INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

RIVERSIDE COFFEE, LLC

Claimant

v.

REPUBLIC OF NICARAGUA

Respondent

(ICSID Case No. ARB/21/16)

THE REPUBLIC OF NICARAGUA'S APPLICATION FOR SECURITY FOR COSTS

October 4, 2023

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I. INTRODUCTION

1. The Republic of Nicaragua ("**Nicaragua**" or the "**Respondent**") hereby requests that the Tribunal order Riverside Coffee, LLC ("**Riverside**" or "**Claimant**") to provide security for costs (the "**Application**").

2. As Nicaragua details below in this Application, Riverside—the only claimant in this arbitration—lacks the funds to satisfy an award of the costs and expenses incurred by Nicaragua for its defense in this arbitration, even while Riverside's conduct in this arbitration to date has made such an award increasingly foreseeable.

3. Over the course of this proceeding, Claimant has bombarded the Tribunal and Respondent's counsel with unsubstantiated requests and applications that have caused Respondent to incur hundreds of thousands of dollars in legal fees and costs that it should have never incurred. Meanwhile, the few documents produced by Claimant in this arbitration show that Riverside has no operations and no liquid assets, beyond its claim in this arbitration, sufficient to satisfy an adverse costs award. Notably, Riverside's 2018 U.S. tax return—one of the few financial documents actually produced in response to the Tribunal's order in Procedural Order No. 6—shows that Riverside had ***no cash*** in its accounts at the end of tax year 2018,[1] and the available documents show that Riverside has ***never*** maintained more than US$ 55,000 in liquid assets.[2] This is not a problem for Claimant's counsel who has acknowledged that he is acting on a contingent fee basis. But the combination of Riverside's lack of funds with its burdensome conduct in this

[1] *See* Riverside IRS Form 1065, 2018, p. 5 **(R-0111).**

[2] *See, e.g.*, Riverside Bank Account Statement, December 31, 2013 (balance of $435.31) **(R-0112)**; Riverside Bank Account Statement, September 30, 2014 (balance of $1,377.81) **(R-0113)**; Riverside Bank Account Statement, December 31, 2015 (balance of $53,711.81) **(R-0114)**; Riverside Bank Account Statement, December 31, 2016 (balance of $53,261.81) **(R-0115)**; Riverside Bank Account Statement, December 31, 2017 (balance of $52,831.81) **(R-0116)**; Riverside Bank Account Statement, December 31, 2018 (balance of $13,713.31) **(R-0117)**.

arbitration presents an acute risk for the Respondent: in the scenario where the Tribunal grants Nicaragua an award of fees and costs, the Claimant will be effectively judgment proof.

4. In these circumstances, an order of security for costs is the appropriate remedy to protect against Nicaragua ultimately being required to expend its own public funds to subsidize Riverside's abusive and inefficient conduct of this arbitration.[3]

II. AN ORDER OF SECURITY FOR COSTS IS NECESSARY, URGENT, AND PROPORTIONAL IN THIS CASE

A. The Tribunal Has Authority to Order Security for Costs

5. The Tribunal has broad authority to order security for costs as a species of provisional measure pursuant to Article 47 of the ICSID Convention and Rule 39 of the applicable 2006 ICSID Arbitration Rules ("Arbitration Rules").[4]

6. Article 47 of the ICSID Convention and Rule 39 of the Arbitration Rules specify the elements that the requesting party must demonstrate in order to request a provisional measure. Specifically, Rule 39(1) of the Arbitration Rules requires the party requesting a provisional

[3] *See* D. Goldberg, Y. Kryvoi, I. Philippov, *Empirical study: Provisional measures in investor-state arbitration (2023)*, British Institute of International and Comparative Law and White & Case LLP, January 2023, p. 22 **(RL-0119)** ("Investment arbitration proceedings typically involve significant costs for both parties, with parties' costs often reaching millions or even tens of millions of US dollars, and the respondent state mean costs reaching up to US$4.7 million. Investors in investor-state proceedings are frequently holding companies operating through local subsidiaries with few assets of their own, which raises concerns about respondent states' ability to recover their costs.").

[4] *See Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6, Decision on the Respondent's Application for Security for Costs, April 13, 2020, ¶ 27 **(RL-0120)** ("The Tribunal's authority to order security for costs is not contested by the Claimant and the Tribunal is satisfied that it has this authority under Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules on provisional measures. Arbitral tribunals have consistently interpreted this Article and Rule as granting tribunals such power. The Tribunal adheres to this *jurisprudence constante*, even if it would appear at a later stage not to have jurisdiction."). *See also BSG Resources v. Republic of Guinea (I)*, ICSID Case No. ARB/14/22, Procedural Order No. 3, Respondent's Request for Provisional Measures, November 25, 2015, ¶ 71 **(RL-0121)** ("The Tribunal's authority to grant security for costs as a provisional measure is undisputed by the Parties. This authority stems from Article 47 of the ICSID Convention and ICSID Arbitration Rule 39, […]"); *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, January 27, 2020, ¶ 47 **(RL-0122)** ("The Tribunal first confirms its existing authority to order security for costs. This authority rests on Article 47 of the ICSID Convention, which authorizes a tribunal to 'recommend any provisional measures which should be taken to preserve the respective rights of either party', and the related ICSID Arbitration Rule 39(1), which authorizes a party to "request provisional measures for the preservation of its rights be recommended by the Tribunal.").

measure to "specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures."[5]

7. Article 53 of the 2022 ICSID Arbitration Rules, which though not formally applicable here, reflects and is consistent with practice under Article 47 and Rule 39 of the Arbitration Rules and may provide further guidance to the Tribunal.[6]

8. Article 53(3) of the 2022 Arbitration Rules provides:

> In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:
>
> (a) that party's ability to comply with an adverse decision on costs;
>
> (b) that party's willingness to comply with an adverse decision on costs;
>
> (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
>
> (d) conduct of the parties.[7]

9. Article 53(4) of the 2022 Arbitration Rules also makes clear that "[t]he Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3) [*i.e.*, Article 53(3)], including the existence of third-party funding."[8]

10. Recent arbitral jurisprudence may support an alternative formulation of the standard, such that the party seeking an order of security for costs must show: (1) that the

[5] ICSID Arbitration Rules (2006), Art. 39(1).

