

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

-between-

**THE ESTATE OF THEODORE DAVID EINARSSON, HAROLD PAUL EINARSSON,
RUSSELL JOHN EINARSSON, and GEOPHYSICAL SERVICE INCORPORATED**

(“Claimants”)

-and-

THE GOVERNMENT OF CANADA

(“Respondent”)

ICSID CASE NO. UNCT/20/6

EXPERT REPORT OF GORDON C. “CHIP” GILL

CER-05

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I. PERSONAL BACKGROUND

1. I am an individual with experience with the seismic industry and as such have personal knowledge of the matters hereinafter deposed to, except where based upon information and belief, and where so based, I verily believe the same to be true, to the best of my recollection.

A. My Information, Background and Experience

2. I have worked for more than 35 years in the oil and gas exploration and production (E&P) industry. I graduated in 1979 from the University of Texas at Austin with a Bachelor of Business Administration in Petroleum Land Management, with a coursework emphasis in geology. I got my start in the oil and gas business in 1977 as a rig hand working for Ard Drilling Company. In 1979 I joined Atlantic Richfield Company in the Land Department of their ARCO Oil and Gas Company subsidiary. I worked in various land roles for the next 10 years, including managing oil and gas leasing endeavors and negotiating, drafting and administering complex E&P contracts and agreements.
3. In 1989 I moved to Atlantic Richfield Company's government relations department as Director - State Government Relations for the southeast United States. After serving for four years in that role, I joined ARCO's new spinoff company, Vastar Resources, Inc., a large US based independent E&P company, as its Manager, Government Relations. In that role, I helped set up and manage Vastar's government relations efforts on the state and federal levels in the US until Vastar was acquired by BP in 2000. In 2000 I joined the Independent Petroleum Association of America, the federal lobbying trade association of the independent oil and gas producers in the US, as its Vice President – Membership and Strategic Planning.
4. In 2001, I joined the International Association of Geophysical Contractors (IAGC) as its President, a role in which I continued until, and from which I retired, in late 2014. IAGC, founded in 1971 and headquartered in Houston Texas USA (and until 2010 with offices in London UK), is the international trade association of the geophysical

industry.¹ The geophysical industry, of which GSI is a part, is the industry that provides geophysical services (geophysical data acquisition, seismic data ownership and licensing, geophysical data processing and interpretation, and associated services) and products to the global oil and gas E&P industry.

5. As the geophysical industry's global trade association, IAGC is the place where industry participants come together to pool their resources and work on common issues – issues that are most efficiently and effectively worked together rather than individually. IAGC's service and value to its members fall primarily in three category areas: representation of the industry with governments around the world; standards and best practices, especially around workplace safety and environmental stewardship; and the commercial health of the industry, including model license agreements and contracts, and statements of industry recommended licensing and contracting principles.
6. The business of non-exclusive data, sometimes also called speculative data; spec data; multi-client data, has always been one of the most valuable practice areas within IAGC to its members. Therefore, this area has always been one of IAGC's top priority areas. This practice area at IAGC includes: the acquisition of the data in the field, including government regulation and permitting (where applicable); the business model under which the data is financed, owned and licensed; the commercial terms and conditions under which is licensed, including the actual license agreement under which non-exclusive data is generally licensed.
7. From 2001 to 2006 IAGC's staff resources were very limited, therefore during that time I personally staffed this practice area. While staffing this practice area we undertook a major rewrite and update of IAGC's model Master License Agreement, developed IAGC's data licensing statements of principles, developed an industry code of practice for the use of licensed geophysical data, engaged with governments in Australia, Canada, the UK and the US on major data licensing regulatory and permitting issues, and developed and implemented a major communications/educational initiative with non-exclusive data licensees (clients).

¹ Note: in January 2022 IAGC rebranded itself as EnerGeo Alliance. (EnerGeo Alliance, 2022). For consistency, I will continue to refer to the organization as IAGC throughout.

