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**MINUTES OF THE SECOND E-TOLL ENFORCEMENT CASE
MANAGEMENT MEETING
BEFORE JUDGE TOLMAY**

Date: 5 December 2018
Time: 08h30
Venue: Room 148, First Floor
Palace of Justice, Pretoria High Court

Attorneys for the Plaintiff: Werksmans Attorneys

Present:

Counsel: Adv Jonathan Blou SC ("Adv Blou SC")
Attorneys: Mr Chris Moraitis
Mr Trevor Boswell
Ms Simone Gast

Attorneys for the Defendants: Alet Uys Attorneys

Present:

Counsel: Adv Gilbert Marcus SC ("Adv Marcus SC")
Adv Adrian D'Oliveira ("Adv D'Oliveira")

Attorneys: Mr Brendan Slade
Ms Andrea Korff

Also present: Ms K Erlank, Registrar to Judge Tolmay

1 Joinder

1.1 None of the Interlocutory Respondents have opposed the Joinder Application. Alet Uys Attorneys ("AUA") notified the Interlocutory Respondents, in writing, that an order in respect of their Joinder would be sought in chambers. None of the Interlocutory Respondents objected to an order being taken in chambers.

1.2 Judge Tolmay therefore made the Draft Order for Joinder (attached hereto marked "X") an Order of Court by agreement in chambers.

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2 Intervention of Magistrates' Court Defendants

- 2.1 Following the exchange of Fact Statements and responses thereto as directed at the first case management meeting, AUA have now indicated that an informal joining of the Magistrates' Court defendants is not sufficient.
- 2.2 AUA have proposed that they prepare an application of the Magistrates' Court defendants to intervene in the consolidated High Court test case under case number 22722/16.
- 2.3 Werksmans Attorneys ("Werksmans") do not agree that a formal intervention application is necessary, having regard to the exchange of the Fact Statements, and sought direction from Judge Tolmay in this regard. Adv Blou SC set out SANRAL's position regarding the Fact Statements and the formal intervention of the Magistrate Court defendants.
- 2.4 Adv Blou SC and Werksmans also recorded SANRAL's position regarding the failure to timeously progress the "test case" on the agreed separated issues and the impact thereof. In this regard it is in the interest of all parties that the matter now proceed as expeditiously as possible and that the lawfulness challenges which form the subject matter of the separated test case, be decided without further delay. E-tolling has been the subject matter of much public debate and the continued uncertainty

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in this regard has material financial implications not only for the SANRAL, but also for the country. The Minister of Finance has recently also expressed his concerns in this regard and was required to address this in Parliament. A speedy resolution of this matter is therefore in the public interest.

- 2.5 Adv Marcus SC disagreed with the position of Adv Blou SC regarding the Fact Statements, as the minute of the first case management meeting held on 16 August 2017 ("the first meeting minutes") stated that the parties were to "*attempt to agree*", and if the parties were unable to reach agreement on the Fact Statements, then the issue of Magistrate Court matter consolidation would be reconsidered by the parties and if necessary referred back to Judge Tolmay (see paragraphs 2.2.3 and 2.2.4 of the first meeting minutes).
- 2.6 Adv Blou SC stated that a transfer of the Magistrate Court matters is unnecessary the parties only needed to stipulate what facts should be before the Court and it would still be open to the parties to say which facts were agreed, and which facts were disputed.
- 2.7 After discussion, it was agreed that there would be ongoing interaction to achieve a statement of agreed facts (and if necessary those in dispute) but that in any event an order of intervention by agreement should be pursued. Adv D'Oliveira undertook to prepare a draft order that the Magistrate Court Defendants who had delivered Fact

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Statements be granted leave to intervene in the consolidated test case for consideration by the Parties. Once this was agreed, Judge Tolmay would be requested to consider the draft order and if appropriate, make that draft Order a final order by agreement in chambers.

- 2.8 Adv D'Oliveira undertook to prepare the draft intervention order before 14 December 2018.

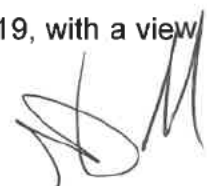
3 Timetable to Trial

- 3.1 For all of the reasons set out in paragraph 2.4 above, Adv Blou SC enquired of Judge Tolmay whether she could now approach the DJP/JP for a preferential trial date for the hearing of the separated issues.

- 3.2 The parties agreed that whilst the default position is that the separated issues would be determined by way of trial proceedings, it may be that material aspects relating to the separated issues could be addressed on affidavit or by way of a stated case.

