

Date: 20090504

Docket: T-1236-01

Citation: 2009 FC 449

Toronto, Ontario, May 4, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**WEATHERFORD CANADA LTD.,
WEATHERFORD CANADA PARTNERSHIP,
EDWARD GRENKE AND GRENCO INDUSTRIES LTD.**

**Plaintiffs
(Defendants by Counterclaim)**

and

**CORLAC INC., NATIONAL-OILWELL CANADA LTD.
AND NATIONAL OILWELL INCORPORATED**

**Defendants
(Plaintiffs by Counterclaim)**

REASONS FOR ORDER AND ORDER

[1] The Defendants have brought a motion under Rule 289 to require the Plaintiffs to introduce into evidence, through read-ins, other parts of the discovery evidence of the Defendants' witnesses.

[2] The basic principle of Rule 289 is not disputed – to ensure that the answers to questions fairly reflect the true response given. Justice Pelletier (as he then was) in *Canada (Minister of Citizenship and Immigration v. Fast)*, 2002 FCT 542, summarized the approach to the issue succinctly – whether the additional material showed either that the witness did not understand the particular question or that the portion being read in was misleading in the sense of suggesting that the witness, at that point, was saying one thing when in fact he/she was saying another.

[3] Justice Gibson, in *Almecon Industries Ltd. v. Anchartek Ltd.* (2002), 17 C.P.R. (4th) 74, gave a slightly broader meaning to the Rule and referred to contextualization. I do not take from that decision anything more than that the question and answer must be seen in the context. For example, a simple affirmative response to a question “Did you do it?” lacks context or subject matter.

[4] However, I do not understand Justice Gibson to mean that other questions and answers on the same subject matter had to be added beyond making clear to what the specific answer related.

[5] It is recognized that the read-ins and the additions thereto, in particular, are a variation of the usual procedure of a trial to have *viva voce* evidence. The party requesting additions to read-ins has the option of calling the witness to explain, clarify or amplify the read-ins. The Court must always be concerned about fairness and prejudice to the parties and to the trial process.

[6] With those principles in mind, I turn to the specifics. The parties have organized the Defendants' proposed read-ins by tab in the motion material. For ease of reference, the Court will use the same tab numbering.

[7] Tab 1

Transcript from Examination of Anthony Moore dated February 27, 2008 Pg. 367, Lines 14-25):

List of Further Answers to Outstanding Questions – Follow Up Examination of Tony Moore, February 27-28, 2008 (Item 92, Pg. 368: 13-20)

If the discovery Exhibit 27 is to form part of the record of the trial, the answer is necessary to give the source of the document and meaning to the identification of the document.

It is to be included in the Plaintiffs' read-ins.

Conclusion: Added

[8] Tab 2

Exhibit 1 to the Examination for Discovery of Anthony Moore dated November 20, 2006:

List of unanswered questions taken from Derek Twidale's examination that touch on actions and issues at the corporate level of the following Defendants: Corlac Inc., Corlac Industries (1998) Ltd., National Oilwell Canada Ltd., and National Oilwell Incorporated (the "National Defendant") (Items 20 and 26)

In a written answer to a written question, the Defendants answered the question by reference to two other answers, questions 23 and 26. The Plaintiffs read in only part of the answer.

The whole answer to the specific question relied on must be read in.

Conclusion: Added

[9] Tab 3

Confidential Transcript from Examination of Anthony Moore dated February 27, 2008 (Pgs. 11-12)

The Defendants seek to add in a series of questions and answers well beyond any notion of ensuring that the witness' response is an accurate reflection of the true answer to the specific question.

If the Defendants wish to elaborate on the answer, they will need to call a witness.

Conclusion: Not added

[10] Tab 4

Transcript from Examination for Discovery of Derek Twidale dated June 21, 2006 (Pgs. 298:8-298:24 and 306:11-306:16)

The parties agreed that this item will be included.

Conclusion: Added

[11] Tab 5

Transcript from Examination for Discovery of Derek Twidale dated June 20, 2006 (Pg. 7:4-8:25)

The parties agreed that Questions and Answers 52-55 will be added to the read-ins.