8. In my day to day dealings with issues surrounding the business of non-exclusive data, I interacted with top executives and other senior managers of geophysical data companies, interacted with client representatives, developed our key messaging and communicated directly with government stakeholders, and communicated extensively on a variety of data licensing topics, including giving presentations at industry conferences, authoring articles on the subject and interacting with the trade press on the subject.
9. In the years after 2006, due to staff training needs and personnel turnover, I stayed closely involved in the practice area, including closely supervising those staffing it thereafter. Thus, my background and expertise on non-exclusive geophysical data was developed in my time at IAGC.
10. Since leaving IAGC, I have continued to network with those in this industry, to follow the filings and disclosures of the public Geophysical Data Companies, and to occasionally participate in relevant industry events and conferences. I have also engaged in extensive research and analysis of information surrounding the non-exclusive data business in support of the expert services in which I have been engaged in support of myriad related legal proceedings. Thus, I believe I have maintained as current my in-depth knowledge of the non-exclusive data business, its trends, challenges, etc. that I developed over those 13 years while at IAGC.

B. My relationships relevant to the matter at issue

11. I do not have any past or current relationship with any members of the Arbitral Tribunal or this court.
12. I have agreed with GSI and Stikeman Elliott LLP to provide witness testimony in this matter. In that agreement, I receive a fee for my time spent on this matter, none of which payment is contingent on the outcome of this matter. Other than that agreement, I have no relationship with Stikeman Elliott LLP. I previously provided an expert report in Court of Queen's Bench of Alberta proceedings related to the Common Issues Decision in 2015, and those efforts were based on a similar agreement with Matti

Lemmens who was with the firm Borden, Ladner Gervais LLP at the time. I also previously provided expert witness services in support of GSI and their Counsel in Court of Queen's Bench of Alberta proceedings Geophysical Services Incorporated vs Falkland Oil and Gas Limited and Rockhopper Exploration PLC, in Court of Queen's Bench of Alberta proceedings Geophysical Services Incorporated vs ConocoPhillips Canada Resources Corp. and Companies A-Z and in US District Court for the Southern District of Texas (Houston Div.) proceedings Geophysical Services Inc. vs Occidental Petroleum Corp. & Occidental Oil and Gas Corp.

13. Earlier in the proceedings surrounding this matter I prepared my Expert Report of Gordon C. "Chip" Gill – CER-03. That document and its supporting references were submitted in September 2022.
14. I have a long-standing interaction with GSI through my work at IAGC, which I describe above. GSI was a core member of IAGC. GSI ceased its IAGC membership sometime around 2009 or 2010.
15. In addition to the copies of the Notice of Arbitration and the Statement of Defence of Canada which I reviewed as part of my preparation of CER – 03, in preparation of this Report, I have reviewed the Expert Report of Robert Hobbs – RER-02 dated January 14, 2023 as well as in whole or in part the Claimants' Memorial, Expert Reports of Nigel Bankes – CER-01 and Paul Sharp – CER-02, and Witness Statement of Theodore David Einarsson – CWS-03 submitted on September 27, 2022. In addition, I have referred to publically available information on industry trends, including seismic equity analyst's reports. I have also reviewed maps and other information published on GSI's website and those supplied by the Canada-Newfoundland and Labrador Offshore Petroleum Board ("CNLOPB"), the Canada-Nova Scotia Offshore Petroleum Board ("CNSOPB") and the Canada Energy Regulator ("CER", formerly known as the National Energy Board or "NEB") which show seismic data coverage in the regions under their jurisdiction. Otherwise, this Report is based on professional experience gained throughout my career.

II. RESPONSE TO RER-02 EXPERT REPORT OF ROBERT HOBBS

16. Mr. Hobbs does a good job of describing the recent global public offshore seismic industry, including that part involved in investments in nonexclusive or multi-client (“MC”) seismic data.² However, GSI never was a global public offshore seismic company, but rather was a privately held seismic company the vast majority of the MC part of whose business and seismic database inventory was situated in Canada.³ As detailed herein below, comparing the privately held GSI, who was primarily a regional, Canada focused company, to global public seismic companies is like comparing apples to oranges. Thus, his descriptions and supporting information were often misdirected as well as being sometimes incomplete, incorrect or irrelevant. As such, Mr. Hobbs’ report often mistakenly led the reader to question the legitimacy and therefore the relevance of GSI, and by extension the validity of GSI’s claims in this Arbitration.

A. Global comparisons are misdirected

17. Mr. Hobbs’ discussion in ¶ 31. of his Expert Report (**RER-02**) under the section titled Consolidation in the Marine Seismic Industry, and its accompanying Figure 1 is mostly of global relevance,⁴ and less so to the Canadian offshore seismic market. The part of Figure 1 that has the most relevance, the MC company (player) consolidation, is most relevant from 2015 onwards, the timing of which is of no relevance to this matter after 2017. Mr. Hobbs’ Expert Report was focused on the global seismic data industry and more recently as opposed to matters relevant to this Arbitration.

