

FEDERAL COURT

GEOPHYSICAL SERVICE INC.

Plaintiff

- and -

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

Defendant

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

Defendant

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**AMENDED AMENDED STATEMENT OF CLAIM**

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Solicitors for the Plaintiff  
File #: 434340-000035

Court File No.: T-1023-17

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**AMENDED 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.

September \_\_, 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 Quebec  
Ministère de la Justice  
9e étage, Édifice Louis-Philippe-Pigeon  
1200, route de l'Église  
Québec G1V 4M1

## **CLAIM**

1.     <sup>^</sup>
2.     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.    Judgment for damages for losses incurred as a result of the torts and misconduct of the Servants on behalf of the Defendants, including for deceit, misrepresentation, misfeasance of public office, and the improper exercise of discretion and actions they undertook that amounted to confiscation, or unauthorized, regulatory or compulsory taking of the Seismic Data, the Goodwill, the Licensing Obligations and Licensing Agreements without payment of compensation;
  - c.    Pre-judgment and post-judgment interest in an amount to compensate GSI for the losses as a result of the conduct of the Defendants complained of herein and on any judgment;
  - d.    Solicitor-client full indemnity costs; and
  - e.    Such further and other relief as this Honourable Court may deem just.

## **PARTIES**

3.     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 Canada 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.

4. 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.
5. 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, pursuant to section 10 of the *Crown Liability and Proceedings Act*.
6. The Defendant, Her Majesty the Queen in Right of the Province of Quebec, is represented by the Attorney General of Quebec (“Quebec”) and is vicariously liable for the actions of its servants, including public officials, (together with the servants and public officials of Canada, the “Servants”), pursuant to articles 1376 and 1464 of the *Civil Code of Québec*, CQLR c CCQ-1991, which servants participated in or were otherwise involved with the activities of the federal servants.

## REGULATORY LEGISLATION

7. 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:

- a. Canada Oil and Gas Lands Administration;
- b. Northern Affairs Canada;
- c. National Energy Board (Frontier Information Office);
- d. Canada Newfoundland and Labrador Offshore Petroleum Board (“CNLOPB”); and
- e. Canada Nova Scotia Offshore Petroleum Board (“CNSOPB”)

(collectively, the “Crown Agencies”).

8. 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.
9. The Defendants are liable for all relevant actions undertaken or omissions made by the Crown Agencies and the Servants thereof.
10. GSI’s Canadian marine seismic data is a significant component of GSI’s total seismic data assets.
11. 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.
12. GSI has extensively reprocessed the Seismic Data since it was first created and obtained through assignment, which has increased the value and marketability of the Seismic Data.
13. From time to time, the Crown Agencies and the Servants have requested

that GSI submit copies of the Seismic Data in various formats, including reprocessed and digital formats, pursuant to the Submission Legislation.

14. 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 through work expenditure credits from the Defendants therefor which GSI has not been entitled to.
15. 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 provided the discretion to require copies thereof prior to the removal from Canada of the Seismic Data or any processed form of the Seismic Data.
16. 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.
17. 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.
18. 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 (2<sup>nd</sup> 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, which disclosure has been deemed by the Courts of Canada to be “confiscatory” and a “compulsory licence”. The Crown Agencies and the Servants 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.

19. 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.

20. GSI has never been notified by the Defendants that the Seismic Data was disclosed to the Third Parties.

## **COPYRIGHT**

21. 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 is registered as copyright, and the Copyright Laws of the United States pursuant to 17 USC and its predecessor legislation, which was created by GSI employees during the course of their employment or the copyright thereto has been acquired from other entities comprising the Predecessors, which includes entities incorporated in the United States of America that authored and owned the copyright in the Seismic Data.
22. 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*.
23. 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.

24. 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 the exclusive rights of the owner of copyright under the *Copyright Act*, resulting in all such conduct by the Defendants being in breach of the *Copyright Act*.
25. 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*.
26. 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**

27. 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.
28. 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.
29. 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**

30. 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”).
31. From time to time, the Licensees have failed to fulfill the Licensing Obligations, relying upon the Servants’ actions, as described below, in defence of breach of the Licensing Agreements.

## **GOODWILL**

32. 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.

33. 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”).

## **TORTS AND MISCONDUCT COMMITTED BY SERVANTS AND CROWN**

34. But for the Submission Legislation and the actions of the Servants, 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.
35. Canada engaged in various activities, including, but not limited to, making various representations to GSI and the Predecessors. Such representations included intentional omissions and often involved Canada having communications with or developing practices to deal with GSI and the Predecessors. These representations were apparently made to deceive GSI and the Predecessors, given the findings of the Alberta Decisions. These representations and their relevant and material background facts are as follows:
  - 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 purported 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. Currently, it is unclear whether the purpose of the Disclosure Legislation is to promote offshore oil and gas development, given that environmental and other regulation has superseded the implementation of the Disclosure Legislation such that oil and gas developments in certain areas regulated by Canada under the Disclosure Legislation are prohibited or severely restricted. Yet, the Seismic Data related to those areas continues to be disclosed by Canada without any indication as to its purpose. This ongoing disclosure with no connection to Canada's once purported purpose of disclosure of the Seismic Data goes unchecked as Canada has fettered its discretion by not exercising its discretion to disclose on a case-by-case basis.

