

**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)**

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**PROCEDURAL ORDER NO. 10**

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**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*

8 July 2024

[CORRECTED]

## I. BACKGROUND

1. On 6 February 2024, the Tribunal held a further Case Management Conference (“2024 CMC”) to discuss the proceeding going forward, including issues related to the passing of Theodore David Einarsson (“Davey Einarsson”) on 2 January 2024. After the 2024 CMC, the Tribunal issued Procedural Order No. 4, where it noted that “[a]s 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 Mr. Theodore Einarsson’s stead.” Consequently, the Tribunal ordered Claimants to submit the following documents 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.*

2. On 11 February 2024, the Tribunal granted Claimants an extension to 29 February 2024 to file the materials ordered in Procedural Order No 4.
3. On 26 February 2024, in the Tribunal’s Procedural Order No. 6, the Tribunal maintained this 29 February 2024 deadline.
4. On 29 February 2024, Claimants responded that they were unable to meet the deadline.
5. On 14 March 2024, Claimants submitted a response to Procedural Order No. 4 and 6, noting at paragraph 63, that “*Claimants await the outcome of the probate proceedings before the Texas court to confirm Paul’s authority to act on behalf of Davey’s estate. Currently, no counsel have authority to act on behalf of Davey’s estate in this Arbitration due to the circumstances.*”
6. On 2 April 2024, further to the Tribunal’s 25 March 2024 invitation, Respondent provided comments on Claimants’ 14 March 2024 response to Procedural Orders No. 4 and 6, and included an update from public records on the court proceeding relative to the estate. Claimants responded to this update on 4 April 2024 with a further update on the estate proceeding before the Texas Court.
7. On 15 April 2024, in response to Procedural Orders No. 4 and 6, Mr. Harold Paul Einarsson submitted a letter, dated 12 April 2024, to the Tribunal on his own behalf and as the representative of the Estate of Theodore David Einarsson, Geophysical Service

Incorporated and Russel Einarsson (the “Claimants”), confirming that “*Claimants have given full authorization to Stikeman Elliott LLP to act in a full counsel of record role in the Arbitration, for all purposes and in all capacities.*”

8. On 18 April 2024, the Tribunal requested that Claimants submit the Letters Testamentary that had been issued and were in Mr. Paul Einarsson’s possession, which Claimants did on the same day. The Tribunal further noted that it would “*consider the sufficiency of Claimants’ response in light of Procedural Orders No. 4 and 6*”, and invited Respondent to submit any comments on Claimants’ 15 April letter by 22 April 2024.
9. On 22 April 2024, Respondent submitted its response to Claimants’ 15 April 2024 letter, including supporting material. Respondent also noted that the “*April 12, 2024 power of attorney appears to be in good order.*” Respondent indicated that, “*pursuant to NAFTA Article 1121, a new consent and waiver on behalf of the Estate of Davey Einarsson is a condition precedent for the claim to proceed.*” Respondent then submitted that “*Claimants should file the requisite consent and waiver promptly and then should be directed by the Tribunal to file the Reply Memorial promptly.*”
10. On 3 May 2024, Claimants wrote to the Tribunal indicating that they disagreed that a new waiver was required “on behalf of Estate of Davey Einarsson, as the Estate holds Davey Einarsson’s claim as it existed upon his death, which already included a waiver.”
11. On 7 May 2024, the Tribunal informed the Parties that it considered that the 12 April 2024 authorization letter, submitted further to Procedural Orders No. 4 and 6, establishes Stikeman Elliott LLP’s authority to represent Claimants. The Tribunal also noted that Canada had not contested that the 12 April 2024 authorization letter is in good order.
12. On 17 May 2024, further to the Tribunal’s directions, Respondent clarified its position on the waiver, including that “*Canada would be prepared to accept an express acknowledgment and confirmation made directly by Paul Einarsson, as the independent executor of the Estate, that the existing waiver provided by Davey Einarsson, signed on April 3, 2019, is binding on the Estate.*”
13. On 22 May 2024, Mr. Harold Paul Einarsson, in his capacity as the representative of the Estate of Theodore David Einarsson (“Estate”), “*affirm[ed] that the Estate of Theodore David Einarsson remains bound by the Article 1121 Waiver executed April 3, 2019.*”
14. The Tribunal invited Respondent to submit its views on the 22 May 2024 letter regarding the waiver issue submitted by Mr. Harold Paul Einarsson as the Estate’s representative. On 28 May 2024, further to the Tribunal’s invitation, Canada submitted its views on the Claimants’ letter dated May 22, 2024, and “*confirm[ed] that the letter signed by Paul Einarsson addresses the concerns raised by Canada in its letters to the Tribunal dated*

*April 22 and May 17, 2024 with respect to the application of the April 3, 2019 waivers to the Estate of Theodore Davey Einarsson.”* Canada, however, noted that it “*continues to maintain its jurisdictional objection that the Claimants have failed to comply with the waiver requirement under NAFTA Article 1121 to establish Canada’s consent to arbitration in this dispute.*”

## II. TRIBUNAL ANALYSIS

15. The Tribunal notes that the issues related to the passing of Davey Einarsson on 2 January 2024 and the succession of his interests in this arbitration have been extensively briefed by the Parties.
16. Pursuant to Procedural Orders No. 4 and 6, Claimants submitted evidence, including the Letters Testamentary, that Mr. Harold Paul Einarsson qualifies as the independent executor of Davey Einarsson’s estate.
17. The Tribunal therefore finds that Mr. Harold Paul Einarsson has the standing to represent Davey Einarsson’s estate, which includes Davey Einarsson’s interests in GSI, and to pursue claims on behalf of the estate in these proceedings as they may have existed at the time of Davey Einarsson’s death.
18. Mr. Harold Paul Einarsson has submitted a letter, dated 12 April 2024, to the Tribunal on his own behalf and as the representative of the Estate of Theodore David Einarsson, Geophysical Service Incorporated and Russel Einarsson (the “Claimants”), confirming that “*Claimants have given full authorization to Stikeman Elliott LLP to act in a full counsel of record role in the Arbitration, for all purposes and in all capacities.*” Canada has not disputed that the 12 April 2024 authorization letter is in good order.
19. The Tribunal also observes that Canada “*confirm[ed] that the letter signed by Paul Einarsson [dated 22 May 2024] addresses the concerns raised by Canada in its letters to the Tribunal dated April 22 and May 17, 2024, with respect to the application of the April 3, 2019 waivers to the Estate of Theodore Davey Einarsson*” while maintaining its jurisdictional objection that Claimants did not comply with the NAFTA Article 1121 waiver requirement.
20. Considering these findings and also that Canada does not object *per se* to the succession from Davey Einarsson to Mr. Harold Paul Einarsson, or to the authorization of Stikeman Elliott to represent the estate, nor to the applicability to the estate of the waivers as given on 3 April 2019, the Tribunal finds that the estate as represented by Mr. Harold Paul Einarsson now holds the rights of Davey Einarsson as they may have existed at his death and that all Claimants are represented herein.

**III. DECISION**

21. The Tribunal confirms that the proceedings are to continue with Stikeman Elliott acting as the authorized legal representative of all Claimants.

**Dated:** 8 July 2024

**Place of Arbitration:** Calgary, Alberta, Canada

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Carita Wallgren-Lindholm

(Presiding Arbitrator)

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Trey Gowdy

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Toby Landau KC