B. Comparing GSI to global, public MC companies is misdirected

18. In ¶ 41. of Mr. Hobbs' Expert Report (**RER-02**) he focuses on "Major Asset-Light MC Companies". It is clear from the discussion in the section in which this paragraph is

² Quoting from **CER-02** Expert Report of Robert Hobbs, which makes for a good definition for the abbreviation MC: "The terms “multi-client”, “non-exclusive” and “speculative” seismic data are terms used interchangeably in the industry to describe seismic data that is shot by a company to license to multiple customers. This is in contrast with “exclusive” seismic data, which a company will undertake on contract on behalf of a specific customer(s) and does not retain for further licensing (i.e., the customer retains ownership of the seismic data)."

³ Of particular relevance is the fact that it was my understanding, by the time GSI left IAGC around 2009 or 2010, they owned the largest inventory of MC data available for license in Canada.

⁴ In fact, the description of Figure 1 states such: "Diagram illustrating the evolution of the global seismic industry throughout the 2000's."

situated, as well as from the companies that are listed in ¶ 41., that these are global seismic industry companies. This misdirects the reader away from Canada and ignores GSI. Additionally, these companies are all publicly traded companies, while GSI has always been a privately held company. I discuss the significance of this last point in my next paragraph below.

19. In ¶ 44. of Mr. Hobbs' Expert Report (**RER-02**) and the accompanying Table on page 17 is not particularly relevant and is misleading. The title of the Table is "Comparison of GSI's Global Seismic Data Library Inventory to Other Major Industry Players". The overwhelming majority of GSI's seismic database inventory resides in Canada. All the other companies listed are truly ongoing global publically traded MC seismic companies. This is relevant because:
- a) Unlike GSI, all the other global MC companies have been and are publicly traded companies. GSI is a privately held company. This is relevant for a host of reasons, including access to capital available to public companies through the financial markets, scrutiny of public companies by the investment community, which has led to things like hyper conservative amortization policies discussed below, among other reasons.
 - b) Unlike GSI, all the other global MC companies have been and continue to operate their MC business as ongoing global businesses, and thus continue to develop and invest in new MC data acquisition projects globally. Except for reprocessing and other data enhancements, since around 2011 I understand GSI's business has been focused on generating the most revenue possible from the MC data already in its seismic database inventory (often called "late sales").⁵
 - c) Unlike GSI, all the other global MC companies have been and continue to invest in and operate their MC business as a global portfolio. This requires significant scope and scale and is more easily achieved by public companies which have

⁵ Before about 2011 GSI also operated an offshore seismic data acquisition business and was engaged in such data acquisition for third party clients as well as its own MC seismic database inventory. I understand these operations were mostly conducted in Canada.

access to the vast amounts of capital available from the financial markets. This also affords them the advantages of spreading their risks, financial and otherwise, across their portfolios, provides the inherent insulation from the individual risks to which each project would be subjected and provides some marketing advantages (e.g. providing volume discounts). Because the overwhelming majority of GSI's MC data in its seismic database inventory is in one regulatory jurisdiction (Canada) and much of it is older, and thus largely dependent on late sales, GSI has a far different risk profile from the other companies in the table. As a result, the comparison made by the Table is not particularly relevant, and I find it misleading.

20. In ¶ 76. of Mr. Hobbs' Expert Report (**RER-02**) Mr. Hobbs states "For a MC seismic company, continued investment is critical to preserve company value." He then goes on to introduce "key macro considerations for a MC company when making the decision to invest in new data library products" and proceeds to list and discuss five different key macro considerations. While it can be argued that the continued investment in new data library products includes investment in reprocessing existing data, which GSI did regularly, to me this lengthy paragraph points the reader to investments in new MC data surveys and the acquisition of new MC data. By giving so much focus to new investment in new MC data projects, this paragraph (and Mr. Hobbs report in general) seems to downplay a significant part of the MC data business that has been most important to GSI during the period in question in this matter: generating the most revenue possible from "late sales" of the MC data already in its seismic database inventory.
21. In multiple places throughout ¶¶ 77-83. of Mr. Hobbs' Expert Report (**RER-02**)⁶, Mr. Hobbs discusses the amortization of the cost of a MC seismic data survey. This discussion, which I address in detail in ¶ 33. below, applies primarily to public MC seismic companies. As GSI is a private company, this discussion is somewhat irrelevant to this matter and is therefore misdirected.

