

Court File No.

FEDERAL COURT
GEOPHYSICAL SERVICE INC.

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by
ATTORNEY GENERAL OF CANADA

Defendant

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND
LABRADOR as represented by ATTORNEY GENERAL OF
NEWFOUNDLAND

Defendant

HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA as represented by
ATTORNEY GENERAL OF NOVA SCOTIA

Defendant

HER MAJESTY THE QUEEN IN RIGHT OF QUEBEC as represented by
ATTORNEY GENERAL OF QUEBEC

Defendant

AMENDED STATEMENT OF CLAIM

e-document	T-1023-17
FEDERAL COURT COUR FÉDÉRALE	D É P O S É
Jul 27, 2018	
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Calgary, ALTA	

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Solicitors for the Plaintiff
File #: 434340-000035

Court File No.: T-1023-17

FEDERAL COURT

GEOPHYSICAL SERVICE INC.

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by
ATTORNEY GENERAL OF CANADA

Defendant

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LABRADOR as represented by ATTORNEY GENERAL OF
NEWFOUNDLAND

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ATTORNEY GENERAL OF NOVA SCOTIA

Defendant

HER MAJESTY THE QUEEN IN RIGHT OF QUEBEC as represented by
ATTORNEY GENERAL OF QUEBEC

Defendant

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

July _____, 2018

Issued by:

(Registry Officer)

Address of local office: Federal Court of Canada
 Calgary Office
 635 – 8th Ave. SW
 Calgary, AB T2P 3M3

TO: The Administrator
 Federal Court of Canada

AND TO: Attorney General of Canada
 c/o the Clerk of the Court

Attorney General of Newfoundland and Labrador
 Office of the Minister
 Department of Justice and Public Safety
 4th Floor, East Block
 Confederation Building
 P.O. Box 8700
 St. John's, Newfoundland A1B 4J6

Attorney General of Nova Scotia
 Department of Justice
 7th Floor, 1690 Hollis Street
 Halifax, Nova Scotia
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 P.O. Box 7
 Halifax, Nova Scotia
 B3J 2L6

Attorney General of Quebec
 Ministère de la Justice
 9e étage, Édifice Louis-Philippe-Pigeon
 1200, route de l'Église
 Québec G1V 4M1

Copyright Board of Canada
 Suite 800 - 56 Sparks Street
 Ottawa, Ontario K1A 0C9

CLAIM

1. The Plaintiff seeks the following relief against the Defendants:
 - a. Monetary relief exceeding \$50,000, with this action to proceed as a regular action;
 - b. In respect of *de facto* expropriation and the resulting injurious affection:
 - i. A declaration that the Legislation has resulted in the *de facto* expropriation, regulatory or constructive taking of GSI's copyright and confidentiality in the Seismic Data, the Licensing Agreements, the Licensing Obligations and the Goodwill;
 - ii. Compensation, judgment or damages for the Seismic Data which was *de facto* expropriated or taken from GSI by the Defendants, as identified in 1(b)(i), including, without limiting the foregoing, the market value of the Seismic Data, the Licensing Agreements, the Licensing Obligations and the Goodwill, and the damages attributable to or associated with the *de facto* expropriation, regulatory or constructive taking, in an amount to be determined at trial; and
 - iii. Compensation, judgment or damages for the injurious affection, including, but without limiting the foregoing, the reduction in market value of the Licensing Agreements, the loss of the Licensing Obligations, and the loss of the Goodwill, and related business damages caused by the Defendants as a result of the *de facto* expropriation, regulatory or constructive taking, in an amount to be determined at trial;
 - c. A declaration that future disclosure of Seismic Data will result in a *de facto* expropriation, regulatory or constructive taking of the Seismic Data

- d. A declaration that, as a result of the *de facto* expropriation, regulatory or constructive taking of the Seismic Data, the Defendants will owe compensation in the form of royalties or a tariff, as determined by this Court or the Copyright Board of Canada;
- e. An Order requiring the Defendants and their agents to comply with principles of natural justice and procedural fairness by providing notice to GSI of each instance of disclosure of its Seismic Data under the Legislation;
- f. If it is fully and finally determined that the Legislation is a compulsory licensing scheme, then an order of mandamus as against the Defendant, the Attorney General of Canada, to mandate the Copyright Board of Canada to administer the compulsory licensing scheme created by the Legislation;
- g. In the alternative, restitution for unjust enrichment of the Defendants for the taking of GSI's copyright and confidentiality in the Seismic Data, the Licensing Agreements, the Licensing Obligations and the Goodwill, including, but not limited to, a constructive trust over all benefits and monies received by the Defendants in connection with the disclosure of the Seismic Data pursuant to the Legislation;
- h. In the alternative, damages for losses incurred as a result of the torts and misconduct of the Servants and Canada, including for deceit, misrepresentation, misfeasance of public office, and the confiscation, *de facto* expropriation, or unauthorized, regulatory or compulsory taking of the Seismic Data, the Goodwill, the Licensing Obligations and Licensing Agreements;
- i. Pre-judgment and post-judgment interest in an amount to compensate GSI for the loss of opportunity as a result of the conduct of the Defendants complained of herein and on any judgment;

- j. Solicitor-client full indemnity costs; and
- k. Such further and other relief as this Honourable Court may deem just.

PARTIES

2. The Plaintiff, Geophysical Service Incorporated (“GSI”), is a corporation formed under the laws of Canada with its head office in Calgary, Alberta and has carried on business in Alberta and elsewhere. GSI has predecessors in interests and assignors of interests, relevant to this Action, which were incorporated in the United States of America (the “Predecessors”). The Predecessors assigned all of their interests related to the Seismic Data to GSI, including the proprietary rights in the Seismic Data, the books and records that recorded the Representations, the Licensing Agreements and the Licensing Obligations.
3. At relevant times, GSI has provided seismic data services to the oil and gas industry, including non-exclusive seismic data acquisition, and licensing, storage and processing of seismic, gravity and magnetic data.
4. The Defendant, Her Majesty the Queen in Right of Canada (“Canada”), is represented by the Attorney General of Canada, pursuant to section 23 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50. Canada is vicariously liable for the actions of its servants, including public officials (the “Servants”), pursuant to section 10 of the *Crown Liability and Proceedings Act*.
5. The Defendant, Her Majesty the Queen in Right of the Province of Newfoundland and Labrador, is represented by the Attorney General of Newfoundland and Labrador (“Newfoundland”), pursuant to the *Proceedings Against the Crown Act*, RSNL 1990 c P-26.
6. The Defendant, Her Majesty the Queen in Right of the Province of Nova Scotia, is represented by the Attorney General of Nova Scotia (“Nova Scotia”), pursuant to the *Proceedings against the Crown Act*, RS, c 360.

