

# **Court of King's Bench of Alberta**

**Citation: Coalspur Mines (Operations) Ltd v CWA Engineers Inc , 2026 ABKB 268**

**Date:** 20260407  
**Docket:** 2103 12140  
**Registry:** Edmonton

Between:

**Coalspur Mines (Operations) Ltd., Chinook Ine Construction Company Ltd., and Bighorn Mining Ltd.**

Plaintiffs

- and -

**CWA Engineers Inc., Winfield Industrial Sales Ltd., CADD Alta Drafting and Design Inc., CVL Engineers Inc., Lassing Dibben Consulting Engineers Limited. Waiward Industrial Limited Partnership and Its General Partner Waiward Industrial GP Corp. and Ironclad Metals Inc.**

Defendants

- and -

**CWA Engineers Inc., Winifield Industrial Sales Ltd., CADD Alta Drafting and Design Inc., CVL Engineers Inc., Lassing Dibben Consulting Engineers Limited, Waiward Industrial Limited Partnership and Its General Partner Waiward Industrial GP Corp. and Ironclad Metals Inc., Timber West Construction Ltd., Abc Limited #1 and Abc Limited #2**

Third Party

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**Memorandum of Decision  
of the  
Honourable Justice N. Whitling**

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[1] The Plaintiffs (“Coalspur”) own and operate a coal mine near Hinton, Alberta. During construction of the mine, Coalspur contracted with CWA Engineers Inc. (“CWA”), for design and engineering services related to an elevated conveyor system at the mine. Coalspur pleads, among other things that deficient work by CWA caused or contributed to certain structural failures in the system in July, 2019, and seeks damages in respect of those failures, including business interruption losses.

[2] On December 4, 2025, I granted an Order directing CWA to provide answers to certain undertakings respecting insurance held by CWA in respect of the Plaintiffs’ claims. This Order was granted since CWA’s defence invokes clause 10 of the Master Service Agreement between the parties which states: “The total liability of the Contractor shall be limited to proceeds from insurance.” The specific undertakings to which I ordered responses were numbered 76, 78 to 83, and 85.

[3] CWA subsequently provided answers to those undertakings and I have reviewed those answers. In summary, CWA states that there is only one policy of insurance that is responsive to Coalspur’s claim and a redacted copy of that policy has been produced, CWA has notified its insurer of the claim, there is no additional correspondence between CWA and its insurer respecting that claim, no reports or analyses have been prepared by or for the insurer, and no proceeds have been paid to date.

[4] Coalspur now seeks an Order compelling CWA to provide further and better responses on the basis that CWA’s responses are “facially implausible and incomplete”. In other words, Coalspur does not accept the truth of CWA’s answers, and asks me to order CWA to provide different answers.

[5] There is nothing in the record which would allow me to conclude that CWA has provided false answers to the undertakings at issue. The answers are responsive to the questions, and there is no evidence which refutes their contents. In particular, there is no evidence from which I may conclude that there are other insurance policies responsive to Coalspur’s claim, that there is any

additional correspondence between CWA and its insurer respecting this claim, that any reports or studies respecting the claim have been prepared, or that there are any proceeds that have been paid out respecting the claim. Under these circumstances, Coalspur and the Court must take CWA at its word.

[6] I also accept that, as is often the case, CWA's insurer has retained counsel to defend this claim, and receives advice and reports from its counsel. No evidence from CWA is required to demonstrate that communications of this nature are subject to solicitor client privilege.

[7] Regarding the redactions imposed by CWA in the copy of the policy it has produced, I do not find it potentially beneficial to Coalspur to litigate those redactions. CWA has advised the Court that those aspects of the policy are irrelevant since they pertain to other projects which are not a part of this claim and this explanation, although unsworn, makes sense. There is no basis to believe that those redactions withhold any information of relevance to this claim, and cross-examination on this issue would be a waste of time and other resources.

[8] Coalspur also seeks certain relief respecting a day of questioning in which CWA's corporate representative refused to answer questions or grant undertakings respecting insurance and other matters. Coalspur seeks an order directing answers to undertakings 147 to 153 respecting insurance, that the corporate representative attend for further questioning, and an award of thrown-away costs in respect of that day of questioning.

[9] I have reviewed undertakings 147-153 which have been refused or taken under advisement. Essentially, they seek the same information that Coalspur seeks in response to undertakings 76, 78 to 83, and 85, which I have already dealt with. CWA has already provided answers to the underlying questions, and I have found those answers to be sufficient.

[10] Insofar as undertakings 147-153 seek information in the hands of third parties, such as the insurer and the insurance broker, a litigant is only required to produce records under their own control. An insured generally has no power to demand the files held by their insurer or insurance broker, and there is no basis to believe that any exceptional power to demand such records is held by CWA.

[11] With respect to Coalspur's claim for thrown-away costs for the unproductive day of questioning, I do not find that CWA's conduct leading up to or during that questioning justifies an award of costs in favour of Coalspur. Costs of that questioning shall be in the cause.

[12] Coalspur also takes issue with CWA's responses to undertakings respecting any views that CWA may have held to the effect that the tower failure was caused by incorrect or incomplete information from Coalspur. CWA's response is that it has no recollection of having had any such views at the time, but does recall certain information being provided to CWA by a certain person. Again, there is no basis for me to conclude that CWA has provided false answers to these undertakings, and I cannot order CWA to remember something.

[13] Finally, Coalspur seeks an order directing CWA to answer questions respecting a 2023 acquisition of CWA by Norda Stelo Inc. Coalspur has not demonstrated that anything pertaining to that transaction is relevant and material to Coalspur's claim respecting the incident of July, 2019. Coalspur's arguments respecting potentially relevant information amount to speculation. Further questioning on this subject would not assist the parties in resolving the real issues underlying this claim.

[14] For these reasons, Coalspur's application is denied. Costs of the questioning of February 24, 2026, shall be in the cause.

Heard on the 7<sup>th</sup> day of April, 2026.

**Dated** at the City of Edmonton, Alberta this 7<sup>th</sup> day of April, 2026.

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**N. Whitling**  
**J.C.K.B.A.**

**Appearances:**

Matthew Huys and Michael Matwichuk  
Osler, Hoskin &Harcourt LLP  
for the Plaintiffs

Andrew Hung and Robert Hodgins  
Singleton Urquhart Reynolds Vogel LLP  
for the Defendants, CWA Engineers Inc.

Teri Bougie  
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