Court of King's Bench of Alberta

Citation: Pembina Gas Services Ltd v Focus Corporation, 2025 ABKB 745

Date: 20251215
Docket: 1401-03352
Registry: Calgary

Between:

Pembina Gas Services Ltd. (As Initiated by Its Subrogated Underwriters of Policy No. RSLC22276)

Applicant/Plaintiff

- and -

Focus Corporation (c.o.b. "DPH Focus")

Respondent/Defendant

Reasons for Judgment
of the
Honourable Justice N.M. Carruthers

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[1] The Applicant/Plaintiff, Pembina Gas Services Ltd. ("PGS"), seeks two orders amending its pleadings in this matter:

(a) an order pursuant to Rules 3.62(1)(b)(i) and 3.74(2)(a) of the Alberta Rules of Court, Alta Reg 124/2010 to amend the Statement of Claim to add Pembina Pipeline Corporation ("PPC") as a plaintiff to these proceedings; and

(b) an order pursuant to Rules 3.62(1)(b)(ii) and 3.65(1) to make other amendments to the Statement of Claim related to evidence that has been discovered during the course of these proceedings.

[2] The Respondent/Defendant, Focus Corporation (carrying on business as DPH Focus) ("DPH"), opposes the application on the basis that it will be prejudiced by the proposed amendments and that the Applicant is seeking to do indirectly what it cannot do directly – adding a "new" standalone claim that is limitation barred.

[3] For the reasons that follow, the application to amend the Statement of Claim is allowed, with conditions.

I. Background

[4] The matter is set for a 40-day trial beginning Fall 2026.

[5] PGS filed a Statement of Claim in March 2014, seeking $15 million in damages arising from events that occurred between March and September 2012. PGS (referred to as "Pembina" in the Statement of Claim) alleged that three defendants (DPH; Compressor Controls Corporation ("CCC"); and Voith Canada Inc ("Voith")) were jointly and severally liable for damages arising from a failure of a gearbox that led to a complete shutdown of the compressor train at the Musreau gas plant. PGS is the owner of the gas plant.

[6] PGS sought to expand the plant and entered into contracts with each of the defendants. Voith was contracted to refurbish the gearbox. CCC was contracted to conduct a systems engineering review of the compressor train. DPH, the engineering contractor, was responsible for, amongst other things, the design, installation and commissioning of the compressor train control systems and the gearbox. DPH was also responsible for working and consulting with Voith and CCC.

[7] The original Statement of Claim sought damages in tort and contract resulting from a March 29, 2012, gearbox failure (the "First Loss Event"), a second gearbox failure (the "Second Loss Event") and the shutdown of the compressor train from March 22 to September 2, 2012, due to the gearbox failures.

[8] Following the First Loss Event, Voith was contracted to conduct an overhaul of the gearbox which resulted in further damage (the "Second Loss Event"). It is alleged this further damage prevented the compressor train from returning to full operation until September 2, 2012, instead of July 24, 2012, when it otherwise would have been operational. The original Statement of Claim alleged that Voith and its subcontractor were liable in negligence and breach of duty for the Second Loss Event.

[9] The original Statement of Claim sought $15 million in damages, particularized as follows at para 26:

> 26. As a result of the damage to the Gearbox, Pembina sustained damage to its property, chattels, equipment, inventory and leased property, extra expenses, fees and investigation costs, and incurred potential liabilities to third parties, and sustained various forms of consequential loss, loss of use, loss of capital, loss of interest on investments, loss of profit, lost opportunities and business interruption losses. The total quantum of damages, and heads of damages, arising from this incident has not yet been finally determined, but is estimated to meet or exceed $15,000,000.00 CAD. Full particulars of the damages sustained by Pembina will be provided to the defendants prior to a trial of this action.

[10] A number of steps occurred since the original Statement of Claim was filed in March 2014, resulting in DPH now being the only remaining defendant in the action. Statements of defence

were filed, parties exchanged affidavits of records, and parties questioned representatives and witnesses for Voith, DPH, CCC and PGS. For the purposes of this application, the following is relevant:

- April 12, 2016 – DPH filed a notice of claim for contribution or indemnity against CCC and Voith.
- September 20, 2017 – PGS served its first affidavit of records.
- June 25, 2018 – DPH filed an Amended Statement of Defence.
- February 28, 2021 – PGS entered into a Pierringer settlement agreement with Voith. PGS agreed that it would not seek to recover from the remaining defendants or any other person any portion of the damages sought in the action which a court attributes to the fault of Voith.
- April 23, 2021 – PGS discontinued the action as against Voith.
- July 6, 2021 – Applications Judge Mattis granted an order, on consent of all parties, dismissing all of DPH and CCC's claims for contribution and indemnity against Voith and granting PGS permission to amend its claim in accordance with the Pierringer settlement agreement.
- July 19, 2021 – PGS amended its Statement of Claim, deleting reference to the "Second Loss Event" and adding a reference to the Pierringer settlement agreement between the PGS and Voith (the "Amended Statement of Claim").
- January 17, 2023 – PGS entered into a settlement agreement with CCC agreeing not to sue CCC, without prejudice to PGS's right to claim against the remaining defendant, DPH.
- March 16, 2023 – PGS discontinued the action as against CCC.
- July 6, 2023 – PGS filed an application to set the matter down for trial.
- May 28, 2024 – A court order directed that expert reports be exchanged in late 2024, the parties attend mediation in February 2025, and the matter be set down for a 40-day trial.
- April 30, 2024 – PGS served its expert report on DPH (the Copeland Report).
- October 15, 2024 – The sole remaining defendant, DPH, served its expert report on PGS (the Das Report).
- February 2025 – PGS and DPH attended mediation.
- August 19, 2025 – PGS filed the within application seeking to amend the Amended Statement of Claim.

II. Proposed Amendments

[11] PGS's application states that it is seeking to add a closely-related corporate affiliate, PPC (the "Proposed Plaintiff") because PPC "suffered damages from the First Loss Event and Second Loss Event".

[12] The proposed amendments include the following, as well as other consequential amendments:

- Changing the definition of "Pembina" and "the Plaintiff" to include both PGS and PPC.

- Particularizing the losses incurred by PPC as follows:

> 39. The Plaintiff Pembina Gas Services Ltd., through its limited partnership, Pembina Gas Services Limited Partnership, and the Plaintiff, Pembina Pipeline Corporation, entered into a Pipeline Transportation Service Agreement, dated November 4, 2011 (the "**Transportation Service Agreement**").
>
> 40. By virtue of the Transportation Service Agreement, and pursuant to its terms, all natural gas liquids recovered, inter alia, by or through the Musreau Plant's Deep Cut Facility, were delivered to Pembina Pipeline Corporation for transportation to delivery points by way of Pembina Pipeline Corporation's pipeline system.
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> 41. Pursuant to the terms and provisions of the Transportation Service Agreement, moreover, Pembina Pipeline Corporation earned a liquids transportation fee ("**Transportation Fee**") of $15.50 per cubic meter of natural gas liquids received from the Musreau Deep Cut Facility for delivery.
>
> 42. During the time when the Musreau Deep Cut Facility was not operating because of the Gearbox failure and its subsequent repair, Pembina Pipeline Corporation lost revenue it would otherwise have earned from the Transportation Fee.

[13] The proposed amendments also include particularization of the compressor train control system to include reference to the Human Machine Interface ("HMI") (the "Proposed HMI Amendments"). At para 12. a) the following is proposed:

> a) Integrate the Compressor Train at the plant, including necessary modifications to the Human Machine Interface ("HMI") upon which plant operators relied to monitor and control the operation of the Compressor Train, including the Gearbox;

[14] And at para 22:

> 22. Pembina personnel were aware that running the compressor train with the speed control in manual mode would allow the Gearbox to be operated outside of its pre-programmed operating range. However they were not aware of, and reasonably did not anticipate or expect, the fact that with the speed controller bypassed there was no longer any form of alarm, warning or safeguard whatsoever to prevent the Gearbox from sustaining a critical failure from over speed/over torque exposure, with the exception of an over-current shutdown for the Electric Motor. Such alarms, warnings and safeguards should have been programmed into the HMI.

[15] There are further consequential amendments adding reference to the HMI when the control system is referenced throughout the Statement of Claim.

[16] The relief sought has not changed. The amended claim continues to seek $15 million in damages. Paragraph 26, set out above, is unchanged save for being renumbered as paragraph 25.

III. Evidence on this Application

[17] In support of its application, PGS relies on the affidavit of Dave Esau, the corporate representative for PGS, and the affidavit of Kyle Dionisi, a lawyer at the law firm representing PGS in this action. DPH cross-examined both Mr. Esau and Mr. Dionisi on their affidavits.

[18] DPH argues that the court should disregard the entirety of Mr. Dionisi's affidavit because it is an affidavit sworn by PGS's lawyer on substantive matters, the affidavit is sworn on the basis of information and belief but does not disclose the source of that information, and the affidavit contains improper legal argument.

[19] DPH did not file any evidence.

[20] The expert reports are before me as exhibits to the cross-examination of Mr. Esau and Mr. Dionisi.

