

Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2024 ABKB 639

Date: 20241101
Docket: 1701 07427
Registry: Calgary

Between:

CNOOC Petroleum North America ULC

Applicant

- and -

ITP SA, Sunstone Projects Ltd, and Wood Group Canada, Inc

Respondents

- and -

Surerus Pipeline Inc and Stresstech Engineering Inc and Thurber Engineering Ltd

Third Party

**Reasons for Judgment
of the
Associate Chief Justice
D.B. Nixon**

I. Introduction

[1] The underlying action involves a pipeline failure on July 15, 2015 (the “**Pipeline Failure**”). In its capacity as the Plaintiff, CNOOC Petroleum North America ULC (“**CNOOC**”) issued a Statement of Claim against several parties, including Sunstone Projects Ltd and Wood Group Canada, Inc (collectively, the “**Wood Group**”) and ITP SA (“**ITP**”).

[2] This is a complex litigation matter that I have been case managing for some years and several applications have been filed by the parties. The present application concerns refused undertakings and objections at questioning, as well as seeking better responses on some of the submitted responses.

[3] These involved the questioning of Kevin Allsop on February 22, 27 and May 8, 2023, the questioning of Nicholas Bullen on May 8 and 10, 2023, the questioning of Todd Antony dated May 11, 2023, and the questioning of Jay Selin on June 14, 2023.

II. The Application

[4] The judgment deals with the Application by CNOOC to compel responses to undertakings by Wood Group. Some of the undertakings were refused by Wood Group whereas for others a response was given but CNOOC deems that response to be insufficient and seeks a better response.

III. Issue

[5] The issue is whether or not I compel Wood Group to respond to certain Undertakings or direct them to provide better particulars.

IV. Analysis

A. Disclosure Principles

[6] At the outset, it is helpful to review briefly the principles undergirding disclosure. These are outlined in Part 5 of the Alberta *Rules of Court* (“**Rules**”) as follows:

5.1(1) Within the context of rule 1.2, the purpose of this Part is

- (a) to obtain evidence that will be relied on in the action,
- (b) to narrow and define the issues between parties,
- (c) to encourage early disclosure of facts and records,
- (d) to facilitate evaluation of the parties’ positions and, if possible, resolution of issues in dispute, and
- (e) to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of them.

(2) The Court may give directions or make any order necessary to achieve the purpose of this Part.

[7] As described by the Court of Appeal in *McElhone v Indus School*, 2019 ABCA 97:

[18] [...] The discovery provisions in Part 5 arise from the foundational principle that lawsuits should be decided on the merits. A party must disclose all relevant and material records and answer all relevant and material questions, whether helpful or unhelpful. [...]

[8] What is considered relevant or material is set out in *Rule 5.2*:

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.

(2) The disclosure or production of a record under this Division is not, by reason of that fact alone, to be considered as an agreement or acknowledgment that the record is admissible or relevant and material.

[9] The pleadings are the starting point for determining relevance and materiality, along with the context and nature of the claim: *Brookdale International v Crescent Point Energy*, 2023 ABKB 120 at para 17 [*Brookdale International*]; *Wetherill (Estate) v Weatherill*, 2003 ABQB 69 at paras 16 and 17.

[10] *Rule 5.25* sets out which questions must be answered, stating:

5.25(1) During questioning, a person is required to answer only

(a) relevant and material questions, and

(b) questions in respect of which an objection is not upheld under subrule (2).

(2) A party or a witness being questioned may object to an oral or written question during questioning but only for one or more of the following reasons:

(a) privilege;

(b) the question is not relevant and material;

(c) the question is unreasonable or unnecessary;

(d) any other ground recognized at law.

(3) A corporate representative may object to an oral or written question during questioning on the basis that it would be unduly onerous for the corporate representative to inform himself or herself in the circumstances.

[...]

[11] There is an important distinction in discovery between facts and evidence. “Facts, which enable a party to know what the case is, are discoverable. Evidence, which enables a party to know how the case will be proved, is not [...]”: *Brookdale International* at para 22.

[12] Further, the permissible scope of discovery is important to consider. In summarising the case of *Tolko Industries Ltd v RaiLink Ltd*, 2003 ABQB 349 Justice Horner in *Brookdale International* notes:

[28] [...] Justice Slatter considered the permissible scope of questions at discovery. One of the issues arose from questions relating to the pleadings. The format of the two questions in *Tolko* was “Provide whatever information Tolko has that relates to the [allegations in paragraph of the pleadings].” Justice Slatter held that the Plaintiff was justified in refusing to give these two undertakings because it was a single compendious question about all the detailed allegations in the specific paragraph of the pleadings, rather than a question of fact about particular allegations in the Statement of Claim: *Tolko* at paras 22, 26-28.

