

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Steelhead LNG Limited Partnership v.
ARC Resources Ltd.*,
2024 BCSC 1872

Date: 20241009
Docket: S197484
Registry: Vancouver

Between:

**Steelhead LNG Limited Partnership, and
Steelhead LNG Corp.**

Plaintiffs

And

ARC Resources Ltd.

Defendant

Before: The Honourable Justice Kent

Reasons for Judgment

Counsel for the Plaintiffs:

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H. Poulus, KC
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Place and Dates of Hearing:

Vancouver, B.C.
August 9-10, 2023, September 6,
2023 and September 12, 2024

Place and Date of Judgment:

Vancouver, B.C.
October 9, 2024

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Introduction and Overview

[1] By way of their Notice of Application filed March 21, 2023, the plaintiffs applied to add Rockies LNG Limited Partnership and Rockies LNG GP Corp. as defendants to these proceedings and for leave to file a Further Amended Notice of Civil Claim.

[2] By way of its Notice of Application filed August 2, 2023, the defendant applied for an order pursuant to rule 9-5(1) to strike certain paragraphs in the amended Notice of Civil Claim or, alternatively, to strike those same paragraphs along with certain additional paragraphs in the proposed Further Amended Notice of Civil Claim should leave be granted for the latter pleading to be filed.

[3] The original Notice of Civil Claim was filed in this Court on July 4, 2019, naming as the defendant Seven Generations Energy Ltd (“7G Ltd.”). That defendant filed what it called a *pro forma* Response to Civil Claim on August 30, 2019 denying each allegation in the Notice of Civil Claim but otherwise stating that it was “unable to plead with specificity until the Plaintiffs particularize the information that is alleged to be confidential and to have been disclosed to, and improperly used by, the Defendant”.

[4] The defendant then applied for an order requiring the plaintiffs to provide further particulars of (1) the information alleged to be confidential and (2) the manner in which that information had been misused by the defendant. It also applied for an order that the plaintiffs’ post security for costs on the grounds that they were insolvent.

[5] In reasons for judgment issued on June 5, 2020, Justice Giaschi of this Court ruled that the particulars sought by the defendant were unnecessary (the NOCC contained 87 paragraphs in some 23 pages), and that the defendant well knew the case it had to meet. However, he directed the plaintiffs to provide additional particulars “to the extent that they were now known”. He also issued an order requiring the plaintiffs to post security for costs in the amount of \$316,050.

[6] Mr. Justice Giaschi’s reasons for judgment describe the underlying litigation in detail and I will not repeat all of that here. Suffice it to say the plaintiffs allege that the defendant used extensive confidential information and copyrighted materials (as defined) in developing a competing LNG project in breach of various contractual non-disclosure and confidentiality provisions. Liability was (and is) asserted on the basis of both the law of contract and also in tort for breach of confidence and breach of copyright.

[7] In the meantime, another related company, Steelhead LNG (ASLNG) LTD. (“Steelhead ASLNG”) had applied for, and on November 3, 2020 was issued, a Patent for an invention entitled “Liquefaction Apparatus, Methods, and Systems” (the “085 Patent”). In December 2020, Steelhead ASLNG, along with one of the plaintiffs in this litigation, Steelhead LNG Limited Partnership, issued suit in the Federal Court against 7G Ltd., Rockies LNG Limited Partnership, Rockies LNG GP Corp. and Birchcliff Energy LTD., alleging “wilful misconduct” (misappropriation of confidential information) by way of an “infringing competing LNG project”.

[8] The pleadings in that Federal Court action are extensive. They included a counterclaim by the defendants against not only the two plaintiffs but also three private equity funds who owned the majority of partnership units in Steelhead LNG Limited Partnership. The defence and counterclaim rather colourfully described the plaintiffs’ claim as a “cascade of fictions and an abuse of process”. The relief sought in the counterclaim included a declaration that no patent infringement had occurred and that, in any event, the 085 Patent was “invalid and void”.

[9] 7G Ltd. was the subject matter of amalgamation and the successor corporation was ARC Resources Ltd. Amendments to the pleadings in both the Federal Court action and the action in this court resulted in ARC Resources Ltd. becoming the named defendant in the place of 7G Ltd.

[10] ARC Resources Ltd. appealed Giaschi J.’s order dismissing its application for particulars. In reasons for judgment dated April 7 and indexed at 2022 BCCA 128, the appeal was dismissed.

[11] The plaintiffs in the Federal Court action then applied for an order requiring the defendants to produce further and better Affidavits of Documents and also for an order granting leave for the plaintiffs to add Western LNG as a defendant. On February 28, 2022 Case Management Judge Tabib dismissed the application (the “Tabib Judgment”). An appeal of that judgment was also dismissed by Justice McDonald of the Federal Court on May 25, 2022 indexed at 2022 FC 756.

[12] The defendants in the Federal Court action brought a motion for summary trial seeking a declaration that they had not infringed the Steelhead Patent and for an order dismissing the plaintiffs’ action in its entirety. That order was granted by Mr. Justice Manson of the Federal Court on July 6, 2022 and the reasons for judgment are indexed at 2022 FC 998 (the “Manson Judgment”).

[13] The Manson Judgment was appealed and in reasons for judgment dated April 11, 2024 and indexed at 2024 FCA 67, the Federal Court of Appeal unanimously dismissed the appeal.

[14] The parties have advised me that leave is being sought to further appeal the summary dismissal judgment to the Supreme Court of Canada. As at the date of the hearing, that leave application had not been determined.

[15] By the time of the final appearance before me, the issues in dispute had been further refined by the parties.

[16] The plaintiffs are no longer seeking to add the two Rockies entities as defendants in this action. As well, the plaintiffs have redrafted their proposed amendments to the Further Amended Notice of Civil Claim in order, so they say, to specifically address some of the concerns raised by the defendant.

[17] The question that is now squarely before me is whether portions of the plaintiffs’ most current and/or proposed amended pleadings should be struck out/refused on the grounds of abuse of process or issue estoppel in light of the findings “made by the Federal Court in both the Tabib and Manson Judgments”. Another possibility, urged in the alternative by the plaintiffs, is whether the Court

should exercise its discretion to decline any determination at this time, allow the proposed revised amendments to be made, and direct that the questions of abuse of process/issue estoppel be determined at a later date, whether at a summary trial or any “full” trial in due course.

[18] Attached as Appendix A to these reasons for judgment is a colour copied annotated version of the proposed Further Amended Notice of Civil Claim. This document usefully highlights, in separate colours:

- the paragraphs sought to be struck in the defendants’ original Notice of Application (highlighted text);
- the plaintiffs’ recently proposed “narrowing amendments” (red text);
- the further amendments which the defendants say are required to make the pleading “congruent” with the Manson Judgment (blue text); and,
- the further amendments required to render the pleading “congruent” with the Tabib Judgment (green text).

[19] For the reasons that follow I permit the plaintiffs to amend their pleading as proposed, dismiss the defendant’s application to strike parts of the plaintiffs’ pleading, and direct that the issues of abuse of process or issue estoppel be determined at trial.

The Tabib Judgment

[20] The Tabib judgment is quite short (10 pages) brackets and is unpublished. The paragraphs are not numbered.

[21] The plaintiffs in the Federal Court action were seeking production of documents related to the design and development of a certain floating LNG facility project then being pursued by the defendants and Western LNG known as the Ksi Lisims Project. The defendants acknowledged that these Kis Lisims’ documents did in fact exist and had not been produced in the litigation. Their position was that the

Ksi Lisims Project was a different project from the “infringing Competing LNG Project” alleged in the statement of claim and hence were irrelevant and immune from discovery in the Federal Court litigation.

[22] The key parts of the Tabib judgment for present purposes include the following:

The Defendants deny that they have ever proposed an LNG project based on the Plaintiffs’ confidential information or on the patent. Still, they acknowledge having proposed one, and only one, LNG project in the time frame identified in the statement of claim. The defendants’ position is that they have produced the documents related to that LNG project, and that the Ksi Lisims project is a different project.

It is up to the Plaintiffs to show that, on the balance of probabilities, the documents related to the Ksi Lisims project are likely relevant to the allegations of the statement of claim, i.e., That those documents should show that the Ksi Lisims project is the same as the initial project. The Plaintiffs have not met their burden....

The evidence on record shows that when Western LNG joined the defendants and others in 2020, it did so on the understanding that it would use its own design for the LNG facility at Ksi Lisims. Whether or not that design is infringing is irrelevant. The defining characteristics of the allegedly infringing project, as pleaded, is that it is they based on the plaintiff's confidential information, including the as yet unpublished invention. A concept that might infringe the patent but is not based on the allegedly misappropriated information is no longer the “infringing Competing LNG Project”; it is an infringing project, and falls outside the scope of the statement of claim has pleaded.

The plaintiffs have led no evidence to show that it is likely that the project, as it evolved with the participation of Western LNG, continue to be “based” on the information allegedly misappropriated. Rather, the evidence is overwhelmingly to the effect that the design for the LNG facility at Ksi Lisims, whether or not it otherwise infringes, originated from Western, without influence from any information supplied by the Defendants, let alone the Plaintiffs’ confidential information.

The court is not satisfied that the Ksi Lisims project is likely the same as the original allegedly infringing project or that the documents relating to the Ksi Lisims project are relevant to the issues as pleaded.

[23] The “evidence” before Case Management Judge Tabib included affidavit material which had been prepared by the defendants for use on a proposed Motion for Summary Trial. One of the grounds of the appeal raised by the plaintiffs was that CMJ Tabib should not have considered evidence when assessing the plaintiff's

request to amend their claim. In her judgment on appeal, Justice McDonald noted that the application was not just a request to amend pleadings but also a request to add Western LNG as a defendant, a matter on which evidence was required and hence was properly before CMJ Tabib. Justice McDonald held there was “no error in law arising from the CMJ's consideration of the evidence” in the context of the necessity of adding Western LNG as a party to the action.

[24] On the application before me, the defendant is arguing that it would be an abuse of process to allow further amendments to the plaintiff's pleading which do not acknowledge that the “designed for the LNG facility at Ksi Lisims originated from Western without influence from any information supplied by the defendants, let alone Steelhead's confidential information”.

The Manson Judgment

[25] This judgment relates to the defendants' subsequent motion for a summary trial of the Federal Court patent infringement action. The court was satisfied that the summary trial process was appropriate. The testimony of both expert and fact witnesses was adduced by way of affidavit supplemented by *viva voce* testimony at the hearing. As the court noted,

28. The only issue for determination on this motion is whether the Defendant's activities constitute infringement of the 085 Patent contrary to s. 42 of the *Patent Act*, by virtue of using the steelhead patented design to obtain a commercial benefit.

[26] Section 42 of the *Patent Act*, R.S.C. 1985, c. P-4 reads as follows:

Contents of Patent

42. Every patent granted under this Act shall contain the title or name of the invention, with a reference to the specification, and shall, subject to this Act, grant to the patentee and the patentee's legal representatives for the term of the patent, from the granting of the patent, the exclusive right, privilege and liberty of making, constructing and using the invention and selling it to others to be used, subject to adjudication in respect thereof before any court of competent jurisdiction.

[emphasis added]

[27] The parties agreed there had not been any infringement by reason of making, constructing or selling the 085 claimed invention. The defendants admitted for the purposes of the summary trial that they had received a drawing of and a conceptual design of the plaintiff's LNG facility "invention" and that this material was presented to third parties to demonstrate the feasibility of a floating natural gas liquefaction facility.

[28] In the result, Justice Manson held that:

- the patented invention (i.e. the Steelhead LNG facility) did not exist during the relevant time frame and therefore could not be "used";
- the 085 Patent did not claim the conceptual design of the LNG facility invention;
- showing conceptual design drawings to third parties for promotional purposes does not amount to "use" of a patented invention and does not amount to patent infringement;
- there was no evidence that the defendants obtained any sort of commercial benefit through their promotional use of the plaintiff's conceptual design and feasibility studies;
- since the defendants had never made, constructed or sold the invention claimed in the 085 Patent, and since their promotional activities did not amount to "use" of the patented invention, the plaintiff's action for patent infringement had been brought before any infringement had actually occurred and thus was, at best, premature.

[29] The plaintiff's action in the Federal Court was therefore dismissed in its entirety, however the defendant's Counterclaim for, among other things, challenging the validity of the plaintiff's patent, was permitted to stand as a continuing, separate proceeding.