[6] Crina Baltag and Maria José Alarcon, *2022 ICSID Regulations and Rules: Towards Efficiency and Consistency in Investment Arbitration Proceedings'*, in João Bosco Lee and Flavia Foz Mange (eds), Revista Brasileira de Arbitragem, (Kluwer Law International; Kluwer Law International 2022, Volume XIX, Issue 75), p. 176 **(RL-0135)** ("Also, Rule 53 introduces a list of elements that must be considered by tribunals when ordering security for costs, and which reflect ICSID jurisprudence on security for costs.")

[7] ICSID Arbitration Rules (2022), Art. 53(3).

[8] ICSID Arbitration Rules (2022), Art. 53(4). The 2022 ICSID Arbitration Rules, Article 53, notably refrain from prescribing any moment in time during the procedural calendar when a party must request security for costs.

application is necessary or sufficiently urgent to impose an interim monetary measure on the counterparty; (2) that the counterparty is incapable of paying the eventual cost award in the event the applicant prevails in the proceeding; and (3) that an order of security for costs will be proportionate to the risk of failing to pay costs and not unduly burdensome to the counterparty.[9]

11. Although Nicaragua makes this Application mainly with reference to standards applied under the 2006 ICSID Arbitration Rules, Nicaragua's Application is properly granted under ***any*** of these three complementary formulations of the security for costs standard.

B. Nicaragua's Right to Recover a Costs Award Must Be Preserved by Requiring Riverside to Provide Adequate Security.

12. Under ICSID Arbitration Rule 39(1), a party seeking a preliminary measure must first establish the existence of a right to be preserved.[10] ICSID tribunals have consistently held that the right to an enforceable costs award is a right entitled to protection under Rule 39(1).[11]

13. Nicaragua submits that an order for security for costs is necessary to protect its right to the reimbursement of costs that it may be awarded in this proceeding. This does not require the Tribunal to pre-judge the merits or even to determine at this stage whether a costs award is "likely." Rather, as the tribunal in *Kazmin v. Latvia* recognized, it is enough for the Tribunal to conclude

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[9] *Garcia Armas and Others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 Decision on the Respondent's Request for Provisional Measures, June 20, 2018, ¶ 205 **(RL-0123)**; *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 11, July 14, 2023, ¶ 91 **(RL-0124)**.

[10] Arbitration Rules, Rule 39 ("Provisional Measures. 1. At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures. […]").

[11] *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, January 27, 2020, ¶ 52 **(RL-0122)** ("First, the Tribunal is satisfied that Turkmenistan has specified the right to be preserved, namely the right to an enforceable order for costs should it ultimately prevail and be awarded costs); *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, August 13, 2014, ¶ 74 **(RL-0125)** ("Therefore, the (conditional) right to reimbursement of legal costs qualifies as a right to be protected within the meaning of Article 47 ICSID Convention and ICSID Arbitration Rule 39 (1).").

that the party seeking security has a "plausible defense" against the counterparty's case.[12] In *RSM v. Saint Lucia*, the tribunal similarly noted that Santa Lucia had elaborated in its counter-memorial defenses against the claims brought forward by the claimant and, without making any prejudgment of the merits, found that Respondent's position was at least plausible, such that its ability to recover on a potential costs award was a right not to be excluded.[13] In *Garcia Armas v. Venezuela*, the tribunal reasoned that there was an inherent risk that Venezuela, in that case, could be awarded costs, and therefore, a *prima facie* test had been met.[14] Nicaragua submits that it too has—at a minimum—a plausible case.[15]

C. Nicaragua Seeks Reasonable Security in the Form of a Bank Guarantee

14. The second element under ICSID Arbitration Rule 39(1) is to specify the measure sought. Nicaragua seeks an order requiring Riverside to provide an unconditional and irrevocable bank guarantee for an amount of US$ 4 million from a first-class international bank according to the model attached as Annex 1 to cover a potential award on costs in favor of Nicaragua.

15. For the reasons set forth below, Nicaragua's proposed security is appropriate in light of the costs Nicaragua has already incurred and in light of available data as to the costs foreseeably incurred by Respondent States in investment arbitrations.

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[12] *See Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6, Decision on the Respondent's Application for Security for Costs, April 13, 2020, ¶ 28 **(RL-0120)**.

[13] *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, August 13, 2014, ¶ 74 **(RL-0125)** ("As far as the discussion is concerned whether or not the party requesting provisional measures needs to make any showing as to its position on the merits, this question need not be finally decided by the Tribunal. In its Counter-Memorial of June 6, 2014, Respondent has elaborated on its defense against the claims brought forward by Claimant. Hence, without making any prejudgment of the merits, Respondent's position is at least plausible, i.e., a future claim for cost reimbursement is not evidently excluded.").

[14] *Garcia Armas and Others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 Decision on the Respondent's Request for Provisional Measures, June 20, 2018, ¶ 205 **(RL-0123)**.

[15] Nicaragua respectfully directs the Tribunal to its Counter-Memorial for the content of its "plausible case." *See* Counter-Memorial, § II.

16. From the inception of these proceedings, Nicaragua has incurred in US$ 2,200,000 in legal fees. Of this amount, hundreds of thousands of dollars can be directly tied to Claimant's frivolous and abusive extraordinary submissions. In addition to these amounts (and as discussed further below at Section II.D.1, *infra*) Nicaragua incurred additional fees responding to Claimant's 302-page Memorial, 7 witness statements, 3 expert reports, and 177-page Stern schedule.