[13] Bearing these principles in mind, I now turn to consider the requests for supplemental responses to certain undertakings as well as the refused undertakings and questions.

B. Application of the Law to the Facts

[14] Certain of the requests and undertakings initially brought have been resolved as between the parties. I consider only those that remain unresolved.

[15] For ease of reference, I append as Appendix A a chart containing five columns. The Appendix addresses the following matters: (i) the Undertaking Request; (ii) the Response; (iii) the CNOOC Position; (iv) the Wood Group Position; and (v) the Court Holding/Determination. This Judgment should be read concurrently with Appendix A. However, Appendix A is purely for the benefit of the reader and in the case of any discrepancy between this Judgment and Appendix A, the reasons of this Judgment are authoritative.

i. Kevin Allsopp Undertaking Responses – CNOOC Request for Supplemental Response – Undertakings 2 and 8

[16] I find the answer provided by Wood Group to Undertaking 2 is not fully responsive. I direct Wood Group to supplement its response to Undertaking 2 by advising whether there were any other “senior people” beyond Ms. Saurette and Mr. Bauhuis who had pre-heating experience before working on the Nexen pipelines project.

[17] I find the answer provided by Wood Group to Undertaking 8 is not fully responsive. I direct Wood Group to provide a supplemental response to Undertaking 8 to confirm whether it did any calculations based on the maximum design temperature of 150 degrees Celsius that was provided by CNOOC.

ii. Kevin Allsopp Undertaking Responses – CNOOC Request for Supplemental Response – Undertakings 33, 35, 37, 38 and 49

[18] I find the answer provided by Wood Group to Undertaking 33 is fully responsive. Wood Group is entitled to respond that an assumption in the undertaking request is not accurate. If the ditch profiles of the actual constructed pipelines were not provided prior to the completion of the construction of the pipelines, then Wood Group would not be capable of answering the undertaking as worded.

[19] I find the answer provided by Wood Group to Undertaking 35 is not fully responsive. For Undertaking 35, I direct Wood Group to supplement this response because it is not clear whether any enquiries have been made to answer the question.

[20] I find the answers provided by Wood Group to Undertakings 37 and 38 fully responsive. I make this determination because I am of the view that it was appropriate for Wood Group to confirm through its records that there was no record of comments on the drawings set out in WGC00139769 and no records of provision of said drawings.

[21] I find Wood Group's response to Undertaking 49 appropriate based on its further response providing additional context.

iii. Kevin Allsopp Undertaking Responses – CNOOC Request for Supplemental Response – Undertakings 64, 82 and 84

[22] I find the answer provided by Wood Group to Undertaking 64 is not fully responsive. I direct Wood Group to advise who allegedly communicated this information to Ms. Colborne and on what records this information was based. That said, Wood Group is not required to produce the documents if not in its control, but should identify them if that information is known.

[23] I find the answers provided by Wood Group to Undertakings 82 and 84 fully responsive. If the drawings do not show the depth of the muskeg along the pipeline right-of-way, this provides appropriate context to explain the Wood Group response beyond what would be conveyed by a simple yes or no.

iv. Kevin Allsopp Undertaking Responses – Refused Undertakings – Undertaking 55

[24] I find Undertaking 55 is irrelevant. As a result, Undertaking 55 need not be answered by Wood Group. I make this determination because there is no indication that the presentation, made in May of 2015, ultimately being used for sales and marketing initiatives outside of Wood Group, bears any relevance to the litigation.

v. Kevin Allsopp Undertaking Responses – Refused Undertakings – Undertakings 70, 71, 72, 73, 76

[25] I find the refusals to Undertakings 70, 71, 72, and 73 are appropriate. As worded, the questions are asking for legal conclusions in a manner that offends the principles set out in *Can-Air Services Ltd v British Aviation Insurance Co*, 1988 ABCA 341 (CanLII) at para 6.