7. The Defendant, Her Majesty the Queen in Right of the Province of Quebec, is represented by the Attorney General of Quebec ("Quebec").

REGULATORY LEGISLATION

8. Pursuant to various regulations, including:
 - a. the Canada Oil and Gas Land Regulations, SOR 61-253, under the *Territorial Lands Act*, RSC 1952, c 263, as amended;
 - b. the Canada Oil and Gas Geophysical Operations Regulation, SOR/96-117 (“COGOA Regulations”), under the *Canada Oil and Gas Operations Act*, RSC 1985, c O-7 (“COGOA”);
 - c. the Newfoundland Offshore Area Petroleum Geophysical Operations Regulations, SOR 95-334, under the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*, SC 1987, c 3, as amended and mirror Legislation;
 - d. the Nova Scotia Offshore Petroleum Geophysical Operations Regulations, NS Reg 191/95, under the *Canada-Nova Scotia Offshore Atlantic Accord Implementation Act*, SC 1988, c 28, as amended and mirror legislation
(collectively, the “Submission Legislation”)

GSI and the Predecessors were required to submit marine seismic data that GSI and the Predecessors created as listed in Schedule “A” hereto (the “Seismic Data”), including in some cases, digital copies of the Seismic Data and Seismic Data which was created prior to the Legislation being enacted, to various crown agencies between 1969 and present, including:

- e. Canada Oil and Gas Lands Administration;
 - f. Northern Affairs Canada;
 - g. National Energy Board (Frontier Information Office);
 - h. Canada Newfoundland and Labrador Offshore Petroleum Board (“CNLOPB”); and
 - i. Canada Nova Scotia Offshore Petroleum Board (“CNSOPB”)
(collectively, the “Crown Agencies”).
9. The provisions of the Submission Legislation pursuant to which GSI and the Predecessors submitted the Seismic Data to the Crown Agencies are

listed in Schedule “B” hereto. The Seismic Data was also unilaterally transferred and shared between the Crown Agencies without knowledge or involvement of GSI and the Predecessors.

10. The Defendants are liable for all relevant actions undertaken or omissions made by the Crown Agencies.
11. GSI’s Canadian marine seismic data is a significant component of GSI’s total seismic data assets.
12. As required by the Submission Legislation, GSI and the Predecessors submitted the Seismic Data, in confidence, to the Crown Agencies, in formats as required by the Submission Legislation and the Crown Agencies.
13. GSI has extensively reprocessed the Seismic Data since it was created and obtained, which has increased the value and marketability of the Seismic Data.
14. From time to time, the Crown Agencies have requested that GSI submit copies of the Seismic Data in various formats, including reprocessed and digital formats, pursuant to the Submission Legislation.
15. From time to time, third party licensees of the Seismic Data have also submitted the Seismic Data in various formats, including reprocessed and digital formats, purportedly pursuant to provisions in the Legislation, in breach of the Licensing Agreements, receiving benefits from the Defendants therefor that GSI has been denied.
16. The Submission Legislation also requires GSI to retain the Seismic Data, including all of the processed forms of the Seismic Data, in Canada and, if GSI elects to remove the Seismic Data or any processed form of the Seismic Data from Canada, the Crown Agencies are entitled to require copies thereof prior to the removal from Canada of the Seismic Data or any processed form of the Seismic Data.
17. As further explained below, the Seismic Data is confidential and is protected by copyright and GSI and the Predecessors have always communicated the confidentiality of the Seismic Data and its copyright protection to recipients of the Seismic Data, including the Crown Agencies

to which it submitted the Seismic Data pursuant to the Legislation. But for the Legislation and the Representations, GSI and the Predecessors would not have provided the Seismic Data to the Crown Agencies or the Defendants.

18. GSI and the Predecessors have not, impliedly or expressly, authorized, granted or consented to the granting of a licence, in any form, to the Defendants in respect of the Seismic Data to do any activities that are exclusive to the copyright owner under the *Copyright Act*, RSC 1985, c C-42, or to do any activities in breach of GSI's and the Predecessors' confidentiality in the Seismic Data.
19. Pursuant to various statutes and regulations, including:
 - a. the *Canada Oil and Gas Land Regulations*, SOR 61-253, under the *Territorial Lands Act*, RSC 1952, c 263, as amended;
 - b. the *Canada Oil and Gas Act*, SC 1981, c 81, as amended ("COGA");
 - c. the *Canada Petroleum Resources Act*, RSC 1986, c C-36 (2nd Supp), as amended ("CPRA");
 - d. the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*, SC 1987, c 3, as amended and mirror legislation;
 - e. the *Canada Nova Scotia Offshore Atlantic Accord Implementation Act*, SC 1988, c 28, as amended and mirror legislation; and
 - f. any legislation implementing the Accord between the Government of Canada and the Government of Quebec for the shared management of the petroleum resources in the Gulf of St. Lawrence

(collectively, the "Disclosure Legislation", and together with the Submission Legislation, the "Legislation"),

the Courts have determined that the Seismic Data is disclosable to third parties, including, without limiting the foregoing, oil and gas companies,

competitors of GSI, researchers and the general public (the “Third Parties”), after a “privilege” period. The Crown Agencies have unilaterally extended the privilege period in some circumstances by policy. The provisions of the Disclosure Legislation pursuant to which the Crown Agencies have asserted their rights to disclose the Seismic Data to Third Parties are listed in Schedule “C” hereto.