[21] Kevin Copeland provided an expert report on behalf of PGS, estimating the total quantum of PGS's losses as a result of the First Loss Event and the Second Loss Event during the period from March 29, 2012, to September 3, 2012, at just over $9 million dollars. That amount includes an estimated $2.7 million in losses for "Shipper Tariffs" defined as lost C2+ delivery volumes at a tariff of $15.50 per cubic metre (Schedule A-1).

[22] Dean Das provided an expert rebuttal report on behalf of DPH as it relates only to the First Loss Event. The Das report states that the Copeland report overstates the losses and the "Shipper Tariffs" losses should be $0. The Das report states that the Copeland report failed to consider: (i) that PGS is a separate entity from the owner of the pipeline, PPC, and the Copeland report therefore does not appropriately consider the incremental expenses that PGS would have incurred during the outage, and (ii) PGS's ability to mitigate as prescribed in the *force majeure* clause in the Pipeline Agreement.

IV. Law

[23] Rule 3.62(1)(b) of the *Alberta Rules of Court*, Alta Reg 124/2010 allows a party to amend its pleadings after pleadings have closed in accordance with Rule 3.74 (adding, removing or substituting parties) and Rule 3.65 (all other amendments).

[24] Rule 3.74(2)(b) deals with adding a plaintiff as a party to an action. The relevant portions provide:

> 3.74(1) After close of pleadings, no person may be added, removed or substituted as a party to an action started by statement of claim except in accordance with this rule.
>
> (2) On application, the Court may order that a person be added, removed or substituted as a party to an action if
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> (a) in the case of a person to be added or substituted as plaintiff, plaintiff-by-counterclaim or third party plaintiff, the application is made by a person or party and the consent of the person proposed to be added or substituted as a party is filed with the application;
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> ...
>
> (3) The Court may not make an order under this rule if prejudice would result for a party that could not be remedied by a costs award, an adjournment or the imposition of terms.

[25] Rule 3.65 provides that all other amendments may be made with permission of the Court. Whether to grant permission is a discretionary decision. There is a strong presumption in favour of allowing the amendment unless the responding party demonstrates a compelling reason not to: ***Astolfi v Stone Creek Resorts Inc***, 2023 ABKB 416 at para 40.

[26] Amendments to pleadings after pleadings close are "relatively easy to get": ***Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited***, 2014 ABCA 74 at para 24. The general rule is that amendments should be allowed, no matter how careless or late the party seeking to amend, subject to four exceptions (***Attila*** at para 25, citing ***Foda v Capital Health Region***, 2007 ABCA 207 at para 10, and ***Dow Chemical Canada Inc v Nova Chemicals Corp***, 2010 ABQB 524 at paras 20-21; ***Domenic Construction Ltd v Primewest Capital Corp***, 2020 ABCA 265 at para 20; ***Andritz*** at para 46):

> (a) The amendment would cause serious prejudice to the opposing party, not compensable in costs;
>
> (b) The amendment requested is hopeless;
>
> (c) Unless permitted by statute, the amendment seeks to add a new party or new cause of action after the expiry of a limitation period; or

(d) There is an element of bad faith associated with the failure to plead the amendment in the first instance.

[27] If no exception applies, the pleadings can generally be amended: ***Dow*** at para 21; ***Delta Hotels No 2 Holdings Ltd v Calm Shore Ventures (1992) Inc***, 2019 ABQB 434 at para 29 [***Delta Hotels QB***], aff'd 2020 ABCA 24 [***Delta Hotels CA***].

[28] The applicant concedes that the amendments are being sought after the expiration of the limitation period, and therefore section 6 of the *Limitations Act*, RSA 2000, c L-12 applies. Section 6 permits parties to add claims that add claimants after the expiration of the limitation period in certain circumstances. The relevant portions provide:

> 6(1) Notwithstanding the expiration of the relevant limitation period, when a claim is added to a proceeding previously commenced, either through a new pleading or an amendment to pleadings, the defendant is not entitled to immunity from liability in respect of the added claim if the requirements of subsection (2), (3) or (4) are satisfied.
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> ...
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> (3) When the added claim adds or substitutes a claimant, or changes the capacity in which a claimant sues,
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> (a) the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding,
>
> (b) the defendant must have received, within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits, and
>
> (c) the court must be satisfied that the added claim is necessary or desirable to ensure the effective enforcement of the claims originally asserted or intended to be asserted in the proceeding.
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> ...
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> (5) Under this section,
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> (a) the claimant has the burden of proving
>
> (i) that the added claim is related to the conduct, transaction or events described in the original pleading in the proceeding, and
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> (ii) that the requirement of subsection (3)(c), if in issue, has been satisfied,

and

(b) the defendant has the burden of proving that the requirement of subsection (3)(b) or (4)(b), if in issue, was not satisfied.