Conclusion: Added

[12] Tab 6

Transcript from Examination for Discovery of Derek Twidale dated June 20, 2006
(Pgs. 17:18-18:2)

The parties have agreed to include this matter.

Conclusion: Added

[13] Tab 7

Transcript from Examination for Discovery of Derek Twidale dated June 20, 2006
(Pgs. 21:10-25)

The parties agreed that this item is included.

Conclusion: Added

[14] Tab 8

Transcript from Examination for Discovery of Derek Twidale dated June 20, 2006
(Pgs. 89:13-91:14)

The Defendants wish to require the Plaintiffs to include evidence from another witness to explain the first witness' answer. This goes well beyond ensuring fair and accurate responses to specific questions of a witness.

As the case law indicates, this is the very type of matter which requires *viva voce* evidence.

Conclusion: Not added

[15] Tab 9

Transcript from Examination for Discovery of Derek Twidale dated June 20, 2006
(Pgs. 219:18-220:5)

This is a new and different question and the Plaintiffs are not required to include it.

Conclusion: Not added

[16] Tab 10

Motion 116, Schedule A, Item 52: “List of Questions Arising from Discovery of the Defendants (Derek Twidale)”

This is an answer to an undertaking which the Plaintiffs are not required to read-in. The Plaintiffs would otherwise be denied the ability to cross-examine on an answer on which it had no intention to rely. The Defendants remain free to call a witness to explain the alleged mistake.

Conclusion: Not added

[17] Tab 11

Motion 116, Schedule A, Item 208: “List of Questions Arising from Discovery of the Defendants (Derek Twidale)”

The Defendants seek to add a completely separate question to the read-ins. This is not permitted and in any event, as Mr. Britton will be a witness, it is unnecessary.

Conclusion: Not added

[18] Tab 12

Motion 116, Schedule A, Item 301: “List of Questions Arising from Discovery of the Defendants (Derek Twidale)”

Again, this is a separate question from the one being read in which related to names and addresses. The Defendants allege that it explains corporate information; however, that is better done through a witness.

Conclusion: Not added

[19] Tab 13

Motion 114, Schedule A, Item 65: “List of Questions Arising from the Discoveries of Christopher Carr, Derek Twidale and Anthony Moore”

The parties have agreed to its inclusion.

Conclusion: Added

[20] Tab 14

Motion 114, Schedule A, Item 148: “List of Questions Arising from the Discoveries of Christopher Carr, Derek Twidale and Anthony Moore”

The additions proposed are well beyond any concept of ensuring inclusion of a fair and accurate response to a question. The item is a question about facts relied on to support a pleading and is not evidence of those facts.

Conclusion: Not added

[21] Tab 15

Motion 114, Schedule A, Item 164: “List of Questions Arising from the Discoveries of Christopher Carr, Derek Twidale and Anthony Moore”

Withdrawn

[22] Tab 16

Motion 114, Schedule A, Item 168: “List of Questions Arising from the Discoveries of Christopher Carr, Derek Twidale and Anthony Moore”

The item relates to Mr. Britton and for the same reasons as for Tab 11, it is not to be included.

Conclusion: Not added

[23] Tabs 17 and 18

Motion 114, Schedule A, Item 193: “List of Questions Arising from the Discoveries of Christopher Carr, Derek Twidale and Anthony Moore”

Moore, January 5, 2009, Item 63 – Follow-Up Examination for Discovery of Tony Moore – Phoenix, Arizona – February 27-28, 2008 – List of Further Answers to Outstanding Questions

These items are no longer in issue.

ORDER

THIS COURT ORDERS that:

1. Tabs 1, 2, 4, 5, 6, 7 and 13 are added
2. Tabs 3, 8, 9, 10, 11, 12, 14 and 16 are not added.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1236-01

STYLE OF CAUSE: WEATHERFORD CANADA LTD., WEATHERFORD
CANADA PARTNERSHIP, EDWARD GRENKE and
GRENCO INDUSTRIES LTD.

and

CORLAC INC., NATIONAL-OILWELL CANADA
LTD. and NATIONAL OILWELL INCORPORATED

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 29, 2009

**REASONS FOR ORDER
AND ORDER:** PHELAN J.

DATED: May 4, 2009

APPEARANCES:

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Mr. Adam Bobker
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