⁶ ¶ 77. (4 & (10); ¶ 80.; ¶¶ 82.-83.

22. In ¶ 87. of Mr. Hobbs' Expert Report (**RER-02**), Mr. Hobbs concludes with his opinions about what contributes to the success of MC seismic companies. The focus is very much on public MC seismic companies. Success for GSI, which is a private MC seismic company, should not be measured by what success would necessarily look like for a public MC seismic company. In my experience, public MC seismic companies can be more prone to being influenced by near term performance such as that in the current or following quarter, can be quicker to discount to customers the price of licensing MC seismic data to influence quarterly results and can be more quick to write off a given survey. In my experience I did not observe these influences affecting private MC companies, which seemed generally more focused on maximizing revenues from existing surveys. Private companies also seemed to have the advantage of carrying lower overhead than the public MC companies. Thus Mr. Hobbs' comments in this paragraph are mis-directed.

C. Some discussions are incomplete

23. In ¶¶ 23-26. of Mr. Hobbs' Expert Report (**RER-02**), which is under the heading of Other Market Players, subheading Multi-Client, Mr. Hobbs fails to mention or include GSI, the vast majority of whose MC seismic data is situated in Canada and is therefore of most relevance to this matter. He also fails to mention or include, among other smaller players, Jebco, a smaller company who had relevant seismic data offshore Nova Scotia throughout the relevant time of deliberations with CNSOPB, and Fairfield, a company significant in the US Gulf of Mexico MC seismic data business in the first decade of this century.
24. In a glaring omission, in ¶¶ 28-30. of Mr. Hobbs' Expert Report (**RER-02**), which is under the subsection Marine data acquisition companies, Mr. Hobbs fails to mention GSI's data acquisitions capability and vessel ownership.⁷ This is particularly significant given that Canadian maritime laws required those companies acquiring Marine seismic data in Canada to use Canadian flagged vessels for their data acquisition where possible. At various times GSI's vessel(s) was the only one qualified, a fact which gave

⁷ **CWS-03** Witness Statement of Theodore David Einarsson ¶¶ 18-19, 52.

it at times an advantage over its competitors and allowed GSI to acquire MC seismic data for its seismic database inventory cheaper than its competitors could for theirs.

25. Figure 1, which accompanies Mr. Hobbs discussion in ¶ 31. of his Expert Report (**RER-02**) under the section titled Consolidation in the Marine Seismic Industry, omits GSI.
26. In another glaring omission, ¶¶ 44-46. of Mr. Hobbs' Expert Report (**RER-02**), the second two paragraphs which are under the subsection Canada MC Activity, Mr. Hobbs fails to list or even mention GSI's MC seismic database inventory in Canada. In ¶ 44. his discussion is from a global perspective. In ¶¶ 45-46 and the table preceding them (in which compares “Global Seismic Data Library Inventory”), he again ignores GSI's MC seismic database inventory in Canada. This discussion is obviously incomplete, and as such it is incorrect.
27. In ¶ 47. of Mr. Hobbs' Expert Report (**RER-02**) Mr. Hobbs states "I understand that all of the companies which operate in Canada are subject to the same regulatory rules, including disclosure of data after the expiration of the applicable confidentiality period, as GSI." While I cannot disagree with this general statement, it probably seemed reasonable to Mr. Hobbs in 2023. However it fails to take into account the fact that historically in Canada, disclosure of data after the confidentiality period was accomplished in a limited way which did little to compromise the confidentiality of the data and did not include release. I discuss this matter more below in ¶ 31., and discussed it much more thoroughly in my September 2022 Expert Report⁸ (**CER-03**), as the following also do in their Witness Statements: Theodore David Einarsson (CWS-03); Harold Paul Einarsson (CWS-06); Ralph Maitland (CWS-4).
28. In ¶¶ 54-60., 87. of Mr. Hobbs' Expert Report (**RER-02**), he describes and discusses offshore (marine) seismic data acquisition techniques and technologies and their advances and improvements over time. He also implies that newer, more advanced and improved marine seismic data is always better and preferred. Based on my knowledge and experience I found the points made in these paragraphs (and the related conclusion) to be somewhat incomplete and thus misleading. Specifically:

⁸ **CER-03** Expert Report of Gordon C. “Chip” Gill, Sections II. U. and II. V.

