



ICC INTERNATIONAL COURT OF ARBITRATION

CASE No. 21785/ZF/AYZ

ARCHIRODON CONSTRUCTION (OVERSEAS) COMPANY LIMITED (formerly  
known as Archirodon Construction (Overseas) Company S.A. (Panama))

(Cyprus)

vs/

GENERAL COMPANY FOR PORTS OF IRAQ

(Iraq)

This document is an original of the Final Award rendered in conformity with the Rules of  
Arbitration of the ICC International Court of Arbitration.

ICC INTERNATIONAL COURT OF ARBITRATION

CASE NO. 21785/ZF/AYZ

ARCHIRODON CONSTRUCTION (OVERSEAS) COMPANY LIMITED (CYPRUS) (FORMERLY KNOWN AS ARCHIRODON CONSTRUCTION (OVERSEAS) COMPANY S.A. (PANAMA))

Claimant

v.

GENERAL COMPANY FOR PORTS OF IRAQ (IRAQ)

Respondent

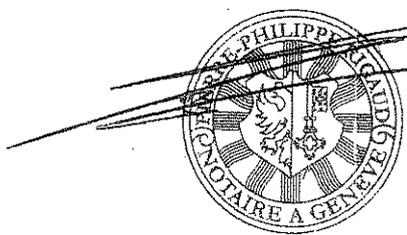
FINAL AWARD

CONSULAR SECTION  
AUTHENTICATION  
BERN  
No. 35  
Date: 8.11.2020  
TRIBUNAL

Mr Andrew White, O.C.  
Avv. Professor Luigi Fumagalli  
Dr Robert Gaitskell, O.C. (President)  
Adnan Alwi Nasir

Consular Section of the Embassy of the Republic of Iraq in Bern, Switzerland. The document is authentic and the signature of the Consul General is genuine.

القسم القنصلي  
الجمهورية العراقية - بERN  
التوقيع القنصلي  
الرجوع الى  
الرجوع الى



Seen exclusively for the legalization of the signatures of Mr Luigi FUMAGALLI, Mr Robert GAITSKELL and Mr Andrew WHITE. Geneva, 05.12.2019.

Dr. Robert Gaitskell QC  
President  
ICC Case No. 21785/ZF  
Archirodon Construction (Overseas)  
Company S.A. (Panama)  
v.  
General Company for Ports of Iraq (Iraq)

**I. THE FINAL AWARD, THE PARTIES AND THE ARBITRAL TRIBUNAL**

**Introduction**

This Final Award is a consolidated document. Its structure is intended to satisfy Article 270 of the Iraqi Civil Procedure Law (Claimant's email of 14 October 2019), which provides as follows:

- “1. In accordance with this law and after collective discussion among themselves, arbitrators issue their award in writing, either unanimously or by majority. The drafting of the said decision shall be similar to that of any issued written court judgment.
2. The decision shall particularly include a summary of arbitration award, statements and documents of litigants, text and reason of the decision, place and date of issue and the signatures of arbitrators”.

The Claimant has requested by its email of 25 October 2019 that, for reasons of enforceability in Iraq, since this Final Award will have appended to it, in order to satisfy Article 270, both the Partial Final Award (PFA) dated 4 June 2019, and the Addendum to the Partial Final Award, dated on the same date as this Final Award, this Final Award must refer to, and incorporate by reference, the Partial Final Award and the Addendum by the inclusion of the following words, which the Tribunal now does: *“attached to this Final Award, and fully included herein by reference, are the Partial Final Award, covering all issues except interest and costs, and the Addendum to the Partial Final Award; also included herein by reference, which corrects certain figures in the Partial Final Award”*.

All matters other than claims for pre-award interest and costs are dealt with in the Partial Final Award and the Addendum thereto and so those remaining issues are now addressed below. Note that physically attached hereto as an appendix is the PFA and it contains a table of contents and a full procedural history, and sets out the relevant arbitral clause, and the Parties' respective requests for relief. Subsequent procedural steps are set out in section II of this Final Award. Also note that the particular relief sought by the Claimant, the overall successful party, who makes a certain costs recovery below, is set out in paragraph 28 below. Further, note that although the Respondent considers that the signing procedure requested by the Claimant is unnecessary it does not object.

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*Robert Gaitskell*  
**Dr. Robert Gaitskell QC**  
President

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Archirodon Construction (Overseas)  
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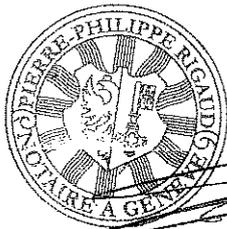
**The Claimant**

1. The Claimant, Archirodon Construction (Overseas) Company Limited (formerly known as Archirodon Construction (Overseas) Company S.A., Panama) ("Archirodon"), is a company organised and existing under the laws of Cyprus, having its registered office at: Spyrou Kyprianou 38 – 4154, Limassol, Cyprus. Herein the Claimant is also variously termed Archirodon and the Contractor.
  
2. Archirodon is represented in these proceedings by:

Mr Ellis Baker  
Ms Sam Kay  
Ms Therese Marie Rodgers  
Mr Karim Mariey  
Address: White & Case LLP  
5 Old Broad Street  
London  
EC2N 1DW  
United Kingdom  
Telephone: +44 20 7532 1000  
Facsimile: +44 20 7532 1001  
Email: [ebaker@whitecase.com](mailto:ebaker@whitecase.com)  
[sam.kay@whitecase.com](mailto:sam.kay@whitecase.com)  
[therese.marie.rodgers@whitecase.com](mailto:therese.marie.rodgers@whitecase.com)  
[karim.mariey@whitecase.com](mailto:karim.mariey@whitecase.com)  
[ICC-21785@whitecase.com](mailto:ICC-21785@whitecase.com)

