INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

COMMERCE GROUP CORP.
AND
SAN SEBASTIAN GOLD MINES, INC.
(APPLICANTS - CLAIMANTS)

and

THE REPUBLIC OF EL SALVADOR
(RESPONDENT)

ICSID CASE NO. ARB/09/17
(ANNULMENT PROCEEDING)

CLAIMANTS' RESPONSE TO EL SALVADOR'S APPLICATION FOR SECURITY FOR COSTS

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LEGAL AUTHORITIES

Reference:

CL-1 *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Preliminary Objections Under CAFTA Articles 10.20.4 and 10.20.5, 2 August 2010.

CL-2 *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12,Decision on the Respondent's Jurisdictional Objections, June 1, 2012.

CLAIMANTS' RESPONSE

Pursuant to the direction of the *ad hoc* Committee, the Applicants/Claimants, Commerce Group Corp. and San Sebastian Gold Mines, Inc. (collectively the "Claimants"), respectfully submit this Response to El Salvador's Application for Security for Costs, in the matter *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador* (ICSID Case No. ARB/09/17):

SUMMARY

1. The Respondent El Salvador asks the *ad hoc* Committee to create an economic bar to this annulment proceeding so that the merits of the Claimants' claims and arguments will never be heard.

2. The Claimants have complied with their obligations under ICSID Administrative and Financial Regulation 14(3)(e) by complying with ICSID's request that they deposit the sum of $150,000.

3. On consideration of the comprehensive provisions of Regulation 14(3)(e) relating to the advancement of costs, the Respondent's request is without merit and should be denied.

BACKGROUND

4. The Claimants, Commerce Group Corp. ("CGC") and San Sebastian Gold Mines, Inc. ("SSGM"), were in the business of exploring for and producing gold and silver in the Republic of El Salvador since 1968. For nearly forty years, their work was permitted and encouraged by the Republic of El Salvador, which granted the Claimants concessions extending through the year 2034. However, in 2006, the Republic of El Salvador declared a general moratorium on mining and forced the Claimants to shut down their entire business in El Salvador. After it declared the moratorium, El Salvador revoked the Claimants' permits for mining, processing, and exploration.

5. On 17 March 2009, the Claimants served on El Salvador a written notice of their intent to submit a claim to arbitration pursuant to Article 10.16.2 of CAFTA. The Republic of El Salvador did not respond to it. On 2 July 2009, the Claimants filed a Notice of Arbitration with ICSID, stating that their request for arbitration was made pursuant to Article 36 of the ICSID Convention, Articles 10.16(1)(a), 10.16(1)(b) and 10.16(3)(a) of CAFTA, and Article 15(a) of the Ley de Inversiones of El Salvador. On 16 August 2010, the Respondent El Salvador filed its Preliminary Objection under the expedited procedures of CAFTA, attacking jurisdiction. After briefing and oral argument the Tribunal dismissed all proceedings pending before ICSID. On 11 July 2011, the Claimants applied for annulment based on grounds provided in ICSID Convention Article 52, specifically, that the Tribunal manifestly exceeded its powers under Article 52(1)(b) and the Award fails to state the reasons on which it is based under Article 52(1)(e).

6. The Claimants have not failed to pay any of their obligations in this proceeding. The Claimants did request, and appreciate, the *ad hoc* Committee's extension of time to pay the $150,000 advance requested by the Secretary-General of ICSID. The Claimants complied with the extended deadline set by the *ad hoc* Committee.

THE EQUITIES UNDERLYING THE RESPONDENT'S REQUEST

7. The Respondent asserts that "El Salvador is not responsible for Claimants' insolvency." [Respondent's Application, ¶¶ 5-7] The Claimants do not regard themselves as being insolvent. They have substantial assets in the Republic of El Salvador which they cannot develop because of El Salvador's moratorium on mining. They continue to employ staff both in the United States and in the Republic of El Salvador, although the number they now employ does not come close to the hundreds they employed after the Respondent invited them to invest.

8. The Respondent suggests that its moratorium was of little consequence because in 2002, the Claimants were seeking funding. The Respondent fails to mention that in 2008 the Claimants entered into an agreement with a strategic partner to develop the San Sebastian Gold Mine. After meeting with representatives of the El Salvadoran government, however, the strategic partner withdrew, when it was clear that the El Salvadoran government would not allow

mining under any circumstances.[1] When the Claimants have the opportunity to present the merits of their claim, they will show that at this time, the value of their mining development was estimated at $858 million.

