

# Court of King's Bench of Alberta

**Citation: Geophysical Service Incorporated v Edison SPA, 2024 ABKB 27**

**Date:** 20240115  
**Docket:** 1301 09664  
**Registry:** Calgary

Between:

**Geophysical Service Incorporated**

Applicant

- and -

**Edison S.P.A. and Edison International S.P.A.**

Respondents

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## Reasons for Decision of the Honourable Justice K.M. Horner

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[1] The Applicant, Geophysical Services Inc (“GSI”), is a company that conducts offshore seismic surveys. GSI’s seismic data and analyses are licensed, for a fee, to third parties to assist in resource exploration.

[2] The Respondents are Edison S.p.A and Edison International S.p.A (collectively “Edison”). Edison is a large, international company involved in energy exploration and production.

[3] In November, 2004, GSI licensed seismic materials to Falkland Oil and Gas Ltd. (“FOGL”) via a written license agreement. In April, 2012, GSI licensed certain seismic materials to Edison as part of a written general licensing agreement (the “Edison Agreement”). Around the same time, Edison became a member of an exploration group with Noble Energy Inc. and Noble Energy

Falklands Ltd. (collectively “Noble”) and FOGL. In October, 2012, GSI licensed seismic materials to Nobel, again as part of a written licensing agreement.

[4] GSI alleges that Edison obtained and is still in possession of GSI seismic materials which Edison has not licensed from GSI as required. GSI’s position is that Edison received the materials in question from FOGL and/or Noble in the process of becoming a member of the exploration group or while a member of the exploration group. Edison denies the allegations.

[5] GSI’s pleadings raise a host of issues related to this central allegation. Three categories of claims are relevant to this application:

1. Breach of contract: GSI claims that Edison breached the Edison Agreement by:
  - a. Joining the exploration group without entering into a licensing agreement with GSI about the use of GSI materials licensed by FOGL and/or Noble.
  - b. Obtaining unlicensed GSI seismic materials from FOGL and/or Noble without paying GSI the fees required by the Edison Agreement.
2. Contractual interference and negligence: GSI claims Edison is liable for inducing or persuading FOGL and/or Noble to breach the terms of their respective licensing agreements with GSI by:
  - a. Disclosing GSI seismic materials to Edison without complying with the relevant confidentiality clauses.
  - b. Improperly giving Edison access to GSI seismic materials and/or allowing Edison to take, retain, and/or manipulate GSI seismic materials, before and during Edison’s time as a member of the exploration group.
3. Intellectual property infringement: GSI claims Edison breached Edison’s obligations at law and/or infringed on GSI’s intellectual property by:
  - a. Acquiring and using unlicensed GSI seismic materials.
  - b. Previously or currently possessing unlicensed GSI seismic materials for the purpose of selling, licensing, and/or copying and distributing those materials.
  - c. Knowingly exploiting GSI’s confidential and proprietary information to the detriment of GSI and the benefit of Edison.

[6] In this Application, GSI asks this Court to compel Edison to answer certain questions and undertakings to which Edison has objected. GSI questioned Edison’s corporate representative, Mr. Francesco Federici, for three days in late 2020. During questioning, GSI requested several undertakings, and Edison objected to and declined to answer several of GSI’s questions. Edison served its Response to Undertakings to GSI on January 10, 2022.

[7] GSI submits that many of Edison's objections to questions and undertakings are improper and, furthermore, that many of Edison's responses to undertakings are inadequate. Edison submits that GSI's questions and undertakings are not relevant and material to the claims being advanced, and therefore Edison has no obligation to disclose the requested information.

### **How relevancy and materiality are determined**

[8] Information disclosure rules are intended to encourage early disclosure of facts and records so that both the parties and the court have the evidence needed to expeditiously resolve the dispute: r 5.1(1). Litigants are required to answer questions that are both relevant and material, for which no valid objection has been raised: r 5.25(1) and (4). Relevancy and materiality are defined at r 5.2(1):

#### **5.2 When something is relevant and material**

**5.2(1)** For the purposes of this Part, a question, record or information is relevant and material only if the answer to the question, or the record or information, could reasonably be expected

- (a) to significantly help determine one or more of the issues raised in the pleadings, or
- (b) to ascertain evidence that could reasonably be expected to significantly help determine one or more of the issues raised in the pleadings.

[9] Relevancy is primarily determined by the pleadings: *Dow Chemical Canada Inc v Nova Chemicals Corp*, 2014 ABCA 244 at para 17 [*Dow*] citing *Collacutt (Next Friend of) v Briggs Bros Student Transportation Ltd*, 2009 ABCA 17 at para 10; *Weatherill Estate v Weatherill*, 2003 ABQB 69 at paras 16-17 [*Weatherill*]; and *Canadian Natural Resources Ltd v ShawCor Ltd*, 2013 ABQB 230 at para 18. The pleadings determine the issues, and relevance must be determined in relation to the issues: *Weatherill* at para 16. Courts must look at all the pleadings when determining whether a particular piece of information is relevant: *Patrick Burns Estate Memorial Trust (Trustee of) v P Burns Resources Ltd*, 2015 ABQB 459 at para 27 [*Burns*] citing *Hepworth v Canadian Equestrian Foundation*, 2000 ABCA 327 at para 7 and *Stone Sapphire Ltd v Transglobal Communications Group Inc*, 2007 ABQB 238.

[10] Materiality is determined by whether the information in question can significantly help to prove a fact in issue, either directly or indirectly: *Dow* at para 17. There is no fixed standard of what is "material", so an element of judgment is required to determine whether a particular piece of information is material: *Dow* at para 19. The less amenable a fact is to direct proof, the wider the circle of materiality: *Weatherill* at para 16.

[11] Edison submits that r. 5.25 only compels disclosure of primary evidence (facts directly in issue) or secondary evidence (facts from which the existence of primary evidence may be inferred), and, therefore, the rule does not compel disclosure of tertiary evidence (facts that may lead to secondary evidence). On this point, Edison relies on the Court of Appeal's decision in *NAC Constructors Ltd v Alberta (Capital Region Wastewater Commission)*, 2006 ABCA 246 at para 12. However, the Court of Appeal has more recently described this three-part analytic scheme as

“not helpful” because (1) the distinctions between the three types are “not satisfactorily delineated” in case law and (2) the scheme “does not accommodate proving facts using inferences and circumstantial evidence”: *Kaddoura v Hanson*, 2015 ABCA 154 at para 15 [*Kaddoura*]; see also *Weatherill* at para 18. In short, a fact being tertiary evidence does not, by itself, render the fact immaterial or irrelevant under r 5.25.

[12] The disclosure rules are intended to prevent abusive, vexatious, overly burdensome, and/or disproportionately expensive disclosures, and to limit the ability of a party to engage in an overlong discovery process that delays the resolution of the underlying dispute: r 5.3(1); *Dow* at para 19. Disclosure is not required “just because some remote and unlikely line of analysis can be advanced”, and lines of discovery that are “unrealistic, speculative, or without an air of reality” can be rejected: *Dow* at paras 19 and 21.

[13] A party that seeks to compel disclosure must therefore show some reason why the fact at issue could reasonably be expected to help determine one or more issues. This burden has been described in several ways:

- “... the [party] need only show a plausible line of argument.”: *Kaddoura* at para 14.
- “... some underlying foundation on which [the party] is basing its allegations ...”: *Tirecraft Group Inc (Receiver of) v High Park Holdings ULC*, 2010 ABQB 653 at para 26 [*Tirecraft*].
- “Some evidence is required. ... There must be some underlying factual foundation...”: *Burns* at para 28.
- “... if counsel can disclose a rational strategy in which the disputed document plays a material part, that should be sufficient”: *Weatherill* at para 18.