[29] Section 1(a) of the *Limitations Act* defines "claim" as meaning "a matter giving rise to a civil proceeding in which a claimant seeks a remedial order".

[30] The evidentiary threshold to amend pleadings is low. Only a modest degree of evidence with "some foundation in fact" is needed to support an amendment that alleges new substantive facts: ***Balm v 3512061 Canada Ltd***, 2003 ABCA 98 at para 29; ***Attila*** at para 14 citing ***Canadian Natural Resources Ltd v Arcelormittal Tubular Products Roman SA***, 2012 ABQB 679 at para 53; ***Bard v Canadian Natural Resources***, 2016 ABQB 267 at para 12; ***Astolfi*** at para 61(b). The evidentiary threshold of "modest evidence" can be satisfied with documents: ***Andritz*** at para 52; ***Delta Hotels CA*** at para 28.

[31] The amending party need not show that the amended pleading can be proven at trial or that it meets the test for summary judgment: ***Attila*** at para 26. The evidence need not prove the new allegation on a balance of probabilities: ***Balm*** at paras 25-26, 29. An amendment may be justified even in the face of contradictory evidence: ***Balm*** at paras 12-13. Any type of evidence that is admissible evidence, including hearsay, will suffice: ***Balm*** at para 25.

V. Issues

[32] DPH argues that the proposed amendments should not be allowed for the following reasons:

- PGS has failed to meet the evidentiary threshold to support the application,
- the requirements of section 6(3) of the *Limitations Act* are not met,
- the proposed amendments will cause prejudice not compensable by costs,
- PGS has failed to prove the corporate connection between it and PPC,
- PGS deliberately delayed bringing this amendment application and it should be barred by the doctrine of laches and acquiescence, and
- the Proposed HMI Amendments are too late and unnecessary.

VI. Analysis: Proposed Amendment to Add PPC as a Plaintiff

[33] As set out in Mr. Esau's affidavit, PPC consents to the application as required by Rule 3.74(2)(a). The question then is whether any of the exceptions relied on by DPH apply, and if not, the amendments should be allowed.

A. Has PGS met the evidentiary threshold?

[34] As will be set out below, I am satisfied that the PGS has met the evidentiary threshold.

[35] DPH argues that I should strike or disregard the entirety of Mr. Dionisi's affidavit because he is PGS' lawyer. A lawyer cannot be both counsel and a witness in the same proceeding: ***Holden v Holden***, 2022 ABCA 341 at para 50, fn 37. Members of a law firm are identified as one in the eyes of the law: ***RT v Alberta***, 2020 ABQB 655 at para 32. A court will permit a lawyer to use their own affidavit so long as it is limited to formalities or if the subject of the evidence is uncontroverted: ***RT*** at para 32. DPH argues that Mr. Dionisi swore to issues that are not mere formalities and to subjects that are not uncontroverted.

[36] I place no weight on portions of Mr. Dionisi's affidavit that contain argument, are speculative or appear to go beyond mere formalities. In particular, I place no weight on paragraphs 10(b), 11(b), 11(c), 14(a)-(e), and para 22.

[37] I am satisfied that PGS has established that there is a foundation in fact for the following: PPC is a corporation registered in Alberta; PPC and PGS are distinct though related corporate entities; PPC owns and operates certain facilities at the Musreau gas plant.

[38] The Transportation Agreement appended to Mr. Dionisi's affidavit, and which has long been produced and in evidence in this litigation, satisfies the modest evidence requirement and establishes a foundation in fact for the following: on November 4, 2011, PGS through its limited partnership, Pembina Gas Services Limited Partnership, and the Proposed Plaintiff (PPC) entered into a "Pipeline Transportation Service Agreement". Under this agreement, PPC earned $15.50 per cubic meter of natural gas liquids received from the Musreau gas plant (the "Transportation Fee"). While the plant was not operating due to the gearbox failure, PPC did not earn the Transportation Fee.

[39] There may be evidence to contradict the above points, and it will be up to the trial judge to make their own findings of fact at trial. But at this stage I am satisfied the low evidentiary threshold is met.