- a) In ¶ 56., Mr. Hobbs notes that "... A majority of the streamer advances have occurred after 2011...". That means these technological streamer advances would not have been deployed in Canadian waters until new offshore MC surveys were undertaken, and that would have only happened when market conditions justified them (due to industry interest, costs, availability of technology and other factors). Thus it is likely few of them came into existence during the time period relevant to this matter, and of the few that did, only a fraction would likely have been located on top of existing GSI Marine MC seismic data.
- b) In ¶ 57., Mr. Hobbs observes that "The large majority of GSI's data library is 2-D streamer data with only a small amount in 3-D." and that "more than half" is older and likely acquired utilizing older streamer technology. By not discussing the ongoing uses client Oil and Gas Exploration and Production Companies (E&P Companies) have for MC seismic data from older technology, I find this observation incomplete and misleading. New marine seismic data technologies and acquisition techniques are expensive, and in underexplored areas such as existed in much of Atlantic Canada during the time period relevant to this matter, such new technologies and techniques are not likely to be acquired early in the exploration cycle or on a basin or regional scale. Rather, they are most likely to be acquired where the E&P Companies believe exist the greatest opportunities for hydrocarbon generation, migration and trapping, and also often where host governments offer areas in the form of exploration blocks to the E&P Companies for license (focus areas). However, these same E&P Companies will always seek the best possible understanding of the relation of the focus areas to the larger basin or region, as well as of the nature of the sub surface rocks that would have been revealed by previous exploration wells drilled in the basin or region. For this and other reasons E&P Companies which are considering further investment in exploring in a chosen focus area will leave no stone unturned and will avail themselves of any other marine MC seismic data that might give them further insight into the nature of the subsurface of a focus area and lower their exploration risk, such as MC seismic data acquired utilizing earlier technology. Thus E&P Companies will often purchase licenses to older Marine MC seismic

data in and around their focus areas, which present “late sales” opportunities for sales by GSI of licenses to the applicable GSI marine MC 2-D streamer data. In my experience the E&P Companies’ investment and risk is too large, and the relative cost of such licenses is much less than to do otherwise.

- c) In ¶ 59., Mr. Hobbs notes that “Extensive 2-D and 3-D data has been acquired in offshore Newfoundland and Labrador and Nova Scotia with dual-sensor streamer since is 2011.” He goes on to observe that most of that data appears to overlap with GSI’s seismic data. Offshore Newfoundland and Labrador and Nova Scotia are huge areas, and the descriptors “extensive” and “most of that data appears” provide little granularity, thus they are incomplete. Further, I am aware that marine seismic data acquisitions in those areas can only be carried out seasonally and that for several seasons after 2011 only one or two marine seismic data surveys were acquired per season. Therefore it is likely that some if not most of this extensive new data to which he refers came into existence after 2017. Additionally, Mr. Hobbs fails to provide any specificity as to how much of GSI’s marine MC seismic data is affected by this new data, and the type of GSI marine MC seismic data that was affected (i.e. was it 3-D data, 2-D streamer data recorded with newer streamer technology or 2-D streamer data recorded with older streamer technology). GSI also acquired extensive 3D MC marine seismic data in these areas with more current technologies and techniques. Reviewing the information Mr. Hobbs cites as having reviewed for his Expert Report and the information contained in his references (and maps contained therein), it seems it would be difficult at best to provide any further specificity, as well as to conclude that “most” data overlaps in a way that is meaningful to this Arbitration, and I find it hard to imagine that a large amount of GSI seismic data was overlapped by these more recent post-2011 surveys to such a significant extent that all E&P Company interest in licensing them would be eliminated.
- d) Related to all of this, in ¶ 87, which is in the section titled “Conclusions on the Marine Multi-Client Seismic Industry” Mr. Hobbs concludes “Having access to the best geophysical technology and having the willingness to continue to invest

in promising regions are also *critical* for a successful MC seismic company.” (Emphasis added.) In my experience an E&P Company will not always license “the best geophysical technology,” even when it is available. Among the factors which come into play are higher cost (the best technologies are often more expensive), timing (if an E&P Company is early in their study of a basin or region, MC seismic data acquired utilizing earlier technology can be sufficient for a higher level, broader analysis, and as is often less expensive, they may be able to license more of it) and exploration objective (if an E&P Company is exploring in a remote area lacking supporting infrastructure, they will need to identify large possible exploration prospects or targets which in the success case can also support the needed infrastructure – large exploration targets can generally be imaged / illuminated utilizing earlier technologies).

