

Court of King’s Bench of Alberta

Citation: LJ Resources Co Ltd v Indepth Energy Inc, 2026 ABKB 574

Date: 20260814
Docket: 1601 02031
Registry: Calgary

Between:

**LJ Resources Co Ltd
(Formerly Goldenkey Oil Inc)**

Plaintiff
(Respondent)

- and -

Indepth Energy Inc, Indepth Investments Inc, Qiping Men Professional Services Ltd, CMC Professional Energy Services Corp, Spring Resources Ltd, JH Petroleum Enterprises Inc, Fangyuan Ceramic Proppant Canada Inc, Copro Oil Services Inc, Somani & Associates Inc, Accurate Directional Drilling Inc, Diamond Proppants Inc, KOBO Consulting Inc, Musta Consulting Inc, Musta Petroleum Solutions Inc, Petroleum Steel Depot Inc, Proficient Drilling Fluids Inc, Pro-Tech Drilling Fluids Inc, Quality Petroleum Solutions Inc, Seismic Master Inc, Summit Directional Drilling Inc, Emerald Energy Services Inc, KOBO Proppant Inc, Rainbow Petroleum Solutions Inc, Round Steel Inc, Abc Corp, Xyz Corp, Shougen Song, Heiju Song, Qiping Men, Camilla Men, Chunku Dou, Xiaoyu Gu, Fangzhi Guo, Aziz Somani, John Doe and Jane Doe

Defendants
(Applicants)

**Reasons for Decision of the
Honourable Justice D. Jugnauth**

I. Introduction

[1] In February 2016, the Plaintiff filed a claim alleging the Defendants engaged in a fraudulent scheme that caused Goldenkey Oil Inc. (“Goldenkey”) to transfer approximately \$9.2M to various shell companies so the Defendants could obtain a secret profit at Goldenkey’s expense. The Defendants have denied the allegations.

[2] The Defendants now apply to dismiss the Plaintiff’s claim based on inordinate and inexcusable delay that has caused actual and presumed prejudice. The Plaintiff disagrees with the Defendants’ characterization of the conduct of the litigation up to this point.

[3] While there has been inordinate delay in advancing this litigation, I find that delay was excusable in the circumstances and did not result in significant prejudice attributable to the Plaintiff. Further, the Defendants materially contributed to the pace of the litigation and the interests of justice do not favour dismissal. The applications are dismissed.

II. Background

[4] In March 2007, Goldenkey was founded and incorporated in Alberta by Shougen Song, Wenfeng Liu, and Xingli Zhang. Goldenkey engaged in the business of acquiring oil and gas mineral rights leases and developing oil and gas wells.

[5] Originally, Goldenkey’s Board of Directors (“GK Board”) consisted of Mr. Song, Mr. Liu, and Mr. Zhang. Qinmin Gui joined the GK Board thereafter. Each GK Board member was associated with a Goldenkey shareholder.

[6] Mr. Song was associated with Indepth Energy Inc. (“Indepth”), a company incorporated under the laws of British Columbia and continued in Alberta. Mr. Liu was associated with Luck King Holdings Limited (“Luck King”), a company incorporated under the laws of China, which owns LJ Resources Co. Ltd. (“LJ Resources”). Mr. Zhang was associated with East Triumph Overseas Limited, a company incorporated under the laws of China. Mr. Gui was associated with DS Century Energy Ltd.

[7] Mr. Song was Goldenkey’s Chief Executive Officer from its inception until his termination in January 2016. Mr. Song was the only GK Board member who held an executive role and was involved in Goldenkey’s day-to-day operations. Until about 2015, Mr. Song could unilaterally sign contracts on Goldenkey’s behalf, exercise control over Goldenkey’s banking and financial operations, and had employees reporting directly to him. Additionally, Mr. Song was the only GK Board member with an email address on Goldenkey’s server.

[8] Around 2009, Mr. Qiping Men began performing production accounting work for Goldenkey through his company, Qiping Men Professional Corporation. In 2011, Mr. Men took a formal position with Goldenkey, and beginning in March 2011 Mr. Men was held out as Vice-President Finance and Chief Financial Officer of Goldenkey.

[9] Also in March 2011, Mr. Chunku Dou entered into an agreement to perform petroleum engineering services for Goldenkey through his company, Spring Resources Ltd. At some point, Mr. Dou obtained a Goldenkey email address. His email signature for his Goldenkey email address was “Dan Dou VP Engineering Goldenkey Oil Inc.” Mr. Dou also signed off on Authorizations for Expenditure on Goldenkey projects.

[10] On March 31, 2012, Mr. Song, on Goldenkey’s behalf, executed a new agreement with Mr. Men and Mr. Dou whereby Mr. Men and Mr. Dou would provide services to Goldenkey on a full-time basis (“Service Agreement”). The term of the Service Agreement was from April 1, 2012 to March 31, 2013.

[11] Under the Service Agreement, Goldenkey was “Party A” and Mr. Men and Mr. Dou were “Party B”. The Service Agreement states the following with respect to the purpose of the Service Agreement and the services to be provided under same:

To better leverage the resource advantages, management advantages, technical advantages and human resources advantages of the relevant parties and maximize and optimize the various projects, cost control and financial management of Party A’s oil and gas exploration and development, the following service agreement was reached through consultation between the three parties:

1. Party A hires Party B to provide it with oil and gas exploration and development project execution and management consulting services. Chunku Dou shall be responsible for Party A’s drilling, completion, commissioning and equipment engineering organization and management, as well as oil well production management. Qiping Men shall be responsible for Party A’s engineering cost control, financial management, coordination between the cooperation parties and engineering coordination.

[12] Further, the Service Agreement provided that “[Goldenkey] agrees that Party B may use its service company to provide [Goldenkey] with certain related engineering services or equipment for sale at a price better than the market price under the condition of ensuring the quality of the project”. In exchange, Goldenkey would provide \$10,000 per person per month as a fixed basic service fee.

[13] Following the execution of the Service Agreement, Mr. Men and Mr. Dou, in collaboration with Aziz Somani, caused the following companies to be incorporated: Accurate Directional Drilling Inc., Diamond Proppants Inc., KOBOL Consulting Inc., Musta Consulting Inc., Musta Petroleum Solutions Inc., Petroleum Steel Depot Inc., Proficient Drilling Fluids Inc., Pro-Tech Drilling Fluids Inc., Quality Petroleum Solutions Inc., Seismic Master Inc., Summit Directional Drilling Inc., Emerald Energy Services Inc., KOBOL Proppant Inc., Rainbow Petroleum Solutions Inc., and Round Steel Inc. These companies were to be service companies for Goldenkey’s production needs (“Service Companies”).

[14] Goldenkey, along with three joint venture partners, drilled six oil and gas wells between 2012 and 2013. Goldenkey maintained joint bank accounts with two of the joint venture partners,

E. Law Enterprises Ltd. (“E. Law”) and ROC Pacific Oil and Gas Inc. (“ROC Pacific”), but not with the third, GL Petroleum Corporation (“GL Petroleum”).

[15] During this period, Goldenkey transferred funds to the Service Companies for services or materials, and the Service Companies contracted one or more third parties to perform the work. Additionally, the Service Companies transferred funds to Mr. Song, Mr. Men, and Mr. Dou for consulting fees.

[16] On December 31, 2013, the GK Board resolved to commence annual audits of Goldenkey’s finances (“December 2013 Resolution”). The December 2013 Resolution provided that Mr. Liu, Mr. Zhang, and Mr. Gui would choose the accounting firm that would conduct the audit. Mr. Gui was not present at this meeting because he was in China at the time.

[17] As a result of the December 2013 Resolution, Goldenkey retained Derek Liu in March 2014 to conduct the audit, later downgraded to a “review engagement” with the consent of Mr. Song. Derek Liu noted that “the documentation [he had received] would not meet the standards and requirements for audit engagement.”

[18] In April 2014, Derek Liu provided a draft report to the GK Board (“Derek Liu Report”). The Derek Liu Report determined that “the business scope of the service companies Deputy general manager Dou and Men established has exceeded the agreement with Goldenkey Oil Inc.” Further, the report concluded that the price charged by the Service Companies for services and materials was higher on average than comparable market price for same.

[19] Although the Derek Liu Report disclosed the relationship between Mr. Men, Mr. Dou and the Service Companies, it did not disclose any relationship between the Service Companies and Mr. Song.

[20] On May 21, 2014, the GK Board met in the absence of Mr. Gui, who was in China. The Board reviewed the results of the audit authorized by the December 2013 Resolution. According to the meeting summary, the auditors reported to Wenfeng Liu and Mr. Zhang after approximately two months of audit work. The directors generally expressed approval of Mr. Song’s efforts and achievements as chairman. However, Mr. Song acknowledged that he had made mistakes, including agreeing to the engagement of service companies associated with Mr. Dou and Mr. Men to provide drilling-well services.

[21] The meeting summary records Wenfeng Liu’s view that, although Mr. Men’s service company caused no financial loss to Goldenkey, its involvement negatively affected the company’s external image and brand. Wenfeng Liu therefore proposed that Mr. Men no longer be employed by the company, a proposal that Mr. Zhang and Mr. Song supported.

[22] In July 2014, Goldenkey hired James Dai as its Financial Manager. By that point, Mr. Men and Mr. Dou were no longer working for Goldenkey. After a GK Board meeting in June 2015, Mr. Dai was instructed to retrieve and back-up all information stored on Goldenkey computers and servers.

[23] Based on his discoveries, Mr. Dai formed the opinion that Mr. Song, Mr. Men, and Mr. Dou had conducted a fraudulent scheme and engaged in a conspiracy to derive a secret profit at Goldenkey's expense.

[24] In 2015, Mr. Dai was appointed as Chief Financial Officer. Around that time, the GK Board engaged Mr. Song in discussions regarding his involvement in the alleged scheme. In January 2016, Mr. Song was removed from the GK Board and dismissed as Goldenkey's CEO.

III. Procedural History

A. Pleadings and initial questioning in the Fraud Action

[25] On February 9, 2016, the Plaintiff filed its Statement of Claim against the Defendants, who I refer to separately as the "Indepth Defendants" and "Men Defendants". The Plaintiff filed an amended Statement of Claim on February 19, 2016 ("Fraud Action"). The amended Statement of Claim alleged that Mr. Song, Mr. Men, and Mr. Dou owed Goldenkey a fiduciary duty and that they were in a unique position to abuse their authority to the detriment of Goldenkey.

[26] It further alleged that, unbeknownst to Wenfeng Liu, Mr. Zhang, and Mr. Gui, the Service Companies were incorporated for the sole purpose of defrauding Goldenkey. Specifically, the Plaintiff asserted that Mr. Song, Mr. Men, and Mr. Dou caused Goldenkey to transfer funds to one or more of the Service Companies for the purpose of engaging a third party to perform the necessary work and that these funds would typically exceed the actual cost of the work.

[27] The Plaintiff claimed that in total Mr. Song, Mr. Men, and Mr. Dou caused Goldenkey to transfer approximately \$9,200,000 to the Service Companies ("Misappropriated Funds"). Of that total, the Service Companies paid third party vendors approximately \$5,100,000, and the rest was distributed between the Defendants. The Plaintiff alleged that through this fraudulent scheme the Defendants converted the Misappropriated Funds for their own use, depriving Goldenkey of the benefit of those funds.

[28] The Plaintiff also alleged conspiracy, unjust enrichment, knowing receipt, and fraudulent conveyance. The Plaintiff seeks both equitable and common law remedies, including tracing, accounting, disgorgement, and punitive and exemplary damages.

[29] On March 3, 2016, the Plaintiff filed a Statement of Claim against the Indepth Defendants in British Columbia based on the same underlying facts and allegations as the Fraud Action ("BC Action"). The purpose of filing a claim in British Columbia was to enable the Plaintiff to register a Certificate of Pending Litigation on the Song family home in Vancouver. The Plaintiff alleged that Mr. Song had transferred assets into his wife's name (Xiaoyu Gu) to hide assets or evade enforcement.

[30] On April 1, 2016, the Indepth Defendants made a request for particulars in the Fraud Action. On April 8, 2016, the Plaintiff provided its reply to the request for particulars.

[31] On April 18, 2016, all Defendants filed their Statements of Defence, and the Indepth Defendants and Men Defendants filed a Notice of Claim Against Co-Defendants against each other.

[32] On July 18, 2016, the Plaintiff served its affidavit of records. On September 19, 2016, some of the Men Defendants served their affidavit of records. On October 31, 2016, the Indepth Defendants served their affidavit of records. The remaining Men Defendants served their affidavit of records in September 2017, over a year after being served the Plaintiff's affidavit of records.