[14] The burden is not intended to be onerous. At the production stage of litigation, the court should not measure the parties’ proposed line of argument “too finely”: *Dow* at para 21 citing *Weatherill* at para 16. The rules are intended to prevent abusive and/or excessive discovery processes, not to cut off legitimate lines of inquiry: *Weatherill* at para 16. The party seeking disclosure does not need to prove conclusively that the information will be of any assistance to them: *Kaddoura* at para 14.

## Decision

[15] The issue before the Court is whether each of the undertakings or questions asked by GSI is relevant and material such that Edison should be compelled to respond.

[16] GSI attached two appendices to its Brief: Appendix A – Undertakings from Questioning and Appendix B – Objections from Questionings. These appendices set out each undertaking or question asked by GSI, Edison’s response, and GSI’s initial submission on relevance and materiality to the issues. In its Reply Brief, GSI provided updated appendices to include columns identifying Edison’s responding submission and GSI’s reply submission. For the purposes of streamlining the Court’s decision, these Appendices are reproduced and attached to this decision, with an additional column titled “Holding of the Court”. Based on the legal principles outlined

above, the Court's decision and reasons with respect to each Undertaking and Question is explained within this column.

**Costs**

[17] Given the parties' mixed success, each shall bear their own costs, save for a cost sanction in the amount of \$2,500 against GSI for exceeding the page limit of their reply submissions.

Heard by way of desk application submitted in 2022.

**Dated** at the City of Calgary, Alberta this 15<sup>th</sup> day of January, 2024.

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**K.M. Horner**  
**J.C.K.B.A.**

**Appearances:**

Matti Lemmens  
for the Applicant

Gordon Tarnowsky, Q.C.  
Rachel Howie  
for the Respondent

## Appendix A – Undertakings from Questioning

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 4 - To advise who the officers of Edison S.p.A. and Edison International S.p.A. were from 2011 to 2018, or at least the end of the Falklands project - TAKEN UNDER ADVISEMENT</p>	<p><b>All Issues:</b> the Response to Undertaking No. 4 would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because it would provide the identity of the officers at Edison who were making corporate decisions at the time Edison was involved in the Exploration Group, including discussions to join it. During the Questioning, Mr. Federici stated that he had little personal involvement in the events at issue in this Action. As such, GSI may have to question other employees of Edison who have first- hand knowledge of the events at issue in this Action. GSI is entitled to ask questions to identify other potential witnesses from Edison.</p>	<p>The identity of the officers of Edison S.p.A. and Edison International is not relevant and material to the issues or facts pled in the Amended Statement of Claim. Contrary to what is alleged by GSI there is no matter at issue in the pleadings with respect to who was making corporate decisions for the Defendants or with Edison’s own internal decisions to join the alleged “Exploration Group”. GSI has adduced no evidence that supports the notion that a response would in some way “be expected to significantly help determine one or more of the issues raised in the pleadings.” The Plaintiff’s argument that a response would reveal the identity of “other employees” with first-hand knowledge has no connection to this exact Undertaking (it is a different question entirely) and also lacks any evidentiary basis.</p>	<p>The Response to Undertaking No. 4 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, there is ample evidentiary foundation for this Undertaking, as set out in GSI’s Reply Brief of Law (the “GSI Reply Brief”). There is also a direct connection between identifying witnesses and asking who the officers of Edison were at the relevant times, as the information requested would show: (a) that Mr. Federici is not one of those officers; and (b) the identity of witnesses who actually have firsthand knowledge of the events at issue in this Action.</p>	<p>Undertaking No. 4, as currently written, is too broad. However, GSI’s purpose for requesting this undertaking—to identify potential witnesses for further questioning—is legitimate. As such, GSI is permitted to rephrase the undertaking as follows: “Which officers at Edison were involved in the Falklands project?” Edison is directed to provide an answer.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 6 -To provide and produce all of the production licences that Edison had an interest in in the Falkland Islands offshore areas - TAKEN UNDER ADVISEMENT</p>	<p><b>All Issues:</b> the Response to Undertaking No. 4 would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because it would identify the geographic areas in the offshore of the Falkland Islands that Edison would have been interested in acquiring or using GSI seismic materials for. The GSI seismic materials at issue in this Action relate to geographic areas in the offshore of the Falkland Islands. If Edison had interests in those areas, then it would have had a motive to acquire and use GSI seismic materials from FOGL and/or Noble, which GSI alleges it did and Edison generally denies. It also assists with identifying the partners and geographic areas that Edison was part of an Exploration Group in, which dictates whether GSI seismic materials should have been licensed by Edison.</p>	<p>There is no relevant and material factual issue that requires copies of the actual licences in which Edison International had an interest offshore the Falkland Islands. This request is also overly broad. Moreover, the actual production licences cannot possibly provide any primary or secondary evidence relating to the claims against the Defendants and there is no evidential basis stating otherwise. In response to GSI's allegation this would identify the partners to the alleged Exploration Group – Edison states in the Amended Statement of Defence who was involved in the Joint Venture to which it was a party when, and such was also determined by this Court proceedings to which GSI was a party. There is no issue of what seismic data may or may not be involved because GSI has full knowledge of what it licensed to FOGL and to Noble.</p>	<p>The Response to Undertaking No. 6 is relevant and material for the reasons set out in GSI's initial submissions. In reply to Edison's responding submissions, there is ample evidentiary foundation for this Undertaking, as set out in the GSI Reply Brief. The Undertaking is also not overly broad. The licenses requested will show what interests Edison had in the Falkland Islands offshore areas and what geographic areas those interests were in, which is relevant for ascertaining what seismic data was used for those licenses. Edison's Amended Statement of Defence generally describes those areas, but the licenses requested in Undertaking No. 6 would clarify where exactly they were located so that the areas of GSI's seismic data could be matched up to the license coordinates. Further, even if GSI has information, that does not absolve or change the obligation of Edison to produce its information.</p>	<p>I agree with GSI's submissions, and I direct that Edison respond to Undertaking No. 6.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 13 -To produce all meeting materials that were presented during any TCM, OCM, or workshop for the joint venture related to the Falklands project for the duration of the project - TAKEN UNDER ADVISEMENT</p>	<p><b>All Issues:</b> the Response to Undertaking No. 4 would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because the information requested would identify whether the Exploration Group was making use of the GSI seismic materials at issue in this Action and whether Edison was privy to those seismic materials. During the Questioning, Mr. Federici stated that Edison attended all of the meetings for the Exploration Group, called OCMs, TCMs and workshops, respectively, at which meetings detailed information regarding the operations of the Joint Venture would be presented, normally by way of PowerPoint. GSI is entitled to confirm if those materials reference or make use of the GSI seismic materials at issue in this Action, which materials Edison should not have been privy to or benefitting from.</p>	<p>Edison adopts and repeats its submissions in response to this Undertaking at paragraphs 20-23, above.</p>	<p>The Response to Undertaking No. 13 is relevant and material for the reasons set out in GSI’s initial submissions. In reply to Edison’s responding submissions, which are set out in the Edison Brief, the Response to Undertaking No. 13 actually does relate to issues raised in the pleadings, as set out in GSI’s initial submissions. At the very least, Edison should be required to produce the requested materials that reference seismic data or GSI, which materials are obviously relevant and material to the issues in this Action.</p>	<p>Undertaking No. 13, as currently stated, is too broad. Edison does not have an obligation to produce meeting materials during <i>any</i> TCM, OCM, or workshop for the joint venture where GSI is not discussed. However, if there are meeting materials that reference both GSI and seismic data, this would be relevant and material.</p> <p>Therefore, GSI’s Undertaking No. 13 is granted in part; Edison shall produce any meeting materials that were presented during any TCM, OCM, or workshop for the joint venture related to the Falklands project which reference GSI and seismic data.</p>