[30] As noted earlier, Justice Manson's decision was upheld by the Federal Court of Appeal (2024 FCA 67). The Federal Court of Appeal expressly affirmed Justice Manson's finding that sharing designs or feasibility studies with potential stakeholders, investors or partners does not amount to "use" of a patented invention within the meaning of s. 42 of the *Patent Act*. However, it also observed:

88. The subject matter and time-limited monopoly granted by the Act does not offer the protection that the appellants are seeking. Recourse may lie elsewhere, in the protection of other forms of intellectual property including copyright and moral rights, or in the enforcement of any non-disclosure agreements between the parties respecting the treatment and use of confidential information required by the parties in the course of their business dealings. The appellants have in fact commence proceedings against the respondents to pursue such claims before the Supreme Court of British Columbia.

[31] The proposed Further Amended Notice of Civil Claim attached as Appendix A to these Reasons identifies the specific paragraphs of Justice Manson's judgment which the defendant says represent the findings of fact or law which should be binding upon the plaintiffs for the purposes of this action. Although they are rather lengthy, I repeat them here:

[2] The proceeding underlying this motion is a patent infringement action brought by the Plaintiffs, Steelhead LNG (ASLNG) Ltd. and Steelhead LNG Limited Partnership (collectively, Steelhead or the Plaintiffs), pursuant to the Patent Act, RSC 1985, c P-4 asserting infringement of Canadian Patent No. 3,027,085 (the "085 Patent").

...

[11] The following facts and timeline are uncontested and outline the business relationship and interactions between and within the Parties:

1. In early 2014, Steelhead and 7G (the predecessor to the Defendant ARC Resources Ltd.) commenced discussions to further Steelhead's development of its LNG facilities in British Columbia.

As part of their business relationship and under the protection of applicable confidentiality obligations, 7G came into possession of Steelhead's confidential information including, among other things, the design for their proposed LNG facility (the "Steelhead Design").

2. From February 2018 to November 2018, Steelhead (with 7G as their representative) began discussions with a group of natural gas producers (the "Consortium") with a view to pursuing the design, development, and construction of an LNG

export project in British Columbia. In addition to 7G, the Defendant Birchcliff Energy Ltd. was also a member of the Consortium.

On September 14, 2018, Steelhead disclosed to the Consortium confidential information, including the Steelhead Design.

In November 2018, the Consortium unilaterally terminated discussions with the Plaintiffs.

3. Meanwhile, in January 2018, the Consortium (which, as stated above, included the Defendants Birchcliff Energy Ltd. and 7G) hired the engineering, procurement, and construction (EPC) firm Advisian to prepare a preliminary feasibility study of an LNG facility.

In May 2018, Advisian's study was delivered to the Consortium and included broad outlines of an LNG facility -- there were no engineering designs or drawings.

In July 2018, the Consortium hired KBR, a second EPC firm, to prepare a preliminary Front End Engineering Design (pre-FEED) study.

Between August 2018 and January 2019, KBR's pre-FEED study was provided to the Consortium on a rolling basis. This study did involve some engineering designs and was classified as a "Class 4" design and cost estimate -- "Class 5" being the earliest stage and "Class 1" being the latest stage.

The KBR study was considered to be in the conceptual stage: it included significant optionality (including essential aspects of the Steelhead Design) and had a cost range [XXX]

The KBR pre-FEED study marked the end of the Consortium's conceptual LNG facility -- no further development steps were taken in respect to this specific design.

As stated above, the business relationship between the Consortium and the Plaintiffs ended in November 2018 -- during the time that the KBR pre-FEED study was being provided to the Consortium.

4. On December 10, 2018, the Plaintiffs filed their application for the 085 Patent, which claims the Steelhead Design as the invention.

5. On February 8, 2019, the 085 Patent was published.

6. From approximately February 2019 to May 2020, the Consortium showed a high-level summary of the KBR pre-FEED study design to third party potential investors, LNG off-takers, and large-scale industry contractors as part of large presentations, and allowed four of these third parties to see the KBR pre-FEED study itself.

None of the third parties referred to above participated further with the Defendants in respect to the KBR pre-FEED study or design contained therein.

The Consortium also met with Indigenous stakeholders throughout this period.

7. In April 2019, the Consortium began discussions with Western LNG, a Houston-based company engaged in the development of North American LNG export facilities, regarding the design and development of a potential LNG facility. At no time was the Plaintiffs' Steelhead Design, the 085 Patent, the Advisian feasibility study, or the KBR pre-FEED study provided to Western LNG; Western LNG provided and relied upon its own LNG facility design.

8. On July 4, 2019, the Plaintiffs commenced a civil claim in the British Columbia Supreme Court against the Defendants alleging breach of copyright and moral rights of the Steelhead Design.

9. As of May 1, 2020, the Consortium was formalized as the Defendant Rockies LNG Limited Partnership with several limited partners including the Defendants 7G (now ARC Resources Ltd.), Rockies LNG GP Corp., and Birchcliff Energy Ltd.

10. On November 3, 2020, the 085 Patent was issued.

11. On December 9, 2020, the Plaintiffs commenced the underlying patent infringement action.

12. On July 2, 2021, Western LNG, Rockies LNG Limited Partnership, and the Nisga'a First Nation entered into an agreement to develop the Ksi Lisims project, which is not the subject of this motion or the underlying action (see *Steelhead LNG (ASLNG) Ltd. et al. v. ARC Resources Ltd. et al.*, 2022 FC 756 aff'g *Steelhead LNG (ASLNG) Ltd. et al. v. ARC Resources Ltd. et al.*, T-1488-20, Order of Case Management Judge Tabib dated February 28, 2022 (unpublished)).

...

[39] Thus, the issue is narrowed to whether the Defendants' conceptual design for purposes of potential future development of an LNG facility (as set out in KBR pre-FEED study) and presentation of the same to third party stakeholders between February 8, 2019 (the publication date of the 085 Patent) and May 2020 (when the KBR pre-FEED study was abandoned) constitutes use of the 085 Patent, contrary to section 42 of the Patent Act.

(2) The Expert and Fact Witnesses

(a) The Defendants' Fact Witnesses

(i) Ms. Charlotte Raggett

...

[42] Ms. Raggett was a credible and knowledgeable witness. On cross-examination, she highlighted that:

1. Building a FLNG facility takes many years (upwards of ten years) and costs billions of dollars (potentially exceeding ten billion dollars);
2. The crucial "go/ no go" decision for a FLNG project is referred to as the Final Investment Decision or "FID";
3. Pre-FID work can be broken down into three stages: the feasibility stage, the pre-FEED stage, and the FEED stage;
4. The KBR pre-FEED was classified as a "Class 4" design and cost estimate, with "Class 5" being the earliest stage and "Class 1" being the latest stage -- Class 4 design and cost estimate was at a "conceptual stage" only;
5. The KBR design had multiple options to be considered in the design, including:

[XXX]

[XXX]

[XXX]

[XXX]

[XXX]

6. During the relevant times, engagement with Indigenous stakeholders, specifically the Nisga'a First Nation, were facilitated by a team member with strong relationships to First Nations in Northern British Columbia; the Nisga'a First Nation gave a presentation to the Defendants, not the other way around; and discussions regarding an LNG project were more broadly focussed and did not include the specific KBR design.

7. The reference in a presentation of a [XXX] [XXX] [XXX] -- not the subject of this motion or the underlying action.

8. By the time the Defendants were engaged in discussions with Western LNG, Ms. Raggett believed that the Defendants had developed credibility with important stakeholders, including the government, regulators, First Nations, and local communities.

...

[57] On cross-examination, Mr. Ravesloot agreed that:

1. At the pre-FEED study stage, an LNG facility cannot produce LNG.
2. Though the mandate provided to KBR by the Defendants for their pre-FEED study may have included the elements of the 085 Patent, this mandate was given eight months before its publication date and the relevant period for this motion.

3. The presentations given by the Defendants were relatively early engagement to demonstrate to potential stakeholders that the Consortium are aware of and are addressing the challenges and are advancing components which must mature before a FID can be made.

4. While he thought it would be unusual and unlikely that the Defendants would start a new development with a new design, he conceded that this appears to be what occurred with Western LNG and the Ksi Lisims project.

...

[85] In addition, the Plaintiffs have not provided evidence that a commercial benefit was obtained by the Defendants through their presentation of the KBR pre-FEED study. As stated above, all third parties shown the KBR study did not engage in further business relationships with the Defendants, and the testimony of Ms. Raggett revealed that relationships with Indigenous stakeholders were as a result of a team member and that the KBR pre-FEED study was never part of the discussions with First Nations. In addition, Western LNG approached and entered into a relationship with the Defendants accompanied by its own LNG facility design.

[32] In essence, by opposing and/or modifying the plaintiffs' proposed further amendments to their pleading, the defendant is saying that the Federal Court judgments estop/prevent the plaintiffs from denying that:

- the design of the Ksi Lisims facility/project originated solely from and was supplied entirely by Western LNG without reference to any of the plaintiff's confidential information;
- the Ksi Lisims facility/project is independent from and is not a continuation of any conceptual floating natural gas liquefaction facility design pursued by the defendants before May 2020 (the date when the defendants discontinued their work with any engineering, procurement and construction contractors with whom the plaintiffs were actively engaged);
- at no time was the plaintiff's LNG facility design, its 085 Patent or any of its feasibility/engineering studies provided to Western LNG;

- none of the third parties who were shown the defendant's preliminary feasibility and engineering studies participated in any related further business with the defendants;
- in May 2020, the KBR pre-FEED was abandoned by the defendants in favour of the facility design originating entirely from Western LNG; and,
- the defendants relationship with the Nisga'a Nation arose out of a pre-existing relationship with an employee of the defendants without the plaintiff's confidential information being used in any fashion.

Parties' Submissions

The Defendant's Submissions

[33] The defendants submit that substantial portions of the plaintiffs' claim against it have already been conclusively determined by the Federal Court and that the continued pursuit of these claims in this action amounts to impermissible re-litigation. They invoke the doctrines of issue estoppel and abuse of process as grounds for striking out the claims in paras. 29-33 and 96-99 of Part 1 of the Amended Notice of Civil Claim or, alternatively, paras. 29-33, 81-88, 99 & 99.2 of Part 1 of the Proposed Further Amended Notice of Civil Claim. They say the Federal Court has made findings of material fact and/or conclusions of mixed fact and law which are binding upon the parties in this litigation and which are wholly at odds its with the allegations to the contrary made in the plaintiff's current or proposed pleading.

[34] The defendants invoke the well-known cases of *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 and *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, 2003 SCC 63 in support of the doctrines of issue estoppel and abuse of process. They acknowledge that the Federal Court action and the action in this court deal with different causes of action, however submit that the legal distinction between the tests for patent infringement and breach of confidence do not preclude the court from finding that material facts and issues are common to

both actions and have already been decided in the defendant's favour by the Federal Court.

[35] To the extent that the plaintiffs seek to circumvent or distinguish the Tabib Judgment on the grounds that it was “merely” an interlocutory procedural application (production of documents), the defendant invokes *Gonzalez v. Gonzalez*, 2016 BCCA 376 at paras. 13-15 in support of the proposition that the doctrines of issue estoppel or abuse of process can nonetheless apply (and should in this particular case).

The Plaintiffs’ Submissions

[36] The plaintiffs remind the court that in order to strike out pleadings under SCCR 9-5, the applicant must meet the high threshold test whether it is “plain and obvious” that the claim(s) is unsustainable, whether by virtue of issue estoppel/abuse of process or otherwise. They say that none of the allegations regarding the nature, scope or misuse of the plaintiff's confidential information were ever explored, much less decided, in the Federal Court. They argue that the legal and factual issues in the Federal Court patent proceeding are much more narrow, and are distinct from, the breach of contract and breach of confidence issues before this court, matters with which are beyond the statutory jurisdiction of the Federal Court.

[37] The plaintiffs submit that, at its core, the Tabib Judgment was about the scope of the Federal Court pleadings i.e. whether the Ksi Lisims project was the same as the “infringing Competing LNG Project” alleged by the plaintiffs in the Federal Court action. CMJ Tabib concluded that the pleadings were not sufficient in that regard, noting there were no allegations tying Western LNG's activities to the alleged infringing project. She emphasized that the plaintiffs had not sought leave to amend the pleadings to expressly identify the Ksi Lisims project as the allegedly infringing project. They argue that the Tabib judgment “should not be afforded any weight given the procedural context”.

[38] Insofar as the Manson Judgment is concerned, the plaintiffs say it dealt solely with the issue of patent infringement and, in particular, the narrow question whether the defendants' presentation to third parties of the plaintiff's conceptual design and feasibility studies constituted an infringing "use" of the invention claimed by the plaintiff's patent, contrary to s. 42 of the *Patent Act*.