[33] On September 12, 2017, the Indepth Defendants filed a Statement of Claim against the Plaintiff, alleging that the Plaintiff refused to repay Indepth's outstanding shareholder loans and sought to recover \$9,277,201.94 ("Indepth Action"). On October 26, 2017, the Plaintiff filed its Statement of Defence to the Indepth Action.

[34] In October 2017, the Plaintiff questioned Mr. Men, Mr. Dou, Aziz Somani, Fangzhi Guo, and Camilla Men in the Fraud Action. In November 2017, the Plaintiff questioned Mr. Song, Xiaoyu Gu, and Heiju Song in the Fraud Action.

[35] Mr. Dai's questioning was scheduled to take place in December 2017, but that questioning was postponed at the request of the Indepth Defendants. In February 2018, the Defendants questioned Mr. Dai in the Fraud Action.

B. Baytech Action and undertaking responses

[36] On February 16, 2018, Baytech Energy Investment Inc. ("Baytech") filed an amended Statement of Claim against the Plaintiff, Indepth, Mr. Song, Xiaoyu Gu, Heiju Song, and Song International Inc. ("Baytech Action"). It appears Baytech filed its original Statement of Claim in September 2017. Baytech was not a party in either the Fraud Action, the BC Action, nor the Indepth Action.

[37] Baytech alleged several causes of action including breach of contract, negligence, negligent misrepresentation, fraud, conversion, conspiracy, and breach of fiduciary duty in relation to joint development agreements entered into by Goldenkey, Indepth, and Baytech. Baytech sought general and special damages in the amount of approximately \$22,000,000.

[38] On April 23, 2018, the Plaintiff filed its Statement of Defence, Counterclaim, and Notice of Claim Against Co-Defendants in the Baytech Action. On April 25, 2018, the Indepth Defendants' counsel informed the Plaintiff that they could not accept service of the pleadings on behalf of Indepth, Mr. Song, Xiaoyu Gu, Heiju Song, or Song International Inc., as they had not been retained on the Baytech Action.

[39] On June 1, 2018, nearly 10 months after filing their Statement of Claim, the Indepth Defendants served their affidavit of records in the Indepth Action. On July 4, 2018, Goldenkey served its affidavit of records in the Indepth Action.

[40] In August 2018, Mr. Men, Aziz Somani, and Fangzhi Guo served their responses to undertakings given during their October 2017 questioning, and a supplemental affidavit of records in the Fraud Action.

[41] On October 3, 2018, the Plaintiff served a supplemental affidavit of records in the Fraud Action. On November 8, 2018, Mr. Song, Xiaoyu Gu, and Heiju Song served their responses to undertakings given during their November 2017 questioning in the Fraud Action.

[42] On November 26, 2018, Mr. Dou, Spring Resources Ltd, Fangyuan Ceramic Proppant Canada Inc., JH Petroleum Enterprises, and Copro Oil Services Inc. served their responses to undertakings given during their October 2017 questioning in the Fraud Action.

[43] On August 7, 2020, Mr. Dai provided his responses to undertakings given during his February 2018 questioning in the Fraud Action.

C. Consent litigation plan and consolidation order

[44] On November 5, 2020, the Plaintiff attempted to engage the Defendants to set a litigation plan. After receiving no response regarding the litigation, the Plaintiff followed up with the Defendants on December 3, 2020.

[45] On December 4, 2020, the Men Defendants' counsel responded that he was seeking instructions from his clients. On December 28, 2020, the Indepth Defendants' counsel responded that they were in a long trial and a long out-of-town arbitration to start in 2021, so they could not achieve the Plaintiff's proposed timelines.

[46] Further, in that same correspondence, the Indepth Defendants' counsel stated that it was important to their clients that the Indepth Action be heard in conjunction with the Fraud Action, so they made a provision in the proposed litigation plan for a consolidation timetable.

[47] On March 11, 2021, the Plaintiff informed the Defendants of its application to set a litigation plan.

[48] On April 13, 2021, the return date for the Plaintiff's application, the parties consolidated the Fraud Action and the Indepth Action ("Consolidated Action") and consented to a litigation plan ("2021 Litigation Plan"). The order for consolidation provided that the Indepth Action would be consolidated with and heard as a counterclaim to the Fraud Action.

[49] The 2021 Litigation Plan set out the following schedule for questioning, expert reports, mandatory dispute resolution, and trial scheduling:

- a) On or before June 30, 2021, Goldenkey shall conclude questioning on the undertaking responses produced by the [Indepth Defendants and the Men Defendants in the Fraud Action];
- b) On or before June 30, 2021, the Indepth Defendants shall conclude initial questioning for discovery regarding the allegations made in the Indepth Action, subject to any additional questioning on undertaking responses;

- c) On or before August 31, 2021, the Indepth Defendants and the Men Defendants shall conclude questioning on the undertaking responses produced by Goldenkey to date in the Fraud Action;
- d) On or before August 31, 2021, Goldenkey shall conclude initial questioning for discovery regarding the allegations made in the Indepth Action, subject to any additional questioning on undertaking responses;
- e) The parties shall provide responses to all undertakings given or taken under advisement at the questioning of a witness (“Undertaking Responses”) within 45 days of the conclusion of each such questioning;
- f) Within 30 days of the delivery of Undertaking Responses, a questioning party shall serve any application in respect of undertakings refused or objections taken during initial questioning of a witness [...]
- g) Any primary expert reports shall be served on or before April 1, 2022;
- h) Any rebuttal expert reports shall be served on or before August 1, 2022;
- i) Any reply expert report shall be served on or before December 1, 2022;
- j) Mandatory Judicial Dispute Resolution shall be scheduled by July 1, 2022;
- k) The parties shall agree on the anticipated number of witnesses and the anticipated length of Trial on or before January 1, 2023;
- l) The parties shall apply to schedule a date for trial on or before January 1, 2023 (in accordance with the Court’s normal practice at the time of scheduling);
- m) This Order does not govern or limit any procedural matters other than those listed [above];
- n) This Order does not govern or limit the ability of any Party to bring a security for costs application, including in respect of the litigation steps contemplated in this Order;
- o) These timelines may be modified by consent of all parties in writing or by Court order [...]

[50] On May 31, 2021, the Defendants questioned Mr. Dai in the Indepth Action. On July 15, 2021, Mr. Dai provided his responses to undertakings.

[51] On August 18, 2021, the Men Defendants filed an application for security for costs.

[52] On August 31, 2021, the Plaintiff questioned Mr. Song in the Indepth Action. However, as a result of translation difficulties and other issues, the parties resolved to complete the questioning by way of written interrogatories.

[53] On September 30, 2021, the Plaintiff questioned Mr. Men on his affidavit in support of the security for costs application. On October 8, 2021, the Plaintiff sent the Indepth Defendants the written interrogatories.

[54] On November 30, 2022, the Indepth Defendants provided their responses to undertakings given in the August 2021 questioning and to the October 2021 written interrogatories.

D. Plaintiff's change of counsel and interlocutory applications

[55] On January 28, 2022, Baytech filed an application for partial summary judgment seeking \$4,269,580 against the Plaintiff.

[56] In July 2022, Plaintiff's counsel contacted the Indepth Defendants' counsel to determine when Mr. Song's undertaking responses and responses to the written interrogatories from Mr. Song's August 2021 questioning and the October 2021 written interrogatories would be provided. The Plaintiff sought to set dates to finish questioning in the Fall of 2022.

[57] In August 2022, the Indepth Defendants' counsel indicated they would serve Mr. Song's responses and additional documents by the end of August. They also advised that before completing the questioning of Mr. Dai they wanted to question Mr. Liu, Mr. Zhang, and Mr. Gui.

[58] On August 18, 2022, the Plaintiff's then counsel advised the Defendants that McCarthy Tétrault LLP would be taking over as counsel of record.

[59] On August 23, 2022, the Men Defendants applied to set a hearing date for the security for costs application and to set aside or vary the 2021 Litigation Plan.

[60] On August 26, 2022, the Plaintiff served the Notice of Change of Representation on the Defendants. As a result of the change, the security for costs application hearing was adjourned by agreement until November 2022.

[61] In November 2022, the Plaintiff's new counsel proposed a new litigation plan and suggested that the parties proceed to a case conference to set a new litigation plan. The Defendants expressed concern about moving the Consolidated Action forward without first resolving security for costs application. Further, the Indepth Defendants' counsel suggested that the resolution of Baytech's partial summary judgment application may be relevant to scheduling in the Consolidated Action.

[62] On November 28, 2022, the Indepth Defendants filed an application for an order directing the parties in the Consolidated Action and the Baytech Action to participate in a joint case conference.

[63] On December 2, 2022, the Men Defendants' security for costs application was granted; however, the form of order from that application remains unresolved. In his decision, the Applications Judge ordered that Mr. Liu and Mr. Zhang, as principals of Goldenkey, post an undertaking with respect to the amount sought for security for costs.

[64] The Applications Judge stated that “[i]f the parties can’t agree... on the form of the undertaking, they can seek further directions from the Court. It needs to be posted within 60 days of the ... service of the order.”

[65] Further, during this morning chambers appearance, the Indepth Defendants spoke to their application for a joint case conference regarding the Consolidated Action and the Baytech Action. The Applications Judge directed both the Consolidated Action and the Baytech Action to a case conference that he would conduct, which was scheduled for January 30, 2023.

[66] On January 17, 2023, Baytech informed the Plaintiff that it intended to proceed with its application for partial summary judgment and proposed dates for the litigation plan that would be developed at the joint case conference.

[67] On January 25, 2023, the Indepth Defendants circulated a proposed form of order for a new litigation plan, which included:

- (i) replacing the 2021 Litigation Plan with a new litigation plan that provided for further rounds of questioning in the Consolidated Action to be completed by January 31, 2024;
- (ii) having a joint trial for the Consolidated Action and the Baytech Action or sequential trials in the same hearing; and
- (iii) scheduling the Baytech summary judgment application in or after June 2023.

E. Goldenkey’s bankruptcy and insolvency proceedings

[68] On January 29, 2023, the Plaintiff filed a Notice of Intention to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“BIA”).

[69] On February 23, 2023, the Plaintiff applied for:

- (i) an order vesting the BC Action and the Fraud Action in trust for the Alberta Energy Regulator, the Plaintiff’s equity holders, and its creditors with proven claims, appointing Mr. Dai as litigation trustee, and approving a financing arrangement for pursuing the Fraud Action; and
- (ii) an order severing the Consolidated Action. The Indepth Defendants resisted the application.

[70] Justice Lema dismissed that application on April 28, 2023: ***Goldenkey Oil Inc (Re)***, 2023 ABKB 263 at paras 27-28 [***Re Goldenkey***]. The Court found the evidence for the proposed litigation trust and associated financing insufficient. As a result of the decision regarding the proposed litigation trust, Justice Lema declined to address the request to sever the Consolidated Action and invited the parties to provide written submissions on costs, with the final submission to be delivered on May 22, 2023.

[71] On May 29, 2023, the Plaintiff was assigned into bankruptcy as a result of its failed proposal.

[72] On June 16, 2023, Justice Lema determined that each party should bear their own costs in relation to the application for a litigation trust and severance: **Goldenkey Oil Inc (Re)**, 2023 ABKB 365 at paras 2, 7.

[73] In September 2023, the Plaintiff's Trustee in bankruptcy issued a Notice to Creditors to gauge creditors' interest in filing a section 38 application to obtain the Plaintiff's interest in the Consolidated Action and BC Action. Luck King, one of the Plaintiff's shareholders, and Indepth responded to the Trustee's notice.

[74] As a result of the expression of interest, the Trustee proposed an auction process for bidders to bid on the rights to the claims. On November 27, 2023, the Trustee's proposal for an auction was approved by the Court. By December 12, 2023, only Luck King and Indepth had indicated an intention to participate in the bidding process.

[75] On December 15, 2023, the day of the auction, Indepth did not attend or participate in the process. Luck King appointed LJ Resources as its nominee to participate in the auction process and to complete any resulting sale and assignment of the Plaintiff's claim.

[76] LJ Resources won the auction with its opening bid. The claims were sold for \$75,000. On January 24, 2024, the Trustee applied for and was granted a litigation sale and vesting order. On January 25, 2024, LJ Resources and the Trustee entered into a litigation assignment agreement. LJ Resources was substituted in place of Goldenkey as the Plaintiff in the Fraud Action.

[77] On May 15, 2024, the Trustee completed its determination of the claims submitted in the Goldenkey claims process. The Trustee allowed Baytech's claim for \$4,829,747 but disallowed the rest of Baytech's claim as against Goldenkey. The Indepth Action was disallowed in its entirety, along with the claims of Goldenkey's other shareholders. The Indepth Defendants did not appeal the Trustee's decision.