Mr Julian Bailey  
Address: White & Case LLP  
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West Bay  
Doha, Qatar  
Telephone: +974 440 64300  
Facsimile: +974 440 64399  
Email: [julian.bailey@whitecase.com](mailto:julian.bailey@whitecase.com)

Mr Michael Turrini  
Mr Luka Kristovic Blazevic  
Address: White & Case LLP  
Level 6, Burj Daman  
Al Sa'ada Street  
Dubai International Financial Centre  
P.O. Box 9705  
Dubai



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General Company for Ports of Iraq (Iraq)

*Robert Gaitskell*  
*Luigi Fumagalli*  
*Andrew White*

United Arab Emirates  
Telephone: +971 4 381 6200  
Facsimile: +971 4 381 6299  
Email: [michael.turrini@whitecase.com](mailto:michael.turrini@whitecase.com)  
[lkristovicblazevic@whitecase.com](mailto:lkristovicblazevic@whitecase.com)

**The Respondent**

3. The Respondent, General Company for Ports of Iraq (“GCPI” and also referred to herein as the “Respondent”), is a government department of the Ministry of Transport in the Republic of Iraq organised and existing under the laws of Iraq. GCPI’s address is: Ma’qil Quarter, Basrah, Iraq.

4. GCPI is represented in these proceedings by:

Mr Michael E. Schneider  
Dr Veijo Heiskanen  
Mr Joachim Knoll  
Ms China Irwin  
Ms Juliette Richard  
Ms Tessa Hayes  
Address: Lalive  
35, rue de la Mairie  
P.O. Box 6569  
1211 Geneva 6  
Switzerland  
Telephone: +41 58 105 2000  
Facsimile: +41 58 105 2160  
Email: [meschneider@lalive.ch](mailto:meschneider@lalive.ch)  
[vheiskanen@lalive.ch](mailto:vheiskanen@lalive.ch)  
[jknoll@lalive.ch](mailto:jknoll@lalive.ch)  
[cirwin@lalive.ch](mailto:cirwin@lalive.ch)  
[jrichard@lalive.ch](mailto:jrichard@lalive.ch)  
[thayes@lalive.ch](mailto:thayes@lalive.ch)

**The Arbitral Tribunal**

5. The Arbitral Tribunal is constituted as follows:

5.1 Dr Robert Gaitskell, QC (President, nominated by Co-Arbitrators)

Address: Keating Chambers  
15 Essex Street  
London



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**Dr. Robert Gaitskell QC**  
President  
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WC2R 3AA  
United Kingdom  
Telephone: +44 20 7544 2600  
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Email: [rgaitskell@keatingchambers.com](mailto:rgaitskell@keatingchambers.com)

5.2 Mr Andrew White, QC (Co-Arbitrator nominated by the Claimant)

Address: Atkin Chambers  
1 Atkin Building  
Gray's Inn  
London  
WC1R 5AT  
United Kingdom  
Telephone: +44 20 7404 0102  
Facsimile: +44 20 7405 7456  
Email: [awhite@atkinchambers.com](mailto:awhite@atkinchambers.com)

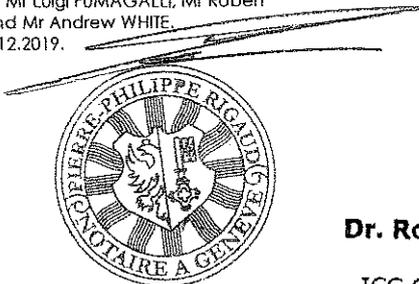
5.3 Avv. Professor Luigi Fumagalli (Co-Arbitrator nominated by the Respondent)

Address: Galleria S. Babila 4/D  
20122 Milan  
Italy  
Telephone: +39 02 7600 6765  
Facsimile: +39 02 784 158  
Email: [lfumagalli@luzzatto.net](mailto:lfumagalli@luzzatto.net)

**II. PROCEDURE**

6. The Partial Final Award (PFA), dated 4 June 2019, appended hereto and incorporated herein by reference, as noted above, dealt with all matters save pre-award interest and costs. Please refer to that document for full details of the dispute. That PFA was, by agreement of all concerned, signed in Geneva by the full Tribunal on 4 June 2019, with each page of the main text and each page of each of the appendices, being signed. The main signature page was also stamped with the stamp created for the President of the Arbitral Tribunal for this dispute. Similarly, as noted above, the Addendum to the PFA is incorporated by reference into this Final Award. Since earlier procedural steps are fully set out in the appended PFA and the Addendum, only additional steps are noted below:

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Geneva, 05.12.2019.



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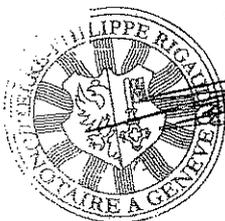
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- 6.1 By email of 5 June 2019 the Tribunal invited the Parties to agree a timetable on the remaining matters, leading to a Final Award.
- 6.2 By email of 12 June 2019 the Respondent stated that there was no justification for further submissions on pre-award interest since the Claimant had not submitted a claim for pre-award interest apart from that included in its claim for financing charges which the Tribunal dismissed in the Partial Award.
- 6.3 By email of 13 June 2019 the Claimant responded by stating, amongst other things:

*“The Claimant claims, and has always claimed, pre-award interest (see, for example, para 602(3)(v) of the Statement of Case and para 604(f)(v) of the Claimant’s Post-Hearing Submissions). The Tribunal has dismissed the Claimant’s claim for financing charges but has expressly, at paragraph 915.3 of the Partial Final Award, not decided the Claimant’s claim for pre-award interest and deferred such decision to a subsequent award. The Claimant’s email of 6 March 2019, to which the Respondent refers below, simply reflects the fact that, as a matter of calculation, the Claimant has expressed its claim for financing charges and pre-award interest in the same amounts. That, however, does not somehow interlink the claims for the purposes of liability, nor does it preclude the Tribunal from considering the issue of pre-award interest, and the Tribunal has expressly and deliberately reserved the right to do so.”*

7. After the Respondent had responded to the above email the Tribunal stated in its email of 14 June 2019 that it wished the Parties to treat the dispute about whether or not the Claimant had claimed pre-award interest as an issue that needs to be addressed along with costs in the Final Award, and cover the issue in the submissions they would now produce.
8. By email of 28 June 2019 the Parties supplied a procedural timetable leading to the Final Award, and thereafter, as shown below, supplied submissions and information in accordance with that timetable.
9. On 12 July 2019 the Claimant produced its Submissions on Pre-Award interest. On 9 August 2019 the Respondent produced its Response to the Claimant’s Submission on Pre-Award Interest.