20. Pursuant to the Disclosure Legislation, to the best of GSI’s knowledge, and within the knowledge of the Defendants, portions of the Seismic Data have been disclosed to the Third Parties from time to time and will continue to be disclosed in the future. That disclosure has been unilaterally expanded over the relevant period of time.
21. GSI has never been notified by the Defendants that the Seismic Data was disclosed to the Third Parties as required by the principles of natural justice and procedural fairness where the exercise of discretion arises.

COPYRIGHT

22. The Seismic Data is comprised of original literary, artistic and sound recording works, within the meanings ascribed to such terms pursuant to the *Copyright Act* and its predecessor legislation, and the Copyright Laws of the United States pursuant to 17 USC and its predecessor legislation, created by GSI employees during the course of their employment or the copyright thereto has been acquired from other predecessor entities, including entities incorporated in the United States of America, that authored and owned the copyright in the Seismic Data.
23. GSI owns the copyright in the Seismic Data. GSI’s exclusive rights in copyright in the Seismic Data are guaranteed by the *Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, as revised by the Paris Act of 1971*, and the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, signed in Rome on October 26, 1961*, both

as implemented in section 91 of the *Copyright Act*.

24. Other than when disclosed pursuant to the Disclosure Legislation, the Seismic Data has:
 - a. not been, or will not be, produced, reproduced, published or distributed;
 - b. not been, or will not be, translated;
 - c. not had, or will not have, derivatives made therefrom or portions thereof; and
 - d. not been authorized for the foregoing by third parties,
 without the exclusive authorization of GSI and the Predecessors, as the exclusive owner of the Seismic Data and the copyright therein. GSI and the Predecessors have not granted the Defendants a licence to do any of the foregoing with the Seismic Data.
25. GSI and the Predecessors have not assigned its copyright to the Defendants, GSI and the Predecessors have not granted the Defendants any copyright licence, and GSI and the Predecessors have not authorized, consented nor acquiesced to that conduct of the Defendants which is inconsistent with exclusive rights of the owner of copyright under the *Copyright Act*, resulting in all uses by the Defendants being in breach of the *Copyright Act*.
26. Further, the Third Parties that obtained the Seismic Data from the Defendants were not assigned GSI's copyright, granted a copyright licence by GSI and the Predecessors, nor authorized by GSI and the Predecessors to use the Seismic Data in any manner inconsistent with the exclusive rights of the owner of copyright under the *Copyright Act*, nor did GSI and the Predecessors consent or acquiesce to same, resulting in all uses of the third party recipients constituting infringement of the copyright in the Seismic Data under the *Copyright Act*.
27. The Copyright Board of Canada has not, to date, determined royalties under the Legislation, or otherwise administered any compulsory licensing scheme under the Legislation, in respect of the activities of the Defendants in dealing with the Seismic Data.

CONFIDENTIAL INFORMATION

28. GSI and the Predecessors have consistently treated the Seismic Data as a trade secret, or alternatively, as confidential information, such that the Seismic Data has the necessary quality of confidence about it.
29. GSI and the Predecessors have always communicated the Seismic Data to recipients, including, without limiting the foregoing, the Defendants, in circumstances imparting an obligation of confidence.
30. GSI and the Predecessors have not granted the Defendants a licence in respect of the Seismic Data, nor has it authorized or consented to the Defendants to use the Seismic Data, resulting in any disclosure of the Seismic Data by the Defendants being contrary to the confidentiality maintained by GSI and the Predecessors in the Seismic Data, which is, and has been, unauthorized and to the detriment of GSI.

LICENSING AGREEMENTS

31. From time to time, GSI and the Predecessors entered into licensing arrangements of the Seismic Data with third party licensees (the "Licensing Agreements"). Pursuant to the Licensing Agreements, the licensees thereunder (the "Licensees") are generally obligated to GSI to:
 - a. not disclose the Seismic Data to any third party, unless explicitly permitted under the Licensing Agreements and only pursuant to restrictions that are agreeable to GSI;
 - b. not submit the Seismic Data to the Crown Agencies;
 - c. pay for acquiring access from the Crown Agencies to other portions of the Seismic Data not licensed by the Licensees; and
 - d. pay for distributing, disseminating, reproducing for and otherwise making accessible the Seismic Data to other third parties

(collectively, the “Licensing Obligations”).

32. From time to time, the Licensees have failed to fulfill the Licensing Obligations, relying upon the Legislation in defence of breach of the Licensing Agreements.

GOODWILL

33. Throughout the course of its operations and business in Canada, GSI has built, and has had, a reputation of obtaining or creating high-quality marine seismic data, creating high-quality processed and reprocessed forms of seismic data, including the Seismic Data, and maintaining reasonable terms in the Licensing Agreements.
34. As a result of that strong and well-known reputation, GSI built a strong customer base and was a leader in the area with substantial goodwill in its name and its seismic data, including the Seismic Data (collectively, the “Goodwill”).

***DE FACTO* EXPROPRIATION, REGULATORY OR CONSTRUCTIVE TAKING OF THE SEISMIC DATA, THE LICENSING AGREEMENTS, THE LICENSING OBLIGATIONS AND THE GOODWILL**

35. But for the Legislation, the Defendants would not be in possession of the Seismic Data nor entitled to use of the Seismic Data without a license, consent or authorization otherwise from GSI, as exclusive owner thereof and the rights therein.
36. As a result of the Legislation, through the conduct of the Defendants pursuant to the Legislation and their actions beyond the scope of the Legislation and sometimes prior to the expiry of the privilege period under the Disclosure Legislation, contrary to the proprietary rights of GSI, the Defendants have, from time to time, taken or regulated away most or all reasonable uses of the Seismic Data, without providing GSI compensation

for same.

