

Court of King's Bench of Alberta

Citation: CNOOC Petroleum ULC v 801 Seventh Avenue Inc, 2026 ABKB 147

Date: 20260302
Docket: 1901 06261
Registry: Calgary

Between:

CNOOC Petroleum North America ULC

Plaintiff/Defendant by Counterclaim

- and -

**801 Seventh Inc, OPTrust Office Inc, Centurion Holdings Ltd, Quantico Capital Corp,
Westhills Development Corporation, Canadian Income Fund Group Inc, and Tokay
Capital Corp**

Defendants/Plaintiffs by Counterclaim

- and -

CNOOC Limited

Defendant by Counterclaim

**Endorsement
of the
Honourable Justice P.R. Jeffrey**

[1] During a procedural conference in respect of 801 7th Avenue Inc's application (the "**Landlord's Costs Application**") for legal costs incurred up to entry of the Order following the Liability Trial (the "**End Date**"), questions arose about its parameters. If the questions can be

determined now, the risk of the parties not being ready for the Court to hear the Landlord's Costs Application will be mitigated. Therefore, the Court invited the parties to provide their submissions on those issues in writing, for the Court to consider and rule on now.

[2] What follows are my rulings on the issues the parties addressed that need to be decided now. Silence on any other issue raised by the parties orally or in writing not ruled on below does not bar a party from raising that issue in the future as circumstances may warrant.

1. The scale of costs that the Court will apply to all the costs claimed by the Applicant¹ that are encompassed by the scope of Clause 30 of the Lease is full indemnity. The entire amounts invoiced to the Applicant and paid by it will be the basis of any such costs award. No reasonableness filter shall be applied.
2. All costs incurred on or prior to the End Date are eligible for recovery. The parties are not to waste effort delineating between liability issues costs and damages issues costs. My decision(s) on the Application(s) will be expressly subject to the Damages Trial Judge in their discretion adjusting my costs awards where required in the interests of justice and resulting from the new information heard in the Damages Trial. It will also, as stated on February 23 in Court, be subject to any decision by the Court of Appeal to reverse the Landlord's substantial success at the Liability Trial or remit it back for re-trial on substantial issues.
3. All parties' invoices from their lawyers must be disclosed reciprocally in the preliminary evidentiary portion of the pre-hearing process.² Absent agreement of the parties otherwise, they must be adduced in an evidentiary form that all parties opposite may probe and test, and that the Court may base its decision(s) on.³ All those invoices are relevant to the issues presently intended for the Court at the April 7 & 8 hearing, because there is a possibility that not all costs claimed by the Applicant may fall within the scope of Clause 30 of the Lease (or attract an award of costs on a full indemnity scale on some basis other than Clause 30 of the Lease).⁴ In that circumstance, the Landlord asks in the alternative for an award of costs on a solicitor client scale or, failing that, on some other enhanced scale or on a party and party scale. Therefore, the invoices of other parties appearing at the same trial on the same issues are relevant. Also, just pragmatically, the limited time for the pre-hearing process will not accommodate the alternative more

¹ At the time of these Rulings the Court does not know whether CNOOC Limited will make any claim for costs. Currently the only Applicant for costs is 801 7th Avenue Inc. This first ruling applies only to that Applicant. CNOOC Limited's counsel awaits instructions from its client on whether to submit a claim. No other party is seeking an award of costs for legal fees incurred up to the End Date. Absent costs issues for the period up to the End Date needing to be re-opened and reconsidered after the Alberta Court of Appeal releases its decision (currently on reserve) from the appeal of the Liability Trial, there shall be no other opportunity for any party to that trial to apply for a costs award in respect of costs incurred up to the End Date.

² That is, all are due to the others by the initial March 4 deadline and with the same level of detail, under attestation of, among other things, completeness. In the event this deadline is not achievable, the parties may vary it by agreement, acting reasonably and purposively, as they can all deadlines set on February 23 except the final deadline for all material to be delivered to the Court to my attention: April 2.

³ Any such agreement otherwise must include all parties expressly consenting to the Court relying on the information despite not being in some form of sworn evidence.

⁴ The Tenant parties have already indicated that not all Landlord legal fees will fall within the scope of Clause 30.

staged approach whereby, as just one example, the Respondents could decide whether to oppose any Landlord costs claimed as falling outside the scope of Clause 30 before having to disclose their own records. Finally, the parties' agreement in the Lease to address promptly matters of costs incurred in enforcing the Lease motivates the Court in favour of simultaneous not sequential disclosure by all parties.

4. Legal invoices are presumptively privileged. This is not a case in which that presumption has been rebutted or otherwise over-ridden, and certainly not simply by virtue of the reciprocal agreement in Clause 30 of the Lease which contemplates indemnity costs not solicitor-client costs. First, in my view, Clause 30 does not amount to an automatic waiver of privilege. To the extent cited jurisprudence is said to have that effect, it is in error or has been misunderstood.⁵ Second, the parties are still in hard-fought litigation. There should be no disclosure of privileged communications, or any one-sided disclosure requirement.
5. Parties are at liberty to redact all privileged information, all information that may reveal privileged information, and all information from which someone might infer something that is privileged. That list is not exhaustive.
6. The redactions are to protect the privilege, but no more. The parties must still disclose sufficient information around the work done and the reason for that work to allow the other parties to make an informed decision as to whether the claimed amounts properly flow to them to reimburse or not. If time permits, the parties may scrub their disclosure further to exclude details unrelated to the nature of the legal work performed or the fees charged.
7. I am not persuaded that any restricted access order or publication ban is justified on the evidence to be adduced. Matters over which privilege is asserted will be redacted. The open courts principle is not easily overcome. No other reason for restricted access has been advanced. Indeed, it was first floated by the Court not any of the parties, largely to see if that approach might lead to greater dialogue about resolutions among them.

Heard by oral and written submissions, between February 23 and 26, 2026.

Dated at the City of Calgary, Alberta this 27th day of February, 2026.

P.R. Jeffrey
J.C.K.B.A.

⁵ This is not the context to, nor does time permit me to, elaborate further, beyond saying that I do agree with the outcome in *Wang* cited by CPNA just not all the statements in it about privilege and its waiver when indemnity costs have been awarded. I was the one who awarded them in *Wang* at first instance. Not every award of them is the result of a request for them. I agree with the outcome on different grounds, among them because the Assessment Officer considered information that *Wang* was denied access to and therefore could not address or respond to, in breach of a core principle of procedural fairness. For present purposes, however, *Wang* is not binding on me.

Appearances:

D. McKinnon, B. Yorke-Slader, KC, T. McDonough
For 801 Seventh Inc.

M. Kuhl, J. Lisztwan
For CNOOC Petroleum North America ULC

J. Patterson, KC
for CNOOC Limited