Neutral Citation Number: [2021] EWHC 3456 (Comm)

Case No: CL-2020-000441

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2021

Before :

Peter MacDonald Eggers QC
(sitting as a Deputy Judge of the High Court)

- -

Between :

GEOQUIP MARINE OPERATIONS AG	**Claimant**
- and -	
(1) TOWER RESOURCES CAMEROON SA	
(2) TOWER RESOURCES PLC	**Defendants**

- -
- -

Julia Dias QC and Jason Robinson (instructed by **Clyde & Co LLP**) for the **Claimant**
SJ Phillips QC and Rebecca Jacobs (instructed by **Richard Slade & Company**) for the **Defendants**

Hearing dates: 13th December 2021

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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PETER MACDONALD EGGERS QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

"Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 21 December 2021 at 10:30"

Peter MacDonald Eggers QC :

Introduction

1. In this action, the Claimant ("Geoquip") brings a claim against the Defendants ("Tower Resources") for sums allegedly due from the First Defendant under a contract and an extension agreement in respect of the provision of a geotechnical survey of ground conditions, and the supply of a survey report, via the vessel "*INVESTIGATOR*" ("the vessel") and allegedly due from the Second Defendant under a contract of guarantee.

2. The sums claimed amount to approximately US$2.23 million. The claim is for (1) US$610,091.68 being the balance of the lump sum said to be payable for the fixed scope of the work and (2) US$1,619,541.69 standby charges for the period from 8th January 2020 to 4th February 2020 before the vessel was able to complete the survey. The standby charges are said principally or solely to be accounted for by the delay in Tower Resources obtaining a licence or a licence extension for offshore drilling activities from the Cameroon government.

3. A number of issues arise between the parties, including (1) issues of contractual construction; (2) estoppel by convention; (3) contractual estoppel; (4) a claim for quantum meruit; and (5) the liability of the Second Defendant as guarantor.

4. The trial was scheduled to start on Monday 13th December 2021, for 3-4 days.

5. However, the first day of the trial was devoted to the hearing of an application by Tower Resources for an adjournment of the trial by reason of an alleged failure by Geoquip to provide disclosure as required by the order of Calver, J dated 16th April 2021.

6. Tower Resources' application did not start as an application for an adjournment, although it was foreshadowed; the initial application was for an order that Geoquip provide - by 4.00 pm on Monday 13th December 2021 - the disclosure which was ordered to be provided but had not been provided by Geoquip.

7. However, Ms Julia Dias QC on behalf of Geoquip informed the Court that it was not possible to undertake this exercise with a view to providing the requested disclosure within the time required. Accordingly, Mr Stephen Phillips QC on behalf of Tower Resources applied for an order adjourning the trial.

8. Geoquip opposed the application by Tower Resources for an adjournment and, if necessary, applied for an order that the issue of reliance relating to the case of estoppel by convention advanced by Geoquip (to which the outstanding disclosure was initially said to be related) be determined separately at a later trial (in other words, a split trial).

9. I heard these applications on Monday 13th December 2021. During the morning of Tuesday 14th December 2021, I informed the parties that I had decided to dismiss the application for an adjournment. Insofar as the application for a split trial survives the dismissal of Tower Resources' application for an adjournment, the counter-application is also dismissed.

10. These are the reasons for my decision.

11. In order to understand the reasons for the application and the counter-application, it is necessary to understand how the parties got to the place they found themselves in.

Geoquip's disclosure

12. On 16th April 2021, Calver, J ordered that the parties provide disclosure in accordance with the agreed Disclosure Review Document (subject to a few modifications).

13. The Disclosure Review Document set out 8 Issues for Disclosure (the following is largely, but not completely, a verbatim statement of the issues):

    (1) Issues 1 and 2: Whether, prior to and at the time the Contract and the Further Agreement/Extension were agreed, both parties knew that certain data and analysis from the Survey, to be provided by way of the fieldwork report, needed to be supplied to COSL in order to secure the rig contract and whether the timely provision of the fieldwork report (as per clause 8.3 of the Contract), including the requisite data and analysis, was critical to the First Defendant.

    (2) Issue 3: What the cause(s) of the licence/permit and security arrangements issues experienced between 8th January and 1st February 2020 was or were and, in particular, whether such issues were the fault of the First Defendant.