[40] I will comment on DPH's argument about the motives of PGS. DPH argued there was a distinction as to whether PGS was mistaken as to who had the right to sue or whether it intentionally sued in the wrong name to achieve a strategic advantage in the litigation. DPH asks me to draw the inference that it is the latter, or at least that the error had the effect of creating a strategic advantage. DPH focused much of their argument on the statements in Mr. Dionisi's affidavit, cross-examination on affidavit, and undertakings about who first came to the realization that PPC should be a plaintiff in these proceedings and how that realization arose. Save for my consideration of laches and acquiescence below, I find the evidence about how and when PGS came to realize that PPC ought to be a plaintiff is not relevant. Under the general rule, whether amendments could have been made sooner is irrelevant: ***Bard*** at para 17. An amendment should be allowed no matter how late or careless. And as stated in ***Attila*** at para 24, "no particular reason for needing the amendment is required". Instead, delay is considered in terms of prejudice – would the amendment cause prejudice not compensable in costs. But in any event, I do not draw the inference that PGS intentionally sued in the wrong name rather than as a result of error or inadvertence, as that argument is speculative and not borne out by the evidence.

B. Is the proposed amendment to add PPC barred by section 6 of the *Limitations Act*?

[41] PGS has the burden of establishing the requirements in section 6(3)(a) and (c), and DPH has the burden of establishing the requirement in section 6(3)(c).

[42] PGS says this case is similar to ***Delta Hotels***, where the plaintiff was permitted to add new parties as plaintiffs after pleadings closed. In that case, the plaintiff alleged that the losses it had sustained as a result of a fire were caused by breach of contract and negligence of the defendants. After the close of pleadings the plaintiff sought to add three closely related companies which had suffered loss as a result of the fires. The court accepted that the proposed amendments did not seek to impose new liability, but rather, sought to allocate the losses already claimed among related parties. The proposed amendments involved the same allegation of breaches and did not increase the amount of damages claimed. The court held that the proposed amendments were further particulars of losses and damages already claimed, not "new" heads of damages: ***Delta Hotels QB*** at paras 51, 54.

[43] PGS also says this case is similar to ***Andritz Ltd v Quality Fabricating and Supply Limited***, 2010 ABQB 101, in which a plaintiff applied to add a related company as a plaintiff to an action after the expiration of the limitation period. As here, after filing the statement of claim, the plaintiff determined that some of the damages set out in the claim were actually incurred by a related company. Notably, the damages incurred by the related company were included in the damages already pled, and none of the background facts changed as a result of the amendment.

C. Are the added claims "related to the conduct, transaction or events described in the original pleading"

[44] The phrase "related to" in section 6(3)(a) has a broad meaning and establishes a low threshold: ***Bow Valley Insurance Services (1992) Limited v Shah***, 2005 ABCA 304 at para 14; ***Astolfi*** at para 11. The proposed amendments adding PPC as a plaintiff relate to PPC's allegation that it lost the Transportation Fee "because of the Gearbox failure and its subsequent repair". This falls into the category of losses allegedly incurred in 2012, as described in paragraph 26 of the original Statement of Claim. PGS has met the evidentiary threshold to establish the relatedness of PPC's claim to the gearbox failure.

[45] Adding PPC will not change the substance of the Statement of Claim as it will continue to relate to the losses arising from the 2012 gearbox failure. It is still related to the events of which DPH was already aware, as described in the original pleading.

[46] This is also not a case where the amendments allege different causes of action or new heads of damage. The proposed amendment adding PPC includes further particulars of losses and damages already claimed by PGS. Everything arises out of the 2012 gearbox failure.

[47] I am satisfied that the requirements of section 6(3)(a) are met.

D. Did DPH acquire sufficient knowledge of the added claim, such that DPH will not be prejudiced in maintaining a defence to it on the merits?

[48] Prejudice "is given more prominence where new parties are added, presumably because they are more likely to expand the scope and expense of an action, and may be particularly [...] affected where the action is well advanced or limitation periods have passed": ***Manson Insulation Products Ltd v Crossroads C & I Distributors***, 2011 ABQB 51 at para 52. The resisting party must show that it would suffer actual prejudice: ***Andritz*** at para 45, citing ***Stout Estate v Golinowski Estate***, 2002 ABCA 49.

[49] DPH adduced no evidence alleging prejudice to its defence. Submissions of counsel are not evidence. I place little weight on Mr. Dionisi's agreement with statements put to him by counsel for DPH about what steps DPH may have to take going forward.

[50] DPH argues that the limitation period began to run, at the latest, on September 1, 2012, and that DPH would have had to receive knowledge of PPC's claim by September 1, 2015 (being the two year limitation period plus the one year allotted for service). DPH says it was not served with a copy of the Transportation Service Agreement until on or about September 20, 2017, when PGS served its first affidavit of records, so DPH did not have knowledge of the added claim within the limitation period.

[51] The word "claim" in section 6 refers to knowledge of the added facts: ***Bow Valley*** at para 16. The resisting party must show that it was unaware of the facts supporting the added claim within the applicable limitation period, to alert it to the possibility of the potential claim: ***Canadian Natural*** at paras 418-422. The section does not indicate a specific form of knowledge that must be acquired. Nor does the section "expressly specify that the identity of a specific claimant be known within the defined period": ***McDonnell v Csaki***, 2014 ABQB 452 at para 47. The sufficiency of the knowledge will depend on the facts of the particular case.

