CITATION: Plenary Health Milton LP v. PCL Constructors 2025 ONSC **5756**
COURT FILE NO.: CV-20-00648322-0000
DATE: 20251014

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: PLENARY HEALTH MILTON LP

Plaintiff

AND:

PCL CONSTRUCTORS CANADA INC., B + H ARCHITECTS INTERNATIONAL (CANADA) INC., CALLISONRTKL ARCHITECTS CANADA INC., SMITH AND ANDERSEN CONSULTING ENGINEERING, MODERN NIAGARA TORONTO INC., JOHNSON CONTROLS CANADA LP/SOCIETE DE CONTROLE JOHNSON CANADA S.E.C., and JOHNSON CONTROLS BE LTD./LES SERVICES DE CONTROLE JOHNSON BE LTEE

Defendants

BEFORE: Koehnen J.

COUNSEL: *Glen Ackerley, Hayden Trbizan,* for the moving party PCL Constructors Canada Inc.

Varoujan Arman for the moving party Smith and Andersen Consulting Engineering

KaraTakagi for the moving party Modern Niagara Toronto Inc.

Roman Myndiuk for the moving parties B + H Architects International (Canada) Inc. and CallisonRTKL Architects Canada Inc

Brett Hughes for the responding party Plenary Health Milton LP

Maria Naimark for the responding parties Johnson Controls Canada LP/Societe De Controle Johnson Canada S.E.C., And Johnson Controls BE Ltd./Les Services De Controle Johnson BE Ltee

HEARD: June 26, 2025.

ENDORSEMENT

OVERVIEW

[1] This is a motion by the defendants other than the Johnson Controls defendants[1] to stay this action as a result of what they assert is the failure of the plaintiff, Plenary Health Milton LP ("Plenary") and of Johnson Controls, to immediately disclose a settlement agreement that changed the litigation landscape.

[2] For the reasons set out in greater detail below, I dismiss the motion. In my view, Plenary and Johnson Controls did make timely disclosure of the agreement in question given the factual context of this action. Moreover, the agreement did not change the litigation landscape in the particular factual context of this action.

Background Facts

[3] This litigation arises out of the expansion of the Milton District Hospital. As part of the expansion, Plenary entered into an agreement with the defendant PCL Constructors Canada Inc. ("PCL ") pursuant to which PCL would design and build the project. PCL in turn entered into contracts with the remaining defendants who

[1] Johnson Controls Canada LP/Societe De Controle Johnson Canada S.E.C., and Johnson Controls BE Ltd./Les Services De Controle Johnson BE Ltee (collectively "Johnson Controls")

provided various subcontracting design and build services for the expansion. Plenary also entered into a contract with Johnson Controls pursuant to which the latter would provide facility management and lifecycle maintenance services to the hospital for 30 years.

[4] Approximately a year and half after substantial completion, a blockage was discovered in the drainage pipe connected to the system by which the hospital cleaned, disinfected and sterilized reusable medical devices. Further investigation disclosed that sections of the pipe had separated. Johnson Controls repaired the pipe system as facility manager. Johnson Controls took the position that the failure was a construction defect for which PCL was liable. PCL took the position that it was an operational failure for which Johnson Controls and Plenary were responsible.

[5] On September 18, 2020, Johnson Controls served a “notice of dispute” on PCL as required under the agreement with PCL.

[6] On September 25, 2020 Plenary issued, but did not serve, the statement of claim in this action against PCL and its subcontractors as well as Johnson Controls. Plenary says it issued the claim to protect against the expiry of limitation periods and to preserve its ability to pursue claims against subcontractors with whom it had no direct contractual relationship.

[7] On September 28, 2020 Johnson Controls served a notice of arbitration on PCL.

[8] On October 1, 2020, PCL and its subcontractors entered into a tolling and cooperation agreement with respect to Johnson Controls' claims. Pursuant to that agreement they committed to cooperate in defending the Johnson Controls claim, and agreed to be bound by any determination in the arbitration about the liability or absence of liability of Johnson Controls. PCL committed to keep the subcontractors reasonably informed of all communications between itself and Johnson Controls concerning the claim. Neither PCL nor its subcontractors disclosed this cooperation agreement to Plenary until June 2025 in connection with this motion.[2]

[9] The arbitration proceeded. All sanitary pipe claims were ultimately pursued in the arbitration, rather than this action. By the time this motion was argued, the arbitration hearing had occurred and the parties were awaiting the decision of the arbitrator. Plenary is not a party to the arbitration, nor are PCL's subcontractors. Plenary has, however, agreed that all sanitary pipe claims may be pursued in the arbitration.