[39] The plaintiffs submit that Justice Manson did not consider confidential information at all, nor did he determine any allegations regarding its use or misuse. They cite *Netbored Inc. v. Avery Holdings Inc.*, 2005 FC 1405 at paras. 53-54 for the proposition that the Federal Court "does not have jurisdiction to hear and determine issues as to "confidential information"".

[40] The plaintiffs urge the court to note the significant distinction between the subject matter of the patent (an invention/facility for the liquefaction of natural gas) and the much broader concept of an LNG project and all of its complexities (permitting, land acquisition, regulatory approvals, pipeline development, and the like). They emphasize that the litigation in this court concerns a 4-year business relationship between the parties with associated contractual, common law and fiduciary duties along with the alleged conveyance and subsequent misuse of confidential information provided by the plaintiff to the defendant over that period, including technical information and information related to marketing, business relationships, commercial strategies, and financial analyses, among other things.

[41] The plaintiffs also ask the court to keep the notion of fairness "top of mind", suggesting that the plaintiffs should be permitted to advance its confidential information allegations in this court rather than having them determined "collaterally or incidentally" by the Federal Court which had no jurisdiction to even hear them.

Analysis and Determination

[42] The breach of confidentiality alleged in this case is much broader than the design of any particular facility for liquefaction of natural gas and extends to Steelhead's "LNG Development Strategy" as defined in the plaintiffs' proposed pleadings i.e. the "project" versus "facility" distinction referred to above. If such

information is in fact confidential and was improperly used by the defendant in pursuit of the Ksi Lisims project with Western LNG and others, there may exist a viable claim which might succeed at trial. In my view, it is appropriate for the plaintiffs to have an opportunity to develop this claim through discovery and into trial.

[43] By their strikeout application, the defendant is not seeking dismissal of the litigation. Instead, they are only seeking surgical excision of certain specific allegations and/or are asking the court to effectively require certain admissions from the plaintiffs, admissions which the defendant obviously believes will severely limit successful prosecution of the remaining claim. Yet, as noted above, the court retains a residual discretion to decline estoppel even where the prerequisite elements are present, and this requires a nuanced inquiry into the fairness of using the results of prior proceedings in subsequent related litigation. That is an inquiry which, in my view, should be determined at trial based on findings of fact respecting the parties' respective conduct and the manner in which any confidential information has actually been (mis)used ("use" in a sense other than what is contemplated by s. 42 of the *Patent Act*). This is precisely the type of "recourse" referred to by the Federal Court of Appeal in para. 88 of its judgment referred to above.

[44] In the result, for the reasons stated, I make the following orders:

- the plaintiffs are granted leave to further amend their Notice of Civil Claim in the manner proposed and as reflected in Appendix A to these Reasons for Judgment (without inclusion of the additional paragraphs proposed by the defendant as marked in blue and green in Appendix A);
- the defendant's application to strike out and/or qualify parts of the plaintiffs' pleading is dismissed;
- however, the defendant is granted leave to amend its Response to Civil Claim to specifically allege and particularize its defences respecting issue estoppel and abuse of process through impermissible re-litigation; and,

- any questions regarding the application of issue estoppel or abuse of process will be determined at trial.

[45] In the circumstances, the costs of these applications will be in the cause.

“Kent J.”

Appendix A

- 1 -

Legend:

Highlighted Text – Paragraphs sought to be struck in the Defendant’s Notice of Application;

Red Text – The Plaintiff’s proposed “Narrowing Amendments”;

Blue Text – Amendments necessary to render the pleading congruent with the decision of Justice Manson; and

Green Text – Amendments necessary to render the pleading congruent with the decision of Associate Judge Tabib.

No. S-197484
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

STEELHEAD LNG LIMITED PARTNERSHIP, and STEELHEAD LNG CORP.

PLAINTIFFS

AND:

ARC RESOURCES LTD.

DEFENDANT

FURTHER AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

- 2 -

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS**Part 1: STATEMENT OF FACTS****I. Parties**

1. The Plaintiff Steelhead LNG Limited Partnership ("**Steelhead LP**") is an extra-provincially registered limited partnership organized pursuant to the laws of Manitoba with an address for service for this action at suite ~~2300—1055 W. Georgia St., 700-375 Water Street~~, Vancouver, British Columbia ~~V6E 3P3 V6B 56C~~.
 2. The Plaintiff Steelhead LNG Corp. ("**Steelhead GP**") is a company incorporated pursuant to the federal laws of Canada with an address for service for this action at suite ~~2300—1055 W. Georgia St., 700-375 Water Street~~, Vancouver, British Columbia ~~V6E 3P3 V6B 56C~~. Steelhead GP is the general partner of Steelhead LP.
 3. As far as is known to the Plaintiffs, the Defendant ARC Resources Ltd., is a corporation existing pursuant to the laws of Alberta with a registered office at suite 2400, 525 - 8th Avenue S.W., Calgary, Alberta T2P 1G1, and is successor in interest to Seven Generations Energy Ltd. by way of amalgamation. ARC Resources Ltd. and Seven Generations Energy Ltd. are hereinafter referred to collectively as "**7G**".
- 3.1 ~~As far as is known to the Plaintiffs, the Defendant~~ Rockies LNG Limited Partnership ("**Rockies LP**") is a limited partnership formed pursuant to the laws of the province of

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Alberta. Rockies LP was created as a legal entity in May 2020. Rockies LP is the formalized entity that was the Producer Consortium defined herein.

3.2 As far as is known to the Plaintiffs, the Defendant Rockies LNG GP Corp. ("Rockies GP") is a corporation formed pursuant to the laws of Alberta with a registered office at Suite 4000, 421 7th Avenue SW, Calgary, AB. Rockies GP is the general partner of Rockies LP. Rockies GP was created as a legal entity in May 2020.

3.3 7G (by its successor ARC Resources Ltd) exited the Producer Consortium and the Rockies LP partnership in or around December 2022.

II. Overview

4. This is a claim concerning the ~~Defendant's~~Defendants' 7G's knowing and intentional wrongful use and disclosure of confidential information provided to the ~~Defendant 7G~~ by Steelhead LP and Steelhead GP (together, "Steelhead") and/or knowingly obtained by 7G from others, as outlined herein, for its own purposes and contrary to the duties of good faith and honesty, to the significant detriment of Steelhead, and for remedies relating thereto.

Steelhead and the LNG Industry

5. Steelhead was founded in or around late 2013 and specializes in the development of state-of-the-art liquefied natural gas ("LNG") export projects. This specialization was made possible because of Steelhead's globally experienced LNG project development team, which has expert knowledge of all facets of the LNG industry.
6. Developing a state-of-the-art LNG export project takes several years and involves numerous elements, including design engineering, operational planning, stakeholder engagement, First Nations engagement, political engagement, permitting and commercial deal-making.
7. Each of these elements is critical to building a successful LNG export project. It is only by carefully weaving each element together under an overarching LNG strategy that an

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LNG export project has any possibility of success.

8. A misstep in any element of an LNG export project could cost hundreds of millions of dollars, cause significant delays and compromise a project's viability.
9. Steelhead quickly became a pioneer in the LNG field in Canada. From early 2014, Steelhead began to develop a design for an at-shore (also known as near-shore) LNG liquefaction export facility ("Steelhead's LNG Solution") to be situated along the west coast of British Columbia, and which particularly addressed unique considerations and challenges for coastal British Columbia.
10. The development work for Steelhead's LNG Solution was proprietary and confidential.

The Parties' Relationship

11. During the first half of 2014, Steelhead and 7G began discussing a potential business relationship that would enable 7G to gain access to valuable new markets for ~~its~~the natural gas ~~and it produced~~, become a significant investor in Steelhead, and become an important partner in Steelhead's LNG export projects.
 - 11.1 This was more than a mere customer-supplier relationship. Steelhead and 7G were working together toward a common goal: selling LNG to new markets abroad. Both parties brought something to the table: Steelhead brought an experienced team of executives and technical experts in the LNG industry, and 7G brought its natural gas supply and access to capital. Understanding that the parties were working in unison, Steelhead provided significant technical support and information to 7G that it would never provide to a typical supplier of natural gas.
12. At all material times, the relationship between Steelhead and 7G has been subject to contractual and common law duties of confidentiality, the common law duties of good faith in performing contracts and honest contractual performance, and was overlaid with fiduciary obligations owing to Steelhead from members of 7G's board and executives, pursuant to which 7G knowingly received valuable information from Steelhead (which

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7G later exploited for its own benefit).

13. While Steelhead had secured funding for the initial development stages of its LNG export projects, its intention was always to source additional funding from third party investors as the projects advanced. Natural gas producers (like 7G) were attractive potential investors because they produced natural gas that could be liquefied at, and transported from, Steelhead's LNG export facilities.
14. 7G is a natural gas producer in the business of extracting and supplying natural gas to the North American market through the existing physical pipeline infrastructure. While 7G's natural gas extraction expertise is considerable, in contrast to Steelhead, 7G did not in 2014, or at any time thereafter, have the expertise required to design or develop an LNG export facility.
15. As discussions evolved, 7G in or around late 2015 dedicated a core team of 7G employees, directors and representatives ("7G's LNG Team") to engage with Steelhead. No member of 7G's LNG Team had any substantive experience in designing, developing, constructing or operating any type of LNG export facility, floating, at-shore, or otherwise. 7G's experience was nil.
16. Between early 2016 and August 2016, 7G's LNG Team undertook significant due diligence on Steelhead. The parties ultimately entered a series of agreements which broadly provided that 7G would pursue development of the required pipeline infrastructure to supply Steelhead's coastal LNG export projects with natural gas, and Steelhead would develop and construct the LNG export facilities, secure required permits ~~and approvals and negotiate all commercial agreements required for the projects,~~ approvals, and consents (e.g. from First Nations) and negotiate all commercial agreements required for the projects. In view of this purpose, Steelhead provided significant details about its LNG project and Steelhead's LNG Solution to 7G. At 7G's insistence, 7G was granted a seat on Steelhead's board and was additionally permitted to nominate an observer for Steelhead's board meetings. Beginning in 2016, numerous 7G board members and executives joined Steelhead's board and observed Steelhead's board

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meetings.

17. During the negotiations between the parties, 7G continually focussed on the price it would receive from Steelhead for its natural gas. However, Steelhead could not agree to a firm price until there was more certainty in the overall project economics, including, for example, the cost of securing a suitable site for the LNG export facilities (including securing First Nations approval/consent for the site(s) at issue) and the price at which customers under various LNG Offtake Agreements (as defined below) would be willing to purchase LNG. As a result, the parties ultimately agreed to a framework for determining the price 7G would receive for its natural gas ~~by reference~~ should it sell its natural gas to Steelhead to supply any of Steelhead's sales price LNG Offtake Agreements.
18. Between 2014 and 2018, Steelhead continued to refine its design for Steelhead's LNG Solution. Pursuant to the parties' contractual relationship, Steelhead provided 7G information on Steelhead's LNG Solution on an ongoing basis, on the understanding that 7G would use the information it received only in connection with Steelhead's LNG export projects in British Columbia. As part of Steelhead's engagement with 7G on Steelhead's LNG Solution, Steelhead discussed many technical details with 7G's LNG Team. Steelhead's technical experts taught 7G's LNG Team about the design, development, and operation of an LNG facility, including ways to treat and supply 7G's rich gas to optimize for downstream LNG production. Steelhead would not have undertaken these efforts if it were not for the special nature of the relationship with 7G.
19. Aspects of Steelhead's LNG Solution are protected by Canadian Patent No. 3,027,085 (the "**085 Patent**") issued on November 3, 2020 to Steelhead LNG (ASLNG) Ltd. ("**Steelhead ASLNG**"), a wholly owned subsidiary of Steelhead LP.
20. Between 2014 and 2018, Steelhead was also continuing to improve its strategies with respect to stakeholder engagement, customer relationships, First Nations engagement, consent, and approval, regulatory requirements, operational planning, and other relevant elements which, collectively, together with Steelhead's LNG Solution, are hereinafter

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referred to as "Steelhead's Development Strategy". As with Steelhead's LNG Solution, Steelhead provided 7G information on Steelhead's Development Strategy on an ongoing basis, on the understanding that 7G would use the information it received only in connection with Steelhead's LNG export projects in British Columbia.