    (3) Issue 4: Whether, at the time the Contract and the Further Agreement / Extension were agreed, the daily standby rate was a reasonable estimation of the loss the Claimant would suffer as a result of a day spent idle during the anticipated period of the Survey.

    (4) Issue 5: Whether the First Defendant communicated to the Claimant in January 2020 that it accepted liability to pay the Claimant standby charges under the Contract.

    (5) Issue 6: Whether, if such a representation was made as per Issue 5 (which is itself in issue), the Claimant relied upon it and if so, how.

    (6) Issue 7: Whether the First Defendant entered into the Contract believing that it would only be liable for charges over and above the lumpsum agreed on the occurrence of those events where the Contract specifically provided standby charges would be payable, and, if so, whether the Claimant knew or ought to have known this.

    (7) Issue 8: The circumstances in which and at whose instigation the vessel was mobilized on 8th January 2020.

14. All of the disclosure to be provided by the parties was based on Extended Disclosure Model D (under which "*a party shall disclose documents which are likely to support or adversely affect its claim or defence or that of another party in relation to one or more of the Issues for Disclosure*").

15. In addition, the Disclosure Review Document set out keywords for searches in respect of each of the issues to be made in respect of named custodians. The keywords included amongst other search terms:

(1) "*Tower Resources*", "*M/V INVESTIGATOR*", "*INVESTIGATOR*", "*Douala*".

(2) Alongside the term "*Tower*": "*Fieldwork*", "*Spud can*", "*Standby*", "*Licence AND Extension*".

(3) Alongside the terms "*Cameroon*", "*Cameroun*" and "*Nigeria*": "*survey*", "*maintenance*" and "*Total*".

16. However, the searches which were undertaken by Geoquip through Wizard IT (whom Geoquip retained as external IT service providers) in accordance with instructions prepared by Clyde & Co LLP (Geoquip's solicitors) appear to have been deficient in two respects: (a) Wizard IT searched for certain keywords as specific phrases and not as combinations, for example "*Nigeria survey*" instead of "*Nigeria AND Survey*", and (b) although there was a search for "*M/V INVESTIGATOR*", there was no search for "*INVESTIGATOR*" (without "*M/V*").

17. I think the use of the word "*alongside*" is ambiguous, although I consider that it required a search of both words, rather than a specific phrase. Although I think the error was understandable, it was still an error. Similarly, I can understand how the error of failing to search for "*INVESTIGATOR*" (without "*M/V*") arose, but the search was not carried out as intended by the Court's order.

18. Geoquip maintains that this was a non-deliberate error, as stated in the witness statement dated 13th December 2021 of Mr Robert Sullivan, Geoquip's General Counsel. I accept this evidence.

19. The parties served their written opening submissions for trial last week on 7th-8th December 2021.

20. In Tower Resources' written opening submissions, at paragraph 55(3)(b) it was said that Geoquip's disclosure was "*wholly inadequate*". This assertion was explained in a footnote as follows: "*At the CCMC, Geoquip was ordered to provide disclosure in relation to other work opportunities – the Disclosure Review Document, approved by the order of Calver J. [A/9/67], is not presently in the bundles. It has not done so. The inference to be drawn is either that no such documents exist, or that if they do, they would be damaging to Geoquip's case*".

21. On Friday 10th December 2021, at 1725 hours, Geoquip served a second witness statement from one of its witnesses, Mr Jack Harmon of Geoquip, where he explained what contracts and opportunities were in place for Geoquip after the completion of the survey work for Tower Resources. Mr Harmon exhibited to this witness statement eight documents, including contracts (with a number of entities) and correspondence.

22. On Sunday 12th December 2021, Tower Resources filed a further skeleton, which observed that the documents in question should have been disclosed earlier because they contained the search keywords referred to above.

23. The conclusion drawn by Mr Phillips QC in this skeleton argument was that "*(i) the disclosure exercise ordered by Calver J. was not carried out, or (ii) it was carried out, but a deliberate decision was made by Geoquip to supress disclosable materials for reasons that are unclear*".

24. In this skeleton argument, Tower Resources focussed on Issue for Disclosure 6, which was concerned with the issue of reliance relating to Geoquip's case based on estoppel by convention.

25. However, during oral argument, Mr Phillips QC submitted that Geoquip's failure of disclosure also related to the other Issues for Disclosure.

26. In this respect, I am prepared to accept that the deficiencies in the searches undertaken by Geoquip might extend to some or most of the Issues for Disclosure, although not Issues for Disclosure 3 and 5.