29. In ¶ 66. of Mr. Hobbs' Expert Report (**RER-02**), Mr. Hobbs introduces and broadly describes the "Multi-client Sales Model (“Non-exclusive”)". In the first sentence he states "... the seismic company holds the marketing rights to the data.” While this is true, the much more important point to make, of which Mr. Hobbs’ statement is a subset, is that the MC seismic company *owns* the data. Additionally, Mr. Hobbs fails to make another point that MC seismic companies always wanted to be emphasized upfront about their business model: that MC seismic companies bear the costs of and all of the risk associated with acquiring MC seismic data. In ¶ 66. 1) **The Master Data License Agreement (“MLA”)**, Mr. Hobbs fails to explicitly point out up front that all MC seismic data covered by the MLA is required to be strictly maintained as confidential (and not being disclosed or disseminated in any way) except under the narrow and strict circumstances necessitated by business realities. While any of these of these omissions that I point out may seem trivial, MC seismic companies learned through painful experience that licensee understanding of and/or adherence to these are critical and foundational to the success of their business model.
30. In ¶ 67. of Mr. Hobbs' Expert Report (**RER-02**), Mr. Hobbs describes four conditions upon which the ability to generate an adequate revenue stream from a MC seismic data project depends. Mr. Hobbs fails to describe another condition upon which the ability

to generate an adequate revenue stream from a MC seismic project depends, a condition which in my experience most MC seismic companies would insist is included high in this list: that the confidentiality of the MC seismic data is strictly maintained, including it not being disclosed or disseminated except as expressly allowed.

31. In ¶ 76. 4) c. of Mr. Hobbs' Expert Report (**RER-02**), Mr. Hobbs states "In my experience, most governments require data disclosure after a reasonable period. This is known and understood throughout the industry." However, Mr. Hobbs fails to note or discuss the fact that sometimes governments change their regulations after MC data investments have been made, and change them in ways that undermine the value proposition on which the investment was made in the first place. If host governments have never done that before, do not communicate way in advance that such detrimental changes are contemplated or possible and generally don't do so for other industries, then MC companies have little reason to impute much associated risk to their MC data investments in that jurisdiction. In my opinion this is what happened in Canada to the regulatory framework within which MC data was acquired. Mr. Hobbs goes on to state that when MC data is released to the public, it will generally no longer carry any significant value to the MC seismic company "...unless what is publicly released is of inferior quality to what is still exclusively available under license from the MC seismic company...". Practically speaking, this was the case historically in Canada until the various government entities chose to change things. Thus Mr. Hobbs indirectly confirms GSI's contention that before Canada changed its regulatory framework GSI's MC data carried significant value for GSI even after release because release was done in a way that did not undermine the value of the data (for example only viewing and not copying paper and mylar versions of the data in government offices or receiving paper copies on A4 paper at very large scale).

D. Some discussions are incorrect

32. In ¶ 44. of Mr. Hobbs' Expert Report (**RER-02**), Mr. Hobbs only compares GSI to the MC marine seismic data industry. I believe it is incorrect to ignore the Marine seismic data acquisition capability that GSI possessed and deployed through much of the time

period relevant to this Arbitration. It is my understanding that that capability gave GSI unique commercial advantages in the regional Canadian seismic data market in both its offshore data acquisition and MC data licensing businesses.