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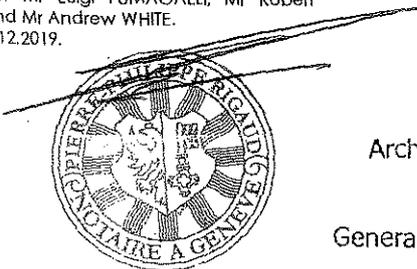
Two handwritten signatures are present. The first is in blue ink and appears to be "Dr. Robert Gaitskell QC". The second is in black ink and is less legible, possibly "Andrew White".

10. On 23 August 2019 the Claimant supplied its Reply Submissions on Pre-Award Interest. On 6 September 2019 the Respondent supplied its Rejoinder on Pre-Award Interest.
11. On 20 September 2019 the Claimant produced its Updated Cost Submissions and Further Updated Schedule of costs. Also on 20 September 2019 the Respondent produced its Additional Submissions on Costs.
12. On 30 September 2019 the Secretariat of the ICC stated that on 26 September 2019 the International Court of Arbitration of the International Chamber of commerce had extended the time limit for rendering the Final Award until 31 October 2019.
13. On 7 October 2019 each party submitted its updated Schedule of Costs. By email of 28 October 2019 to all concerned the Tribunal declared the proceedings closed and indicated it expected to supply the draft Final Award to the ICC for scrutiny by 31 October 2019.

### III. PRE-AWARD INTEREST

14. The Claimant noted at paragraph 7 in its Submissions of 12 July 2019 that it had raised its claim for pre-award interest in the Request for Arbitration of 24 March 2016 in paragraph 96(c)(iv). It was also referred to in the Statement of Claim of 9 May 2017 at paragraph 602(3)(v). It was also sought in the Claimant's Post-hearing Submissions of 2 November 2018 at paragraph 604(f)(v). This latter reference states that it seeks: "*interest or financing charges on any amounts payable by GCPI to Archirodon from such date as is determined by the Tribunal until the date of the award*". (Note that the terms 'financing charges' and 'financing costs' are used interchangeably by the Parties in their submissions.)
15. In paragraph 8 of its Submissions of 12 July 2019 the Claimant states: "*The fact that Archirodon's claim for financing charges and its claim for Pre-Award interest were pleaded together as a matter of quantum (to avoid overlapping or duplication) is of no consequence. The tribunal dismissed the claim for financing charges but expressly recognised Archirodon's separate and distinct claim for pre-Award Interest.*" The Claimant then went on to make claims for pre-award interest pursuant to Article 171 of the Iraqi Civil Code, and further or in

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*Andrew White*

the alternative, pursuant to GC14.8 of the Contract, quoted in paragraph 22.7(i) below.

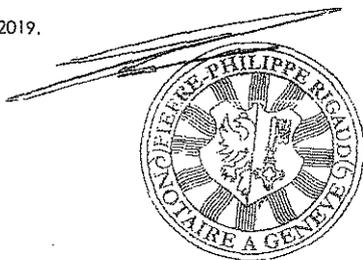
16. As noted by the Respondent in paragraph 17 of its Submissions of 9 August 2019, the Claimant stated in email C-209 of 6 March 2019, prior to the Partial Award, in response to a question from the Tribunal, as follows: "... *the Claimant confirms that its claim for pre-award interest is included in its claim for financing charges which has been addressed by the Parties in their respective submissions. The Claimant claims financing charges/pre-award interest at a rate of 45 per annum ....*"
17. The Respondent's Submissions of 9 August 2019 at paragraph 18 note that when the Tribunal requested on 9 July 2018 that the Claimant list its claims the Claimant responded in email C-139 of 11 July 2018: "*Further to the Tribunal's request on 9 July 2018 for a summary of the sums in issue, please find attached the quantum claimed, including interest (see Claim E Financing Charges), by Archirodon ....*".
18. The Respondent's Submissions of 9 August 2019 at paragraphs 27 – 30 note that the Tribunal by email of 15 July 2018 asked the Parties to produce a Schedule of Claims, which became Schedule 6 to the PFA. In its email of 15 July 2018, the Tribunal stated that each row should contain a separate claim and that, "*[i]f any claim is omitted from the schedule it will be deemed to have been discontinued*". At row 10 in the Schedule a claim for "Financing Costs" was set out. There was no separate claim for pre-award interest.
19. The Financing Charges claim was addressed in the PFA in paragraphs 910 to 915.3. This stated as follows:

**"Schedule Item 10: Financing Costs**

910. *The Schedule summarises the Claimant's claim as follows:*

*"Archirodon planned for the Project to be cash positive. The Delay Events had an enormous impact on Archirodon's finances as Archirodon had to spend many millions of dollars on, amongst other things, additional materials. Consequently, Archirodon had to borrow funds to complete the Project; Archirodon is therefore entitled to claim the financing charges of these additional Costs".*

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911. *In the Schedule the Respondent states:*

*"This is a global claim which must be rejected for lack of causation, as the Claimant has to date not attempted to link the financing costs claimed to each of the three alleged delay events (Nos. 2, 3 and 8), and in any event, stands to be dismissed if the Tribunal dismisses any of the three delay claims (even in part). Furthermore, this claim constitutes a claim for indirect loss which is excluded by Clause GC 17.6. Lastly, its quantification remains unsubstantiated as there is no evidence for the interest rate of 4% on which it is based".*