- 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 disclosure (and certainly did not refer to 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 "disclose" as employed in the CPRA.

- d. Throughout the relevant and material times, and 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 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 complied with by those third parties, regardless of the provisions of the Disclosure Legislation that enabled those third parties to access the Seismic Data.
- f. In or around the 1970s to 1980s, the Province of Newfoundland represented to the Predecessors that disclosure of the Seismic Data was not possible without mutual agreement with the Predecessors as to that disclosure. For clarity, at all relevant times, including prior to the creation of the CNLOPB, Newfoundland and the Canadian Government coordinated their practices with respect to seismic data.
- g. In or around the 1970s to 1980s, the Province of Nova Scotia represented that seismic data need not be submitted by the geophysical contractor, but only the exclusive data owners. For clarity, at all relevant times, including prior to the creation of the CNSOPB, Nova Scotia and the Canadian Government coordinated their practices with respect to seismic data.
- h. In or around 1976, 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, although there was no practice of disclosure of the Seismic Data at this time. Yet the confidentiality period was actually extended rather than shortened, representing to GSI, the Predecessors and the Canadian public that this Policy was ultimately 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 interests 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” of 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



would have to have a regulated process associated with it that would be subject to review.

- k. On or around March 5, 1982, the COGA was proclaimed in force and the representations of Canada contained in the permits did not change. Section 50(3) of the 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. The COGA represented to GSI and the Predecessors that Canada purposefully excluded or intentionally omitted prescription of the manner of disclosure, which misled GSI and the Predecessors to believe that such disclosure of the Seismic Data would not occur, thereby deceiving GSI and the Predecessors.
- l. In or around November 1982, the 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 mislead GSI and the Predecessors that the Seismic Data would not be disclosed, thereby deceiving GSI and the Predecessors.
- m. In or around January 1983, the 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 mislead GSI and the Predecessors that the Seismic Data would not be disclosed, thereby deceiving GSI and the Predecessors.

- n. In or around June 1983, the 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 to GSI's potential customers.
- o. In or around March 1984, the COGLA issued revised Guidelines referring for the first time to confidentiality matters.
- p. In or around that same year, in 1984, unbeknownst at the time to the Predecessors and to GSI until 2015, the COGLA purportedly 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 the COGLA was making available to the Third Parties. This Report was never drawn to the attention of GSI or the Predecessors.
- q. In or around June 1986, with specific reference to amendments to section 50 of the COGA, which when amended became section 101 of the 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 could only be released upon an appropriate exercise of the servants' discretion. This Briefing Book was never brought to the

attention of GSI or the Predecessors, but acknowledges the Servants' duties.

- 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 regarding the confidentiality and copying of non-exclusive seismic data, stating, *inter alia*, that:
  - i. the Servants' 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, but only by attendance at Canada's offices;
  - v. non-exclusive seismic data, which is the nature of the Seismic Data, was never released for viewing;
  - vi. in or around the late 1970s, the Servants began requesting 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 the COGLA orally represented to the Predecessors that the Servants and Canada do not release non-exclusive seismic data; and
  - viii. the Director of the COGLA represented to the Predecessors that the 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, despite the Disclosure Legislation not explicitly referring to non-exclusive seismic data and incorporating a discretionary element to disclosure.

- s. In or around the mid-1980s, the industry developed the ability to reproduce paper and mylar seismic data, but the reproductions were of such low quality that they were 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 the 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 of 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, the 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 has ultimately yet to be issued.

- u. In or around 1989, the software and hardware 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. On or around October 5, 1993, Canada entered into a license agreement with GSI affirming that certain of the Seismic Data is proprietary to GSI, copyright, and that certain of the Seismic Data cannot be disclosed, representing to GSI that Canada was recognizing and acknowledging GSI's proprietary rights, including copyright.
- w. In or around the late 1990s, the CNLOPB issued permits to GSI that required that GSI waive its rights under the AIA, whereby the Servants and Canada are mandated under section 20 to refuse to disclose records requested thereunder 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"**).

The Seismic Data constitutes AIA Third Party Records.

- x. In or around 2000, GSI commenced submitting requests to Canada under the AIA 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.
- y. In or around 2000 to present, the responses received to GSI's requests under the AIA indicated that AIA Third Party Records are consistently redacted from Canada's responses, representing by conduct and misleading GSI that the Servants and Canada abide by the provisions of the AIA and do not disclose copies of confidential and copyright information to third parties requesting same from Canada, including the Seismic Data.
- z. On or around October 4, 2000, Jim Dickey, Chief Executive Officer of the CNSOPB, represented to GSI 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, representing that exclusive and non-exclusive seismic data are treated differently by the Defendants.

