

**INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES**
(INSTITUTION RULES FOR ARBITRATION PROCEEDINGS)

Receiver
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G. Flores

REQUEST FOR INSTITUTION OF ARBITRATION PROCEEDINGS

**SUBMITTED UNDER SECTION B OF CHAPTER 10 OF THE
DOMINICAN REPUBLIC - CENTRAL AMERICA - UNITED STATES
FREE TRADE AGREEMENT**

RAILROAD DEVELOPMENT CORPORATION

Claimant,

v.

THE REPUBLIC OF GUATEMALA

Respondent.

Submitted under the ICSID Convention and the ICSID Institution Rules, including the Rules of Procedure for Arbitration Proceedings (Arbitration Rules), and delivered by hand on June 14, 2007, to the International Centre for Settlement of Investment Disputes, Secretariat, 1818 H Street, N.W., Washington, D.C. 20433.

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I. PROCEDURAL REQUIREMENTS

A. Request for the Institution of Arbitration Proceedings

1. Pursuant to Articles 10.16 and 10.17 of the Dominican Republic - Central America - United States Free Trade Agreement (“CAFTA”), the Investor, Railroad Development Corporation (“RDC” or the “Claimant”), hereby requests the institution of arbitration proceedings on its own behalf and on behalf of its Investment Enterprise, Compañía Desarrolladora Ferroviaria, S.A., which does business as Ferrovias Guatemala (“FVG” or the “Investment Enterprise”), a Guatemala company that it owns and controls (hereinafter, “Request”).

2. RDC submits to arbitration its claim that the Government of Guatemala (“Guatemala”) has breached obligations owed to Claimant under Section B of Chapter 10 of the CAFTA. These breaches have arisen from the declaration of “*lesivo*” by the President of the Republic of Guatemala, who on August 11, 2006 (effective as of August 25, 2006), in joint counsel with certain of his cabinet ministers, signed Government Resolution 433-2006, which declared an essential element of the country’s 1998 railroad privatization, the usufruct of the rolling stock as set forth in Deed 143/158, “INJURIOUS to the interests of the State” (the “Lesivo Resolution”).¹ The effect of the Lesivo Resolution has been financially and commercially devastating and has permanently destroyed the value of the very substantial investments that RDC made, including those investments made in and through FVG, in the development and operation of the railway system in Guatemala. The Lesivo Resolution was intended to further three principal, but highly improper, Government objectives: (1) to force FVG to withdraw from the arbitration processes in which FVG has charged a Government entity, FEGUA, with breach of contract, (2) to appropriate FVG’s rolling stock, making it impossible for FVG to perform under the basic right-of-way usufruct contract (Deed No. 402) and, thereby, to appropriate all of FVG’s business, without paying compensation; and (3) to redistribute to certain Guatemalan private sector companies the benefits of the usufructs granted by the Government to FVG for the term of fifty years, again without compensating RDC. As a result of the Lesivo Resolution, RDC has lost its covered investment, including RDC’s common and preferred shares in FVG, un-repaid advances by RDC to FVG, allocated or to-be-allocated overhead of RDC, the reasonably expected income stream from that investment over the life of the usufruct and the risk-adjusted cost of capital.

B. Parties to the Dispute

3. Pursuant to Rule 2(1)(a) of the Institution Rules, each party to the dispute is identified below.

¹ The Lesivo Resolution published in the Diario de Centro América on August 25, 2006, attached as Exhibit 1.

1. Claimant

4. RDC is incorporated under the laws of the Commonwealth of Pennsylvania² with its principal place of business located at the following address:

381 Mansfield Avenue, Suite 500
Pittsburgh, Pennsylvania 15220

As required by Rule 2(1)(f) of the Institution Rules, RDC has duly authorized the filing of this claim in accordance with its relevant internal procedures.³

2. Enterprise of the Claimant

5. Claimant submits this claim to arbitration on its own behalf and on behalf of its Investment Enterprise, FVG. FVG is the company which, on May 5, 1997, was formed under the laws of the Republic of Guatemala⁴ specifically to be the vehicle for RDC's bidding for, and entering into the usufructary contracts with the Government of Guatemala, and, thereby, for RDC's covered investment. Its principal place of business is at the following address:

24 Avenida 35-91, Zona 12
Guatemala City, Guatemala, C.A.

6. FVG is an enterprise⁵ owned and controlled by RDC. RDC, through direct ownership, owns 82 percent of the shares of FVG, with the remaining eighteen percent divided among sixty-five Guatemalan investors. For this reason, Claimant may submit a claim under CAFTA Article 10.16.1 (b) on behalf of FVG, as well as on its own behalf under CAFTA Article 10.16.1 (a). FVG has duly authorized the filing of this claim in accordance with its relevant internal procedures.⁶

3. Respondent

7. The Government of Guatemala, the Respondent in these proceedings, is a sovereign State and a Party to the CAFTA. For purposes of disputes arising under the CAFTA, the Government of Guatemala's address is as follow:

Ministerio de Economía
República de Guatemala
Dirección de Administración de Comercio Exterior
8a Avenida 10-43, zona 1
Ciudad de Guatemala, Guatemala

² See Exhibit 2 for Certificate of Incorporation of RDC from the Commonwealth of Pennsylvania.

³ See Exhibit 3 for RDC's authorization of the filing of this claim.

⁴ See Exhibit 4 for Certificate and Articles of Incorporation for FVG (as amended).

⁵ CAFTA Article 10.28 defines "enterprise" by reference to CAFTA Article 2.1 (definitions of General Application), which defines "enterprise" as "any entity constituted or organized under applicable law, whether or not for profit, ... including any corporation ... or other association."

⁶ See Exhibit 5 for FVG's authorization of the filing of this claim.

Attention: Minister of Economy, Lic. Luis Oscar Estrada Burgos

C. Notice and Time Requirements

8. CAFTA Article 10.16.2 requires that a claimant notify a Party at least ninety (90) days before submitting its arbitration claim. Claimant fulfilled this requirement by delivering its Notice of Intent to Submit a Claim to Arbitration to the Government of Guatemala on March 13, 2007, more than ninety (90) days before the date of submission of this Request for Institution of Arbitration Proceedings. Exhibit 6 contains a copy of this Notice of Intent and the date-stamped cover letter confirming receipt by Respondent.⁷ On May 18, 2007, Claimant voluntarily provided additional information concerning its claim at the request of Guatemala.⁸

9. CAFTA Article 10.16.3 provides that a claim may be submitted to arbitration no sooner than six months following the events giving rise to the claim. RDC's claims arise from the Lesivo Resolution declared by the President of Guatemala on August 11, 2006. Accordingly, Claimant has satisfied the requirement of CAFTA Article 10.16.3.

