IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *International Wood Products, LLC v. CLG Enterprises, Inc.,* 2026 BCSC 100

Date: 20260122
Docket: S251601
Registry: Vancouver

Between:

International Wood Products, LLC

Petitioner

And

CLG Enterprise, Inc., Gary Cheng and Graham Piccard

Respondents

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Petitioner:	S. Warnett
Counsel for the Respondent, Gary Cheng:	M.D. Parrish T.J. Christensen
No other appearances:	
Written Submissions from the Petitioner:	January 14, 2026
Written Submissions from the Respondent:	January 15, 2026
Place and Date of Hearing:	Vancouver, B.C. January 6, 2026
Place and Date of Judgment:	Vancouver, B.C. January 22, 2026

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I. Introduction

[1] International Wood Products, LLC ("IWP"), petitions this court to give effect to letters rogatory, also known as a letter of request, issued by the United States District Court in the District of Oregon (the "Request"). The Request seeks to have the respondents, Gary Cheng and Graham Piccard, produce certain classes of documents and attend for an examination for the purposes of a court proceeding in Oregon.

[2] Mr. Cheng argues the Request should not be given effect. He submits that the petitioners have not met the legal requirements for enforcing letters rogatory, particularly as they relate to providing evidence of the relevance and necessity of third-party document production against Mr. Cheng.

[3] Mr. Piccard did not respond to the petition or appear at the hearing. He agreed to attend a deposition in Portland which has now occurred. Thus, these reasons focus on Mr. Cheng. The respondent, CLG Enterprises, Inc. ("CLG"), does not oppose the petition as long as it is permitted to examine Mr. Cheng for half the time allotted for the deposition, if effect is given to the Request. IWP does not object to that.

II. The Underlying Dispute

[4] IWP is an Oregon-based company that distributes building materials. It is the plaintiff in the Oregon lawsuit. CLG is a British Columbia-based company and the defendant in the Oregon lawsuit. By purchase and sale agreement dated April 4, 2022, CLG sold exterior trim wood products to IWP (the "Products"). CLG sourced the Products from a company called Interworld Development Inc. The respondent, Gary Cheng, is the majority shareholder, president, and director of Interworld. Neither Interworld nor Mr. Cheng is a party to the Oregon lawsuit. The respondent, Graham Piccard, is Interworld's sales agent.

[5] In July 2022, IWP discovered what it claims are defects in the Products. It alleges that when they become wet, they show visible signs of swelling in the finger

joints, causing both structural and aesthetic defects, including delamination. It reported those defects to CLG upon learning of them. Soon after that, Mr. Cheng became involved and, through an email dated July 7, 2022 to IWP, he committed to "get to the bottom of this to rectify the problem to ensure it will not happen again in the future." He said based on information provided by IWP, he was "quite confident" that he knew where the problem occurred. In the same email he told IWP that he was the owner of the factory that "produced the problematic products".

[6] In an email the following day, Mr. Cheng further reported to IWP that he did not believe the problem was an issue with the glue and so he was focusing his efforts on the production. He said he had a "theory as to why this problem has occurred" and he was "pretty sure" he knew what was happening but did not want to give a "false answer" so wished to complete his investigation. From the email, it appears his theory had to do with three specific shipments and it seems he believed that any problem might be confined to those specific volumes. He asked IWP if it could provide information about earlier shipments.

[7] The following week, Mr. Cheng travelled to Oregon to personally inspect the Products. There is no email correspondence in evidence after that. In his affidavit, Mr. Cheng states that the samples of the product he inspected at IWP's yard in Oregon "did not exhibit what I understood to be swelling and deamination." He inspected other samples that IWP had apparently submerged in water for some period of time and these seemed to show swelling at the finger joints. Mr. Cheng maintains the product is not intended to be submerged and observes that the manufacturer's warranty excludes damages caused by submersion in water. I note, however, that Mr. Cheng seemed to do his own test of the product using the same methodology.

[8] IWP started the Oregon proceeding against CLG by filing a "Complaint" (akin to a notice of civil claim) on January 2, 2024 claiming US$262,299.26 in damages. The Complaint essentially pleads a sale of goods action. CLG has counterclaimed for US$2,352,156 for unpaid invoices that arise from IWP refusing to take delivery of

further shipments of the Products after the alleged defect was discovered. Discoveries have completed but a trial date has not been set.

