representations to PwC to say ‘Don’t allow the false accounts to go out’.” So that is how the link goes from PwC, Herbert Smith on to PwC. So all these matters -- have I cited three names -- Herbert Smith, PwC and Baker Tilly. So all these are public issues. They are not a secret.”

MISS MAKAR:

“They provided the funding during 2005 to supplement that of my family. So they are on the public record as being the Royal Bank of Canada. So the question of, “We don’t know who the person who was lending the money is”, is actually not owning up to the fact that they are on the public record and when Baker Tilly accepted the instructions to do the opinion whistle-blowing on PwC, they knew that I had been borrowing this money. I had borrowed 1.2 million in 2005, that was the debt and 1.3 million to get the opinion under the Public Interest Disclosure Act. The court orders were on 1 August 2006 and 19 September 2006, Withers LLP on the record, instructing –”

MISS MAKAR:

“I wanted the report to rescue the company because, when a company is in difficulty because somebody has issued false accounts, there is no mechanism for rescuing it unfortunately. So what you have to resort to is public disclosure. So this was a public accountants’ assurance report on historic financial statements under FSMA 2000, the court order said, which is the market notification consequences of not telling the market that there was financial uncertainty, money had disappeared from the company, and it was suppressed by PwC who had issued an adverse report saying the books and records had gone, nevertheless allowing numbers to go out. Having made the decision that they are going to get out, resigning, because this reflected badly on their previous year’s audit, but not notifying the market. That is an offence.

That is why it was rather complicated but there is no mechanism for rescue. Therefore, the only thing you can do is to get an assurance opinion and make that public and that was the plan in 2006.

The costs and the money was all legal fees and professional fees. We have Egan Roberts on the record and newspapers, Herbert Smith, Royal Bank of Canada, everybody knows what is going on, no secret.

The reason that Baker Tilly charged very little, which was eight to nine days’ time of Michael Taub, court forensic expert witness, who was going to provide said assurance report, is because all the work had already been done.”

MIRA MAKAR:

“One of the complicating factors was a fire at Allen & Overy, who are my lawyers and that has obviously made things a lot worse because they are the ones who have conduct of the relationship with the Royal Bank of Canada.”

PwC:

(1) was party to investigation from December 2004: January 2005 commitment to re-audit March 2004 balance sheet signed July 2004: report to Audit Committee – undisputed facts

(2) removed July 2005 Adverse Report without explanation 29 September 2005: PwC’s report on accounts not approved by the Board

(3) reported whilst civil proceedings by director to gain access to records, instructions to Herbert Smith

(4) offered themselves for re-appointment in AGM 31 October 2005. No reference to decision to resign

PwC resignation notification in April 2006:

- (1) 15 months after January 2005 commitment to re-audit 31 March 2004 balance sheet (signed 27 July 2004)**
- (2) without reporting on reasons for removal of adverse report and causing FSA to close enquiry, uninformed of resignation decision**
- (3) reporting that there are no matters associated with resignation that should be reported to members and creditors**

Enhancing Auditor's Contribution to Prudential Regulation - FSA FRC DP 30 September 2010

FRC Page: <http://www.frc.org.uk/publications/fsafrcdpresponses.cfm>

Response:

http://www.frc.org.uk/documents/pagemanager/frc/Responses_to_FRC_and_FSA_DP/Ms%20Mira%20Makar.pdf