10. CAFTA Article 10.18.1 provides that "[n]o claim may be submitted to arbitration ... if more than three years have elapsed from the date on which the claimant first acquired, or should have acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant ... has incurred loss or damage." Guatemala declared the Lesivo Resolution on August 11, 2006, and Claimant and its Investment Enterprise first acquired knowledge of the CAFTA breaches and potential losses or damages on or after that date. Therefore, Claimant has timely submitted its arbitration claim within the applicable three-year period to satisfy the requirement of CAFTA Article 10.18.1.

D. Consultations and Negotiations Under CAFTA Article 10.15

11. Since the date Guatemala declared the Lesivo Resolution, RDC and FVG have made themselves available to resolve the dispute. The Government has made no overtures to either FVG or RDC.

E. Consents and Waivers

12. Rule 2(1)(c) of the Institution Rules requires that a request for institution of arbitration proceedings "indicate the date of consent [by the Parties] and the instruments in which it is recorded."

13. CAFTA Article 10.17.1 provides that each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in the CAFTA. Article 10.17.2 further states that a Party's consent under Article 10.17.1, and the submission of

⁷ See Exhibit 6.

⁸ See Exhibit 7 for a copy of RDC's May 18, 2007 submission in response to the April 30, 2007 letter from the Ministerio de Economía, Guatemala, C.A., Ing. Julio Cesar Corado de la Vega, attaching evidence of RDC's ownership and control of FVG.

a claim by a disputing investor, shall constitute written agreement of the Parties to arbitration for the purposes of the Institution Rules.

14. CAFTA Article 10.18.2 requires a consent and waiver by any claimant as conditions precedent to submission of a claim to arbitration. RDC and FVG hereby consent to arbitration according to the procedures set forth in CAFTA Chapter 10 and waive their right, specifically subject to and reserving the CAFTA Article 10.18.3 exception, to initiate or continue before any administrative tribunal or court under the law of any Party proceedings that seek damages based on measures alleged to constitute a breach of Guatemala's obligations under CAFTA, provided, however, that RDC and FVG reserve the right to pursue any and all local remedies which the ICSID arbitration panel requires in order for RDC and FVG to avoid any contention by the Government of Guatemala that RDC has failed to exhaust local remedies. As required by Article 10.18.2, RDC and FVG provide copies of their written consents and waivers as Exhibit 8.⁹

F. Eligibility of Investor to Bring a Claim on Its Own Behalf and on Behalf of Its Enterprise

15. RDC is eligible to institute an arbitration on its own behalf and on behalf of its Investment Enterprise, FVG, pursuant to CAFTA Article 10.16.1 (a) and (b), respectively.

16. CAFTA Article 10.16.1 (a) permits "an investor of a Party" to submit a claim on its own behalf if it "has incurred loss or damage by reason of, or arising out of," a breach of an obligation under Section A of Chapter 10 of CAFTA. Under CAFTA Article 10.28, the term "investor of a Party" includes "an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party." CAFTA Article 2.1 (definitions of General Application), defines "enterprise of a Party" as "any entity constituted or organized under applicable law, whether or not for profit, ... including any corporation ... or other association." RDC is such an enterprise which is incorporated in the State of Pennsylvania and which has made substantial investments in Guatemala. RDC has suffered damages arising out of the Lesivo Resolution declared by Guatemala, which breaches Guatemala's obligations under CAFTA Articles 10.3 (National Treatment), 10.5 (Minimum Standard of Treatment), and 10.7 (Expropriation and Compensation). Therefore, RDC meets the requirements to file a claim under CAFTA Article 10.16.1 (a).

17. CAFTA Article 10.16.1 (b) permits an "investor of a Party," such as RDC, to submit to a claim to arbitration "on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly" if "the enterprise has incurred loss or damage by reason of, or arising out of" a breach by the respondent of its obligations under Section A of CAFTA Chapter 10. FVG, which is a corporation incorporated in Guatemala, is an "enterprise of the respondent" in that FVG is controlled

⁹ See Exhibit 8.

by RDC which directly owns eighty-two percent (82%) of the shares of FVG.¹⁰ Therefore, RDC is entitled to submit its claim to arbitration on behalf of FVG.

18. As required by CAFTA Article 10.1, the breaches of Chapter 10 described below arise from measures adopted or maintained by a Party relating to “covered investments” made by “investors of another Party.” CAFTA Article 2.1 (definitions of General Application) defines “covered investment” as an “investment” which is defined by CAFTA Article 10.28 to include “an enterprise” and “shares, stock, and other forms of equity participation in an enterprise.” Therefore, FVG is a “covered investment” of “an investor of another Party” as such terms are defined under CAFTA. Under CAFTA Article 2.1, the definition of the term “measure” includes “any law, regulation, procedure, requirement, or practice.” The Lesivo Resolution and other actions of the Government of Guatemala in connection with such resolution constitute “measures” adopted or maintained by Guatemala. The Lesivo Resolution has substantially and permanently impaired the ability of FVG to continue its operations in Guatemala, has destroyed FVG’s business and prospects and has critically compromised the eight-year investment by RDC in the rehabilitation and operation of the Guatemalan railway system. The breaches of CAFTA Articles 10.3, 10.5, and 10.7 have given rise to continuing losses and damage to RDC and FVG. The Lesivo Resolution was the last, direct act and the immediate cause which had a direct effect on RDC’s covered investments and there is no contributing, intervening or superseding cause. Such damages are the foreseeable, direct and proximate result of the breaches of CAFTA by the Government of Guatemala.

G. Approval by the Secretary-General Pursuant to Rule 6 of the Institution Rules

19. RDC respectfully requests the Secretary-General of ICSID to approve access to the Centre under the Arbitration Rules and register RDC’s request in the Arbitration Register. The agreement providing for arbitration proceedings under the Arbitration Rules in respect of this dispute is formed by Respondent’s consent to submit disputes with U.S. companies for settlement by binding arbitration under the ICSID Convention and the ICSID Rules for Arbitration Proceedings pursuant to Article 10.16.3(a) of the CAFTA, by virtue of Guatemala’s signing of the ICSID Convention (entered into force as of February 20, 2003), and RDC’s consent to submit this dispute under ICSID Arbitration Rules expressed in this Request and the attached consents and waivers.