[9] The Request was issued by the District Court on February 19, 2025. It seeks production of documents relating to the product that "Interworld manufactured for CLG to be sold and delivered to IWP." That includes all documents on that subject exchanged in 2022 between Mr. Cheng and any representative of CLG or IWP including purchase and shipping documents and correspondence in 2022 that references defects in and inspection of the Products. It also seeks correspondence in 2022 between Mr. Cheng and Mr. Piccard about the Products and any warranty that Interworld provided to CLG for the Products. It also seeks all documents relating to complaints of defects from any customer who purchased similar products manufactured by Interworld and sold to CLG between January 1, 2020 and the present. Finally, it seeks to have Mr. Cheng (and Mr. Piccard) attend for a deposition by video in respect of these matters.

[10] IWP filed this petition proceeding on Mach 3, 2025 seeking to have this court give effect to the Request in British Columbia. The petition was supported by an affidavit sworn by Katherine Bennett, one of the Portland lawyers representing IWP in the Oregon proceeding. She provided further information in a reply affidavit, which Mr. Cheng challenges on grounds that it amounts to case splitting. I will address that objection in the course of my reasons.

III. Legal Principles Respecting Letters Rogatory

[11] The enforcement of letters rogatory is governed by the *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 46 and the *Evidence Act*, R.S.B.C. 1996, c. 124, s. 53. The basic legal principles that apply are not in dispute and are summarized in *Monster Energy Company v. Craig*, 2016 BCCA 290 at paras. 10-13, cited by both parties:

> [10] The authority of the Supreme Court to enforce letters rogatory received from foreign courts is found in s. 53 of the *Evidence Act*, R.S.B.C. 1996, c. 124 and s. 46 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5.
>
> [11] In responding to a letter of request, the starting point is the presumption that the request from the foreign court will be granted unless it

would be contrary to Canadian public policy to do so or would otherwise be prejudicial to Canadian sovereignty or to Canadian citizens: *R. v. Zingre*, [1981] 2 S.C.R. 392; *EchoStar Satellite Corporation v. Quinn*, 2007 BCSC 1225.

[12] *Halsbury's Laws of Canada, Extradition and Mutual Legal Assistance* (2015 Reissue) describes letters rogatory and their purpose this way:

> Letters rogatory are letters submitted by a court seeking the assistance of a foreign court. The enforcement of letters rogatory is a matter within the discretionary power of the courts and is based upon international comity or courtesy proceeding from international law. Inherent in the idea of international comity is a mutuality of purpose and power: *Westinghouse Electric Corp. v. Duquesne Light Co.*, [1977] O.J. No. 2287, 16 O.R. (2d) 273 at 290 (Ont. H.C.) ("[a]s a matter of principle Courts of justice of different countries are in aid of justice under a mutual obligation consistent with their own jurisdiction to assist each other in obtaining testimony upon which the rights of a cause may depend; so generally are individuals under a duty to give their testimony to Courts of justice in all inquiries where it may be material. Courts in Canada recognize, and have often said, that, in the interests of comity, judicial assistance should whenever possible be given at the request of Courts of other countries"). See also *Gulf Oil Corp. v. Gulf Canada Ltd.*, [1980] S.C.J. No. 41, [1980] S.C.J. No. 41 (S.C.C.); *National Telefilm Associates Inc. v. United Artists' Corp.*, [1958] O.J. No. 275, 14 D.L.R. (2d) 343 (Ont. H.C.).
>
> [Emphasis added by BCCA.]

[13] In *EchoStar* at para. 38, L. Smith J. summarized the factors to be considered in determining whether to give effect to letters rogatory:

> 1. Relevance;
> 2. Whether the evidence is necessary for trial and will be adduced at trial if admissible;
> 3. Whether the evidence is otherwise obtainable;
> 4. Whether the order sought is contrary to public policy;
> 5. Whether the documents sought are identified with reasonable specificity; and
> 6. Whether the order sought is unduly burdensome having in mind what the witness would be required to do and produce were the action to be tried locally.

[12] While judicial deference and comity are the core guiding principles, the enforcing court in British Columbia has a duty to scrutinize the basis for the request, as explained by Griffin J.A. in *Liu v. Zhi*, 2019 BCCA 427:

> [20] The mere fact that the foreign court issued an order in the form necessary to support letters of request, does not on its own prove that the underlying requirements for enforcing the request exist. The court receiving the request is entitled and indeed obliged to look beyond the mere form of the foreign letters of request: *Fecht*. The court should look beyond a supporting affidavit that simply offers hearsay opinions and bald conclusions: *Aker Biomarine* at paras. 16, 26; *Cytozome* at para. 47.

