IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANATOLIE STATI; GABRIEL STATI; ASCOM GROUP, S.A.; TERRA RAF TRANS TRAIDING LTD., Petitioners, v. REPUBLIC OF KAZAKHSTAN, Respondent.	Civil Action No. 1:14-cv-1638-ABJ

JOINT STATUS REPORT

Petitioners Anatolie Stati, Gabriel Stati, Ascom Group, S.A., and Terra Raf Trans Traiding Ltd. ("Petitioners") and Respondent Republic of Kazakhstan ("Respondent") respectfully submit this Joint Status Report.

Petitioners' Statement

On April 19, 2019, the United States Court of Appeals for the District of Columbia Circuit issued a *per curiam*, summary order affirming this Court's judgment of March 23, 2018, which confirmed the award at issue in these proceedings (the "Award"). On May 20, 2019, the ROK filed a petition for rehearing or rehearing *en banc* of its appeal from this Court's judgment confirming the Award. To date, the Court of Appeals has not requested that Petitioners file a response to the ROK's petition.

On May 9, 2019, Petitioners took the deposition of Mr. Kalymzhan Ibraimov, Deputy Chairman of the Committee of State Property and Privatization of the ROK's Ministry of Finance, at the offices of counsel for the ROK in Washington, D.C. A complete copy of the

deposition transcript is attached hereto as **Exhibit A**. Petitioners had not sought to depose Mr. Ibraimov — the ROK had proposed him as a Rule 30(b)(1) witness to testify in place of Mr. Almas Taigulov, whom the ROK failed to produce as ordered by the Court on December 20, 2018. Despite this Court's order that Mr. Taigulov answer all questions over objection, except where necessary to protect privilege, *see* 12/20/19 Tr. at 40:5-10 (ECF 100), the ROK made Mr. Kalymzhan available for deposition subject to the condition that he not answer any questions pertaining to the ROK's assets outside the United States. Petitioners objected to this condition prior to taking the deposition of Mr. Kalymzhan and reserved all of their rights.

Shortly after the deposition began, counsel for the ROK stated a lengthy general objection to any inquiry by Petitioners concerning the ROK's assets outside the United States. *See* Ex. A at 25:9-30:12. Counsel for the ROK referred to this objection as "Objection 1" and stated that the witness either would not answer any question counsel deemed subject to Objection 1, or that counsel would terminate the deposition for purposes of seeking a protective order. *Id.* at 28:9-14, 31:24-32:5. Counsel for Petitioners responded that Petitioners disagreed with the substance of Objection 1, which had already been presented to this Court on various occasions, and he requested that the witness answer all questions over the objection, except where necessary to protect privilege. *Id.* at 28:15-29:3. Counsel for Petitioners also once again reserved Petitioners' rights with respect to the objection. *Id.* at 30:6-11.

Counsel for the ROK raised Objection 1 at least 14 times during the deposition of Mr. Kalymzhan, thereby preventing the witness from answering any question that related, either directly or indirectly, to the ROK's assets outside the United States. *See* Ex. A at 47:5-6, 51:9-11, 51:25-52:2, 81:13-18, 86:2-4, 92:4-15, 98:15-17, 99:2-5, 108:10-12, 115:2-12, 134:3-10, 135:23-136:6, 140:22-25, 146:14-15.

The deposition of Mr. Kalymzhan also did not shed much light on the ROK's assets located **inside** the United States, because the witness—who had been handpicked by the ROK—had limited knowledge about such assets. Mr. Kalymzhan testified that he did not know anything about significant categories of U.S. assets owned by the ROK, including escrows, retainers, brokerage accounts, and assets held by the ROK in connection with the repayment of its sovereign debt and/or commercial transactions. *See* Ex A, at 34:16-35:19, 50:2-7, 61:10-16, 66:24-67:23, 126:2-7.

To date, the ROK has still not produced a single document to Petitioners, and it continues to refuse to produce a 30(b)(6) witness, despite the fact that Petitioners served their discovery requests on May 1, 2018, more than **one year** ago.

While the ROK has successfully thwarted Petitioners' attempts to obtain any meaningful discovery from the ROK in aid of execution on this Court's judgment, it has been using the liberal discovery available under U.S. law in an attempt to support its claim in the foreign legal proceedings that the Award is unenforceable because Petitioners purportedly obtained it by fraud. In particular, the ROK has sought, obtained, and moved to compel several subpoenas under 28 U.S.C. § 1782 from several third parties(including Clyde & Co LLP, Renaissance Capital, Jefferies & Co, and Linklaters LLP) and at least one former employee of the Ascom Group, S.A. (Mr. Artur Lungu). Thus, as the Court considers the equities of this matter, it should keep sight of the fact that the ROK, while refusing to pay and standing in open defiance of this Court's judgment against it and while objecting virtually in total to Petitioners' discovery requests, is itself invoking the authority of the U.S. federal courts in an attempt to gather evidence for purposes of undermining this Court's judgment against it. As a result, the ROK has obtained thousands of documents and taken depositions related to its defense to recognition of

the arbitration award, while failing to produce a single document in response to Petitioners' discovery requests. The inequity of that situation is manifest, and the Court should rectify it.