37. The Legislation has been deemed by the Courts to be “confiscatory”.
38. The Courts have deemed that, as a result of the Legislation, the exclusivity of GSI’s private property rights, including copyright and confidentiality in the Seismic Data, has ended.
39. GSI is unable to license, sell, assign, transfer or in any way exercise its otherwise exclusive proprietary rights over the Seismic Data since it is available to the public for free pursuant to the Legislation. The Courts have determined that the exclusivity of GSI’s rights under the *Copyright Act* and the Berne Convention expire at the end of the privilege period under the Disclosure Legislation and that GSI has no ability to interfere with the Crown Agencies’ decisions regarding the Seismic Data. As a result, GSI has lost all reasonable uses of the Seismic Data.
40. If it is determined that, as a result of the Legislation, the Licensing Agreements and the Licensing Obligations have been undermined and GSI’s rights thereunder have been taken or regulated away without a provision for compensation to GSI for same, then:
 - a. the reasonable uses of the Licensing Agreements and the Licensing Obligations have been taken or regulated away by way of *de facto* expropriation, regulatory or constructive taking; or in the alternative,
 - b. GSI has suffered damages related to its loss of rights under the Licensing Agreements and the Licensing Obligations, as a result of the injurious affection or consequential losses caused by the *de facto* expropriation, regulatory or constructive taking of the Seismic Data.
41. As a result of the Legislation, all reasonable uses of GSI’s licensing business for the Seismic Data and the Goodwill have been taken or regulated away, without provision for compensation to GSI for same, and:
 - a. the Goodwill has been *de facto* expropriated or taken; or in the alternative,

- b. GSI has suffered damages related to its loss of the Goodwill, as a result of the injurious affection or consequential losses caused by the *de facto* expropriation, regulatory or constructive taking of the Seismic Data.
- 42. In the alternative, as a result of the Defendants' *de facto* expropriation, regulatory or constructive taking of the Seismic Data, the Goodwill was severely impaired and GSI suffered damages as a result.
- 43. The Legislation does not exclude GSI's right to compensation for *de facto* expropriation, regulatory or constructive taking. GSI is entitled to compensation from the Defendants for the *de facto* expropriation, regulatory or constructive taking of the Seismic Data.
- 44. GSI has not received any compensation from the Defendants for the *de facto* expropriation, regulatory or constructive taking of its copyright and confidential information in the Seismic Data, the Licensing Agreements, the Licensing Obligations or the Goodwill.
- 45. The Defendants know that the Seismic Data has commercial value, is confidential other than pursuant to the Legislation, and is a proprietary asset of GSI who is the exclusive owner of the copyright therein that provides it with a competitive advantage in the market.
- 46. Alternatively, if the Disclosure Legislation is fully and finally determined to be a compulsory licensing scheme, that compulsory scheme requires compensation in the form of royalties payable by the Defendants, in an amount to be determined, by this Court or by the Copyright Board of Canada.
- 47. The Defendants have benefitted from disclosure of the Seismic Data, including, *inter alia*, through:
 - a. gaining the ability to make public the Seismic Data to interested parties that would not otherwise have access to the knowledge and information contained in the Seismic Data;
 - b. promoting oil and gas exploration, development and production through use of the Seismic Data;

- c. gaining a greater degree of control on the timing, development, rate and level of exploration, development and production of oil and gas resources in their jurisdictions through use of the Seismic Data;
 - d. increasing oil and gas exploration, development and production through use of the Seismic Data;
 - e. receiving royalties from oil and gas production from projects for which the Seismic Data was used;
 - f. gaining independence in oil and gas resources, having oil and gas available from local production instead of foreign production, through promotion and encouragement of local resources through use of the Seismic Data;
 - g. receiving taxes from employees of the companies which receive copies of the Seismic Data or are relieved from their rights under the Licensing Agreements and the Licensing Obligations, including:
 - i. oil and gas companies;
 - ii. seismic data companies who distribute the Seismic Data; and
 - iii. copy companies who distribute the Seismic Data; and
 - h. gaining economic benefit for the benefit of all residents in the Canada, with a corresponding political benefit.
48. GSI claims compensation against the Defendants for the foregoing *de facto* expropriation, regulatory or constructive taking, in an amount to be determined at trial.

INJURIOUS AFFECTION OR CONSEQUENTIAL LOSSES

49. The Defendants have failed to pay prompt or adequate compensation to GSI in relation to the *de facto* expropriation, regulatory or constructive taking which has caused GSI to incur further losses, in an amount to be determined

at trial.

50. In addition to the loss GSI has suffered as a result of the *de facto* expropriation, regulatory or constructive taking of its copyright and confidentiality in the Seismic Data, the Licensing Agreements, the Licensing Obligations and the Goodwill, and the Defendants' failure to pay prompt or adequate compensation in respect thereof, GSI has suffered other associated personal and business damages as a result, in an amount to be determined at trial, because it was forced to sell or close the following, ending its ability to continue operating its seismic acquisition business and its processing business:

- a. GSI's seismic ships and related seismic equipment; and
- b. GSI's processing center and related processing equipment.

51. In the alternative, GSI has suffered losses as a result of the *de facto* expropriation, regulatory or constructive taking of its copyright and confidentiality in the Seismic Data, including, without limiting the foregoing, the following, resulting in damages in an amount to be determined at trial:

- a. the reduction in market value of the Licensing Agreements and the Licensing Obligations;
- b. the loss of its rights under the Licensing Agreements and the Licensing Obligations;
- c. the loss of the Goodwill, including in its seismic licensing business, its seismic acquisition business and its processing business; and
- d. losses resulting from GSI being forced to sell or close the following, ending its ability to continue operating its seismic acquisition business and its processing business:
 - i. GSI's seismic ships and related seismic equipment; and
 - ii. GSI's processing center and related processing equipment.

PAST AND FUTURE DISCLOSURE

52. To the best of GSI's knowledge, and within the knowledge of the Defendants, portions of the Seismic Data submitted by GSI pursuant to the Submission Legislation and following demands by the Crown Agencies, have not yet been disclosed to the Third Parties.
53. To date, neither the Defendants nor their agents have notified GSI when the Seismic Data was disclosed to the Third Parties, contrary to the principles of natural justice and procedural fairness.
54. GSI seeks an order requiring the Defendants or their agents, including the Crown Agencies, to notify GSI of each instance of past and future disclosure of the Seismic Data.