9. The Respondent highlights the debts of the Claimants as stated in Commerce Group Corp.'s 2010 Annual Report [R-1]. The same report, at page 55, shows that in the previous fiscal year Commerce Group Corp., consistent with accounting guidelines, wrote off $26,049,303 of its investment in its mining operation because of "factors including the cancellation of its permits by the Government of El Salvador, the fact that there has been no resolution of the Company's legal challenges to this action initiated in El Salvador, the unwillingness of the El Salvadoran Government to engage in any discussions after the Company gave notice of its intent to file for arbitration under CAFTA-DR on March 17, 2009 (and consequently, the need to file for arbitration before the International Centre for Settlement of Investment Disputes (ICSID) on July 2, 2009), and public statements made by members of the Government of El Salvador elected in March 2009."

10. The Respondent casts aspersions on Commerce Group Corp.'s financial statements by selectively quoting a report filed by Commerce Group Corp. with the Securities and Exchange Commission on July 14, 2011. [Respondent's Application, ¶ 7] The selective quoting leaves the impression that there was impropriety in the audit of the company's financial statements. A full reading of the report [R-3] shows just the opposite.[2]

11. There is no question that the Respondent will use every device to pose economic barriers to the Claimants' pursuit of justice. As reported in our 17 November 2011 letter to the

[1]Claimants' Rejoinder on Preliminary Objection, ¶ 105.

[2]The report states: "Douglas W. Morrill, CPA, a former partner of Chisholm, was the engagement partner for the Company's March 31, 2010 audit and was responsible for supervising the engagement and signing or authorizing an individual from Chisholm to sign the Company's March 31, 2010 audit. Mr. Morrill continues to conduct audits through his new firm Bierwolf, Morrill & Nilson CPA. To the Company's knowledge, Mr. Morrill was not personally sanctioned by the PCAOB, and the Company did not receive any correspondence from the Securities and Exchange Commission, the PCAOB or Chisholm regarding the revocation of Chisholm's PCAOB registration." Neither the PCAOB nor the Securities and Exchange Commission found fault with the audits of Commerce Group Corp.'s financial statements.

ad hoc Committee, during the pendency of the proceedings the Respondent has not refunded tax and security deposits due the Claimants, and has in other respects made it difficult, if not impossible, for the Claimants to keep their investment intact. Meanwhile, the Respondent fails to enforce its moratorium against El Salvadoran nationals who continue to mine in El Salvador, even turning a blind eye to such mining at the Claimants' San Sebastian mine.

12. The Respondent asserts that the Claimants initiated an arbitration and an annulment proceeding they could not fund. [Respondent's Application, ¶¶ 8-14] The fact of the matter is that the Claimants have funded these proceedings.

13. The Respondent suggests that for some inexplicable reason, the Claimants have been preventing this matter from proceeding to a hearing on the merits, all to the detriment of the Respondent's international reputation. [Respondent's Application, ¶¶17-19] In reality, the opposite is the case. From the outset, the Respondent's response has been to stonewall against claims and to introduce successive objections to prevent a hearing on the merits. This can be seen not only in the history of the proceedings initiated by the Claimants, but also in the proceedings initiated by another mining company, Pacific Rim.[3]

14. In the case of the Claimants, there were unsuccessful informal attempts to resolve this matter with the Respondent through the time that the Claimants served their 17 March 2009 notice of their intent to submit a claim to arbitration. The Respondent did not at all respond to the 17 March 2009 notice, let alone make any effort to resolve this dispute.