17. The amount of security that Respondent seeks is also reasonable in light of available data as to the total fees typically incurred by Respondent States in investor-State proceedings. According to the BIICL study, average State fees and costs for defending an ICSID arbitration where the Claimant has sought between US$ 250 million and US$ 1 billion is US$ 5.4 million, excluding the tribunal's costs.[16]

Figure 39: Average costs by the size of claims

	Mean costs	Median costs	Pool
Claims under US$50m			
Investor costs	US$2.6m	US$1.5m	62
Respondent State costs	US$2.2m	US$1.2m	61
Tribunal costs	US$0.5m	US$0.4m	64
Claims between US$50m and US$100m			
Investor costs	US$4.3m	US$3.7m	34
Respondent State costs	US$2.6m	US$1.6m	30
Tribunal costs	US$1.0m	US$0.9m	31
Claims between US$100m and US$250m			
Investor costs	US$5.4m	US$4.7m	49
Respondent State costs	US$4.9m	US$3.7m	44
Tribunal costs	US$0.9m	US$0.9m	48
Claims between US$250m and US$1bn			
Investor costs	US$8.6m	US$7.1m	48
Respondent State costs	US$5.4m	US$4.2m	45
Tribunal costs	US$1.2m	US$0.9m	56

[16] M. Hodgson, Y. Kryvoi, D. Hrcka, British Institute of International and Comparative Law, *2021 Empirical Study: Damages and Duration in Investor-State Arbitration*, Figure 39 **(RL-0136)**. *See also* M. Hodgson and A. Campbell, *Damages and costs in investment treaty arbitration*, Global Arbitration Review, December 14, 2017, pp. 2 *et seq*. (Table 1) **(RL-0137)** (showing the mean costs figure to represent a State is US$ 4,855,000).

18. In this context, Nicaragua seeks security ***only*** for the foreseeable costs of the median investor-state arbitration of comparable value. Here, of course, Riverside's abusive conduct to date and the costs incurred fall outside the norm.

19. Finally, it should be noted that international investment tribunals have repeatedly concluded that an irrevocable bank guarantee, such as that set forth in Annex 1, is the least burdensome form of security for a claimant to provide.[17] For example, unlike requiring a claimant to pay an anticipated costs award into escrow, obtaining a bank guarantee ordinarily will not require Riverside to put up the full value of the ordered security but only partial collateral required by a guaranteeing bank.

D. Riverside's Conduct Justifies an Order for Security for Costs

20. The third element of the 2006 ICSID Rule standard is to show that the circumstances present in the arbitration warrant an order for security for costs.[18] The requesting party must show that the request is necessary or sufficiently urgent to justify imposing the interim measure sought.[19]

21. While security for costs is granted only in exceptional circumstances, arbitral tribunals regularly consider the conduct of the parties (and their counsel) during the arbitration and may compensate for dilatory, abusive, unreasonable, or otherwise irregular behavior aimed at undermining or delaying the proceedings. [20]

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[17] *See Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6, Decision on the Respondent's Application for Security for Costs, April 13, 2020, ¶ 66 (**RL-0120**) ("The Tribunal considers that the least burdensome form which the security may take is an irrevocable guarantee from a first-class international bank[.]"); *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, January 27, 2020, ¶ 65 **(RL-0122)**.

[18] ICSID Arbitration Rules, Art. 39(1).

[19] *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6, Decision on the Respondent's Application for Security for Costs, April 13, 2020, ¶ 28 (**RL-0120**).

[20] *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 3, Decision on the Parties' Request for Provisional Measures, June 23, 2015, ¶ 121 (**RL-0127**) ("As regularly held by

22. In *Bernhard von Pezold v. Republic of Zimbabwe*, the tribunal similarly found the relevant party's conduct, including convoluted and repetitive presentation of its prior pleadings and the inclusion of irrelevant material, relevant in its decision to order an adverse award on costs.[21] Similarly, in *Karkey v. Pakistan*, the tribunal also considered Pakistan's conduct during the proceedings. Specifically, the tribunal noted that the state had engaged in dilatory tactics, and it had failed to comply with orders from the Tribunal.[22] This is as it should be. As the *Orlandini v. Bolivia* tribunal reasoned, a party's "improper behavior in the proceedings at issue, such as conduct that interferes with the efficient and orderly conduct of the proceedings" or "other evidence of a claimant's bad faith or improper behavior" should be considered when deciding whether to order security for costs.[23] Nicaragua should be similarly protected from Riverside's abusive conduct in these proceedings.

23. Practice in international commercial arbitration is analogous and tribunals regularly considered whether one party's actions significantly increase the financial burden of the requesting party.[24] In this same spirit, Article 4 of the International Arbitration Practice Guideline on Applications for Security for Costs adopted by the Chartered Institute of Arbitrators (CIArb

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ICSID arbitral tribunals, security for costs may only be granted in exceptional circumstances, for example, where abuse or serious misconduct has been evidenced); *Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador*, ICSID Case No. ARB/09/17, Decision on El Salvador's Application for Security for Costs (Annulment Proceeding), September 20, 2012, ¶ 45 (**RL-0128**) ("However, the power to order security for costs should be exercised only in extreme circumstances, for example, where abuse or serious misconduct has been evidenced.") *See also* Joseph R Profaizer, Igor V. Timofeyev and Adam J. Weiss, Costs, Global Arbitration Review, December 19, 2022, pp. 4-5 (**RL-0129**).

[21] *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, July 28, 2015, ¶¶ 1006-1008 (**RL-0061**).

[22] *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, August 22, 2017, ¶¶ 1063-1074 (**RL-0130**).

[23] *See The Estate of Julio Miguel Orlandini-Agreda and Compania Minera Orlandini Ltda. v. Plurinational State of Bolivia*, PCA Case No. 2018-39, Procedural Order No. 15, November 12, 2021, ¶ 68 (**RL-0131**).

[24] Samaa A. Haridi, Security for Costs and Claim Under the ICC Rules of Arbitration: Rare, but Possible A Survey of 23 ICC Procedural Orders and Final Awards, ICC Dispute Resolution Bulletin 2020 Issue 2, p. 3 (**RL-0132**).