UNJUST ENRICHMENT

55. Further, or in the alternative, the Defendants have been unjustly enriched by the disclosure of the Seismic Data.
56. The Defendants have benefitted from disclosure of the Seismic Data, as detailed above.
57. GSI has correspondingly been deprived over time, and continues to be deprived and will be deprived, of its copyright and confidential information in the Seismic Data, the Licensing Agreements, the Licensing Obligations and the Goodwill, without juristic reason, including, but not limited to:
 - a. loss of licensing fees;
 - b. loss of control of the Seismic Data to control the market and competitiveness of GSI's businesses;
 - c. loss of value of the Seismic Data;
 - d. loss of GSI's business to continue acquisition and processing of seismic data;
 - e. interference with GSI's contractual relations with current and prospective licensees; and

f. loss of business opportunities.

58. The Defendants have not provided consideration to GSI in return for the benefits it received, a necessary component of a compulsory licensing scheme, or compensation for the *de facto* expropriation, regulatory or constructive taking of the copyright or confidentiality in the Seismic Data, and as such, there is no juristic reason for the benefit obtained by the Defendants, all to the detriment of GSI.
59. The federal portions of the Legislation are *ultra vires* Canada's legislative power under the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), as infringing on the provincial power in respect of property and civil rights under section 92(13) of the *Constitution Act*, including confidential information. The provincial portions of the Legislation are *ultra vires* the provincial Defendants' legislative powers under the *Constitution Act*, as infringing on the federal power in respect of Copyrights under section 91(23) of the *Constitution Act*. Therefore, those aspects of the legislation do not provide juristic reason for disclosure of the Seismic Data as they are *ultra vires* their respective jurisdictional powers.

TORTS AND MISCONDUCT COMMITTED BY SERVANTS AND CROWN

60. GSI states, and the fact is, that Canada and the Servants engaged in various activities, including, but not limited to, the following representations to, communications with, practices, intentional omissions and deceit of GSI and the Predecessors, against the background of the following relevant and material facts:
 - a. Throughout the relevant and material times when GSI and the Predecessors submitted seismic data under the Submission Legislation, the purpose of the Submission Legislation was for safety and environmental regulation, not for the purpose of the Disclosure Legislation to promote Canadian offshore oil and gas development, representing to GSI and the Predecessors that the

Seismic Data was only required by Canada for the purpose of safety and environmental regulation, when in fact, Canada has, on occasion, represented that the purpose of the Disclosure Legislation also applies to the submission of the Seismic Data to Canada, thereby intentionally deceiving GSI and the Predecessors.

- b. Throughout the relevant and material times, the permits issued to GSI and the Predecessors under the Submission Legislation did not indicate any connection to the Disclosure Legislation and represented by omission that the Seismic Data would not be disclosed as they failed to refer to either disclosure or copying, thereby intentionally deceiving GSI and the Predecessors.
- c. Throughout the relevant and material times, the Disclosure Legislation has not employed the term “copy”, has not referred to the *Copyright Act*, has not amended the *Copyright Act* and has not been enacted notwithstanding the *Copyright Act*, representing to GSI, the Predecessors and the Canadian public that copying or reproduction of the Seismic Data was not intended by the terms “release” or “disclosing” with reference to the Seismic Data.
- d. Throughout the relevant and material times, and alternatively, at least since the 1990s, the Crown Agencies have represented, at their offices where the Seismic Data is held, that intellectual property laws of Canada must be respected, including copyright, when accessing the Seismic Data.
- e. Throughout the relevant and material times, and alternatively, at least since the 1990s, the Crown Agencies have employed liability forms that are executed by the Third Parties accessing the Seismic Data, representing that intellectual property laws of Canada, including copyright, would be abided by those third parties.
- f. In or around the 1970s to 1980s, Newfoundland represented to the Predecessors that disclosure of the Seismic Data was not possible without mutual agreement with the Predecessors as to that disclosure. At all relevant times, including prior to the creation of the CNLOPB, Newfoundland and Canada coordinated their practices with respect to seismic data.
- g. In or around the 1970s to 1980s, Nova Scotia represented that seismic data need not be submitted by the geophysical contractor, but only the exclusive licensee. At all relevant times, including prior to the creation of the CNSOPB, Nova Scotia and Canada coordinated their practices with respect to seismic data.

- h. In or around 1976, the Servants and Canada prepared and issued the 1976 Statement of Policy: Proposed Petroleum and Natural Gas Act and New Canada Oil and Gas Land Regulations, which does not refer to “copying” any information for third parties. This Policy suggests a shorter confidentiality period for proprietary information, representing that the practice of the Servants and Canada was to hold proprietary information confidential for extended periods of time, yet it is clear from the history of the Legislation that the confidentiality period was actually extended rather than shortened, representing to GSI and the Predecessors that this Policy was not implemented by Canada.
- i. In or around 1977, Bill C-20 *An Act to regulate the disposition and development of oil and gas rights* was tabled in Canadian Parliament. Bill C-20 never received royal assent and does not have the force of law. Bill C-20 employs the term “published” in conjunction with “released”, “publication” being a term defined by the *Copyright Act* at section 2.2, as “(a) in relation to works, [...] (i) making copies of a work available to the public”. The term “published” has not been part of the Disclosure Legislation, which represented to GSI and the Predecessors that Canada intended to not include that specific term and its accompanying effects.
- j. In or around 1980, Bill C-48 *An Act to regulate oil and gas interest in Canada lands and to amend the Oil and Gas Production and Conservation Act* was tabled in Canadian Parliament. Bill C-48 never received royal assent and does not have the force of law. Bill C-48 included a specific provision addressing the “publication” information furnished under that Act, recognizing that the Governor in Council would need to delineate a process for publication of seismic data and consider whether to prescribe fees in connection therewith, representing to GSI and the Predecessors that Canada acknowledged that, if access to such information was to be provided, such access has value.
- k. On or around March 5, 1982, COGA was proclaimed in force and the representations of Canada contained in the permits did not change. Section 50(3) of COGA states “[...] information or documentation furnished in respect of the following matters may be disclosed, in the manner prescribed [...],” requiring regulations to prescribe the “manner” by which information or documentation, including geophysical works, could be disclosed. No regulations were ever enacted to prescribe the manner of disclosure. The term “published” is not employed, in contrast to Bill C-20 and Bill C-48. COGA represented to GSI and the Predecessors that Canada purposefully excluded or intentionally omitted, in order to deceive

GSI and the Predecessors, prescription of the manner of disclosure such that disclosure of the Seismic Data would not occur.