[26] I find the refusal to Undertaking 76 is appropriate as it is currently worded because it is overly broad and unclear. A rephrased question involving which specific clauses were referenced may be appropriate to ask. However, the question as currently worded is inappropriate.

vi. Kevin Allsopp Undertaking Responses – Refused Undertakings – Undertaking 83

[27] I find the refusal to respond to Undertaking 83 appropriate because the question is unclear and ambiguous. The reference to “any deviations” is an overly broad scope, and CNOOC's clarification that this means “‘differences’ between two things” does not provide clarity to respond.

vii. Nicholas Bullen Undertaking Responses – Refused Undertakings – Undertakings 7 and 8

[28] I find the refusals to Undertakings 7 and 8 appropriate. Mr. Bullen was a student working with Wood Group. He recalled that Surerus Pipeline Inc (“**Surerus**”) had a binder on which he had recorded hand-written notes. It would be overly onerous to have Mr. Bullen go through all

the documentation to determine whether he could identify the notes that he had taken. However, Wood Group during the hearing had suggested that it would revisit this undertaking if CNOOC, pursuant to its Pierringer Agreement with Surerus, were to acquire production from Surerus and sought from Mr. Bullen to identify the binders from that production.

[29] Until the above request is made, Undertakings 7 and 8 are properly refused.

viii. Todd Antony Undertaking Responses – Refused Undertakings – Undertakings 7 and 8

[30] I find the refusal to answer Undertaking 7 is appropriate as it is currently worded. I make this determination because the phrase “critical error” makes assumptions about what had been presented. It is not clear as to factual assessments for which Wood Group can provide an answer.

[31] I find the refusal to answer Undertaking 8 is appropriate as it is currently worded. I make this determination because the question is overly broad and does not provide clarity as to which facts are being sought by CNOOC. Further, since Surerus had actually constructed the pipeline, it is not clear that this would be knowledge held by Wood Group.

ix. Jay Selin Undertaking Response – Refused Undertaking – Undertakings 2

[32] I find the refusal to answer Undertaking 2 is not appropriate. I make the determination that the refusal is improper because Wood Group had provided the presentation in its disclosure. Unlike Undertaking #55 of Mr. Allsopp above which I found irrelevant, I find that it is proper to advise as to how this presentation was used and who prepared it. However, this determination does not require answering whether it was ultimately used outside of Wood Group.

V. Conclusion

[33] In conclusion, based on the evidence before me and my analysis of the law, I direct that Wood Group provide supplemental responses to those undertakings I set out above and to respond to the undertakings as I have directed. The other undertakings do not need to be answered as they are currently worded.

VI. Costs

[34] The parties may speak to costs if they cannot otherwise agree.

Heard on the 19th day of April 2024.

Dated at the City of Calgary, Alberta this 1st day of November 2024.

D.B. Nixon
A.C.J.C.K.B.A.

Appearances:

S. Fader and K. Kidd
for the Applicant

M.J. LaFleche
for the Respondent

A. Pozzobon
for ITP SA

APPENDIX A

Undertaking	Undertaking Response of Wood Group	CNOOC's Position	Wood Group's Position	Holding of the Court
KEVIN ALLSOP UNDERTAKING RESPONSES – CNOOC REQUEST FOR SUPPLEMENTAL REASONS				
UNDERTAKING 2 - To make enquiries and advise whether Sunstone Project Ltd or any of its senior people had experience using preheating techniques to mitigate against pipeline movement or expansion during operation prior to starting their work on the Nexen pipelines project	At the time of the K1A project, Ms. Saurette had previous experience completing design work using preheating techniques on a pipeline for Gibson Energy. Mr. Bauhuis also had prior experience using pre-heating techniques.	The answer is not fully responsive. The question is specific as to whether Sunstone or any of its senior people had experience on the use of preheating techniques to mitigate against pipeline movement or expansion during operation. Sunstone's answer does not fully answer that question, but just generally states that Ms. Saurette and Mr. Bauhuis had experience using pre-heating techniques. A responsive answer should advise whether this pre-heating experience involved techniques to mitigate against pipeline movement or expansion during operation, prior to starting their work on the Nexen pipelines, and should advise whether or not Ms. Saurette and Mr. Bauhuis were the only senior people at Sunstone with this experience.	This answer is fully responsive. The only reason "pre-heating" would be relevant to this dispute is to provide pipeline stability by reducing the temperature differential between installation and operation of a pipeline. In its response, Wood Group has identified that both Ms. Saurette and Mr. Bauhuis (Sunstone's "senior people") had experience using preheating techniques. CNOOC has already questioned both individuals on the details of their experience.	Wood Group is to supplement its response to advise whether there were any other "senior people" beyond Ms. Saurette and Mr. Bauhuis who had this pre-heating experience.
UNDERTAKING 8 - To make enquiries and	The 150-degree Celsius maximum	The answer is not fully responsive.	This answer is fully responsive.	Wood Group is to provide a supplemental response to confirm

