

# Apache Beryl I Limited v Marathon Oil UK LLC, Centrica Resources Limited, JX Nippon Exploration and Production (UK) Limited, Taqa Bratani Limited, Taqa Bratani LNS Limited



No Substantial Judicial Treatment

## Court

Queen's Bench Division (Commercial Court)

## Judgment Date

6 October 2017

Case No: CL-2017-000297

High Court of Justice the Business and Property Courts of England and Wales Queen's Bench Division Commercial Court

**[2017] EWHC 2504 (Comm), 2017 WL 04653012**

Before: Mr. Justice Robin Knowles CBE

Date: Friday, 6th October 2017

## Representation

Mr. David Allen QC and Mr. Henry Moore (instructed by Clyde & Co. LLP ) appeared for the Claimant.  
Mr. David Davies (instructed by CMS Cameron McKenna Nabarro Olswang LLP ) appeared for the Defendants.  
Mr. Douglas Paine appeared for Ancala as a watching/noting brief.

## Approved Judgment

Mr. Justice Robin Knowles:

1. I thank everyone for their submissions. Unsurprisingly, in this particular case and at this particular stage, this type of issue is very finely-balanced.
2. The purpose of the court in enabling an expedited trial in the present case has been to ensure that real assistance can be given to the parties in the commercial context of this case. It is a matter in which the court's expedited programme to trial is happening in "real time" regarding the commercial position.
3. Where possible, the court will wish to provide the parties with an answer that is as relevant and informed as possible and to avoid the risk of providing an answer that could be seen to be frozen in time or in some way compromised by being informed only by part of the documentation or information available. That said, there must be real consideration, in the interests of fairness and justice, to ensure that each of the parties has a proper opportunity to prepare and present the matters that they wish the court to have available for the purpose of its decision.
4. In the present case, there are three forms of material. First, there is additional material going to or extending a financial model. Secondly, there are industry-available reports from Wood MacKenzie. Thirdly, there is a case-specific report from

Poyry. Any decision I reach in relation to this material will have its imperfections, especially as one is looking not just at a highly-compressed timetable since Males J ordered expedition, but because we are in now the closing -- and particularly intense -- stages before trial commences in a period that can be measured in days.

5. I have been greatly helped by the contribution of a letter from Travers Smith of 5th October 2017. It further informs my conclusion, with the benefit of the pre-reading and argument from the parties, that the present case is not one in which the further material in question comes in late in a way deserving of criticism.

6. This is not a case in which I consider that anyone has been, in this regard, intending to mislead anyone else. With respect, I consider, as best advised as I am at this stage, that Mr. Davies' written submission in the following terms - "If there has been any misapprehension, it is because Ancala has knowingly allowed the entire expert exercise to proceed on a false premise" - is a submission that is not made out.

7. Despite the fact there is no criticism, in my mind, to be made of the parties or of Travers Smith's clients, it still leaves the question of manageability. In very attractive oral submissions, Mr. Davies presses upon me that it is logistically impossible now to deal with this further material at trial with the assistance of experts, a submission that is set against Mr. Allen Q.C.'s informing me, for the experts on the claimant's side, that given continued effort and resource, this material is manageable.

8. On what I have heard and read, and bearing in mind the question of trial management to which I will come, I do not consider it impossible to deal with the material. The material has come in not just for updating purposes, Mr. Davies is right about that. But it is clearly, to my mind, material by way of response to the contribution that the experts have made so far rather than, for example, a unilateral attempt by the claimant to bring in some unprompted new case.

9. I consider that the just and feasible course to take is as follows. First of all, the material will be allowed into the case. That is the material in all three forms. Secondly, the experts should have the opportunity to augment their existing written treatment to take account of that further material. One aspect of that is touched on in their existing Joint Memorandum. I expect any augmentation to be undertaken with the utmost concision.

10. When one reaches the trial itself -- and this includes the written arguments that will open the trial as well as the course of trial itself -- the trial judge (at the moment scheduled to be me) will, I am confident, manage the trial in relation to this further material with the benefit of full appreciation of the circumstances, including the lateness in which that material has come in and including the fact that, broadly speaking, the material has come in in a responsive context rather than in the context of a fresh case.

11. The trial judge will have full regard to the particular challenge that the late material has presented to the parties. Frankly, they face challenges across the board in getting matters ready, but there is the particular challenge in relation to this material.

12. This will, in my assessment, mean that the judge is going to be able to continue to draw on the experts for the specific purpose that the parties were given permission to bring in an expert contribution, namely, that of explaining the modelling in the present case.

13. That is my overall conclusion. I welcome the benefit of timetabling suggestions to allow the experts to augment their contributions. This is a case where I would expect the experts to be meeting additionally at the trial so particular provision for that can now be made given that they have more to consider together and not just individually.

14. I conclude, as I began, by saying that the high order of consideration for me in reaching this decision is to strive to achieve a decision that is of maximum commercial value to all parties without compromising the importance of being fair to all parties in the opportunity to present their respective cases.

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