912. *Financing charges appear to have been claimed on the whole of the Contract Sum rather than on the additional cost related to the soil conditions (the only one of the three primary claims upon which the Claimant succeeded).*

913. *In any event, such financing charges are prima facie an indirect loss and so precluded by Clause 17.6. Clause 17.6 includes the following: "Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract ...".*

914. *Accordingly, the claim fails on the basis that financing costs are considered by the Tribunal to amount to an indirect loss (Respondent's Reply to Claimant's Post-Hearing Brief, paragraph 352).*

915. *Pre-Award Interest*

*In paragraph 604(f)(v) of the Claimant's Post Hearing Brief it seeks pre-award interest.*

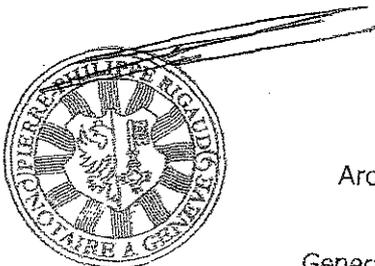
915.1. *Accordingly, by email of 28 February 2019 the Tribunal raised the following question:*

*"Q2: Pre-award interest: The Claimant's PHB at 604(f)(v) has requested pre-award interest. In the event that the Tribunal were to award such interest upon what basis do the parties contend that the calculation should be made? What particular rates and periods are proposed?"*

915.2. *In response, on 6 March 2019 the Parties stated:*

*"Question 2: The Claimant confirms that its claim for pre-award interest is included in its claim for financing charges which has been addressed by the Parties in their respective submissions. The Claimant claims financing charges/pre-award interest at a rate of 4% per annum for years 2013-*

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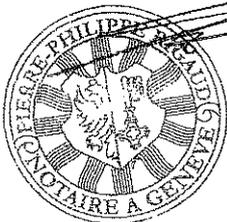
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2016 and 4.9% per annum for 2017 up to the date of the award (see Claimant's Post-Hearing Submissions, paras 551 – 557). The Claimant's claim for financing charges/pre-award interest is calculated on the basis of simple interest. For completeness, the Claimant notes that Mr Wishart's calculation of financing costs as set out in document D93A, page 2581.1 is up to the end of June 2018 and will require updating, subject to the Tribunal's decision. The Respondent refers to its position on the merits and quantum of this claim (including the period applicable assuming that the Respondent would be responsible for Delay Events Nos. 2, 3 or 8), as set out in Section 6.4 of the Respondent's Pre-Hearing Submission and 6.5 of its Post-Hearing Submission."

915.3. *The Tribunal considers that the issue of pre-award interest, and all questions of commencement dates, should be deferred to a subsequent award so that the parties can address the issue in detail."*

20. For the avoidance of doubt, the Tribunal's deferral of the issue of pre-award interest to a subsequent award, in the PFA, as noted immediately above, was not in any way a decision that there was a claim for pre-award interest other than on the basis of what was then pleaded and dismissed by the Tribunal.
21. The Claimant's Reply Submissions of 23 August 2019, paragraph 6, contest the Respondent's assertion that the Tribunal's decision in the PFA dismissing the Finance Charges claim has a *res judicata* effect on the pre-award interest claim. The Claimant notes that the PFA specifically deferred a determination on pre-award interest to a further award. The Claimant in its paragraph 9 contests the Respondent's contention that the Claimant's claims advanced in its submissions for the Final Award are, on analysis, new claims. This is considered further below.
22. The Tribunal's Decision as regards the Claimant's Pre-Award Interest claim
- 22.1 The Tribunal deferred the issue of pre-award interest and did not deal with it in the PFA because it was unclear what precisely was being claimed. Although the term 'pre-award interest' has appeared in the Claimant's pleadings from its Request for Arbitration onwards, up until the production of the PFA that term was always closely associated with the terms 'financing costs' or 'financing charges'. Indeed, the

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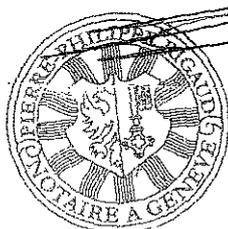
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Claimant expressly emphasised the close association of ‘pre-award interest’ and ‘financing costs/charges’ when the Tribunal enquired about that item of claim. It said, for example, in its email of 6 March 2019 that its claim for pre-award interest is “*included in its claim for financing charges*”. It is also noteworthy in that email that the Claimant quantified its claim thus; “*The Claimant claims financing charges/pre-award interest at a rate of 4% per annum ...*”. (underling added)

22.2 The Tribunal by its email of 15 July 2018 specifically invited the Parties to identify in a schedule each of its claims or counterclaims and stated only those claims and counterclaims identified would be addressed, and any claim omitted would be deemed discontinued. The resulting Schedule 6 to the PFA contained, at row 10, a claim for ‘Financing Charges’. There was no claim for pre-award interest identified. In the Tribunal’s view this demonstrates that the Claimant was not advancing a separate claim for pre-award interest. Further, there were specific columns in the Schedule for the Parties to identify relevant contractual clauses (column ‘e’) and relevant provisions of the Iraqi Civil Code (column ‘f’). However, there was no reference by the Claimant to Clause 14.8 in column ‘e’ or anywhere else in row 10, and in column ‘f’ it simply stated ‘N/A’ (not applicable). The Tribunal considers this a clear statement that the Claimant was not advancing any ‘financing costs’ claim based on Clause 14.8 and/or the Iraqi Civil Code prior to the production of the PFA.