Geoquip's case on reliance and estoppel by convention

27. One of Geoquip's claims relates to the claim for standby charges for the vessel *INVESTIGATOR* while it waited in Cameroon for the licence to be granted to Tower Resources.

28. The original contract was extended by agreement at the end of January 2020. Geoquip alleged that under the Extension Agreement, Tower Resources "*expressly acknowledged and accepted in the Extension, substantial Standby Charges had by that point already been incurred on account of the Vessel having lain idle*" (paragraph 12 of the Particulars of Claim).

29. In paragraph 25(b) of the Defence, Tower Resources "*denied that standby charges had been incurred or that the Further Agreement "expressly acknowledged and accepted" this*".

30. In response, at paragraphs 21-23 of the Reply, Geoquip denied this allegation and then advanced a further or alternative plea that "*the Defendants acknowledged and/or accepted liability to pay Standby Charges and are accordingly estopped by contract and/or convention from alleging that they are not liable to pay Standby Charges*". Geoquip identified the documents and a conversation it relied upon in this respect and then pleaded that "*the Defendants unequivocally represented that they acknowledged and accepted liability to pay Standby Charges and the Claimant relied on such representation by allowing such Standby Charges to continue accruing. The Defendants are accordingly estopped, by contract and/or convention, from denying liability to pay the Standby Charges, and/or alternatively have in all circumstances the [sic] waived any such right*".

31. Further, at paragraphs 17 of the Particulars of Claim, Geoquip pleaded that "*as acknowledged and accepted by the parties in the Extension, significant delays were experienced on and after 8 January 2020 prior to the Vessel's departure for the survey site. In accordance with clause 14.6 of Section II(a) of the Contract, Tower Cameroon became liable to pay standby charges in respect of such delays at the rate set out in clause 10.1 of Section IV of the Contract within 30 days of Geoquip invoicing for the same*".

32. At paragraph 31(e) of the Defence, Tower Resources denied this and pleaded that "*the Contract/Further Agreement cannot have contemplated that a failure to obtain the licence extension would cause the Vessel to be on standby and so incur charges,*

because there was intended to be no mobilisation or fieldwork before such a licence extension was obtained".

33. At paragraph 31.6(7) of the Reply, Geoquip responded with a further plea of estoppel, namely that "*... there was a common shared assumption of law and/or fact that the contractual preconditions to the accrual of Standby Charges had been satisfied, and the Claimant relied on that assumption by continuing in good faith to make itself and the Vessel available to perform the work contemplated by the Contract, and/or by continuing to wait until such time as the Vessel could mobilise to the field. In the premises, it would be unconscionable to permit the First Defendant to resile from that common shared assumption and it is accordingly estopped from doing so*".

34. It seems to me that these pleas of estoppel substantially overlap, although there may be differences between them.

35. By reference to the case on estoppel, Geoquip served the first witness statement of Mr Jack Harmon dated 20th October 2021, who said in paragraph 56: "*Whilst we were waiting for the permits and security arrangements, Geoquip was actively bidding for other work, and though I do not remember specific dates, Geoquip had signed a subsequent contract with another client to follow directly on from the Project. I was continuously updating that other client as to when the Vessel would be able to start the work, and I was concerned that we may lose that contract if we did not complete the fieldwork soon. At the time, I thought this would help Tower Resources because they were incurring standby charges for each day that the Vessel was sitting in Douala port. We had a number of other contracts for the Vessel in the region that were waiting in the background. My intention was to take the Vessel off hire to perform one of those other contracts and then come back when all of the relevant licenses and security arrangements were in place. As far as I remember this was not well received by Jeremy [Asher]; I remember he called me shortly after receiving my email, and asked that we bear with him, hang on and he promised me that everything would be sorted soon*".

36. Tower Resources' original complaint relating to Geoquip's "*wholly inadequate*" disclosure related to this evidence and the fact that the "*other contracts*" referred to by Mr Harmon had not been included in the disclosure.

37. It is to be noted however that no reference to these other contracts was made in Geoquip's plea of reliance in its Reply in support of its case as to estoppel.

38. During the morning of Monday 13th December 2021, Ms Dias QC on behalf of Geoquip offered not to refer to this material in order to forestall an adjournment of the trial. I asked Geoquip to reflect on its case as to reliance and to identify what its case was in writing by 1.00 pm. This was duly done.