F. The delay applications

[78] In July 2024, following the bankruptcy proceedings, the Plaintiff proposed new litigation plans. On August 12 and 13, 2024, the Indepth Defendants and the Men Defendants, filed their applications to dismiss the Fraud Action ("Delay Applications").

[79] On August 23, 2024, the Plaintiff applied for an order setting a trial date, which was heard on August 30, 2024. Justice Silver directed the parties to a case conference for the purpose of determining what additional steps were required before the Fraud Action could proceed to trial and to set dates for those steps.

[80] On September 16, 2024, Mr. Song was cross-examined on his affidavit sworn on August 8, 2024 in support of the Delay Applications. On October 11, 2024, Mr. Dai swore an affidavit in relation to the Delay Applications. On October 31, 2024, Mr. Dai was cross-examined on his affidavit by the Indepth Defendants.

[81] On November 26, 2024, the parties attended a case conference where Justice Silver ordered various steps, including directing that the Plaintiff make Wenfeng Liu and Mr. Zhang available for questioning, approving a new litigation plan, and directing that the Delay Applications be decided as if they had been heard on November 27, 2024 (“2024 Order”).

[82] In January 2025, the Plaintiff filed a supplemental affidavit. In February 2025, Mr. Song filed a supplemental affidavit. Both parties accepted these supplemental affidavits without objection.

[83] On March 5, 2025, the BC Action was dismissed for want of prosecution under rule 22-7(7) of the *Supreme Court Civil Rules*, BC Reg 168/2009: **Goldenkey Oil Inc v Song**, 2025 BCSC 371 [**Goldenkey BC**]

[84] On May 17, 2025, I granted the Indepth Defendants’ application for international judicial assistance to question Mr. Gui. On May 22, 2025, the Indepth Defendants sent a Letter of Request for International Judicial Assistance to the International Legal Cooperation Center, Ministry of Justice of China.

[85] The Ministry responded that same day, informing the Indepth Defendants’ counsel that there was “no treaty basis for the evidence-taking cooperation between China and Canada” and that he should contact the Ministry of Foreign Affairs of China for his request. The Indepth Defendants’ counsel responded to the email to ask for the contact information of the appropriate person at the Ministry of Foreign Affairs of China to direct his inquiry to.

[86] Between June 4-12, 2025, the Indepth Defendants questioned Wenfeng Liu and Mr. Zhang. In July 2025, the Plaintiff provided responses to undertakings given in the June 2025 questionings. On August 20, 2025, Mr. Song affirmed a second supplemental affidavit that was served on the Plaintiff on September 5, 2025.

[87] On November 21, 2025, I granted the Indepth Defendants’ application to admit Mr. Song’s August 20 affidavit into the record for the Delay Applications. I directed the Plaintiff to complete questioning on the affidavit so that the transcript of that cross-examination could be made available for the Delay Applications.

[88] Mr. Song was cross-examined on his August 20 affidavit on December 5, 2025.

[89] I heard the Delay Applications on December 11, 2025.

IV. Issues

[90] The main issue is whether the Fraud Action should be dismissed under rule 4.31 of the *Alberta Rules of Court*, Alta Reg 124/2010 (“*Rules*”), which raises the following questions:

- (i) Has there been delay?
- (ii) If so, is the delay inordinate and inexcusable such that significant prejudice is presumed?

- (iii) If not, have the Defendants established that delay caused significant prejudice?
- (iv) Should the Court's discretion be exercised in favour of dismissing the Fraud Action?

V. Law

[91] *Humphreys v Trebilcock*, 2017 ABCA 116, leave to appeal to SCC refused, 37626 (14 December 2017), *Transamerica Life Canada v Oakwood Associates Advisory Group Ltd*, 2019 ABCA 276 are the foundational cases in Alberta on the interpretation and application of rule 4.31. *Humphreys* was intentionally forceful, intending to break judicial tolerance of chronic delay.

[92] *Transamerica* evolved *Humphreys* by emphasizing that *Humphreys* did not impose a rigid formula and reminding lower courts that it is prejudice, not duration, that is the central consideration. These two leading decisions advance the following guiding principles that inform the analysis:

- (i) **Rule 4.31 is designed to enforce the foundational objectives of the Rules.** These objectives include the fair, just, timely, and cost-effective resolution of civil disputes. Litigation delay undermines not only the interests of the parties, but public confidence in the administration of justice. Therefore, courts are obliged to address delay where it materially frustrates those objectives: *Humphreys* at paras 90, 95-96, 140-43; *Transamerica* at para 14.
- (ii) **Delay is a relative concept.** Delay is assessed by comparing the progress actually made in the action against the progress a reasonable litigant, acting diligently and having regard to the nature and complexity of the action, would have achieved within the relevant time frame. There is no fixed temporal threshold or tariff of years that determines whether delay is inordinate: *Humphreys* at paras 115-116; *Transamerica* at paras 18-21.
- (iii) **“Inordinate delay” means delay well beyond what is reasonable.** Inordinate delay is that which greatly exceeds what is reasonable having regard to the nature of the issues and the circumstances of the case. Minor or trivial delay will not justify dismissal. Conversely, even relatively short periods of inactivity may constitute inordinate delay if the circumstances demand expediency or if meaningful advancement of the action has effectively ceased. To justify dismissal, the delay must put the action within the slowest category for that type of proceeding: *Humphreys* at paras 120-122; *Transamerica* at paras 18 and 20-21.
- (iv) **The plaintiff bears the burden of justifying inordinate delay.** Once delay is shown to be inordinate, the onus shifts to the party responsible for advancing the action to provide an explanation. Not every explanation excuses delay. Factors such as changes of counsel, internal resource constraints, or generalized assertions of complexity do not, without more, justify prolonged inactivity. A plaintiff is

generally responsible for the conduct of its counsel and for moving the action forward: *Humphreys* at paras 153 and 174; *Transamerica* at paras 16 and 41.

- (v) **Defendants may not use their own delay as a sword.** While the plaintiff bears the primary obligation to advance the action, rule 4.31 is not premised on the fiction that defendants have no responsibilities. Defence conduct may be relevant to whether delay is excusable, including whether the defendant failed to meet procedural duties imposed by the *Rules* or otherwise contributed to litigation stagnation: *Transamerica* at paras 27-30 and 50.
- (vi) **Significant prejudice is an indispensable requirement for dismissal.** Under rule 4.31(1)(a), dismissal of an action requires proof of significant prejudice resulting from delay. Under rule 4.31(2), where delay is both inordinate and inexcusable, significant prejudice is presumed, subject to rebuttal. In either case, prejudice is the controlling consideration: *Humphreys* at paras 149 and 154; *Transamerica* at paras 2, 42-43, 48 and 50.
- (vii) **Prejudice is not limited to trial fairness.** Prejudice is a broad concept and includes both litigation prejudice (such as faded memories, unavailable witnesses, or lost evidence) and non-litigation prejudice (such as reputational harm, business uncertainty, stress, and the burden of unresolved allegations). Allegations of dishonesty or fraud may intensify non-litigation prejudice and heighten the need for timely prosecution: *Humphreys* at paras 123-138 and 167; *Transamerica* at paras 44-45.
- (viii) **The presumption of prejudice is rebuttable and fact-sensitive.** Proof of inordinate and inexcusable delay triggers a rebuttable presumption of significant prejudice. The responding party may rebut the presumption by showing that, despite the delay, the moving party has not suffered prejudice of sufficient significance to justify dismissal. The assessment remains fact-specific and context-driven: *Humphreys* at paras 144-149, 155 and 186; *Transamerica* at paras 43 and 50.
- (ix) **The six-factor framework in *Humphreys* is a guide, not a mandatory checklist.** The six questions articulated in *Humphreys* provide a helpful analytical structure, but they do not constitute a rigid or mandatory formula. The ultimate inquiry remains whether delay has occurred; whether it is inordinate and inexcusable; whether it has caused significant prejudice; and whether dismissal is a proportionate and just response in all the circumstances: *Transamerica* at paras 15-17 and 23.
- (x) **The court retains residual discretion to avoid injustice.** The word “may” in rule 4.31(1) preserves a residual discretion to decline dismissal even where the preconditions are met. That discretion must be exercised consistently with the purposes of the *Rules* and will be engaged only where there is a compelling reason why dismissal would work an injustice: *Humphreys* at para 156; *Transamerica* at paras 15 and 28.

[93] Taken together, *Humphreys* and *Transamerica* confirm that rule 4.31 is a prejudice-focused, discretionary mechanism that requires courts to assess litigation delay contextually; to distinguish tolerable slowness from inordinate and inexcusable inactivity; and to intervene only where delay causes significant prejudice to the integrity of the litigation, the interests of the parties, or public confidence in the administration of justice.

VI. Position of the Parties

[94] The Indepth Defendants argue the Plaintiff was required to prosecute the action expeditiously due to the seriousness of the fraud allegations, and they failed to do so. They submit that the Fraud Action should be dismissed because it has been marked by prolonged, inordinate, and inexcusable delay. They argue that more than a decade has passed since the underlying events and that the Plaintiff has repeatedly failed to advance the litigation despite numerous opportunities to do so, and the delay cannot be justified by changes of counsel, insolvency proceedings, or other procedural developments.

[95] The Indepth Defendants further contend that the delay has caused substantial prejudice. They assert the loss or unavailability of witnesses, fading memories, destruction or loss of records, and the difficulty of litigating allegations of fraud long after the relevant events occurred. They argue that this is not a purely “documents case” and that the credibility and reliability of witnesses will be central issues at trial. The Indepth Defendants submit that, both presumptively and in fact, they have suffered significant litigation and non-litigation prejudice such that the Fraud Action should be dismissed for delay.

[96] The Men Defendants take much the same position as the Indepth Defendants. They argue that there has been delay, the delay is inordinate and inexcusable, and the delay has resulted in significant litigation and non-litigation prejudice. They also argue that pre-claim delay should be considered by the Court in arriving at a conclusion.

[97] The Plaintiff opposes dismissal and argues that the Fraud Action has continued to advance through various stages of litigation and insolvency administration. It submits that periods of delay were attributable to procedural necessities, including the insolvency process, changes in control of the claim, documentary production, discovery-related issues, and efforts to coordinate the litigation through court-approved litigation plans. It argues that any delay was excusable in the circumstances and does not justify terminating its claim.

[98] Further, LJ Resources argues the Defendants have not demonstrated the level of prejudice required to dismiss the claim. It argues that the action remains capable of being fairly determined, that substantial documentary evidence exists concerning the alleged transactions, and that the interests of justice favour allowing the claims to proceed to adjudication on their merits rather than being dismissed for delay.

VII. Analysis

[99] The analysis that follows considers: (i) whether delay has occurred; (ii) if so, whether that delay is inordinate and inexcusable such that significant prejudice is presumed; (iii) whether the

Defendants have established actual significant prejudice; and (iv) whether I should exercise my discretion to dismiss the Fraud Action or the Delay Applications.

[100] Although these reasons do not expressly address every submission made by the parties, I have considered them.

(i) **Has delay occurred?**

[101] The relevant time period in a rule 4.31 application extends from the commencement of the action to the date the application is brought: **Arbeau v Schulz**, 2019 ABCA 204 at para 27; **Cochrane (Town) v Austech Holdings Inc**, 2022 ABCA 377 at paras 28-29 (**Austech CA**); **Recycling Worx Solutions Inc v Hunter**, 2023 ABKB 51 at para 56.

[102] In the case conference before Justice Silver in November 2024, the parties disagreed about the effect of the Delay Applications. The Defendants took the position that the Delay Applications effectively acted as a stay of the Fraud Action such that they did not have to participate in any further steps. They were concerned that any steps they took would prejudice their position with respect to the Delay Applications.

[103] It appears that Justice Silver’s 2024 Order was, in part, meant to address these concerns and limit the timeframe for consideration so that further steps could be taken in the Fraud Action.

[104] Although steps have been taken since the 2024 Order, the relevant period for consideration in assessing delay is from when the Fraud Action was commenced in February 2016 to the deemed date for the hearing contained in the 2024 Order – a period of approximately 8 years and 9 months. Given Justice Silver’s Order, it would not be appropriate to consider any period beyond that in the assessment of delay.

[105] “There is no fixed test for measuring ‘delay’ or ‘inordinate delay’, because every action is slightly different”: **Royal Bank of Canada v Levy**, 2020 ABCA 338 at para 14. One method is to measure delay comparatively between the point on the litigation spectrum where the action is and the point “a reasonable litigant acting in a reasonably diligent manner and taking into account the nature of the action and stipulated timelines in the rules of court would have reached in the same time frame”: **Humphreys** at para 115.