15. On 2 July 2009 the Claimants filed their Notice of Arbitration. The Respondent states that it "recalls" that Claimants also let the underlying arbitration remain idle. [Respondent's Application, ¶ 18] In fact, the Respondent delayed the proceedings by failing to nominate an arbitrator. The Claimants had nominated Professor Christopher Greenwood, CMG QC as an arbitrator in their 2 July 2009 request for arbitration. On 29 September 2009 Senior Counsel for

[3]See *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Preliminary Objections Under CAFTA Articles 10.20.4 and 10.20.5, 2 August 2010, and *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, June 1, 2012. [**Authority, CL-1; CL-2**]

ICSID wrote to advise the parties that Professor Christopher Greenwood would be unable to accept the appointment and invited the Claimants to proceed with the appointment of another arbitrator. On 23 October 2009 the Claimants nominated Dr. Horacio A. Grigera Naón in place of Professor Greenwood. On 29 October 2009 Senior Counsel for ICSID wrote to advise the parties that Dr. Grigera Naón accepted his appointment as arbitrator. Throughout this time and afterward, the Respondent did not nominate anyone to serve as arbitrator, and consequently, delayed the proceedings because, lacking a nomination from the Respondent, the Secretary-General did not constitute the Tribunal.

16. The Respondent mischaracterizes the situation when it states that the Claimants proceeded "[o]nly when faced with ICSID's termination of the arbitration" and that the Respondent was kept "in limbo while figuring out how they would proceed." [Respondent's Application, ¶18] The proceedings were being held up by the Respondent's failure to nominate an arbitrator. Only because of the Respondent's inaction, on 9 April 2010 the Secretary-General of ICSID wrote to the parties to remind them that the proceedings could be discontinued if the parties failed to take any steps during six consecutive months, noting that the last step taken by any party was the Claimants' nomination of Dr. Grigera Naón on 23 October 2009. On 13 April 2010 the Claimants asked the Chairman of the Administrative Council, ICSID to immediately appoint an arbitrator on behalf of the Respondent. On 19 April 2010 the Senior Counsel for ICSID wrote to the parties to advise them that the Secretary-General would do so if the Respondent did not act. On 28 April 2010, the Respondent nominated Mr. J. Christopher Thomas, Q.C., as an arbitrator, and the proceedings moved forward, notwithstanding more procedural objections on the part of the Respondent.

17. On 20 May 2010 the Secretary-General of ICSID notified the parties that it was her intention to appoint Professor Albert Jan van den Berg as chairman of the Tribunal, unless she received an objection to his appointment by 27 May 2010. On 27 May 2010 the Respondent objected to the appointment of Professor Albert Jan van den Berg. On 22 June 2010, the Secretary–General wrote to the parties to advise that she did not find the Respondent's objection compelling and that she was appointing Professor Albert Jan van den Berg as president of the

Tribunal unless the parties proposed an alternate solution by 25 June 2010. Thereafter, on 1 July 2010 the Secretary-General informed the parties that the Tribunal was deemed constituted.

18. The Respondent suggests that the Claimants have had some secret plan to initiate and then abandon this annulment proceeding, and have advanced that plan by paying the $150,000 requested by the Secretary-General of ICSID. [Respondent's Application, ¶¶ 15-24] The Respondent does not explain what conceivable reason there would be for the Claimants to do such a thing. The Claimants have already presented their arguments in a memorial timely submitted on December 15, 2011, and have fully advanced the costs of the proceedings requested by the Secretary-General of ICSID. There is no plan to abandon this annulment proceeding.

ARGUMENT: THE APPLICATION LACKS ANY LEGAL MERIT

19. ICSID Administrative and Financial Regulation 14 relates to "Direct Costs of Individual Proceedings" which include expenses of ICSID and do not include legal fees and expenses of the parties.

20. ICSID Administrative and Financial Regulation 14(3)(e) applies this regulation to annulment proceedings. It does not authorize ICSID to require a deposit of an opponent's anticipated legal fees and expenses on penalty of having no further right to be heard.

21. Respondent's Application conflates and obfuscates two distinct issues: first, advance payment of costs for the annulment proceeding; and second, security for the Respondent's own legal costs. Neither of these requests involves the Committee's inherent power to preserve the integrity of the annulment process. With respect to the cost of the annulment proceeding, Respondent self-servingly and repeatedly emphasizes the alleged "risk" of the Centre and the Committee being left with unreimbursed fees and expenses. This risk is entirely illusory as the ICSID Administrative and Financial Regulation (the "Regulation") authorizes the Centre to request advance payments to cover all anticipated expenses.

22. The application for the Respondent's own costs should be seen for what it is—a disguised provisional measures application to protect its own interests—and not a question of the

integrity of the proceeding. The Respondent has inappropriately veiled its application for security for its own costs in the guise of protecting the integrity of the proceeding. It is apparently unwilling to make a provisional measures application because it doubts whether the Committee has the power to recommend provisional measures, knows that orders for security for costs are unprecedented in ICSID proceedings and that it would, in any event, fail to meet the high threshold for obtaining security for its own costs as a provisional measure.