- 3.3 Judge Tolmay advised that whilst she acknowledged the national interest in the matter and the resolution thereof, she was not yet in a position to approach the JP/DJP until such time as the matter was trial ready.

- 3.4 In this regard, the parties undertook to engage on the issue in 3.2, the Fact Statements and other pre-trial issues in January 2019, with a view

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to addressing or narrowing all outstanding issues and agreeing a proposed timeline with a view to the matter being heard prior to the end of the second Court term in June 2019.

3.5 The parties agreed that whilst it may be prudent to reserve a period of three to four weeks for the hearing of the separated issues, the duration may be significantly curtailed if it is agreed that aspects of the evidence be addressed on affidavit or by way of a stated case. This would be clarified in the meetings between the Parties to be scheduled for January 2019 and addressed at the next case management meeting.

3.6 The next case management meeting is scheduled for **5 February 2019 at 08:30**, at which meeting the Parties would, report back on the outcome of the meeting(s) referred to in paragraph 3.4 above, seek further directions from Judge Tolmay, if necessary and request that an approach be made to the JP/DJP for a preferential trial date for the hearing of the separated issues.

3.7 It was noted that the Parties were not opposed to having Judge Tolmay (as the case manager) hear the separated test case.

MEETING CONCLUDED AT 09H10

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Signed at Sandton on the 11th day of December 2018.

Trevor Boswell
Werksmans Attorneys
Attorneys for the Plaintiff



Brendan Slade
Alet Uys Attorneys
Attorneys for the Defendant(s)

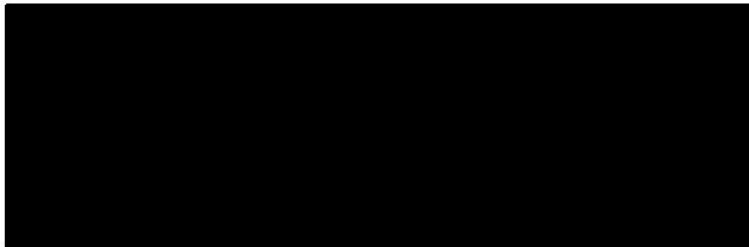


PH207A

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

X
MP
Case No. 22722/16

In the matters between:



and

MINISTER OF TRANSPORT

MINISTER OF ENVIRONMENTAL AFFAIRS

DIRECTOR GENERAL OF ENVIRONMENTAL
AFFAIRS

MINISTER OF FINANCE

COMMISSIONER, SOUTH AFRICAN REVENUE
SERVICE

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

In re:

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD

and

PRIVISOL T/A BREAKAWAY TRANSPORT

And

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD

and

Case No. 22722/16

Plaintiff

Defendant

Case No. 24520/16

Plaintiff

MP
5/12/16
1
M

[REDACTED]

Defendant

And

Case No. 24894/16

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD

Plaintiff

and

[REDACTED]

Defendant

And

Case No. 25063/16

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD

Plaintiff

and

[REDACTED]

Defendant

DRAFT ORDER

Before Her Ladyship Ms Justice Tolmay

on _____ 2018

By agreement between the parties, it is ordered that:

- 1 The first to fifth respondents in this interlocutory application ("the interlocutory respondents") are joined as the second to sixth defendants, respectively, in each of the actions consolidated under case number 22722/16.

  
2

- 2 The interlocutory applicants are directed, within ten (10) days of the grant of this order, to serve on the interlocutory respondents a copy of the papers in each of the consolidated actions, as well as this court order.
- 3 Any of the interlocutory respondents that wishes to oppose any of the relief sought in the consolidated actions is required:
- 3.1 within 10 days of service as contemplated in paragraph 2 above to specify an address within 15 kilometres of the office of the Registrar at which it will accept notice and service of all process in these proceedings; and
- 3.2 within 20 days of delivery of such notice, to plead as it considers appropriate.
- 4 The further exchange of process will be governed by the Uniform Rules of Court.
- 5 No order is made as regards costs of the application for joinder.