E. Some discussions are irrelevant

33. In multiple places throughout ¶¶ 77-83. of Mr. Hobbs' Expert Report (**RER-02**)⁹, Mr. Hobbs discusses the amortization of the cost of a MC seismic data survey. In ¶ 80. he explains the reason as follows “All costs to acquire and process the survey are capitalized to the company’s balance sheet. Capital invested in the survey is then removed from the balance sheet over the investment life of the survey through amortization so that costs can be recognized at approximately the same time as expected sale of licenses to the survey occur.” He goes on to state that straight-line amortization over a four-year period is to be used, explaining at various points in his discussion that this is “the standard in the industry”, “historic industry practice”, “industry standard”, and “standard”. First, I offer some history on this point. In late 2001, news of widespread fraud within Enron Corporation, an American energy, commodities and service company, became public, triggering what became known as the Enron Scandal, which quickly resulted in its bankruptcy. At the end of 2001, it was revealed that Enron's reported financial condition was sustained by an institutionalized, systematic, and creatively planned accounting fraud, known since as the Enron scandal. Enron has become synonymous with willful corporate fraud and corruption. The scandal also brought into question the accounting practices and activities of many corporations in the United States and it was even a major factor in the enactment of the Sarbanes–Oxley Act of 2002.¹⁰ Essentially, Enron was discovered to have been cooking its books, including over-valuing speculative assets which represented a significant portion of the assets on its balance sheet.
34. As a result of the Enron scandal, by early 2002 public seismic companies with significant MC assets were finding themselves under the focused and sustained scrutiny

⁹ ¶ 77. (4 & (10); ¶ 80.; ¶¶ 82.-83.

¹⁰ **C-354**, *Journal of Business Ethics* 57: 31-54, 2004. Legislated Ethics: From Enron to Sarbanes-Oxley, the Impact on Corporate America.

of the equity investment community surrounding the value of their MC assets, which are of course to some extent speculative. Out of an abundance of caution, these companies, in discussion of this matter at the time at IAGC, chose to adopt a hyper-conservative straight-line amortization schedule of 4 years, and to publicize their decision. They also developed an IAGC Statement of Principles (IAGC SOP).¹¹

35. It is important to note that this is primarily an issue for public MC seismic data companies. Generally, private MC seismic data companies such as GSI are not subject to the scrutiny of the equity investment community and are not encumbered by the financial regulations governing public companies. Thus, they enjoy greater financial flexibility in these areas. The referenced IAGC SOP states, "Under Generally Accepted Accounting Principles, these assets must be written off over the economic life of the survey (or pool of surveys), considered to be the period over which data are likely to be licensed. Geophysical companies have utilized a variety of estimates of survey life, generally in the range of four to eight years." I note that GSI, like many MC seismic data companies, continued to enjoy revenues from late sales of licenses to its MC seismic data well beyond the end of 4 years from the creation of the data. It is my understanding that for private companies such as GSI this decision can relate to how they want to manage their tax liability (if tax write-offs are available for such amortized expenses in their taxing jurisdiction) and on their managerial accounting approach and philosophies. And from a tax standpoint, amortizing the cost of nonexclusive seismic data over a longer period means, at least in the US, less write-offs each year and the potential for paying higher taxes. Clearly, under these circumstances the company would not be running afoul of taxing authorities.¹² Thus this entire discussion is irrelevant to GSI and should be ignored.

¹¹ C-355, IAGC (2003d). Statement of Principles effective March 18, 2003, titled Amortization Policy Associated with Non-Exclusive (Multi-Client) Geophysical Data Libraries.

¹² There is an additional point to be made, albeit of lesser consequence. The decisions surrounding amortization policies as described by Mr. Hobbs generally contemplate being applied to new investments to acquire original MC seismic data surveys. A significant portion of GSI's MC seismic database inventory already existed and was acquired through purchase transactions. The decisions surrounding what amortization policies to apply to existing MC seismic database inventory that are purchased are much more subjective.

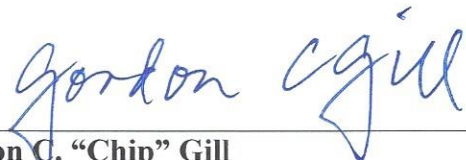
III. CONCLUSION

36. Mr. Hobbs seems to question the legitimacy and therefore the relevance of GSI throughout his report, and by extension the validity of GSI's claims in this Arbitration. For the reasons enumerate and discuss above, I found the above-described areas of his expert report to be misdirected and sometimes incomplete, incorrect, or irrelevant. Therefore, I caution the reader to weigh and account for the above-described areas of his report accordingly.

37. I make this Expert Report in support of the Claimants' claim in this Arbitration and for no other purposes.

38. I swear this Witness Statement in English.

Signed at Houston TX USA on April 1, 2024



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