H. Agreement Concerning the Number of Arbitrators and Appointment of an Arbitrator by RDC

20. CAFTA Article 10.19.1 states that, “[u]nless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.” RDC and Guatemala have not otherwise agreed to

¹⁰ See Exhibit 7 which contains evidence of RDC’s ownership and control of FVG. RDC’s investment in FVG also includes cash transfers booked as equity and cash transfers booked as advances prior to being converted to equity and allocated and unallocated overhead.

the number and appointment of arbitrators. Accordingly, CAFTA Article 10.19.1 governs.

21. CAFTA Article 10.16.6 requires Claimant to provide, with its notice of arbitration, the name of the arbitrator that the claimant appoints or the written consent for the Secretary-General to appoint such arbitrator. RDC designates Hon. Stuart E. Eizenstat to be its appointed arbitrator for the purposes of the arbitration. The coordinates of Mr. Eizenstat are as follows:

Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel: 1-202-662-6000
Fax: 1-202-662-6291

II. FACTUAL BACKGROUND

22. As required by Article 36 of the ICSID Convention and Rule 2(1)(e) of the Institution Rules, RDC sets out below the factual background of this dispute, the breaches of Chapter 10 of the CAFTA to be proved during the proceedings, the issues presented by these claims, and an indication of the amount at issue.

A. Introduction

23. RDC is a privately owned railway investment and management company which focuses on “emerging corridors in emerging markets”, meaning railways plus other complementary businesses, such as ports or fiber optics, electric and petroleum transmissions, commercial and institutional developments or other uses of railway lines, stations and yards, primarily in developing countries. RDC currently has operations in six countries, including the United States, Argentina, Peru, Guatemala, Malawi and Mozambique.

24. Ferrocarriles de Guatemala (“FEGUA”) is a state-owned enterprise of the Republic of Guatemala which was established in 1969 under Decree No. 60-72 of the Congress of the Republic of Guatemala for the management and exploitation of the railroad system of Guatemala. In accordance with its Organizational Law, FEGUA is controlled by the Government of Guatemala and from 1969 until 1996, FEGUA was responsible for providing certain rail transport services and managing the rail personal property and real estate that comprised its assets.

25. In March, 1996, Guatemala closed the entire national railway system operated by FEGUA. At that time, there was extensive physical deterioration of the equipment and premises, insufficient investment in the reconstruction or modernization of the railroad system, operating losses and declining cargo and passenger carriage.

26. In 1997 (a year after a peace treaty brokered by the United Nations ended three decades of civil strife), Guatemala, through an international public bidding process, invited the private sector to rebuild and to operate its railway system, and authorized

FEGUA to enter into an agreement with a private investor contractually authorizing the use of the infrastructure, real estate and other specified rail assets in order to induce a private enterprise to provide railway services to the country.

B. Guatemala Grants FVG a 50-Year Usufructuary Right of Way to Rebuild and Operate the Guatemalan Rail System

27. The public bidding was initiated on February 17, 1997. Of the two presented bids, RDC submitted the only bid that was considered responsive by the Government. RDC's bid represented a plan to rebuild the rail system in stages, committing to an investment program estimated at approximately Ten Million Dollars (U.S. \$10,000,000.00). On this basis, on June 23, 1997, RDC was awarded a 50-year usufructary right to rebuild and operate the Guatemalan rail system (the "Usufruct"). The Usufruct contract was signed on November 25, 1997, by FEGUA Administrator Andrés Porras, in a public ceremony on the rear platform of the Presidential coach "Michatoya" which was parked on the non-operating railway line. The Usufruct and the Usufruct contract were ratified by the Congress of Guatemala by Decree 27-98 and were published in the Official Gazette on April 23, 1998. The railroad privatization became effective May 23, 1998.

28. The Government's stated objective in granting the Usufruct was to re-establish the functions of the railroad system in order to support productive activities of the country, while, at the same time, relinquishing its role of rail operator and all other functions pertaining to the activities of rail transport companies.¹¹

29. The Usufruct covers a 497-mile (narrow gauge) railroad connecting Guatemala City with Mexico, El Salvador, and ports on both the Atlantic and Pacific coasts. The Usufruct also includes the right to develop alternative uses for the right of way, such as pipelines, electric transmission, fiber optics and commercial and institutional development. In return, for the right-of-way Usufruct, RDC (through FVG) agreed to pay, and, indeed, has paid, FEGUA five percent (5%) of gross income on rail operations and ten percent (10%) on other income during the first five (5) years of the Usufruct and, starting in year six (6), ten percent (10%) of gross income on both rail transportation income and other income for the remainder of the Usufruct, plus an additional one point twenty-five percent (1.25%) of gross income on rail transportation income for the Usufruct of Rail Equipment, making an effective total royalty payment of eleven point twenty-five percent (11.25%).

30. The Usufruct consisted of the following agreements entered into by and between FEGUA and FVG, as the Investment Enterprise owned or controlled by RDC (collectively, the "Usufruct Contracts"):

- Usufruct Contract of Right of Way documented by Deed Number 402 dated November 25, 1997 ("Deed 402"). Deed 402 came into force on May 23, 1998;

¹¹ Deed 402, Sec. 1 (Background)

- Usufruct Contract of Rail Equipment, Property of FEGUA in Favor of FVG documented by Deed Number 41, dated March 23, 1999. This contract was then replaced by Deed Number 143 dated August 28, 2003 (“Deed 143”). Deed 143 was further amended on October 7, 2003 by Deed Number 158 (“Deed 158”)¹²; The term of Deed 143 was for 44 years, 8 months and 25 days or till May 22, 2048, the termination date of the original 50-year Usufruct;
- Trust Fund for the Rehabilitation and Modernization of the railroad system in Guatemala documented by Deed Number 820 dated December 30, 1999 (“Deed 820”), together with obligations by FEGUA to make annual payments into the Trust Fund. The term of Deed 820 was for 25 years starting on January 1, 2000.

C. RDC’s and FVG’s Efforts in Rebuilding Guatemala’s Railroad System

31. Despite decades of little maintenance by the Government of Guatemala, complete loss of traffic prior to entering into Deed 402, extensive invasion by squatters, and the destruction caused by Hurricane Mitch in late 1998, FVG, through dedicated, disciplined and literally heroic efforts, was able to resume commercial service on April 15, 1999 with a short-haul (60 km.) symbolic cement movement from El Chile to Guatemala City.

32. In December, 1999, further commercial service was restored with a 320 km. line from Guatemala City to the Atlantic ports of Puerto Barrios and Puerto Santo Tomas. Since that year and through 2005, FVG was successful in steadily increasing traffic tonnage as follows: year 2000 - 64,580 tons; year 2001 - 94,603 tons; year 2002 - 100,391 tons; year 2003 - 118,860 tons; year 2004 - 122,308 tons; and year 2005 - 135,572 tons. In 2006, however, total tonnage declined for the full year to only - 83,524 tons. On June 11, 2007, because the Lesivo Resolution had effectively destroyed any prospect for FVG to pursue its business plan, the Board of Directors of RDC was forced to terminate its financial support of FVG.

