

International Centre for Settlement of Investment Disputes

1818 H Street, N.W., Washington, D.C. 20433, U.S.A.
Telephone: (202) 458-1534 Faxes: (202) 522-2615/2027
Web site: www.worldbank.org/icsid

By E-mail

July 31, 2009

Piero Foresti, Laura De Carli and others
c/o Messrs. Peter Leon,
Kevin Williams, Vladislav Movshovich and
Jonathan Veeran
Webber Wentzel
10 Fricker Road, Illovo Boulevard
Illovo, Johannesburg 2196
South Africa
and
c/o Mr. Toby T. Landau QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC21 3EG
United Kingdom
and
c/o Professor Sir Elihu Lauterpacht QC; and
Dr. Guglielmo Verdirame
20 Essex Street Chambers,
20 Essex Street,
London WC2R 3AL
United Kingdom

Republic of South Africa
c/o Mr. S.P. Mathebula
State Attorney and
Mr. Seth Nthai SC
Old Mutual Centre, 8th Floor, 167 Andries Str.
Pretoria, 0002
South Africa
and
c/o Messrs. Jan Paulsson,
Georgios Petrochilos, and
Ben Juratowitch,
Freshfields Bruckhaus Deringer
2 rue Paul Cézanne
75008 Paris, France
and
c/o Mr. Jonathan Gass
Freshfields Bruckhaus Deringer
Strawinskylaan 10
1077 XZ Amsterdam
The Netherlands

Re: Piero Foresti, Laura de Carli and others v. Republic of South Africa **(ICSID Case No. ARB(AF)/07/1)**

Dear Sirs,

The President of the Tribunal has me asked to inform you of the following:

The Tribunal has considered and discussed the Parties' written submissions with respect to the Claimants' request for a stay of the proceedings and the Respondent's second document request. It has also discussed the recent request by third-parties to participate in the proceedings.

The Claimants' Request For A Stay

Having carefully reviewed the Parties' written submissions, the Tribunal is strongly of the view that the arbitration can and should proceed according to the timetable previously agreed, without prejudicing the position of either Party. The Tribunal appreciates that the precise details of the conversion of old rights to new rights may be

said to bear upon both issues of quantum and issues of liability. It considers, however, that the question of the precise details of the conversion scheme can be kept separate from broader issues of principle concerning the scheme, and that it is possible for the Claimants' case to be pleaded on the facts now known, even if some doubts remain as to the precise terms or extent of the conversions. Mindful that evidence regarding the details of the conversions might become important, to the extent that it becomes necessary to refine pleadings in the light of newly-discovered facts concerning the details of the conversion scheme, the Tribunal would be willing to accept concise (up to 50 pages) additional submissions on the question of the adequacy of the compensation mechanism, up until March 2010. The Claimants might be permitted to make such a submission by March 5, 2010 and the Respondent by March 26, 2010. In addition, the Tribunal would accept post-hearing submissions from each Party on the issue.

The Tribunal believes strongly that, with the caveats as to additional pleadings noted above, the proper course is to proceed as planned, and that to do so is entirely consistent with the just and efficient conduct of the case. It is minded to make an order to that effect. It is, however, conscious that the Claimants have asked for a telephone hearing to be convened if the Tribunal considers a stay to be inappropriate. For that reason, while the Tribunal considers that the Parties have made their positions quite clear in their respective written submissions and does not itself feel any need for further submissions, if either Party considers that there is a compelling case for adding oral submissions to those written statements, the Tribunal is willing to hold a short telephone hearing at 17:00 (UK Time) on either August 10 or 11, 2009.

Respondent's Second Document Request

Having considered the Parties' submissions on Respondent's second request for documents, it appears that the Parties are agreed that the documents at issue should be submitted to an impartial third party for review, to certify that all relevant parts of the documents have been produced. Unless the Parties are agreed on another person, the Tribunal suggests as a possible impartial third party (1) Lord Bingham or (2) Sir Gavin Lightman. Unless either Party objects, the Tribunal will ask if Lord Bingham or, failing him, Sir Gavin, is willing and able to act.

Third Party Participation In Proceedings

As the Parties know, a petition dated July 17, 2009 (attached, in electronic version only) was filed by four NGOs, led by the Centre for Applied Legal Studies, for limited participation in the proceedings as non-disputing parties. In accordance with the ICSID Additional Facility Rules and the procedure agreed in item 19 of the Minutes of our first session (London, December 11, 2007), the Parties are asked to submit their views on the petition to the Tribunal by September 11, 2009. It is understood that another, similar petition may be filed within the next two weeks by the International Commission of Jurists, based in Geneva.

If such a petition is filed with ICSID before August 14, 2009, it will be referred to the Parties as quickly as possible, and they will be asked to submit their views on that petition, too, by September 11, 2009.

The Parties are asked to give their responses to these points as soon as possible, and in any event by close of business (Washington time) on Wednesday, August 5, 2009, so that final decisions can be made in good time before the current agreed deadline for submission of the Claimants' Reply, which is October 15, 2009.

Sincerely yours,

.....signed.....

Eloïse M. Obadia
Secretary of the Tribunal

Attachment

cc (with attachment):
Members of the Tribunal