Guideline) provides that "[…] arbitrators should consider and be satisfied that, in light of all of the surrounding circumstances, it would be fair to make an order requiring one party to provide security for the costs of the other party."[25]

1. Riverside's conduct has unreasonably multiplied Nicaragua's legal costs

24. In *Kazmin v. Latvia*, the tribunal recognized that the extraordinary conduct justifying an order of security for costs can "become known gradually overtime and acquire[] . . . overall significance only when . . . considered in its totality."[26] That has been the case here.

25. Since the beginning of this arbitration, Riverside has displayed a pattern of conduct that has increased Nicaragua's costs by submitting unnecessary, unsubstantiated, and curiously long submissions, supported by relatively few documentary exhibits. Riverside is also responsible for an unusually costly document production phase in which more than fifty (50) percent of Riverside's document requests were denied by the Tribunal.

26. As explained in detail below, Riverside has substantially increased Respondent's uncontemplated and unforeseen costs to defend itself in this arbitration by: (1) submitting several substantive requests and motions to the Tribunal outside the procedural calendar, which have been all summarily rejected; (2) filing an extraordinarily long Memorial and set of document requests; and (3) sending requests and proposals to Respondent's counsel only to later withdraw such requests or proposals. This improper conduct has resulted in an unnecessary escalation of Nicaragua's legal costs.

[25] International Arbitration Practice Guideline on Applications for Security for Costs, Chartered Institute of Arbitrators, Art. 5.3 (**RL-0133**).

[26] *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6, Decision on the Respondent's Application for Security for Costs, April 13, 2020, ¶ 29 **(RL-0120)** ("The Tribunal finds, as did the *RSM v. Saint Lucia* tribunal, that '[a]lso future or conditional rights such as the potential claim for cost reimbursement qualify as 'rights to be preserved' by provisional measures.'").

27. At the same time, documents produced by Riverside in this case demonstrate that Riverside would be unable to pay an adverse award on costs. That Riverside's legal counsel Appleton & Associates are operating under a contingency agreement compounds these concerns.

28. While avoiding argumentation on the merits, Nicaragua takes the opportunity to review key instances in which Riverside has unreasonably increased costs in a pattern that, thus far, shows no sign of stopping.

29. *First*, on October 21, 2022, the Claimant filed a 302-page memorial on the merits (the "Memorial").[27] To be sure, a claimant is master of its own complaint, but Riverside's Memorial was, it is submitted, simultaneously excessive and bereft of evidentiary support. Riverside among other things spent forty-four (44) pages describing a sequence of events that occurred in a period of less than two months (*i.e.*, June 16, 2018 – August 4, 2018) while attaching very little documentary evidence and relying almost entirely on second or third-hand testimony.[28]

30. *Second*, three weeks after Riverside submitted its 302-page Memorial and without seeking leave from the Tribunal or approaching Nicaragua to discuss the situation, Riverside filed an extraordinary application on November 13, 2022. Riverside sought "discretionary relief" in connection with the supposed taking of the Hacienda Santa Fé. As the Tribunal will recall, Riverside alleged it had recently discovered facts supporting that Nicaragua had breached its international obligations when a court issued a protective order (the "Protective Order"), which appointed a judicial depositary in order to protect the property and prevent damages to the property belonging to the Claimant.[29] Riverside stated that it only became aware of the Protective Order in an "accidental discovery" while reviewing unrelated litigation files before the courts of Jinotega,

[27] Memorial dated October 21, 2022.

[28] Counter-Memorial, ¶ 3.

[29] *See* Riverside's Application of November 13, 2022; Procedural Order No. 4, ¶ 41.

three weeks after filing its Memorial.[30] Despite having actual knowledge of the Protective Order and the circumstances concerning the entry of that Order since July 2022, more than four months before the filing of its Memorial, Claimant waited until November 13, 2022 to bring its concerns about the measures taken by Nicaragua to preserve Claimant's acknowledged property to the attention of the Tribunal.[31]

31. Riverside's application precipitated two rounds of briefs that were prepared and submitted within a single month, over the course of which Claimant submitted forty (40) pages of substantive argument (excluding Claimant's lengthy emails containing additional argument), as well as twenty-six (26) additional fact exhibits. Claimant could have submitted the very same arguments along with its Memorial—filed three weeks prior—but instead chose to disrupt the procedural calendar and consequently increase the costs of this arbitration with an additional month of briefing.

32. Claimant's application was also completely meritless and the Tribunal rejected Claimant's request in its entirety.[32] In Procedural Order No. 4, the Tribunal rejected Claimant's characterization of the Protective Order as a "seizure order."[33] Instead, the Tribunal acknowledged that the Protective Order was a provisional measure "for the purpose of protecting, and not for the purpose of seizing, Hacienda Santa Fé."[34] Based on this, the Tribunal found that it was unable to

[30] Procedural Order No. 4, ¶ 10.

[31] *See* Nicaragua's Response of November 23, 2022, pp. 3-7.

[32] Procedural Order No. 4, ¶ 39.

[33] Procedural Order No. 4, ¶ 30.

[34] Procedural Order No. 4, ¶ 33; *see also id.* at ¶ 35 ("The Court Order cannot be characterized as a "seizure" order; it rather constitutes a measure that is intended to protect the Claimant's property in Nicaragua, pending the completion of the present proceedings.").

accept Claimant's contention that Nicaragua had "jeopardized the procedural integrity and the exclusivity" of the Tribunal's jurisdiction under the ICSID Convention.[35]

33. The Tribunal also rejected Claimant's request to order Nicaragua to disclose the entire Protective Order file and "all related or associated files" as premature. The Tribunal noted that Riverside would have an opportunity to request this information in the document production phase of this arbitration.[36]

34. Finally, the Tribunal rejected Claimant's argument that the Protective Order would have a "material effect" on the issue of quantification of compensation and therefore should be allowed to supplement its Memorial. The Tribunal noted that Claimant will have the opportunity to amend its claims in its Reply.[37] As the Tribunal's decision confirmed, Claimant's application was baseless.[38] It nevertheless imposed additional and unnecessary legal costs of hundreds of thousands of dollars on Nicaragua, especially during the months of November and December of 2023.