21. Advancing Steelhead's LNG Solution and Steelhead Development Strategy took Steelhead five years and cost over 140 million dollars.
22. Notwithstanding that 7G's LNG Team could not and did not contribute to Steelhead's Development Strategy (including, *inter alia*, Steelhead's LNG Solution), 7G required Steelhead to provide 7G's LNG Team with access to significant amounts of confidential information related thereto, as well as a position on Steelhead's board of directors. Steelhead provided the requested information in view of the parties' contractual relationship, and on the understanding that 7G would use the information it received only in connection with Steelhead's LNG export projects in British Columbia.
23. Under the protection of the confidentiality obligations owed between the parties, Steelhead shared with 7G significant amounts of Confidential Information (as defined in paragraph 48 below) including, *inter alia*:
 - a. Disclosing various aspects of Steelhead's design, engineering and operations plans for its LNG export facilities;
 - b. Disclosing Steelhead's regulatory and permitting strategies, including as related to First Nations;
 - c. Allowing 7G to actively observe Steelhead's commercial deal-making efforts;
 - d. Permitting 7G to view Steelhead's political engagement plans and actively participate in engagement with key political supporters and government agencies; and
 - e. Sharing Steelhead's bespoke approach to First Nations engagement.

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In effect, Steelhead provided 7G with the confidential blueprints and know-how for developing an innovative LNG export project in British Columbia.

23.1 At all material times, it was Steelhead's understanding and legitimate expectation that the information regarding its business, financial and technical strategies, designs, know-how, operations, and contacts that it had provided (and was providing) to 7G in connection with Steelhead's proposed LNG export facilities would be used by 7G and its affiliates honestly and in good faith, and in connection with Steelhead's LNG export facility projects, not for 7G's own benefit/purposes and not for 7G's own competing LNG project(s), especially in light of the details described in paragraph 6, above, and given the extremely limited opportunities for LNG export projects in British Columbia.

7G's Pursuit of a Competing LNG Project using Steelhead's Information

24. By mid-2017, 7G had ceased pursuing the originally agreed-upon pipeline infrastructure arrangement for ~~the~~ Steelhead's LNG export projects. The relationship between Steelhead and 7G had deteriorated by that time. This was due in part to 7G's continued concern regarding the price that it would receive for its natural gas, which Steelhead could not agree to until the LNG Offtake Agreements (as defined below) had been secured.
25. At or around this same time 7G inexplicably requested the right to use Steelhead's confidential information for 7G's own benefit without compensation to Steelhead. Steelhead refused 7G's request.
26. In or around late 2017 or early 2018, 7G formed a consortium of natural gas producers (the "**Producer Consortium**") to explore their own separate LNG development opportunities- (which Steelhead alleges 7G was exploring prior to the formation of the Producer Consortium) in British Columbia, without informing Steelhead of its intentions to do so, including at Steelhead board meetings. The Producer Consortium was subsequently formalized as Rockies LP in or about May 2020.
27. At the time 7G formed the Producer Consortium, 7G had gained and was still in

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possession of a wealth of confidential knowledge and copyrighted materials from Steelhead that would, if misused, give 7G the means to fully replicate Steelhead's Development Strategy including Steelhead's LNG Solution without Steelhead.

28. ~~As~~ 7G represented to Steelhead in early 2018 that the Producer Consortium had interest in Steelhead's LNG export facility projects; ~~between~~ February 2018 and November 2018 Steelhead and 7G discussed the possibility of Steelhead working with the Producer Consortium; however, 7G ultimately unilaterally terminated those discussions.

28.1 At all materials times during those discussions, Steelhead's understanding and legitimate expectation that the information regarding its business, financial and technical strategies, designs, know-how, operations, and contacts that it had provided (and was providing) to 7G and the Producer Consortium in connection with Steelhead's proposed LNG export facilities would be used by 7G and the Producer Consortium honestly and in good faith, and in connection with 7G's (or the Producer Consortium's) involvement in Steelhead's LNG export facility projects, not for their own benefit/purposes and not for their own competing project(s) especially in light of the details described in paragraph 6, above, and given the extremely limited opportunities for LNG export projects in British Columbia.

29. Meanwhile, in or around August 2018, Steelhead discovered that 7G, either alone or together with members of the Producer Consortium, was pursuing the development of its own near-shore LNG facility design and project(s) (the "Competing LNG Project"). Such project(s) were initially developed by 7G as the lead proponent, and subsequently involved additional stakeholders, and have been renamed and/or have continued into what is now known as Ksi Lisims LNG.

(all of which is referred to collectively herein as the "Competing LNG Project")

- 29.1 Rockies LP and/or Rockies GP has since its formation been, and is currently, the lead proponent of the Competing LNG Project. Rockies LP and Rockies GP are the knowing

¹ *Steelhead LNG (ASLNG) Ltd. v Arc Resources Ltd.*, Docket: T-1488-20 at pages 4-7 (the "*Tabib Decision*")

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recipients of Steelhead's Confidential Information and have thereby obtained the benefit of the 7G's and the Producer Consortium's special relationship with Steelhead, including by access to the extensive information provided by Steelhead to 7G and the Producer Consortium in connection with Steelhead's proposed LNG export facilities.

30. Steelhead subsequently discovered that the Competing LNG Project had ~~and is~~ ~~was~~ being promoted as having a facility configuration strikingly similar to Steelhead's LNG Solution, and that in June 2018, in order to pursue the development of the Competing LNG Project, 7G had solicited services from key engineering, procurement and construction contractors ("EPCs") with whom Steelhead was actively engaged, in breach of 7G's obligations to Steelhead. 7G solicited the services of said EPCs knowing that said EPCs possessed Steelhead's Confidential Information and had gained their experience by virtue of working on Steelhead's LNG projects and with Steelhead's LNG Solution. However, it is admitted that in or about May 2020, the Defendants discontinued their work with the EPCs and abandoned the development of their own conceptual design for an FLNG facility. Instead, at that time the Defendants partnered with Western LNG for the design, development and operation of an LNG facility at the Ksi Lisims LNG Project in northern British Columbia.²
31. It is admitted that the design of the facility at the Ksi Lisims LNG Project is independent, and is not a continuation, of any conceptual FLNG facility design pursued by the Defendants prior to May 2020. The design of the facility at the Ksi Lisims LNG Project originated from and was supplied entirely by Western LNG without reference to any information supplied by the Defendants, let alone Steelhead's Confidential Information.³
32. It is inconceivable that 7G, 7G (together with Rockies LP and/or Rockies GP), with no LNG export facility development experience and without the requisite technical skills of its own, ~~could accomplish~~ accomplished in a few months what Steelhead's LNG expert development team achieved only after years of effort and at significant expense. 7G ~~could~~ only be pursuing its own near shore LNG project (including through the Producer Consortium, Rockies LP, and Rockies GP) was able to do so by misusing Steelhead's

² Steelhead LNG (ASLNG) Ltd. v Arc Resources Ltd., 2022 FC 998 at para 11 (the "Manson Decision")

³ Tabib Decision, page 7.

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- Confidential Information, in breach of its confidentiality obligations to Steelhead, and in breach of its duties of good faith and honest contractual performance to Steelhead.
- 32.1 Specifically, 7G (together with Rockies LP and/or Rockies GP) used and leveraged Steelhead's Confidential Information (as defined in paragraph 48, below) to advance the Competing LNG Project. 7G, Rockies LP, and Rockies GP has used and disclosed Steelhead's Confidential Information (or used and disclosed documents and information derived therefrom) in its dealings with potential project partners, potential investors, potential customers, potential suppliers, First Nations (including the Nisga'a Nation), regulatory bodies, and marketing entities (including the Alberta Petroleum Marketing Corporation). 7G's use of Steelhead's Confidential Information allowed it to, *inter alia*, gain credibility in its dealings with potential partners, investors, customers, and suppliers, secure a site for its Competing LNG Project, obtain approval and consent of First Nations, enter into an MOU, site option agreement, and partnership with the Nisga'a Nation, and enter a commercial arrangement with Western LNG that enabled 7G to proceed with its Competing LNG Project, now being led by Rockies LP and/or Rockies GP. 7G's exploitation of Steelhead's Confidential Information was also to the detriment of Steelhead, given the scarcity of opportunities for LNG export facilities in British Columbia. However, it is admitted that none of the third parties who were shown the Defendants' preliminary feasibility study (the "Advisian Study") or the Defendants' Pre-Front End Engineering Study (the "KBR Pre-FEED"), both of which were abandoned in or before May 2020, participated in further business with the Defendants in respect of the KBR Pre-FEED or any design contained therein.⁴
33. It is also admitted that, at no time was Steelhead's design for an LNG facility, the 085 Patent, the Advisian Study or the KBR Pre-FEED provided to Western LNG. Similarly, the KBR Pre-FEED was not discussed during the Defendants' interactions with the Nisga'a Nation.⁵
34. 7G's brazen misuse and misappropriation of Steelhead's highly valuable and highly sensitive Confidential Information has (a) unjustly enriched 7G (together with Rockies

⁴ *Manson Decision* at para 11

⁵ *Manson Decision*, paras 11, 42, 85.

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LP and/or Rockies GP) and (b) caused substantial damage to Steelhead.

35. 7G (together with Rockies LP and/or Rockies GP) continues to pursue⁶ the Competing LNG Project using Steelhead's misappropriated Confidential Information until in or before May 2020.⁷ In any event, 7G (together with Rockies LP and/or Rockies GP) would not have been able to progress its Competing LNG Project to its present stage without its unlawful use of Steelhead's Confidential Information. At all material times, the Producer Consortium and/or the Rockies Parties, as the case may be, acted with knowledge (whether actual or constructive) of all material facts and conduct of 7G, and acted in concert with, on behalf of, or being liable for the activities of, 7G.
36. Steelhead is seeking, *inter alia*:
- a. An injunction preventing 7G from using or disclosing Steelhead's Confidential Information;~~and,~~
 - b. Damages and/or an accounting relating to:
 - i. the improper misuse and disclosure by 7G of Steelhead's Confidential Information;~~and~~
 - ~~ii. infringement of Steelhead's copyright;~~
 - iii. 7G's breach of the duty of honest contractual performance;
 - iv. 7G's breach of the duty of good faith in performing contracts;
 - v. unjust enrichment; and
 - vi. 7G's knowing receipt of trust property (i.e. Confidential Information) provided by Steelhead to its board members and board observers, and subsequent use of and dealing with that trust property in a manner inconsistent with the trust relationship between Steelhead and its board

⁶ *Tabib Decision*, at page 7; *Manson Decision* at para 11, 85

⁷ *Manson Decision* at para 11, 85.

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members and observers: and

- c. A constructive trust over all or part of the Competing LNG Project and any other project involving or requiring the use of Steelhead's Confidential Information (defined in paragraph 48, below).

III. Steelhead's innovative LNG development business

The LNG market is fundamentally different from the conventional natural gas market

37. Canada has long been a major producer of natural gas. Most domestic producers sell their natural gas within the North American market, where prices have generally become increasingly depressed over the last decade. As a result, more and more Canadian gas producers have been seeking to sell their natural gas in overseas markets such as Asia, where demand for natural gas is rising and prices are typically higher than in North America.
38. Lucrative overseas markets can only be accessed by converting natural gas to LNG, so that it can be stored and shipped on overseas carriers. This conversion is achieved in LNG liquefaction and export facilities, which are typically developed, constructed and operated in jurisdictions where natural gas resources greatly exceed the domestic demand, as is the case in Western Canada.
39. In recent years, the development of LNG export facility projects has been successfully pursued by both large international oil and gas companies (such as the LNG Canada project in British Columbia being developed by Royal Dutch Shell and its partners) and by independent developers (such as Cheniere Energy, Inc. in the US Gulf Coast).
40. In order to secure late-stage development funding and construction financing, an independent LNG project developer will typically be expected to pre-sell the LNG to be produced during the project's anticipated initial lifespan. This can be contrasted with projects led by developers that are large international oil and gas companies that have the ability to self-finance.

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41. It is therefore critical for independent LNG project developers to engage with potential LNG customers ("LNG Offtakers") and enter into long-term agreements to supply LNG Offtakers with LNG ("LNG Offtake Agreements") in order to obtain such financing.
42. There is significant and intense competition in the global market to secure LNG Offtake Agreements. Details regarding potential LNG offtake relationships that are highly valuable include, *inter alia*:
 - a. Names of potential counterparties;
 - b. Potential offtake commercial terms;
 - c. Preferred pricing indices;
 - d. Counterparty sensitivities, including existing portfolios, exposures, or expansion plans; and,
 - e. Commercial strategies for enhancing the value of LNG Offtake Agreements based on specific counterparty circumstances;

("LNG Offtaker Information").