39. Geoquip's case on estoppel as revised stated as follows:

> "*The Claimant was materially influenced and/or relied on the Defendants' representation and/or a common shared assumption of law and/or fact (alternatively an assumption made by one party and acquiesced in by the other) that the contractual preconditions to the accrual of Standby Charges had been satisfied by:*

> *2.1. Continuing in good faith to make itself and the Vessel available to perform the work contemplated by the Contract, and/or by continuing to wait until such time as the Vessel could mobilise to the field and/or allowing such Standby Charges to continue accruing, when it could have sought other work opportunities [and/or performed other work opportunities already available to it]; and/or*
>
> *2.2. Negotiating and subsequently entering into the Extension and thereby binding itself to make the Vessel available until 29 February 2020; and/or*
>
> *2.3. Issuing on about 29/30 January 2020 an invoice number 200590 for Standby Charges accrued from 8-22 January 2020.*"

40. There are three material respects in which this revised case on reliance is not pleaded:

    (1) It includes an alternative case of an estoppel by convention based on acquiescence, as opposed to a shared assumption. Ms Dias QC submitted that the facts and evidence are the same and this was no more than a new legal label for the estoppel it relied on.

    (2) It includes the words "*when it could have sought other work opportunities [and/or performed other work opportunities already available to it]*". The earlier reference to "other work opportunities" is meant to refer in a generic sense to the fact that the earlier that the vessel was released from the Tower Resources contract, the earlier it could seek other employment. This earlier reference is not intended to refer to specific contracts which were already available to Geoquip. The words in square brackets were included provisionally on the basis that if their inclusion were critical to my decision in allowing an adjournment, Geoquip would not pursue that part of the case.

    (3) There is a reference to the issue of an invoice. This was explained to add little to the earlier part of the case. I note that there is no express reference to the agreement of the Extension as an instance of reliance, but it seems to me that this is an inextricable part of the plea that the vessel make itself available.

41. During the morning of Tuesday 14th December 2021, Geoquip served an amended Reply incorporating the above revisions to their case.

42. If no adjournment were to be ordered, I would have been prepared to allow each of these new cases to be advanced.

43. For reasons I explain below, I consider that it is now too late for Geoquip to adduce evidence about its future contracts, that is the case set out in square brackets to which I have referred. This is because the issue was unpleaded and because the disclosure was provided too late and was not complete and this gave Tower Resources little or no opportunity to consider the same for the purposes of the trial.

44. The question arises whether, even with the revised case on reliance and without the case based on future contracts (the case set out in square brackets), there should be an adjournment of the trial.

The principles to be applied

45. CPR rule 3.1(2)(b) provides that the Court may adjourn a hearing. There is an equivalent power in CPR rule 29.5(1)(d).

46. As part of the Business and Property Courts Disclosure Pilot, there is an additional power included in paragraph 20.2 of CPR Practice Direction 51U, which provides that:

> "*If a party has failed to comply with its obligations under this pilot including by—*
>
> *(1) failing to comply with any procedural step required to be taken;*
>
> *(2) failing to discharge its Disclosure Duties; or*
>
> *(3) failing to cooperate with the other parties, including in the process of seeking to complete, agree and update the Disclosure Review Document,*
>
> *the court may adjourn any hearing, make an adverse order for costs or order that any further disclosure by a party be conditional on any matter the court shall specify …*"

47. In the exercise of its discretion, the Court should take into account the overriding objective, in particular dealing with the case justly and proportionately, and ensuring as far as practicable that the parties are on an equal footing, saving expense, having regard to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of the parties, ensuring that the action is dealt with fairly and expeditiously and allotting to it an appropriate share of the Court's resources, and enforcing compliance with the Court's order and the Civil Procedure Rules. See *Boyd & Hutchinson v Foenander* [2003] EWCA Civ 1516, para. 9.

48. In *Fitzroy Robinson Ltd v Mentmore Towers Ltd* [2009] EWHC 3070 (TCC); [2010] CP Rep 15, Coulson, J stated at para. 9:

> "*More particularly, as it seems to me, a court when considering a contested application at the eleventh hour to adjourn the trial, should have specific regard to:*
>
> *(a) the parties' conduct and the reason for the delays;*
>
> *(b) the extent to which the consequences of the delays can be overcome before the trial;*
>
> *(c) the extent to which a fair trial may have been jeopardised by the delays;*

> *(d) specific matters affecting the trial, such as illness of a critical witness and the like;*
>
> *(e) the consequences of an adjournment for the claimant, the defendant, and the court.*"

49. The reference to "*delays*" should be understood to be a reference to the reason relied on by the applicant for the adjournment. In the present case, it is said to be the deficiencies in the provision of disclosure (which of course would include an element of delay).

