

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re Application of

Webuild S.p.A. and Sacyr S.A.,

Applicants,

To Obtain Discovery for Use in an International
Proceeding

Case No. 1:22-mc-00140-LAK

NOTICE OF SUPPLEMENTAL AUTHORITY

The Republic of Panama, by and through its undersigned counsel, hereby gives notice of the decision of the U.S. Supreme Court in *ZF Automotive US Inc. v. Luxshare Ltd.*, 596 U.S. ____, ____, S. Ct. ____, No. 21-401, 2022 WL 2111355 (U.S. June 13, 2022), *rev'g Fund for Prot. of Invs.' Rights in Foreign States v. AlixPartners, LLP*, 5 F.4th 216, 228 (2d Cir. 2021),¹ as supplemental authority in support of its Motion to Intervene, to Vacate the Court's May 19, 2022 Order, and to Quash the WSP USA Subpoena (ECF No. 13). A copy of the Supreme Court's decision is attached hereto as Exhibit A.

In support of their *ex parte* application under 28 U.S.C. § 1782, Applicants Webuild S.p.A. and Sacyr S.A., in reliance on the Second Circuit's holding in *Fund for Prot. of Inv'r Rights in Foreign States v. AlixPartners, LLP*, 5 F.4th 216, 228 (2d Cir. 2021), argue that because "the requested discovery is 'for use in' the international ICSID arbitration between Webuild and Panama under the Italy-Panama Treaty and/or the UNCITRAL arbitration between Sacyr and

¹ The Supreme Court consolidated *AlixPartners, LLP v. Fund for Protection of Investors' Rights in Foreign States*, No. 21-518, with *ZF Automotive* for briefing and oral argument. See Docket for 21-518, <https://www.supremecourt.gov/docket/docketfiles/html/public/21-518.html> (last visited June 13, 2022).

Panama under the Spain-Panama treaty,” the application “meets the ‘foreign or international tribunal’ requirement” of § 1782. *Id.* at 15-16.

The Supreme Court has now reversed the Second Circuit’s decision in *Fund for Protection of Investors’ Rights*. The Supreme Court held that “only a governmental or intergovernmental adjudicative body constitutes a ‘foreign or international tribunal’ under §1782. Such bodies are those that exercise governmental authority conferred by one nation or multiple nations.” *ZF Automotive*, 2022 WL 2111355, at *10 (Ex. A, slip op. at 16-17). The Supreme Court further held that an investor-state arbitration “under a bilateral investment treaty between Lithuania and Russia,” *id.* at *4 (Ex. A., slip op. at 4), did not meet this test because “nothing in the treaty reflects Russia and Lithuania’s intent that [the arbitral] panel exercise governmental authority,” *id.* at *9 (Ex. A, slip op. at 13-14)

The Supreme Court’s holding in *ZF Automotive* applies with equal force here and further supports the grant of Panama’s motions.

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