- l. In or around November 1982, COGLA issued Guidelines for Approvals and Reports. These Guidelines omit reference to any privilege period or confidentiality matters, representing by exclusion or intentionally omitting to deceive GSI and the Predecessors that the Seismic Data would not be disclosed.
- m. In or around January 1983, COGLA issued revised Guidelines for Approvals and Reports, again with no mention of a privilege period or confidentiality matters, representing by exclusion or intentionally omitting to deceive GSI and the Predecessors that the Seismic Data would not be disclosed.
- n. In or around June 1983, COGLA issued correspondence to the Predecessors representing that Canada was collecting seismic reflection data on Canada lands to create a database accessible only to designated federal government geophysicists exclusively with no access by industry with respect to confidential data, representing that the Seismic Data would not be disclosed.
- o. In or around March 1984, COGLA issued revised Guidelines referring for the first time to confidentiality matters.
- p. In or around that same year, in 1984, unbeknownst to GSI until 2015 and the Predecessors at the time, COGLA issued the first report *Released Geophysical and Geological Reports – Canada Lands* that was available in print format at one or more of the offices of the Crown Agencies, listing seismic data in the Canadian offshore areas that COGLA was making available to the Third Parties.
- q. In or around June 1986, with specific reference to amendments to section 50 of COGA, which when amended became section 101 of CPRA, the Servants and Canada prepared and issued the *Briefing Book – Canada Petroleum Resources Act*, representing that Canada agreed that confidentiality protection should increase as the value of seismic data increases and that seismic data may be released, but there is no obligation on the Crown to release information or documentation upon expiration of the relevant periods of privilege as that is a matter of discretion, which represented that the Seismic Data may not be released.
- r. In or around October 7, 1986 and November 18, 1986, the Predecessors affirmed to Marcel Masse, Minister of Energy, Mines & Resources and to the Standing Senate Committee on Energy and Natural Resources that there was reliance upon the representations

of the Servants and Canada regarding the confidentiality and copying of non-exclusive seismic data, stating, *inter alia*:

- i. the Servant's and Canada's policies with respect to non-exclusive seismic data have changed over time;
 - ii. no seismic data was provided to Canada in earlier times;
 - iii. after a period of time, the Servants requested black-line copies of seismic data for internal use only;
 - iv. after a further period of time, the Servants allowed the Third Parties to look at seismic data older than 10 years old, but only by attendance at Canada's offices;
 - v. non-exclusive seismic data was never released for viewing;
 - vi. in or around the late 1970s, the Servants began requesting reproducible mylar sections rather than hard copy prints and reduced the confidentiality period from 10 years to five years with respect to exclusive seismic data;
 - vii. the Director of COGLA orally represented to the Predecessors that the Servants and Canada do not release non-exclusive seismic data;
 - viii. the Director of COGLA represented to the Predecessors that COGA required, with no discretion to be exercised, the disclosure of non-exclusive seismic data since such type of data was governed by the Disclosure Legislation.
- s. In or around the mid-1980s, the industry developed the ability to reproduce paper and mylar seismic data, but the reproductions were of low quality such that they were mostly unusable.
- t. From in or around June 1987 to February 1988, Canada engaged in a dialogue with the Predecessors and the Canadian Association of Geophysical Contractors (CAGC), an association of which GSI and the Predecessors are and have been members. The Servants included Marcel Masse, the Director General of the Resource Evaluation Branch, M.E. Taschereau (Administrator), the CPA Negotiating Subcommittee Meeting with Graham Campbell of COGLA, and others. The CAGC affirmed to the Servants and Canada its reliance on the pattern of Canada's conduct to maintain confidentiality of seismic data. The Servants and Canada represented that the CPRA provides for disclosure seismic data within the discretion of the Minister or his designate, and that such discretion encompasses the type of data to be disclosed, the form of

disclosure, and the ultimate schedule of disclosure. The Servants and Canada further represented that they would engage with their counterparts in Newfoundland and Nova Scotia to delay disclosure of the Seismic Data. The Servants and Canada further represented that the best solution to the matters in dialogue between the CAGC and Canada was to amend the CPRA to differentiate between confidentiality periods for each class of non-exclusive and exclusive seismic data and the types thereof that could be disclosed. Ultimately, COGLA represented to the Predecessors that it agreed to extend the confidentiality period and would do so by way of a Ministerial Directive. GSI and the Predecessors relied upon that representation that a Ministerial Directive would be issued, since it could be challenged through appropriate judicial processes, if necessary. Such Ministerial Directive was never issued.

- u. In or around 1989, the software to enable scanning and digitizing seismic data, including the Seismic Data, was invented, but the use of this software was limited by labour intensive processes and resulting expense.
- v. In or around 1993, GSI acquired certain of the Seismic Data from the Predecessors.
- w. On or around October 5, 1993, Canada entered into an agreement with the Plaintiff affirming that certain of the Seismic Data is proprietary to GSI, copyright, and that certain of the Seismic Data cannot be disclosed.
- x. In or around the late 1990s, the CNLOPB issued permits to GSI that required that GSI waive its rights under the *Access to Information Act*, RSC 1985, c A-1, whereby the Servants and Canada are mandated under section 20 to refuse disclose records requested under that contain:
 - i. trade secrets of a third party;
 - ii. commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;
 - iii. information that is supplied in confidence to a government institution by a third party for the preparation, maintenance, testing or implementation by the government institution of emergency management plans;
 - iv. information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or

could reasonably be expected to prejudice the competitive position of, a third party; or

- v. information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party

(“AIA Third Party Records”).

