

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE
NORTH AMERICAN FREE TRADE AGREEMENT AND THE
UNCITRAL ARBITRATION RULES (1976)**

-between-

**THEODORE DAVID EINARSSON, HAROLD PAUL EINARSSON, RUSSELL JOHN
EINARSSON, AND GEOPHYSICAL SERVICE INCORPORATED
("Claimants")**

-and-

**GOVERNMENT OF CANADA
("Respondent", and together with Claimants, the "Disputing Parties")**

(ICSID CASE NO. UNCT/20/6)

PROCEDURAL ORDER NO. 4

**regarding consequences for these proceedings of the passing of Claimant Theodore David
Einarsson**

The Arbitral Tribunal

Ms. Carita Wallgren-Lindholm (Presiding Arbitrator)

Mr. Trey Gowdy

Mr. Toby Landau KC

Administrative Authority

ICSID

Tribunal Secretary

Ms. Geraldine R. Fischer

9 February 2024

I. Procedural Background

1. On 6 February 2024, the Tribunal held a further Case Management Conference (“2024 CMC” or “CMC”) in order to discuss this proceeding going forward. The matters addressed included: (1) the Parties’ proposed additional new counsel; (2) issues related to the passing of Theodore David Einarsson (“Davey Einarsson”) on 2 January 2024; (3) Claimants’ Motion to Compel and request for an extension to file the Reply; and (4) the remainder of the procedural calendar.
2. Regarding the proposed new counsel, the Parties at the CMC stated that they had no objection, and the Tribunal confirmed it had no conflicts. Consequently, the Tribunal approved Ms. Julia Deutsch as a member of Respondent’s Counsel team and Mr. Vincent Lanctôt-Fortier as a member of Claimants’ team.
3. Of the matters discussed at the CMC, the most urgent one is to determine the measures required for purposes of this proceeding as a result of Mr. Theodore David Einarsson’s death, to ensure (a) that those currently acting in his stead, and also on behalf of GSI, are his proper and duly empowered successors; and (b) that counsel acting for Claimants demonstrate that they are duly authorized to act for such successors. These questions will be dealt with herein as regards immediately required measures. The other matters addressed in the CMC will be recorded in subsequent procedural orders.

II. The Issue

4. On 2 January 2024, Claimants advised that Mr. Theodore David Einarsson passed away that day. Mr. Theodore David Einarsson is one of four claimants in this arbitration. He had brought claims on his own behalf, and also on behalf of Geophysical Services Incorporated (“GSI”), under NAFTA Article 1117(1).
5. On 24 January 2024, Canada requested “*that the Claimants produce documents evidencing the following: (1) Paul Einarsson’s legal authority to act as executor of Theodore David Einarsson’s estate; (2) power of attorney confirming authority of Stikeman Elliot to represent the estate of Theodore David Einarsson in these proceedings; (3) Theodore David Einarsson’s last will and testament and any related estate-plans with respect to GSI; (4) corporate documentation establishing that Paul Einarsson is the beneficiary of Theodore David Einarsson’s interests in GSI; (5) any court filings, including creditor claims, by, on behalf of, or against the estate of Theodore David Einarsson; and (6) any published notice regarding the timeline to file claims against the estate of Theodore David Einarsson.*” Canada argues that these “*documents will be relevant and material to the Claimants’ ability to continue their claim against Canada on behalf of Theodore David Einarsson and/or GSI, as well as relevant and material to the calculation of damages.*”
6. On 31 January 2024, in a letter dated 26 January 2024, Claimants indicated that Mr. Harold Paul Einarsson was the executor of Mr. Theodore David Einarsson’s estate and beneficiary

of his interests in GSI. Claimants also provided a redacted copy of Mr. Theodore David Einarsson's will.

7. In a witness statement dated 31 January 2024, Mr. Harold Paul Einarsson confirmed that he was "*the executor of Davey Einarsson's estate, the beneficiary of his shares of GSI as well as his shareholder loan, and that [he had] already confirmed via separate letter that Matti Lemmens of Stikeman Elliott LLP is our chosen legal representative throughout this arbitration.*"
8. At the CMC, Respondent underscored its concern about the lack of clarity arising from the death of Davey Einarsson, and Canada requested at a minimum documentation evidencing Mr. Harold Paul Einarsson's ability to act on behalf of Mr. Theodore David Einarsson's estate and GSI.

III. The Tribunal's Direction

9. As a result of Mr. Theodore David Einarsson's passing, the Tribunal needs to ascertain the authority of Mr. Harold Paul Einarsson, under applicable law, to act in these proceedings in Mr. Theodore David Einarsson's stead.
10. To this end, Claimants are requested to submit, within two weeks from the date of issuance of this Order, namely by **23 February 2024**:
 - (a) a full and reasoned explanation (with all supporting materials) as to Mr. Harold Paul Einarsson's authority and standing to make the claims for Mr. Theodor David Einarsson's estate and bring claims on behalf of GSI, including as to the law applicable to these issues;
 - (b) a full set of the Powers of Attorney/authorizations in this proceeding for Counsel for Claimants to act herein on behalf of all Claimants as now existing.
11. As indicated at the CMC, pending Claimants' delivery of the requested items above, the proceedings will continue for the time being, unless and until the Tribunal decides otherwise.

Dated: 9 February 2024

Place of Arbitration: Calgary, Alberta, Canada

[Signed]

Carita Wallgren-Lindholm
(Presiding Arbitrator)

[Signed]

Trey Gowdy

[Signed]

Toby Landau KC