Respondent's Statement

Petitioners in this case seek to enforce this Court's Judgment dated March 23, 2018, confirming an international arbitral award. That judgment remains on appeal. On May 20, 2019, Respondent filed a motion for rehearing *en banc* with the U.S. Court of Appeals for the District of Columbia Circuit asking the court to reconsider the panel's affirmance of this Court's confirmation of the award without permitting Respondent the opportunity to present its defense that the award had been obtained by fraud.

In order to enforce this Court's judgment, Petitioners have sought discovery from Respondent pursuant to Rule 69, as well as third-party discovery. With regard to third-party discovery, Petitioners issued subpoenas *duces tecum* and *ad testificandum* to the Bank of New York Mellon and to State Street Corporation ("State Street") as the holder and manager, respectively, of assets belonging to the National Bank of Kazakhstan ("NBK"). On March 21, 2019, State Street filed a motion to quash or stay the deposition subpoena in the U.S. District Court for the District of Massachusetts, where State Street is based. *See State Street Corp. v. Anatolie Stati et al.*, No. 19-mc-91107 (D. Mass.), at ECF 2. State Street argued, *inter alia*, that the Rule 30(b)(6) deposition should not proceed until judicial proceedings in the High Court of Justice of England and Wales had been completed. *Id*. at 3. In those proceedings, the court was determining whether assets belonging to the NBK could be used to satisfy any judgment against the Republic of Kazakhstan. *Id*. State Street argued that, because Petitioners' subpoenas sought information from State Street relating to its role in managing the assets of the NBK, compliance with the deposition subpoena should be stayed pending the English court's determination

whether the NBK's assets could be attached. *Id*. The federal court in Massachusetts agreed. In a Report and Recommendation from a magistrate judge dated May 22, 2019, the court stayed compliance with the subpoena pending the resolution of the English proceedings, which "will likely settle and/or simplify a number of questions relevant to this action." *Id.* at ECF 44 at 4. Meanwhile, Petitioners also filed a motion to compel State Street's compliance with the subpoena *duces tecum* on May 17, 2019, in a separate action in the District of Massachusetts. *See Anatolie Stati et al. v. State Street Corporation*, No. 19-mc-91214 (D. Mass.). That court has assigned the motion to the magistrate who issued the stay of the deposition subpoena, but it has not yet ruled on Petitioners' motion.

With regard to discovery from Respondent, on March 20, 2019, this Court ordered the parties to "continue to meet and confer in an effort to resolve their discovery dispute" and to file a joint status report no later than April 30, 2019 regarding these efforts. In the joint status report filed that day, the parties informed the Court, *inter alia*, that they had scheduled the deposition of Mr. Kalymzhan Ibraimov for May 9, 2019. Respondent first identified Mr. Ibraimov, the Deputy Chairman of the Committee of State Property and Privatization (the "Committee") of the Republic of Kazakhstan's Ministry of Finance, as a potential witness for Petitioners on January 22, 2019. Although he is based in Kazakhstan, Respondent agreed to make him available for deposition in the United States at a time and place of mutual convenience. On April 3, 2019, Petitioners stated that they wanted to proceed with the deposition of Mr. Ibraimov. After a series of communications, the parties agreed that the deposition would take place on May 9, 2019. On May 2, 2019, this Court ordered that deposition to proceed, and it also ordered a further status report to be filed today, May 24, 2019, in anticipation of a status hearing scheduled for May 31, 2019.

Mr. Ibraimov testified for more than five hours at the offices of Norton Rose Fulbright in Washington, D.C. As he testified, the Committee oversees the Respondent's shareholding interests in a series of approximately 130 companies. The Committee also manages a process in which certain assets of Respondent are being privatized. In his role as Deputy Chairman of the Committee, Mr. Ibraimov had broad knowledge regarding the assets of the Republic of Kazakhstan. He testified that, although he conducted a search for any assets belonging to Kazakhstan in the United States in preparation for his deposition, he was unaware of any such assets other than diplomatic assets, which are immune from attachment under the Foreign Sovereign Immunities Act.

Since Mr. Ibraimov's deposition, Petitioners have not requested any additional discovery from Respondent or sought to meet and confer on any issue. Given this, and that there thus are no discovery issues that require the Court's attention, Respondent does not believe there is any need to hold the status conference on May 31, 2019. Instead, Respondent respectfully requests that the Court direct the parties to file a further Status Report in 30–60 days, in the event that any discovery issues actually arise and the parties are unable to resolve such disputes after completing the meet and confer required by Local Rule 7(m).

Dated: May 24, 2019

Respectfully submitted,

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