[106] However, such comparisons are not scientific exercises capable of precision: **Recycling Worx** at para 55, citing **Transamerica** at para 20 and **Austech CA** at para 25. Litigation progresses differently based on the complexity of the issues, the nature of the claims, and the actions of the parties, among other things: **Humphreys** at para 116.

[107] Moreover, comparisons are not dispositive because every action is distinct: **Royal Bank** at para 17; **Transamerica** at paras 15, 48. “[W]hether there has been delay in any particular case is to be determined based on an examination of the record, the submissions of counsel, and the experience of the judiciary”: **Transamerica** at para 22. The comparison should consider the action as a whole to determine whether it has advanced to the point a reasonable litigant would have advanced within the same time frame: **Arbeau** at para 27.

[108] The Indepth Defendants argue that after nearly 10 years the Fraud Action is still in the discovery phase. They submit that questioning is incomplete, no expert reports have been exchanged, and no mediation or pre-trial steps have occurred. Further, the Indepth Defendants assert that many documents such as director's records and bank statements are missing because of the Plaintiff's deficient document production. Parenthetically, I note that the Indepth Defendants' framing of the period of delay as "nearly ten years" belies a timeframe of less than 9 years actually under consideration.

[109] The Men Defendants rely on **4075447 Canada Inc v Pacrim Developments Inc**, 2018 ABQB 358 (Master), aff'd by unreported order of Justice A.D. Macleod, 30 November 2018 (Alta QB Action No 0701-06236), aff'd 2020 ABCA 150 to argue that pre-claim delay is relevant to the rule 4.31 analysis. They assert that where, as here, evidence is already stale by the time an action is brought, the Plaintiff is required to take some reasonably prompt steps. In the Men Defendants' view, the Plaintiff's delay in bringing and prosecuting the claim suited the Plaintiff's purpose because it would make it more difficult for the Defendants to establish when the GK Board had sufficient knowledge to negate any alleged fraud.

[110] The Plaintiff argues there has not been any delay because multi-party litigation of this nature does not advance at the pace of a straight-forward commercial dispute. Further, the Plaintiff contends that pre-claim delay is irrelevant, and the Men Defendants' reliance on **Pacrim** is misplaced. The Plaintiff points out that "[**Humphreys**] contemplates a comparison being made between the overall progress of an action *from the time the action was commenced* until the application to dismiss is brought": **Arbeau** at para 27 [emphasis added].

[111] In **Pacrim**, Master Robertson considered the period before the commencement of the action to be important because the action was commenced almost 10 years after the underlying events giving rise to the cause of action. The application to dismiss was heard approximately 11 years after the plaintiff had brought its action and almost 20 years after the events giving rise to the cause of action.

[112] As noted above, each case is to be determined on its own facts. Master Robertson was entitled to consider the impact of the pre-claim delay on considerations of actual prejudice given the extraordinarily long period between the events giving rise to the claim and a future date for trial. To that extent, pre-claim delay can be relevant to the analysis. However, that does not transform the basic mechanics of the rule as articulated by the Court of Appeal, which is binding upon me.

[113] I agree with the Plaintiff that the relevant period to assess for delay is the period after the action has been commenced to the period when the application to dismiss is brought. Statutory limitations periods are the means to account for prejudice caused by the passage of time before an action is commenced: **Cochrane (Town) v Austech Holdings Inc**, 2021 ABQB 666 (**Austech QB**) at para 98; **NE v DD**, 1995 ABCA 142 para 14.

[114] In this case, the action was commenced in February 2016, and the Delay Applications were filed in mid-August 2024. As evidenced by the 2024 Order, there was still some questioning to be completed at that time. The parties have provided various reasons for why that

is, but the fact that the action was not trial ready after over eight years points strongly towards a finding of delay.

[115] The Plaintiff submits that the Fraud Action was trial ready or nearly trial ready in 2022. However, I find that that was not the case. For example, questioning was still incomplete and no expert reports had been exchanged. Questioning was not closed by August 2024 because the Defendants sought to question Messrs. Liu, Zhang, and Gui before concluding their questioning of Mr. Dai.

[116] Further, after questioning, the parties must still exchange expert reports, then participate in mandatory judicial dispute resolution before the matter goes to trial. These facts contradict the Plaintiff's assertion that the Fraud Action was nearly trial ready in 2022.

[117] When the action is viewed as a whole, there are periods where no steps were taken by the Plaintiff to advance the Fraud Action, including a period longer than two years for the Plaintiff to provide responses to undertakings given in Mr. Dai's 2018 questioning.

[118] As a result, I find that the Defendants have established that there has been delay.

(ii) **Is the delay inordinate and inexcusable such that significant prejudice is presumed?**

[119] As the considerations engaged by inordinate delay and inexcusable delay differ, I deal with each separately. I am mindful that "[b]oth the overall delay, and gaps between steps, are relevant in assessing whether delay is inordinate, and whether it is excusable": **Royal Bank** at para 14. Further, as noted earlier in these reasons, defendant delay is relevant to the assessment of inordinate and inexcusable delay.

a. Is the delay inordinate?

[120] Delay is inordinate if it is "much in excess of what was reasonable having regard to the nature of the issues in the action and the circumstances of the case": **Arbeau** at para 36 citing **Kuziw v Kucheran Estate**, 2000 ABCA 226 at para 30; **Transamerica** at para 18. "In this context, inordinate means that the differential between the norm and the actual progress of an action is so large as to be unreasonable or unjustifiable": **Humphreys** at para 120.

[121] The Indepth Defendants rely on **Humphreys** for the proposition that any delay in a fraud case that is not trivial or minor is presumptively inordinate. They assert that Goldenkey's delay is manifestly and presumptively inordinate given the periods of inactivity total more than 2,100 days, which they contend is "much in excess" of what would be reasonable for a commercial fraud claim.

[122] The Men Defendants submit that the delay is inordinate because the Plaintiff had not completed its questioning of the Men Defendants almost 10 years after the claim was filed. They note that the 2021 Litigation Plan required the Plaintiff to complete questioning of all the Men Defendants by June 30, 2021; however, by November 2024, that questioning was still not

complete. Further, the Men Defendants note that the Plaintiff was obliged to provide its primary expert reports by April 1, 2022, but have not produced any expert report to date.

[123] The Plaintiff submits there has not been inordinate delay when the delay is contextualized in all the circumstances. It opposes the Defendants' framing of the action as a "straightforward fraud claim." The Plaintiff submits that in the first six years the action progressed in a manner consistent with complex, multi-party litigation involving overlapping claims with a complicated but overarching factual nexus, coupled with the procedural realities of COVID-era litigation and dedicated, well-resourced opposition.

[124] Analogizing to **Royal Bank**, the Plaintiff identifies several features of the Fraud Action that make it more complicated and challenging than straightforward fraud claims, including:

- (a) 32 named defendants, comprising both individual and corporate defendants, represented by three separate legal counsel;
- (b) production of nearly 10,000 records, many of which had to be translated from Mandarin to English;
- (c) 247 undertaking responses;
- (d) multiple related proceedings, some of which were consolidated;
- (e) multiple interlocutory applications; and
- (f) the Plaintiff's insolvency and bankruptcy that occurred during the litigation.

[125] The Plaintiff also argues that inordinate delay must be understood in light of who caused it, when, and why. While these considerations play a more central role in determining whether delay was inexcusable, the context of what was going on between the parties is indivisible from the circumstances that I must consider when deciding whether any period of delay, or the delay in the action overall, was inordinate. To ignore that context would be to transform this element of the analysis into something akin to time-based tariffs.

[126] The Indepth Defendants identify five periods they consider to be the most unreasonable periods of delay:

- i. October 31, 2016 to October 3, 2017 (337 days);
- ii. February 16, 2018 to July 4, 2018 (138 days);
- iii. July 4, 2018 to August 7, 2020 (765 days);
- iv. August 7, 2020 to May 31, 2021 (297 days);
- v. November 30, 2022 to August 12, 2024 – the date the Application was filed (621 days).

[127] Each will be discussed in turn.

i. October 31, 2016 – October 3, 2017 (~ 11 months)

[128] With respect to this period, the Indepth Defendants' arguments largely relate to deficient production and the assertion that after the Indepth Defendants served their affidavit of records on October 31, 2016, the Plaintiff did not take any steps to advance the action until October 3, 2017.

[129] This assertion is not supported on the record before me. In November 2016, the Plaintiff sent an email to the Indepth Defendants seeking to arrange questioning for January and February 2017. The Indepth Defendants did not respond. The Plaintiff followed up regarding questioning in January then again in February 2017. The Indepth Defendants finally responded in February 2017. When the parties entered into active dialogue they agreed to questioning in October, November, and December 2017.

[130] Further, the record shows that not all the Men Defendants had served their affidavit of records by October 31, 2016. In these circumstances, it was not unreasonable for the Plaintiff to defer questioning the Men Defendants until they had done so: see rule 5.20(1).

[131] In my view, there is nothing in this period that can be characterized as dilatory on the Plaintiff's part. Apart from the Indepth Defendants' delay in responding to the Plaintiff's attempts to schedule, both the Indepth Defendants and certain of the Men Defendants were noncompliant with the two-month period specified for service of their affidavit of records after receiving the Plaintiff's affidavit of records: see rule 5.5(3).

[132] The Defendants were largely the reason that initial questioning in the Fraud Action did not begin until approximately a year and a half after the Fraud Action was commenced.

ii. February 16, 2018 – July 4, 2018 (~ 4.5 months)

[133] The Indepth Defendants did not spend significant time arguing this period in written or oral submissions, except to say that the Plaintiff took no further steps in either the Fraud Action or the Indepth Action until it served its affidavit of records in the Indepth Action. There is nothing to suggest this was out of the ordinary for this type of litigation.

[134] Moreover, each party was waiting for undertaking responses from questioning that took place in October and November 2017, and February 2018. The Indepth Defendants served their affidavit of records in the Indepth Action in June 2018, and the Plaintiff responded with its affidavit of records in July 2018. That was reasonable and in compliance with the *Rules*.

iii. July 4, 2018 – August 7, 2020 (~ 25 months)

[135] The third period identified by the Indepth Defendants is the clearest period of delay. From the record, it seems that the most significant activity undertaken by the Plaintiff during this time was the production of Mr. Dai's undertaking responses following his February 2018 questioning. That said, I note the Plaintiff served a supplemental affidavit of records in October 2018, so it was not as if zero steps were taken during this period.

[136] The Plaintiff further contends that this period is shorter because, on March 30, 2020, the Minister of Justice and Solicitor General issued Ministerial Order 27/2020 ("Ministerial Order")

in response to the COVID-19 pandemic. The Ministerial Order provided that “[a]ny period of time within which any step must be taken in any proceeding or intended proceeding is suspended subject to the discretion of the court, tribunal, or other decision-maker from March 17, 2020 to June 1, 2020”.

[137] On this basis, the Plaintiff argues that the relevant period is shortened by 75 days. Even so, the period of inactivity is approximately 20 months when I consider the date of the Plaintiff’s supplemental affidavit of records.

[138] The Plaintiff submits that this delay is not inordinate because:

- (i) the high volume of undertakings (216) requested from Mr. Dai;
- (ii) 75 undertaking requests were addressed to individuals other than Mr. Dai himself;
- (iii) 3,500 records were produced along with the undertaking responses;
- (iv) certain of the Men Defendants and Indepth Defendants only served their undertaking responses (approximately 31 in total) in August and November 2018, respectively, which was more than a year after they were requested;
- (v) the undertaking responses from the Men Defendants and Indepth Defendants generated thousands of pages of further disclosure; and
- (vi) meaningful steps were taken in both the Indepth Action and Baytech Action.

[139] On the record before me, the Plaintiff’s steps in the Baytech Action and the Indepth Action occurred on or before July 4, 2018. As such, they can only be said to have impacted on the period at issue to the extent that completing those steps interfered with other steps ongoing prior to July 4, 2018, such as the production of Mr. Dai’s undertaking responses and related documents.

[140] Under rule 5.30(1), a person who gives an undertaking “must undertake to inform himself or herself and provide an answer, or produce the record, within a reasonable time”. In any given situation, what is reasonable will be informed by the circumstances.

[141] It is common ground that Mr. Dai was not employed with Goldenkey when the alleged fraudulent scheme is said to have occurred. The 216 undertakings requested of Mr. Dai in his February 2018 questioning necessarily required him to contact and obtain information from Goldenkey’s former directors and other third parties.