[10] Plenary did not serve its statement of claim until March 2021, at which time it provided an indefinite waiver of defence to the defendants. The only defendant who has defended is Modern Niagara which has served a pro forma defence and cross-claim in March 2023 to avoid the expiry of a limitation period for cross-claims.

[2] The agreement was produced under objection pursuant to Rule 34.12. In my view the agreement is relevant to the issues on this motion as set out later in these reasons. I therefore find it to be admissible.

[11] In 2022 and 2023 discussions occurred between the parties about whether to pursue the claims through arbitration or through this action. At one point, certain parties delivered motion records to stay this action in favour of arbitration. That motion has not advanced. At other points the parties discussed and exchanged documents reflecting what the parties have referred to as the Transfer Agreement, the object of which was to move all claims from the arbitration into this action.

[12] During the course of those latter exchanges, on July 18, 2023, counsel for PLC received a draft Transfer Agreement, a recital of which provided that Plenary and Johnson Controls had settled the action as between themselves and intended to pursue the claim against PCL and its subcontractors. The draft Transfer Agreement also had PCL acknowledge the settlement between Plenary and Johnson Controls.

[13] PCL was not aware of any such settlement and therefore asked for a copy of the settlement agreement on July 20, 2023. On July 27, 2023 counsel for Plenary delivered to PCL a redacted and undated copy of what the parties have called the Pro Rata Agreement. The Pro Rata Agreement indicated it was made “the ___ day of June, 2023” and was between Johnson Controls, Plenary and Affiliated FM Insurance Company, Plenary’s insurer. Pursuant to the Pro Rata Agreement, Plenary agreed: not to prosecute this action against Johnson Controls; limit its recovery to the several liability of PCL and the subcontractors; share any proceeds from the action with Johnson Controls pursuant to specified per centages; and

have Plenary's insurer assume complete control over the action, cross-claims by Johnson Controls, and settlement.

[14] Plenary took the position that the Pro Rata Agreement was executed on July 27, 2023. PCL took the position that it was agreed to in June 2023.

[15] The subcontractors did not learn of the Pro Rata Agreement until September 6, 2023.

[16] The moving parties take the position that Plenary did not disclose the Pro Rata Agreement in a timely manner and that its failure to do so should result in the permanent stay of this action.

The Basic Legal Principle

[17] The moving parties rely on a line of cases beginning with *Aecon Buildings v. Stephenson Engineering Limited*,[3] which holds that, if a settlement substantially alters the litigation landscape, the settling parties must disclose the agreement to the non-settling parties and to the court immediately.[4]

[3] *Aecon Buildings v. Stephenson Engineering Limited*, 2010 ONCA 898 and continuing with *Handley Estate v. DTE Industries Limited*, 2018 ONCA 324; *CHU de Québec-Université Laval v. Tree of Knowledge International Corp*., 2022 ONCA 467 and others.

[4] *Aecon Buildings v. Stephenson Engineering Limited*, 2010 ONCA 898 at para 15.

[18] Failure to disclose a settlement immediately amounts to an abuse of process, with the "only remedy" being an automatic stay of the proceedings against the non-settling parties, even in the absence of prejudice.[5]

[19] This principle raises three issues on the motion before me:

a. Did Plenary and Johnston Controls provide timely notice of the Pro Rata Agreement?

b. Did the Pro Rata Agreement change the litigation landscape?

c. What is the appropriate remedy if Plenary and Johnson Controls breached the principles set out in *Aecon* and its progeny?

[20] To some extent, the law concerning what has come to be known as an *Aecon* motion changed as of June 16, 2025 (10 days before the motion was heard) with the entry into force of Rule 49.14 which establishes a new regulatory regime regarding the disclosure of partial settlement agreements. Rule 49.14 changes the common law in three significant ways. First, the common law required disclosure only if the settlement agreement changed the litigation landscape in some significant way. Rule 49.14 (4) requires the parties to disclose any partial settlement agreement regardless of the extent to which it changes the litigation landscape. Second, the common law required "immediate" disclosure. Rule 49.14

[5] *CHU de Québec-Université Laval v. Tree of Knowledge International Corp*., 2022 ONCA 467 ("***CHU***") at para 55(g); *Poirier v. Logan*, 2022 ONCA 350 at paras 38-40; *Aecon* at para 16.

requires disclosure “immediately” if the hearing or proceeding has commenced; or by the earlier of seven days after the agreement is reached or a settling party takes a further step in the proceeding. Third, the common law required that the action be stayed permanently for breach of duty to disclose. Rule 49.14 affords the court broad discretion with respect to remedy.