- y. In or around 1999, GSI commenced submitting requests to Canada under the *Access to Information Act* seeking information regarding the use of the Seismic Data by the Servants and Canada, and in response, the Servants and Canada represented by omission of information, concealed or deceived GSI, that the Seismic Data was not being accessed or copied by third parties.
- z. In or around 1999 to present, the responses received to GSI’s requests under the *Access to Information Act* indicated that AIA Third Party Records are consistently redacted from responses from the Servants and Canada, representing by conduct to GSI that the Servants and Canada abide by the provisions of the *Access to Information Act* and do not disclose copies of confidential and copyright information to third parties requesting same from Canada, including the Seismic Data.
- aa. On or around October 4, 2000, Jim Dickey, Chief Executive Officer of the CNSOPB, represented to the Plaintiff that non-exclusive seismic data would not be disclosed until 10 years have passed from its submission, but that exclusive seismic data would not be disclosed until only five and a half years have passed from its submission.
- bb. In or around 2000 to 2004, the Servants and Canada engaged in negotiations with the Canadian Association of Petroleum Producers (CAPP), CAGC and GSI in which the Servants and Canada represented that they only sought to disclose, without copying, and that a licence agreement with the data owner shall be used for copying, with accompanying licence fees.
- cc. In or around the early 2000s, computers were invented that had processors and memory sufficient to operate the software and process digitization of seismic data.
- dd. In or around January 2002, Dan Whelan, Director General, Energy Resources Branch, Natural Resources Canada represented to the Canadian Association of Petroleum Producers, including GSI, that Canada was unilaterally changing its policy to expand release to digital formats of processed versions of the Seismic Data.

- ee. In or around May 2002, Rudi Klaubert, Regulatory Information Administrator, National Energy Board, represented to GSI that the appropriate policy approach by Canada to disclosure of seismic data is to ensure that non-exclusive seismic data is always available for sale at fair market value.
- ff. On or around April 30, 2004, Jacob Verhoef, Director of the Geological Survey of Canada (Atlantic), Natural Resources Canada, entered into an agreement on behalf of Canada with GSI, affirming that certain of the Seismic Data was non-public, strictly confidential and proprietary in nature, confirming that certain of the Seismic Data would not be disclosed to third parties.
- gg. On or around May 16, 2006, the CNSOPB issued a news release representing to the public at large that its new policy was to require submission of digital seismic data for use by scientists and researchers. The CNSOPB further represented that digital submission will enhance the ability of prospective explorers to become involved in the offshore.
- hh. On or around May 29, 2006, Bill Dooks, Energy Minister, Nova Scotia, in relation to the *Coasting Trade Act*, SC 1992, c 31, acknowledged that there have been significant differences in describing the same set of facts by parties involved, including Canada, representing that there was confusion as between the parties involved and that there were factual representations made with recklessness or indifference about the veracity of those facts, with the intention of deceiving GSI and others regarding the application and developments of policies about geophysical data creation and exploration activity.
- ii. On or around July 25, 2006, Michael McPhee, General Counsel, Secretary of the Board and Manager, Regulatory Policy, CNSOPB, represented to GSI that the CNSOPB intended to come to an agreement with GSI to disclose digital TIFF images that were akin to print formats of seismic data, with disclosure of digital seismic trace data in SEG Y format only to *bona fide* research institutes once confidentiality expired with appropriate licence agreements.
- jj. On or around January 6, 2009, Michael McPhee, General Counsel, Secretary of the Board and Manager, Regulatory Policy, CNSOPB, represented to GSI that, to date, none of the Seismic Data had been made available for disclosure by the CNSOPB and that CNSOPB had deferred the implementation of its Digital Data Disclosure Policy in respect of non-exclusive seismic data.

- kk. In or around the late 2000s, the National Energy Board represented, through access and liability forms prepared by the Servants and Canada that are executed by third party recipients of the Seismic Data, that those third party recipients of the Seismic Data should not violate the copyright of the owner, GSI.
- ll. On or around June 4, 2010, Marc D'Iorio, Director General, Office of Energy Research and Development, Natural Resources Canada, represented to GSI that it:
- i. would not disclose copies of the Seismic Data to third parties,
 - ii. would direct third parties interested in certain of the Seismic Data to GSI,
 - iii. acknowledged seismic data ownership when presenting the Seismic Data,
 - iv. would not publish the Seismic Data without prior written permission of GSI,
 - v. would not create translations of the Seismic Data without prior written consent from GSI, until it obtained a clear legal opinion from Justice Canada on potential intellectual property issues, and
 - vi. would protect copyright and intellectual property of third party data.
- mm. In or around 2009 to 2014, Canada filed Statements of Defence in Court of Queen's Bench of Alberta Action Nos. 0901-08210, 1201-05556, 1201-16166, 1401-00777, 1401-05316, all commenced by the Plaintiff, alleging and thereby representing by admission to GSI that, *inter alia*:
- i. copyright and confidentiality do not exist in the Seismic Data;
 - ii. alternatively, that GSI's and the Predecessor's submission of the Seismic Data to Canada impliedly or expressly consented to the Disclosure Legislation, even in spite of the *Copyright Act* and *Access to Information Act*;
 - iii. alternatively, that Canada owns the copyright in the Seismic Data;

- iv. alternatively, that GSI does not own the copyright in the Seismic Data;
- v. alternatively, that Canada did not copy or use the Seismic Data for motive of gain and merely hosted the Seismic Data as a library or archive, in spite of the pattern of conduct of the Servants and Canada in pursuit of the alleged purpose of the Disclosure Legislation to promote Canadian offshore oil and gas development; and
- vi. alternatively, that GSI was not deprived, in spite of the finding by the Court of Queen's Bench of Alberta, affirmed on appeal, denied leave to appeal to the Supreme Court of Canada, that GSI's exclusivity to the copyright in the Seismic Data ends when the Disclosure Legislation discloses the Seismic Data.

(collectively, the "Representations").

- 61. GSI states, and the fact is, that policies and legislation of the Canadian government in respect of Canadian offshore non-exclusive seismic data were in a state of flux, evolving throughout the relevant times, resulting in the Representations.
- 62. GSI states, and the fact is, that the Servants, through the Representations, acted beyond the scope of their authority or contrary to the provisions of the Copyright Act and the Access to Information Act, and thereby committed the confiscation, de facto expropriation and unauthorized, regulatory or compulsory taking of the Seismic Data, the Goodwill, the Licensing Obligations and Licensing Agreements, as described above in this Claim.
- 63. GSI further states, and the fact is, that the Representations resulted in GSI being mistaken of fact regarding the meaning of the term "disclose" in the Disclosure Legislation, as the Servants and Canada had undertaken a pattern of conduct to not copy the Seismic Data and technological history had not enabled reproduction and translation from print into digital formats of the Seismic Data until the mid-2000s. GSI further states, and the fact is, that the Servants and Canada acknowledged at various times that they were also mistaken of fact regarding the differences between exclusive and non-exclusive seismic data, print and digital formats, reproduction technologies

available at various times and the meaning of the term “disclose”.