(a) The ICSID Administrative and Financial Regulation provides the appropriate mechanism for funding the cost of the proceeding.

23. The Respondent's entire argument with respect to security for the cost of the proceeding is beside the point. Regulation 14 provides a comprehensive mechanism to address the cost of annulment proceedings by making the applicant solely responsible for making advance payments for the proceeding *upon the request of the Secretary-General*:

> (d) in connection with every conciliation proceeding, and in connection with every arbitration proceeding unless a different division is provided for in the Arbitration Rules or is decided by the parties or the Tribunal, each party shall pay one half of each advance or supplemental charge, without prejudice to the final decision on the payment of the cost of an arbitration proceeding to be made by the Tribunal pursuant to Article 61(2) of the Convention. All advances and charges shall be payable, at the place and in the currencies ***specified by the Secretary-General***, as soon as a request for payment is made by him. If the amounts requested are not paid in full within 30 days, then ***the Secretary-General shall inform*** both parties of the default and give an opportunity to either of them to make the required payment. At any time 15 days after such information is sent by the Secretary-General, ***he may move*** that the Commission or Tribunal stay the proceeding, if by the date of such motion any part of the required payment is still outstanding. If any proceeding is stayed for non-payment for a consecutive period in excess of six months, ***the Secretary-General may, after notice to and as far as possible in consultation with the parties, move that the competent body discontinue the proceeding***;
>
> (e) in the event that an application for annulment of an award is registered, the above provisions of this Rule shall apply *mutatis mutandis*, except that the applicant shall be solely responsible for making ***the advance payments requested by the Secretary-General*** to cover expenses following the constitution of the Committee, and without prejudice to the right of the Committee in accordance with Article 52(4) of the Convention to decide how and by whom expenses

> incurred in connection with the annulment proceeding shall be paid. [emphasis added]

24. In accordance with the Secretary-General's request, the Claimants have made an advance payment of USD150,000, well in excess of the incurred expenses and fees to date.

25. The appropriate mechanism to address any concerns about the cost of the annulment proceeding is for the Secretary-General to require advance payment. Under the Regulation, the Secretary-General is empowered to ensure annulment proceedings are properly funded through the provision of advance payments. The Respondent's request usurps the role of the Secretary-General and contravenes Regulation 14(3)(d) and (e). Under 14(3)(d), it is the role of the Secretary-General to move that the Committee stay, and then ultimately, discontinue the proceeding, if there is a failure to make the required advanced payment. Neither the Regulation nor the ICSID Convention allows the Committee to "terminate" an annulment proceeding, as requested by the Respondent at paragraph 45 of its Application.

26. The Respondent has, in an entirely self-interested way, held itself out as the guardian of the Centre and the Committee through its feigned concern with the risk of unreimbursed fees and expenses. The application for security for costs for the proceeding is simply a pretext for the Respondent to put another procedural roadblock in the way of the proceeding. The Secretary-General, not the Respondent, is the guardian of financial matters relating to the costs of the proceeding. It is the Secretary-General who sets the amounts of advance payments and who has the discretion to move that the Committee stay or discontinue the proceeding in the event that an advance payment is not made.

27. In light of the mechanism provided in the Regulation, there is no need for, or question of, the Committee having to rely on inherent powers to order security for the costs of the proceeding. The Regulation provides for such "security" through requests for advance payment. There is no procedural "gap" as suggested by the Respondent [Respondent's Application, ¶ 27] that needs to be filled by an unprecedented and unwarranted order for security for the costs of the proceeding.

(b) The Respondent's application for security for its own legal expenses is a disguised provisional measures application that should be rejected.

28. The Respondent disclaims that it is making an application for provisional measures and bases its application on the inherent powers of the Committee to protect the integrity of the proceeding.[4] As demonstrated above, the Regulation ensures integrity with respect to the funding of the proceeding through the mechanism of advance payment. The Respondent deliberately and confusingly conflates its own interests in seeking its own legal costs with that of the funding of the proceeding, and inappropriately characterizes both of these as going to the integrity of the proceeding.