22.3 It was only after the financing charges claim was dismissed in the PFA that the Claimant has now sought to characterise its pre-award interest claim as separate and different from its claim for financing charges. Since the PFA it seeks to rely on two bases of claim that were not mentioned prior to the PFA: a claim under Iraqi law, Article 171, and a claim under Clause 14.8 of the Contract. As the Respondent states in paragraph 6 of its Response Submissions: “*Now, after the claim for financing charges has been dismissed in the Partial Final Award, the Claimant has presented on 12 July 2019, under the heading of ‘pre-award interest’, two new claims, entirely different from the combined claim made previously. It took the Claimant thirteen*

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*pages of text and not less than forty-eight pages of tables with complex calculations to seek to justify these new claims”.*

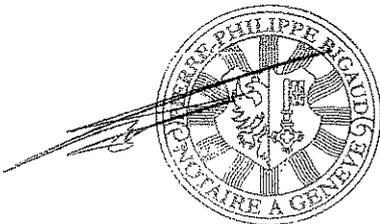
22.4 In the Tribunal’s view, not only are these two new ways of the Claimant putting its claim for pre-award interest ways that were never foreshadowed prior to the PFA, but they are also unjustified. That they were never foreshadowed has already been dealt with immediately above. Further, whereas the original quantification of the claim for ‘financing charges/pre-award interest’ was for ‘4% per annum’, the new claims are quantified quite differently. As the Respondent states in paragraph 13 of its 9 August 2019 Response Submissions: *“This new quantification exceeds by far what the Tribunal allowed (section 4.1 [of the Submissions]), is based on incorrect principles (Section 4.2) and relies on evidence and argument which are not on record (Section 4.3). For the Tribunal to award claims on this basis, factual evidence would have to be produced and assessed and experts would have to be heard.”*

22.5 The Tribunal now determines that the Claimant’s claim for pre-award interest is a new claim which it is now far too late to advance and is inadmissible. Further it would prejudice the Respondent since (as explained above) it has been deprived of any opportunity to call evidence from its quantum expert. It is strictly unnecessary to consider the new ways in which the claim has been put, but since both parties have addressed them the Tribunal now deals with them briefly below.

22.6 Iraqi Civil Code, Article 171

(i) Article 171 is quoted in paragraph 11 of the Claimant’s Submissions of 12 July 2019: *“Where the object of the obligation is a sum of money which was known at the time the obligation arose and the debtor delayed the payment thereof he shall be obligated to pay the creditor by way of compensation for the delay a legal interest at the rate of (4%) four percent in regard to civil matters and (5%) five percent in respect of commercial matters ...”.*

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- (ii) The Respondent makes the point in paragraph 11 of its Response Submissions that Article 171 has by agreement of the Parties been replaced by the contractual provisions dealing with late payment. The Tribunal accepts that contention. The Parties' agreement in that respect is evident from the fact that Clause 14.8 (quoted in paragraph 22.7(i) below) deals with the subject matter of interest on payments which, in the absence of a contractual provision on the subject, would be dealt with by Article 171. Since the Parties agreed a specific contractual clause covering the same subject matter they thereby displaced the effect of Article 171. As the Respondent notes in paragraph 43 of its Response Submissions, Clause 14.8 specifies both the applicable period and rate, so Article 171 is unnecessary and irrelevant. In any event, the requirement that: "*Where the object of the obligation is a sum of money which was known at the time the obligation arose - -*" is not satisfied since no payment became due until the PFA was produced.
- (iii) Accordingly, in the Tribunal's view the Claimant's reliance on Article 171 is unjustified.

#### 22.7 Contract Clause GC14.8

- (i) Clause 14.8 is quoted in paragraph 21 of the Claimant's Submissions of 12 July 2019: "*If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment] irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment certificate is issued. ...*" (underling added)
- (ii) The Claimant, in its paragraph 22 of its 12 July 2019 Submissions, relies particularly upon GC14.7(b), which states: "*The Employer shall pay to the Contractor: (b) the amount certified in each Interim Payment Certificate*

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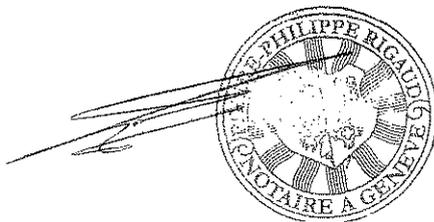
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*within 45 days after the Engineer receives the Statement and supporting documents ...”.*

- (iii) The ‘financing charges’ claimed prior to the PFA are described in that PFA in its paragraphs 910 – 914. As there made clear, the claim then being advanced was for financing charges on the whole Contract Sum rather than on the additional cost related to the soil conditions (the only one of the three primary claims upon which the Claimant succeeded). That claim was dismissed in paragraph 913 of the Partial Award on the basis it was an indirect loss and so precluded by Clause 17.6.
  
- (iv) In paragraph 12 of its Response Submissions the Respondent notes that, for the new claim in reliance on Clause 14.8, this clause provides for the Contractor to receive ‘financing charges’ only in case of delayed payment of amounts payable under the Contract. However, payment of the awarded amounts did not become due until the determination in the PFA. The Respondent states in its paragraph 53 that uncertified, contested amounts did not become due under Clause GC14.7. For a claim for interest under the contract to be pursued the Claimant ought to have contended that the Engineer should have included the sums claimed in the Interim and Final Payment Certificates. If such a claim had been advanced then factual evidence would have had to be called by the Claimant to support the contentions, and the Respondent could have cross examined the relevant witnesses and, if it so chose, could have called contrary factual evidence of its own. Since there was no pleading of this type the Respondent would now, if faced with such a contention, be seriously prejudiced since it has lost the opportunity to test the Claimant’s evidence (if it had been called) and lost the chance to call its own evidence to the opposite effect.
  
- (v) Accordingly, this new claim pursuant to Clauses 14.7 and 14.8 is unjustified.