D. The Lesivo Resolution

33. FVG has consistently objected to Guatemala’s and FEGUA’s failure to comply with their obligations under Deeds 402, 143/158 and 820. In particular, Guatemala, through its agency, FEGUA, has failed to remove “squatters” from the right of way and to make the contractually obligated payments to the Trust Fund granted under the above mentioned Deed 820 designated to rehabilitate the right of way granted under Deed 402. Through February, 2007, the outstanding balance owed to the Trust Fund by Guatemala exceeds Three Million Dollars (\$3,000,000.00).

34. On June 26, 2005, after extensive efforts to convince Guatemala to meet its contractual obligations, FVG initiated two arbitration cases against FEGUA based on

¹² Deeds 143/151 state that Deed 41 never entered into effect. In fact, Deeds 143/151 state that Deed 41 was rescinded. Curiously, it is only based on the demand that FVG execute the replacement Deeds 143/151 in 2003 that the Government of Guatemala created the purported opportunity to declare these replacement Deeds “lesivo” within three (3) years. This is another example of Guatemala’s arbitrarily and capriciously changing the rules affecting foreign investment to fit its own objectives.

breach of contract, one for failure to remove squatters from the railroad right of way pursuant to its obligations under Deeds 143/158 and another for FEGUA's failure to pay monies owed to the Trust Fund pursuant to its obligations under Deed 820. The Government has resolutely opposed the arbitrations and, predictably, they have gone nowhere because of that opposition. FVG reserves the right to continue the arbitrations to the extent necessary to prevent the Government from contending that FVG has failed to exhaust local remedies.

35. In anticipation of FVG's filings and as a thinly disguised threat, on June 22, 2005, FEGUA requested the Attorney General of Guatemala to investigate the circumstances surrounding the award of the Usufruct and to issue an opinion on the validity of Deed 143 (as amended by Deed 158). The timing of this "request" to the Attorney General was no mere coincidence: a request by the Republic of Guatemala to its Attorney General for such an investigation with no basis carries with it an inherent message of how the Republic of Guatemala expects its Attorney General to respond.

36. On August 1, 2005, the Attorney General issued his *lesion*¹³ opinion (Opinion No. 205-2005) and recommended that Guatemala declare Deeds 143/158 void as not in the interest of Guatemala. In particular, the opinion by the Attorney General, as translated, states as follows:

Lesion was caused in this case because there is a violation to the rules and procedures that should have been applied in order to execute the agreement in due form and with legal validity. The relevant contract breaks the Government Contracting Law and other laws that govern the process to grant FEGUA's property in usufruct.

There is pecuniary lesion by executing an Onerous Usufruct Contract to grant the State's property in usufruct to be exploited by a private entity, in exchange of one point twenty-five percent (1.25%) of the gross income as a result of rendering transportation services.

There is no basis in fact or law for the Attorney General's opinion. Indeed, the factual misstatement regarding the amount of the royalty payment was nothing more than the Attorney General of Guatemala's attempt to distort the well-documented fact that FVG is contractually obligated to pay FEGUA the much more significant fee of ten percent (10%) of gross income on both rail operations and other income plus one point twenty-five percent (1.25%) of the gross income on rail transportation income, for a total of eleven point twenty-five percent (11.25%), which FVG has consistently done, thereby meeting all of its financial obligations under the Usufruct Contracts.

¹³ Black's Law Dictionary defines the term *lesion* as "injury suffered by one who did not receive the equivalent value of what was bargained for." Under Guatemalan law, the President with joint cabinet (Ministers) can issue a resolution called "Lesividad" which declares an administrative act as contrary to the interests of the state and seeks its annulment.

37. On January 13, 2006, FEGUA issued a legal opinion (Opinion No. 05-2006) in which it agreed with the Attorney General's Opinion regarding *lesion* and further argued that the Usufruct Contracts were not awarded as a result of a public bid. The facts surrounding the Usufruct bidding process are completely contrary to this finding and there is no basis in fact or law to support it. FEGUA then officially requested the President of Guatemala to declare *lesion*.

38. RDC and FVG made consistent efforts to resolve their claims through outreach, consultation and negotiation with the Government of Guatemala.¹⁴ After numerous attempts to reach an understanding with FEGUA, RDC and FVG requested a meeting with the President of Guatemala, Mr. Oscar Berger, which occurred on March 7, 2006. RDC made a presentation concerning the current situation and the importance of the Government's support for and compliance with the Usufruct Contracts entered into with FVG. RDC Chairman, Henry Posner III and FVG President, William Duggan were among those present on behalf of RDC and FVG. President Berger and FEGUA's director Arturo Gramajo were present at the meeting. In their presence, President Berger purported to instruct FEGUA's director to dissolve FEGUA and to comply with the Usufruct Contracts. Unfortunately, but predictably, neither Presidential "instruction" was followed. President Berger also instructed that a high level railroad commission be established, purportedly to work with RDC and FVG on Governmental support of FVG railroad operations and to address the issues of public, private and commercial squatters, as well as theft and vandalism, all of which were plaguing railroad operations. The commission was established and a number of meetings took place; however, while Government representatives attended the meetings, the Government never made a proposal or offered a plan for compliance with the Usufruct Contracts. Within approximately three (3) months of its establishment, meetings with the commission were suspended by the Government, despite multiple requests by FVG to continue negotiations. It is apparent that the Government was not acting in good faith during the negotiations because, on information and belief and without the knowledge of RDC or FVG, President Berger and the Government were planning for and preparing the Lesivo Resolution even as officials of the Government were pretending to work with FVG. After the Government issued the Lesivo Resolution, it convened no more full commission meetings in tacit recognition that the Commission had been a sham.

39. As described above, on August 11, 2006, the President, in joint counsel with certain of his cabinet ministers, signed Government Resolution 433-2006, which declared an essential element of the country's 1998 railroad privatization, the usufruct of the rolling stock (the railroad cars and engines), "*lesivo*" or "INJURIOUS to the interests of the State" (the "Lesivo Resolution"). The Lesivo Resolution was published in the Guatemala Official Gazette on August 25, 2006. There was no basis in fact or law for the Lesivo Resolution which was issued after CAFTA went into effect between the United States and Guatemala on July 1, 2006.