[21] The question then arises: to what extent should these changes in the Rules apply to the present case?

[22] Section 52 of the *Legislation Act*[6] provides that, unless the relevant legislation stipulates otherwise:

a. proceedings commenced under an old regulation shall be continued in conformity with the new or amended one as much as possible;[7]

b. the procedure established by a new or amended regulation shall be followed, with necessary modifications, in proceedings in relation to matters that arose before the new or amended regulation entered into force.[8]

[23] Thus, the new rule is intended to apply retrospectively to the extent possible. The requirements to disclose *any* partial settlement and the timing requirements of the

[6] *Legislation Act*, 2006, SO 2006, c 21, Sch F
[7] *Legislation Act*, 2006, SO 2006, c 21, Sch F s. 52(3).
[8] *Legislation Act*, 2006, SO 2006, c 21, Sch F s. 52(4).

new Rule should not, in my view, be applied to Plenary. Plenary could not, in 2023, be expected to foresee rules that would not come into effect until two years later.

[24] When it comes to remedy, however, the analysis is different.

[25] Section 52 (5) of the *Legislation Act* provides that, if a new or amended regulation provides for a lesser penalty, the lesser penalty applies when a sanction is imposed after the new or amended regulation enters into force.

[26] I turn then to the issues of timely notice, change of the litigation landscape and remedy.

i. Was Timely Notice of the Pro Rata Agreement Given?

[27] The moving defendants note that no further changes were made to the Pro Rata Agreement after Plenary sent a copy to Johnson Controls on June 27, 2023 and that the Pro Rata Agreement states that it is made “this _____ day of June 2023.” At the same time, however, Plenary did not send PCL a copy of the Pro Rata agreement until July 27, 2023 and did not send the subcontractors a copy until September 6, 2023.

[28] The fact that there were no further changes after June 27, 2023 does not, however, mean that the agreement was known to be final as of that date. Plenary

would not have had any way of knowing if Johnson would propose further changes to the agreement after June 27.

[29] In this regard, the text of the email by which Plenary sent the Pro Rata Agreement to Johnson Controls is relevant. It states:

> "Attached is the approved Pro Rata Agreement. Plenary made some clean up changes to the signature block (shown in the first pdf) and I've made a minor change to Affiliated's name in the style of cause and signature block. I'm attaching a final PDF for signature. Let me know if you guys are content with the final draft and I'll arrange for signature."

[30] If Plenary was asking if Johnson Controls was content with the draft, there was clearly still potential for further change to the agreement.

[31] The defendants then note that on July 18, 2023 Johnson Controls' counsel advised Plenary's counsel that Johnson Controls was prepared to enter the "Pro Rata Agreement" with Plenary. While that is the case, the email noted that Johnson Controls was prepared to proceed with the Pro-rata agreement *and* the Transfer Agreement. Indeed, the negotiation of the Pro Rata Agreement and the Transfer Agreement had been proceeding simultaneously.

[32] In response to Johnson Controls's July 18 email, Plenary mailed Johnson Controls the proposed execution copy of the Pro Rata Agreement.

[33] The disclosure obligation for partial settlement agreements at common law requires the existence of an enforceable agreement. As Kimmel J. observed in in

Oakdale Drywall & Acoustics Ltd. v. Providence St. Joseph's,[9] however, it does not require disclosure of unexecuted, unenforceable draft settlement agreements.[10]

[34] What Johnson Controls indicated in the July 18 email was that it was prepared to enter into both the Pro Rata Agreement *and* the Transfer Agreement. The whole purpose of the Pro Rata Agreement was to govern this action if it was going to move forward. As of July 18, 2023, the action had not moved forward because the dispute was being pursued in the arbitration. If there was no transfer of the arbitration dispute into this action, then there was no need for the Pro Rata Agreement.

[35] The Pro Rata Agreement was ultimately signed on July 26 and 27, 2023.

[36] Plenary sent a copy of the executed Pro Rata Agreement to PCL on July 27, 2023 at 4:42pm, only 37 minutes after Plenary's counsel provided the fully executed agreement to Johnson Controls.