[52] That the Transportation Service Agreement was not served on DPH before the expiration of the limitation period is not the end of the analysis. In ***Delta Hotels,*** the amending party had not yet produced some documents (a lease and management agreement) at the time of the amendment that were the basis for calculating the added claims: ***Delta Hotels CA*** at para 28. The question is not whether DPH had notice of the Transportation Service Agreement, which serves to provide the basis on which to calculate the particulars of the claims for PPC's loss of the Transportation Fee. It is whether DPH had notice of the facts underlying PPC's claim for the lost Transportation Fee, or whether their lack of knowledge would prejudice it in defending against the merits of PPC's claim.

[53] In my view, notice of the action as constituted in the original Statement of Claim satisfies the "sufficient knowledge" requirement. The facts concerning the gearbox failure were pled. Further, the claim sought several heads of damages at para 26 arising from the gearbox failure, including consequential loss and business interruption losses. The knowledge of these facts was sufficient to put DPH on notice, or alert it to the possibility, that it would be liable for the loss of the Transportation Fee due to the gearbox failure and subsequent outage.

[54] On reviewing the expert reports provided, it seems clear that PGS was claiming the amount it would have charged as a shipping tariff. The Das Report says this amount could not be claimed

as PGS was paying that amount to PPC as an offsetting expense. In the alternative, if it was an ongoing expense, it could be mitigated by relying on the *force majeure* clause in the Transportation Service Agreement. The basis of the claim seems to have been clear early in the litigation.

[55] DPH says it will be prejudiced if PPC is added as a plaintiff at a late stage in the action. It says its strategy in the action (whether to settle, what records to produce, what experts to retain, etc.) would have been different had it known PPC was a party. It says if PPC is added as a plaintiff, its experts will have to reconsider the matter and prepare new reports, and it will have to file additional pleadings, as well as conduct additional discovery and questioning. It also says it will be prejudiced because over 13 years have passed since the events alleged, and this significant passage of time is detrimental to the availability and quality of evidence (with reference to ***Precision Forest Industries Ltd v East Prairie Investments Corp***, 2018 ABQB 489 at para 48).

[56] PGS argues that this type of prejudice can be compensated with costs. PGS acknowledges that DPH will likely need to amend its pleadings and conduct further questioning, but PGS maintains that none of the questioning to date has been "wasted". PGS argues that adding PPC as a plaintiff merely clarifies which party has suffered part of the loss that has been pursued from the beginning of the action.

[57] While the potential for additional pleadings, questioning or expert reports may be inconvenient, this type of prejudice can be remedied with costs: ***Andritz*** at para 49; ***Delta Hotels QB*** at para 37. I am also not satisfied that the trial dates are at risk. DPH has provided no evidence on the point and, given the nature of the claims and the proposed amendments, I agree with PGS that nothing done to this point will be thrown away.

[58] As for the deterioration in evidence, there is no suggestion that any evidence has been destroyed or lost, or what the nature of the deteriorated evidence might be. In ***Delta Hotels*** the defendants alleged prejudice in the form of diminished ability to garner evidence. The Court of Appeal commented that the defendant had failed to provide any evidence that documentary evidence had been destroyed or lost: ***Delta Hotels CA*** at para 27. I find that DPH's argument is speculative, particularly in light of the nature of the claims being advanced here and the fact that expert reports have been generated with regard to the claimed losses. I am not satisfied that the mere passage of time has resulted in a deterioration of evidence that would prejudice DPH in defending against the merits of PPC's claim.

[59] Nor am I persuaded that a bald assertion, without evidence, that DPH's strategy would have been different satisfies the requirement of demonstrating actual prejudice in this circumstance. In ***Sorrell v eQube Technology and Software Inc***, 2019 ABQB 31, the court found that an application for an amendment on the last day of trial occasioned a form of prejudice in the form of not knowing what the lifespan or trajectory of the lawsuit would have been, had the amendments been sought earlier. The court held that not knowing what effect an earlier amendment would have had on settlement discussions or strategies was a form of prejudice. But in that case the amendment was sought on the final day of a trial after all evidence had been led. Here we are still a year away from trial.

[60] DPH argues that it appears the applicant is seeking to revive the claims related to the Second Loss Event (that were deleted in the first Amended Statement of Claim) against DPH as the sole remaining defendant. While paragraph 14 of the application to amend the pleadings states

that PGS is seeking to add a closely related corporate affiliate "who suffered damages from the First Loss Event and Second Loss Event", the statement of claim as proposed to be amended no longer references a Second Loss Event. The Second Loss Event is no longer part of the claim. The pleadings, not the application to amend, determine the issues at trial.