IV. Analysis

A. Threshold Flaw – Interworld is not the Manufacturer

[13] Mr. Cheng raises what I will call a threshold flaw in the Request which is that it is premised on a mistaken understanding that Interworld manufactured the Products. Mr. Cheng deposes that the Products were not manufactured by Interworld but by an arm's-length company in China called Yangzhou Muzhiyuan Wood Ind. Co. Ltd. He states that Interworld is "not in the business of manufacturing wood products and does not own or operate, or have any interest in, any manufacturing facilities in Canada or elsewhere."

[14] Mr. Cheng argues that IWP ought to have known that Interworld was not the manufacturer because the warranty IWP was given for the Products came from Yangzhou, not Interworld, and states that Yangzhou is the manufacturer. Mr. Cheng argues IWP must have been aware of this since it quoted from the warranty in the Complaint document filed in the Oregon proceedings.

[15] However, Mr. Cheng's evidence appears inconsistent with his July 7, 2022 email to IWP in which he stated that he is the owner of the factory that manufactured the products. The signature block on that email has Mr. Cheng's name followed by "InterWorld Group." The warranty document states otherwise but one can certainly see why IWP might have been given to believe that Interworld is the manufacturer. In fact, the counterclaim CLG filed in the Oregon proceedings refers to Mr. Cheng's inspection of the product in July 2023 and, in so doing, refers to him as the "manufacturer" of the Products. Thus, the evidence and the pleadings indicate that the Products were manufactured at least on behalf of Interworld.

[16] At this point I propose to address Mr. Cheng's objection to Ms. Bennett's second affidavit which attaches the email correspondence just discussed. The affidavit purports to have been given in reply to Mr. Cheng's affidavit, and specifically to his statement that Interworld is not the manufacturer. It also attaches emails from Mr. Cheng regarding an inspection of the Products he did when he attended IWP's yard in Portland and investigations he did to determine if the defect was a manufacturing issue. Ms. Bennett deposed that only Mr. Cheng can provide testimony about his observations of the Products and the steps taken to identify the defect.

[17] Mr. Cheng argues the second affidavit is not proper reply and it constitutes a splitting of IWP's case. He argues that the issue of whether Interworld was the manufacturer of the product and Mr. Cheng's investigation are central to the issues in the petition and ought to have been part of IWP's evidence in chief. He argues that IWP ought to have known from the warranty document that the identify of the manufacturer would be in issue.

[18] I am inclined to agree the evidence respecting Mr. Cheng's investigation ought to have been part of IWP's evidence in chief such that putting it in the reply affidavit amounts to case splitting. I am less persuaded that the same can be said the evidence about who manufactured the Product given Mr. Cheng's July 7, 2022 email in which he said he owns the factory that manufactured it.

[19] Regardless, the court has a discretion to permit evidence to be adduced at a hearing, even if it amounts to case splitting, to achieve a just result: *Tietz v. Affinor Growers Inc*., 2022 BCCA 307 at para. 71. Relevant considerations include permitting a petition to be heard fairly and efficiently and resolving it on its merits, weighed against any prejudice that would arise from its admission.

[20] In this case, I find there is no real prejudice to Mr. Cheng in permitting IWP to adduce Ms. Bennett's second affidavit. The emails that Ms. Bennett attaches are those that Mr. Cheng himself sent or received (or, in one case, an email that he appears to have sent and was then forwarded to IWP). His own correspondence

cannot come as a surprise to him. In fact, in Mr. Cheng's own affidavit, he refers to his email communications with IWP after he learned about the alleged defects but he does not attach them to his own affidavit, asserting settlement privilege. That privilege claim was not advanced as a ground for Mr. Cheng's objection to the reply affidavit. In my view, it is evident that Mr. Cheng had this email correspondence in mind when he swore his own affidavit.

[21] More significantly, the affidavit was served in August 2025, more than four months before the petition was ultimately heard. If the petition had been heard in August 2025, as initially scheduled, it might well be said that Mr. Cheng would have been prejudiced by the potential case-splitting. However, the matter could not be heard by the court in August and it was rescheduled to December 2025. That gave Mr. Cheng ample time to prepare a further affidavit in response to Ms. Bennett's second affidavit if he wished to do so. If counsel for IWP objected to a further affidavit from Mr. Cheng, which seems unlikely in the circumstances, the court would undoubtedly have accepted the affidavit to alleviate any prejudice from case splitting.