35. *Third*, on December 23, 2022, after the Tribunal had rejected Claimant's meritless application, Nicaragua asked Riverside to agree to amend the procedural timetable and accommodate an extension for Nicaragua's Counter-Memorial, while offering equivalent extensions for Riverside's subsequent Reply.[39] After it proved impossible to reach an agreement,

[35] Procedural Order No. 4, ¶ 35.

[36] Procedural Order No. 4, ¶ 38.

[37] Procedural Order No. 4, ¶ 39.

[38] Procedural Order No. 4, ¶ 39.

[39] *See* Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 23, 2022 (1:46 PM EST) (**R-0119**); Email from Riverside (Mr. Appleton) to Nicaragua (Ms. Analia Gonzalez) of December 23, 2022 (6:50 (**R-0119**); Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 23, 2022 (9:51 PM EST) (**R-0119**); Email from Riverside (Mr. Appleton) to Nicaragua (Ms. Analia Gonzalez) of December 28, 2022 (4:03 PM EST) (**R-0119**); Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 29, 2022 (2:13 PM); Email from Riverside (Mr. Appleton) to Nicaragua (Ms. Analia Gonzalez) of

Nicaragua submitted a request to the Tribunal on December 29, 2022 seeking a four-week extension to submit its Counter-Memorial. The request took the form of a three-paragraph email, taking up no more than half a page.[40] On January 4, 2023, Riverside responded with a 9-page letter with four (4) new exhibits—all purportedly responding to Nicaragua's extension request.[41] The same day, Nicaragua sought leave from the Tribunal to submit the complete exchange of communications between the Parties that Riverside had failed to submit.[42] The next day, Riverside sent a further lengthy email arguing that it had not attached the complete exchange of communications between the parties based on a purported "settlement privilege," only to withdraw its own objection two hours later.[43]

36. Claimant's conduct after the filing of its Memorial and during the period when Respondent should have been able to focus on preparing its Counter-Memorial served to disrupt the procedural calendar, delay the orderly resolution of this dispute with unsolicited submissions, and unnecessarily burden the Tribunal with meritless applications.

37. *Fourth*, after Nicaragua submitted its Counter-Memorial, Riverside wrote to Nicaragua's counsel on March 13, 2023 "inviting" Nicaragua to withdraw its jurisdictional objection regarding Riverside's alleged failure to show that it controlled Inagrosa at the time of the alleged breaches.[44] On March 16, 2023, Riverside submitted to the Tribunal (1) a letter

December 29, 2022 (3:39 PM EST) (**R-0119**); Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Appleton) of December 29, 2022 (7:47 PM) (**R-0119**).

[40] *See* Email from Nicaragua (Ms. Analia Gonzalez) to the Tribunal of December 29, 2022 (**R-0120**). That Riverside's tactics required all of these submissions to be made at the height of the holiday season should not go un-noted.

[41] *See* Email from Riverside (Mr. Appleton) to the Tribunal of January 4, 2023 (**R-0121**).

[42] *See* Email from Nicaragua (Ms. Analia Gonzalez) to Nicaragua of January 4, 2023 (**R-0121**).

[43] *See* Email from Riverside (Mr. Appleton) to the Tribunal (8:13 AM EST); Email from Riverside (Mr. Appleton) to the Tribunal (9:46 AM EST) of January 4, 2023 (**R-0121**).

[44] *See* Email from Riverside (Mr. Barry Appleton) to Nicaragua of March 13, 2023 (**R-0122**).

withdrawing its claim made concerning claims from Inagrosa under Article 10.16(1)(b) of DR-CAFTA; and (2) a so-called "motion to dismiss" Nicaragua's jurisdictional objection on the basis that Riverside did not control Inagrosa at the time of the alleged breaches.[45] That same day, Nicaragua responded that there was no need for the Parties and the Tribunal to engage in "piecemeal consideration of Claimant's response to Nicaragua's jurisdictional and admissibility objections."[46] Nicaragua also pointed out that this was the second instance where Claimant had submitted substantive argumentation outside the ordinary schedule and pleadings agreed upon by the Parties without seeking leave from the Tribunal.[47]

38. On March 17, 2023, the Tribunal rejected Claimant's motion to dismiss noting that Claimant would have the opportunity to respond to Respondent's jurisdictional and admissibility objections in its Reply on the Merits and Counter-Memorial in accordance with the applicable procedural calendar.[48] The Tribunal also found that Claimant had failed to demonstrate why "it would be in the interest of procedural efficiency or indeed appropriate or justified to address such objections at [that] time on an expedited basis, outside the agreed procedural timetable."[49] These additional proceedings, not anticipated in the procedural calendar, generated further and excessive costs.

39. *Fifth*, on April 14, 2023, Riverside submitted a 177-page Stern Schedule containing one hundred twelve (112) document requests for Nicaragua.[50] These requests were highly

[45] *See* Email from Riverside (Mr. Appleton) to the Tribunal of March 16, 2023 (**R-0123**). It bears emphasizing that motions to dismiss jurisdictional objections do not exist in ICSID practice. *See also* Counter-Memorial, § III(C).

[46] Email from Nicaragua (Mr. East) to the Tribunal of March 16, 2023 (**R-0124**).

[47] *See* Email from Nicaragua (Mr. East) to the Tribunal of March 16, 2023 (**R-0124**).

[48] *See* Letter from the Secretary on behalf of the Tribunal of March 17, 2023 (**R-0125**).

[49] Letter from the Secretary on behalf of the Tribunal of March 17, 2023 (**R-0125**).

