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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ALBERTO SALCIDO-ROMO, *et al.*,

Applicants,

vs.

SOUTHERN COPPER CORPORATION,

Respondent.

CASE NO. MC-16-0035-PHX-DLR

SOUTHERN COPPER CORPORATION'S RESPONSE IN OPPOSITION TO SALCIDO-ROMO, ET AL.'S APPLICATION FOR AN ORDER GRANTING LEAVE TO ISSUE SUBPOENAS FOR THE TAKING OF DISCOVERY PURSUANT TO 28 U.S.C. § 1782 (DKT. 1)

Oral Argument Requested

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Respondent Southern Copper Corporation ("SCC") submits the following response in opposition to Alberto Salcido-Romo, *et al.*'s ("Applicants") Application for an Order Granting Leave to Issue Subpoenas for the Taking of Discovery Pursuant to 28 U.S.C. § 1782. (Application, Dkt. 1).

INTRODUCTION

Applicants' request is an improper use of 28 U.S.C. § 1782 to circumvent the Mexican legal system. The discovery proposed by Applicants here would require the production of documents from Mexico and deposition testimony of a Mexican national. In fact, it is likely that all of the documents and testimony requested are held by Operadora de Minas e Instalaciones Mineras, S.a. de C.V. ("Operadora Mineras"), a Mexican company which is a subsidiary of Minera Mexico, another Mexican company (together the "Mexican Companies"), which in turn is a subsidiary of the Respondent SCC. Applicants are not after documents held by SCC; the proposed discovery explicitly demands documents from the Mexican Companies relating to events that occurred entirely in Mexico. By using Section 1782 to obtain documents located in Mexico, Applicants are using the U.S. as a clearinghouse for discovery in foreign litigation. Such uses of Section 1782 find no support in the text of the statute or in the case law applying it.

First, Applicants have not met the statutory requirements of Section 1782. In particular, the primary target of the discovery – Operadora Mineras – does not "reside" and is not "found" in the District of Arizona. The same is true of Operadora Mineras corporate parent, Minera Mexico. In addition, Applicants have failed to show that the

proposed discovery would be "for use" in a foreign proceeding, as required by Section 1782 because they have not provided the Court with either sufficient evidence that the pending Mexican proceedings are in the proof-gathering stages or that any additional litigation will be filed in the near future. While there is some precedent for use of Section 1782 to assist foreign judges or government investigators in pre-suit discovery, private civil litigants are not permitted to seek a vast array of discovery sought here. It is clear that the Application is nothing more than an attempt to engage in a fishing expedition to determine whether there is enough evidence to file suit against Operadora Mexico, which is counter to the stated purposes of the statute.

Second, and apart from the mandatory requirements of Section 1782, Applicants' request fails to satisfy the four discretionary factors set forth by the U.S. Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004). The proposed discovery seeks documents from a foreign company through its U.S. corporate parent for use in foreign litigation against the subsidiary. Courts have repeatedly exercised their discretion to deny such demands because (1) the U.S. corporate parent is effectively a party in the foreign proceeding; (2) such requests implicate serious comity concerns; (3) the requests conceal an attempt to circumvent foreign proof-gathering restrictions; and (4) because such requests are effectively duplicative of discovery demands the petitioner could make in foreign courts, it is by definition unnecessarily burdensome and intrusive.

The Application should be denied because it is an improper use of Section 1782. If Applicants believe that they need documents and other discovery to aid in their current

or anticipated lawsuits against Operadora Mexico, they should obtain such discovery from a Mexican court in accordance with Mexican discovery procedures.

FACTUAL BACKGROUND

SCC is a U.S.-based mining company that is affiliated with mining companies in several countries. SCC owns Minera Mexico, a Mexican company, which in turns owns Operadora Mineras. On April 11, 2016, Applicants filed this Application which seeks a vast array of document discovery and a deposition pursuant to Federal Rule of Civil Procedure 30(b)(6).