[22] Thus, I would not accede to IWP's objection to Ms. Bennett's second affidavit.

[23] Returning to the substantive issue, regardless any apparent contradiction in Mr. Cheng's statement about who manufactured the product, the fact remains that the Request is premised in its entirety on the understanding (or misunderstanding) that Interworld was the manufacturer. Almost every category of document that is sought for production refers to documents relating to product that was manufactured by Interworld. The only exception is for all documents "relating to any warranty provided to CLG by Interworld for the Product manufactured for CLG to be sold and delivered to IWP".

[24] The topics that are prescribed for the examination of Mr. Cheng suffer from the same problem. Except for the topic of "any warranty provided to CLG by Interworld", all of the topics relate to product manufactured by Interworld.

[25] Mr. Cheng argues this means there is no utility to giving effect to the Request because, since Interworld is not the manufacturer, he will be unable to answer questions or produce documents about the manufacturing of the product. IWP argues I should look more broadly at the Request for what it is intended to cover and consider it in light of Mr. Cheng's emails where he claims to own the manufacturing plant and appears to demonstrate some knowledge of the manufacturing of the Product.

[26] I am satisfied that even if Interworld did not actually manufacture the products, they were manufactured for Interworld. The evidence satisfies me that Interworld is not simply a buyer and seller in the supply chain like CLG. It caused the products to be manufactured and, in this sense, it is a manufacturer of the product. This is supported by Mr. Cheng's emails which suggest he has specific knowledge of the manufacturing process and of what might have gone wrong, if anything, in the that process. I would therefore interpret the Request as seeking documents and information about product that was manufactured by or at the behest of Interworld. I do not consider this to broaden the Request but rather to give effect to what it clearly intendeds. In my view, principles of international comity and judicial assistance favour a purposive reading of the Request, not an overly strict one.

[27] As I discuss below, it does not follow from this that I would give effect to all the document requests or the full scope of the proposed deposition, but I am satisfied that Mr. Cheng has some knowledge about the manufacturing of the product as a manufacturer in the broad sense I have described.

B. The Document Requests

[28] The Request seeks to authorize IWP to obtain from Mr. Cheng correspondence and communications, broadly defined and covering various subjects, between Mr. Cheng and representatives of CLG and IWP. IWP has provided almost no evidence to explain why it must obtain these documents from Mr. Cheng when it already has access to them. Unless documents have been lost, deleted, or destroyed (and there is no evidence of that), IWP should already have

any correspondence and communications between it and Mr. Cheng; and it can or ought to have obtained correspondence and communications between Mr. Cheng and CLG through discovery in the Oregon litigation.

[29] For this court to give effect to the Request, the petitioner must establish that the evidence sought is "not otherwise available". It must show that evidence of the same value sought by Mr. Cheng cannot be obtained by other means. This serves to ensure that the person from whom the information is sought, who is not a party to the proceeding in the foreign jurisdiction, is not unduly burdened by being drawn unnecessarily into the foreign litigation: *Aker Biomarine AS et al. v. KGK Synergize inc.,* 2013 ONSC 4897 at para. 29.

[30] Yet IWP has provided no information as to why it must obtain these classes of documents from Mr. Cheng when IWP and CLG should already have them. The only evidence that speaks to incomplete records is a very general statement in Ms. Bennett's second affidavit where she states that, to date:

> …IWP has not been able to obtain complete relevant documents or information pertaining to several key issues in he case, including but not limited to: the shipping and delivery of the product; documents identifying whether and when title of the product … transferred from Interworld to CLG; and the cause of the defect, which Cheng himself was investigating.

Ms. Bennett provides no particulars about what documents or classes of documents IWP has been able and unable to obtain, what appears to be missing, or why the parties' own records of communications are incomplete. As the Court of Appeal stated in *Liu* at para. 20, "bald assertions" of necessity and relevance to do not meet the standard for giving effect to letters rogatory.

[31] Thus, the request essentially calls on Mr. Cheng to provide disclosure of documents that duplicate what CLG must already produce and what IWP must already have. As suggested in *AstraZeneca LP v. Wolman*, 2009 CanLII 69793 at para. 59 (O.N.S.C.) it would be "unfair and burdensome" to have a person search their correspondence files to locate documents the petitioner may already have.