[37] Although the common law sometimes framed its requirement for disclosure as "immediate", not "eventually" or "when it is convenient,"[11] the Court of Appeal held in *Chu de Québec-Université Laval v Tree of Knowledge International* that the

---

[9] *Oakdale Drywall & Acoustics Ltd. v. Providence St. Joseph's,* 2024 ONSC 3504
[10] *Oakdale Drywall & Acoustics Ltd. v Providence St. Joseph's,* 2024 ONSC 3504 at para. 90.
[11] *Peninsula Employment v. Castillo*, 2025 ONSC 1121at paras 14-18 where a delay of eight days violated the disclosure requirement and *Tallman truck Centre Limited v KSP holding Inc*, 2021 ONSC 984 where a 3 week delay violated disclosure requirements.

specific meaning of 'immediate disclosure' turned on the "factual dynamics" of the case at hand.[12]

[38] In *1086289 Ontario Inc. v Welland (City)*,[13] the statement of claim was issued in 2016, certain parties entered into a partial settlement on December 7, 2021, and the settlement was disclosed on January 12, 2022. Donohue J. described the litigation before her as proceeding at a "glacial pace", noted that the parties had not exchanged productions or conducted examinations, and found that disclosure "in roughly a month's time" was immediate "[in] the context of this ponderously moving litigation".[14]

[39] Similarly, in *Kingdom Construction Limited v Perma Pipe Inc*.,[15] disclosure of a partial settlement within 27 days was immediate on the facts of that case. Justice Broad found that the settling parties made "no effort to conceal or delay disclosure" of a partial settlement, "but rather informed counsel for certain of the non-settling defendants of the imminence and fact of the settlement" and then disclosed key terms of the settlement within 27 days.[16]

[40] In other circumstances, a delay of 30 minutes may be problematic. If, for example, a partial settlement is concluded during the lunch break in a trial while a key

---

[12] *Chu de Québec-Université Laval v Tree of Knowledge International Corp.*, 2022 ONCA 467 at para. 66.
[13] 1086289 Ontario Inc. v Welland (City), dated July 12, 2024; 2024 ONSC 3966, although the decision bears a CanLII citation, it is unreported.
[14] *1086289 Ontario Inc. v Welland (City)*, dated July 12, 2024; 2024 ONSC 3966, although the decision bears a CanLII citation, it is unreported at paras. 44-52.
[15] *Kingdom Construction Limited v Perma Pipe Inc.*, 2023 ONSC 4776
[16] *Kingdom Construction Limited v Perma Pipe Inc.*, at paras. 51-59, affirmed 2024 ONCA 593.

witness is being cross-examined, even a short delay in notifying other parties may amount to an abuse of process.

[41] In my view, the approaches taken in *Welland (City)* and *Kingdom Construction* are applicable here.

[42] Although Plenary issued the statement of claim in September 2020, it did not serve the claim until March 2021, and then provided an indefinite waiver of defence. PCL served a notice of motion in March 2022 to stay this action in favour of arbitration. PCL's subcontractors brought similar motions. Those motions did not proceed while the parties were negotiating the Transfer Agreement. Only one defendant served a pro forma statement of defence and cross claim to protect against the expiry of limitation periods. The action was in effect stayed pending resolution of the Transfer Agreement. Nothing occurred or was scheduled to occur between the Pro Rata Agreement being reached and being disclosed. As in *Kingdom Construction,* PCL received advance notice of the Pro Rata Agreement by way of reference to it in the Transfer Agreement. In this case, Plenary provided a copy of the Pro Rata Agreement to PCL 37 minutes after the agreement was fully executed, at a time when the action was effectively stayed.

[43] The moving defendants submit that the Pro Rata Agreement was not voluntarily disclosed but had to be pursued after it was inadvertently raised in the draft Transfer Agreement. There is no direct evidence before me about the extent to which reference to the Pro Rata Agreement in the draft Transfer Agreement and

its disclosure to PCL was intentional or inadvertent. Emails between counsel for Plenary and Johnson Controls, however, indicate that the intention was to advise other parties of the Pro Rata Agreement as soon as it was entered into. The Pro Rata Agreement is clearly mentioned in the Transfer Agreement. The only reason for having the Pro Rata Agreement was to govern this litigation if the dispute was transferred from arbitration to this action. Referring to the Pro Rata Agreement in the Transfer Agreement therefore made eminent sense. In those circumstances I find that the disclosure of the Pro rata Agreement by mentioning it in the draft Transfer Agreement sent to PLC was not inadvertent but reflected an ongoing intention to disclose it.

[44] The moving defendants then note that the subcontractors were not notified of the Pro Rata Agreement until September 6, 2023. That too, however, is understandable.