43. Except for certain well-known global LNG customers, LNG Offtaker Information is generally not publicly available. It is typically obtained through years of engagement with potential LNG Offtakers, often utilizing longstanding relationship networks, at significant expense.
44. In addition to securing LNG Offtake Agreements, designing, constructing and operating an LNG liquefaction and export facility requires crafting a complex LNG development strategy that accounts for, *inter alia*, technical, economic, environmental, commercial, operational, and political considerations.
45. Additionally, in British Columbia, it is particularly difficult to:
 - a. Locate suitable sites, especially as most coastal sites in British Columbia are

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situated on (or require passage through) First Nations territories where First Nations engagement, consent, and approval is paramount; and

- b. Cost-effectively configure the LNG facility while still meeting the ~~BC~~British Columbia government's low emission and marine environment preservation objectives.
46. The development of Canadian LNG export facilities is a relatively recent phenomenon. It requires highly specialized expertise. Conventional Canadian natural gas producers do not have the specialized expertise required to successfully develop an LNG export facility nor secure valuable LNG Offtake Agreements.

Steelhead specializes in developing innovative LNG projects

47. Steelhead was founded in or about late 2013 for the sole purpose of developing LNG export projects in British Columbia. To do so, Steelhead assembled a globally experienced team with comprehensive knowledge of both the natural gas and LNG industry. At all relevant times, Steelhead had:
- a. The technical expertise to develop an LNG facility to facilitate the export of natural gas from Canada to international markets in accordance with federal and provincial regulations and restrictions including but not limited to environmental regulations; and in view of unique First Nations considerations for development in western Canada;
 - b. The commercial expertise and contacts with LNG Offtakers to profitably export LNG to foreign buyers; and
 - c. The expertise to deliver the other necessary elements of Steelhead's Development Strategy.
48. Steelhead's engineering research efforts led to Steelhead's LNG Solution, which is a cost-effective, innovative design and configuration for a floating LNG liquefaction and export facility. Steelhead's LNG Solution was developed for the political, economic, regulatory

and social context of British Columbia and Canada, but has global applicability:

- a. Steelhead's LNG Solution includes one or more near shore floating liquefaction and LNG storage facilities, coupled with electric drive motors, which allows for the LNG facility to be powered from an electrical grid or other external power source. When combined with an environmentally efficient electrical grid, such as an electrical grid heavily reliant on hydroelectric power generation as is the case in British Columbia, this novel configuration provides for substantially lower greenhouse gas (GHG) emissions than the traditional approach, where open-cycle gas turbines drive the refrigerant compressors of the facility.
 - b. Steelhead's LNG Solution balances the supply of electricity from the external or on-shore power source to the floating LNG facility liquefaction trains in order to address potentially large variation in electrical loads resulting from transient conditions.
 - c. Steelhead's LNG Solution incorporates an electrical connection with enough capacity to deliver the required electrical power yet having the flexibility necessary to withstand movement between a fixed, static jetty and a floating LNG facility.
 - d. As referenced at paragraph 19 above, in the claims of the 085 Patent are set out novel aspects of ~~the~~ Steelhead's LNG Solution. A copy of the 085 Patent is attached hereto as **Schedule A**.
49. In parallel to the technical development of Steelhead's LNG Solution, Steelhead generated and obtained confidential LNG Offtaker Information through *inter alia* extensive visits to Asia to conduct in-person meetings and obtain 'on-the-ground' competitive intelligence regarding LNG Offtakers.
50. 7G received from Steelhead significant and highly valuable confidential information, "**Steelhead's Confidential Information**", the particulars of which relate to Steelhead's LNG Solution, LNG Offtaker Information, Steelhead's Development Strategy, and

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sensitive commercial components associated with the Malahat LNG Project (as defined below) and the Kwispaa LNG Project, (as defined below), and includes, *inter alia* :

- a. Technical information relating to Steelhead's LNG Solution;
- ~~b. Location studies for LNG facilities to be sited by Steelhead;~~
- c. Technical studies commissioned or performed by or for Steelhead, including studies of specialized equipment for LNG liquefaction and export projects and such projects' anticipated capital costs;
- d. Work relating to the 'expression of interest' and 'invitation to tender' processes undertaken by or for Steelhead in relation to the design and construction of Steelhead's LNG Solution and associated on-shore components;
- e. Steelhead's Memoranda about the elements to be included in requests for proposals from third party consultants/suppliers/contractors to an LNG liquefaction and export project, and the identities of these potential third-party consultants/suppliers/contractors;
- f. Steelhead's LNG market studies and analyses, including:
 - i. LNG pricing analyses;
 - ii. LNG marketing analyses; and,
 - iii. Analyses of the global LNG market, including bespoke LNG marketing opportunities;
- ~~g. Steelhead's LNG Offtaker Information, including:
 - i. The identity of an LNG Offtaker who had entered into an LNG Offtake Agreement with an affiliate of Steelhead;
 - ii. Identities of LNG Offtakers who have engaged in private, non-public discussions and/or negotiations with an affiliate of Steelhead in respect~~

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~~of LNG Offtake Agreements. The identities of these LNG Offtakers were and remain confidential, but are set out in Exhibit I to the confidential Affidavit #1 of Alex Brigden filed under seal January 7, 2020;~~

~~iii. Identities of LNG Offtakers potentially subject to future engagement by Steelhead to negotiate LNG Offtake Agreements;~~

~~iv. Pricing and value enhancement strategies for LNG Offtakers and LNG Offtake Agreements;~~

~~v. Anticipated commercial terms, other than pricing, for LNG Offtakers and LNG Offtake Agreements;~~

~~vi. Letters of Intent and Term Sheets with LNG Offtakers; and~~

~~vii. Extensive historical information gathered by Steelhead in respect of potential LNG Offtakers both through the extensive networks of Steelhead's representatives and through direct engagement of such potential LNG Offtakers over a number of years;~~

~~h. Steelhead's extensive internal analyses of timelines and steps for developing an LNG liquefaction and export project in British Columbia;~~

~~i. Steelhead's extensive analyses of risks for developing an LNG liquefaction and export project in British Columbia;~~

~~j. Extensive analyses and strategies for meeting the applicable environmental, regulatory, and permitting requirements for developing an LNG liquefaction and export project in British Columbia;~~

~~k. Extensive analyses and strategies for stakeholder engagement in British Columbia;~~

~~l. Bespoke and innovative approaches to working with First Nations in British~~

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~~Columbia in respect of infrastructure development:~~

- ~~m. Extensive analyses relating to pipelines, including legal requirements and strategy for pipeline development in British Columbia;~~
 - ~~n. Steelhead's commercial strategies regarding the potential participation of a group of gas producers in the development of an LNG liquefaction and export facility and/or any associated pipeline;~~
 - o. Steelhead's documents and information relating to Steelhead's and its affiliates' intellectual property strategy;
 - p. Steelhead's extensive financial analyses, including budgets, projections and financial models;
 - q. Steelhead's LNG Solution disclosed in the underlying patent application of the 085 Patent (until such time as the information became public with the laying open to the public of the patent application on February 8, 2019); and
 - r. Other confidential information falling into the categories defined by the confidentiality provisions in the 7G NDA, the Second Amended and Restated Limited Partnership Agreement, and the Amended and Restated Master Investment Agreement referenced at paragraphs 52.2 and 53 below.
51. Further, Steelhead owns the copyright in the works, whether technical, engineering, operational, business, economic or otherwise, created as part of the Steelhead Development Strategy (which includes the development of Steelhead's LNG Solution) (Steelhead's "Copyrighted Materials") including:
- a. Business plans, budgets, technical documents, technical studies, technical designs and specifications, reports, proposals, procurement documents, regulatory documents, patent documents, First Nations relationship agreements, LNG Offtake Agreements, memoranda, correspondence, marketing materials, presentations, pitch decks, notes, emails, spreadsheets, tables, electronic files

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and other original literary works; and,

b. Charts, projections, graphs, sketches, illustrations, diagrams, drawings, schematics, photos, images and other original artistic works.

52. Pursuant to section 3 of the *Copyright Act*, R.S.C. 1985 c. C-42, Steelhead has the exclusive right, *inter alia*, to produce, reproduce and publish the Copyrighted Materials, or any substantial part thereof, in any material form whatsoever, including the exclusive right to authorize such acts by others.
53. In or about early 2014, Steelhead began to pursue development of two LNG liquefaction and export facilities on Vancouver Island using Steelhead's LNG Solution, the Malahat LNG project (the "**Malahat LNG Project**") and the Kwispaa LNG project (the "**Kwispaa LNG Project**"). In order to develop the Malahat LNG Project and Kwispaa LNG Project, Steelhead required a supply of natural gas and was open to forming business relationships with domestic gas producers to do so.

IV. 7G and Steelhead's business relationship

54. In early 2014, to obtain more stable demand and a higher price for its natural gas than it was receiving in North America, 7G engaged Steelhead in early discussions about entering into a potential business relationship where 7G could support Steelhead's development of LNG export projects in British Columbia.
- 54.1 The nature of the parties' business relationship was simple: 7G and Steelhead would, together, pursue the development of an LNG export facility in British Columbia. Steelhead brought an experienced team of executives and technical experts in the LNG industry, and 7G brought its natural gas supply and access to capital. Steelhead's understanding and reasonable expectation at all material times was that the parties were working together, toward the same common goal.
- 54.2 On April 10, 2014, Steelhead GP and 7G executed a Mutual Non-Disclosure Agreement, which was extended by subsequent written agreements effective April 10, 2017 and April

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10, 2018 (the "7G NDA").

55. These discussions continued between early 2014 and mid-2016, and resulted in 7G making an equity investment in Steelhead LP of CDN 25,800,000 (the "**Equity Investment**"), as evidenced by, *inter alia*, the following agreements:

- a. The Amended and Restated Master Investment Agreement dated August 5, 2016, among *inter alia* Steelhead and 7G; and,
- b. The Second Amended and Restated Limited Partnership Agreement dated August 5, 2016 among *inter alia* Steelhead GP and 7G;

(together, the "**Equity Investment Agreements**").

56. At the same time, in furtherance of the conditions of the Equity Investment, Steelhead LP and 7G entered into the following additional agreements:

- a. The Amended and Restated Development Agreement made as of August 5, 2016 (which was amended and restated on February 6, 2017); and
- b. The Amended and Restated Option Agreement made as of August 5, 2016 (which was later amended and restated on February 6, 2017) (the "**Option Agreement**");

(together, the "**Development Agreements**").

(As a matter that is outside the scope of this Notice of Civil Claim, Steelhead denies that the Option Agreement is of any force or effect).

57. Pursuant to the Development Agreements:

- a. 7G was to pursue development of the required infrastructure to supply the Malahat LNG Project and the Kwispaa LNG Project with natural gas from Northern British Columbia and Northern Alberta;

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- b. Steelhead was to pursue the development of the Malahat LNG Project and the Kwispaa LNG Project, including all associated commercial, regulatory and technical elements; and,
- c. Steelhead was to arrange and negotiate LNG Offtake Agreements with potential LNG Offtakers;

(the "Original Plan").

58. In addition to the 7G NDA, the Equity Investment Agreements and Development Agreements contain confidentiality provisions.

58.1 All of the agreements between 7G and Steelhead were for the purpose of discussions and dealings related to the development and pursuit of Steelhead's LNG export projects. All of the information provided to 7G pursuant to those agreements was in furtherance of that purpose, and not at any time for the 7G's use and exploitation for its own benefit.

59. From inception of negotiations of the Equity Investment Agreements and Development Agreements, 7G prioritized attempting to guarantee the highest price possible for its natural gas. However, Steelhead could not agree to a firm price until there was more certainty in the overall project economics, including the price at which Steelhead would sell LNG to customers under the various LNG Offtake Agreements.

60. In such negotiations, and over time thereafter, 7G disagreed with Steelhead over the equity rate of return that Steelhead projected that investors in Steelhead and its LNG export projects would require, notwithstanding that Steelhead's position was based on an economic modelling approach endorsed by experienced financial advisors.

61. Having no experience in the LNG industry, 7G did not appreciate the complexities in constructing state-of-the-art LNG facilities and the corresponding risks borne by investors in doing so.

62. Ultimately, as part of the Option Agreement, 7G agreed on a framework to be used to

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determine the price that it was to receive for its natural gas should it sell its natural gas to Steelhead to supply one or more of Steelhead's Offtake Agreements.