50. In *Elliott Group Ltd v Gecc UK* [2010] EWHC 409 (TCC), being a case where the adjournment was sought in advance of trial, at para. 7-9, Coulson, J referred to his earlier decision and added:

> "*In essence, on an application of this sort, the court is faced with a balancing exercise between, on the one hand, the obvious desirability of retaining a fixed trial date (which promotes certainty) and avoiding any adjournment (which can only add to the costs of the proceedings) and, on the other, the risk of irredeemable prejudice to one party if the case goes ahead in circumstances where that party has not had proper or reasonable time to prepare its case.*"

51. The adjournment of a trial whose date has already been fixed, and perhaps the more so, when the trial has commenced or is about to commence, has been described as "*a last resort*" (*Original Beauty Technology Company Ltd v G4K Fashion Ltd* [2021] EWHC 2632 (Ch), para. 10).

52. The chief enquiry the Court should pursue is whether the refusal of an adjournment will render the trial unfair to one or both of the parties and equally whether allowing the adjournment would be unfair (*Bilta (UK) Ltd v Tradition Financial Services Ltd* [2021] EWCA Civ 221, para. 49(1)). This to my mind is one of the primary considerations the Court should take into account in disposing of an application for an adjournment of a trial, certainly on the eve of trial or after it commences.

Decision

53. In the present case, Tower Resources relies on Geoquip's failures in providing disclosure, in particular the incorrect search keywords used. It is notable that the additional documents disclosed by Geoquip for the first time on the Friday evening before the trial to start on the Monday contained these search words. I accept that Geoquip did not undertake the searches as contemplated by the Disclosure Review Document which had been approved by Calver, J on 16th April 2021.

54. However, the errors in carrying out the keyword searches does not necessarily mean that there was a serious failure on the part of Geoquip to disclose documents relating to the reliance issue or indeed any other issue. This is because the review of the documents might have excluded from disclosure any documents retrieved by the use of the correct search terms, as this review would have taken place by July 2021 and Mr Harmon's first witness statement was served in October 2021. Moreover, the documents relating

to Geoquip's vessel's later employment was not a pleaded issue and therefore such documents cannot have been said to be relevant. Nevertheless, I assume that there must have been some documents which are relevant in the broad sense and which have not been disclosed that would have been retrieved for review had the correct searches been undertaken.

55. However, that is not sufficient, in my judgment, to justify an adjournment of the trial. There must be evidence that there is at least a serious risk that documents which are likely to promote the applicant's case or prejudice the respondent's case have not been disclosed.

56. For example, Mr Phillips QC took me to an exchange of emails, only one of which had not been disclosed earlier, in particular:

    (1) Email exchanges within Geoquip on 14th January 2020 and 29th January 2020 discussing the delays in obtaining authorisation for the vessel in Cameroon, the impact on the vessel's future employment, the vessel's standby, the payment of charges alleged to be due from Tower Resources and plans to demobilise the vessel in the absence of authorisation from the Cameroon authorities and in the event that such authorisation is obtained. Mr Phillips QC on behalf of Tower Resources submitted that there must have been an email discussion within Geoquip about the contents of these emails which have not been disclosed.

    (2) An email exchange on 29th January 2020 within Geoquip as to the vessel proceeding to demobilise if the authorisation from the Cameroon authorities allowing the vessel to proceed to the project site is not received and the mobilisation of the vessel for its next employment depending on whether and when the authorisation is received. This exchange was disclosed only on Friday 10th December 2021.

57. I am not convinced by this review of these emails that there is a serious risk that further documents have not been disclosed which are both relevant and are likely to be advantageous to Tower Resources' case or likely to be prejudicial to Geoquip's case.

58. Apart from these emails, the highest Mr Phillips QC put his case was that the Court and it would follow Tower Resources would have no confidence that all relevant and disclosable documents which would have a material bearing on the issues in this case have been disclosed.

59. Against this, Ms Dias QC on behalf of Geoquip explained that there has already been very substantial disclosure by Geoquip after a search amongst some 35 GB of data (see Mr Sullivan's witness statement, para. 10). The trial bundles comprise 13 bundles of contemporaneous documents.