29. The authorities cited by the Respondent address the integrity of the proceedings in the context of matters such as potential conflicts of interest between counsel and arbitrators; basic procedural fairness; respect for confidentiality and legal privilege; the right of parties both to seek advice and to advance their respective cases freely and without interference; and non-aggravation of the dispute.[5] In all of these cases, the overriding goal of the exercise of inherent powers was to ensure due process and facilitate the adjudication of claims. In contrast, the Respondent seeks to rely on inherent powers to create an impediment to due process.

30. Security for a party's legal costs is a question of the financial interests of one party and not the integrity of the proceeding. This is evident from the authorities cited by the Respondent, all of which discuss security for a party's own legal costs in the context of applications for provisional or interim measures aimed at preserving the rights of one of the parties.

31. As the Committee is likely aware, in circumstances like these security for a party's own costs has never been granted by an ICSID tribunal or *ad hoc* Committee. Where security for

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[4]Respondent's Application, fn 26.

[5]*Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Decision on Preliminary Issues, June 23, 2008 (Authority RL-8); *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Decision on the Participation of Counsel, May 6, 2008 (Authority RL-9); *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Procedural Order No. 2, May 30, 2008 (Authority RL-10).

costs has been sought, it appears that it has always been sought on the basis of ICSID Convention, Article 47 (Provisional Measures). In *Libananco Holdings Co. Limited v. Republic of Turkey*, in response to the Respondent's application for security for costs, the Tribunal stated as follows:

> 57. The Tribunal is not aware of any established practice on the part of ICSID Tribunals in favour of granting security for costs either to a Claimant or to a Respondent. Asked during the oral hearing for its most favourable authority supporting the granting of security for costs, even by analogy, counsel for the Respondent was in some difficulty to name anything specific.In these circumstances, the Tribunal takes the view that it would only be in the most extreme case – one in which an essential interest of either Party stood in danger of irreparable damage – that the possibility of granting security for costs should be entertained at all.
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> 58. The Tribunal does not believe that the present is such a case. The Respondent bases its request on the claim that the Claimant, Libananco, is a shell company without assets of its own, and is therefore unlikely to be able to meet an eventual award of costs against it should either its jurisdictional or its merits claims be rejected by the Tribunal in due course.
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> 59. The Tribunal does not find that argument convincing. The state of Libananco's assets is not at this stage the subject of proof, but of mere assertion and counter-assertion. More important to the mind of the Tribunal is that, far from this being an unusual exception, it is in practice closer to the norm that the entity appearing as an ICSID Claimant is an investment vehicle created or adapted specially for the purpose of the investment transaction that has in the meanwhile become the subject of dispute. Nor, moreover, is it in fact standard practice for ICSID Tribunals invariably to make an award of costs against a losing Party. There is no express reference to such an award in the Convention itself, and Rule 47(1)(j) of the Arbitration Rules is cast in broad and flexible terms which in its application entails an exercise of discretion by the individual tribunal in the light of the particular circumstances of the dispute before it. The Tribunal can see no good reason to prejudge at this stage in these proceedings how it might in due course wish to exercise that discretion, the more so as it has not yet … been apprised of the terms of the Respondent's arguments on either jurisdiction or merits.[6]

32. The Claimants submit that the Respondent's application for security for its own costs should be rejected as inadmissible because it is premature. ICSID practice demonstrates

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[6]*Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Decision on Preliminary Issues, June 23, 2008 [**Authority RL-8**]

that applications for security for costs are appropriately entertained as provisional measures applications because they are made to preserve the respective rights of one of the parties. The Respondent has put the proverbial cart before the horse by arguing that the Committee has the inherent power to order security for the Respondent's own costs rather than seeking provisional measures. It is for the Respondent to make the case that the Committee has the power to recommend provisional measures and to establish that the criteria for recommending provisional measures has been met.[7] To hold otherwise would result in a two-track system for seeking interim relief—one under ICSID Convention Article 47 and one under the Committee's inherent powers to protect the integrity of the proceeding.