V. **Steelhead's disclosure of Confidential Information and Copvrighted Materials to 7G**

63. 7G's tasks under the Original Plan related to pipeline infrastructure and not LNG. Nonetheless, 7G demanded that it be provided access to a vast amount of the development and operational work Steelhead undertook with respect to Steelhead's tasks under the Original Plan. In doing so, 7G became privy to very significant amounts of Steelhead's Confidential Information relating to Steelhead's Development Strategy including Steelhead's LNG Solution.
64. Steelhead was committed to the success of the business relationship with 7G, and relied on 7G's legal duty of confidentiality, honest contractual performance, and good faith to ensure that use of Steelhead's Confidential Information would be strictly limited to the purpose for which it was disclosed.
65. 7G's LNG Team became involved in Steelhead's affairs. This included the following directors and senior executives of 7G:
 - a. Pat Carlson (then CEO of 7G), who was appointed to Steelhead GP's Board on or about August 5, 2016, as a condition of the Equity Investment;
 - b. Marty Proctor, (then COO, and later CEO, of 7G), who was appointed as a 7G observer to Steelhead GP's Board;
 - c. Tim Stauff (initially a consultant to 7G, and later hired by 7G as Senior Vice President);
 - d. Charlotte Raggett, Vice President, Midstream Business Development of 7G and later, Chief Commercial Officer of Rockies GP and then its President and CEO;
 - e. Harvey Doerr, Director of 7G; ~~and~~

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f. Avik Dey, Director of 7G and an investment representative of the Canada Pension Plan Investment Board (“CPPIB”); and

g. William (Bill) McAdam, Director of 7G.

65.1 The same leadership team would later be closely involved in the affairs of the Producer Consortium and Rockies LP and Rockies GP in pursuit of the Competing LNG Project. Additionally, other individuals associated with 7G became heavily involved with the Rockies Parties, including Greg Kist (formerly an employee or consultant of 7G and the first President & CEO of the Rockies Parties upon its formation).

66. From late 2015 to 2018, Steelhead disclosed to 7G and the Producer Consortium extensive amounts of its Confidential Information and Copyrighted Materials relating to the Steelhead Development Strategy, including Steelhead’s LNG Solution, associated with the Malahat LNG Project and Kwispaa LNG Project.

67. 7G was provided Steelhead’s Confidential Information and Copyrighted Materials in the ordinary course of meetings and through other communications with Steelhead, including *inter alia* as follows:

a. Steelhead GP Board Meetings attended by 7G representatives — Between August 5, 2016 and January 2018, Pat Carlson, Marty Proctor and Tim Stauff (alone or in combination) attended Steelhead GP Board meetings and were copied on e-mail communications in relation thereto, as well as communications relating to other sensitive and confidential matters for the board’s attention. During these in person and electronic communications, Steelhead’s Confidential Information, including highly sensitive strategic technical and commercial information, was discussed and Copyrighted Materials were shared.

b. Teleconferences and meetings between Steelhead and 7G’s technical teams — Commencing August 2016, Steelhead’s technical team conducted regular

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technical teleconferences and in person meetings with 7G's technical team (the "**Technical Meetings**"). During these meetings Steelhead shared both verbally and in writing with 7G extensive Confidential Information, including highly significant and valuable technical information about the Malahat LNG Project, the Kwispaa LNG Project, and the development of the configuration for Steelhead's LNG Solution.

- c. *Steelhead data rooms* — Between August 2016 and November 2018, at 7G's insistence, members of 7G's LNG Team were provided with access to Steelhead's electronic 'data rooms' (the "**Data Rooms**"). These Data Rooms contained extensive amounts of Steelhead's Confidential Information and Copyrighted Materials covering all aspects of Steelhead's operations; and
- d. *Meetings to negotiate pricing* —
- i. As part of the Option Agreement, 7G required the parties to establish a pricing strategy group to, *inter alia*, negotiate the pricing of 7G's natural gas and the price of LNG to be sold to LNG Offtakers (the "**Pricing Strategy Group**").
 - ii. In addition, 7G required that (A) Steelhead regularly inform the Pricing Strategy Group about the progress of negotiations with LNG Offtakers and (B) representatives of 7G participate in Steelhead's discussions with potential LNG Offtakers, except where the participation by 7G would constitute a conflict of interest. At no time did 7G identify to Steelhead that it was in a conflict of interest with respect to such discussions.
 - iii. Between August 2016 and April 2017, representatives of Steelhead met regularly, in person and via teleconference, with representatives of 7G, including 7G's LNG Team members, who were appointed to the Pricing Strategy Group (the "**Pricing Meetings**"). During these Pricing Meetings, highly valuable and highly sensitive Confidential Information and

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Copyrighted Materials were shared with 7G, including *inter alia* LNG Offtaker Information and other sensitive commercial information gathered and/or created by Steelhead concerning the sale and export of LNG.

- iv. Steelhead provided to 7G of lists of potential LNG customers with whom Steelhead was in private, non-public negotiations. These customer lists, and each customer's requirements and commercial objectives, were shared with 7G's representatives verbally and in writing through e-mails, Board meetings, regular marketing meetings, meetings of the Price Strategy Group, and in other communications.
 - v. One such potential customer was China Shenhua Overseas Development & Investment Co. ("**Shenhua**", now amalgamated into China Energy Investment Corporation). Shenhua was not known to be seeking to become a customer of the LNG market, and Shenhua would not have been known to 7G as a potential LNG customer if it were not in possession of Steelhead's confidential LNG Offtaker Information.
68. The disclosure of Steelhead's Confidential Information was provided to 7G and the Producer Consortium pursuant to ~~7G's~~their obligations of confidentiality arising from contract and/or the common law, and their obligations of good faith and honest contractual performance.

VI. 7G's pursuit of a Competing LNG Project

69. Throughout the period 7G was working within the fold of Steelhead's experts and receiving extensive amounts of Steelhead's Confidential Information, the issue of the ultimate price for 7G's supply of natural gas to Steelhead's LNG projects remained contentious. Efforts to bridge the disagreement failed and the business relationship began to break down.

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70. By or about mid-2017, 7G had ceased pursuing development of the infrastructure required to carry out the Original Plan. At such time, Steelhead paused the Malahat LNG Project and accelerated its pursuit of the Kwispa LNG Project.
71. In mid-2017, 7G refused to fund its proportionate share of any alternative to the Original Plan unless Steelhead agreed to allow 7G an unrestricted right to use Steelhead's confidential information, including Steelhead's Confidential Information and the Copyrighted Materials, for 7G's own benefit and without compensation to Steelhead. As granting such right would be fundamentally detrimental to Steelhead, Steelhead refused to grant the request. Consequently, no funding was provided by 7G.
72. Notwithstanding 7G's failed attempt to obtain the right to use Steelhead's proprietary technology for 7G's own benefit, to Steelhead's best knowledge, 7G, in or about ~~late 2017, formed the Producer Consortium for the purpose of~~ early 2017 began secretly pursuing the development of ~~its own~~ its own LNG liquefaction and export facility in British Columbia- ~~and, by late 2017, formed the Producer Consortium for the same purpose. The Producer Consortium was later formalized as Rockies LP together with Rockies GP, in or about May 2020.~~
73. Although Steelhead had first proposed the idea of a producer consortium to 7G in or around August 2017 as a means to support the development of the Kwispa LNG Project, 7G did not create the Producer Consortium to work with Steelhead. Rather, 7G intended that the Producer Consortium explore ~~all their own~~ all their own LNG development ~~possibilities open to it, of which Steelhead's LNG export projects were but one~~ opportunities.
74. The members of the Producer Consortium are domestic gas producers and did not then nor do they now have sufficient expertise or experience to successfully develop an LNG liquefaction and export facility or secure LNG Offtake Agreements.
75. 7G was at this time still in possession of an extensive amount of Steelhead's Confidential Information and Copyrighted Materials.
76. In or about early 2018, 7G invited Steelhead to enter into discussions with 7G and the

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Producer Consortium regarding 7G's and the Producer Consortium's purported interest in supporting the development of the Kwispa LNG Project.

77. The Producer Consortium was not a formal legal entity at that time but ~~ultimately upon~~ its legal formation as Rockies consisted of the following members:
- a. 7G;
 - b. Advantage Oil & Gas Ltd.;
 - c. Birchcliff Energy Ltd.;
 - d. Black Swan Energy Ltd.;
 - e. Bonavista Energy Corporation;
 - f. Canbriam Energy Inc.;
 - g. Murphy Oil Company Ltd.;
 - h. Nuvista Energy Ltd.;
 - i. Peyto Exploration & Development Corp.; and,
 - j. Paramount Resources Ltd.
78. In February 2018 at Steelhead's prompting, Marty Proctor acknowledged that 7G had a potential conflict of interest through its continued involvement with Steelhead given the relationship with the Producer Consortium. Following this acknowledgement, Marty Proctor ceased attending Steelhead's Board Meetings. Marty Proctor did not indicate what the conflict was.
79. Various directors and representatives of 7G continued to advise Steelhead that that 7G was genuinely interested, along with the Producer Consortium, in redefining the commercial relationship between Steelhead and 7G to advance the Kwispa LNG Project. While Steelhead was disappointed with the devolution of its relationship with 7G at that

- point, it was crucial to Steelhead that it explore every available opportunity to advance the Kwispa LNG Project.
80. Throughout 2018, Steelhead's business relationship with 7G was ongoing. 7G continued to receive Steelhead's Confidential Information and the Copyrighted Materials in its own right, and as a member of the Producer Consortium. Steelhead believed that 7G had a legitimate interest in Steelhead's LNG export projects in British Columbia, and specifically the Kwispa LNG Project. As before, Steelhead continued to provide 7G Confidential Information, including details regarding Steelhead's LNG Solution and Steelhead's Development Strategy, understanding that 7G would use the information it received only in connection with Steelhead's LNG export projects in British Columbia, and specifically the Kwispa LNG Project.
81. In furtherance of the discussions between Steelhead, 7G and the other members of the Producer Consortium, on or about September 14, 2018, Steelhead and the Producer Consortium executed a Mutual Non-Disclosure Agreement (the "**Producer Consortium NDA**"). As the Producer Consortium was not a formal legal entity at the time, the members of the Producer Consortium executed the Producer Consortium NDA in their respective corporate capacities.
82. As far as is known to the Plaintiffs, in or around May 2020, the Producer Consortium entered into a registered partnership, ~~Rockies LP LNG Limited Partnership~~. The complete present membership of the Producer Consortium/~~Rockies LP LNG Limited Partnership~~ is unknown to the Plaintiffs but within the knowledge of the Defendant. As the Producer Consortium was subsequently formalized as Rockies LP together with Rockies GP, Rockies LP and/or Rockies GP have (a) obtained the benefit of the Producer Consortium NDA, having received the Steelhead Confidential Information provided thereunder, and (b) have the responsibilities of a Party and/or successor to a Party under the Producer Consortium NDA, including by operation of section 6.1 of the Producer Consortium NDA which reads "...Parties may assign the benefit of this Agreement to an operating entity created in connection with the advancement of the matters subject to the Discussions without the consent of the other Party", either legal or equitably.

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82.1 Rockies LP and Rockies GP have also obtained the benefit of receiving the extensive Confidential Information provided by Steelhead to 7G and its executives pursuant to the numerous agreements between Steelhead and 7G, which the Rockies parties obtained from 7G knowing of the circumstances in which it was initially provided to 7G from Steelhead.

VII. 7G's misuse and misappropriation of Steelhead's Confidential Information and Copyrighted Materials to pursue the Competing LNG Project

83. In or around June 2018, while various directors and executives of 7G, including Messrs. Proctor and Dey, were expressly representing to Steelhead that there was a serious intent to explore progression of the Kwispaa LNG Project, (and while 7G continued to receive Confidential Information from Steelhead accordingly), 7G (including through the Producer Consortium) had already in fact ~~began to pursue~~ been secretly pursuing the Competing LNG Project. At no time did 7G inform Steelhead that it had or was doing so.
84. One of Steelhead's key ongoing technical and commercial workstreams was to select an engineering, procurement and construction ("EPC") contractor for the Kwispaa LNG Project.
85. Steelhead's expert technical team spent an extensive amount of time preparing and implementing a process to solicit expressions of interest from EPC contractors and evaluating the 9 responses it received. Steelhead ultimately shortlisted 4 qualified EPC contractors: KBR, TechnipFMC, Black and Veatch, and Chicago Bridge & Iron (the latter of whom ultimately became ineligible due to financial difficulties). KBR, TechnipFMC, and Black and Veatch are collectively referred to as the ("Shortlisted EPCs").
86. All information regarding this workstream formed part of Steelhead's Confidential Information shared by Steelhead with 7G (and later obtained by Rockies LP and/or Rockies GP).
87. Steelhead subsequently discovered that while it was preparing for an August 2018 launch

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of its Invitation to Tender Process, 7G had, in June 2018, and without Steelhead's knowledge:

- a. Issued a Request for Proposals (the "RFP"), either alone or together with one or more members of the Producer Consortium, to pursue early-stage development of the Competing LNG Project; and
- b. Solicited the participation of the Shortlisted EPCs and WorleyParsons (now Advisian, and which was under an active engineering services contract with Steelhead and had provided to Steelhead extensive LNG engineering and design services over a number of years), all with reliance on Steelhead's Confidential Information and in breach of its obligations to Steelhead.