[61] DPH argues that the proposed amendments have the effect of adding new causes of action. DPH says by changing the definition of Pembina and Plaintiff to include both PGS and PPC, the effect is that the claim now alleges contracts between DPH and PPC, that DPH agreed to indemnify PPC, and that DPH owed a duty of care to PPC. I am not satisfied that this a strong argument on prejudice. If there are no contracts or indemnity agreements between DPH and PPC, nor a duty of care owed by DPH to PPC, then it would not be difficult for DPH to maintain that defence at trial: see ***Andritz*** at paras 47-49. Again, PGS does not need to prove that the amendments to its claim will succeed at this stage.

[62] DPH says this case is unlike ***Delta Hotels*** and ***Andritz*** because of the two settlement agreements entered after the original pleading was filed and before the amendment application was brought. DPH says the fact that the Pierringer settlement agreement with Voith and settlement agreement with CCC were entered into by PGS, without reference to PPC, causes extreme prejudice to DPH because those agreements cannot be undone. DPH says it has no recourse against the parties that were let out of the action pursuant to agreements with PGS.

[63] PGS says there is no prejudice caused to DPH by the settlement agreements. PGS says the claims against Voith and CCC are gone, and having those parties out of the litigation does not create actual prejudice for PGS.

[64] I agree with DPH that the settlement agreements may distinguish this case from ***Delta Hotels*** and ***Andritz***, but I do not agree the addition of PPC as a party will cause prejudice to DPH. While a non-settling defendant can be prejudiced by a Pierringer agreement (see for example ***Vandevelde v Smith***, 1999 ABQB 365), here the focus is on potential prejudice arising from the proposed amendment, not the settlement itself.

[65] While PPC is not a party to the Pierringer agreement, paragraph 45 of the proposed amended claim has the effect of including PPC in the agreement. This means that, like PGS, PPC can only seek damages against DPH which reflect the extent of its own causal negligence, if any. I did not understand the Plaintiffs to submit that the Pierringer agreement would not apply to PPC and that is the only fair way to interpret and apply the amendments. There is no prejudice to DPH, as its potential exposure to PPC will be limited in the same way as its liability to PGC.

[66] If PPC's losses were being claimed from the beginning, which is the premise upon which PGS advances this application, then PPC should not be able to recover from DPH any amounts that the trial judge finds are attributable to the fault of Voith.

[67] I also do not accept DPH's argument that it is prejudiced because of the settlement agreement with CCC. The action against CCC was discontinued in 2023 and I understand that the settlement agreement was a covenant not to sue. Such an agreement does not prevent one defendant from seeking contribution from another, as is the case with a Pierringer agreement. DPH alleges, without evidence, that CCC is DPH's closest tortfeasor. I do not accept that the addition of PPC

as a party will prejudice DPH, as it relates to its position as it relates to CCC. DPH has had the right to seek contribution from CCC.

[68] In the result, DPH has failed to satisfy the requirements of section 6(3)(b).

E. Is adding PPC as a plaintiff necessary or desirable to ensure the effective enforcement of the claims originally asserted or intended to be asserted in the proceeding?

[69] PPC and PPG both allege they incurred damages as a result of the gearbox failure and outages that followed at the Musreau gas plant. The proposed claim for the lost Transportation Fee is properly that of PPC and not of PGS, and was included as a claim in the original Statement of Claim issued on behalf of PGS. The same breaches and damages are claimed now as they were from the start. This is not the case where PGS is seeking to allege difference causes of action or other heads of damage. The loss of the Transportation Fee is a further particular of the losses and damages already claimed in the original Statement of Claim.

[70] Like ***Andritz*** and ***Delta Hotels***, if DPH is liable for all of the damages claimed in the Statement of Claim, then it is necessary for PPC to be added as a claimant so that a judgment for those damages can be effectively enforced.

[71] I am satisfied that the requirements of section 6(3)(c) are met.

F. Will the proposed amendments cause prejudice not compensable by costs?

[72] I have already dealt with this, and I find that any prejudice can be compensable by costs or conditions.

G. Is PGS required to prove the corporate connection between it and the Proposed Plaintiff?

[73] DPH argues that PGS has failed to "satisfactorily prove the corporate connection between PPC and PGS".

[74] I am not satisfied that that is a basis on which to dismiss the application. While it will be for the plaintiffs to establish the corporate relationship between PPC and PGS at trial, the evidentiary threshold is low at this stage and I am satisfied, with reference to the undertakings elicited in cross-examinations, that there is a sufficient factual foundation to permit the amendments.