22.8 Tribunal’s Decision – Summary

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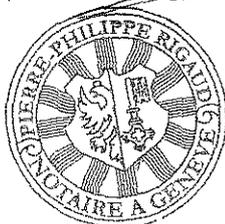
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In summary, the Claimant having failed to recover 'financing charges/pre-award interest' in the attached PFA, for the reasons there set out, in circumstances where it emphasised that the pre-award interest was included in the financing charges claim and was quantified in the same way, has now sought to introduce two new bases for claiming pre-award interest. The bases are Iraqi law and GC Clauses 14.7 and 14.8. It is far too late for such new claims to be advanced. Their introduction would prejudice the Respondent, who would have had no opportunity to deal with the new and complex methods of quantification the Claimant now seeks to rely upon. In any event, the new bases of claim are unjustified. In conclusion, the claim for pre-award interest is dismissed, both because it is inadmissible as being raised far too late, as explained above, and also because it is rejected on its merits, as set out, inter alia, in paragraphs 22.4, 22.5 and 22.7 above.

#### IV. COSTS

23. The Partial Award at section X, page 241, stated that: "*Costs will be dealt with in the next award. The Parties have supplied details of their costs to date.*"
24. Each Party dealt with the question of costs in its Post Hearing Submissions, on 2 November 2018, and in its Reply Post Hearing Submissions, on 28 November 2018. In section 7 of its Post-Hearing Submissions of 2 November 2018 the Respondent stated that for costs to be recoverable they must be incurred for the arbitration and be reasonable. It went on to contend that the allocation of costs should reflect the Parties' relative successes. It asserted that the Claimant's actions increased the costs of the arbitration, and it contended there were inflated and unsubstantiated claims and inefficiencies. In its section 8 it requested that the Tribunal award compensation for the Respondent's costs.
25. In its 28 November 2018 Reply to the Claimant's Post-Hearing Submissions, the Respondent in its section 8 referred to the ICC Rules, Article 37(1) which states: "*The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court. In accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed*

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*Andrew White*

*Robert Gaitskell*

*Luigi Fumagalli*

*by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.”*

26. The Respondent in its Reply Submissions goes on to note in paragraph 403 that the ICC Secretariat’s Guide does not include internal employee costs as recoverable, since these are part of the normal costs of running the company. In its paragraph 406 it notes that the Parties agree the Tribunal has significant discretion with respect to the allocation of costs.
27. The Claimant’s Reply Post Hearing Submissions at section X notes that there is agreement that costs follow the event. It contests that the Parties’ relative successes are relevant. As regards its internal employees, it states these would not have been diverted from normal duties were it not for the arbitration. It agrees costs must be reasonable.
28. The Claimant’s paragraph 371 in its Reply Post Hearing Submissions states that it seeks the relief set out in paragraph 604 of its Post Hearing Submissions of 2 November 2018. This states in the material part:

*“... Archirodon respectfully requests the Tribunal to: [...]*

*f) award Archirodon, and require GCPI to pay to it: [...]*

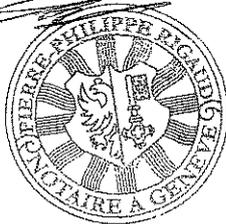
*iv) all costs and expenses (including, but not limited to, costs payable to the Tribunal, ICC, legal fees and expenses, and experts’ and witnesses’ fees and expenses and other in-house personnel) incurred by Archirodon in connection with the preparation for and conduct of this Arbitration pursuant to Article 37 of the ICC Rules; and*

*v) interest or financing charges on any amounts payable by GCPI to Archirodon from such date as is determined by the Tribunal until the date of the Award; and*

*g) grant Archirodon such other or varied relief as the Tribunal deems just and appropriate in the circumstances.”*

29. The Claimant’s 7 October 2019 Final Schedule of Costs states:

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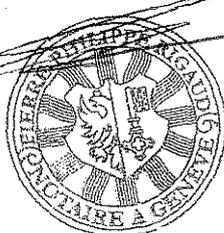
29.1 “In accordance with the Tribunal’s directions,<sup>1</sup> the Claimant sets out below its final Schedule of Costs, which includes its expected expenditure in relation to the signing of the Final Award in Geneva. As directed by the Tribunal, the Claimant’s expected expenditure has been calculated by reference to the Claimant’s costs of attendance in Geneva for the signing of the Partial Final Award.

29.2 The Claimant has also included below an estimate of the costs of attendance of a notary to notarise the signatures of the Tribunal on the Final Award, which is (alleged by the Claimant to be) a requirement for enforceability of the Final Award in Iraq. The estimate below is based on the notarisation of two copies of the consolidated Final Award (one copy for the Claimant and one copy for the Respondent), assuming that the consolidated Final Award will be 400 pages in length.

Description	Total (USD)	Total (USD)
	20 September 2019	1 October 2019
A. White and Case LLP Professional Services	5,371,465	5,376,065
B. White and Case LLP Disbursements	199,780.91	201,280.91
C. Costs of the Notary for the signing of the Final Award	N/A	10,057
D. Iraqi Counsel Costs (including disbursements)	132,437.67	132,437.67
E. Delay Expert Costs (including disbursements)	1,591,796	1,591,796
F. Quantum Expert Costs (including disbursements)	3,231,311.80	3,231,311.80
G. Geotechnical Expert Costs (including disbursements)	165,501	165,501
H. Costs related to witnesses	70,943	70,943

<sup>1</sup> Email from the Tribunal to the Parties, dated 1 October 2019.

