RDC RAILROAD DEVELOPMENT CORPORATION

RDC Wins CAFTA Claim Against the Republic of Guatemala

Pittsburgh, Pennsylvania, USA / July 5, 2012 — Railroad Development Corporation (RDC) has prevailed in its five-year international arbitration against the Republic of Guatemala brought under the Dominican Republic-Central America Free Trade Agreement (CAFTA). On June 29, 2012, a Tribunal of the International Centre for Settlement of Investment Disputes (ICSID) unanimously ruled that Guatemala had violated the minimum standard of treatment set forth in Article 10.5 of CAFTA by engaging in conduct that was "**arbitrary, grossly unfair, [and] unjust**" towards RDC and awarded RDC full reparations.

RDC's Guatemalan affiliate, Ferrovías Guatemala (FVG), was awarded a 50-year concession by the Government of Guatemala in 1997 to revive, operate and develop the assets of FEGUA, the national railway of Guatemala which had been closed by the government in 1996. The requirements of the concession were considered unprecedented since it involved the revival of a completely-abandoned national railway by the private sector. After RDC successfully revived and operated the railway for seven years, the Government of Guatemala issued a Presidential decree in August, 2006 which declared the rolling stock contract of FVG's concession "*lesivo"* or "harmful to the interests of the State." The decree was issued by the Government after RDC refused to give into the Government's extortionate demands to renegotiate and surrender its key economic rights under the concession contracts. The *lesivo* decree caused FVG's railway business to collapse due to the environment of commercial uncertainty and political maneuvering. Ultimately, RDC was forced to shut down FVG's operations in Guatemala: the last train ran in September 2007. RDC's ICSID claim was the first to use the investor-state dispute resolution mechanism under Chapter 10 of CAFTA.

After RDC successfully defeated two sets of jurisdictional objections raised by Guatemala, and following a hearing on the merits, the Tribunal issued its finding that Guatemala violated the CAFTA minimum standard of treatment which requires each state party to provide fair and equitable treatment and full protection and security to investors of the other parties. The Tribunal found that Guatemala used the "*lesivo* remedy…under a cloak of formal correctness allegedly in defense of the rule of law, [but] in fact for exacting concessions [from RDC] unrelated to the finding of *lesivo*."

As compensation for Guatemala's breach, RDC was awarded full reparations. The Tribunal awarded RDC more than $14 million in damages and compound interest and also ordered Guatemala to pay for certain administrative expenses of the Tribunal in the amount of almost $200,000. The compound interest and administrative cost awards were based upon the Tribunal's determination that Guatemala had caused an unnecessarily protracted jurisdictional phase and other postponements in the proceedings.

The Tribunal also determined that, upon full payment of the award by Guatemala, RDC must surrender its entire 82% interest in FVG to Guatemala or its nominee, thereby relinquishing any rights RDC might have under the railway concession. Under CAFTA, Guatemala is obligated to comply with the final award "without delay."

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RDC's U.S. legal team consisted of C. Allen Foster, Kevin E. Stern, Ruth Espey-Romero, Regina Vargo and Precious Murchison of the international law firm Greenberg Traurig, LLP (www.gtlaw.com). Ms. Espey-Romero commented, "Greenberg Traurig was honored to work with the stellar management team at RDC and FVG in achieving this unanimous landmark decision upholding and clarifying the rights of foreign investors under CAFTA. The decision by this independent ICSID Tribunal has important precedential value for the interpretation of the rights of foreign investors and obligations of member states under CAFTA, including affirming that the CAFTA minimum standard of treatment prohibits state parties from engaging in conduct that is 'arbitrary, grossly unfair, unjust, [] idiosyncratic [or] discriminatory' towards investors of the other CAFTA parties."

RDC's Guatemalan counsel, Juan Pablo Carrasco of Diaz-Durán & Asociados Central-Law (www.central-law.com), commented, "This decision establishes an important precedent for the rule of law in Guatemala. For the first time, an independent international Tribunal has reviewed the grievances of a foreign investor regarding its unfair treatment in Guatemala, and has found for the investor. CAFTA has proven that it is an important tool in fostering and promoting fair trade and fair treatment of foreign investors, which in turn should be viewed as a stabilizing mechanism for the parties to the Treaty."

RDC and FVG Chairman Henry Posner III commented, "The Tribunal's ruling is a victory for both the rule of law in Guatemala and recovery of RDC's investment. But this victory has come at a heavy cost, ranging from the cost to FVG and RDC of prosecuting the case before ICSID to the cost to Guatemala of losing its railway for the second time." Posner added, "It is ironic that while railways worldwide are enjoying unprecedented levels of traffic and investment, Guatemala's stands not only abandoned but literally destroyed thanks to the unending theft inflicted upon the railway assets after the *lesivo* declaration: for example, entire steel bridges have literally disappeared in broad daylight." Posner concluded, "Our short-term focus is now on the implementation of the Tribunal's ruling, a complex process in itself."

RDC is a privately held Pittsburgh-based railway management and investment company, focusing on "Emerging Corridors in Emerging Markets." For more information about RDC and its investment and management activities in the USA, Latin America and Europe, please visit www.RRDC.com.

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