<p>advise with respect to any analysis that Sunstone Projects Ltd. did in respect of the 150 degrees Celsius maximum design temperature for the carrier pipeline and the emulsion pipeline, and if any documents or calculations were created by Sunstone Projects Ltd. containing that information, to identify those, and if they have not been produced, to produce them.</p>	<p>design temperature was a design parameter specified by Nexen.</p>	<p>The question does not ask who provided the 150-degree Celsius maximum design temperature, but whether Sunstone conducted any analysis regarding this design temperature. On that basis, Sunstone's answer is not responsive and should advise whether any analysis was done regarding that maximum design temperature.</p>	<p>The undertaking request seeks information as to whether Sunstone calculated the maximum design temperature for the carrier pipe in the emulsion pipeline. As stated in the undertaking response, the referenced temperature is not a calculated figure from Sunstone. It was a design input from Nexen.</p>	<p>whether it did make any calculations based on the 150 degrees Celsius maximum design temperature and if it created documents regarding those calculations, regardless of whether the maximum design temperature was a design input.</p>
<p>UNDERTAKING 33 – Sunstone to make enquiries and advise whether, prior to the completion of the construction of the pipelines, Sunstone did any work to determine whether the ditch profiles of the actual constructed pipelines were consistent with Sunstone design criteria for those pipelines; and if the answer is yes, to identify what that work was, and to identify or produce any related documents.</p>	<p>Sunstone was not provided with ditch profiles of the actual constructed pipelines prior to the completion of the construction of the pipelines.</p>	<p>The answer is not fully responsive. The question initially asks whether Sunstone did any work to determine whether the ditch profiles of the actual constructed pipelines were consistent with Sunstone design criteria for those pipelines. Sunstone does not answer that question.</p>	<p>This answer is fully responsive. A question is objectionable if it assumes facts that have not already been put into evidence, where answering the question could be seen as an acceptance of the underlying unproven fact. The undertaking is predicated on an unproven assumption that the ditch profiles of the actual constructed pipelines were provided to Sunstone prior to the completion of the construction of the pipelines, which they were not, as stated in the undertaking response. Therefore, CNOOC is asking whether Sunstone conducted an analysis of documents that it did not have. To answer this question, it is appropriate for Wood Group to</p>	<p>This response is appropriate. Wood Group is entitled to respond that an assumption in the undertaking is not accurate. If the ditch profiles of the actual constructed pipelines were not provided prior to the completion of the construction of the pipelines, then Wood Group would not be capable of answering the undertaking as posed.</p>

			identify the incorrect assumption on which the undertaking is predicated.	
UNDERTAKING 35 – Sunstone to make enquiries and advise if it ever told anyone at Nexen that there was no Sunstone representative in the field tracking field changes.	Harry Duncan, of Nexen, advised Barry Bauhuis, of Sunstone, that the only field activity to be performed by a Sunstone representative was to document the relative growth of the inner pipe in the course of the preheating of the produced emulsion and boiler feed water pipelines.	The answer is not fully responsive. The question asked whether Sunstone ever told anyone at Nexen that there was no Sunstone representative in the field tracking field changes. The response refers to advice that Nexen allegedly provided to Sunstone.	The answer is responsive. Sunstone's evidence is that there was a conversation where the scope of Sunstone's field activities was discussed, and Sunstone has provided its information as to that communication. A response without that context would be misleading.	Wood Group is to supplement this response because it is not clear whether any enquiries have been made to answer the question.
UNDERTAKING 37 – Sunstone to make enquiries and advise whether it ever provided any comments on the version of the plan and profile of pipelines drawings set out in WGC0013979.	Wood Group has not located any record of Sunstone providing any comments on the plan and profile drawings set out in WGC0013979.	The answer is not fully responsive. The question is not limited to a review of books and records, but asks Sunstone to make enquiries to determine whether any comments, written or otherwise, were provided.	Wood Group made enquiries by reviewing the transmittal records and correspondence, which is where comments on a drawing would have been communicated, and as indicated in the response, Sunstone's information is that the drawings produced as WGC0013979 were reviewed and there is no record of any comments. The undertaking request has been answered.	This answer is responsive.
UNDERTAKING 38 – Sunstone to make enquiries and advise whether Sunstone ever provided the drawings located at	Wood Group has not located any record of Sunstone providing the drawings located at WGC0013979 to Stresstech.	The answer is not fully responsive. The question is not limited to a review of books and records, but asks Sunstone to make enquiries and advise whether anyone has information that the drawings at	Wood Group made enquiries by reviewing the transmittal records and correspondence, which is how a document would have been communicated, and as indicated in the response, Sunstone's	This answer is responsive.