[50] *See* Procedural Order No. 6, Annex A. In contrast, Nicaragua submitted sixty-three document requests. *See* Procedural Order No. 6, Annex B.

argumentative and ***nearly two-thirds the length of Claimant's Memorial***. As set forth in Procedural Order No. 5, the Tribunal rejected more than fifty (50) percent of Riverside's document requests outright.[51] Riverside's requests, including the relevance and materiality section, were particularly extensive. By and large, Riverside's requests were argumentative and distorted the facts of the case. This exercise required Nicaragua to spend considerable amount of time to respond to each one of the requests correcting the record and distortions to the facts, unnecessarily increasing legal costs. This is evidenced by the length of Riverside's Document Requests that was ultimately filed with the Tribunal.[52]

40. *Sixth*, in responding to Nicaragua's document requests, Riverside made extensive bad faith objections to Nicaragua's requests. These included "Standard Response – RDR No 1" by which Riverside purported to object to Nicaragua's request being addressed to an "unknown" company.[53] The Tribunal found it:

> . . . apparent that this is a typographical error and that the reference should be understood to be to "Inversiones Agropecuarias S.A.," a company allegedly owned and controlled by the Claimant, and which at the relevant time owned and operated Hacienda Santa Fé, the property at issue in this arbitration.[54]

41. The Tribunal further determined that Riverside could not "legitimately rely on what is clearly a typographical error to resist an otherwise valid request for production of documents, and therefore cannot refuse to produce documents requested by the Respondent on the sole basis of such an error."[55]

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[51] *See* Procedural Order No. 6, Annex A.

[52] *Compare* Procedural Order No. 6, Annex A (481 pages) with Procedural Order No. 6, Annex B (292 pages).

[53] As pointed out in Nicaragua's Replies to its Document Requests, in a clear typographical error, Nicaragua inadvertently referred to "Inagrosa" as "Inagrosa Agropecuarias S.A.".

[54] Procedural Order No. 6, ¶ 9.

[55] Procedural Order No. 6, ¶ 9.

42. *Seventh*, Claimant has since failed to comply with several of the Tribunal's orders requiring compliance with key requests made by Nicaragua. During the document production phase of this proceeding, Nicaragua issued several document requests concerning the financial history of Riverside and Inagrosa. By way of summary:

No.	Content of Request & Decision	Outcome
RDR 11	Nicaragua requested "any and all" audited or unaudited financial statements for Riverside from 1999 until March 19, 2021. The Tribunal granted the request in its entirety thus rejecting Claimant's objections.	Claimant has not produced *any* audited or unaudited financial statements for Riverside, despite the Tribunal's order to produce Riverside's financial statements from 1999 until March 19, 2021.
RDR 12	Nicaragua requested "any and all" audited or unaudited financial statements for Inagrosa from 1996 until March 19, 2021. The Tribunal granted the request in its entirety thus rejecting Claimant's objections.	Claimant produced only unaudited financial statements for Inagrosa from 2010 through 2020, despite the Tribunal's order to produce all audited or unaudited financial statements from 1996 until March 19, 2021. In addition, several of the produced unaudited financial statements appear to be incomplete. The documents produced for fiscal years 2010, 2011, 2012, 2013, are one page balance sheets with accompanying cover letter.
RDR 13	Nicaragua requested "any and all" bank account statements for Riverside from 1999 to March 19, 2021. The Tribunal granted the request for a narrower time frame of 2010 through 2018.	Claimant produced Riverside's bank account statements only for December 2013 through December 2018, despite the Tribunal's order to produce all bank account statements beginning in 2010 through 2018.
RDR 15	Nicaragua requested "any and all income tax returns (federal or state) from Riverside from 1999 to March 19, 2021." The Tribunal granted the request on a narrower time frame of 2015 through 2017.	Claimant produced Riverside's U.S. tax returns (IRS Form 1065) from 2015 to 2018 but did not produce any Kansas or Colorado state tax returns, despite the Tribunal's order to do so. Furthermore, Riverside's 2018 U.S. tax return is incomplete, as the accompanying statements are omitted from the copy produced.

43. Based on Claimant's responses and objections to those particular requests, further documents must exist. Riverside has offered no justification for withholding those documents.

This deliberate attempt to conceal relevant documents further underscores Claimant's extraordinary conduct, as well as the necessity and urgency for ordering security for costs. Riverside's refusal to comply with Procedural Order No. 6 calling for production of these documents impedes Nicaragua's presentation of its defense based on documents to which it is entitled. Nicaragua would accordingly welcome an additional order from the Tribunal compelling production for Respondent's Request Nos. 11, 12, 13, and 15. Should Claimant refuse to produce any further documents, Nicaragua will request adverse inferences at the appropriate time. Of particular relevance here, however, having to prepare its defense without such documents will foreseeably and unjustifiably increase Nicaragua's costs in this arbitration.

44. *Eighth*, on May 8, 2023, Riverside's counsel approached Nicaragua with an unparticularized request to conclude a confidentiality order.[56] The Parties were not able to agree on the necessity of such order and therefore its terms.[57] This request generated extensive correspondence between Riverside and the Tribunal to which Nicaragua was obliged to respond, only for Riverside to ultimately abandon its insistence on a confidentiality order.[58]

45. On June 21, 2023, the Tribunal sent a letter to the Parties rejecting Claimant's request to put in place a confidentiality order without the Parties mutually agreeing on the terms. Since the Tribunal's order, Riverside has not approached Nicaragua again to discuss a confidentiality agreement, which evidences that Nicaragua's agreement to treat Riverside's

[56] *See* Communication from Riverside (Mr. Appleton) to Nicaragua (Ms. Analia Gonzalez) of May 8, 2023 (**R-0126, p.3**).

[57] *See* Exchange of communications between Claimant's and Nicaragua's counsel (**R-0126**).

[58] *See* Communication from Riverside (Mr. Appleton) to the Tribunal on May 25, 2023 (**R-0128**); Email from Riverside (Mr. Barry Appleton) to Nicaragua (Ms. Analia Gonzalez) of June 7, 2023 (**R-0127**). *See also* Email from Nicaragua (Ms. Analia Gonzalez) to Riverside (Mr. Barry Appleton) of June 7, 2023 (**R-0129**) (agreeing to treat material produced by the Claimant and designated as subject to claimed protected status under Articles 9.2(e) and 9.2(g) of the IBA Rules as Protected Information within the meaning of CAFTA Article 10.21).

information as protected was enough for the purposes sought by Riverside and could have saved the Parties from yet another costly series of exchanges. This episode nevertheless imposed unnecessary additional costs on Nicaragua.