60. In my judgment, it is not appropriate for the trial to be adjourned. I reach this conclusion for the following reasons:

    (1) Although the sum claimed is not insignificant, it is not very substantial (US$2.23 million). The legal costs are likely to be a significant - I do not say a major - proportion of this sum. The adjournment of the trial is likely to represent a substantial increase of those costs. In addition, the purpose of any adjournment

would be to require Geoquip to undertake a fresh review of its disclosure with the correct keyword search terms and undertake a review for the purposes of providing additional disclosure. This in itself will be an expensive exercise. I consider that an adjournment for this purpose would be a disproportionate and unreasonable response to Tower Resources' complaint.

(2) Geoquip's failure to carry out all of the searches required by the Court's order does not mean that there would be an unfair trial as far as Tower Resources is concerned. I do not consider that there has been any deliberate suppression of documents. I say this because of the witness statement from Mr Sullivan and because of the manner in which the additional disclosure was provided. Indeed, Mr Phillips QC merely identified deliberate suppression as one of two possibilities and did not say that it had occurred.

(3) Although it is correct to say that the Court or Tower Resources cannot be confident that all relevant documents have been disclosed, a very substantial amount of documentation has been disclosed and there is no indication or evidence - as far as I can tell - that there are any documents which have not been disclosed which are likely to be helpful to Tower Resources' case or likely to be prejudicial to Geoquip's case. I would add that in many cases disclosure will not have been undertaken perfectly and that imperfect searches and reviews of documents will result in the omission of documents from a party's disclosure. I do not see that the possibility - and I emphasise the word "*possibility*" - of documents being omitted from a party's disclosure is of itself a reason for an adjournment in most cases. Indeed, I consider it would be contrary to the overriding objective to accede to an application for an adjournment unless there was a serious risk that documents which are likely to be helpful to the applicant's case or prejudicial to the respondent's case had not been made available to the applicant by way of disclosure. There is therefore no evidence of such omissions in this case. There is no real risk of irremediable prejudice to Tower Resources in this case. The mere possibility of the omission of relevant documents does not in my judgment outweigh the disproportionate and unreasonable consequences of an adjournment.

(4) Any omitted disclosure is most likely to be relevant - in the broad sense of the word - to the estoppel case. That represents but one issue. It is possible that such omitted disclosure might relate to other issues, but given that the majority of the other issues are issues of contractual construction, I think that is unlikely. Given Geoquip's decision to remove from its case on reliance (as part of its case on estoppel by convention) the reference to later specific contracts available to the vessel, any possible unfairness can be neutralised by these means.

(5) It was stated by Tower Resources that there had been a "*wholly inadequate*" disclosure exercise on the part of Geoquip, even before the additional disclosure was provided by Geoquip, but there had been no earlier application by Tower Resources for further disclosure or for an adjournment of the trial. If the disclosure was obviously inadequate as far as Tower Resources was concerned, this could have been taken up earlier between the parties. I am conscious that Mr Phillips QC indicated that the inadequacy of Geoquip's disclosure occurred to Tower Resources late in the day. Accordingly, this is a minor consideration

in the balancing exercise which the Court must carry out. Even without this consideration, I would have come to the same conclusion that the adjournment should be refused.

61. I should add that had I been receptive to Tower Resources' application, I would not have acceded to Geoquip's application to have the trial proceed on all issues apart from the reliance issue or even the estoppel issue. Indeed, insofar as this counter-application is maintained, it is dismissed. My reasons for refusing to order a split trial are concerned with the application of the overriding objective to ensure an economy in the conduct of this action and to avoid the inevitable complications which arise where the same witnesses who are to be called on the separate issues would result in the duplication of evidence and would give rise to the continuing difficulty of demarking the evidence of the same witness dealing with two or more issues at separate hearings. See *Cook v Cook* [2011] EWHC 1638 (QB), para. 12.

62. For the above reasons, and on the basis of Geoquip's case on reliance removing reference to "*and/or performed other work opportunities already available to it*", I dismiss the application for an adjournment and, insofar as it survives, I also dismiss the counter-application for a split trial.

63. Finally, I am prepared to allow the remainder of Geoquip's application to advance its recast case on reliance as set out in Geoquip's draft Amended Reply (without the words in square brackets dealing with other work opportunities already available to the vessel) because it does not require any additional evidence and because I do not discern any prejudice to Tower Resources in this respect.