The proposed Request for Production of Documents (the "Document Requests")[1] defines SCC to include "any company directly or indirectly controlled by, or under common control with SCC, and shall include, without limitation, any and *all operating companies, joint ventures, divisions and/or units, controlled directly or indirectly by SCC*." (Document Requests at 5 (emphasis added).) In addition, the Document Requests define "Possession, Custody or Control" to include "those documents in the possession, custody or control of SCC a*s well as all of its subsidiaries*." (*Id.* at 5-6 (emphasis added).) The categories of documents demanded in the Document Requests request documents relating to communications with the Mexican Government (*id.*, Requests No. 3-7, 10) and documents relating to a mine owned by Operadora Mineras and located entirely in Mexico (*id.* Request Nos. 1-13). None of the document requests relate to SCC directly or to any activity or events in the U.S..

[1] Applicants attached the proposed Requests for Production of Documents to the Application as Exhibit A and the proposed Rule 30(b)(6) Deposition Notice as Exhibit B.

The proposed Rule 30(b)(6) Deposition Notice (the "30(b)(6) Notice") defines "SCC" and "possession, custody and control" to include and encompass information held in and by SCC's Mexican subsidiaries. (30(b)(6) Notice at 5-6.) The 30(b)(6) Notice requires SCC to produce a corporate representative that can testify as to events that occurred entirely in Mexico.

LEGAL STANDARD

A court may only grant discovery under § 1782 when (1) the party from whom discovery is sought can be found in the district where the application is made; (2) the discovery will be used in a foreign proceeding; and (3) the party applying for discovery is an interested person in the foreign proceeding. *Intel*, 542 U.S. at 246. In *Intel*, the Supreme Court emphasized that "a district court is not required to grant a § 1782(a) discovery application simply because it has the authority to do so." *Id*. at 264.

The Supreme Court set forth the following four factors to assist district courts in determining whether to grant a § 1782 petition: (1) whether the person from whom the discovery is sought is a participant in the foreign proceeding; (2) the character of the proceedings underway abroad and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance; (3) whether the § 1782 request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the U.S.; and (4) whether the § 1782 application contains unduly intrusive or burdensome discovery requests. *Id.* at 264-66. This is not an exhaustive list. Courts may also consider whether the requests were a "fishing expedition." 542 U.S. at 266. One of the other discretionary factors considered by courts in this circuit after *Intel*

is availability of information from parties to the foreign action. *See, e.g., In re Marino*, No. CV-09-80020-MISC-DLJ, 2009 WL 482649, *4 (N.D. Cal. Feb. 25, 2009) ("Absent any evidence that Elena [party to foreign action whose information was being sought from nonparties] herself does not possess the desired information . . . this court finds no basis to authorize the issuance of the requested subpoenas."); *In re Application of Fischer Advanced Composite Components AG*, No. C08-1521-RSM, 2008 WL 5210839, *5 (W.D. Wash Dec. 11, 2008) ("*Fischer*") (denying application as duplicative after finding requested information was available in foreign jurisdiction).

ARGUMENT

I. APPLICANTS HAVE FAILED TO ESTABLISH THE BASIC STATUTORY PREREQUISITES.

A. The Proposed Discovery Is Not "For Use" In Any Foreign Proceeding.

Applicants have failed to satisfy Section 1782's prerequisite that the discovery be "for use in a foreign . . . tribunal." In *Intel*, the Supreme Court held that Section 1782 does not require that the foreign proceedings be "pending," but they must at least "be within reasonable contemplation." 542 U.S. at 259. Here the Applicants rely solely on a self-interested affidavit from a foreign attorney asserting that there are six cases pending in Mexico, but do not provide any indication that such cases are in the proof-gathering stages. Applicants also assert that they are considering an additional action but provide no detail sufficient to prove to this court that such action is in "reasonable contemplation." Under the relevant case law, Applicants' showing is insufficient to demonstrate that the proposed discovery is "for use" in a foreign proceeding.