[142] That the Plaintiff went 20 months without communicating anything to the Defendants regarding the status of the undertakings is inexplicable. The Plaintiff could have staggered undertaking responses in tranches or negotiated a standstill agreement with the Defendants once it knew or suspected that responding to the Defendants’ undertaking request would take an extraordinarily long period of time.

[143] While Mr. Dai was in an unenviable position to have to respond to undertakings without firsthand knowledge of the events at issue, it was not reasonable for the Plaintiff to hold off delivering any undertaking responses for approximately 30 months. I find this period of delay was inordinate.

iv. August 7, 2020 – May 31, 2021 (~ 10 months)

[144] The Defendants argue that the Plaintiff did not meaningfully advance the litigation between August 2020 and May 2021 because discussions regarding future steps do not constitute advancement of an action: *Municipal District of Foothills No 31 v Alston*, 2023 ABCA 46 (*Alston CA*).

[145] I do not accept that characterization. Discussions about future steps are not inherently meaningless; courts must examine the effect of a step on advancing the litigation: *Alston CA* at para 27.

[146] Beginning in November 2020, the Plaintiff sought to establish a litigation plan. The Men Defendants repeatedly delayed a substantive response indicating they were awaiting instructions. The Indepth Defendants only responded approximately two months after the original request, advising that existing professional commitments prevented them from meeting the Plaintiff's proposed timetable. When agreement could not be reached, the Plaintiff applied to the Court, resulting in the April 2021 consolidation order and 2021 Litigation Plan.

[147] By November 2020 the litigation was already moving slowly. In my view, establishing a litigation plan was a significant procedural achievement because it imposed structure, deadlines, sequencing, and accountability on a file that was not moving as it should.

[148] While approximately six months elapsed before the plan was finalized, that delay was principally attributable to the Defendants' lack of responsiveness rather than any failure by the Plaintiff to advance the action.

[149] Accordingly, although this period was lengthy, it does not support a finding of Plaintiff-caused inordinate delay.

v. November 30, 2022 – August 12, 2024 (~ 20 months)

[150] With respect to the final period, the Defendants assert that the delay during this period is inordinate because the Plaintiff failed to meet the deadlines in the 2021 Litigation Plan, and the Plaintiff caused its own bankruptcy and insolvency proceedings. In addition, the Defendants argue that the Plaintiff was obligated to continue prosecuting its claim during insolvency proceedings since the stay of proceedings under the *BIA* only applied to proceedings instituted against the Plaintiff.

[151] Prior to the *BIA* proceedings, the Plaintiff changed counsel. When the Plaintiff proposed new litigation plans, the Defendants expressed concern about moving forward without resolving the security for costs application. The Indepth Defendants expressed concern about how the Baytech partial summary judgment application would impact the Consolidated Action. It appears the Indepth Defendants wanted to consolidate the Consolidated Action and the Baytech Action.

[152] This position is reflected in the Indepth Defendants' application for an order directing the parties, including Baytech, to a case conference to set a litigation plan. Effectively, the Defendants were not prepared to take steps in the Consolidated Action until the interlocutory applications were dealt with.

[153] The Men Defendants obtained security for costs in December 2022. The security for costs hearing and joint case conference application revealed that the Plaintiff's liabilities had been mounting and outpacing its assets since at least 2018, and it had largely been operating as an insolvent person.

[154] The Plaintiff's Notice of Intention to make a proposal under the *BIA* automatically stayed all actions against the Plaintiff: *BIA*, s 69.1(1). The initial stay-and-assemble-proposal period was extended to the end of May 2023: ***Re Goldenkey*** at para 14. The parties disagree about the effect this stay had on the Consolidated Action and the Plaintiff's obligation to prosecute its claim.

[155] The order for consolidation provided that the Indepth Action would be consolidated with and heard as a counterclaim to the Fraud Action. However, the *BIA* stay of proceedings does not affect proceedings brought by the debtor: ***Ghag v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 2009***, 2022 BCCA 360 at para 55, citing ***Jema International v Scholle Canada***, 2013 ONSC 2270 at para 65.

[156] Further, a counterclaim is a claim provable in bankruptcy and is therefore stayed by operation of the automatic stay of proceedings under the *BIA*: ***Jema International*** at paras 65-72. Believing that the *BIA* stay applied the whole Consolidated Action, the Plaintiff argued that its only options were to either: (i) apply to lift the stay of proceedings; or (ii) apply to sever the Consolidated Action.

[157] When the Plaintiff applied to sever the Consolidated Action, the Indepth Defendants opposed and were successful in doing so: ***Re Goldenkey*** at paras 8, 27-28. Ultimately, the Plaintiff still had an ongoing obligation to advance its claim at this time.

[158] As a result of its failed proposal, on May 29, 2023 the Plaintiff was automatically assigned into bankruptcy and all of its property vested in its bankruptcy Trustee: *BIA*, s 71. The Trustee determined that it could not pursue the Fraud Action. In early September 2023, the Trustee circulated a Notice to Creditors to gauge the creditors' interest in acquiring the Fraud Action.

[159] In the Notice, the Trustee indicated that if multiple parties expressed interest in taking assignment of the Fraud Claim, then it would: (i) assign the Fraud Action to multiple parties; or (ii) apply to run an auction to sell the Fraud Action to the highest bidder for the benefit of Goldenkey's creditors.

[160] Since Luck King and Indepth both expressed interest in acquiring Goldenkey's interest in the Fraud Action, in November 2023 the Trustee applied to the court to approve an auction process. On the day of the auction, in mid-December 2023, Luck King (through its nominee, LJ Resources) won the bid, uncontested.

[161] Notably, the sale of the Fraud Action could have happened sooner but for the Indepth Defendants expressing interest in acquiring the claim (which triggered the auction) and then not attending or participating in the auction. This course of conduct rendered the auction process unnecessary.

[162] On January 24, 2024, the Trustee successfully applied to the Court for an order confirming the sale and vesting of Goldenkey's interest in the Fraud Action, among other rights, to LJ Resources. That Order directed the Clerk of the Court to substitute LJ Resources in Goldenkey's place as the Plaintiff in the Fraud Action.

[163] While the Fraud Action was stayed after the Trustee entered into the litigation assignment agreement with LJ Resources in January 2024, pursuant to rule 4.34(1), the period of delay that accrues during a stay under this rule is not deducted from the overall delay: **Edinburgh Tower Development Ltd v Curtis**, 2021 ABQB 239 at para 9, aff'd 2022 ABCA 419, citing **Kametani v Holman**, 2018 ABQB 18 at para 32.

[164] In my view, this period does not demonstrate the type of inactivity that would support a finding of inordinate delay. While the Plaintiff remained responsible for advancing the Fraud Action notwithstanding the BIA proceedings, the litigation during this period was materially affected by the Plaintiff's insolvency, the statutory stays arising under the BIA, the parties' disputes regarding the effect of those stays on the Consolidated Action, the failed proposal proceedings, the bankruptcy process, and ultimately the sale and assignment of the Fraud Action.

[165] Further, some of the delay was attributable to steps taken by the Defendants themselves. These included their opposition to severance, and the Indepth Defendants triggering an auction process that ultimately proceeded without their participation. Viewed in its full context, this period reflects litigation activity directed toward resolving Goldenkey's insolvency and preserving the Fraud Action, rather than a failure to prosecute it.

[166] Accordingly, I do not regard the delay between November 30, 2022 and August 12, 2024 as unreasonable or unjustifiable in the circumstances.

vi. Conclusion on inordinate delay

[167] The mere fact of delay is not fatal: **Transamerica** at para 21. The question is whether the delay is "much in excess" of what is reasonable in the circumstances. Further, I am mindful that "[a] defendant accused of fraud is entitled to have those allegations resolved in a timely manner": **Royal Bank** at para 15, citing **Humphreys** at paras 32 and 123.

[168] There is no doubt the Fraud Action has been delayed. Having regard to the overall delay and gaps between steps, especially the time it took the Plaintiff to serve Mr. Dai's undertaking responses, I find that the delay is much in excess of what is reasonable in the circumstances.

[169] In the result, the Defendants have established that the delay is inordinate.

b. Is the delay inexcusable?

[170] This question requires the Court to consider whether the Plaintiff has accounted for the delay and whether the explanation justifies the pedestrian pace of prosecution: **Morrison v Galvanic Applied Sciences Inc**, 2019 ABCA 207 at para 13. As a general rule, without a credible excuse, the natural inference is that the inordinate delay is inexcusable: **Arbeau** at para 36 citing **Lethbridge Motors Co v American Motors (Canada) Ltd**, 1987 ABCA 150 at para 12.

[171] “Whether the plaintiff has provided a satisfactory explanation or ‘excuse’ for any delay is largely a question of fact”: **Transamerica** at para 41. While the onus lies on the plaintiff to make out a credible excuse, a defendant’s conduct is relevant in assessing whether delay is inexcusable: **Recycling Worx** at para 86; **Transamerica** at para 28; rule 4.31(3).

[172] The Plaintiff submits that any inordinate delay is excusable because: (i) the Defendants’ conduct has largely contributed to delay; (ii) there are no significant gaps of time without explanation; (iii) the Fraud Action is complex so slower progress is to be expected; (iv) the Fraud Action has progressed in the face of the COVID-19 pandemic; and (v) Goldenkey underwent a change in representation and a change in control.

[173] The Indepth Defendants say that the Plaintiff’s argument amounts to five themes to excuse or deflect responsibility for delay: (i) blame-shifting to the Indepth Defendants; (ii) reliance on administrative “steps” and correspondence; (iii) changing counsel; (iv) declarations of a commitment to proceed; and (v) insolvency/bankruptcy of Goldenkey and the assignment of the claim to LJ Resources.

[174] The Indepth Defendants submit that none of these excuses withstand scrutiny and urge the Court should follow the decision of Associate Judge Bilawich in the BC Action and dismiss the Fraud Action for delay.

[175] In addition, the Men Defendants argue that the Plaintiff failed to explain why it did not comply with the deadlines in the 2021 Litigation Plan. Further, they argue that the Plaintiff’s focus on the BIA proceedings is misguided because that stay only stopped actions against the Plaintiff, not actions started by the Plaintiff. According to the Men Defendants, the stay under the BIA had no bearing on the Plaintiff’s obligation to prosecute its claim and comply with the 2021 Litigation Plan.

i. The BC Action

[176] In my view, the BC Action does not assist in determining the merits of the delay applications before me. The Plaintiff commenced the BC Action to preserve the proceeds of the alleged fraud, including a property in Vancouver: **Goldenkey BC** at para 40. Ultimately, the BC Action was dismissed for want of prosecution because the substance of the allegations was being dealt with in the parallel Alberta Fraud Action.

[177] I also note the Court expressly avoided making any findings of fact regarding matters in dispute in the Fraud Action: **Goldenkey BC** at para 8. In the absence of those findings, it would be perverse to defer to the BC Action as dispositive of the current applications.

ii. Defence Conduct

a. The Defendants' contribution to delay

[178] The Alberta Court of Appeal has rejected the proposition that a defendant bears no responsibility for litigation delay. While a plaintiff has the primary obligation to move an action forward, a defendant may only remain passive in the face of plaintiff inaction within limits: *Transamerica* at paras 27 and 31.

[179] When a defendant acquiesces to a leisurely pace of the litigation in the face of their own procedural obligations, a defendant may not use delay it has contributed to as a sword to strike down a plaintiff's claim: *Transamerica* at para 30.

[180] Accordingly, defence delay may be relevant when assessing whether delay is inordinate or excusable, whether prejudice has resulted, and whether the court should exercise its discretion to dismiss the action: *Transamerica* at paras 27-28 and 30.

[181] The Plaintiff submits that the Defendants have consistently employed tactics that have unnecessarily stalled progress. They identify examples of the Defendants' conduct contributing to delay, including:

- (i) unresponsiveness to the Plaintiff's initial request for questioning;
- (ii) taking 10-15 months to deliver a small number of undertaking responses;
- (iii) actively contesting Goldenkey's *BIA* proceedings and prolonging the assignment of the Fraud Action;
- (iv) failing to adhere to their own procedural obligations under the 2021 Litigation Plan;
- (v) failing to bring applications for a substitute corporate representative or for further production;
- (vi) refusing to proceed with the Fraud Action / Consolidated Action if other applications were not dealt with first; and
- (vii) acquiescing to delay.

[182] The Indepth Defendants submit that the Plaintiff is attempting to shift blame by claiming that the timing of the Indepth Defendants' request to examine Goldenkey's former directors was inappropriate. They assert that their requests to examine the former directors date back to at least 2021/2022. Further, they argue that they reasonably refrained from applying to compel earlier because their requests had never been clearly refused, and "[a] party is not required to bring applications it reasonably believes are unnecessary".