<p>WGC0013979 to Stresstech.</p>		<p>WGC0013979 were provided to Stresstech. Based on the response it appears that Sunstone has not made any enquiries with any current or former employees to try to answer this request.</p>	<p>information is that there is no record of the Stewart Weir drawings, produced as WGC0013979, being provided by Sunstone to Stresstech. The undertaking request has been answered.</p>	
<p>UNDERTAKING 49 – Sunstone to make enquiries and to advise whether it prepared a procurement plan for the project; and, if so, to identify or produce any drafts of that plan.</p>	<p>Wood Group has not located any records or information that Sunstone prepared a standalone written procurement plan as each stage of each procurement activity undertaken by Sunstone was reviewed and approved by Nexen.</p>	<p>The answer is not fully responsive. The question does not ask whether Sunstone provided a "stand-alone written procurement plan". Rather it asks whether Sunstone prepared any type of procurement plan for the project, whether stand alone, by stage, as a whole or otherwise.</p>	<p>The undertaking request has been answered. The undertaking originated from a request that Sunstone inquire and produce a document called a "procurement plan" that was to be submitted for "owner review and approval" during the pipeline project. Wood Group's answer is responsive in that it has not located a document called a "procurement plan" and its answer provides context about Nexen's review and approval of procurement activities.</p>	<p>This answer is responsive.</p>
<p>UNDERTAKING 64 – To make inquiries and advise of what information, if any, Sunstone Projects Ltd. has regarding Nexen Energy ULC unilaterally directing Omnisens S.A. not to install certain software interface and real-time reporting components of the LDS in its control systems at the K1A facility, and if the sources of that information are</p>	<p>This information was communicated to Leona Colborne of Sunstone at a meeting held in April of 2013 at which time Sunstone was advised that Nexen did not intend to hook up the ethernet or modbus functionality of the LDS to its control system. The records relating to the justification for this</p>	<p>The answer is unclear and not fully responsive. It is not clear who allegedly communicated this information to Ms. Colborne. Sunstone has also not identified the records it is referring to in its answer.</p>	<p>Sunstone has provided its information in response, and the source of the information is identified: Leona Colborne (who CNOOC examined). The balance of CNOOC's undertaking request is for Sunstone to produce documents as to interactions between Nexen and another party, Omnisens, which documents would not be within Sunstone's control. The undertaking has been answered.</p>	<p>This answer is not fully responsive. Wood Group is to advise who allegedly communicated this information to Ms. Colborne and on what records this information was based. Wood Group is not required to produce the documents if not in its control, but should identify them if that information is known.</p>

<p>documents, to identify or produce them</p>	<p>decision and its implementation are Nexen records.</p>			
<p>UNDERTAKING 82 – To make inquiries and advise whether Sunstone Projects Ltd. ever reviewed the plan and profile drawings that it received from Stewart Weir as indicated in the covering email found in WGC0013978, and if Sunstone Projects Ltd.'s information is that it did review these drawings, to advise whether or not it considered the depth of the peat along the pipeline right-of-way in its review of these drawings.</p>	<p>Barry Bauhuis reviewed the plan and profile drawings prepared by Stewart Weir and submitted under cover of the e-mail found in WGC0013978. The referenced drawings do not show the depth of the peat along the pipeline right-of-way.</p>	<p>The answer is not fully responsive. The question does not ask for Sunstone's opinion on what the drawings show. Rather, the question is whether Sunstone considered the depth of the peat along the right of way in its review of these drawings. If the answer is "no", Sunstone should clearly say so. This portion of the undertaking request remains unanswered.</p>	<p>This undertaking request has been answered. The question contains an incorrect assumption that the referenced drawings show the depth of the muskeg along the pipeline right-of-way, which they do not, as indicated in the undertaking response. The response provides that context while responding to the question of whether the document was reviewed.</p>	<p>The response answers that there was no depth of the muskeg along the pipeline right-of-way shown in the drawing and provides a context that a simple “yes” or “no” response could not. It is appropriate as a response.</p>
<p>UNDERTAKING 84 – To make inquiries and advise of when Sunstone Projects Ltd. was preparing the as-built alignment sheets it looked to see whether the screw anchors were installed every 20 metres in deep muskeg.</p>	<p>No, Sunstone was not provided with any as-built information regarding the actual depth of muskeg encountered during construction of the straight segments of the corridor pipe.</p>	<p>The answer is not fully responsive. The question does not ask if Sunstone was provided with as-built information about the actual depth of the muskeg encountered during construction. It asks whether Sunstone looked to see whether screw anchors were installed every 20 m in deep muskeg when it was preparing the as-built alignment sheets. Sunstone's answer may simply be "No.", but the balance of the answer is argumentative.</p>	<p>The undertaking request implicitly assumes that information about muskeg depth encountered during construction was available to Sunstone to assess. The response is not argumentative; to the contrary, it contains critical context while answering the question that was asked.</p>	<p>For the same reasoning as Undertaking 82, this provides context to explain the response and is appropriate.</p>