Without evidence to explain why that is necessary or what specific documents are missing, I would not give effect to this request.

[32] For that reason, I would not give effect to paras. 7 A, B, C of the Request.

[33] Largely for the same reason, I would also not give effect to para. 7G which seeks documents relating to complaints of defects from any customer who purchased similar products "manufactured by Interworld and sold to CLG between January 1, 2020, to the present" (emphasis added). Since this request is confined to products "sold to CLG", one would expect that any customer complaints would go through CLG or at least that CLG would be aware of them, yet there is no evidence to explain what efforts have been made to obtain these documents, if they exist, from CLG or why CLG is unable to provide them. Further, as explained later, Mr. Cheng deposes that Interworld has not received any such complaints.

[34] The documents sought under at para. 7D are "[a]ll documents between Mr. Cheng and Mr. Piccard regarding the Product manufactured by Interworld for CLG to be sold and delivered to IWP." Mr. Cheng argues that IWP has not adequately explained why it could not obtain these documents from Mr. Piccard who agreed to be deposed following the issuance of the Request. Ms. Bennett's affidavit states that while Mr. Piccard was deposed, he did not provide documents. She does not explain why or what efforts are being made to have him produce documents.

[35] Mr. Cheng argues IWP needs to show it cannot obtain the documents from Mr. Piccard before it can seek them from Mr. Cheng. I disagree. Both Mr. Piccard and Mr. Cheng are named in the Request. As I understand it, Mr. Piccard is a sales agent who is contracted to Interworld. I see no reason why IWP must satisfy the court that the documents could not be obtained from Mr. Piccard before it seeks to have them produced from Mr. Cheng.

[36] However, I find the request is overbroad in that it does not explain why all documents exchanged between Mr. Piccard and Mr. Cheng relating to the Products are relevant. As I discuss below, I find that potential manufacturing defects in the

Products are relevant to issues in the Oregon proceeding, but the document request as stated would capture documents that have no relation to potential defects.

[37] A court that is asked to give effect to letters rogatory has the authority to narrow the scope of the request where appropriate: *Sculley v. Pivot,* 2015 ONSC 287 at para. 35. I would confine the request in para. 7D to all documents exchanged in 2022 between Mr. Cheng and Mr. Piccard in respect of potential defects in the product manufactured by or on behalf of Interworld for CLG to be sold and delivered to IWP. I note that the term "in respect of" is "the widest of any expression intended to convey some connection between two related subject matters": *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29 at 39. Thus, my narrowing of this class of documents should not be read too strictly.

[38] I would also confine the request in para. 7F in the same way. It seeks documents exchanged in 2022 between Mr. Cheng and other representatives at Interworld about the product to be sold and delivered to IWP. Mr. Cheng has deposed that Interworld has no staff other than a bookkeeper. If that is the case, it may well be that there are no documents to produce under this category as I have now limited it. Nevertheless, I would leave that to Mr. Cheng to address in any response to this request.

[39] Paragraph 7E seeks production of any warranty that Interworld gave CLG in respect of the product. The evidence provides no explanation for why such a warranty is relevant to IWP's claim or defence to the counterclaim. Further, I can only assume that if such a warranty existed, IWP would have learned of it and obtained copies from CLG through discovery in the Oregon proceedings. There is no explanation as to why IWP could not obtain such warranty, if it exists, from CLG.

[40] Finally on the issue of the documents, Mr. Cheng argues he cannot be compelled to produce documents in the possession or control of Interworld because Interworld was not named in the Request or as a respondent to the petition. Mr. Cheng argues that seeking Interworld documents from him personally runs

counter to the foundational principles of corporate identity dating back to *Salomon v. Salomon & Co.*, [1897] A.C. 22 (H.L.).

[41] I agree it may have been preferable to name Interworld as a respondent, but that is not fatal. The evidence suggests that Interworld is a closely-held corporation controlled by Mr. Cheng. In *Lacker v. Lacker*, 1982 CanLII 691 (B.C.S.C.) Huddart L.J.S.C. (as she then was) held that a person who controls a closely-held corporation is in possession and control of that corporation's documents. As I read her decision, it turns on the meaning of possession and control and it cannot be distinguished simply because it is a family case, as Mr. Cheng argues. Nor do I read *Lonrho Ltd. v. Shell Petroleum Co. Ltd*., [1982] A.C. 173 or *Mainstream Canada v. Don Staniford,* 2012 BCSC 1599 at para. 13, cited by Mr. Cheng on this point, as contradicting *Lacker*.