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<u>Description</u>		<u>Total (USD)</u> 20 September 2019	<u>Total (USD)</u> 7 October 2019
I.	ICC Costs	765,000	765,000
J.	Tribunal's Costs	8,000	8,000
K.	Procedural and Merits Hearing Costs	110,089	110,089
L.	Costs related to the Claimant's employees (including disbursements)	680,144	680,144
M.	Consultancy and Technical Assistance Costs	42,388	42,388
<b><u>TOTAL</u></b>		12,368,856	12,385,013

29.3 Further, as set out in the Claimant's Schedule of Costs, the Claimant includes in its updated Schedule of Costs the Respondent's share of the costs of the screens used at the Merits Hearing for efficiency only. As accepted by the Respondent,<sup>2</sup> these costs constitute costs generally owed to the Claimant regardless of the Tribunal's decision on costs. These costs are:

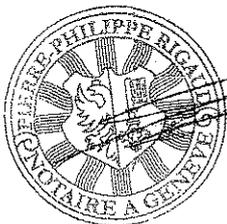
<u>Description</u>		<u>Total (USD)</u>
A.	Respondent's share of the costs of the Screens at the Merits Hearing	2,926.16 (2,900 CHF)
<b><u>TOTAL</u></b>		2,926.16

30. The Respondent's 7 October 2019 Fourth Updated Schedule of Costs states, amongst other things, as follows (yellow colouring in original):

30.1 Pursuant to the Tribunal's emails of 1 and 4 October 2019, the Respondent sets out below its Fourth Updated Schedule of Costs. The revised figures, updated to include

<sup>2</sup> Respondent's Comments on the Claimant's Schedule of Costs dated 14 December 2018, para 37.

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costs incurred since the Third Updated Schedule of Costs of 20 September 2019, as well as an estimate of the expenditures it expects to incur in connection with the signature of the Final Award, are highlighted below. Summary of Costs Claimed:

30.2 The Respondent has incurred and estimates it will incur the following costs in connection with the Arbitration proceedings:

Description	Amount (USD)	Amount (GBP)	Amount (CHF)
LALIVE legal fees <sup>3</sup>	4'146'062.30		
LALIVE expenses <sup>4</sup>	227'228.29		
ICC fees/Tribunal fees and expenses	608'000.00	- 11'525.00 <sup>5</sup>	- 38'983.08 <sup>6</sup>
Quantum and Delay Experts' Fees and Expenses	835'000.00		
Technical Experts' Fees and Expenses	145'600.00		
Expenses Related to the Case Management Conferences and the Merits Hearing	7'431.32	12'462.55	38'983.08
Expenses Related to Witness (Mr Horgan) Participation in the Merits Hearing	8'553.93		
Expenses for GCPI's	83'000.00		

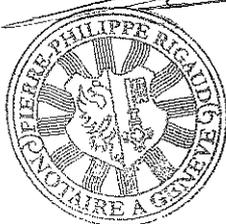
<sup>3</sup> LALIVE legal fees include USD 1'000 of estimated legal fees, set out at Section 2.3 below.

<sup>4</sup> LALIVE expenses include travel and accommodation and sundry office expenses, as well as USD 50 of estimated expenses set out at Section 2.3 below.

<sup>5</sup> A corresponding amount, equal to the payment made by the ICC out of the advance on costs, has been included in Expenses Related to the Case Management Conferences and the Merits Hearing item of this table (see Respondent's Second Updated Schedule of Costs, p. 8 *et seq.* (s. 3 and s. 5)).

<sup>6</sup> A corresponding amount, equal to the payment made by the ICC out of the advance on costs, has been included in Expenses Related to the Case Management Conferences and the Merits Hearing item of this table (see Respondent's Second Updated Schedule of Costs, p. 8 *et seq.* (s. 3 and s. 5)).

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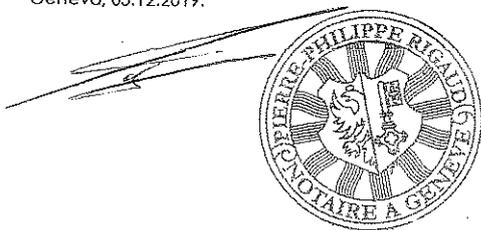
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Description	Amount (USD)	Amount (GBP)	Amount (CHF)
Meetings with Counsel and Attendance at the Merits Hearing			
<b>Total</b>	<b>6'060'875.84</b>	<b>937.55</b>	

### Tribunal's Determination

31. The Tribunal notes that the Parties agree (as noted in paragraph 27 above) that costs follow the event and agree (as noted in paragraph 26 above) that the Tribunal has significant discretion as to the allocation of costs. It also notes costs should be reasonable. In the Tribunal's view the Claimant has broadly succeeded since it had to bring proceedings to recover the substantial sums it has secured. However, the Tribunal considers that some significant account must be taken of the following matters:
- 31.1 The costs of the submissions on pre-award interest: these were a separate set of submissions from the main hearing submissions, and the Respondent succeeded.
- 31.2 It is noted that the Claimant only succeeded on one of its three heads of claim.
- 31.3 The Claimant's costs were very much greater than the Respondents, notwithstanding that it is normal for a Claimant, with the carriage of the action, to incur somewhat greater costs than the Respondent. It is noted from the tables above that the Claimant's legal fees were significantly greater than the Respondent's legal fees. The Tribunal only allows US\$5 million (instead of US\$5,376,065) for this item, taking account of the matters noted in this paragraph 31, including the fact that an element of those legal fees must relate to the submissions on the matters in respect of which the Claimant did not succeed.
- 31.4 The cost of having a notary attend the signing event has not been shown, by reference to any specific Iraqi legal requirement, to be an obligation that needs to be satisfied,

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and the Respondent has opposed this aspect of the production of the Final Award. Accordingly, the sum of US\$10,057 is disallowed.

31.5 The Claimant's delay and quantum expert costs were very significantly greater than the Respondent's equivalent costs. A significant part of the evidence related to items on which the Claimant failed. It is also noted that recoverable costs need to be reasonable. Accordingly, only US\$1 million is allowed (instead of US\$1,591.796 + 3,231,311.80) for this item.

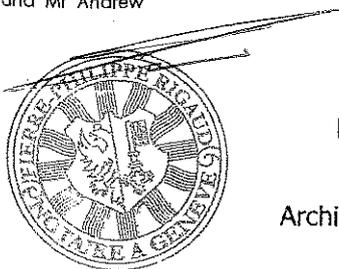
31.6 The Claimant seeks US\$680,144 for costs related to its employees. There is little evidence to demonstrate these employees would not in any event been employed in the material period. Accordingly, this item is disallowed.

