

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GEOPHYSICAL SERVICES,
INCORPORATED,

Plaintiff,

VS.

TGS-NOPEC GEOPHYSICAL
SERVICES,

Defendant.

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CIVIL ACTION NO. 14-1368

MEMORANDUM AND OPINION

Canadian laws regulating offshore petroleum exploration and extraction require geophysical surveyors performing seismic studies in waters offshore Newfoundland and Labrador to submit copies of the data the surveyors collect and compile to a government regulatory board. The plaintiff, Geophysical Services Incorporated, performed seismic surveys in those offshore waters in 1982 and gave the regulatory board copies of its data. Geophysical asserts a copyright interest in that data under Canadian law. In 1999, the defendant, TGS-Nopec Geophysical Services (“TGS”), asked the regulatory board for a copy of the seismic data Geophysical had filed years earlier. The board made copies and sent them to TGS’s Houston address. TGS then did its own seismic surveys at the same location where Geophysical had surveyed in 1982. TGS licensed the data it collected through those surveys to oil and gas companies. Geophysical has sued for copyright infringement, alleging that TGS contributorily infringed Geophysical’s copyrighted seismic survey data by asking the Canadian regulatory board to copy the data and send it to TGS. Geophysical also alleges that the TGS surveys made

at the locations disclosed in the Geophysical surveys obtained from the Canadian regulatory board were derivative works. Geophysical alleges that TGS infringed its copyrights by providing licenses to oil and gas companies to use the data collected in the TGS surveys made using Geophysical's locations, and by distributing the survey results without attaching Geophysical's copyright-management information.

This memorandum and opinion addresses TGS's motion to dismiss. TGS argues that Geophysical's complaint fails to state a claim and is barred by the act-of-state doctrine and by international comity. (Docket Entry No. 10). Geophysical responded, TGS replied, and Geophysical surreplied, (Docket Entry Nos. 13, 16, 20), and counsel presented oral argument.

Based on the pleadings; the motion, response, reply, and surreply; counsels' arguments; and the applicable law, the court grants the motion to dismiss. The claims arising from TGS's request that the Canadian regulatory board copy and send the Geophysical survey data filed with the board years earlier are dismissed, with prejudice and without leave to amend. The claims related to TGS's subsequent use of the data it received from the board are dismissed, but without prejudice. No later than **April 24, 2015**, Geophysical may file an amended complaint that repleads these allegations in compliance with Rule 8(a) of the Federal Rules of Civil Procedure.

The reasons for these rulings are explained below.

I. Background

Geophysical is a Canadian company that collects, prepares, and licenses seismic data, including seismic lines. (Docket Entry No. 1 at p. 2).¹ Geophysical licenses its seismic lines to

¹ A seismic line is taken in offshore waters and is a two-dimensional depiction of the earth's structure below the ocean floor, revealing a cross-section picture of the earth's rock layers. (Docket Entry No. 1 at p. 3). The picture is intended to be an accurate depiction of the earth's structure. Two seismic lines taken at the same location may vary, however, depending on the acquisition parameters selected by the surveyor,

oil and gas companies to use in exploring for oil, gas, and other hydrocarbons.

Various Canadian laws govern seismic surveying in Canada's offshore waters. The federal government of Canada and the provincial government of Newfoundland and Labrador enacted the Canada-Newfoundland Atlantic Accord in 1985. The Accord's objectives were "to provide for the development of oil and gas resources offshore Newfoundland for the benefit of Canada as a whole and Newfoundland in particular" and "to protect, preserve and advance the attainment of national self-sufficiency and security of supply." (Docket Entry No. 10, Ex. A). The federal and provincial governments enacted mirror legislation, the Canada-Newfoundland Offshore Petroleum Resources Accord Implementation Act, (the "Implementation Act"), to implement the Accord. S.C. 1988, c. 28; R.S.N.L. 1990 c. C-2, (Docket Entry No. 10, Ex. B).