C. The Proposed Deposition

[42] I turn next to the whether Mr. Cheng should be deposed and the proposed topics for a deposition. In my view, this issue largely comes down to relevance.

[43] Relevance is generally determined by the issues in the underlying litigation and whether it would be fair to require the petitioner to proceed to trial without the desired and requested evidence: *Aker* at para. 27; *Liu*, at para. 14. In British Columbia, relevance extends to use for pre-trial discovery purposes as well, although the standard for enforcement of the request for discovery purposes may be somewhat higher than when the evidence is to be used at trial: *Aker* at para. 28.

[44] Mr. Cheng argues relevance has not been established because the underlying action is a sale of goods case whereas the information sought in the Request relates almost entirely to the manufacturing of the Products. He argues that a sale of goods case turns on whether the product actually received by the plaintiff is defective in the sense that it does not meet the standard required in the contract of sale, any contractual warranty for the product, or any statutory warranty. The inquiry focuses on the condition of the product when it was delivered to the plaintiff. The source of any defect is irrelevant.

[45] This submission has merit but I am nevertheless satisfied that potential manufacturing defects in the Products are also relevant to the issues in the litigation for several reasons.

[46] First, if there are issues with the manufacturing process that cause defects in other products that are similar to the defects IWP complains of, this would tend to support IWP's contention that the product was defective as at delivery.

[47] Second, IWP refused to accept delivery of further shipments of the product after it found the alleged defects. CLG has counterclaimed against IWP seeking damages exceeding US$2.3 million for breach of contract for this refusal. Evidence of a manufacturing defect, if any, is therefore relevant to the reasonableness of IWP's refusal to accept further product.

[48] Third, CLG's defence (or "Answer") to the Complaint alleges IWP obtained the defective products from a different supplier, not CLG. If the same or similar defects are found in other products manufactured by or at the behest of Interworld, that would tend to suggest the defective products were not obtained from a different source.

[49] Fourth, CLG's counterclaim puts in issue Mr. Cheng's inspection of the product. It alleges that on two different occasions in 2022, CLG "and its manufacturer" separately visited IWP's yard to inspect the product and found no "significant problems" and that "the manufacturer … was unable to identify defects or unsaleable product in the units that [IWP] claimed came from CLG". With CLG having put that inspection in issue, Mr. Cheng clearly has evidence to give on that inspection.

[50] For those reasons, I find that documents and evidence relating to manufacturing defects in the Products and Mr. Cheng's inspection of the Product as the manufacturer (in a broad sense I have described earlier) are relevant to the matters in issue. I am also satisfied that Mr. Cheng has relevant evidence to give in

view of his emails which indicate knowledge of the manufacturing process and his inspection of the product.

[51] I am also satisfied that evidence that complaints, if any, from other customers about similar products manufactured by or at the behest of Interworld are relevant, insofar as those complaints assert similar defects to those alleged by IWP. Mr. Cheng deposes that IWP is the only customer who has made any complaints relating to finger-jointed, edge-glued and primed exterior trim wood products manufactured by Yangzhou and, more broadly, that Interworld has not received any complaints from other customers or end users relating to wood products supplied by Interworld in the period 2020 to 2025.

[52] The court cannot compel Mr. Cheng to produce documents that do not exist. His evidence that Interworld has not received any complaints about the product is unchallenged. However, without an examination of Mr. Cheng, IWP's ability to challenge and potentially contradict that evidence is limited. Nevertheless, one way it could be challenged is to provide evidence from its discovery of CLG in the Oregon proceeding as to any complaints CLG has learned of respecting products supplied by Interworld. The fact IWP has provided no such evidence on this application tends to support Mr. Cheng's evidence that Interworld has received no such complaints.

[53] In view of that, I would not give effect to the document request for such complaints at this time. Mr. Cheng's evidence that Interworld has never received a complaint appears to be a full answer to that. However, since I would give effect to the request to examine Mr. Cheng on other matters, albeit on terms more limited than those set out in the Request, I would permit IWP to question Mr. Cheng about the statement in his affidavit that Interworld has not received complaints. This may include questions about what searches he did to satisfy himself that the statement in his affidavit is correct. If it turns out there were complaints that Mr. Cheng has forgotten about, he should then produce documents relating to that complaint if he has them.