¹⁴ See Exhibit 9 for a copy of letter dated April 21, 2006, in which FVG through its Guatemalan legal counsel makes a proposal to FEGUA which neither FEGUA nor the "Commission" ever acknowledged.

40. The Lesivo Resolution, declaring the lease of the rolling stock void, was intended to further three principal, but highly improper, Government objectives: (1) to force FVG to withdraw from the arbitration processes in which FVG has charged FEGUA with breach of contract; (2) to appropriate FVG's rolling stock, making it impossible for FVG to perform under the basic right-of-way Usufruct Contract (Deed No. 402) and, thereby, to appropriate all of FVG's business, all without paying compensation; and (3) on information and belief, to redistribute to certain Guatemalan private sector companies the benefits of the usufructs granted by the Government to FVG for the term of fifty (50) years, again without compensating FVG for the loss of its contractual rights or compensating RDC for its covered investment, including RDC's common and preferred shares in FVG, un-repaid advances by RDC to FVG, allocated or to-be-allocated overhead of RDC, the reasonably expected income stream from that investment over the life of the usufructs and the risk-adjusted cost of capital.¹⁵ The Lesivo Resolution constitutes a wrongful indirect expropriation under Section A, Article 10.7 of and Annex 10-C (the Expropriation Annex) to CAFTA, and violates the National Treatment obligations of Section A, Article 10.3 and the Minimum Standard of Treatment obligations of Section A, Article 10.5 of CAFTA.

41. On November 14, 2006, the Government of Guatemala filed a claim against FVG in the administrative court of Guatemala ("Sala Primera de lo Contencioso Administrativo," Claim No. 389-2006) seeking the court's confirmation of the Lesivo Resolution, an order seizing the rolling stock transferred by FEGUA to FVG pursuant to Deed 143/158, an order denying the FVG general manager the right to travel outside of Guatemala and the seizure of FVG accounts (hereinafter, "*lesivo* action"). After delaying the filing of official notice of its claim for six (6) months, on May 15, 2007, the Government served its claim on FVG. FVG filed its initial objections to the claim on May 21, 2007. Consistent with CAFTA Article 10.18.3, FVG intends to defend the *lesivo* action to preserve its contractual rights under Deed 143/158 while this arbitration is pending and does not seek in the *lesivo* action any monetary compensation as a result of the Government of Guatemala's actions related to the issuance of the Lesivo Resolution.

E. Impact of the Lesivo Resolution on RDC and FVG

42. The Lesivo Resolution has placed unbearable financial pressure on FVG by causing a critical number of FVG's customers and suppliers to refuse to continue to do business with a private entity in a legal battle with the Republic of Guatemala. Through its Lesivo Resolution, the Government sent, and continues to send, a chilling message to creditors, investors, suppliers and customers of FVG that they continue to do business with FVG at their peril. It was entirely foreseeable (particularly to the Government) that lenders, individual customers and suppliers would be deterred from challenging their own Government by continuing to support a now-targeted private enterprise. The Lesivo

¹⁵ Guatemalan law allows the Government to declare lesion only within three (3) years of the date of the underlying contract. Guatemala could not declare Deed 402 *lesivo* because it was effective in 1998; hence, Guatemala lacked even a facial basis to revoke the basic right-of-way usufruct and could only target the rolling stock contract, which it did on the last possible day before the expiration of the three (3) year period during which *lesivo* can potentially be declared.

Resolution, by the mere declaration that the lease of rolling stock is void, has destroyed the business prospects of FVG and the eight-year investment by RDC and has truncated the committed efforts of RDC to rehabilitate the railway system that previously was completely abandoned by Guatemala. Prior to the Lesivo Resolution, based solely on the investment and work of RDC, as the majority investor, and despite the obstacles placed in its way by the Government, forty-five percent (45%) of the railroad was rebuilt and reopened, and was under operation by FVG for the last six (6) years.

43. Since the Lesivo Resolution, FVG has also suffered the permanent loss of customers for transport of goods, which is reflected in a decline in use of the railroad for freight transportation. After six (6) years of steady traffic increases, for the first time in FVG's operational history, a significant reduction of the yearly tonnage was experienced from 135,572 tons in year 2005 to only 83,524 tons in 2006. The environment in which FVG must now attempt to market to new customers is one of profound uncertainty. Local companies have refused to enter into agreements, either as suppliers (unless for cash up front) or for future carriage by the railroad. FVG has met stiff resistance from customers who now refuse to contract exclusively with FVG or for any term longer than meeting immediate needs. Many of FVG's hard-won regular customers have been protecting themselves by switching their business to truck transportation providers, although FVG had previously been a preferred transportation mode given its cost, safety and security performance. The Lesivo Resolution has effectively destroyed FVG's eight (8) years of marketing efforts and its underlying transportation advantage of reliability.

44. FVG's principal suppliers have significantly reduced credit terms to FVG and it has no possibility of securing new credit lines with either financial institutions in country or new suppliers of essential goods and services. The local Guatemalan banks have recently taken actions confirming that they consider FVG non-credit-worthy, not based on FVG's performance or credit history, but on the imminence of its demise as a result of the Government's actions in declaring lesivo.

45. Prior to the Lesivo Resolution, FVG had been engaged in leasing of real estate within the "right of way," such activities being expressly contemplated and allowed under the Usufruct and essential to FVG's business plan in order to subsidize the rail transport. Customers with which FVG had been negotiating for real estate leases have now withdrawn from those negotiations, choosing to wait to see when (not whether) FVG will succumb to the pressure of the Government's indirect expropriation and official discriminatory treatment and be forced into bankruptcy or simply to shut down operations as a result of the unavoidable, intentionally-induced operating losses flowing directly and proximately from Guatemala's action in issuing the Lesivo Resolution.

46. Likewise, new investors previously indicating interest in leases of the right-of-way, stations and yards have backed away and FVG will not be able to raise investment from any sources as a result of the Lesivo Resolution. For Example, the declaration of lesivo prevented new investments in leases for electric lines in the right of way and FVG has suffered the loss of an investment from a large supermarket chain that was intending to convert some of the train stations to stores. RDC cannot overstate the importance of

the income FVG would earn from the right of way leases as an essential element of its business plan during the years required to restore the rail equipment and tracks.