[45] Between May and July 2023, all parties were exchanging drafts of the Transfer Agreement. In the conduct of those discussions, PCL confirmed that it was discussing the Transfer Agreement with its subcontractors. For PCL, its ability to agree to the Transfer Agreement turned on reaching an agreement with its subcontractors in this regard. Plenary's counsel, explained in an affidavit on this motion that she understood that PCL was keeping the subcontractors apprised of discussions between PCL and Plenary. The moving defendants note that this specific statement referred to discussions about the potential Transfer Agreement. That is not particularly surprising because there were no negotiations with PCL

about the Pro Rata Agreement because it did not involve PCL. In a dynamic where Plenary as owner was communicating with PCL as contractor one can easily understand how an owner would assume, perhaps mistakenly, that the contractor would keep subcontractors apprised of issues. This indeed appears to have been the case even with respect to the Pro Rata Agreement.

[46] By way of example, on August 2, 2023, PCL's counsel advised the subcontractors that Johnson Controls had raised "an issue" that she would e discuss with PCL on August 4, 2023 and that she should be able to update the subcontractors after that. PCL's counsel admitted that the "issue" related to both the Transfer Agreement *and* the Pro Rata Agreement.

[47] In addition, as noted earlier, PCL and its subcontractors had entered into a tolling and cooperation agreement in October 2020 pursuant to which they agreed to cooperate in defending the Johnson Controls claim, and agreed to be bound by any determination in the arbitration about the liability or absence of liability of Johnson Controls. PCL committed to keep the subcontractors reasonably informed of all communications between itself and Johnson Controls concerning the arbitration.

[48] The reality of the situation appears to be that PCL was in fact keeping its subcontractors apprised of the main dispute between itself and Johnson Controls, including the Pro Rata Agreement after PCL found out about it.

[49] On September 4, 2023, PCL's counsel emailed Plenary's counsel to advise that PCL would bring a motion to permanently stay this action based on an alleged failure to immediately disclose the Pro Rata Agreement. On September 6, 2023, Plenary's counsel emailed a copy of the executed Pro Rata Agreement to counsel for PCL's subcontractors.

[50] In the foregoing circumstances, I am satisfied that Plenary and Johnson Controls made timely disclosure given the Court of Appeal's observation that the concept of immediacy turns on the context in which the issue arises. Disclosure was made within an hour of the Pro Rata Agreement being signed. Plenary counsel had a valid reason to believe that PCL was keeping its subcontractors informed of discussions about the dispute. Even if the Pro Rata Agreement was formed before the document was signed and even if the subcontractors were not advised about it until September 6, that amounts to delay in only the most theoretical sense. I refer to this as only theoretical delay because the purpose of the Pro Rata Agreement was to govern relationships in this action only if the arbitration dispute was transferred into this action. That never occurred so the Pro Rata Agreement never came into effect. In addition, any delay is only theoretical because the action was, and even now remains, effectively stayed. Other cases have permitted delayed disclosure in litigation that is proceeding at a glacial pace. This action has not even proceeded at a glacial pace. It has simply remained at a complete standstill from the outset.

ii. Did the Pro Rata Agreement Change the Litigation Landscape?

[51] The duty to disclose partial settlements arises when a party's adversarial position in its pleadings changes to a cooperative one. Courts have explained that to maintain the fairness of the litigation process, the court needs to "know the reality of the adversity between the parties" and whether an agreement changes "the dynamics of the litigation" or the "adversarial orientation".[17]

[52] The moving defendants submit that the Pro Rata Agreement changes the adversarial orientation between Plenary and Johnson Controls in that: (i) Plenary will no longer be prosecuting the action against Johnson Controls and will limit its recovery to the several liability of PCL and the subcontractors; and (ii) Plenary, its insurer, and Johnson Controls will share the proceeds of the action.

[53] Plenary submits that there has been no true change in adversarial orientation because the action was effectively stayed and the dispute was being pursued in the arbitration. The arbitration was only between Johnson Controls and PCL. It did not involve Plenary. Plenary also submits that there was no true adversity between itself and Johnson Controls because the two had always been aligned in arguing that the sanitary pipe defect was a construction or design defect over which neither Plenary nor Johnson Controls had any influence.

[17] *Handley Estate v. DTE Industries Limited*, 2018 ONCA 324 at para 39.