- aa. In or around 2000 to 2004, 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.
- bb. 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.
- cc. In or around January 2002, Dan Whelan, Director General, Energy Resources Branch, Natural Resources Canada represented to CAPP, including GSI, that Canada was unilaterally changing its policy to expand release to digital formats of processed versions of the Seismic Data.
- dd. 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 rather than disclose seismic data.
- ee. 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.
- ff. 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, but provided no details regarding when or how that would take place.

- gg. 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 misleading GSI and others regarding the application and developments of policies about geophysical data creation and exploration activity thereby deceiving them.
- hh. 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.
- ii. 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.



- jj. 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.
- kk. 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, representing that Canada would accede to and abide by its intellectual property laws, and
  - vi. would protect copyright and intellectual property of third party data.
- ll. 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 protective provisions of both the *Copyright Act* and the AIA;
- 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 determination that GSI's exclusivity to the copyright in the Seismic Data ends when the Disclosure Legislation discloses the Seismic Data, and that the copyright in the Seismic Data is confiscated, which decision was made by the Court of Queen's Bench of Alberta, and was affirmed on appeal and leave to appeal to the Supreme Court of Canada was denied,

(collectively, the "Representations").

- 36. As a result of the conduct of the Servants of the Defendants and pursuant to the exercise of their discretion under 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. 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.
38. 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, and unauthorized, regulatory or compulsory taking of the Seismic Data, and caused damages stemming from the loss of the Goodwill, the Licensing Obligations and Licensing Agreements, as described above in this Claim.
39. 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”.
40. GSI further states, and the fact is, that the Seismic Data consists 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.

41. 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, including the enforcement of the Representations which amounted to agreements and promises by the Servants and the Defendants that were breached by them. In the alternative, GSI states, and the fact is, that the Servants and Canada waived their ability to rely upon the Disclosure Legislation at various times, such that GSI relied upon those waivers in investing in and creating the Seismic Data and the business, to its detriment and loss.
42. In the alternative, GSI states, and the fact is, that GSI and the Predecessors operated under an officially induced error such that confiscation, and unauthorized, regulatory or compulsory taking occurred, 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 were misled or mistaken in law, such that they invested in and created the Seismic Data,

which was non-exclusive. 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.

43. 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, and unauthorized, regulatory or compulsory taking occurred, 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.
44. 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 law of trade secrets, 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 and the Predecessors had acted upon the Representations and without notice to GSI and the Predecessors. In the further alternative, the Servants and Canada reasonably believed that the Representations were true.

45. 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.

46. Further, and in the alternative, by disclosing the Seismic Data to the public despite the Representations made to GSI, the Servants interfered with GSI's use and enjoyment of the Seismic Data, including by taking away all reasonable uses of the Seismic Data. The Servants enabled the public interest to override the private property interests of GSI in the Seismic Data, which property interests had been guaranteed, promised to and represented by the Servants to GSI to be protected from such disclosure. As a result of the Representations made of the Servants, including the guarantees and assurances made by the Servants to GSI, the Servants' interference with the Seismic Data was substantial and unreasonable. As a result of this nuisance, GSI suffered losses for which it claims compensation.
47. Further, and in the alternative, the Legislation has now been deemed by the Courts to be "confiscatory". 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. The Courts have now 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. The Legislation does not exclude GSI's right to compensation for the confiscation and GSI is entitled to compensation from the Defendants for the actions of the Servants. The Crown Agencies are in a fiduciary relationship with GSI and its Predecessors as the recipients of the Seismic Data, with the unilateral power to remove all reasonable uses of the intellectual property in the Seismic Data, and have a fiduciary obligation to determine whether compensation is payable as a result. GSI has not received any compensation from the Defendants and the Defendants have failed to exercise their discretion to determine whether compensation was required, or alternatively, exercised that discretion improperly, thereby breaching their fiduciary obligation.
48. Alternatively, if the Disclosure Legislation is 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, as the Servants have failed to pay such compensation in exercising their discretion to disclose the Seismic Data.

## **LOSSES**

49. As a result of the Legislation and the conduct of the Servants, including the Representations, GSI has lost all reasonable uses of the Seismic Data.
50. 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 conduct of the Servants. As a result, GSI claims against the Defendants the loss of value of the Seismic Data.
51. If it is determined that, as a result of the Legislation, despite the Servants' conduct, 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 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 consequential losses caused by the regulatory or constructive taking of the Seismic Data.
52. As a result of the Legislation and the conduct of the Servants, 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 taken;
  - b. alternatively, the Goodwill has been severely impaired; or



53. GSI has suffered consequential damages related to its loss of the Goodwill, as a result of the unauthorized, regulatory or constructive taking of the Seismic Data.
54. The Defendants have failed to pay prompt or adequate compensation to GSI for its losses in relation to the actions of the Servants, which losses were reasonably foreseeable, which has caused GSI to incur further losses, in an amount to be determined at trial, in relation to:
- a. 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;
  - b. the reduction in market value of the Licensing Agreements and the Licensing Obligations;
  - c. the loss of its rights under the Licensing Agreements and the Licensing Obligations; and
  - d. the loss of the Goodwill, including in its seismic licensing business, its seismic acquisition business and its processing business.
55. 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