[54] I am not persuaded that evidence respecting purchase orders, invoices, bills of lading, shipping updates and expected delivery dates is relevant to the issues in the claim. Mr. Cheng may well have information about these matters but neither of Ms. Bennett's affidavits explain why these issues or Mr. Cheng's knowledge of them are relevant to an issue in the claim. I can see that this kind of evidence may be relevant to proving what was shipped and when, but the evidence does not explain whether that is even disputed in the proceeding or why this information is not available through CLG. The evidence before me is insufficient to justify this request.

[55] Further, for the reasons explained earlier, I am not persuaded that any warranty that Interworld gave to CLG in respect of the product is relevant to the issues in the Oregon litigation. If such a warranty exists, it would have been produced by CLG under its discovery obligations. If it has relevance to the IWP's case, the warranty ought to have been included in the evidence with an explanation as to why Mr. Cheng may have relevant evidence to give on that subject. With no evidence or explanation on the point, I would not enforce that aspect of the Request.

V. Summary and Terms

[56] In summary, for the reasons given, I find that IWP has not provided evidence to explain the necessity or, in some cases, the relevance of several categories of documents sought to be produced under para. 7 of the Request. I would give effect only to the following:

a) documents exchanged in 2022 between Mr. Cheng and Mr. Piccard in respect of potential defects in the product manufactured by or at the behest of Interworld for CLG to be sold and delivered to IWP; and

b) documents exchanged (if any) in 2022 between Mr. Cheng and other representatives (if any) at Interworld about the product to be sold and delivered to IWP.

[57] With respect to the examination of Mr. Cheng, I would give effect the Request but limit the topics to the following:

a) Manufacturing defects, if any, in the product manufactured by or at the behest of Interworld for CLG to be sold and delivered to IWP;

b) Mr. Cheng's inspection of the product at IWP's yard in July 2023; and

c) Any complaints of defects from any customer who purchased the same or substantially similar product (i.e. finger-jointed, edge-glued, and primed exterior trim products) manufactured by or at the behest of Interworld, including questions about Mr. Cheng's affidavit evidence that there have been no such complaints.

[58] If, on examination, Mr. Cheng comes to recall that there has been a complaint from another customer, I would then give effect to that part of the Request that require Mr. Cheng to produce documents in relation to that complaint.

[59] In addition to the terms set out in Part I of the petition, which terms I order will apply with modifications made necessary by these reasons, Mr. Cheng seeks additional conditions or restrictions.

[60] First, he seeks the sum of $10,000 in advance to have counsel assist in reviewing the document production, assisting Mr. Cheng in preparing for the examination, and attendance at the examination. I agree Mr. Cheng should be compensated for the reasonable cost of counsel. CLG has filed, but not served, an action in British Columbia against Interworld in relation to the Products. I presume that CLG will pursue that claim if IWP is successful in the Oregon proceeding. Although, the District Court has made an order limiting the use of the evidence obtained through the Request to the Oregon proceeding, I agree CLG is given some advantage in its British Columbia lawsuit by having an advance opportunity to examine Mr. Cheng. Ensuring Mr. Cheng has counsel for the examination sufficiently addresses that prejudice. Thus, Mr. Cheng will have his reasonable legal fees and disbursements for counsel reviewing and advising with respect to document production, assisting Mr. Cheng to prepare for the examination, and

attending the examination with Mr. Cheng. However, since I have significantly narrowed the Request, I find that an advance of $7,500 is appropriate.

[61] Mr. Cheng should also receive reasonable compensation for his own time in searching for documents and preparing for and attending the examination. As a specific amount was not proposed, I leave it to counsel to work out something reasonable. I would refer any disagreement on that to the Registrar for determining and certifying suitable compensation.

[62] Mr. Cheng also seeks $1.00 per page for any document he produces, but I would set that at the same rate that the Registrar ordinarily allows for photocopies on a taxed account.

[63] I find the seven hours for an examination sought by IWP is excessive. I would limit the examination to no more than the equivalent of one court sitting day with the time to be divided equally between IWP and CLG.

[64] Given that I have significantly narrowed the scope of the Request through this petition, I would award costs of the petition to Mr. Cheng.

“Kirchner J.”