[54] Plenary and Johnson Controls further submit that the Pro Arata Agreement could not affect the action because it was conditional on the transfer of the dispute from the arbitration into this action. They rely on articles 7 and 8 of the Pro Rata Agreement in this regard. Those articles provide:

> "7. JCCLP and Plenary will enter into an agreement with PCL, including that: (a) Plenary shall not be obligated to comply with its procedural obligations prior to commencing litigation as set out in Schedule 27 of the DBA. No party will take the position in the Sanitary Pipe Action that the Sanitary Pipe Claim must be determined by arbitration either pursuant to the DBA, the FCA or otherwise. (b) JCCLP will be entitled to proceed with its claim in the Sanitary Pipe Action by way of its Crossclaim. (c) The parties will not raise any objections to pursuing the Sanitary Pipe Claim or Crossclaim through the Sanitary Pipe Action as opposed to by way of the JCCLP Arbitration. (d) PCL will not seek costs from JCCLP related to change of forum of the Sanitary Pipe Claim from the arbitrator in the JCCLP Arbitration. The costs already incurred by JCCLP and PCL in relation to the Sanitary Pipe Claim in the JCCLP Arbitration will be dealt with by the judge in the cause of the Sanitary Pipe Action.
>
> 8. Subject to (7), JCCLP will: (a) Remove the Sanitary Pipe Claim from the JCCLP Arbitration; and (b) Defend against the Sanitary Pipe Action and assert its Crossclaim against PCL and the Subcontractors for the losses it suffered arising from the Sanitary Pipe Claim."

[55] The Moving defendants note that neither of those articles contains language of conditionality. Although that is true, the underlying purpose of the Pro Rata Agreement was to govern the litigation if the dispute were moved from arbitration into this action. The dispute has not been moved into this action and this action has still not even proceeded to the stage of statements of defence being served.

[56] Given that: (i) the action has been effectively stayed from the outset; (ii) the Pro Rata Agreement would only govern if the dispute were moved from the arbitration into this action; and (iii) given that this has not occurred; there has been no change to the litigation landscape. The action remains stayed and the dispute continues to be resolved by way of arbitration.

Remedy

[57] In light of my finding that Plenary and Johnson controls provided timely notice of the Pro Rata Agreement in the context of this case, and that there had not yet been a change to the litigation landscape, no remedy is warranted.

[58] If I am wrong in this regard, I would make use of the expanded discretion to fashion remedies under Rule 49.14. The object of giving courts more discretion to fashion remedies is to tailor a remedy that responds most appropriately and directly to the seriousness of the breach and its consequences. Orders of that sort might range from removing any prejudice to ones that denounce and disincentivize certain types of conduct.

[59] If there were a breach in this case, it would be minor. It would have involved a short delay in providing notice in an action that was effectively stayed by agreement of the parties before statements of defence had even been filed. A remedy would only be required if the parties intended to revive the litigation and move forward with the action. The remedy that responds most directly to the circumstances here is to have any party who wishes to advance the litigation

request a case conference to set a timetable that moves the action to trial on an expedited timetable.

Cross Motion to Discontinue this Action

[60] Plenary brings a cross-motion for leave to discontinue this action without costs.

[61] Plenary had proposed this some time ago. PCL and its subcontractors did not consent to a discontinuance and expressed concerns about costs and unspecified "implications" for the arbitration.

[62] There was almost no time spent on the discontinuance on the motion. Given the limited information I have about the arbitration and its possible consequences for this action, I am reluctant to discontinue that action without further information. If the parties wish to make further submissions on the discontinuance before me, they are at liberty to do so. Submissions should be limited to 10 double spaced pages following which I will arrange a short hearing outside of regular court hours in order to address the issue quickly.

Conclusion and Costs

[63] For the reasons set out above, I dismiss the motion of the moving defendants.

[64] Plenary seeks costs on a partial indemnity scale which they ask me to fix at $17,354.09 including disbursements and HST. Johnson Controls seeks costs on a partial indemnity scale which they ask me to fix at $13,732.89 including HST and

disbursements. Those costs strike me as eminently reasonable, especially when compared to the costs of the moving defendants. By way of example, PCL sought partial indemnity costs of $34,420.74; B + H Architects sought partial indemnity costs of $10,761.22; and Modern Niagara sought partial indemnity costs of $10,342.55. Given that Plenary's costs are approximately one half those of PCL and the costs of Johnson Controls are only modestly larger than those of the other moving defendants, I fix costs in favour of Plenary at $17,354.09 and fix costs in favour of Johnson Controls at $13,732.89.

Date: October 14, 2025

Koehnen J.