<p>KEVIN ALLSOPP REFUSED UNDERTAKINGS</p>				
<p>UNDERTAKING 55 – Sunstone to make enquiries and advise whether this presentation was ever ultimately used for sales and marketing initiatives outside of Wood (WGC0010860)</p>	<p>This request is refused as the request is not relevant to the litigation.</p>	<p>The questions are about a document that Sunstone produced in its Affidavit of Records and included in the updated Schedule 1 that was served on May 29, 2023. In producing this document, Sunstone has determined that it is relevant to the litigation. This document includes Sunstone's understanding of how the PIP system used at K1A worked, how it was fabricated and installed, and the regulatory considerations around it. Further, Sunstone has pled at paragraph 6 of its Amended Statement of Defence that CNOOC selected the ITP PIP system contrary to "Sunstone's professional recommendation". Sunstone's post-project marketing of the very same ITP PIP system to other potential clients that it criticizes CNOOC for selecting is very probative to this pleading.</p>	<p>The referenced document is from May of 2015 long after the pipelines at issue in the litigation were complete. This undertaking request is not relevant to the litigation. CNOOC argues that the document is relevant as it may explain Sunstone's understanding of how the PIP system worked, how it was fabricated and installed, and surrounding regulatory considerations. Those topics could be examined by asking questions about the content of the document. Whether the document was ever used for other marketing purposes is unrelated to that. Further, whether this document was used for 'sales and marketing initiatives' after 2015 is not probative to what transpired in 2012 when the decision was made to use the PIP system.</p> <p>Whether the PIP system might be recommended for some other unrelated project is also not relevant to whether the PIP system was recommended for the K1A project at issues in the litigation.</p>	<p>Whether the presentation WGC0010860, made in May of 2015, was ever ultimately used for sales and marketing initiatives outside of Wood is not relevant.</p>
<p>UNDERTAKING 70 – To make inquiries and advise what information Sunstone Projects Ltd. has regarding CNOOC</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. CNOOC is asking for specific information on Sunstone's pleading that CNOOC failed "to properly manage the design...of the Pipelines". This is a narrow factual</p>	<p>Whether CNOOC failed to properly manage the design of the pipelines is a legal conclusion. The requested undertaking is a reliance question associated with a legal</p>	<p>This undertaking asks for a legal conclusion and is inappropriate as phrased.</p>