47. Another result of the Lesivo Resolution is that even common legal issues now result in Guatemalan judges issuing injunctions and other precautionary measures based on an expectation that FVG will declare bankruptcy, be dissolved or face a Government imposed shut down and transfer of its assets to Guatemalan private interests. For example, on September 19, 2006, FVG was sued by a "squatter" claiming to own property on a river bank that falls within the Usufruct right of way. The judge, *ex parte*, issued a preliminary injunction against FVG without providing so much as an opportunity for FVG to be heard. The injunction provided for, among other measures, embargoes of FVG bank accounts and an order precluding the FVG General Manager from traveling outside Guatemala (Order of Arraigo also known as a "legal guarantee"). These excessive manipulations and perversions of the judicial process are in violation of the minimum standard of treatment obligations required under CAFTA Section A, Chapter 10, Article 10.5 which requires "fair and equitable treatment" in accordance with principles of due process, as embodied in the world's basic legal systems. In declaring the lease of the railroad stock null and void and against the public interest, the Government is attempting to expropriate Claimant's property and investment by "decree" and without compensation. The Government knew perfectly well that it had failed to comply with its obligations under the Usufruct and therefore, to avoid the consequences of its illegal actions, decided to take the rail stock away from FVG and then blame FVG for failing to perform under the Usufruct Contracts.

48. FVG has faced public interference from locals who have vandalized the tracks, stolen railroad materials for personal use or financial gain and set up living quarters as squatters along the tracks, in some cases in collaboration with local authorities. This activity has substantially increased since the issuance of the Lesivo Resolution, based on the public perception that FVG is no longer a viable entity and is unavoidably heading toward bankruptcy or dissolution in a face-off with the Republic of Guatemala. Once the Government had declared itself against FVG, even the basic services of the local police to protect FVG's property all but melted away. The lesivo declaration was the equivalent of the Government giving an all clear signal to poorer Guatemala citizens to seize land and personal property from FVG with impunity as the Government would not provide protection. The current lack of protection by the Government of Guatemala and its local police has created an insecure environment in violation of the Government's legal obligations under CAFTA Article 10.5 to provide "full protection and security," including the level of police protection required under customary international law.

49. Additionally, FVG faces an epidemic of private and public sector entities using the right of way without FVG permission and without paying compensation. FVG's efforts to secure compensation from these entities have been met with delaying tactics in the easily-manipulated court system and these commercial squatters have been emboldened by the issuance of the Lesivo Resolution. The public perception is that since FVG is no longer a viable entity and is unavoidably heading toward bankruptcy or dissolution in a face-off with the Republic of Guatemala, there is no reason to pay FVG for using its right of way.

50. Since the Lesivo Resolution, the Government of Guatemala has made successive specific decisions not to pay into the Trust the funds required by Deed 820, and, through FEGUA, has made successive specific decisions not to remove squatters from the railway right of way, stations and yards. These decisions are an integral part of the Lesivo Resolution and other affirmative actions by the Government of Guatemala to deny RDC and FVG the minimum standards of treatment required by international law and, thereby, to make it impossible for FVG to remain in business and thereby to appropriate FVG's assets without compensation.

51. The Government's consistent moves to block FVG's attempts to use the local court system to enforce its Usufruct rights and to declare itself not subject to the very arbitration it had consented to in entering into the Usufruct Contracts constitutes a denial of due process under Chapter 10. The Government has systematically opposed, and has been unwilling to submit itself to, the negotiated arbitration provisions of the Usufruct Contracts, which constitute the legal and appropriate mechanism to resolve any contractual disputes. In response to FVG arbitration requests, on September 27, 2005, FEGUA filed with the Guatemalan Arbitration Court a motion to dismiss the case alleging lack of jurisdiction, despite unambiguous contract language to the contrary. On December 8, 2005, the Arbitration Court notified both parties that it did not accept FEGUA's motion for lack of jurisdiction. On January 3, 2006, FEGUA filed a motion to declare article 103 of the Guatemalan Public Agreements Act unconstitutional, since article 103 provides for arbitrations in public contracts. To date, no hearing has taken place (to rule whether it is unconstitutional for the Government to be contractually subject to arbitration). On January 5, 2006 FEGUA, in clear violation of the Usufruct Contracts and the arbitration clause, filed a lawsuit (outside of the arbitration process) with the First Circuit of the Administrative Court seeking to annul the Usufruct Contracts and arbitration clause. The Administrative Court ruled that the arbitration clause was valid and the arbitration process for breach of contract claims should continue (the court had initially issued a preventive measure suspending the arbitrations). As a further denial of due process, the Government has engaged in continued stalling tactics that have prevented the judicial order in support of the arbitration clause from entering into effect. To date, the arbitration processes are completely stymied because of these actions on the part of the Government in violation of CAFTA Article 10.5. As a result of this denial of due process and violation of CAFTA Article 10.5, RDC and FVG are entitled to recover in this proceeding those damages which would, except for such violations of CAFTA, be recovered in those proceedings.

52. Since the Lesivo Resolution, FVG has been understandably faced with mounting worker concerns that their jobs are, at best, in jeopardy and, more likely, soon to terminate. The work force is now demoralized and distracted as measured by such basic indicators as personal injury rates, a major concern to a company that until recently had achieved operations over the last 1.5 years with no injuries, an impressive accomplishment for any business, let alone an operating railroad. Many of FVG's workers are looking for employment elsewhere as they see the inevitable result of this forced indirect expropriation. In addition to the actions set forth above, these results were the direct and foreseeable consequence of the Lesivo Resolution, have the effect of making it impossible for FVG to carry out its business plan and materially contribute to

the indirect appropriation of FVG's business and RDC's investment. Unfortunately, the Government of Guatemala's self-serving Lesivo Resolution, undertaken for the improper purposes set forth above, has not only destroyed FVG's business but has also adversely impacted its own citizens through job insecurity, emotional turmoil and, not surprising, on-the-job injuries.

53. RDC has been, and will continue to be, harmed as a direct and foreseeable result of the actions and omissions by the Government. In addition to expending considerable sums in fighting the Government's baseless interference, FVG has suffered significant revenue losses; incurred considerable legal costs; and lost any opportunity to operate and grow into what was once an extremely promising business with reasonably expected and quantifiable revenues and profits, all of which FVG relied on in committing to make and making a very sizable investment to return the Guatemalan railroad system to service for the people of Guatemala.

III. LEGAL CLAIMS UNDER CAFTA SECTION A OF CHAPTER 10

54. The Lesivo Resolution and the actions of Guatemala undertaken subsequent thereto related to the rolling stock under Deed 143 (as amended by Deed 158), as set forth below, have breached the obligations of Guatemala under provisions of Section A of Chapter 10 of CAFTA: Expropriation and Compensation (Article 10.7), Minimum Standard of Treatment (Article 10.5), and National Treatment (Article 10.3).