BY ORDER OF THE COURT

REGISTRAR

11/12/14
5/12/14 3

**MINUTES OF THE FIRST E-TOLL ENFORCEMENT CASE MANAGEMENT
MEETING
BEFORE JUDGE TOLMAY**

Date: 16 August 2018
Time: 09h15
Venue: Room 148, First Floor
Palace of Justice, Pretoria High Court

Attorneys for the Plaintiff: Werksmans Attorneys

Present:

Counsel: Adv Jonathan Blou SC ("Advocate Blou SC")
Attorneys: Mr Chris Moraitis ("Mr Moraitis")
Mr Trevor Boswell
Ms Simone Gast

Attorneys for the Defendants: Alet Uys Attorneys

Present:

Counsel: Adv Gilbert Marcus SC ("Advocate Marcus SC")
Adv Isabel Goodman ("Advocate Goodman")
Attorneys: Mr Brendan Slade
Ms Andrea Korff ("Ms Korff")

Also present: Ms K Erlank, Registrar to Judge Tolmay

1 Separation of proposed "test case"

1.1 The parties are in agreement in principle that –

1.1.1 there ought to be a separation in order to deal with the various
"legality challenges" raised in the defendants' special pleas; and

1.1.2 the subject matter of the separation has been agreed with
reference to specified paragraph numbers of the pleadings as
contained in the letters exchanged between Werksmans and Alet



Uys dated 15 February 2018, 22 March 2018, 16 April 2016 and
21 May 2018 respectively.

2 Consolidation of matters

2.1 High Court Matters

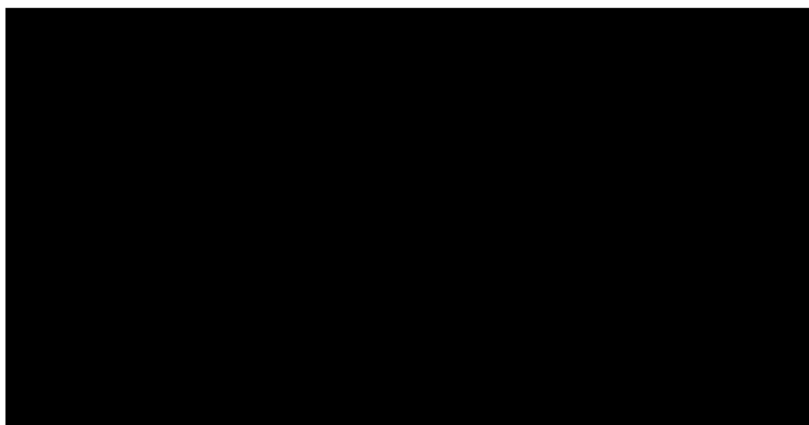
2.1.1 The parties are agreed on the consolidation of the four identified
High Court matters, namely —

2.1.1.1

2.1.1.2

2.1.1.3

2.1.1.4



2.1.2 Judge Tolmay noted the consolidation of the above four matters
and requested that a draft order in this regard be prepared and
submitted to her jointly by the parties for that draft order to be
made an order of Court by her in chambers.

2.1.3 Advocate Goodman will prepare a draft order for consideration by
the parties.



2.2 Magistrates Court matters

2.2.1 Advocate Marcus SC recorded that the defendants do not accept that SANRAL can dictate which parties will participate in the test case. He further recorded that Alet Uys attorneys seek the transfer to the High Court, or the withdrawal and re-commencement, of six identified matters currently instituted in the Magistrates' Court and that these be consolidated with the High Court matters referred to above, for the following three reasons –

2.2.1.1 one of the legality challenges is founded on an alleged lack of alternative routes. A number of defendants are required in order to be representative of the various places to demonstrate this;

2.2.1.2 a variety of defendants are required to address the alleged unreasonable delay on the part of the defendants in raising the legality challenges, and each defendant's position is different. The amounts claimed from each also vary substantially, ranging from just over a thousand Rand to as much as R7 million; and

2.2.1.3 a representative spread of defendants is required to evidence the effect of the remedial discretion sought by SANRAL in its Replication. In this regard, there is no "one

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size fits all" for defendants, as there is, inter alia, a difference between the individual defendants and corporate entity defendants.

2.2.2 Advocate Blou SC noted that, based on these reasons, and rather than having to formally transfer matters from the Magistrates Court or reinstitute these matters in the High Court, it may be possible to deal with these matters by agreement into evidence and broadening the scope of the High Court issues or at least narrowing the ambit of evidence that may be required.

2.2.3 The parties are to attempt to agree the facts that could be stipulated in relation to the Magistrate Court matters proposed for consolidation. In this regard, it was agreed that Alet Uys would, by **6 September 2018**, submit statements of facts relating to the Magistrate Court matters, which they propose be included in the separated case in the High Court by agreement. SANRAL will answer to those statements of fact, and admit or deny the allegations contained therein, by **4 October 2018**.

2.2.4 If the parties are unable to reach agreement on the basis set out in paragraph 2.2.3 above, then the issue of the consolidation of the Magistrate Court matters with the High Court matters, referred to in 2.1 above, will be reconsidered by the parties and if necessary referred back to Judge Tolmay.