46. In short, Riverside's conduct in this arbitration has been contrary to the principles of efficiency and orderly dispute resolution that should govern these proceedings and which Riverside has claimed to embrace.[59] Nor does the record of this arbitration presently offer any basis to anticipate that Riverside's behavior will change in the future. To the contrary, the record shows that Riverside has engaged in the kind of "improper behavior in the proceedings at issue, such as conduct that interferes with the efficient and orderly conduct of the proceedings," at times rising to the level of "bad faith or improper behavior" that tribunals have taken into account in ordering security for costs.[60]

2. Riverside's limited document production confirms that it is unable to cover an adverse cost award

47. Riverside's bank account statements from December 2013 through December 2018 reveal that Riverside has never maintained an account balance of more than US$ 55,000.[61] As evidenced by Riverside's 2018 U.S. tax return—the most recent financial information Riverside disclosed—Riverside held *no cash* in its accounts at the end of tax year 2018 and only had a

[59] *See* Email from Riverside (Mr. Appleton) to the Tribunal of January 5, 2023 ("The goal of arbitration is to be efficient and practical.") (**R-0130**).

[60] *See, e.g., The Estate of Julio Miguel Orlandini-Agreda and Compania Minera Orlandini Ltda. v. Plurinational State of Bolivia*, PCA Case No. 2018-39, Procedural Order No. 15, November 12, 2021, ¶ 68 (**RL-0131**); *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, July 28, 2015, ¶¶ 1006-1008 **(RL-0061)**; *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, August 22, 2017, ¶¶ 1063-1074 (**RL-0130**).

[61] *See, e.g.*, Riverside Bank Account Statement, December 31, 2013 (balance of $435.31) (**R-0112**); Riverside Bank Account Statement, September 30, 2014 (balance of $1,377.81) (**R-0113**); Riverside Bank Account Statement, December 31, 2015 (balance of $53,711.81) (**R-0114**); Riverside Bank Account Statement, December 31, 2016 (balance of $53,261.81) (**R-0115**); Riverside Bank Account Statement, December 31, 2017 (balance of $52,831.81) **(R-0116)**; Riverside Bank Account Statement, December 31, 2018 (balance of $13,713.31) (**R-0117**).

balance of US$ 52,832 in accounts under its name at the beginning of tax year 2018.[62] As mentioned above, Riverside produced an incomplete 2018 U.S. tax return that omits any of the accompanying schedules that itemize *inter alia* partner capital accounts, deductions, investments, and liabilities. Despite Riverside's incomplete production, the documents that Riverside has produced suffice to confirm that Riverside's ***only*** noteworthy asset is Inagrosa, which is an illiquid asset incapable of covering short-term debt obligations, such as an adverse award of costs.[63] Riverside's only other "assets" (according to its U.S. tax returns) are its partners' capital accounts. But according to the laws of Kansas, those accounts are protected due to Riverside LLC's corporate form and thus cannot be collected against to satisfy Riverside's liabilities.[64] Riverside is, in short, simply a hollow holding company for Inagrosa.

48. At the same time, Riverside's U.S. tax returns also reflect that the partners behind Riverside, including the late Melvin Winger and Ms. Mona Winger, have significant assets.[65] Where the Wingers are U.S. citizens whose investments in Nicaragua would be protected by the DR-CAFTA, this structure suggests a strategy of pursuing this arbitration only through a claimant judgment-proof against a costs award. Indeed, Riverside drained its accounts of all liquid assets

[62] *See* Riverside IRS Form 1065, 2018, p. 5 (**R-0111**). Riverside produced this return without including any of the accompanying schedules that *inter alia* itemize partner capital accounts, deductions, investments, and liabilities. *Compare* Riverside IRS Form 1065, 2018 (**R-0111**) *with* Riverside IRS Form 1065, 2017 (**R-0118**).

[63] *See* Riverside IRS Form 1065, 2017, at 15 (**R-0118**).

[64] *See* Kansas Statutes, Ch. 17, Art. 76, § 88 (2021) (**RL-0138**) ("[T]he debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manage of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.")

[65] *See* Riverside IRS Form 1065, 2017 (**R-0111**); Riverside IRS Form 1065, 2016 (**R-0131**); Riverside IRS Form 1065, 2015 (**R-0132**).

at the end of 2018.[66] This is further evidence of a deliberate strategy of using Riverside's corporate form to shield its partners' underlying assets against a potential costs award.

49. The *Nord Stream 2 AG v. The European Union* tribunal's recent decision to award the Respondent security for costs is particularly instructive on this point. The tribunal highlighted the prejudice a Respondent in Nicaragua's situation will face when enforcing an award of costs against a holding company whose partners otherwise maintain significant assets:

> Whereas the Claimant can rely on support of other members of the corporate group to help finance the costs of the proceedings, an award of costs to the Respondent would only be enforceable against the Claimant itself, who acknowledges that it is presently relying on the support of its Guarantor and shareholders to meet its own costs.[67]

In the event that the Tribunal were to order Riverside to cover some or all of Nicaragua's costs and fees without having earlier ordered security for those costs, Nicaragua would be faced with the insurmountable task of recovering from an otherwise judgment-proof Claimant. That is the precise risk identified by the *Nord Stream 2* tribunal.

50. Finally, it should be noted that the above considerations are based solely on the limited documents that Riverside has produced. But Claimant has ***still not produced a single audited or unaudited financial statement for Riverside*** despite Procedural Order No. 6 requiring it to do so pursuant to Respondent's Document Request No. 11. Nicaragua reserves the right to request the Tribunal to draw the appropriate adverse inferences from Claimant's continued non-production.

3. That Riverside's counsel is operating on a contingent fee basis further underscores Riverside's inability to cover an adverse costs award

[66] *See* Riverside IRS Form 1065, 2018, p. 5 (**R-0111**). Notably, the earliest document reflecting Riverside's engagement of Appleton & Associates is dated January 25, 2019 (*see* **C-0002**). It is therefore likely that Riverside retained Appleton & Associates at an earlier date. This timing is thus suggestive of Riverside's beneficial owners having been advised to bring their claims only through a judgment-proof entity.