64. GSI further states, and the fact is, that the Seismic Data consist of AIA Third Party Records. GSI further states, and the fact is, that GSI could not waive its rights under the *Access to Information Act* because the Servants operating within that Act are obligated and mandated to refuse disclosure of the enumerated records. The Servants that disclosed the Seismic Data acted beyond their authority under the *Access to Information Act*, to the detriment of GSI, for which GSI suffered losses and incurred damages.
65. Further, and in the alternative, GSI states, and the fact is, that the Servants and Canada are estopped by the Representations, through promissory or proprietary estoppel, from asserting that GSI knew or ought to have known that Canada would terminate GSI’s exclusivity to copyright in the Seismic Data by reproducing and authorizing reproductions throughout the relevant and materials times, as the Representations changed over the relevant and material times. The Representations were made by the Servants and Canada to GSI, with the intention that GSI rely upon them. GSI relied upon the Representations at various times, and the promises contained within the Representations should be upheld as against the Servants and Canada. In the alternative, GSI states that, and the fact is, that the Servants and Canada waived its ability to rely upon the Disclosure Legislation at various times throughout the relevant times, such that GSI relied upon those waivers in investing in and creating the Seismic Data and the Business.
66. In the alternative, GSI states, and the fact is, that GSI and the Predecessors operated under an officially induced error such that confiscation, *de facto* expropriation and unauthorized, regulatory or compulsory taking apply, in any event that the Disclosure Legislation existed at all relevant times. GSI states, and the fact is, that GSI and the Predecessors considered the legal consequences of investing in and creating the Seismic Data and were provided legal advice from appropriate government officials who were involved in the administration of the Legislation at issue in this Action. The legal advice was provided through the Representations and was erroneous

at various times. GSI and the Predecessors relied upon the Representations, which was objectively reasonable for GSI to do in the circumstances. As a result, in reliance upon the Representations, GSI and the Predecessors was misled or mistaken in law, such that it invested in and created the Seismic Data, which was non-exclusive. Had GSI not been misled by Canada, GSI and the Predecessors would not have invested in and created the Seismic Data on a non-exclusive basis, or alternatively, would not have created the Seismic Data at all. GSI would not have invested in the Goodwill but for the Representations.

67. In the further alternative, GSI states, and the fact is, that GSI and the Predecessors were deceived by the Servants and Canada through the Representations such that confiscation, *de facto* expropriation and unauthorized, regulatory or compulsory taking apply, in any event that the Disclosure Legislation existed at all relevant times. The Servants and Canada made the Representations to GSI and the Predecessors, either intentionally or recklessly with indifference to the veracity of the Representations, intending for GSI and the Predecessors to rely upon it in investing in and creating the Seismic Data, which GSI and the Predecessors did, to GSI's detriment. Had GSI and the Predecessors not been misled by Canada, GSI and the Predecessors would not have invested in and created the Seismic Data on a non-exclusive basis, or alternatively, would not have created the Seismic Data at all. GSI would not have invested in the Goodwill but for the Representations.

68. Further, and in the alternative, GSI states, and the fact is, that the Servants and Canada negligently, intentionally or innocently misrepresented their practices, policies and their interpretation of the Disclosure Legislation and Canada's intellectual property laws, including the *Copyright Act* and the *Access to Information Act*, through the Representations, to GSI and the Predecessors, inducing GSI and the Predecessors to invest in and create the Seismic Data and the Goodwill. Canada was in a special relationship with GSI, as it was provided the Seismic Data in confidence and it is in a

unilateral position of power with respect to the laws of Canada and the Seismic Data in its possession, amounting to a fiduciary relationship, such that it had a duty of care to GSI to observe its duty of confidentiality and its own laws, including the *Copyright Act* and the *Access to Information Act*. By disclosing the Seismic Data, the standard of care of a recipient of confidential information, fiduciary and as Crown servants as established by the *Copyright Act* and the *Access to Information Act*, was breached and not met. The misrepresentations by the Servants, caused GSI's losses and injury, in that GSI and the Predecessors would not have invested in and created the Seismic Data on a non-exclusive basis, or alternatively, would not have created the Seismic Data at all. GSI would not have invested in the Goodwill but for the Representations. The damages of GSI were reasonably foreseeable to the Servants and Canada. In the alternative, the Servants and Canada made the Representations to GSI and the Predecessors knowing them to be false with the intention of not abiding by the Representations or changing their practices, policies and their interpretation of the Disclosure Legislation and Canada's intellectual property laws, including the *Copyright Act* and *Access to Information Act*, at a later date, but after GSI had acted upon the Representations. In the further alternative, the Servants and Canada reasonably believed that the Representations were true.

69. Further, and in the alternative, GSI states, and the fact is, that the Servants misused or abused their power amounting to misfeasance of public office. The Servants exercised powers as public officers or as part of public functions of Canada. The Servants acted outside their authority by creating policies to disclose the Seismic Data, fettering the discretion that was required to be exercised on a case by case basis, considering the copyright and confidentiality in the Seismic Data. GSI, as do all intellectual property owners, have a right not to be damaged or injured by a deliberate abuse of power. Through the Representations, the Servants were aware of GSI and the Predecessors' asserted proprietary rights in the Seismic Data. The

Servants caused damages to GSI by disclosing and copying the Seismic Data for free, including the loss of the value of the Seismic Data, the Goodwill, the Licensing Obligations and the Licensing Agreements.

70. The Plaintiff proposes that this Action be tried at the City of Calgary in the Province of Alberta as a regular action claiming monetary relief exceeding \$50,000.00.



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SOR/2004-283, s. 35