The Ninth Circuit suggested that in determining whether an action is in "reasonable contemplation" the court my take into account "the nature and attitudes of the government of the country from which the request emanates and the character of the proceedings in that country." *United States v. Sealed 1, Letter Request for Legal Assistance from Deputy Prosecutor General of the Russian Federation*, 235 F.3d 1200, 2013 (9th Cir. 2000) ("*Russian Federation*"). For example, in *Intel*, the petitioner met the "within reasonable contemplation" requirement because the Directorate General-Competition of the European Commission "provided sufficient evidence that it was conducting an investigation that will lead to a decision whether to proceed [with an antitrust enforcement proceeding]. A decision not to go forward would be appealable to the Court of First Instance, thus 'leading to a judicial proceeding." *Advanced Micro Devices, Inc. v. Intel Corp*., 292 F.3d 664, 667 (9th Cir. 2002), *aff'd*, 542 U.S. 241 (2004). Similarly, in Applicants' authority on this point, *Russian Federation*, involved a formal request for foreign assistance from the Government of the Russian Federation, which sought U.S. assistance in connection with an on-going criminal investigation of alleged tax fraud. 235 F.3d at 2013. *Russian Federation* is similar to other cases involving a formal request from a foreign judge or prosecutor investigating criminal activity where the court permitted discovery before charges had been filed because there was sufficient evidence of an ongoing good-faith criminal investigation. *See, e.g.*, *In re Letter of Request from Crown Prosecution Service of United Kingdom*, 870 F.2d 686, 687 (D.C. Cir. 1989) ("evidence sought by the Crown Prosecution Service of the United Kingdom" to aid in an ongoing criminal investigation); *Lazaridis v. Int'l Centre for*

Missing & Exploited Children, Inc., 760 F. Supp. 2d 109, 112-13 (D.D.C. 2011) (evidence sought to aid in pending "Greek prosecution" and related "Greek investigation conducted by a magistrate").

Here, by contrast, there is no formal discovery request from a foreign government, government investigator, or judge despite the fact that Applicants claim to have six pending cases in Mexico. Instead, Applicants have merely indicated that cases have been filed but provide no evidence – in the form of a docket report or other court documents – showing that such cases are still in evidence-gathering stage and would be receptive to additional evidence. Unlike the cases cited by Applicants, there is no evidence here that the discovery is being sought to aid any foreign government or foreign tribunal in conducting any investigation of a crime or tort.

Applicants hang their hats on the argument that private litigants may use Section 1782 to engage in pre-suit discovery. But that alone does not provide sufficient evidence that a case is within "reasonable contemplation." Courts have suggested that applicants may provide proof that the contemplated foreign litigation is "sufficiently mature[]" by providing the court with, for example, proof of payment of "filing and processing fees." *In re Mesa Power Group*, LLC, 878 F. Supp. 2d 1296, 1303 (S.D. Fla. 2012). If an applicant is unable to provide proof that the discovery requests are nothing more than a "fishing expedition," the district court should deny the request. *In Re Request for Assistance for Ministry of Legal Affairs of Trinidad and Tobago*, 848 F.2d 1151, 1156 (11th Cir. 1988); *see also In re Certain Funds, Accounts, &/or Inv. Vehicles Managed by*

Affiliates of Fortress Inv. Grp. LLC, No. 14 CIV. 1801 NRB, 2014 WL 3404955, at *6-7 (S.D.N.Y. July 9, 2014) ("*Fortress*").

The facts of this case are analogous to that of *Fortress*. In *Fortress*, investors in two Saudi Arabia-based conglomerates sought Section 1782 discovery from U.S. accounting firms that had performed auditing services for the conglomerates. 2014 WL 3404955, at *1–2. Like the applicants here, the investors in *Fortress* argued that the materials unearthed in discovery would be used in foreign proceedings because (1) they are "relevant to pending proceedings in Saudi Arabia, Bahrain, and the Cayman Islands" and (2) "the material is relevant to the proceedings that the Applicants are contemplating in the future." *Id.* at *5-6.

With regard to the current proceedings, the court held that the investors – like Applicants here –"failed to demonstrate" that there was "any discernible procedural mechanism whereby the discovered material could actually be used in the foreign tribunals." *Id.* at *6. As to the planned future proceedings, the investors – like Applicants – only attested that they have retained counsel to investigate and prosecute claims. The court found such scant evidence unpersuasive especially since the investors "had an opportunity to initiate judicial proceedings abroad but have failed to do so." *Id.* at *7. The court concluded that the proposed Section 1782 discovery was "more akin to a fishing expedition" and denied the request because the investors failed to provide sufficient evidence to satisfy the second statutory requirement of Section 1782. *Id.*

As in *Fortress*, Applicants have failed to show that the proposed discovery is being sought "for use" in a foreign proceeding. There is no indication that the Mexican

courts would make use of discovery obtained by the Applicants and Applicants have failed to provide any evidence that they are on the verge of filing a new action for which the proposed discovery would be relevant and well-received. The Court should deny the Application because Applicants fail to meet their statutory burdens.