87.1 Steelhead also learned that 7G's aforementioned RFP described the basis of design for the proposed LNG facility in using elements substantially identical to Steelhead's LNG Solution, including the entire concept of a at-shore floating barge paired with an onshore power generation, and a refrigeration train which was air cooled and electrically driven. 7G could not have prepared an RFP containing these elements, in the time that it did, without having knowledge from Steelhead that these elements were feasible based on Steelhead's years of extensive study of alternative options and consultation with potential stakeholders.

87.2 Furthermore, 7G's aforementioned RFP was prepared by, or with the assistance of, WorleyParsons, an engineering contractor that was under contract to Steelhead at all material times prior to August 2018. WorleyParsons knew the details of Steelhead's LNG Solution and possessed Steelhead's Confidential Information due to its various roles as owner's engineer and engineering contractor for Steelhead between 2014 and 2018. 7G was aware of WorleyParson's unique relationship to Steelhead, including its role in studying Steelhead's LNG Solution. 7G deliberately engaged WorleyParsons to prepare or assist in the preparation of, first, a feasibility study and, later, 7G's RFP in order to further leverage Steelhead's efforts for 7G's own benefit.

88. In early August 2018, KBR advised Steelhead that it wished to withdraw its candidacy

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from Steelhead's Invitation to Tender Process. In September 2018, Steelhead learned that 7G had already engaged KBR to work on the development of the Competing LNG Project.

89. In late November 2018, 7G and the Producer Consortium notified Steelhead that they were not interested in a commercial arrangement with Steelhead. 7G at this time still did not inform Steelhead that it was pursuing the Competing LNG Project. At that point, the business relationship between Steelhead and 7G was also effectively terminated, other than 7G's remaining passive interest in Steelhead LP.
90. It became apparent to Steelhead that what 7G and the Producer Consortium had represented as a genuine interest to find a mutually viable development solution was actually a series of deliberate strategies to amass a critical volume of Steelhead's Confidential Information and Copyrighted Materials, which 7G could then misuse and misappropriate for its own benefit to the exclusion of Steelhead, including through Rockies LP and Rockies GP once they were legally formed.
91. The Defendants received the KBR Pre-FEED on a rolling basis between August 2018 and January 2019. However, it is admitted that the KBR Pre-FEED marked the end of the Defendants' work on their own design for a conceptual LNG facility – no further steps were taken in pursuit of the development of that design. In May 2020, the KBR Pre-FEED was abandoned in favour of an LNG facility design originating from Western LNG.⁸
92. It is further admitted that the design of the facility at the Ksi Lisims project originated solely from and was supplied entirely by Western LNG without reference to any information provided by the Defendants, let alone any of Steelhead's confidential information.⁹

⁸ *Manson Decision*, para 11, 39, 57, 85

⁹ *Tabib Decision*, page 7

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Additional Confidential Information provided to 7G Board Member

93. In the first part of 2018, Avik Dey, who was not only a 7G director but also an employee of CPPIB, informed Steelhead that CPPIB wished to explore making an investment in Steelhead. As a result, Mr. Dey, in early July 2018, was given further access to Steelhead's Confidential Information by way of full day management presentation and a separate hosted site visit to meet key First Nations' leaders who had partnered with Steelhead in relation to the Kwispaa LNG Project.
94. Subsequent to receiving further access to Steelhead's Confidential Information, there was no further engagement by CPPIB with Steelhead and no investment by CPPIB was ever made in Steelhead.
95. At the time of the receipt of Steelhead's Confidential Information in July 2018, Mr. Dey was a member of a special LNG advisory committee to 7G's board (the "LNG Committee") which also included Messrs. ~~Doerr and Proctor, and McAdam, all of whom~~ had to have known that 7G, unbeknownst to Steelhead, had issued the aforementioned RFP in June 2018.
96. Steelhead later learned that Messrs. ~~Dey, and Doerr, and McAdam~~, as members of the LNG Committee, were, at all material times, advocating to 7G's board of directors that 7G pursue the Competing LNG Project to the exclusion of Steelhead.
97. Additionally, in late summer of 2018, Mr. van Steenberg, who was then a director of both Steelhead and 7G, challenged Mr. Doerr about what appeared to be 7G's increasingly cavalier position regarding the unauthorized use of Steelhead's Confidential Information. In response, Mr. Doerr stated to Mr. van Steenberg that "perhaps there is Steelhead IP and perhaps there isn't", that "the lawyers would sort that out" and that Steelhead should "catch us if they can".

Steelhead's Patent Application

98. Commencing in early 2019, and with the assistance of Steelhead's Confidential

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Information, 7G and/or the Producer Consortium and/or Rockies GP and/or Rockies LP initiated a calculated effort to frustrate Steelhead ASLNG's application for the 085 Patent by submitting at least six third party protests against the 085 Patent application on its own, and actively soliciting third parties to submit third party protests themselves.

99. In the end, despite the Canadian Intellectual Property Office receiving thirteen third party protests with respect to the 085 Patent application, including from other members of the Producer Consortium, the 085 Patent was issued in November 2020.

Ongoing use of Steelhead's Confidential Information

100. 7G, alone or through or in concert with the Producer Consortium, ~~and Rockies LP and/or Rockies GP, has used and continues to use~~¹⁰ Steelhead's Confidential Information and Copyrighted Materials in the development of the Competing LNG Project, and in promoting and advancing the Competing LNG Project in discussions and dealings with third parties, including stakeholders, First Nations, and actual and potential project partners and investors. This use has been to 7G's benefit and to Steelhead's detriment.
101. Charlotte Raggett, who was a key member of 7G's LNG Team and the personal recipient of extensive amounts of Steelhead's Confidential Information, but had no LNG experience prior to engaging with Steelhead, is now the President and CEO of Rockies LNG, the legal entity comprising the Producer Consortium, and which is now the proponent of the Competing LNG Project.
102. 7G's use of Steelhead's Confidential Information is in breach of the applicable confidentiality provisions in the 7G NDA, the Equity Investment Agreements, the Development Agreements and the Producer Consortium NDA, and is also in breach of confidence as defined at law. Further, 7G's use and reproduction of Steelhead's Copyrighted Materials is a breach of Steelhead's copyright and moral rights in its

¹⁰ *Manson Decision*, paras 11, 85; *Tabib Decision*, page 7 – This amendment is necessary as a result of Steelhead's Narrowing Amendment in paragraphs 30 and 103 in which they now admit that the design of the facility at the Ksi Lisims Project was supplied by Western LNG and is distinct from the Defendants' earlier conceptual design as described in the KBR Pre-FEED.

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Copyrighted Materials. Further, 7G's use of Steelhead's Confidential Information is contrary to its duty of good faith in its performance of its contracts with Steelhead, contrary to its duty of honest contractual performance, and constitutes knowing dealing with trust property.

103. The full extent of the design similarities between the Competing LNG Project (until a design for Ksi Lisims originating from Western LNG was adopted) (including all of its iterations throughout its development) and Steelhead's LNG Development Strategy, including Steelhead's LNG Solution, is not known to the Plaintiffs, but is known to the Defendant. As far as is known to the Plaintiffs, such similarities include one or more of the following:
- a. A natural gas liquefaction and storage facility made up of multiple water-based floating barges containing refrigeration and storage units and an external land-based or near-shore power station and natural gas feed source;
 - b. A 12 million tonnes of LNG per annum (MTPA) production launch capacity;
 - c. Refrigeration trains which refrigerate and convert feed gas through the use of electrically-driven compressors and one or more cryogenic heat exchangers and discharge thermal energy from the refrigeration process to ambient air through air coolers;
 - d. The reliance on receiving at least 100kV of electricity from an external power source;
 - e. The receipt of electricity from an external power source via a line including one or more conductors and a transit bridge;
 - f. An external land-based or near-shore power source in communication with a floating LNG Facility;
 - g. An external power source and floating LNG Facility comprising a controller in communication with and operable between the two components;

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- h. An external power source and floating LNG Facility containing a plurality of sensors, in which there is output of data from both components which supports coordinated functions, at least some of which output comprises supply and demand data, and wherein the coordinated functions include management of the systems requiring power;
- i. The at least partial pre-treatment of natural gas prior to being inputted for liquefaction, including removal of unwanted elements such as heavy hydrocarbons;
- j. The refrigeration and liquefaction of natural gas through refrigeration trains arranged on the barges, with each refrigeration train capable of operating at least partially independently from each other train, and in certain cases, with each refrigeration train capable of being controlled by a controller;
- k. The storage of produced LNG in the hulls of the floating barge facilities;
- l. The use of membrane tanks for at least a portion of the storage, certain membrane tanks having lower and upper membranes, which may define the storage volume and seal the storage volume, respectively;
- m. A floating LNG Facility comprised of barges which are moorable on a port or starboard side to a structure anchored or connected to the shore;
- n. The ability to engage one or more barges with a walkway structure; and
- o. The inclusion of carrier berths in order to output LNG to carrier vessels.

103.2 The full extent of the benefit obtained by 7G through the exploitation and use of Steelhead's LNG Development Strategy (including Steelhead's LNG Solution) is not known to the Plaintiff, but is known to 7G; as far as is known by the Plaintiff, the benefit 7G has obtained includes at least the following, as a result of advancement of the Competing LNG Project through exploitation of Steelhead's Confidential Information:

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- a. Securing an MOU and site option and/or agreement for the Competing LNG Project with the Nisga'a Nation. However, it is admitted that the Defendants' relationship with the Nisga'a Nation arose out of an existing relationship between the Nisga'a Nation and an employee of the Defendants and that the KBR Pre-FEED was not discussed during the Defendants' meetings with the Nisga'a Nation.¹¹
- b. Securing a partnership with the Nisga'a Nation in respect of the Competing LNG Project. However, it is admitted that the Defendants' relationship with the Nisga'a Nation arose out of an existing relationship between the Nisga'a Nation and an employee of the Defendants and that the KBR Pre-FEED was not discussed during the Defendants' meetings with the Nisga'a Nation.¹² and
- c. Securing a commercial arrangement including financial compensation with Western LNG for the Competing LNG Project facilitated by the stage to which 7G (including through the producer Consortium) and Rockies LP and/or Rockies GP was able to advance the Competing LNG Project through the aforementioned exploitation and use of Steelhead's Confidential Information. However, it is admitted that at no time did the Defendants provide Steelhead's design for an LNG facility, the 085 Patent, the Advisian Study, or the KBR Pre-FEED to Western LNG.¹³

104. Notwithstanding paragraph 103.2 it is admitted the Defendants did not obtain any commercial benefit as a result of their presentation of the KBR Pre-FEED to third parties because none of the third parties who were shown the KBR Pre-FEED engaged in any further business with the Defendants.¹⁴
105. The full extent of 7G's breaches of applicable contractual confidentiality provisions, breaches of confidence, and breaches of copyright are not presently known by Steelhead.

¹¹ *Manson Decision*, paras 11, 42, 85

¹² *Manson Decision*, paras 11, 42, 85

¹³ *Manson Decision*, paras 11, 85

¹⁴ *Manson Decision*, paras 11, 85

Further particulars will be provided following completion of some or all of the following:

- a. Documentary discovery;
- b. Oral discovery;
- c. Rule 7-5 examinations of witnesses of members of the Producer Consortium and other third parties;
- d. Documentary production from members of the Producer Consortium; and
- e. Documentary production from third party consultants and/or suppliers from whom proposals were sought or obtained in respect of the Competing LNG Project.

106. Further, the full extent of the dissemination by 7G of Steelhead's Confidential Information and Copyrighted Materials is not presently known by Steelhead. During the discovery process, additional parties may be identified as having received Confidential Information and Copyrighted Materials, against whom relief may be sought.

Part 2: RELIEF SOUGHT

107. Damages.

108. Special damages.

109. Punitive damages.

109.1 An accounting of profits.

110. A temporary injunction restraining 7G from using or disclosing Steelhead's Confidential Information while this action proceeds, or further infringing Steelhead's copyright and moral rights in its Copyrighted Materials.