31.7 The Tribunal notes that some of the expenses of the hearing were paid from the advance on costs, at the Partics' request. The Tribunal assumes that there is no double recovery. The Tribunal also notes the Respondent's concern about expenses incurred in the signing ceremonies in Geneva, given that the Respondent does not consider these are necessary.

31.8 Thus, costs recovery for the Claimant is (in US\$):

Item A: White & case LLP Professional services	5 million
Item B: White & case LLP disbursements	201,280.91
Item C: Costs of notary	Nil
Item D: Iraqi counsel (including disbursements)	132,437.67
Items E & F: Delay & Quantum experts (including disbursements)	1 million
Item G: Geotech. Expert (including disbursements)	165,501
Item H: Witness costs	70,943

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Items I & J: ICC costs including Tribunal	Dealt with separately below since the ICC (not the Tribunal) make the determination
Item K: Hearing costs	110,089
Item L: Employees	Nil
Item M: Consultancy/tech. assistance	42,388
<b>TOTAL</b>	<b>6,722,639.58 + ICC (incl Tribunal)</b>
Plus, Respondent's share of costs of screens	US\$2,926.16

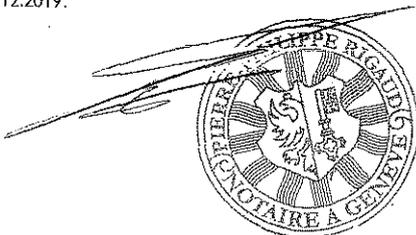
Thus, taking all the above matters into account, the Tribunal considers that whereas the Claimant's costs are over USD12 million, it should only recover the sums shown above: US\$6,725,565.74 + ICC (including Tribunal fees and expenses).

31.9 In its email of 3 October 2019, the Claimant noted that it wished the Final Award to denominate sums awarded in Euros and referred back to its email of 31 July 2019. That email of 31 July 2019 stated, inter alia, as follows:

*"The Parties refer to para 937 of the Partial Final Award wherein the Tribunal directed that "for the purposes of the next award the parties should provide the appropriate Euro figures for the sums recovered".*

The Parties understand, and agree, that as the amounts awarded in the Partial Final Award were fixed as at the date of the Partial Final Award (4 June 2019), the exchange rate to be used to convert the amounts awarded from US Dollars to Euros is the ECB exchange rate as at the date of the Partial Final Award. On that basis, the Parties have agreed the below converted Euro figures. Without prejudice to the Respondent's objection to the Claimant's application for corrections to the Partial Final Award, the Parties have agreed the converted Euro figures for both the amounts awarded in the Partial Final Award and the amounts as set out in the Claimant's application to correct.

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Claim	US Dollar amount awarded (para 941 of the Partial Final Award)	EuroEquivalent	Corrected US Dollar amount as set out in Claimant's Application to Correct dated 5 July 2019	EuroEquivalent
Claim B.01	\$57,491,157	€51,130,520.28	\$58,245,425.60	€51,801,339.03
Claim B.02	\$12,884,996	€11,459,441.48	\$12,945,852.38	€11,513,564.91
Prolongation	\$21,463,154	€19,177,475.99		
Letter of Credit Claim	\$45,993.62	€40,905.03		

31.10 Accordingly, the above table establishes the Euro equivalent amounts for the sums awarded in the PFA. As regards the corrections to the PFA set out in the Addendum attached hereto, the corrected figures are given in US dollars and the equivalent amount in Euros is determined by applying the exchange rate as in the table above. For the purposes of the said sums being denominated in Euros, those are the relevant figures.

31.11 As regards the ICC's costs of the arbitration (including the Tribunal's fees and expenses) these costs were fixed by the ICC Court on 15 November 2019, as US\$1,365,000.

- (i) Payments received: US\$765,000 from the Claimant, and US\$600,000 from the Respondent, so the total is: US\$1,365,000. (Since the Claimant made a substantial recovery as noted above, the Tribunal has determined that the Claimant is entitled to recover from the Respondent the amount the Claimant contributed to the ICC.)
- (ii) Thus, the Respondent must pay to the Claimant forthwith the sum of US\$765,000 in respect of this item.)

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**V. DISPOSITIVE SECTION**

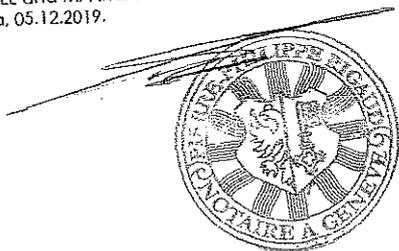
32. Now we, the Arbitral Tribunal constituted in accordance with the Rules as noted above, having perused all the documentation relating to the present disputes, and conducted the substantive hearing in Geneva as referred to above, and having issued the PFA and the Addendum thereto, as appended hereto, do now further find, hold, decide and determine as set out below:

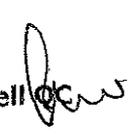
32.1 As regards the Parties' costs: the Respondent must pay the Claimant forthwith the sum of US\$6,725,565.74.

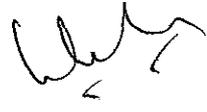
32.2 As regards the ICC costs of the arbitration, the Respondent must pay to the Claimant forthwith the sum of US\$765,000.

32.3 All other claims and counterclaims are dismissed.

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Place of Arbitration: Geneva, Switzerland.

Date: 25 November 2019

Mr Andrew White QC  
Co-arbitrator

Avv Professor Luigi Fumagalli  
Co-arbitrator

Dr Robert Gaitskell QC  
President

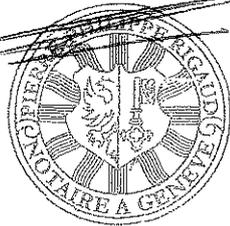
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