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- 2.3 Judge Tolmay indicated that SANRAL's attorneys in the Magistrates' Court should be invited to attend future case management meetings.

3 Further Conduct of Matters

- 3.1 Both parties agreed that although a trial for the separated case may eventuate, it is currently the parties' preference to conduct the separated case either as a stated case or on affidavit, depending on whether it is possible to reach agreement in this regard. This was not however an issue which needed to be addressed at this time and could be addressed in a further case management meeting, in due course.

- 3.2 Judge Tolmay advised that it was premature to consider a hearing date, for the separated case, at this stage, but that she would be amenable to approaching the DJP / JP for a preferential hearing date once the issues relating to the Magistrate Court matters (as addressed above) and joinder (as addressed below) have been addressed and the matter was sufficiently advanced so as to warrant such an approach

4 Joinder

- 4.1 The parties have agreed that the Minister of Transport, the Minister of Finance, the Commissioner of the South African Revenue Service and



possibly the Minister of Environmental Affairs ("the relevant parties") should be joined.

4.2 Advocate Blou SC noted Alet Uys' undertaking (in their letter of 22 March 2018) to take steps to join the relevant parties.

4.3 In this regard, the parties agreed that the relevant Joinder Application should be instituted by Alet Uys by **13 September 2018**.

4.4 Advocate Blou SC undertook to collaborate with Advocate Marcus SC to prepare the Joinder Application, and further advised that Alet Uys could make the averment that the Joinder is supported by SANRAL.

4.5 It was agreed that further timelines for the conduct of proceedings would be agreed once the relevant parties had been joined.

5 Discovery

5.1 It was agreed that discovery would be made after the statement of facts had been exchanged in respect of the Magistrates' Court matters.

5.2 Accordingly, discovery notices are to be exchanged immediately, and discovery affidavits are to be exchanged 20 court days after 4 October 2018.

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5.3 Once the relevant parties have been joined and further pleadings exchanged, further discovery may be called upon from these parties, as appropriate.

5.4 The parties agreed that any interlocutory hearings required in relation to discovery could be heard before Judge Tolmay in chambers, without the need to set the matter down in the ordinary course.

6 Stay of Enforcement of Other Matters Pending the Outcome of the Separated Case

6.1 Advocate Marcus SC sought SANRAL's undertaking to stay the enforcement of other matters (and not just matters in which Alet Uys represent the relevant defendants) pending the outcome of the separated case. He also raised the fact that SANRAL has applied for summary judgment in respect of one of Alet Uys' clients, Vincemus, and that the matter was set down for hearing on 23 September 2018.

6.2 Advocate Blou SC advised that Werksmans do not represent SANRAL in the Magistrates' Court matters instituted by SANRAL, and Werksmans does not have a mandate to agree such a stay in either those or the various other High Court claims. However, he recorded that Werkmans was engaging with SANRAL in respect of the Vincemus matter and would revert formally in that regard as soon as possible.

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6.3 Mr Moraitis stated that road users were being encouraged not to pay toll and recorded that SANRAL would not agree to a general stay until a hearing date had been determined for the separated case. and he recorded further that it is necessary both because people are not paying tolls and for prescription purposes, to continue issuing significant numbers of summonses and SANRAL intends to continue to do so. In the interim, it is preferable for all parties that a hearing date for the separated case be obtained as soon as possible.

7 Judge Tolmay advised that, in her view, it is not appropriate for her to make any ruling in this regard at this point, however the issue may be re-visited at a later stage.

8 Advocate Marcus SC further noted the averments in the Press as regards the ANC's decision to scrap e-tolling. Advocate Blou SC noted that his instructions are that SANRAL are proceeding with claims.

MEETING CONCLUDED AT 10H10

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397 Central Park Avenue
Strubenkop Complex
Lynnwood, Pretoria, 0081
[REDACTED]



010 003 3815
PostNet Suite 36, Pvt Bag x 1
Menlo Park, Pretoria, 0102
www.aletuysattorneys.co.za

12 November 2018

Our ref: S0004

To: Mr Trevor Boswell
Werksmans Attorneys
Attorneys for the Plaintiff
Ref: MR T BOSWELL/tjb/SOUT1.1/1/#5842826v2
Per: Email [REDACTED]