<p>Petroleum North America ULC failing to properly manage the design of the pipelines.</p>		<p>question relating to a narrow pleading that relates to information that Sunstone may or may not have about CNOOC's work on the project. The information sought is clearly relevant and material. CNOOC is entitled to this information.</p>	<p>conclusion pled in the pleadings. A demand for details supporting legal conclusions is objectionable. To the extent it is not a reliance question, the requested undertaking seeks Wood Group's interpretation or understanding of facts arising from its discovery of CNOOC which is impermissible. The refusal is appropriate.</p>	
<p>UNDERTAKING 71 – To make inquiries and advise of what, if any, information Sunstone Projects Ltd. has that CNOOC Petroleum North America ULC failed to properly manage the construction and installation of the pipelines.</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. See Allsopp UT 70. This question also seeks specific information about whether Sunstone was aware of any facts related to CNOOC's management of the construction and installation of the pipelines. The information sought is clearly relevant and material. CNOOC is entitled to this information.</p>	<p>This refusal was appropriate for the same reason set out in response to Undertaking #70, above.</p>	<p>This undertaking asks for a legal conclusion and is inappropriate as phrased.</p>
<p>UNDERTAKING 72 – To make inquiries and advise of what, if any, information Sunstone Projects Ltd. has that CNOOC Petroleum North America ULC failed to properly manage the operation of the pipelines.</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. See UT 70. This question again seeks specific information about whether Sunstone was aware of any facts related to CNOOC's alleged failure to properly manage the operation of the pipelines. The information sought is clearly relevant and material. CNOOC is entitled to this information.</p>	<p>This refusal was appropriate for the same reason set out in response to Undertaking #70, above.</p>	<p>This undertaking asks for a legal conclusion and is inappropriate as phrased.</p>
<p>UNDERTAKING 73 – To make inquiries and advise of what, if any, information Sunstone</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. See UT 70. This question again seeks specific information about whether Sunstone was aware of any facts</p>	<p>This refusal was appropriate for the same reason set out in response to Undertaking #70, above.</p>	<p>This undertaking asks for a legal conclusion and is inappropriate as phrased.</p>

<p>Projects Ltd. has that CNOOC Petroleum North America ULC failed to comply with the minimum and maximum operating temperatures and pressures for the emulsion and boiler feedwater pipeline</p>		<p>related to CNOOC's alleged failure to comply with the minimum and maximum operating temperatures and pressures for the emulsion and boiler feedwater pipeline. The information sought is clearly relevant and material. CNOOC is entitled to this information.</p>		
<p>UNDERTAKING 76 – To make inquiries and advise whether in designing the emulsion pipeline Sunstone Projects Ltd. referenced Clause 16 of Z662/11 to ensure that its design of the emulsion pipeline met the requirements of that clause</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. The information sought is clearly relevant and material. CNOOC has specifically pled at paragraphs 20(j) and 21(j) that the emulsion pipeline and boiler feedwater pipeline were to be designed in accordance with CSA Z662/11. CNOOC has also pled that Sunstone failed to properly design the Pipelines in accordance with the CSA standards, including at para. 96(g). The question of whether Sunstone referenced this portion of the design standard in designing the emulsion pipeline is relevant and material to CNOOC's allegation that they failed to properly design the Pipelines.</p>	<p>This undertaking seeks to elicit an opinion and calls for a conclusion, specifically, whether something was done to "ensure the design met the requirements of" a certain clause of CSA Z662. Whether the design met the requirements of a legal standard is a legal issue. Sunstone's corporate representative already confirmed that Sunstone's information was that the applicable code was Z662.</p>	<p>This undertaking asks for a legal conclusion and is inappropriate as phrased. A question regarding which specific clause was referenced may be appropriate, but as currently worded the undertaking was properly refused.</p>
<p>UNDERTAKING 83 – To make inquiries and advise whether in preparing the as-built alignment sheets for the boiler feedwater and emulsion pipeline Sunstone Projects Ltd. considered whether there are any deviations</p>	<p>This undertaking request is refused. CNOOC has not identified what "deviations" it is referring to.</p>	<p>The refusal is improper. The question refers to "any deviations". During questioning, the witness, Mr. Allsopp, did not ask for clarification on what deviations meant and the word deviation is common and is typically understood to refer to 'differences' between two things.</p>	<p>As phrased, asking Sunstone whether it believes "there are any deviations" seeks to elicit an opinion and is improper. In any event, on January 11, 2024, Wood Group advised CNOOC that it was prepared to review this undertaking request further as to Sunstone's belief at the relevant period if CNOOC were to identify what is</p>	<p>The refusal to respond is appropriate. As currently worded, this undertaking is overly broad. "Difference between two things" is not clarifying enough as to how to determine what deviations are at issue.</p>