H. Are the Plaintiffs seeking to add a standalone claim to which the ultimate 10 year limitation period applies?

[75] At the hearing, DPH argued that, in the alternative, I should find this application is seeking to add a new "standalone" claim by PPC for an injury that occurred in 2012. DPH argued that the ultimate 10 year limitation period in section 3(1)(b) of the *Limitations Act* applies and the claim is therefore barred. DPH argued that I do not need to consider prejudice if I accept this argument.

[76] I reject this argument. I have already found that the proposed amendment to add PPC as a plaintiff satisfies section 6 of the *Limitations Act* and therefore DPH is not entitled to immunity from liability due to the expiration of the relevant limitation period.

I. Should the amendment be barred by the doctrine of laches and acquiescence?

[77] DPH says that PGS' litigation conduct is a reason to deny the application. DPH says that PGH and PPC made a strategic decision to wait and let the matter be set for trial with DPH as the sole remaining defendant before adding this claim.

[78] Laches applies to the delay in instituting or prosecuting a claim, but there must be more than mere delay. It requires acquiescence by the plaintiff to the point of waiver, or prejudice or other potential injustice caused by the delay in prosecuting the lawsuit: ***681210 Alberta Ltd v Hunter***, 2012 ABCA 83 at paras 31-33.

[79] DPH relies on ***Weatherford Canada Partnership v Addie***, 2016 ABQB 188, aff'd 2017 ABCA 110, leave to appeal to SCC refused, 37612 (30 November 2017) and says that just like that case, here PGS had a strategy not to add PPC until many steps were taken to advance the litigation, such as setting the matter down for trial and attending mediation.

[80] In ***Weatherford***, the plaintiff sought to add new defendants, not plaintiffs. And in that case there was evidence the plaintiff delayed suing the proposed defendants. There was a risk that, if they did sue, the proposed defendants would cut off supply to the plaintiff, resulting in commercial detriment to the plaintiff.

[81] I reject this argument because there is no evidence that PGS made a strategic decision here. The evidence on this application establishes, in my view, that while DPH may have been careless, they were not strategic about suing only in the name of PGS.

VII. Analysis: HMI Amendments

[82] DPH's arguments opposing the HMI Amendments relate to the quality of the evidence, and that the proposed amendments are too late and unnecessary. I note DPH does not argue that it is prejudiced by these amendments. DPH argues that PGS has known about the HMI since at least March 2019, PGS could have added these amendments in 2021 when the Statement of Claim was amended, and now it is too late.

[83] I am not convinced that these arguments have merit, given the general rule set out in ***Attila***. I accept that through the course of the litigation, PGS has discovered new information and now intends to include allegations respecting DPH's failure to properly program alarms, warnings and safeguards into the HMI, which is a component of the compressor train. Mr. Dionisi's affidavit and Exhibit J demonstrate that questioning took place with regard to the HMI in 2019. While the amendment may be late, it is not a surprise such that it is prejudicial.

[84] This proposed amendment is a particularization of the claims already alleged and appears to be related to the work which forms the subject matter of the litigation. DPH has not demonstrated a compelling reason to disallow the amendment. I exercise my discretion to allow this amendment under Rule 3.65.

VIII. Conclusion

[85] The proposed amendments are allowed as the Plaintiffs have satisfied the requirements under the Rules and *Limitations Act*. The Defendants have failed to establish prejudice or the application of a limitation period that would bar the action. The amendments are allowed on conditions.

[86] The first condition I am imposing on the Plaintiffs is that they must provide the Defendants with particulars regarding the respective claims of the Plaintiffs within 45 days, including, in particular, the amount of the claim attributable to the loss of PPC's transportation fee. Trial is less than a year away and the parties are now required to assess the revised damages claim in questioning and through the preparation of expert reports. A timely disclosure of the particulars of the claim will provide the basis for the necessary questioning and the preparation of expert reports prior to trial.

[87] Secondly, it is directed as a condition of the amendments that PPC will be bound by the terms of the settlement agreements that PGC has entered with Defendants, other than DPH. This appears to be contemplated in the proposed amendment, but should be confirmed.

[88] If the parties require a case management order to address deadlines, they may contact me to schedule a case management meeting.

[89] The matter of costs shall be reserved for the trial judge, as it is not possible at this stage to determine what future costs will "result from" these amendments.

Heard on the 6th day of November, 2025.
Dated at the City of Calgary, Alberta this 15th day of December, 2025.

N.M. Carruthers
J.C.K.B.A.

Appearances:

Michael J. Bailey, KC
for the Plaintiffs

Taryn Burnett, KC
for the Defendants