B. The Principal Discovery Target is not "Found" in This District.

The Court should deny the discovery that Applicants seek because they have failed to satisfy the requirement that the primary discovery targets must "reside" or be "found" in this District. Section 1782 provides that "[t]he district court of the district in which a person *resides* or is *found* may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal . . . ." 28 U.S.C. § 1782 (emphasis added).

The proposed discovery seeks documents and information located in Mexico, by Mexican companies, about events that occurred only in Mexico. Applicants claim that they have established that the discovery target resides in this District because SCC's principal executive offices are located in Arizona. (Application at 12.) That is not sufficient where – as here – the primary target of the proposed discovery is a foreign subsidiary. *See In re Nokia Corp.*, No. 107-MC-47, 2007 WL 1729664 at *3-4 (W.D. Mich. June 13, 2007) (foreign parent corporation headquartered in Germany did not reside and was not found in Western District of Michigan even though it owned controlling interest in subsidiary with headquarters in the district). Application of Section 1782 is especially unwarranted here because the Mexican Companies that are

alleged to have engaged in the actions at issue are within the jurisdictional reach of Mexican courts.

Additionally, it is likely that in order to comply with the 30(b)(6) Notice, SCC would have to produce a Mexican national to testify in the U.S. to provide evidence of a yet-filed Mexican proceeding. (Ex. B, Evans Decl., at ¶ 6). This is directly counter to the purposes of Section 1782. *See In re Application of OOO Promnefstroy for an Order to Conduct Discovery for Use in a Foreign Proceeding*, No. M 19-99(RJS), 2009 WL 3335608, at *6 (S.D.N.Y. Oct. 15, 2009) ("*Promnefstroy*") (holding that it would be counter to the purposes of Section 1782 to permit discovery of information that is primarily foreign in nature).

Applicants have failed to satisfy their burden to show that the Mexican Companies, from whom they seek discovery, "reside" or are "found" in this District of Arizona. The Court should therefore deny the Application. *See, e.g., In re Godfrey*, 526 F. Supp. 2d 417, 419 (S.D.N.Y. 2007) (denying application because "it is clear that Applicants, who have the burden of proof, have not in fact adequately shown that any respondent . . . is 'found' within this district within the meaning of § 1782(a)).

II. SECTION 1782 MAY NOT BE USED TO OBTAIN DOCUMENTS LOCATED OUTSIDE THE UNITED STATES.

Even if the court determines that Applicants have satisfied the statutory requirements, the Court should exercise its discretionary authority to deny the Application because the proposed discovery would require production of documents located outside the U.S. Courts have routinely held that Section 1782 does not authorize a district court to order the production of documents located in foreign countries. *See.*

e.g., *Astronics Advanced Elecs. Sys. Corp. v. Lufthansa Technik AG*, 561 F. App'x 605, 606 (9th Cir. 2014) (holding Section 1782 could not be used to obtain discovery of documents located in Germany for use in a German action); *Four Pillars Enters. v. Avery Dennison Corp*., 308 F.3d 1075, 1080 (9th Cir. 2002) (holding that the lower court did not commit error by holding that Section 1782 does not support the discovery of material located in foreign countries). While the statute does not on its face limit the discovery power of the court to documents located in the U.S., courts have given two main reasons for this judicially-created restriction. First, allowing foreign parties to obtain documents located outside the U.S. through Section 1782 would render U.S. federal courts "clearinghouses" for global litigation. *See In re Grupo Unidos Por El Canal, S.A.*, No. 14-MC-00226-MSK-KMT, 2015 WL 1810135, at *9 (D. Colo. Apr. 17, 2015); *In re Kreke Immobilien KG*, No. 13 MISC. 110 NRB, 2013 WL 5966916, at *4-5 (S.D.N.Y. Nov. 8, 2013) ("*Kreke*"). Second, courts have concluded that the legislative history of the statute supports the notion that the statute was not intended to be used to compel production of documents located in a foreign country. *See In re Godfrey*, 526 F. Supp. 2d 417, 423 (S.D.N.Y. 2007); *Norex Petroleum Ltd. v. Chubb Ins. Co. of Canada*, 384 F. Supp. 2d 45 (D. Co. 2005).