Dear Sirs,

**SOUTH AFRICAN NATIONAL ROADS AGENCY ("SANRAL") / VARIOUS
DEFENDANTS – STATEMENTS OF FACT & RULE 28(3) OBJECTIONS**

1. We refer to your letter dated 8 November 2018 ("your letter").

STATEMENTS OF FACT

2. We agree that the parties should now engage in order to determine which facts are common cause and which facts are disputed, and the means by which the evidence should be placed before the court.
3. We request that your offices provide us with dates as to when it will be convenient to meet in this regard.
4. In relation to the status of the Magistrate Court matters before the High Court, while we agree that these actions should form part of the consolidated test case, we do not agree that this can be done informally.
5. We propose that we prepare an application to intervene on behalf of the Magistrate Court defendants in the High Court proceedings that will decide the

Director: Alet Magdaleen Uys BCom Law LLB (UP)
Consultants: Andrea Korff LLB (UP); Brendan Charles Slade LLB (UP)
VAT Reg No: 421 0277 853

separated issues. We propose that this be done with SANRAL's consent, and expedited with the assistance of the case manager.

6. Kindly confirm per reply whether your client will consent to such application being made.

RULE 28(3) OBJECTIONS

7. We note your client's reliance on Regulation 6 of the E-Road Regulations.
8. Without prejudice to our clients' rights to oppose your client's claims for alleged e-tolled liability incurred that have prescribed, we will withdraw all objections raised in terms of Rule 28(3). As per paragraph 13 of your letter, we are in agreement that this particular issue may be dealt with as part of the separated case.
9. Formal notices to this effect will be served in due course.

Yours faithfully,



ALET UYS ATTORNEYS

BC Slade

Director: Alet Magdaleen Uys BCom Law LLB (UP)
Consultants: Andrea Korff LLB (UP); Brendan Charles Slade LLB (UP)
VAT Reg No: 421 0277 853



DELIVERED BY EMAIL

Alet Uys Attorneys

Email: [REDACTED]

Pretoria

Attention: Brendan Slade

Johannesburg Office

The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: various
OUR REFERENCE: Mr T Boswell/sg/SOUT1.1/1/#5855038v5
DIRECT PHONE: +27 11 535 8459
DIRECT FAX: +27 11 535 8659
EMAIL ADDRESS: [REDACTED]

14 November 2018


Dear Sirs

SOUTH AFRICAN NATIONAL ROADS AGENCY ("SANRAL") // VARIOUS DEFENDANTS ("your clients / the defendants")

- 1 We refer to your letter ("your letter") dated 12 November 2018.
- 2 The very purpose behind the preparation of Fact Statements and Responses thereto was to obviate the need formally to transfer the Magistrate Court matters to the High Court, consolidate these matters with the High Court matters and to avoid the delay in progressing the test case that would flow as a consequence. The Facts Statements and responses were designed to enable the defendants' participation in the test case to take place on an agreed basis. You have now proposed that these defendants should bring a formal intervention application. We do not agree.
- 3 Further directions are clearly required on this issue, and as appears from paragraph 2.2.4 of the Minute of the First Case Management Meeting with Judge Tolmay (held on 16 August 2018), if the parties are unable to reach agreement in this regard, the issue of consolidation of the Magistrate Court matters with the High Court matters is to be referred back to Judge Tolmay.
- 4 We accordingly intend to approach Judge Tolmay to request a second case management meeting for directions with regard to -
 - 4.1 the Magistrates' Court matters, including issues pertaining to the Statements of Fact and your clients' contention that the Magistrates' Court defendants formally intervene in the High Court consolidated case;
 - 4.2 the procedures to be followed in bringing the matter to trial (for example, whether the matter is to proceed on affidavit or by way of trial proceedings); and

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham C Andropoulos BA Aronoff DA Arteiro T Bata LM Becker JD Behr AR Berman NMN Bhengu Z Bleden HGB Boshoff GT Boss TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer A Kenny A Khumalo R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo JE Meiring SM Moerane C Moraltis PM Mosebo KO Motshwane J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues L Rood BR Roothman W Rosenberg NL Scott TA Sibida LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiefahn DC Williams DG Williams E Wood BW Workman-Davies **Consultant AL Armstrong**

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- 4.3 a timetable leading up the trial of the separated test case, including dates for pre-trial meetings (at which meetings, matters such as requests for admissions may be discussed), further case management meetings and other issues relating to the Fact Statements and Responses thereto.
- 5 As regards the content of paragraphs 7 to 9 of your letter, the content thereof has been noted. We will accordingly deliver our client's amended pages in the matters where Rule 28(3) Notices were received from your various clients.

Yours faithfully

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Werksmans Inc

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