The Implementation Act authorized the adoption of the Newfoundland Offshore Area Petroleum Geophysical Operations Regulations (the "Operations Regulations"). SOR-95-334, (Docket Entry No. 10, Ex. C). The Implementation Act also established the Canada-Newfoundland Offshore Petroleum Board (the "Petroleum Board"). The Petroleum Board is a government agency that oversees regulatory compliance with the Accord, the Implementation Act, and the Operations Regulations. The Implementation Act and the Operations Regulations apply to all exploration and extraction activities in Newfoundland's offshore waters. A surveyor intending to conduct seismic studies in those waters must first apply to the Petroleum Board for authorization and agree to follow the safety and reporting requirements established by the Board and by Canadian law. Operations Regulations §§ 3, 4.

The Operations Regulations require geophysical surveyors to give the Petroleum Board a

proprietary processing technology, and decisions about how to process and assemble the data. (*Id.*).

copy of the data they compile from their surveys, including a copy of any seismic lines they prepare. Operations Regulations, § 25. Surveyors must also keep their own copy of the compiled data and seismic lines inside Canada. For 15 years after collecting the data, surveyors may not destroy their copies or move them outside the country without the Petroleum Board's permission. Operations Regulations, § 26.

The Implementation Act originally required the Board to keep the seismic line and other data surveyors filed confidential for five years. *See* Implementation Act, § 119. In practice, the Petroleum Board observes a 10-year confidentiality period before it will copy and disclose the data to third parties. (Docket Entry No. 10, Ex. G). The Act states that the information "may be disclosed" after the confidentiality period expires." Implementation Act, § 119.

The Petroleum Board regularly receives requests for information that it has obtained from operators and surveyors. If the confidentiality period has expired, the Petroleum Board provides the requested copies. On multiple occasions, the Petroleum Board has sent the Geophysical seismic lines to third parties who followed the Board's procedure for requesting copies. (Docket Entry No. 14-1, Ex. 4).

In addition to these disclosure provisions, and without regard to the 10-year confidentiality period, the Implementation Act gives the Petroleum Board the right to give the Federal Minister and the Provincial Minister access to the information the Board maintains. Implementation Act, § 18. The Board may also disclose "documentation relating to a significant discovery" to any offshore-interest owner who needs the information to comply with a drilling order from the Petroleum Board. Implementation Act, § 77.

Geophysical applied for and obtained a work authorization from the Petroleum Board to

conduct offshore seismic surveys. In 1982, Geophysical completed the NF-82 Survey, covering 7,309 kilometers in the offshore waters of Newfoundland and Labrador. Geophysical created seismic lines from the data it gathered and submitted copies of each to the Petroleum Board. (Docket Entry No. 1 at p. 8; Docket Entry No. 10, Ex. D, at pp. 3–4).

In 1999, long after the 10-year confidentiality period ended, TGS sent the Petroleum Board an e-mail from its Houston office, asking for copies of certain seismic lines Geophysical had prepared and filed after completing its NF-82 survey. TGS filled out the Petroleum Board’s “Disclosure Agreement — Information Requests” form, which included the following statement:

The applicant understands and agrees that information and data contained in these materials are being disclosed in accordance with the Accord Acts and that such disclosure could be challenged under the intellectual property laws of Canada. The applicant agrees to use these materials in a manner consistent with those laws.

(Docket Entry No. 14, Ex. 3). The form also stated that “[t]he [Petroleum Board] makes no representation or warranty as to the existence or absence of any trademark, copyright, or other ownership rights in respect to the disclosed information and data.” (*Id.*).

The Petroleum Board made the copies of the Geophysical seismic lines TGS requested. The Board sent the copies to TGS’s Houston address and charged TGS \$97.75. (Docket Entry No. 1, Ex. A).

Geophysical alleges that in 2002 to 2003 and again in 2012 to 2013, TGS took the copies of the Geophysical seismic lines it had received from the Petroleum Board, went to the same locations Geophysical had surveyed, and took its own seismic-line measurements at those locations. TGS then used this data to prepare its own seismic lines, labeled as OB-102, OB-

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