<b>UNDERTAKING</b>	<b>GSI SUBMISSIONS ON RELEVANCE &amp; MATERIALITY TO ISSUES</b>	<b>EDISON RESPONDING SUBMISSIONS</b>	<b>GSI REPLY SUBMISSIONS</b>	<b>HOLDING OF THE COURT</b>
<p>UNDERTAKING NO. 14 -To produce all meeting minutes related to all OCM, TCM, and workshops for the Falklands project for the duration of the project – TAKEN UNDER ADVISEMENT</p>	<p>See GSI submissions regarding Undertaking No. 13. During the Questioning, Mr. Federici stated that minutes were kept of the meetings, which minutes would significantly help determine, or ascertain evidence that would significantly help determine, whether the GSI seismic materials at issue in this Action were being referred to during those meetings.</p>	<p>Edison adopts and repeats its submissions in response to the Undertaking above.</p>	<p>See GSI reply submissions regarding Undertaking No. 13.</p>	<p>For the same reasons outlined for Undertaking No. 13, GSI’s Undertaking No 14 is granted in part, being that, to the extent that it has not already been produced, Edison shall produce meeting minutes related to OCM, TCM and workshops for the Falklands project for the duration of the project where GSI seismic data is referenced.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 15 -To advise of the name of the seismic contractor that created the 3D seismic data in the Falklands area – TAKEN UNDER ADVISEMENT</p>	<p><b><u>The Intellectual Property and Tort Issues:</u></b> the Response to Undertaking No. 16 would significantly help determine, or ascertain evidence that would significantly help determine, the Intellectual Property and Tort Issues because it would provide the identity of the contractor who created the 3D seismic data for the Exploration Group. During the Questioning, Mr. Federici stated that there was a contractor hired to acquire 3D seismic data for the Exploration Group, but that he did not know who the contractor was or what instructions were provided to the contractor. As such, GSI will have to question the contractor to determine whether the contractor used the GSI seismic data at issue in this Action to create the 3D survey. If GSI seismic data was used to create that 3D survey, then Edison was privy to derivatives of the GSI seismic materials at issue in this Action and/or benefitted from those derivatives, infringing on GSI’s intellectual property rights in the seismic materials.</p>	<p>The name of the seismic contractor is neither relevant nor material to the issues in the pleadings. Similar to the analysis at Undertaking No. 13, paragraph 20, above, any response to this Undertaking would be of, at best, tertiary relevance and is not compellable. In specific response to GSI’s submissions, that this specific Undertaking might in some way reveal if seismic data at issue was given to the Contractor and with respect to GSI’s submission that Mr. Federici did not know what instructions were provided, that is, respectfully, a separate inquiry entirely. In light of such submission and the transcript excerpts provided by the Plaintiff, it is necessary in the interest of fairness to include additional portions of Mr. Federici’s evidence to clarify this point.</p>	<p>The Response to Undertaking No. 15 is relevant and material for the reasons set out in GSI’s initial submissions. In reply to Edison’s responding submissions, Edison’s unilateral submission of transcript excerpts without leave of the Court is improper, as set out in paragraphs 16-19 of the GSI Reply Brief. GSI requires the information requested in Undertaking No. 15 to determine whether to compel third party production from the seismic contractor that created the 3D seismic data in the Falklands area.</p>	<p>GSI’s application to compel an answer to Undertaking No. 15 is granted in part. The contractor’s knowledge could be relevant and material. GSI is therefore permitted to rephrase the question as “Was the contractor who created the 3D seismic data given GSI data or directed to use GSI data?” Edison is directed to answer.</p> <p>I further note that GSI takes issue with Edison’s production of transcript excerpts and states it is improper to do so without leave of the Court. I disagree. It is not inappropriate for a party to reproduce parts of a transcript for the purpose of clarifying information and providing a foundation for its counter-submission. Doing so helps the court to properly understand the context in which the question and the objection arose. This is distinct from adding new information.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 17 -To produce the corporate incorporation records for Edison S.p.A. and Edison International S.p.A. – TAKEN UNDER ADVISEMENT</p>	<p><b>All Issues:</b> the Response to Undertaking No. 17 would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because the information requested would provide details about the Edison entities involved in this Action, including their corporate structure, shareholders, names of their officers and any related subsidiaries. The corporate structure of the Edison entities in this Action is solely within the knowledge of Edison. GSI is entitled to inquire about that structure to identify witnesses and whether any additional Edison entities were potentially involved in the facts underlying this Action or privy to the GSI seismic materials at issue.</p>	<p>The corporate incorporation records of the Defendants are neither relevant nor material to the issues or facts pleaded in the Amended Statement of Claim. GSI’s submission that this would provide information on “corporate structure, shareholders, names of ... officers and related subsidiaries” lacks any temporal or other relevant connection to the matters at issue. GSI was entitled to ask questions on who was involved with the matters at issue in this action if it felt the need to explore potential identification of other witnesses. It has not provided any evidential basis for how a response to this Undertaking would do so.</p>	<p>The Response to Undertaking No. 17 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, there is ample evidentiary foundation for this Undertaking. Edison’s submission that GSI should have asked questions to explore potential identification of witnesses is improper, as set out in paragraph 13 of the GSI Reply Brief.</p> <p>GSI is entitled to know the corporate structure of the entities that have its seismic data and know who its beneficial owners are, as they may have been joint venture partners with other entities.</p>	<p>I dismiss GSI’s application to compel the documents requested in Undertaking No. 17. This request is overly broad. The incorporation dates are irrelevant to the issues in the pleadings. I agree with Edison that the request lacks any temporal connection to the matters at issue.</p> <p>Based on GSI’s submissions, I understand that they wish to identify potential witnesses who may have relevant and material information. On that basis, GSI is permitted to rephrase this undertaking, and Edison shall provide, the names of the Edison employees and/or officers who were involved with the joint venture Falklands project.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 18 -To provide Edison's accounting records indicating a value for GSI Falklands seismic data – TAKEN UNDER ADVISEMENT</p>	<p><b>All Issues:</b> the Response to Undertaking No. 17 would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because the requested accounting records would show the GSI seismic materials that Edison had in its possession and the amount of value Edison thought it was deriving from those GSI seismic materials. The Response to Undertaking No. 18 is deficient because it does not provide the requested accounting records, instead describing information without any detail or accounting numbers.</p>	<p>The value that Edison may or may not have given to any seismic data in its possession is not relevant or material to the facts or issues in dispute as indicated by Edison’s response (“Refused; not materially relevant to this Action. Without prejudice to that position, the amounts invoiced by GSI under the invoices at production number EDI0010 and EDI0011 were accounted for in the year 2012 as exploration costs. That exploration cost was entirely capitalized and accounted for as intangible fixed assets which, as such, were immediately amortized”). In response to GSI’s submissions, there is no evidential basis that this Undertaking would show what seismic materials at issue may or may not have been in Edison’s possession nor that this would reveal any “amount of value.”</p>	<p>The Response to Undertaking No. 18 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, there is ample evidentiary foundation for this Undertaking. Edison’s submission to the contrary would require GSI to prove the contents of the very accounting records that GSI seeks to compel. This nonsensical argument misinterprets the applicable law and is improper, as set out in paragraphs 9-13 of the GSI Reply Brief.</p> <p>This line of inquiry is also relevant to the damages analysis in intellectual property case law.</p>	<p>I dismiss GSI’s application with respect to Undertaking No 18 as the information sought is irrelevant to the issues raised by the pleadings.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 19 -To inquire with Alessandro Agostini as to how the discussions or negotiations between Edison and FOGL commenced, whether that was Edison approaching FOGL or FOGL approaching Edison and whether any brochure or presentation was made to do so – TAKEN UNDER ADVISEMENT</p>	<p><b><u>The Contractual Interference and Negligence Issues:</u></b> the Response to Undertaking No. 19 would significantly help determine, or ascertain evidence that would significantly help determine, the Contractual Interference and Negligence Issues because it would indicate how Edison’s discussions to enter the Exploration Group commenced and whether FOGL shared any GSI seismic data with Edison through a brochure or presentation at that time. It is alleged that there was interference, through inducement or otherwise. During the Questioning, Mr. Federici stated that Alessandro Agostini would have that information. The nature and content of Edison’s discussions with FOGL to join the Exploration Group are directly at issue in this Action.</p>	<p>Whether Edison approached FOGL or FOGL approached Edison, and whether any brochure or presentation writ large was made to do so is irrelevant and immaterial. Any general commencement of discussions and materials that may have been exchanged falls well outside of the scope of the issues pleaded in the Amended Statement of Claim, in particular, the issue of what was or was not licenced and is improperly overbroad. This Court has also determined that FOGL did not breach any agreement it had with GSI when it was discussing joint venture opportunities with prospective participants, including with respect to any confidentiality obligations held by FOGL. Therefore there can be no inducement or interference by Edison. There is no evidential foundation to show otherwise.</p>	<p>The Response to Undertaking No. 18 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, Edison’s assertions that the Response to Undertaking No. 18 is not relevant and material are based on its own mischaracterization of the scope of the pleadings, as set out in paragraphs 7-8 of the GSI Reply Brief. Moreover, the case that Edison cites was not made as between the current parties and, as such, is not res judicata in this Action. In any event, contrary to Edison’s submission, the Court in that case actually found that FOGL did breach its license agreement, but that GSI did not suffer any damages as a result.<sup>36</sup> That finding provides further foundation for the Undertaking, to the extent any is lacking, which is not the case.</p>	<p>Given the contractual interference and negligence issues in the pleadings, in my view, the information that GSI seeks in Undertaking No. 19 is relevant and material. GSI is entitled to understand how the joint venture discussion arose, when the initial discussions took place, who was involved and the nature of the discussions. I therefore grant GSI’s application with respect to Undertaking No. 19 and direct Edison to answer.</p> <p>With respect to Edison’s reliance on other decisions involving GSI and FOGL, those decisions do not bind this Court on this matter. While the parties may be similar, those decisions are not relevant to the considerations before the court in the within application.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 20 -To produce any presentation material between Edison and FOGL for the commencement of discussions to enter into a joint venture arrangement – TAKEN UNDER ADVISEMENT</p>	<p>See GSI submissions regarding Undertaking No. 19.</p>	<p>Edison adopts and repeats its submissions in response to the Undertaking above.</p>	<p>See GSI reply submissions regarding Undertaking No. 19.</p>	<p>I grant GSI’s application with respect to Undertaking No. 20, and direct Edison to respond, for the same reasons outlined at Undertaking No. 19. GSI is entitled to understand the context of the initial discussions that took place between Edison and FOGL about Edison joining the joint venture arrangement.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 21 -To advise of who at Edison was involved in due diligence with respect to the FOGL joint venture – TAKEN UNDER ADVISEMENT</p>	<p><b><u>The Contractual Interference and Negligence Issues:</u></b> the Response to Undertaking No. 21 would significantly help determine, or ascertain evidence that would significantly help determine, the Contractual Interference and Negligence Issues because it would provide the identity of the individual or individuals at Edison who did due diligence prior to entering into the Exploration Group. During the Questioning, Mr. Federici stated that he did not know which individuals were involved in due diligence, what materials they reviewed or what the process was. The nature and content of the due diligence that Edison performed before entering the Exploration Group is directly at issue in the Amended Statement of Claim. GSI needs to know the name of the individual at Edison involved in due diligence so that GSI can question him or her.</p>	<p>Edison adopts and repeats its submissions in response to the Undertaking above.</p>	<p>The Response to Undertaking No. 21 is relevant and material for the reasons set out in GSI’s initial submissions. In reply to Edison’s responding submissions, see GSI reply submissions regarding Undertaking Nos. 19 and 20.</p>	<p>For the same reasons outlined with respect to Undertakings No. 19 and 20, I grant GSI’s application and compel Edison to respond to Undertaking No 21.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 22 -To advise if a data room was set up for that due diligence – TAKEN UNDER ADVISEMENT</p>	<p>See GSI submissions regarding Undertaking No. 21. The Response to Undertaking No. 22 would significantly help determine, or ascertain evidence that would significantly help determine, the Contractual Interference and Negligence Issues because it would provide evidence about whether FOGL and/or Noble complied with the terms of the FOGL Agreement and/or the Noble Agreement during Edison’s due diligence for the Exploration Group. There are certain terms of confidentiality that must be complied with. The nature and content of the due diligence Edison performed before entering the Exploration Group is directly at issue in the Amended Statement of Claim.</p>	<p>Edison adopts and repeats its submissions in response to the Undertaking above. In addition, the record is clear that Noble did not enter the Joint Venture until months after Edison International became a member.</p>	<p>See GSI reply submissions regarding Undertaking No. 21.</p>	<p>For the same reasons outlined with respect to Undertaking No 19, 20 and 21, I grant GSI’s application and compel Edison to respond to Undertaking No 22.</p>