[67] *Nord Stream 2 AG v. The European Union*, UNCITRAL, Procedural Order No. 11, July 14, 2023, ¶ 93 (**RL-0124**).

51. In addition, on June 30, 2022, Mr. Appleton disclosed that his law firm and Riverside were proceeding on a contingency fee arrangement for this case. Tribunals have frequently recognized third party funding as a factor that can weigh in favor of ordering security for costs and a contingent fee arrangement is a form of third party funding.[68] While a contingent fee arrangement is not improper, it is unusual. Here, the existence of such an arrangement further underscores Claimant's inability to cover short term obligations, such as an adverse costs award, and consistent with a strategy of bringing Claimant's case only through a judgment-proof entity.

E. Nicaragua's Request for Security for Costs Is Proportional

52. An application for provisional measures, including one for security for costs, requires a Tribunal to balance the parties' respective interests.[69] These include, on the one hand, the burden that a party may face in complying with a security for costs, and on the other, the risk that the requesting party may face if an award for costs is not paid.[70] Given the exceptional circumstances explained above, Nicaragua's right to security its costs in this arbitration far outweighs Riverside's burden to comply with a security for costs order, especially when the amount sought and vehicle proposed by Nicaragua is reasonable, and where Riverside's partners—and the ultimate beneficiaries of any award in its favor—appear to have substantial funds.

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[68] *See* ICCA-Queen Mary Report on Third-Party Funding in International Arbitration, *ICCA* Reports, no. 4, April 2018, p. 21 (**RL-0126**) ("[A] law firm may effectively act as the provider of dispute finance, for example when offering to act on a contingency fee basis."); Christopher P. Bogart, "Third-Party Financing of International Arbitration," in Annet van Hooft and Jean-François Tossens (eds), 2017 *b-Arbitra Belgian Review of Arbitration* 317 (Wolters Kluwer 2017) (**RL-0134**) ("All of these sources of outside financing – contingent fee firms, banks, insurers and specialists – could be considered 'third-party financing', and that is precisely how the International Bar Association sees it. According to the IBA Guidelines, a 'third-party funder' is: 'Any person or entity that is contributing funds or material support to the prosecution or defense of the case and that has a direct economic interest in the award to be rendered in the arbitration.'").

[69] *See Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6, Decision on the Respondent's Application for Security for Costs, April 13, 2020, ¶ 29 (**RL-0120**).

[70] *See Garcia Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9, Decision on the Respondent's Request for Provisional Measures, June 20, 2018, ¶ 231 (**RL-0123**).

53. As explained above, Nicaragua asks the Tribunal to order the Claimant to provide an unconditional and irrevocable bank guarantee for an amount of US$ 4 million from a first-class international bank according to the model attached as Annex 1 to cover a potential award on costs in favor of Nicaragua. In *Dirk Herzig v. Turkmenistan*, the Tribunal found that funding a bank guarantee as opposed to funding an escrow with the total amount sought by the State was proportional.[71]

54. In this case, the potential injustice suffered by Nicaragua far outweighs any burden on Claimant to provide adequate security. As explained above, Claimant is pursuing this claim on a contingency fee arrangement with its counsel, who have presumably has deferred receipt of any legal fees throughout the pendency of this proceeding. Any award of security for costs would thus not affect Riverside's arrangement with its counsel because Claimant would be able to continue pursuing its claim under the terms of that agreement.

55. On the other hand, while Claimant has made such arrangements to fund its own pursuit of these proceedings, Nicaragua enjoys no such security. At present, if the Tribunal were to order an adverse costs award against Riverside, Nicaragua would be an unsecured creditor seeking to enforce that costs award against a judgment-proof limited liability corporation. Under similar circumstances, the *Nord Stream 2* tribunal granted security for costs because doing so would not "risk denying Claimant the ability to pursue the arbitration, whereas it would leave the Respondent without sufficiently reliable guarantee that it would be able to collect on an award of costs" and it was therefore "necessary to protect the Respondent's rights."[72] The risk to

[71] *See Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, January 27, 2020, ¶ 65 (**RL-0122**).

[72] *Nord Stream 2 AG v. The European Union*, UNCITRAL, Procedural Order No. 11, July 14, 2023, ¶ 94 (**RL-0124**).

Respondent's right to a meaningful and effective costs award thus significantly outweigh any inconvenience to the Claimant.

III. CONCLUSION AND PRAYER FOR RELIEF

56. For the foregoing reasons, Nicaragua's request for an order of security for costs, is necessary, urgent, and proportional given the interests at stake.

57. Nicaragua respectfully requests that the Tribunal:

a. Order the Claimant to provide, within 14 days of the Tribunal's order, security for Respondent's costs of these proceedings in the amount of US$ 4 million:

   i. in the form and terms indicated in Annex 1 attached hereto; or

   ii. alternatively, in any other form and terms the Tribunal deems appropriate.

b. In case of non-compliance by the Claimant, to order the suspension of the proceedings for ninety (90) days, or any time period deemed reasonable by the Tribunal;

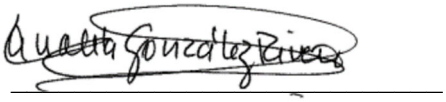
c. Should the Claimant fail to comply within the ordered suspension period, to order the discontinuance of the proceedings with prejudice and order Claimant to pay the costs incurred by Nicaragua to date in the defense of this arbitration;

d. Order Claimant to comply fully with Respondent's Requests Nos. 11, 12, 13, and 15 within 7 days of the Tribunal's order including, in the event no documents are produced in response to such order, to provide a certification signed by Claimant's counsel (i) that diligent efforts have been made to find such documents; (ii) detailing such diligent efforts; and (iii) confirming that such documents either do not exist or cannot be found despite diligent efforts to obtain them; and

e. Order Claimant to bear the costs of this Application.[73]

October 4, 2023

Respectfully submitted,



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[73] Respondent reserves the right to amend its requested relief herein, as well as request any additional relief at the appropriate time.