[183] Finally, the Indepth Defendants rely on *Alston CA* to argue that administrative steps and correspondence do not relieve a plaintiff of its obligation to drive a matter forward, and sending the occasional letter or email is not good enough.

[184] Most of the Men Defendants' arguments with respect to inexcusable delay focused on the Plaintiff's failure to comply with the 2021 Litigation Plan and the *BIA* proceedings.

[185] In the totality of the circumstances, I find that the Defendants materially contributed to the delay in this litigation. The record demonstrates repeated periods of non-responsiveness and procedural delay. For example, the Indepth Defendants took more than three months to respond to the Plaintiff's request to schedule initial questioning. Certain Men Defendants and the Indepth Defendants also took many months, and in some instances more than a year, to provide undertaking responses despite timelines imposed by the *Rules* and later by the 2021 Litigation Plan.

[186] The Defendants similarly failed to comply with some of their own procedural obligations. The Indepth Defendants did not serve their affidavit of records in the Indepth Action until approximately eight months after receiving the Plaintiff's Statement of Defence. The 2021 Litigation Plan was delayed by the Men Defendants' failure to provide timely instructions and substantive responses regarding the proposed litigation plan.

[187] Further, the Defendants delayed pursuing steps they now characterize as essential to their defence. The Indepth Defendants did not seek to question Goldenkey's former directors until years after information was available that should reasonably have identified those individuals as potentially relevant witnesses.

[188] Finally, aspects of the insolvency proceedings proceeded more slowly because of positions advanced by the Indepth Defendants, including their expression of interest in acquiring the Fraud Action. This led to an auction process that ultimately proceeded without their participation.

[189] The Defendants' conduct clearly demonstrates a level of non-responsiveness inconsistent with their recent complaint that the litigation progressed too slowly, or that resulting prejudice is attributable solely to the Plaintiff. While it is not clear that each example above directly caused additional delay, it signals that the Defendants were content with the overall pace of the litigation: *Royal Bank* at para 21.

b. Questioning Goldenkey's Former Directors

[190] In August 2022 – approximately two years after receiving Mr. Dai's February 2018 undertaking responses and more than six years after the Plaintiff's Statement of Claim was filed – the Defendants advised that questioning for discovery could not close until they questioned certain of Goldenkey's former directors.

[191] The Plaintiff suggests that determining who to question and what information the Defendants needed to mount their defence should not have taken so long. I agree.

[192] It must be remembered that Mr. Song was the CEO of Goldenkey at all material times surrounding the alleged fraud. He, better than anyone, would have known who the relevant actors were, the nature of the communication shared and exchanged with the directors, and who he specifically communicated with and through what medium.

[193] Given his executive role, it is difficult to accept that Mr. Song could not have quickly pointed out gaps in Goldenkey's initial and supplemental disclosure that should have led the Indepth Defendants to seek to question the former directors much earlier than two years after they received Mr. Dai's undertaking responses.

[194] This conclusion is reinforced by the parties' common knowledge that Mr. Dai did not have any firsthand knowledge of the events said to give rise to the Fraud Action. Requesting hundreds of undertakings from Mr. Dai should have come as no surprise where counsel was aware the witness lacked any firsthand knowledge of the circumstances surrounding the cause of action.

[195] If, as the Indepth Defendants argue, the Plaintiff was not responsive to or opposed their request to question the former Goldenkey directors, the obligation lay with the Indepth Defendants to apply under the *Rules* to obtain an order to question them: see rules 5.17(1)(b)(i) and 5.18.

[196] More to the point, there is nothing in the evidence to support the Indepth Defendants' claim that the Plaintiff was obstructionist, as alleged. After receiving the Indepth Defendants' correspondence that questioning would not close in November 2022, the Plaintiff only pointed out that the 2021 Litigation Plan did not contemplate questioning the former directors and asked the Indepth Defendants to identify who they wanted to question, and why.

[197] Notably, the only initial questioning contemplated in the 2021 Litigation Plan related solely to the Indepth Action, not the Fraud Action. If the Indepth Defendants had been seeking to question Goldenkey's former directors since 2021, one would have expected them to include those steps in the 2021 Litigation Plan. They did not, even though five months elapsed between the Plaintiff first proposing a draft of that plan and the parties finally coming to an agreement in April 2021 (approximately eight months after the Plaintiff delivered Mr. Dai's undertaking responses on August 7, 2020).

[198] Knowing that Mr. Dai lacked firsthand knowledge, the Indepth Defendants were well positioned to identify the former directors as necessary witnesses before consenting to that plan. While it was not improper to seek to question certain former Goldenkey directors, any delay resulting therefrom does not lie at the feet of the Plaintiff.

[199] The record demonstrates the potential for that questioning was apparent, or at least reasonably discoverable, well before 2022. If the Indepth Defendants considered the former directors' evidence necessary to their defence, the *Rules* provided a mechanism to acquire it. Delay resulting from their choice not to pursue that evidence earlier cannot fairly be characterized as delay caused by the Plaintiff, nor can it support a finding that the Plaintiff's delay was inexcusable.

iii. No unexplained periods of delay

[200] The Plaintiff submits that gaps in activity in the Fraud Action are not without explanation and that the focus of the rule 4.31 analysis must be on the overall delay rather than discrete gaps in the action, citing *Royal Bank of Canada v Levy*, 2020 ABQB 500 at paragraph 40 [*Royal Bank ABQB*].

[201] In my view, the point made by Justice Yamauchi in **Royal Bank ABQB** was that the analysis under rule 4.31 must be factually driven and that there is no bright line over which delay becomes presumptively inordinate. In any event, the Plaintiff's assertion that the analysis should be exclusively focused on overall delay – and not discrete gaps – is contradicted by the Court of Appeal's decision in the same case:

Both the overall delay, and gaps between steps, are relevant in assessing whether delay is inordinate, and whether it is excusable. "Significant prejudice" resulting from delay can arise at any time during the litigation: **Royal Bank** at para 14.

[Emphasis added]

[202] The ultimate consideration in a rule 4.31 application is significant prejudice, which can result from long or short delays between activity in an action that is otherwise diligently prosecuted. In this case, the largest period of delay is the approximately 2.5 years it took to deliver Mr. Dai's undertaking responses (although I appreciate there was other litigation activity taking place between February 2018 and July 4, 2018, including in the related Baytech Action and Indepth Action).

[203] The Plaintiff seeks to draw a comparison between the time it took to deliver Mr. Dai's initial undertaking responses and the Defendants' response time. Without regard to context, elapsed time alone says little. Responding to a single broad undertaking involving a third party may require substantially more time than numerous straightforward undertakings.

[204] While the Defendants' lengthy response time may undermine their complaint about the overall pace of litigation and prejudice resulting therefrom, the fact that the Defendants may have taken an inordinately long time to respond to undertakings does not itself operate to excuse the Plaintiff.

[205] In the circumstances before me, I accept the Plaintiff's explanation that the time it took to respond to the 216 undertakings sought from Mr. Dai is excusable. The undertakings sought from Mr. Dai frequently required him to obtain information and records from former directors, accountants, financial institutions, and other third parties. Many also required investigations into events that predated Mr. Dai's involvement with Goldenkey.

[206] In those circumstances, the timing of complete responses depended, at least in part, on the cooperation and responsiveness of persons outside the Plaintiff's control. That context materially distinguishes these undertakings from routine requests capable of prompt response.

[207] With respect to the *BIA* proceedings, it appears the Plaintiff was under the mistaken belief that the stay applied to the whole of the Consolidated Action such that it was not required to take any steps to advance the Fraud Action. However, the Plaintiff attempted to sever the Consolidated Action, which was successfully opposed by the Indepth Defendants. In my view, the attempt to sever is evidence that the Plaintiff was trying to take steps to address the stay so that it could advance the Fraud Action.

[208] In the result, while the history of this litigation includes lengthy periods between steps, those periods cannot be assessed in isolation or by reference to elapsed time alone. The principal

periods relied on by the Defendants are explained by the volume and nature of the undertaking requests; the need to obtain information and records from third parties; procedural complications introduced by related proceedings and insolvency; and the Defendants' own choices about when and how to pursue additional questioning.

[209] Those explanations do not eliminate the fact of delay, but they are sufficient to prevent the relevant gaps from being characterized as unexplained or inexcusable.

iv. Complexity of the Fraud Action

[210] The Plaintiff submits that courts have consistently acknowledged that the complexity of a legal action can constitute a reasonable and legitimate justification for delay and that due to the intricate nature of the Fraud Action, it is understandably slower than a more straightforward case.

[211] The nature of the fraud allegations is not legally complex. However, the Fraud Action was procedurally complicated by the number of parties, the irregular timing of steps taken by various parties, ties to the Indepth Action through consolidation, the Baytech Action, various interlocutory applications, the *BIA* proceedings, and the Trustee's determination of claims.

[212] In the result, while I do not consider the Fraud Action complex in and of itself, the procedural history up to this point has not been straightforward or entirely within the Plaintiff's control.

v. COVID-19 pandemic

[213] The Plaintiff submits that the COVID-19 pandemic in March 2020 had an unprecedented impact on judicial systems across Canada. Despite the challenges posed by COVID-19, the Plaintiff argues it made repeated efforts to advance a litigation plan which were repeatedly stymied by delay on the part of the Defendants.

[214] There is no doubt that the pandemic impacted courts, court procedures, the conduct of litigation, and the life of ordinary people across the country and around the world. The Ministerial Order formally recognized the adverse impacts on litigation.

[215] While the pandemic may excuse some delay in 2020 (and the Ministerial Order does just that), it does not excuse delay incurred prior to the pandemic or after the emergency orders were lifted and the lives of ordinary citizens were permitted to return to normal.

[216] In my view, the COVID-19 pandemic explains some disruption in 2020 and forms part of the broader context in which this litigation progressed. It is one factor, among several, that informs my conclusion that some delay was inordinate but not inexcusable.

vi. Insolvency proceedings and change of representation

[217] The Plaintiff argues that the *BIA* proceedings provide a reasonable excuse because those proceedings resulted in: (i) changes of control of the Fraud Action; (ii) statutory stays of proceedings under both the *BIA* and the *Rules*; and (iii) the resolution of both procedural and substantive issues that streamlined the Fraud Action for trial.

[218] The Indepth Defendants submit that bankruptcy is no excuse for delay. They argue that the Plaintiff's financial difficulties were the result of the Plaintiff's failure to operate profitably and secure capital, not the alleged fraud. The Indepth Defendants also submit that LJ Resources must be held responsible for Goldenkey's delay before it took assignment of the Fraud Action since an assignee stands in no better position than the assignor: ***OmniArch Capital Corporation v Bishop***, 2020 ABQB 102 at para 27, *aff'd* 2020 ABCA 472.

[219] The Men Defendants submit that the stay of proceedings under the *BIA* did not affect the Plaintiff's obligation to continue to comply with the 2021 Litigation Plan. Further, they argue that the temporary stay provided by rule 4.34 after the Fraud Action was assigned to LJ Resources does not bear on the Defendants' rule 4.31 application, as the delay caused by the stay under rule 4.34 is not deducted from the total period of delay.

[220] After the Plaintiff was assigned into bankruptcy in May 2023, all its property, including the Fraud Action, vested in the Trustee. "The reason a receivership or a bankruptcy stays litigation is to afford a period of calm in which a receiver or trustee can take the time required to assess the steps it will take to deal with the bankrupt's assets and creditors ... [However] a trustee cannot rely indefinitely on a stay of proceedings or leave litigation in limbo": **2811472 *Canada Inc v Her Majesty the Queen in Right of Canada et al***, 2017 ONSC 1015 at para 49.

[221] Here, the Trustee used the period of calm to determine claims with respect to the Baytech Action and the Indepth Action. The Trustee also concluded it could not pursue the Fraud Action.

[222] The Indepth Defendants' expression of interest in taking assignment of the Fraud Action led to the creation of the auction process, which they did not participate in. Further, the Indepth Defendants successfully opposed severing the Consolidated Action. While the Indepth Defendants were exercising statutory rights available to them in the insolvency process, their actions delayed concluding the *BIA* proceedings and advancing the litigation.

[223] Further, I agree with the Plaintiff that the Trustee's determination of related claims served to streamline the Fraud Action. In that regard, those determinations helped ready the Fraud Action for trial more quickly versus it remaining procedurally encumbered by the Indepth Action and possibly the Baytech Action.