33. If the Committee were to hold that the application is admissible, the Claimants submit that security for a party's own costs is not an issue going to the Committee's inherent powers to protect the integrity of the proceeding. The integrity of the proceeding involves the process by which claims are made and determined. The integrity of legal proceedings is not affected by whether an award or decision is satisfied by one of the parties. To hold otherwise would mean that, not only must a tribunal render an enforceable award, it must render an award that will be satisfied by the award debtor. An agreement to arbitrate promises a process, not a result. By agreeing to arbitrate, the Respondent assumes the risk of having to expend resources to defend itself against claims.

34. If the Tribunal were to find that it has, in principle, an inherent power to order security for the Respondent's own legal costs in this proceeding, the Claimants submit that this power should only be used in the most extreme case, where there is incontrovertible evidence of misconduct or bad faith. The Respondent's counsel throughout the proceedings has made inappropriate allegations of bad faith against the Claimants. The Claimants note that in its Award, the Tribunal ordered the parties to split the costs of the proceedings and stated that "the Tribunal

[7]As the Respondent has chosen not to make an application for provisional measures, the Claimants take no position at this point with respect to whether the Committee has the power to recommend provisional measures and on the merits of any such application. The Claimants reserve their rights in all respects with respect to any such application.

has been presented with no indication that Claimants were not serious about the claims they asserted in these proceedings, nor that Claimants pursued this matter in bad faith."[8]

35. The Respondent argues that the Claimants should be responsible for the Respondent's costs if the Claimants abandon this proceeding. [Respondent's Application, ¶¶ 15-20] This submission is premature, speculative and irrelevant to the application before the Committee. It is inappropriate for the Committee to prejudge whether it will grant costs in the proceeding.[9] Further, any inferences with respect to third-party funding are premature and speculative.

36. Granting the Respondent's requested amount would result in a serious miscarriage of justice as it would create an almost insurmountable obstacle to the Claimants' application to annul the Award. The Respondent's illegal moratorium on mining has prevented the Claimants from accessing capital markets and impeded joint venture arrangements. In a seriously flawed Award, the Tribunal held, among other things, that a *de facto* moratorium on mining is not a measure and found that it had no jurisdiction. The Respondent's request for security for USD 1.7 million is a deliberate and calculated strategy aimed at putting procedural roadblocks in the way of the Claimants' attempt to seek justice.

37. Finally, even if the Committee has the power to order security for costs as an interim measure, the Claimants submit that the Committee does not have the power to enforce that order by the termination of the proceeding. ICSID Convention Article 47 does not provide enforcement powers for breaches of provisional measures. A Tribunal cannot simply terminate a proceeding because one of the parties fails to comply with provisional measures. The Respondent has provided no authority for the proposition that an *ad hoc* Committee may terminate a proceeding for failure to pay an order for security.

(c) The *ad hoc* Committee should reject the Respondent's request for additional submissions on this matter.

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[8]Award, ¶ 137.

[9]*Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Procedural Order No. 2, Oct. 28, 1999, ¶¶ 20-21 [**Authority, RL-21**]

38. The Respondent has asked the *ad hoc* Committee for an opportunity to present an additional submission "[i]In the event that Claimants question the Committee's power to issue an order for security for costs, and should the Committee have any doubts about its power to issue such order." [Respondent's Application, ¶ 46] The Claimants ask the *ad hoc* Committee to reject that request.

39. The Respondent expresses great concern over the cost of this proceeding, and the Claimants share that concern. Inviting another round of briefing certainly does not alleviate the cost of this proceeding. It also seems clear, based upon the very authority submitted by the Respondent, that the Application should be denied. The Claimants have not had to go beyond the authority submitted by the Respondent to show this to be the case.

CONCLUSION

40. The Respondent's application is simply a veiled attempt to end this proceeding before the *ad hoc* Committee can consider the Claimants' submission by making the proceeding cost prohibitive. The Respondent's application does not promote the integrity of arbitral proceedings. To the contrary, a decision in the Respondent's favor would run contrary to the integrity of arbitral proceedings because it would stretch for a reason to close the door to Claimants who have paid the financial advance requested by the Secretary-General, pursuant to ICSID's regulations. Ordering security for costs is unprecedented, would deny justice to the Claimants, and would prejudge the merits of the application.

41. For the foregoing reasons, the Applicants/Claimants, Commerce Group Corp. and San Sebastian Gold Mines, Inc., respectfully request that the *ad hoc* Committee deny the Respondent's Application for Security for Costs.

Dated: 17 August 2012

Respectfully submitted,

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