<p>in the as-builts from its pipeline design for the emulsion and boiler feedwater pipelines</p>		<p>As such, the question is clear, and Sunstone should answer whether in preparing the as-builts there were any deviations or differences in the as-builts from its pipeline design for the emulsion and boiler feedwater pipelines.</p>	<p>meant by a "deviation". CNOOC has declined to do so.</p>	
<p>Nicholas Bullen Undertaking Responses – CNOOC Request for Answers to Refused Undertakings</p>				
<p>UNDERTAKING 7 - For the corporate representative to identify the records that were relied upon for the purposes of preparing the PSAs for the project.</p>	<p>This undertaking is refused.</p>	<p>The refusal is improper. As Sunstone is aware, PSAs refers to pre-stress analysis documents, which are records relating to the pre-heating process for the pipelines, which is an issue pled in CNOOC's Statement of Claim. The records that Sunstone relied on in preparing the PSAs is clearly relevant and material.</p>	<p>The context of this undertaking is that Mr. Bullen recalled that Surerus (CNOOC's construction contractor) had maintained a binder in which Surerus had recorded hand-written measurements relating to the pre-stressing of the pipe in pipe system.</p>	<p>The Surerus documents are not within Wood Group's control, and it would be overly onerous to request a student to go over all the present documentation to try to identify these handwritten documents. As suggested by Wood Group during the hearing, this undertaking could be revisited based on CNOOC's relationship with Surerus through its Pierringer Agreement and if CNOOC makes a request from Surerus. Until then, the undertaking is properly refused.</p>
<p>UNDERTAKING 8 - To the extent that it is a Surerus document and is provided in their production, for the corporate representative to identify the records that were relied upon for the purposes of preparing the PSAs for this project.</p>	<p>This undertaking is refused.</p>	<p>The refusal is improper. See CNOOC's position in Bullen UT 7.</p>	<p>The context of this request is the same as the preceding request and was refused for the same reason.</p>	<p>This undertaking is properly refused. See the Court's holding above on Undertaking 7 in respect of Nicholas Bullen.</p>

<p>Todd Antony Undertaking Responses – CNOOC Request for Answers to Refused Undertakings</p>				
<p>UNDERTAKING 7 - For the corporate representative to make inquiries and advise whether or not Mr. Dyck or Stresstech Engineering Inc were involved in the assessment of whether it would be a critical error if these sections were not installed with the required amount of growth.</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. This undertaking is similar to the one above. The issue of whether Sunstone took noncompliance issues to its consultant, Mr. Dyck, is relevant to whether Sunstone properly satisfied its obligations on the project.</p>	<p>Wood Group maintains its objection. CNOOC argues that this request is relevant to whether Sunstone "took non-compliance issues to its consultant". As set out above in response to the prior undertaking, Mr. Antony did not give evidence that there was non-compliance with the CSA code nor was such a question put to Wood Group's corporate representative.</p>	<p>The undertaking as currently worded is improper. The wording of "critical error" makes assumptions about what had been presented and is not clear as to factual assessments that Wood Group can provide an answer for.</p>
<p>UNDERTAKING 8 - For the corporate representative to make inquiries and determine how the various configurations of the pipe were pre-heated and how the segments were connected together</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. This question addresses the pre-heating process, which is one of the issues pled in CNOOC's Statement of Claim. Mr. Antony was unable to recall details on how the various configurations of pipe were pre-heated and how they were connected. Those questions and this undertaking are relevant and material to CNOOC's allegation that the pre-heating was done improperly and should be answered.</p>	<p>The construction of the pipelines was performed by Surerus who was engaged by Nexen. This undertaking request is overly broad and seeks information that would not be within Sunstone's (or Mr. Antony's) knowledge given that the physical construction was carried out by Surerus.</p>	<p>The wording of this undertaking is improper and overly broad. As Surerus had constructed the pipeline it would not be within Wood Group's knowledge or control.</p>
<p>Jaye Selin Undertaking</p>				

Responses - CNOOC Request for Answers to Refused Undertakings				
<p>UNDERTAKING 2 – To advise as to how the presentation found in WGC0010857 was used and who prepared it</p>	<p>This undertaking request is refused.</p>	<p>The refusal is improper. This is a record that Wood Group has produced. This witness was unable to advise who created or for what purpose. CNOOC is entitled to understand how and for what purpose this record, which Sunstone has identified as relevant and material, was created.</p>	<p>The basis for Wood Group's refusal is the same as that for Undertaking #55 arising from Mr. Allsopp's examination. The referenced document is from May of 2015 long after the pipelines at issue in the litigation were built. This undertaking request is not relevant to the litigation. The referenced record are slides from a presentation and were produced because they may contain information about Sunstone's understanding of how the PIP system worked, how it was fabricated and installed, and surrounding regulatory considerations. Those topics could be examined on by asking questions about the content of the document. Whether the presentation was ever given is of no relevance to the litigation.</p>	<p>The refusal is improper. Wood Group had provided the presentation in its disclosure, and unlike Undertaking #55 of Mr. Allsopp above which I found irrelevant, I find that it is proper to advise as to how this presentation was used and who prepared it.</p>