<b>UNDERTAKING</b>	<b>GSI SUBMISSIONS ON RELEVANCE &amp; MATERIALITY TO ISSUES</b>	<b>EDISON RESPONDING SUBMISSIONS</b>	<b>GSI REPLY SUBMISSIONS</b>	<b>HOLDING OF THE COURT</b>
<p>UNDERTAKING NO. 24 -To produce any confidentiality agreement that Edison entered into with FOGL to conduct that due diligence – TAKEN UNDER ADVISEMENT</p>	<p>See GSI submissions regarding Undertaking Nos. 21 and 22. Whether the requested confidentiality agreements were entered into is directly at issue in the Amended Statement of Claim.</p>	<p>Edison adopts and repeats its submissions in response to Undertaking No. 19, above, and in particular the findings of this Court that FOGL did not breach any of its confidentiality or other obligations to GSI.</p>	<p>The Response to Undertaking No. 24 is relevant and material for the reasons set out in GSI’s initial submissions. In reply to Edison’s responding submissions, the case that Edison cites was not made as between the current parties and, as such, is not res judicata in this Action. In any event, the Court in that case actually found that FOGL did breach its confidentiality obligations to GSI by not using the prescribed form of confidentiality agreement.</p>	<p>I dismiss GSI’s application with respect to Undertaking No 24 as the information sought is irrelevant to the issues raised by the pleadings.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 25 -To produce any prospective joint venture participant agreement that was signed by Edison in the course of that due diligence or those discussions with FOGL – TAKEN UNDER ADVISEMENT</p>	<p>See GSI submissions regarding Undertaking Nos. 21, 22 and 24. The requested record could provide details about the terms of such prospective joint venture participant agreement(s), and the nature or contents of the due diligence performed by Edison in anticipation of joining the Exploration Group, which could be in breach of the terms of other GSI licenses or Edison’s license.</p>	<p>As set out by Edison in its response to this Undertaking (“Refused; not materially relevant to this Action. See the response to Undertaking No. 5 for any relevant agreements executed by Edison related to the Falkland Islands joint venture”) this Undertaking is seeking irrelevant and immaterial information. Edison has already produced all relevant agreements that it has executed with respect to the Joint Venture. Edison adopts and repeats its submissions in response to Undertaking No. 19, above as this request is irrelevant, immaterial, improperly overbroad and lacks any evidential foundation to the matters at issue.</p>	<p>In reply to Edison’s responding submissions, Edison’s response is slightly different than its initial Response to Undertaking No. 25. Edison’s initial Response to Undertaking No. 25 left open the question of whether there were any other agreements that Edison deemed irrelevant and therefore did not produce. As a result, GSI would be satisfied with an Amended Response to Undertaking No. 25 in accordance with Edison’s responding submissions.</p>	<p>I dismiss GSI’s application with respect to Undertaking No 25. The information sought in this undertaking is overly broad in that it seeks <i>any</i> prospective agreement. GSI has not demonstrated why prospective or draft agreements are relevant or material to the issues. Further, Edison has already produced all relevant agreements that it executed with respect to the joint venture.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 27 -To advise of how Edison S.p.A. employees are used for Edison International S.p.A. projects and, in particular, for the Falkland Islands project that Edison International S.p.A. entered into - TAKEN UNDER ADVISEMENT</p>	<p><b>All Issues:</b> the Response to Undertaking No. 27 would significantly help determine, or ascertain evidence that would significantly help determine, all the issues in this Action because it would provide information about the relationship between the two Edison entities involved in this Action and the structure of the relationship between those entities. The Response to Undertaking No. 27 does not provide the requested information in any detail. During the Questioning, Mr. Federici did not know the requested information and asked for it to be requested by undertaking. See also GSI submissions regarding Undertaking No. 17.</p>	<p>As set out in its response to this Undertaking (“Refused; not materially relevant to this Action. Without prejudice to that position, at all relevant times Edison S.p.A. employees provided services to Edison International S.p.A. under a Services Agreement”) it is neither relevant nor material. In specific response to GSI’s submissions, the structure and relationship between the two Defendants is a different question from how “employees are used”. There is no evidential basis to show that a response to this Undertaking is relevant and material. Edison repeats and adopts its submissions in response to Undertaking No. 17, above.</p>	<p>The Response to Undertaking No. 27 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, Edison’s reply is based on its mischaracterization of the scope of the pleadings, as set out in paragraphs 7-8 of the GSI Reply Brief.</p> <p>Moreover, Edison’s assertion that there is no “evidential basis” for Undertaking No. 27 is based on a misinterpretation of the applicable law, as set out in paragraphs 9-11 of the GSI Reply Brief. There is ample foundation for the Undertaking. GSI requires the information requested to understand how employees are used by the Edison entities, including whether they are employed by both or paid by both, in order to assess which employees used the GSI seismic data at issue and on behalf of which Edison entity.</p>	<p>Undertaking No 27, as currently phrased, is dismissed. However, GSI is entitled to understand the structure and relationship between the Edison entities. Therefore, GSI is permitted to rephrase this Undertaking, and Edison is compelled to provide a response, as follows: To provide an organization chart or other description of how the two Edison corporations arranged themselves to work together on the project.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 32 -To produce any response to the letter at GSI document 6003, if one exists - TAKEN UNDER ADVISEMENT</p>	<p><b>All Issues:</b> the Response to Undertaking No. 32 would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because the requested information would provide Edison’s information on several key issues in this Action and whether Edison made good faith efforts to address the issues GSI has raised in this Action, which is relevant to Edison’s Counterclaim. GSI document 6003 is a letter that counsel to GSI sent to counsel to Edison after the commencement of this Action and requested Edison’s information on several key issues in this Action. GSI simply wants confirmation from Edison whether a response to GSI document 6003 was ever provided and, if so, to produce it. GSI document 6003 is appended hereto at Appendix “C” for the Court’s reference.</p>	<p>As set out in its response to this Undertaking (“Refused; the sequence of letters exchanged between counsel were on a without prejudice settlement privilege basis”), the information sought is properly the subject of a legal privilege. Edison is not required to provide records that are privileged. In light of the basis on which they were exchanged, such are also not relevant and material to issues plead in the pleadings. Further, and in any event, if a response to the letter at GSI document 6003 exists, it would be in GSI’s counsel’s possession.</p>	<p>The Response to Undertaking No. 32 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, the fact of whether a letter was sent or not is not privileged. Moreover, GSI started this Action with different counsel and the letter requested in this Undertaking is not in the possession of GSI’s current counsel.</p> <p>The correspondence does not meet the test for settlement privilege and clearly requests the position of Edison on matters at issue in this litigation. Edison has counterclaimed in respect of this Action being abusive, and whether it responded to GSI’s attempt to narrow the issues in dispute between the parties is relevant to that assertion.</p>	<p>With respect to Undertaking No. 32, while the response letter, if it exists, would be privileged and Edison would therefore not be required to produce it, confirmation of whether a response was provided is not privileged.</p> <p>Therefore, I permit GSI to rephrase the undertaking to ask whether there was a response to the letter at GSI document 6003, and Edison shall advise whether there was a response. However, Edison is not required to produce the contents of any such response, if it exists.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 37 -To produce the map showing the area covered by the 3D acquisition program referred to in Edison document number 4 – TAKEN UNDER ADVISEMENT</p>	<p><b><u>The Intellectual Property and Tort Issues:</u></b> the Response to Undertaking No. 37 would significantly help determine, or ascertain evidence that would significantly help determine, the Intellectual Property and Tort Issues because the requested map would help identify whether the GSI seismic materials at issue in this Action were used to create the 3D survey for the benefit of the Exploration Group. That would likely be the case if the areas of the 3D survey overlap with the area covered by the GSI seismic materials at issue. See also GSI submissions regarding Undertaking No. 15.</p>	<p>The map showing the area covered by the 3D acquisition Program is neither relevant nor material to the issues in the pleadings. Similar to the analysis at Undertaking No. 13, paragraph 20, above, any response to this Undertaking would be of, at best, tertiary relevance and is not compellable. In specific response to GSI's submissions, that this specific Undertaking might in some way reveal if seismic data at issue was used to create the map, Edison repeats and adopts its response to Undertaking No. 15, above (specifically at footnote 54 therein). There is no evidential foundation to alter the irrelevant and immaterial nature of this Undertaking.</p>	<p>The Response to Undertaking No. 37 is relevant and material for the reasons set out in GSI's initial submissions. In reply to Edison's responding submissions, the admissions made in Edison's Amended Statement of Defence a complete foundation for Undertaking No. 37, as set out in paragraph 14(b) of the GSI Reply Brief. The record requested in Undertaking No. 37 would show whether there is an overlap with the areas covered by GSI seismic data, which would support the allegation that GSI seismic data was used to create the 3D data and create a derivative work.</p>	<p>I agree with GSI that the map showing the area covered by the 3D acquisition program would show whether there is an overlap with the areas covered by GSI seismic data. I find that this is relevant and material to the issues in this matter. I direct Edison to answer this undertaking.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 38 -To produce any of those notes, reports, or presentations given during the workshops, OCMs, or TCMs that relate to the acquisition of the 3D program - TAKEN UNDER ADVISEMENT</p>	<p><b><u>The Intellectual Property and Tort Issues:</u></b> the Response to Undertaking No. 38 would significantly help determine, or ascertain evidence that would significantly help determine, the Intellectual Property and Tort Issues because the requested records would indicate whether the GSI seismic materials at issue in this Action were used to create the 3D survey for the benefit of the Exploration Group. During the Questioning, Mr. Federici stated that he was not present for any of the meetings where the creation of the 3D survey was discussed. If GSI seismic data was used to create that 3D survey, then Edison was privy to derivatives of the GSI seismic materials at issue in this Action and/or benefitted from those derivatives, infringing on GSI's intellectual property rights in the seismic materials. See also GSI submissions regarding Undertaking Nos. 15 and 37.</p>	<p>Edison adopts and repeats its submissions in response to Undertaking Nos. 13, 14, 15 and 37, above.</p>	<p>The Response to Undertaking No. 38 is relevant and material for the reasons set out in GSI's initial submissions. In reply to Edison's responding submissions, see GSI reply to Undertaking Nos. 13, 14, 15 and 37. Undertaking No. 38 is narrower than Undertaking Nos. 13, 14 and 15, in that it only requests records related to the acquisition of the 3D program, which is relevant and material for the reasons set out in GSI's reply to Undertaking No. 37.</p>	<p>I dismiss GSI's application with respect to Undertaking No. 38 because the information sought is too broad and too remote from the issues in this matter and thus is irrelevant.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 40 -To provide any records indicating Edison's payment, in part, for the 3D acquisition program - TAKEN UNDER ADVISEMENT</p>	<p><b><u>The Intellectual Property and Tort Issues:</u></b> the Response to Undertaking No. 40 would significantly help determine, or ascertain evidence that would significantly help determine, the Intellectual Property and Tort Issues because the records requested would confirm whether Edison benefitted from or commissioned the 3D survey created for the benefit of the Joint Venture. See also GSI submissions regarding Undertaking Nos. 15, 37 and 39.</p>	<p>Edison adopts and repeats its submissions in response to the Undertaking above. In specific response to GSI's submissions, there is no evidential basis at all that Edison "commissioned the 3D survey" (the opposite, in fact, as is set out in response to Undertaking No. 15, above), nor that any "benefit" therefrom is relevant or material to the matters at issue.</p>	<p>The Response to Undertaking No. 40 is relevant and material for the reasons set out in GSI's initial submissions. In reply to Edison's responding submissions, see GSI replies to Undertaking Nos. 37 and 38. The information requested in Undertaking No. 40 would show whether Edison was directing the 3D program and therefore had access to GSI seismic data in directing that program if it covers the same geographic area.</p>	<p>I dismiss GSI's application with respect to Undertaking No. 40 because the information sought is too broad and too remote from the issues in this matter and thus is irrelevant.</p>

