

Federal Court



Cour fédérale

Date: 20200117

**Dockets: T-1741-13
T-1569-15
T-1728-15
T-2088-15**

Citation: 2020 FC 68

Ottawa, Ontario, January 17, 2020

PRESENT: Mr. Justice James W. O'Reilly

Docket: T-1741-13

BETWEEN:

PACKERS PLUS ENERGY SERVICES INC.

**Plaintiff
(Defendant by Counterclaim)**

and

**ESSENTIAL ENERGY SERVICES LTD.
AND TRYTON TOOL SERVICES
LIMITED PARTNERSHIP**

**Defendants
(Plaintiffs by Counterclaim)**

Docket: T-1569-15

BETWEEN:

**RAPID COMPLETIONS LLC AND
PACKERS PLUS ENERGY SERVICES INC.**

Plaintiffs

and

BAKER HUGHES CANADA COMPANY

Defendants
Docket: T-1728-15

BETWEEN:

**PACKERS PLUS ENERGY SERVICES INC.
AND RAPID COMPLETIONS LLC**

Plaintiffs
(Defendants by Counterclaim)

and

**WEATHERFORD INTERNATIONAL PLC.
WEATHERFORD CANADA LTD.,
WEATHERFORD CANADA PARTNERSHIP,
AND HARVEST OPERATIONS CORP.**

Defendants
(Plaintiffs by Counterclaim)

Docket: T-2088-15

BETWEEN:

**PACKERS PLUS ENERGY SERVICES INC.
AND RAPID COMPLETIONS LLC**

Plaintiffs
(Defendants by Counterclaim)

and

**RESOURCE WELL COMPLETION
TECHNOLOGIES INC. AND
RESOURCE COMPLETION SYSTEMS INC.**

Defendants
(Plaintiffs by Counterclaim)

ORDER

In a consolidated trial that took place over the course of 19 days in 2017, the defendants were successful in showing that the plaintiffs' patent was invalid on grounds of anticipation and obviousness; the plaintiffs were unsuccessful in proving infringement (2017 FC 1111). The decision was upheld on appeal (2019 FCA 96) and leave to appeal to the Supreme Court of Canada was denied (2019/12/19).

The defendants now bring this motion for increased costs against the plaintiffs. Each defendant seeks an individual assessment of its costs, preferably a lump-sum representing 50% of their taxable legal fees, plus disbursements. The plaintiffs submit that the defendants' costs should be calculated collectively under the Court's Tariff or, at most, set at 25% of what the plaintiffs consider to be reasonable fees.

While the various defendants made separate submissions to me, the lead was taken by counsel for the defendant Resource Well Completion Technologies and Resource Completion Systems (Resource). In my ruling, I rely mainly on Resource's position and refer to the other defendants' representations as appropriate.

In sum, I am persuaded that the defendants should receive individual lump-sum cost awards calculated at 40% of fees, plus reasonable disbursements.

I. Issue One – Should the defendants be granted individual cost awards?

Packers argues that the defendants should be awarded a collective amount for costs in light of the shared interests among them and the efficiencies that resulted from a consolidated trial. In particular, the proceedings were merged to allow for the most expeditious and cost-

effective means of addressing the issues on their merits, without prejudicing Packers. Packers maintains that consolidation should have resulted in a minimal increase over and above the costs incurred in a single action.

Packers also contends that the defendants' interests were aligned – there was no risk of conflict among them, so they could all have been represented by the same counsel. In those circumstances, says Packers, the presumption is that there should only be one set of costs and, in addition, it would be improper to compensate for overlapping costs, where counsel for one defendant worked on an issue for which co-counsel was actually taking the lead.

I disagree with Packers. The defendants are entitled to separate cost awards.

The consolidation order simply achieved a merger of the validity issues and associated costs in order that they could be litigated together. It treated the defendants as a single party only for purposes of limiting the number of experts that could be called. While Packers initially requested that a single set of costs be awarded, there was no provision to that effect in the order.

It was Packers' choice to pursue each of the defendants separately. It could have limited its costs exposure by proceeding only against the first defendant, Essential Energy Services Ltd, and pursuing the other defendants later if successful. Its approach complicated the proceedings and increased the costs incurred.

In addition, while the defendants had a common interest as against Packers, they are otherwise competitors. It was not axiomatic that they would all take the same position on each of the issues. They were entitled to be represented separately. At the same time, defendants' counsel made considerable efforts to divide their labours and reduce duplication throughout the

trial – in examinations-in-chief, cross-examinations, representations on motions, and oral and written submissions.

Therefore, the defendants are entitled to individual cost awards.

II. Issue Two – Are the defendants entitled to lump-sum costs?

Packers submits that the defendants' costs should be calculated under the Tariff (at the upper end of Column IV). That would result in a collective amount of \$375,795 for all defendants. In the alternative, Packers suggests a lump sum based on 25% of a reasonable amount of fees. Packers submits that a reasonable amount would be 40% of taxable fees, 25% of which would be compensable. This approach would result in a collective amount of roughly \$1,003,000 for all defendants. Packers also maintains that the defendants' disbursements are unreasonable and asks that they be trimmed by varying amounts for each defendant.

I have already concluded that a collective amount of costs is not appropriate. I also do not agree with Packers that costs should be assessed according to the Tariff. A lump sum is more appropriate given the complex nature of this case.

Further, I disagree with the way Packers proposes to calculate the lump sum. Its approach would effect an arbitrary discount of the defendants' fees and yield a reimbursement of only 10% of the defendants' taxable costs. I find that a ratio of 40% is more appropriate given that the defendants were wholly successful, they have not sought a disproportionate amount of fees, and their counsel worked diligently and cooperatively to make efficient use of the time allotted for trial with a minimum of duplication.

Baker Hughes submits that its fees should be set at approximately 50% of its reasonable fees (the average charged by Weatherford and Resource), plus disbursements. As with the other defendants, Baker Hughes' costs should be set at 40% of reasonable fees.

Weatherford and Harvest also seek 50% of their reasonable fees, plus disbursements. I would apply the same percentage of 40% as granted to the other defendants. The same is true for Essential.

The defendants agree that certain amounts claimed as business class travel and taxes should not have been included in their disbursements; the amount of claimed disbursements should be adjusted accordingly.

I am not persuaded, however, that the claimed amounts should be otherwise discounted. None of the disbursements are excessive; they are fully supported by the evidence tendered on this motion.

III. Conclusion and Disposition

The defendants are entitled to individual cost awards calculated at 40% of their taxable costs, plus disbursements, as adjusted according to these reasons.

ORDER IN T-1741-13; T-1569-15; T-1728-15 and T-2088-15

THIS COURTS ORDERS that the plaintiffs reimburse each of the defendants for 40% of their taxable costs, plus disbursements, as adjusted according to these reasons.

“James W. O’Reilly”

Judge