[224] Regarding the Plaintiff's argument that delays arising from changes in legal representation and a shift in the control of an action is excusable delay, I am not persuaded. These are actions taken solely by one party. If those actions cause prejudice to the other party – because they caused inordinate delay – the prejudiced party has every right to seek a remedy. However, in this case, the change of counsel happened relatively quickly and does not appear to have caused any meaningful delay.

[225] In my view, the change in control of the Fraud Action and the related insolvency steps affected the pace of the litigation during the period in which they occurred. However, the Trustee's administration of the estate, the determination of related claims, the assignment process, and the Defendants' own participation in those steps all form part of the context in which the delay must be assessed.

[226] Considered in that context, the pace at which the matter proceeded during this period was largely shaped by the necessary bankruptcy steps, and slowed by the actions of the Indepth Defendants, such that any delay during this period cannot fairly be characterized as inexcusable.

vii. Conclusion on inordinate and inexcusable delay

[227] Although some of the delay was inordinate, I find it excusable. This litigation was complicated by the consolidation of the Indepth Action, many parties, related third party claims, interlocutory applications, and insolvency proceedings.

[228] The Defendants also contributed to the pace of the litigation through periods of unresponsiveness, and the positions they advanced regarding further questioning, the sequencing of procedural steps, and throughout the insolvency proceedings.

[229] While I do not wish to be taken as condoning years-long timeframes to respond to undertaking requests, for the reasons above I accept the Plaintiff's explanation for the delay in providing Mr. Dai's undertaking responses.

[230] In the result, the presumption of significant prejudice does not arise.

c. Has the delay caused significant prejudice?

[231] While my findings preclude the Defendants from relying on a presumption of significant prejudice, if they can establish that the Plaintiff's delay resulted in significant prejudice the Defendants may nevertheless be entitled to a remedy.

[232] "Significant", in the context of rule 4.31, means prejudice that is more than minor or trivial: *Humphreys* at para 128. It must be important enough to justify overriding the Plaintiff's interest in having the action adjudicated on the merits: *Humphreys* at para 128; *Transamerica* at paras 16 and 21.

[233] However, rule 4.31 requires more than proof that the litigation has been burdensome or harmful. The delay must cause or contribute to the alleged prejudice. Prejudice arising on account of the claim itself does not suffice. In other words, an applicant must demonstrate significant incremental prejudice resulting from the delay that justifies dismissing the claim: *Royal Bank* at para 24.

[234] The Indepth Defendants assert that the record shows actual litigation and non-litigation prejudice. The alleged litigation prejudice centres on the impairment of the Indepth Defendants' ability to defend themselves owing to lost or unavailable witnesses; fading memories; lost records; a lost limitations defence; and the loss of the Indepth Action. The alleged non-litigation prejudice centres on severe reputational, commercial, and personal harm.

[235] The Men Defendants argue that they have suffered litigation prejudice due to the Plaintiff's selective preservation of documents and delay in prosecution. The Men Defendants accuse the Plaintiff of employing a strategy whereby they limited the information provided to Mr. Dai and then used Mr. Dai's evidence of when he discovered the secret transactions to

pursue their claims. They contend this was done to favour the Plaintiff and to make cross-examination of the former Goldenkey directors exceedingly difficult due to fading memories and incomplete records.

1. Litigation prejudice

i. Loss of key witnesses

[236] The Defendants submit that the evidence of two key witnesses, Mr. Gui and Mr. Men, is now lost or compromised.

a. Mr. Gui

[237] The Indepth Defendants submit that Mr. Gui's evidence is important because he was a director of Goldenkey during the relevant period. They say his evidence may assist in establishing what was known, discussed, and approved by the GK Board, including matters relevant to a potential limitations defence.

[238] The Indepth Defendants further submit that Mr. Gui was within the Plaintiff's control until recently and that they have long expressed an intention to examine him. While the Defendants obtained letters rogatory seeking the assistance of Chinese authorities, they contend that obtaining evidence from Mr. Gui remains uncertain because he resides in China and is not a compellable witness.

[239] The evidence before me does not establish that Mr. Gui was ordinarily resident in Canada during the relevant period. The record contains several references to Mr. Gui being in China, and the last known address provided by the Plaintiff was an address in China.

[240] The Indepth Defendants have taken some steps to contact Mr. Gui, including email correspondence and obtaining letters rogatory. While those efforts demonstrate that obtaining his evidence may be difficult, they fall short of establishing that it is impossible.

[241] In any event, the Defendants did not make known their desire to question Mr. Gui, or any other former director, until 2022, approximately six years after service of the Statement of Claim. Further, the Defendants only obtained letters rogatory in late April 2025, approximately five months *after* the deemed date of the delay hearing in Justice Silver's 2024 Order (i.e., November 27, 2024).

[242] After receiving Mr. Dai's undertaking responses in 2020, the Defendants were able to determine whether further questioning was required, yet they subsequently consented to the 2021 Litigation Plan without including steps to question former directors.

[243] On the record before me, I am not satisfied that any delay is causally connected to issues surrounding Mr. Gui's compellability. The evidence does not establish that Mr. Gui would have been compellable at an earlier stage of the litigation, or that the delay at issue prevented the parties from obtaining his evidence. As noted, the Defendants did not take any steps to request interjurisdictional assistance to acquire Mr. Gui's evidence prior to the deemed date of the 4.31 hearing in the 2024 Order.

b. Mr. Men

[244] In May 2024, Mr. Men was diagnosed with Amyotrophic Lateral Sclerosis (ALS). He is understandably concerned that his condition may eventually impair his ability to give evidence at trial.

[245] However, the medical evidence does not indicate any immediate concerns regarding Mr. Men's capacity or provide a long-term prognosis. Although formal cognitive testing was not performed, the neurologist noted that Mr. Men's cognition, comprehension, and fluency appeared normal.

[246] If Mr. Men's condition deteriorates such that he is unavailable to testify, I accept that all parties may suffer prejudice. As one of the principals involved in the underlying events his evidence may be important to both the Plaintiff and the Defendants.

[247] However, I am not persuaded that delay has caused prejudice. First, on the evidence before me Mr. Men is presently able to testify in the ordinary course so there is no prejudice.

[248] Second, the assertion that Mr. Men would have testified at trial had the Plaintiff complied with the 2021 Litigation Plan is speculative. It should be remembered that both the Plaintiff and the Defendants failed to comply with the deadlines set out in that plan. There is no way to know whether the matter would have proceeded to trial as the parties then envisaged.

[249] In my view, a *de bene esse* examination is the appropriate means of preserving Mr. Men's evidence. While such a procedure may not be ideal, given Mr. Men's evidence would be acquired in advance of the Plaintiff calling its case, this procedure is specifically designed to address concerns about the future availability of a witness.

[250] Given this procedure, the potential prejudice arising from Mr. Men's diagnosis does not rise to the level of significant prejudice. The parties should proceed expeditiously with the remaining questioning, and the Men Defendants should avail themselves of the available procedural mechanisms to preserve Mr. Men's evidence before his condition deteriorates further.

[251] The Indepth Defendants also argue that Mr. Men's illness creates the risk that his death may impact the recovery dynamics toward the remaining Defendants, if the Plaintiff's claim succeeds. Apart from punitive and exemplary damages, Mr. Men's estate would still be liable for any damages awarded against him, either jointly or severally: see *Survival of Actions Act*, RSA 2000, c S-27, ss 3, 5 and 7.

[252] As above, this argument calls for speculation. Mr. Men has neither passed, nor is his demise imminent. Even if the situation contemplated by the Indepth Defendants were to materialize, it is only the punitive and exemplary damages (if any) that would be affected.

[253] More broadly, the Defendants have not established a causal connection between delay attributable to the Plaintiff and potential prejudice arising from the prospective unavailability of either Mr. Gui or Mr. Men.

ii. Loss of records

[254] The Indepth Defendants submit that relevant emails and banking records have been lost due to delay. They point to the absence of emails from Mr. Liu, Mr. Zhang, and Mr. Gui, and argue it is implausible that no relevant communications concerning the alleged fraudulent scheme existed.

[255] I place limited weight on Mr. Song's second supplemental affidavit. On cross-examination, he admitted several material errors. For example, he sought records from periods beginning before Goldenkey was incorporated, asserted that TD records were missing despite the account having been closed in June 2012, and acknowledged that certain HSBC records he identified as missing had in fact been produced in Mr. Dai's undertaking responses.

[256] Mr. Song had intimate knowledge of Goldenkey's banking arrangements and was well positioned to identify any missing records long before 2025. On the record before me, many of the alleged deficiencies either resulted from errors in Mr. Song's review, or records that had already been produced.

[257] With respect to emails, Mr. Song states that he communicated with Mr. Liu and Mr. Zhang through personal email accounts. He also acknowledged in cross-examination that he used his own personal email account for Goldenkey correspondence and that the account remains active. If those communications exist, it is unclear why they have not been obtained by *either* party.

[258] I am unable to conclude that any delay caused the loss or destruction of records. Mr. Song reviewed Mr. Dai's undertaking responses in 2020, yet the Indepth Defendants did not take steps to address alleged deficiencies in those responses until 2022, when they first sought to question Goldenkey's former directors.

[259] Even then, the Indepth Defendants did not seek to proceed with that questioning until after Justice Silver's 2024 Order. On the evidence before me, the Defendants have not established a causal connection between the delay and the alleged loss of records.

iii. Fading memories

[260] The Defendants submit that they have suffered prejudice due to fading memories. They argue that, by the time Mr. Dai's undertaking responses were provided, Goldenkey's former directors were unable to recall significant details of events that occurred more than a decade earlier.

[261] The Men Defendants further submit that this is not a documents case, and that contemporaneous knowledge of the former directors will be an important issue bearing on whether Mr. Song's knowledge can properly be attributed to Goldenkey. They also suggest the former directors have shielded themselves from questioning by relying on Mr. Dai as Goldenkey's representative.

[262] The Plaintiff responds that the case will largely turn on contemporaneous records, including spreadsheets, banking records, accounting documents, and other documentary evidence.

[263] It is undeniable that memories will have faded by the time this matter reaches trial. However, on these applications, the issue is not whether memories have faded, but whether the Plaintiff's delay caused significant prejudice.

[264] As discussed above, the Defendants bear substantial responsibility for the pace of this litigation. It is noteworthy that the Indepth Defendants did not seek to question Goldenkey's former directors until 2022 (and did not actually question them until 2025) notwithstanding they had reviewed Mr. Dai's undertaking responses in 2020.

[265] If the Defendants believed that further evidence was needed to preserve recollections or address deficiencies in the record, they should have taken timely steps to obtain it. In the circumstances, I am not persuaded that Plaintiff delay is the cause of the potential prejudice arising from faded memories.

iv. Loss of a limitations defence

[266] The Indepth Defendants submit that delay has impaired a potential limitations defence. They argue that the directors' decision to pursue an audit without Mr. Song's involvement demonstrates awareness of possible financial irregularities by late 2013 and supports the position that the claim was discoverable at that time.

[267] They further contend that missing director emails and banking records make it more difficult to establish that the claim was statute-barred when commenced. The Plaintiff responds that the directors communicated through personal email accounts, including Mr. Song's personal account, which remains active.

[268] I need not determine discoverability on this application. Discoverability under section 3 and concealment under section 4 of the *Limitations Act*, RSA 2000, c L-12, remain live issues for trial.

[269] On the record before me, the Defendants' assertion that relevant emails or records have been lost is speculative. The evidence establishes that the directors did not use Goldenkey email accounts and that the Plaintiff has produced the records in its possession that were sought by the Defendants.

[270] In any event, the Defendants received Mr. Dai's undertaking responses in 2020 but did not seek to question the former directors until 2022. If one or more email records were lost from the private accounts used by former directors, I have no way of knowing when that occurred.

[271] Without more, I am not satisfied that any prejudice that may arise in relation to a limitations defence has been shown to result from delay attributable to the Plaintiff.

v. Loss of the Indepth Action

[272] The Indepth Defendants submit that if the Plaintiff had advanced the Fraud Action with reasonable diligence, the Indepth Action could have been heard and adjudicated before bankruptcy, during which the Trustee disallowed the claim. The Indepth Defendants further assert that the Plaintiff is seeking to exploit the consequences of its insolvency and bankruptcy by seeking declaratory relief for the purpose of preventing the Indepth Defendants from relying on the defence of set-off.

[273] In my view, the assertion that if the Plaintiff had advanced the Fraud Action with reasonable diligence, then the Indepth Action could have been adjudicated before the bankruptcy is speculative.