A. The Lesivo Resolution Constitutes an Expropriation Under CAFTA Article 10.7

55. CAFTA Article 10.7 provides

Article 10.7: Expropriation and Compensation

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

- (a) for a public purpose;**
- (b) in a non-discriminatory manner;**
- (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and**
- (d) in accordance with due process of law and Article 10.5.**

56. If the Government is ultimately successful in its lesivo action, it will acquire legal title of the Usufruct without compensation and physical possession of the rolling stock which is a direct expropriation of the usufructary rights. Article 10.7, however, is not limited to direct expropriation. Rather, it also includes indirect expropriation or measures

tantamount to an expropriation, including any measure which effectively neutralizes the enjoyment of the property. The Lesivo Resolution is, in itself, an indirect expropriation - a measure tantamount to an expropriation - of RDC's investments because it effectively deprived FVG of its ability to operate the railway system and destroyed its business prospects, as well as FVG's and RDC's reasonably expected economic benefits flowing from the Usufruct Contracts. Specifically:

- a) the Lesivo Resolution directly and substantially interfered with FVG's enjoyment of its property by causing FVG's creditors, customers and suppliers to refuse to continue to do business with FVG, as it is engaged in a much publicized legal battle with the Government of Guatemala;
- b) FVG has suffered the loss of customers for transport of goods, which is reflected in a decline in use of the railroad for freight transportation. Many of FVG's hard-won regular customers have been protecting themselves by switching their business to truck transportation providers;
- c) FVG's principal suppliers have significantly reduced credit terms to FVG and it has no current possibility of securing new credit lines with either financial institutions in Guatemala or new suppliers of essential goods and services;
- d) FVG's right of way leasehold customers have and continue to withdraw from negotiations for renewal or new real estate leases due to their perception that FVG's rights to continue to lease rights of way and real estate are in permanent jeopardy from the increasing pressure of the Government on FVG to shut down its operations; indeed the Lesivo Resolution has emboldened "commercial squatters" to make blatant use of FVG's right of way without even considering entering into leases or making rental payments to FVG as legally required;
- e) all or virtually all of those persons or entities previously interested in investing in commercial or institutional projects on the urban right of way, station and yard properties have indicated that they are unwilling to make any such investment because the Lesivo Resolution has created the perception that FVG will not be in operation for the time necessary to complete and reap economic returns from such projects;
- f) FVG is facing an increasing public interference from locals who have vandalized the tracks, stolen railroad materials for personal use and set up new living quarters as squatters along the tracks. Since the Lesivo Resolution, based on the public perception that FVG is no longer a viable entity, FVG has faced more instances in which private and public sector entities have used the right of way without FVG's permission and compensation; and
- g) the Lesivo Resolution has blocked FVG's planned expansion of the railroad operations in accordance with the phased rehabilitation plan provided in the Usufruct Contracts and RDC's initial proposal, and, as a result, has deprived FVG of expected growth in freight revenues; indeed, one proposed investor was

interested in pursuing a U.S. \$100 million investment to extend the railway line from Guatemala City to the southern areas of the country. This investor has now stated that the Lesivo Resolution has created an environment of such uncertainty that it cannot justify taking the risk of the investment.

57. The Lesivo Resolution, by its declaration that the lease of rolling stock is void, has undermined and critically compromised the eight (8) year investment by RDC and truncated the committed efforts of RDC to rehabilitate the railway system that previously was completely abandoned by Guatemala.

58. The effect of the Government of Guatemala's measures, actions and omissions as part of the Lesivo Resolution process has been financially and commercially devastating and has resulted in an indirect expropriation of RDC's investment.

59. Having effectively expropriated RDC's investment, in a capricious, discriminatory and arbitrary manner and without any public purpose, Guatemala must pay compensation to RDC. As of the date of the filing of this Request, Guatemala has not offered to pay, nor has it paid, any compensation to RDC or FVG to offset the damages that RDC and FVG have suffered by reason of the expropriation.

B. The Lesivo Resolution Violates Guatemala's Minimum Standard of Treatment Obligations Under CAFTA Article 10.5

60. Article 10.5 of the CAFTA provides in its relevant parts as follows:

Article 10.5: Minimum Standard of Treatment

1) Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2) For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

61. Treatment "in accordance with customary international law, including fair and equitable treatment and full protection and security," as provided for in Article 10.5, implies, at a minimum, that the host State's treatment affecting the investment of an investor shall be "fair" and "equitable" *per se* and applied in a manner that provides "full protection" and "security". These requirements are but a mere articulation of the "minimum" basic universal principles that are embedded in, and stem from, the essential foundations of the Rule of Law. Such requirements are breached when they are not satisfied, whether by action or omission, directly or indirectly, by design or by effect.

62. The minimum standard of treatment provision is in no way limited to egregious conduct alone and applies to any treatment that is not in itself "fair" and "equitable." The requirement that the treatment be in itself "fair" and "equitable" includes, but is not limited to, rules and regulations that are clear and judicial systems that are accessible, standards which must not be vague or arbitrary and must provide a reasonable opportunity to know the law so that one may reasonably be allowed to rely and act according to its tenets. The minimum standard of treatment cannot arbitrarily defeat established legitimate expectations. There must be "the rule of law" in the first place, which implies fairness, equity, adequate accessibility, sufficient precision, reasonable predictability and reasonable stability in treatment.

63. The treatment must then also be applied in a manner that provides "full protection" and "security." There must be proactive measures to ensure fair and equitable treatment and, in its application, the treatment must not be applied in a manner so as to encourage, allow or tolerate, by action or omission, unfair and inequitable treatment. Only then can one "fully" be entitled to benefit from the "protection" and "security" which stem from there being "law" in the first place.

64. In the present case, Guatemala did not accord the investments of RDC a minimum standard of treatment as required by Article 10.5 of CAFTA. To the contrary, the Lesivo Resolution and other government measures which accompanied the *lesivo* process defeated the legitimate expectations of RDC that were created by Guatemala's grant of a fifty-year Usufruct to FVG, upon which fifty (50) year grant RDC reasonably relied and based its reasonable expectation of return on its commitment to make a substantial upfront financial investment. The Lesivo Resolution was a result of a radical and arbitrary shift in the Government's policy regarding the development of its railroad and its attitude concerning the terms of the Usufruct Contracts awarded to RDC by previous administrations. The Government's measures, therefore, defeat reasonable stability and predictability of the commercial framework for business planning and investment which Guatemala agreed to ensure by signing CAFTA.