- 111. A declaration, as applicable, that 7G has breached the 7G NDA, the Producer's Consortium NDA, the Equity Investment Agreements, and the Development Agreements, or any of them.
- 112. A permanent injunction restraining 7G from using or disclosing Steelhead's Confidential Information and/or further infringing Steelhead's copyright and moral rights in its Copyrighted Materials.
- 113. A permanent injunction restraining 7G from pursuing the Competing LNG Project and any other project involving or requiring the use of Steelhead's Confidential Information.
- 114. A constructive trust over all or part of the Competing LNG Project and any other project involving or requiring the use of Steelhead's Confidential Information.
- 115. In the alternative, a time limited injunction restraining 7G from using or disclosing Steelhead's Confidential Information.
- 116. An order that 7G return to Steelhead, or cause to return, all documents that include or reflect Steelhead's Confidential Information and/or all infringing copies of Steelhead's Copyrighted Material. Further and/or in the alternative, an order that 7G destroy, or cause to destroy all documents that include or reflect Steelhead's Confidential Information and/or all infringing copies of Steelhead's Copyrighted Material.
- 117. An order that 7G provide to Steelhead a record of the names and contact information of all parties with whom 7G or Rockies LP or Rockies GP shared Steelhead's Confidential Information and Copyrighted Materials or contacted with respect to the development, manufacture, license, distribution, sale, or offer for sale of any designs, systems, facilities, products or services that were based on Steelhead's Confidential Information or Copyrighted Materials, together with details of the disclosure and copies of all communications exchanged with such parties.
- 118. A declaration that 7G has infringed Steelhead's copyright and/or moral rights in its

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Copyrighted Materials pursuant to Section 27(1) of the *Copyright Act* as a result of the unauthorized copying, adaptation, distribution and use of Steelhead's Copyrighted Materials in pursuing the Competing LNG Project.

119. Damages and an accounting of profits made by 7G as a result of its infringement of Steelhead's copyright and/or moral rights pursuant to sections 34 and 35 of the *Copyright Act*, or, in the alternative, an award of statutory damages pursuant to section 38.1 of the *Copyright Act*.

119.1 Tracing remedies, including to any beneficiaries or assignees, as may be applicable in connection with the relief sought in paragraphs 102 to 114, above.

120. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996 c. 79.

121. Costs.

122. Such further relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

Breach of contract and breach of confidence

123. The 7G NDA, the Equity Investment Agreements, the Development Agreements and the Producer Consortium NDA all contain applicable confidentiality provisions, which provisions have been breached by 7G, and Rockies LP and Rockies GP (the Rockies parties in respect of the Producer Consortium NDA).

124. Steelhead also claims for (non-contractual) breaches of confidence by 7G, which require the following:

- a. That the information conveyed was confidential;
- b. That the information was communicated in confidence; and,
- c. That the information was misused by the party to whom it was communicated.

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Minera Aquiline Argentina SA v. IMA Exploration Inc. and Inversiones Mineras Argentinas S.A., 2006 BCSC 1102, (aff'd 2007 BCCA 319, leave to appeal SCC refused, [2007] SCCA No 424) citing *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 ["*Lac Minerals*"]

125. Steelhead's Confidential Information was confidential.
126. Steelhead's Confidential Information was communicated by Steelhead to 7G in confidence.
127. Steelhead's Confidential Information has been misused, and continues to be misused by 7G, including for the purpose of developing the Competing LNG Project. Full particulars of 7G's misuse of Steelhead's Confidential Information is known to 7G and is not in the knowledge of Steelhead.
128. As a result of the misuse of Steelhead's Confidential Information, 7G has been placed in an advantageous position to "springboard" its development of the Competing LNG Project.

Cadbury Schweppes Inc. v. FBI Foods Ltd., [1999] 1 SCR 142
["*Cadbury Schweppes*"];
Seager v. Copydex Ltd., [1967] 2 All E.R. 415 (C.A.)

129. In light of, *inter alia*:
 - a. The difficulties in permitting multiple pipeline projects in the political and social climate of British Columbia and Canada;
 - b. The difficulties in permitting multiple LNG facilities in the political and social climate of British Columbia and Canada; and,
 - c. The competitive international market for LNG, including competition for LNG Offtakers,

the pursuit of the Competing LNG Project has had, and continues to have, an adverse impact on the success of the Kwispaa LNG Project.

130. As such, the nature of Steelhead's Confidential Information and its misuse by 7G justifies the following remedies (collectively or, alternatively, any of them alone or in combination):
- a. Return to Steelhead and/or destruction by 7G of all of Steelhead's Confidential Information;
 - b. A permanent injunction against 7G from using Steelhead's Confidential Information;
 - c. A permanent injunction against 7G from pursuing the Competing LNG Project and any other project involving or requiring the use of Steelhead's Confidential Information;

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- d. A constructive trust over all or part of the Competing LNG Project and any other project involving or requiring the use of Steelhead's Confidential Information; and
- e. Damages for the use of Steelhead's Confidential Information.

Cadbury Schweppes; See also Lac Minerals

Breach of copyright and moral rights in the Copyrighted Materials

131. Steelhead is the owner of the copyright in Copyrighted Materials pursuant to the *Copyright Act*. 7G has breached Steelhead's copyright and moral rights in the Copyrighted Materials through the unauthorized copying, adaptation, distribution and use of Steelhead's Copyrighted Materials.

Breach of the Duty of Honest Contractual Performance

132. The duty of honest contractual performance applies to all contracts, including the 7G NDA, the Equity Investment Agreements, the Option Agreement, and the Producer Consortium NDA.
133. Pursuant to the parties' agreements, 7G directors, executives, and other staff were privy to (and the Producer Consortium, Rockies LP, and Rockies GP obtained the benefit of) Steelhead's Confidential Information and extensive information about Steelhead's business, financial, and technical strategies, know-how, operations, and contacts. Steelhead shared this information based on its legitimate expectations pursuant to the parties' agreements: that the information would be used by 7G only in connection with discussing, exploring, and pursuing an LNG export project(s) with Steelhead—and not for 7G's own purposes and not for 7G's own competing project(s). The same applied to the Producer Consortium and, subsequently, Rockies LP and Rockies GP.
134. 7G (including through the Producer Consortium) was under a duty not to lie or otherwise mislead Steelhead about matters directly linked to the performance of these contracts,

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including by silence or omission or by failing to correct any misapprehension caused by its own conduct.

C.M. Callow Inc. v Zollinger, 2020 SCC 45

135. 7G did not comply with that duty of honest contractual performance. Unbeknownst to Steelhead, 7G began engaging in plans to pursue its own Competing LNG Facility in 2017, while continuing to harvest valuable Confidential Information from Steelhead based on the representation to Steelhead (and/or failure to correct Steelhead's misapprehension) that 7G (including as a member of the Producer Consortium) continued to be interested in exploring an LNG export project(s) with Steelhead. Despite 7G's separate pursuit of a Competing LNG Project, 7G remained silent to Steelhead and continued all efforts to extract Confidential Information from Steelhead, including, for example, by continuing to observe Steelhead's board meetings (pursuant to, e.g., the Amended and Restated Master Investment Agreement dated August 5, 2016). 7G continued its pursuit of the Competing LNG Project through the Producer Consortium and subsequently through Rockies LP and Rockies GP, who have similarly failed to comply with their duty of honest contractual performance.
136. 7G's receipt and exploitation of that Confidential Information enabled it to pursue the Competing LNG Project, to the exclusion and detriment of Steelhead.
137. 7G's breach justifies the same remedies as enumerated in paragraph 125, above.

Breach of the Duty of Good Faith in Performing Contracts

138. The duty of good faith in performing contracts applies to all contracts, including the 7G NDA, the Equity Investment Agreements, the Option Agreement, and the Producer Consortium NDA.
139. Pursuant to the parties' agreements, 7G directors, executives, and other staff were privy to (and the Producer Consortium, Rockies LP, and Rockies GP obtained the benefit of) Steelhead's Confidential Information and extensive information about Steelhead's

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business, financial, and technical strategies, know-how, operations, and contacts. Steelhead shared this information based on its legitimate expectations pursuant to the parties' agreements: that the information would be used by 7G only in connection with discussing, exploring, and pursuing an LNG export project(s) with Steelhead—and not for 7G's own purposes and not for 7G's own competing project(s). The same applied to the Producer Consortium and, subsequently, Rockies LP and Rockies GP.

140. Contractual counterparties are under an obligation to act in good faith. "Good faith", while permitting a party to act in its own self interest, positively requires that such party, in its decisions and actions, have regard to the legitimate interests and expectations of their counterparty, and having regard to the purposes underlying the parties' agreement(s). The duty of good faith places limits on how a party can exercise even facially unfettered contractual rights. When the duty of good faith has been violated, the contract has been breached.

Wastech Services v Greater Vancouver Sewerage and Drainage, 2021 SCC 7.

141. 7G's conduct in deciding to pursue the Competing LNG Project to the exclusion of Steelhead, while remaining silent to Steelhead and continuing to harvest Steelhead's Confidential Information, did not have any regard to Steelhead's legitimate interests and expectations, and was in violation of its duty of good faith. 7G continued those efforts through the Producer Consortium and, subsequently, Rockies LP and Rockies GP, who have similarly had no regard for Steelhead's legitimate interests and expectations and violated their duty of good faith.

142. 7G's breach justifies the same remedies as enumerated in paragraph 125, above.

Breach of Fiduciary Duty and Knowing Receipt

143. Pursuant to the Amended and Restated Master Investment Agreement dated August 5, 2016, 7G's CEO (Pat Carlson) was a member of Steelhead's board (7G had several other executives that also became "observers" of Steelhead's board). As a member of

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Steelhead's board, Mr. Carlson owed Steelhead a fiduciary duty. 7G was at all material times aware of Mr. Carlson's position and duty, as was the Producer Consortium and Rockies LP and Rockies GP. Pursuant to that fiduciary relationship, Mr. Carlson received extensive and unfettered information concerning Steelhead's valuable business, financial and technical strategies, designs, know-how, operations, and contacts, and including the Confidential Information.

144. 7G and the Producer Consortium, and Rockies LP and Rockies GP received the aforementioned information that Mr. Carlson received from Steelhead. After Mr. Carlson's resignation from 7G, 7G knowingly dealt with the information it received for its own purposes and for its own benefit (including through the Producer Consortium and Rockies LP and Rockies GP). That use was inconsistent with the trust relationship pursuant to which the information was transferred from Steelhead to Mr. Carlson. 7G, while a stranger to the trust relationship between Mr. Carlson and Steelhead, is liable for knowing dealing: it received trust property (in this case, information), had actual knowledge of the trust relationship between Mr. Carlson and Steelhead, and used the trust property for its own benefit and contrary to the purpose for which it was conveyed by Steelhead.

Citadel General Assurance Co. v Lloyds Bank Canada,
[1997] SCJ No 92 (QL) (SCC).

145. 7G's knowing dealing justifies the same remedies as enumerated in paragraph 125, above, plus an accounting of 7G's profits.

Unjust Enrichment

146. Unjust enrichment requires (a) that the defendant received a benefit, (b) that the plaintiff suffered a loss corresponding in some way to the benefit, and (c) that there was no juristic reason for the benefit and the loss.

Garland v Consumers' Gas Co., 2004 SCC 25.

- 147. 7G obtained the benefit of use and exploitation of the Confidential Information. That benefit to 7G had a corresponding detriment to Steelhead: (a) 7G pursued the Competing LNG Project using the Confidential Information to the exclusion of Steelhead, despite the parties' extensive work toward a joint LNG export project(s), and (b) Steelhead was denied the exclusive benefit of the Confidential Information for its own LNG export project(s), especially given the limited opportunities for LNG export projects in British Columbia. There was no juristic reason for 7G's use of the Confidential Information—it was, rather, unlawful for the reasons set out above (e.g. breach of contract, copyright infringement, breach of the duty of honest contractual performance, breach of the duty of good faith in performing contracts, and knowing dealing).
- 148. 7G's unjust enrichment justifies the same remedies as enumerated in paragraph 125, above, plus an accounting of 7G's profits.

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Place of trial: Vancouver, British Columbia.
The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1

Original Date: July 04, 2019
Amended Date: July 13, 2021

Further Amended Date:

~~SMART & BIGGAR LLP~~
Per: Evan Nuttall

SUGDEN, MCFEE & ROOS LLP
Per: Robin McFee

Counsel for the Plaintiffs
Steelhead LNG Limited Partnership
and Steelhead LNG Corp.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

~~ARX~~

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Breach of confidentiality, breach of confidence, and breach of copyright for misuse by the defendants of the plaintiffs' confidential information and copyrighted material.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, RSBC 1996, c 79
Copyright Act, RSC 1985, c. C-42