[274] The Indepth Defendants did not serve their affidavit of records in the Indepth Action until seven months after receiving the Plaintiff's Statement of Defence. In addition, the Indepth Defendants did not make any effort to set questioning dates in the Indepth Action until they sought to consolidate the Fraud Action and the Indepth Action.

[275] After Mr. Dai was questioned in the Indepth Action, the Plaintiff delivered their undertaking responses within the 45-day timeframe stipulated in the 2021 Litigation Plan. In contrast, the Indepth Defendants did not serve Mr. Song's undertaking responses or written interrogatories for more than a year. Even after being prompted by the Plaintiff, the Indepth Defendants took more than three additional months.

[276] Further, the Defendants were unwilling to move the Consolidated Action forward until the security for costs application, the Baytech summary judgment application, and related case management issues had been addressed. Their own submissions and proposed litigation schedule contemplated coordinating the Fraud Action with the Baytech litigation and did not target trial readiness until 2024.

[277] In these circumstances, I am unable to conclude that any delay by the Plaintiff caused the loss of the Indepth Action. The proposition that the claim would have been adjudicated before the bankruptcy is speculative and inconsistent with how the Indepth Defendants chose to conduct that litigation.

vi. Adverse impact on expert evidence

[278] The Men Defendants submit that the Plaintiff has not adduced evidence establishing the true market value of the services provided by the Service Companies. They argue that the relationship between Goldenkey, the Service Companies, and the third-party vendors resembles a conventional owner-contractor-subcontractor arrangement, and that expert evidence will be necessary to assess whether any overpayment occurred.

[279] As I understand their position, the Men Defendants say the Plaintiff's delay in obtaining expert evidence is prejudicial because the underlying events will be so historical by the time expert reports are prepared that a fair market assessment will be impaired.

[280] In support, the Men Defendants rely on authorities concerning expert evidence directed at historical standards of care where the opinions depended heavily on witnesses' recollections, verbal communications, and project-specific decision making. This case is materially different.

[281] The Service Agreement defines the parties' relationship and provides the framework within which the impugned transactions occurred. The central issues to which the expert evidence will be directed are whether the Service Companies charged more than fair market value for their services, and whether the Plaintiff suffered a resulting loss.

[282] Although expert evidence may be relevant to both liability and damages, determining the fair market value is principally an objective exercise rooted in documentary and market evidence. The inquiry will focus on what Goldenkey paid for the services and what those services were worth in the market at the time they were provided.

[283] Unlike the circumstances in *Austech QB*, relied upon by the Men Defendants, the determination of fair market value will not depend on fading recollections of conversations, instructions, or changing construction practices. Those matters may explain why certain payments were made, but they are not necessary components of an opinion concerning market value.

[284] Significantly, the Defendants have not adduced any evidence that the passage of time has made a fair market value assessment materially more difficult, less accurate, or otherwise less reliable. They have also not identified any aspect of the proposed valuation exercise that has been impaired by the delay.

[285] In these circumstances, the Men Defendants have not established that any delay in obtaining expert evidence has impaired the quality of that evidence or otherwise caused significant prejudice.

2. Non-litigation prejudice

[286] Allegations of fraud are serious and may exacerbate the stress ordinarily associated with litigation. Courts have recognized that such allegations can cause reputational harm, lost business opportunities, and financial hardship: *Humphreys* at para 31.

[287] The Indepth Defendants submit they have suffered non-litigation prejudice in the form of reputational harm, lost livelihood and business opportunities, delayed retirement, financial hardship, and the physical and emotional toll of unresolved allegations.

[288] The Men Defendants submit the Plaintiff advanced the most damaging allegations available, overstated the value of its claim, and lacked any legitimate basis to allege joint and several liability.

[289] The Plaintiff argues that any assessment of non-litigation prejudice must focus on prejudice caused by the delay, rather than prejudice arising from the allegations or litigation generally. They further contend that the Defendants have not substantiated their claims of reputational, professional, or financial harm.

i. Reputational and financial harm

[290] Mr. Song deposed that the unresolved allegations of fraud harmed his personal and professional reputation, and that members of his family experienced stigma associated with the claim. As an example, Mr. Song described in 2018 where unnamed individuals distributed flyers accusing him of fraud while he delivered a speech at the University of British Columbia. He also pointed to the continued registration of the Certificate of Pending Litigation against the family residence, and the disallowance of the Indepth Action, as sources of financial hardship.

[291] While the Defendants contend these events caused reputational and financial hardship, the relevant question is whether any such hardship was caused by the Plaintiff's delay. On the record before me, I am not satisfied that it was.

[292] The distribution of flyers occurred in 2018, before much of the delay relied upon by the Defendants was incurred. In addition, the Baytech Action independently alleged fraud and other wrongdoing. In my view, these circumstances materially weaken the Defendants' assertion that the alleged prejudice resulted from the Plaintiff's delay.

[293] Nor am I persuaded that the continued registration of the Certificate of Pending Litigation establishes non-litigation prejudice caused by delay. While its registration may have had financial consequences for the Song family, I am not satisfied that those consequences resulted from the Plaintiff's delay as opposed to the existence of the underlying litigation and insolvency proceedings.

[294] I reach the same conclusion regarding the Trustee's disallowance of the Indepth Action. The Indepth Defendants did not appeal the Trustee's determination. More fundamentally, any financial consequence flowing from the disallowance of the Indepth Action assumes that claim would have succeeded. The merits of the Indepth Action have never been adjudicated. In my view, any assertion of financial hardship arising from the disallowance of that claim is speculative.

[295] Accordingly, the Defendants have not established significant non-litigation prejudice attributable to the Plaintiff's delay.

ii. Physical and emotional harm

[296] Mr. Song deposed that he developed lung cancer in 2018 and that the stress of the Fraud Action impeded his recovery. He also deposed that his wife stopped attending a particular dance studio due to stigma arising from the allegations.

[297] There is no admissible evidence regarding the alleged impact on Mr. Song's wife beyond hearsay. While allegations of fraud can undoubtedly cause stress, anxiety, and financial hardship, the focus of this inquiry is whether the Plaintiff's delay caused significant incremental prejudice beyond that ordinarily associated with defending a claim of this nature.

[298] On the record before me, I am not satisfied that the Defendants have established prejudice beyond that ordinarily associated with protracted litigation involving serious

allegations. Nor am I persuaded that any such prejudice is materially attributable to the Plaintiff's delay.

iii. Scope of claim and joint liability

[299] The Men Defendants rely on *Humphreys* to argue that they have suffered non-litigation prejudice. They submit that the allegations impugn their character, have "[hung] like a pall" over them, and that the Plaintiff has overstated the value of its claim.

[300] These are serious allegations. However, whether the Plaintiff has overstated its claim, or whether there is a sufficient basis for joint and several liability, are not issues to be determined on this application.

[301] Allegations of fraud and claims of joint and several liability are common in complex commercial litigation. The mere existence of such allegations does not establish significant prejudice arising from delay.

[302] Ultimately, neither the Indepth Defendants nor the Men Defendants have adduced sufficient evidence of non-litigation prejudice attributable to the Plaintiff's delay. To the extent they have experienced prejudice, I am not persuaded it arises from delay rather than the existence and nature of the allegations themselves.

[303] Courts recognize that allegations of fraud can have serious reputational and financial consequences: *Humphreys* at paras 31-32. However, those consequences flow from the allegations themselves and do not, without more, establish significant incremental prejudice caused by delay. If the Plaintiff is not successful in its claim, the court can recognize the harmful impact of unproven allegations of fraud by awarding substantial costs to defendants.

[304] Finally, I note the Defendants rely heavily on the result in *Humphreys* where the action was dismissed for delay. However, delay applications are fact-specific and "and it is seldom possible to compare the outcome of one case with another": *Transamerica* at para 48. Prior decisions provide guidance on legal principles, not factual outcomes: *R v Kollie*, 2021 ABCA 389 at para 29. On the record before me, I am not satisfied that the Defendants have suffered significant prejudice arising from the Plaintiff's delay.

d. Do the interests of justice favour dismissal?

[305] Even if I concluded that the requirements of rule 4.31 were otherwise met, I would not exercise my discretion to dismiss the Fraud Action.

[306] The conduct of this litigation warrants criticism. The procedural history reflects a pace that falls well short of what the Court and the public are entitled to expect from parties engaged in serious commercial litigation involving allegations of fraud and losses said to exceed \$9 million.

[307] Those serious allegations were permitted to languish for years while the parties proceeded at a pace wholly disproportionate to the importance of the issues, the amount at stake,

and the stigma that unresolved allegations of dishonesty inflict on all concerned. Justice delayed is justice denied: **R v Jordan**, 2016 SCC 27 at para 19.

[308] However, rule 4.31 is not intended to permit a defendant to contribute to litigation delay and then wield that delay as a sword to defeat the claim. The Court of Appeal has repeatedly recognized that a defendant's conduct remains relevant to the exercise of discretion.

[309] Throughout this litigation, the Defendants contributed to the slow pace of the proceedings. The Plaintiff's efforts to schedule initial questioning were met with prolonged periods of non-responsiveness. The Defendants took many months, and in some instances more than a year, to provide undertaking responses that were required much more expeditiously under the *Rules* and litigation plans to which they had consented.

[310] The Defendants also delayed pursuing certain steps that they now say were critical to their defence. The Indepth Defendants received Mr. Dai's undertaking responses in 2020 but did not seek to question Goldenkey's former directors until 2022, despite knowing that Mr. Dai lacked firsthand knowledge of the events underlying the claim. They also consented to the 2021 Litigation Plan without including those steps.

[311] In addition, the Defendants repeatedly took the position that further progress in the Fraud Action should await the determination of other matters, including a security for costs application, aspects of the Baytech litigation, related interlocutory applications, and issues arising from Goldenkey's insolvency proceedings. Those positions slowed the Fraud Action.

[312] The insolvency proceedings are a clear illustration. The Indepth Defendants successfully opposed severance of the Consolidated Action; expressed interest in acquiring the Fraud Action from the Trustee, thereby triggering a more elaborate sale process; and then declined to participate in that process. While they were entitled to pursue those positions, the resulting delay cannot fairly be laid at the Plaintiff's feet.

[313] This is not a case where a diligent defendant repeatedly pressed an indifferent plaintiff to move the matter forward. Rather, the record reflects prolonged periods during which all parties proceeded slowly. In my view, the Defendants were content to proceed unhurried for many years and, at times, contributed to that slow pace.

[314] Dismissal of a serious fraud claim in these circumstances would not advance the foundational purposes of the *Rules*. Instead, it would risk permitting parties who materially contributed to the delay to obtain a windfall based on consequences they helped create.

[315] The allegations describe a fraudulent scheme resulting in losses over \$9 million, which have not been adjudicated on their merits. In my view, given the procedural history of this case, terminating the action for delay would be a disproportionate remedy. The interests of justice favour permitting the parties' claims and defences to be resolved at trial.

[316] However, the Court's refusal to dismiss the action should not be mistaken for approval of the conduct at issue. Too much delay was self-inflicted, too much was tolerated, and some was actively contributed to by the very parties who now complain of it. Neither side emerges from the circumstances before me able to claim the mantle of diligence.

[317] The administration of justice is poorly served when litigation is treated as something to be managed intermittently rather than advanced diligently. All parties must now ensure this action proceeds expeditiously toward trial.

VIII. Conclusion

[318] After reviewing the entire action I have determined that this litigation has suffered from inordinate delay. However, in the totality of the circumstances I find the delay was excusable and that it did not result in significant prejudice to the Defendants. In the result, the Delay Applications are dismissed.

[319] As the successful party, the Plaintiff is entitled to its costs on these applications. If the parties are unable to agree on costs, the Plaintiff may file and serve its position in writing within 30 days of this decision. The Defendants shall file and serve any response not more than 15 days later. In all cases, the submission of a party shall not exceed four pages, excluding authorities and other relevant materials such as a Bill of Costs.

[320] Further, the parties are directed to schedule a date to hear the Plaintiff's declaration application as soon as practicable, and to schedule the next case management meeting before me to occur in September 2026.

[321] Counsel for the Plaintiff shall draft the order arising from these reasons.

Heard on the 11th day of December 2025.

Dated at the City of Calgary, Alberta this 14th day of August 2026.

D. Jugnauth
J.C.K.B.A.

Appearances:

K. Marlowe KC, Osler Hoskin & Harcourt LLP, and
T. Wagner and H. Richardson, Blake Cassels & Graydon LLP
for the Indepth Defendants

L. Rasmussen, De Waal Law
for the Men Defendants

B. West, J. Bierkos, L. Delamont, E. Ward, and J. Corrigan, McCarthy Tétrault LLP
for the Plaintiff