65. Further, having induced RDC to invest millions of dollars into the country's railway system and having solemnly undertaken obligations to investors under CAFTA, the Government of Guatemala unilaterally decreed that Deeds 143/151 were being cancelled and the rolling stock taken over by the Government thereby denying FVG's rights, forcing FVG to operate at a loss and/or lose the right-of-way Usufruct by being unable to conduct railroad operations. Specifically, since the Lesivo Resolution, the

Government of Guatemala has failed to remove “squatters” from the right of way and to make the contractually obligated payments to the Trust Fund designated to rehabilitate the right of way granted under the Usufruct. FVG’s attempt to enforce its rights was met with implacable resistance by the Government which, instead of affording FVG’s rights “full protection and security,” made a decision to trample on and significantly compromise the rights previously granted by arbitrarily issuing the Lesivo Resolution without the requisite public purpose and for its own nefarious reasons. Following the Lesivo Resolution, even straightforward legal motions now result in Guatemalan judges taking the unusual steps of issuing injunctions and other precautionary measures in expectation that FVG will face a Government imposed shut down and transfer of its assets to selected Guatemalan private interests. FVG’s efforts to secure compensation from private and public sector entities that have usurped the Usufruct right of way without FVG’s permission or without paying compensation, as well as, FVG efforts to oppose the Government’s *lesivo* action against FVG, have been met with delaying tactics in the easily-manipulated Guatemalan judicial system. The increased instances of vandalism and stolen railroad materials are being ignored by the local police. Indeed, the local police themselves have occupied one of FVG’s train stations within the right of way, without FVG’s authorization or paying compensation to FVG. Such actions on the part of the police, as well as, the total lack of police protection send an unmistakable public message that the law will not be applied to protect FVG’s investment. These actions created an insecure environment inconsistent with FVG’s reasonable expectation and reliance that its investment would be afforded security and protection in accordance with Guatemala’s CAFTA obligations. The failure of the Guatemalan court system and of the police protective system to afford any reasonable redress to FVG for the well-documented injuries to its rights is itself a violation of Article 10.5 of CAFTA.

66. Thus, the Lesivo Resolution and conduct by the Government of Guatemala have been applied to RDC’s investments in a manner so as to encourage, allow or tolerate, by action or omission, “unfair” and “inequitable” treatment without affording the investor “full protection” and “security.”

C. The Lesivo Resolution Violates Guatemala’s National Treatment Obligations Under CAFTA Article 10.3

67. Article 10.3 of the CAFTA provides in relevant part as follows:

Article 10.3: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition,

expansion, management, conduct, operation, and sale or other disposition of investments.

68. RDC and its investments have been subject to measures imposed by Guatemala in violation of CAFTA Article 10.3.

69. On information and belief, the Government has acted on the instructions of and has supported private Guatemalan interests in usurping FVG's right of way through the Lesivo Resolution, with a view to transferring RDC's and FVG's business and property interests to those private interests. Discovery will reveal conduct which violates the CAFTA requirement that the Government afford treatment "no less favorable than that which the Party accords, in like circumstances, to its own investors and investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory." Therefore, the Lesivo Resolution, as intended by the Government of Guatemala, is discriminatory and violates national treatment, a central pillar of the CAFTA.

IV. RELIEF AND REMEDY SOUGHT

70. RDC is seeking the following relief as a result of the actions and breaches by Guatemala described above:

- a) Damages arising from infringing measures by Guatemala which are inconsistent with its obligations contained within Section A of Chapter 10 of CAFTA, including RDC's common and preferred shares in FVG, un-repaid advances by RDC to FVG, allocated or to-be-allocated overhead of RDC, the reasonably expected income stream from its investment over the life of the fifty (50) year onerous Usufruct and the risk-adjusted cost of capital applicable to that investment, totaling no less than sixty-five million dollars (U.S. \$65,000,000.00);
- b) Costs associated with these proceedings, including all professional fees, attorneys fees and costs and all disbursements;
- c) Fees and expenses incurred to oppose the promulgation of the infringing Lesivo Resolution and other infringing measures;
- d) Pre-award and post-award interest at a rate to be fixed by the Tribunal;
- e) Payment of a sum of compensation equal to any tax consequences of the award, in order to maintain the award's integrity; and
- f) Such further relief as the Tribunal may deem appropriate.


V. REQUIRED COPIES, PAYMENT, AND POWER OF ATTORNEY

71. In accordance with Rule 4 of the Institution Rules and the July 6, 2005 Schedule of Fees, this Request is accompanied by five additional signed copies and by a non-

refundable fee of twenty-five thousand dollars (U.S. \$25,000.00). The undersigned counsel certify that all copies of documents attached as exhibits to this Request are copies of original documents.

All correspondence related to this proceeding should be delivered to C. Allen Foster and to Juan Pablo Carrasco de Grootte at the addresses provided below.

Respectfully submitted,



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Date: June 14, 2007

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Date: June 14, 2007

LIST OF EXHIBITS

- 1 The Lesivo Resolution declared on August 11, 2006
and published in the Diario de Centro América on
August 25, 2006
- 2 Certificate of Incorporation of RDC from the
Commonwealth of Pennsylvania
- 3 Power of Attorney issued by RDC to Greenberg
Traurig, LLP and Díaz-Duran & Asociados on June 14,
2007
- 4 Certificate and Articles of Incorporation for FVG (as
amended)
- 5 Power of Attorney issued by FVG to Greenberg
Traurig, LLP and Díaz-Duran & Asociados on June 14,
2007
- 6 Notice of Intent to submit a claim to arbitration dated
March 13, 2007
- 7 Letter from C. Allen Foster dated May 18, 2007, in
response to Letter from Ministerio de Economía of
Guatemala dated April 30, 2007
- 8 RDC and FVG's Consent and Waiver dated June 14,
2007
- 9 FVG Letter to FEGUA dated April 21, 2006

**CONSENTIMIENTO OTORGADO POR COMPAÑÍA DESARROLLADORA
FERROVIARIA, S.A. CONFORME EL ARTÍCULO 10.19.4 DEL CAFTA**

De conformidad con el Artículo 10.19.4 del TLC-RD-CAFTA (“CAFTA”), Compañía Desarrolladora Ferroviaria, S.A. (“FVG”) por este medio manifiesta su consentimiento sobre la designación de cada uno de los miembros del tribunal con relación al proceso de arbitraje que, en representación suya y según los términos del Artículo 10.16.1(b) del CAFTA, inició Railroad Development Corporation en contra del Gobierno de Guatemala siguiendo los procedimientos establecidos en el CAFTA, el Convenio del CIADI y las Reglas de Procedimiento para Procedimientos Arbitrales del CIADI.

Otorgado el 28 de Junio de 2007



Henry Posner, III, Presidente del Consejo de Administración de FVG,
autorizado por Resolución No. 01-2007 del Consejo de Administración de
FVG de fecha 26 de junio de 2007