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
UNDERTAKING NO. 43 -To produce the reports that were presented to Mr. Bolis for the Falklands project internally by the Falklands project team members - TAKEN UNDER ADVISEMENT	<b>All Issues:</b> the Response to Undertaking No. 43 would significantly help determine, or ascertain evidence that would significantly help determine, all the issues in this Action because the requested records would indicate whether Edison was using the GSI seismic materials at issue in this Action during the course of the Exploration Group, or which GSI seismic materials it was using.	This Undertaking is irrelevant and immaterial to the matters at issue. Edison repeats and adopts its submissions in response to Undertaking No. 13, at paragraphs 20-22, above, in this regard as such reports writ large are not directly at issue in the pleadings. This request is overbroad and unduly burdensome; it cannot be “reasonably expected to significantly help determine one or more issues raised in the pleadings.” Even if Edison conducted this expansive inquiry, the result would not directly infer the existence of any primary or secondary matters of relevance. This request is one of tertiary relevance at best and therefore not compellable.	The Response to Undertaking No. 43 is relevant and material for the reasons set out in GSI’s initial submissions. In reply to Edison’s responding submissions, see GSI replies to Undertaking Nos. 13, 14 and 15. Undertaking No. 43 is not overbroad. At the very least, Edison should produce the reports that reference GSI or seismic data.	Undertaking No. 43, as currently stated, is too broad. Edison does not have an obligation to produce such reports where GSI is not discussed. However, if there are reports that reference GSI and seismic data, this would be relevant and material. Therefore, GSI’s Undertaking No. 43 is granted in part, being that Edison shall produce any reports that were presented to Mr. Bolis for the Falklands project internally by the Falklands project team members where these reports reference GSI and seismic data, to the extent that they have not already been produced.
UNDERTAKING NO. 48 - To advise if Edison was given access to seismic data through FOGL in conducting its due diligence - TAKEN UNDER ADVISEMENT	See GSI submissions regarding Undertaking Nos. 21, 22, 24 and 25. Whether Edison was given access to seismic data, including the GSI seismic materials at issue, during the due diligence process is directly at issue in the Amended Statement of Claim.	Edison adopts and repeats its submissions in response to Undertaking Nos. 21, 22, 24 and 25, above.	See GSI reply submissions regarding Undertaking Nos. 21, 22, 24 and 25.	The information sought by GSI in Undertaking No. 48 is relevant and material to the issues in the pleadings. I direct Edison to provide a response.



UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
UNDERTAKING NO. 49 -To produce any confidentiality agreements that Edison signed to gain access to any seismic data in a data room hosted by FOGL - TAKEN UNDER ADVISEMENT	See GSI submission regarding Undertaking No. 24.	Edison adopts and repeats its submissions in response to the Undertaking above.	See GSI reply submissions regarding Undertaking Nos. 21, 22, 24 and 25.	I dismiss GSI’s application with respect to Undertaking No 49 as the information sought is irrelevant to the issues raised by the pleadings.

UNDERTAKING	GSI SUBMISSIONS ON RELEVANCE & MATERIALITY TO ISSUES	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>UNDERTAKING NO. 55 -To advise whether the group of Edison entities all share the same server or network or IT system - TAKEN UNDER ADVISEMENT</p>	<p><b><u>The Intellectual Property and Tort Issues:</u></b> the Response to Undertaking No. 55 would significantly help determine, or ascertain evidence that would significantly help determine, the Intellectual Property and Tort Issues because it would indicate whether the GSI seismic materials that were uploaded to the Edison server were accessible to all of the Edison entities. During the Questioning, Mr. Federici stated that he believed certain GSI seismic data that Edison received was uploaded to Edison’s server. Whether the GSI seismic data was generally accessible to other Edison entities is relevant to the intellectual property claims, such as breach of confidence and copyright infringement, that GSI asserts against Edison in this Action.</p>	<p>Edison adopts and repeats its submissions in response to this Undertaking at paragraphs 23-34, above.</p>	<p>The Response to Undertaking No. 55 is relevant and material for the reasons set out in GSI’s initial submissions. In reply to Edison’s responding submissions, which are set out at paragraphs 23 to 24 of the Edison Brief, Undertaking No. 55 is not overbroad and has a sufficient foundation, as set out in GSI’s initial submissions and the additional excerpt from the transcript of the Questionings that is attached to the GSI Reply ASM at Tab 3. Edison’s submissions that Undertaking No. 55 does not have a sufficient foundation are based on its misinterpretation of the applicable law, as set out in paragraphs 9-11 of the GSI Reply Brief. Moreover, as set out in paragraphs 16-19 of the GSI Reply Brief, the transcript and Response to Undertaking excerpts that Edison improperly submitted without leave of this Court are not connected with Undertaking No. 55 and, as a result, are not admissible.</p>	<p>Undertaking No. 55, as currently phrased, is too broad, and seeks information that is not relevant and material to the within action. However, I permit GSI to rephrase the question, and direct Edison to reply, as follows: Was the seismic data stored in such a way that it was accessible to any other Edison entities?</p>

**Appendix B – Objections to Questioning**

PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>PAGE 4:</p> <p>Does the Edison group of companies generally share all of the same records?</p>	<p><b>All Issues:</b> the response to the question would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because it would indicate the nature of the relationship between the Edison entities in this Action and whether Edison has produced all relevant and material records in this Action. During the Questioning, Mr. Federici confirmed that the two Edison entities at issue in this Action share all of the same records.</p>	<p>This Question is not relevant and material to the matters at issue as it: 1) purports to reach beyond the allegations involving Edison S.p.A. and Edison International S.p.A. to undefined others in an “Edison group”; and 2) purports to reach beyond the issues alleged in this action to “generally” “all of the same records”. Contrary to GSI’s submissions, this goes beyond “the relationship between the Edison entities in this action” and it has no relevance or materiality to whether these Defendants did or did not produce all relevant and material records.</p>	<p>The Response to the Objection on page 4 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, the Response to the Objection is relevant and material to the Action. Edison’s assertion that it is not is based on Edison’s mischaracterization of the scope of the pleadings, as set out in paragraphs 7-8 of the GSI Reply Brief. Corporate practices that are relevant and material to the issues in dispute, and which relate to both of the Edison entities, are relevant and material to the issues in dispute.</p>	<p>For the same reasons as Undertaking No. 55, this question shall be rephrased to restrict the question to seismic data, as follows: Does the Edison group of companies generally share all of the same records with respect to seismic data? Edison is directed to reply to this narrower question.</p>

PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>PAGE 23:</p> <p>What made you suitable as the corporate representative for Edison?</p>	<p><b>All Issues:</b> the response to the question would significantly help determine, or ascertain evidence that would significantly help determine, all of the issues in this Action because it would indicate what connection Mr. Federici has to the facts at issue in this Action. During the Questioning, Mr. Federici admitted that he had little involvement in the facts at issue in this Action and that the Falkland Islands was outside his scope of work. GSI needs to be able to question a witness from Edison who has first-hand knowledge of the facts at issue, so a more suitable corporate representative may be appropriate. During the Questionings, Mr. Federici was even specifically instructed not to review the contents of records Edison produced in this Action to inform himself, as follows:</p> <p>MS. HOWIE: ... [A]nd right now, no, we're not prepared to have the witness review those before we carry on tomorrow or Wednesday.</p> <p>I do understand that your client has a copy, and if you have gone in and produced further information with respect to what's on those, perhaps there's something there, but, no, he's not going to be looking at them for tomorrow.</p>	<p>See the discussion in this Brief at paragraphs 27- 30,above.</p>	<p>The Response to the Objection on page 23 is relevant and material for the reasons set out in GSI's initial submissions.</p> <p>In reply to Edison's responding submissions, the information that GSI requested in this question goes directly towards the mechanism for replacing a corporate representative. Through this Objection, Edison is blocking GSI from obtaining the evidence it needs to engage that process.</p> <p>Moreover, the additional excerpts that Edison has submitted to respond to this Objection were submitted improperly, as set out in paragraphs 16-19 of the GSI Reply Brief. As a result, those additional excerpts are not admissible.</p>	<p>The question at page 23 is not permitted as written. Edison is entitled to select who the corporate representative is for the purposes of this litigation. GSI is entitled to ask and understand who else, aside from the corporate representative, may have been involved or may have first hand knowledge of the facts at issue. Similar to the reasons identified with respect to undertaking No. 4, GSI is permitted to rephrase the question to ask: Who at Edison has first hand knowledge of the facts at issue? Edison is directed to answer this narrower question.</p>

PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>PAGE 38:</p> <p>If the licence has been terminated, wouldn't it be returned?</p>	<p><b>The Edison Agreement Issues:</b> the response to the question would significantly help determine, or ascertain evidence that would significantly help determine, the Edison Agreement Issues because it would indicate why Edison has chosen to not comply with the terms of the Edison Agreement.</p>	<p>This Question is irrelevant and immaterial, there is no allegation in the pleadings that relates to any termination. It is also improper because it is speculative and is seeking a legal opinion on obligations in the event of that speculative situation; it is not appropriate for Mr. Federici to provide an opinion or reach conclusions on whether there were legal obligations, under the an agreement or otherwise.</p>	<p>The Response to the Objection on page 38 is relevant and material for the reasons set out in GSI's initial submissions.</p> <p>In reply to Edison's responding submissions, the questions seeks Edison's understanding of the termination of the license agreement or how a license agreement functions, not a legal opinion or legal conclusion. Mr. Federici's evidence on that point would explain why Edison is still in possession of the GSI seismic materials at issue in this Action.</p>	<p>The question at page 38 is improper as currently phrased. However, GSI is permitted to rephrase the question as follows: Is he aware of any reason or reasons why the GSI seismic material has not been returned? Edison is directed to answer this narrower question.</p>

PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>PAGE 40:</p> <p>Mr. Federici, is Edison in a cooperation agreement with FOGL related to this action?</p>	<p><b>All Issues:</b> the response to the question would significantly help determine, or ascertain evidence that would significantly help determine, all the issues in this Action because GSI needs to know whether Edison is party to any agreement with FOGL that could impact the just disposition of this Action, including because any such agreement could include evidentiary arrangements, contain a release, covenant not to sue or reservation of rights or could make the position of Edison in this Action different than what would be expected. Such agreements should be disclosed and questions asking about their existence are proper. During the Questioning, counsel to Edison improperly objected to this and related questions on the basis of relevance.</p>	<p>See the discussion in this Brief at paragraphs 31-34, above.</p>	<p>The Response to the Objection on page 40 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, the Response to the Objection is relevant and material to the Action. Edison’s assertion that it is not is based on Edison’s mischaracterization of the scope of the pleadings, as set out in paragraphs 7-8 of the GSI Reply Brief. There is also ample foundation for this Undertaking, including as provided by Edison’s own Amended Statement of Defence, as set out in paragraph 14 of the GSI Reply Brief.</p> <p>Moreover, in the context of this Action, Edison has an obligation to disclose any cooperation agreement, or at least the existence of a cooperation agreement. The obligation to provide such information overrides legal privilege and is intended to preserve the fairness of the adversarial process. As such, where there are multiple co-defendants in a litigation, they have to disclose such an agreement, even if it is protected by privilege.</p> <p>The unique context of this Action is that Edison and FOGL and/or Noble have a common interest in defending against any of GSI’s allegations, but have also made</p>	<p>The question at page 40, as currently written, shall be rephrased as follows: “Is there a cooperation agreement between FOGL and Edison that would demonstrate that FOGL is also adverse in interest to GSI?” Edison is directed to answer this narrower question, and, if the answer is yes, Edison is directed to produce the cooperation agreement.</p> <p>Whether FOGL is adverse in interest to GSI in the present litigation is relevant and material because, for example, adverse third parties can be cross-examined under r 6.8 without requiring the court to declare the witness hostile: <i>Gow Estate (Re)</i>, 2021 ABQB 305 at para 15 citing <i>Precision Drilling Canada Limited v Yangarra Resources Ltd</i>, 2013 ABQB 492 at paras 30, 37-38, 49, 54. The test for production of a confidential agreement with a third party to the</p>

PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
			<p>allegations against each other. That is akin to co-defendants in a single litigation and, as such, falls within the scope of the rule set out in the case law. Any such agreements between Edison, FOGL and/or Noble could impact the evidence that Edison gives in this Action; that is the very purpose of requiring disclosure of such agreements. Edison should be compelled to respond to this Objection accordingly.</p>	<p>litigation is relevance, absent a valid claim of privilege: <i>Jardine Lloyd Thompson Canada Inc v SJO Catlin</i>, 2006 ABCA 18.</p>

<b>PAGE NUMBER AND QUESTION OBJECTED TO</b>	<b>GSI SUBMISSIONS ON COMPELLABILITY</b>	<b>EDISON RESPONDING SUBMISSIONS</b>	<b>GSI REPLY SUBMISSIONS</b>	<b>HOLDING OF THE COURT</b>
PAGE 40:  Is Edison in a common interest privilege agreement with FOGL?	See GSI submissions regarding first Objection on page 40. Common interest privilege does not protect the disclosure of agreements that impact the just disposition of pending litigation and, in any event, the fact of the agreement should always be disclosed.	Edison adopts and repeats its submissions in response to the Question above.	See GSI reply submissions regarding the first Objection on page 40, but for a common interest privilege agreement.	I agree with Edison's submissions outlined in its brief. I dismiss GSI's application with respect to this question.
PAGE 41:  Is Edison in a cooperation agreement with the Falkland Islands government?	See GSI submissions regarding first Objection on page 40.	Edison's adopts and repeats its submissions in response Question 40 at paragraphs 31-34, above, with the addition that the Falkland Islands government is, of course, not a party to these proceedings. Indeed GSI did initiate separate proceedings against the Falkland Islands government which have also been dismissed.	See GSI reply submissions regarding the first Objection on page 40.	I agree with Edison's submissions outlined in its brief. I dismiss GSI's application with respect to this question.
PAGE 41:  Is Edison in a common interest privilege agreement with the Falkland Islands government?	See GSI submissions regarding second Objection on page 40.	Edison's adopts and repeats its submissions in response to the Question above.	See GSI reply submissions regarding the second Objection on page 40.	I agree with Edison's submissions outlined in its brief. I dismiss GSI's application with respect to this question.
PAGE 41:  Is Edison in a cooperation agreement with Noble?	See GSI submissions regarding first Objection on page 40.	Edison's adopts and repeats its submissions in response to Question 40 at paragraphs 31-34, above, with the addition that Noble is also not a party to this litigation.	See GSI reply submissions regarding the first Objection on page 40.	I agree with Edison's submissions outlined in its brief. I dismiss GSI's application with respect to this question.
PAGE 41:  Is Edison in a common interest privilege agreement with Noble?	See GSI submissions regarding second Objection on page 40.	Edison's adopts and repeats its submissions in response to the Question above.	See GSI reply submissions regarding the second Objection on page 40.	I agree with Edison's submissions outlined in its brief. I dismiss GSI's application with respect to this question.



PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>PAGE 42:</p> <p>Is Edison in any cooperation or common interest privilege agreements with any other parties regarding this litigation?</p>	<p>See GSI submissions regarding Objections on page 40.</p>	<p>Edison’s adopts and repeats its submissions in response to Question 40 at paragraphs 31-34, above.</p>	<p>See GSI reply submissions regarding the Objections on page 40.</p>	<p>I agree with Edison’s submissions outlined in its brief. I dismiss GSI’s application with respect to this question.</p>
<p>PAGE 42:</p> <p>Has Edison made any agreements with any other parties related to the damages in this litigation?</p>	<p>See GSI submissions regarding Objections on page 40.</p>	<p>Edison’s adopts and repeats its submissions in response to Question 40 at paragraphs 31-34, above.</p>	<p>See GSI reply submissions regarding the Objections on page 40.</p>	<p>I agree with Edison’s submissions outlined in its brief. I dismiss GSI’s application with respect to this question.</p>
<p>PAGE 44:</p> <p>Does Edison know that FOGL negotiated a licence with GSI at a discount price in comparison to purchasing the GSI Falkland seismic data?</p>	<p><b><u>The Contractual Interference and Negligence Issues:</u></b> the response to the question would significantly help determine, or ascertain evidence that would significantly help determine, the Contractual Interference and Negligence Issues because it would indicate whether Edison was aware of the nature of the FOGL Agreement. Edison’s knowledge of the FOGL agreement is directly at issue in the Amended Statement of Claim. During the Questioning, counsel for Edison improperly objected on the basis of an alleged lack of factual foundation.</p>	<p>The Question is irrelevant and immaterial to the matters at issue between GSI and Edison. There is no allegation in the Amended Statement of Claim that speaks to a “discount price” and there is no evidential foundation set out to either: 1) demonstrate the relevance and materiality of a “discount price”; or 2) that there indeed was any such “discount price”.</p>	<p>The Response to the Objection on page 44 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, the Response to the Objection is relevant and material to the Action. Edison’s assertion that it is not based on Edison’s mischaracterization of the scope of the pleadings, as set out in paragraphs 7-8 of the GSI Reply Brief. There is also ample foundation for this Undertaking, as set out in paragraphs 11-14 of the GSI Reply Brief.</p>	<p>Edison’s knowledge of the FOGL agreement is relevant to the claims of inducing breach of contract and contractual interference. Whether Edison knew what was in the FOGL agreement is relevant. However, I find that this question needs to be rephrased as follows: What did Edison know about the FOGL licence agreement with GSI? I direct Edison to answer this rephrased question.</p>

PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>PAGE 227:</p> <p>So Edison complied with its obligation to properly document the licence of this particular line, then; correct?</p>	<p><b>The Edison Agreement Issue:</b> the response to the question would significantly help determine, or ascertain evidence that would significantly help determine, whether Edison understood that it had certain legal obligations under the Edison Agreement to enter into supplemental license agreements with GSI for additional seismic materials beyond those that were licensed. That obligation is directly at issue in the Amended Statement of Claim. During the Questioning, counsel for Edison objected to this and related questions on the basis that counsel to GSI was asking for a legal interpretation. This was a question of conduct – whether Edison had entered into the supplemental license for the additional GSI seismic line.</p>	<p>This Question is improperly seeking an interpretation and legal conclusion from Mr. Federici on: (a) whether certain obligations were owed based on a specific supplemental agreement; and, (b) if so, whether those obligations were complied with. It is not appropriate to ask a lay witness to draw conclusions on questions of law or questions relating to matters of mixed fact and law.</p>	<p>The Response to the Objection on page 227 is relevant and material for the reasons set out in GSI’s initial submissions.</p> <p>In reply to Edison’s responding submissions, the Objection on page 227 is not seeking a legal conclusion. It is seeking the objective intention of Edison regarding an agreement. That goes to the factual matrix and is not a question of law.</p>	<p>Compliance is a legal question and therefore, the question at page 227, as phrased, is inappropriate. GSI may rephrase the question to inquire whether Edison entered into the supplemental license for the additional GSI seismic line. Edison is directed to answer this narrower question.</p>

PAGE NUMBER AND QUESTION OBJECTED TO	GSI SUBMISSIONS ON COMPELLABILITY	EDISON RESPONDING SUBMISSIONS	GSI REPLY SUBMISSIONS	HOLDING OF THE COURT
<p>PAGE 227:</p> <p>Mr. Federici, do you understand that Edison signed this supplemental agreement to comply with an obligation to document the proper licensing of this one line?</p>	<p>See GSI submissions regarding first Objection on page 227.</p>	<p>This Question is also improperly seeking an interpretation and legal conclusion from Mr. Federici on:</p> <p>(a) whether certain obligations were owed based on a specific supplemental agreement; and,</p> <p>(b) if so, whether those obligations were complied with. It is not appropriate to ask a lay witness to draw conclusions on questions of law or questions relating to matters of mixed fact and law.</p>	<p>See GSI reply submissions regarding the Objections on page 227.</p>	<p>I agree with Edison that the question, as phrased, is inappropriate, because it asks about compliance, which is a legal question. However, GSI is entitled to understand the circumstances surrounding Edison’s decision to enter into a supplemental licence agreement. Therefore, I permit GSI to rephrase the question as follows: Does Mr. Federici have an understanding or know the circumstances surrounding Edison’s decision to enter into the supplemental licence agreement? If a supplemental agreement was entered into, is Mr. Federici aware of the circumstances of Edison’s decision to do so? Edison is directed to answer this narrower question.</p>

<b>PAGE NUMBER AND QUESTION OBJECTED TO</b>	<b>GSI SUBMISSIONS ON COMPELLABILITY</b>	<b>EDISON RESPONDING SUBMISSIONS</b>	<b>GSI REPLY SUBMISSIONS</b>	<b>HOLDING OF THE COURT</b>
<p>PAGE 227:</p> <p>Why did Edison not comply when it obtained copies of GSI Falklands field data and reprocessed data? Why did it not sign a supplemental agreement then, Mr. Federici?</p>	<p>See GSI submissions regarding first Objection on page 227.</p>	<p>This Question is improper as it is asking Mr. Federici to interpret obligations in agreements and reach legal conclusions on:</p> <p>(a) whether certain obligations were owed; and,</p> <p>(b) if so, whether those obligations were complied with. It is not appropriate to ask a lay witness to draw conclusions on questions of law or questions relating to matters of mixed fact and law.</p>	<p>See GSI reply submissions regarding the Objections on page 227.</p>	<p>I agree with Edison’s submissions with respect to this question. I dismiss GSI’s application with respect to this question.</p>