SCC believes that all or nearly all documents responsive to the proposed Document Requests are located in Mexico and held by its Mexican subsidiaries and affiliates. (Ex. B, Evans Decl., at ¶¶ 4-5.) As the foregoing cases establish, Section 1782 does not have extra-territorial effect and the Application should therefore be denied.

III. A PROPER ANALYSIS OF THE *INTEL* FACTORS DEMONSTRATES THAT THE APPLICATION SHOULD BE DENIED.

A. SCC, or Its Subsidiaries, Will Be A Party To The Foreign Proceeding.

The first *Intel* factor is whether the party from whom the discovery sought in a Section 1782 application is also a party to the foreign proceeding. *Intel*, 542 U.S. at 264. "[W]hen the person from whom discovery is sought is a participant in the foreign proceeding . . . the need for § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from a nonparticipant in the matter arising abroad." *Id.* When the respondent in U.S. proceedings is "technically" different than the defendant in the foreign litigation, but the two are really the same "for all intents and purposes," this factor will stand against granting the § 1782 application. *Schmitz v. Bernstein Liebhard & Lifshitz, LLP*, 376 F.3d 79, 85 (2d Cir. 2004); *see also Promnefstroy*, 2009 WL 3335608, at *6 (holding that the first *Intel* factor weighed against applicant because "nearly all the documents that the subpoena seeks are also in the possession of parties to the foreign proceeding.").

The situation presented here is analogous to that in *Kreke*, an action in which the petitioner sought production of documents pursuant to Section 1782 from Deutsche Bank (U.S.) for use in a German proceeding. 2013 WL 5966916, *5. Deutche Bank's German subsidiary, Oppenheim, was a party in the German proceeding and the petitioner sought Oppenheim's documents from Deutsche Bank simply because of the ownership relationship between the two entities. *Id.* In denying the petition, the *Kreke* court held that given the corporate relationship between Deutsche Bank and Oppenheim, "the notion

that Deutsche Bank could somehow be a nonparticipant in the foreign action is untenable." *Id.*

Applicants' discovery requests should be similarly denied. The Application seeks unfettered access to the records of the Mexican Companies – which are located in Mexico – through SCC, their U.S. corporate parent. Applicants admit that at least one of SCC's subsidiaries would be a party to future litigation relating to the proposed discovery, which effectively makes SCC a party to the proceedings as well. (*See* Application at 10.) This factor weighs against granting the Application.

B. Applicants Do Not Need The Assistance of This Court in Order to Obtain Discovery For Use in Mexican Proceedings.

The second set of *Intel* factors directs District Courts to evaluate the nature of the foreign tribunal, the type or proceeding pending, and the receptivity of the tribunal to U.S. discovery. *Intel*, 541 U.S. at 264. These factors suggests a concern about the authority of the foreign tribunals, the formality of its proceedings, and the availability for ensuring discovery of the material requested in the foreign discovery process. In this case, none of the factors supports granting the Application.

The Mexican courts are fully authorized to supervise and compel the collection of evidence in proceedings before it. (Ex. A, Bolaños Silva Decl., at ¶¶ 4-7.) Parties to proceedings in Mexico may request that the court obtain discovery from both the parties before it and from third parties. (*Id.* at ¶ 6.) Yet Applicants have never even bothered to request in the Mexican litigation the discovery it now demands under the authority of this Court. There is simply no need for the Applicants to obtain extraterritorial assistance when it failed to avail itself of Mexican evidence-gathering procedures. *See In re*

Degitechnic, No. C07-414-JCC, 2007 WL 1367697 (W.D. Wash. May 8, 2007) ("*Degitechnic*"), at *4 (denying §1782 application where the requested discovery was subject to the jurisdiction of the foreign tribunal); *In re Application of Microsoft Corp.*, 428 F. Supp. 2d 188, 194 (S.D.N.Y. 2006) (denying §1782 application where the evidence sought was available through the foreign jurisdiction's discovery processes). A Section 1782 application is especially inappropriate here because all of the requested discovery is located in Mexico, can be obtained directly from Mexican companies, and relates to activities that occurred entirely in Mexico. (Ex. B, Evans Decl., at ¶ 4.)

C. Applicants May Not Use § 1782 To Circumvent Mexican Discovery Procedures.

In *Intel*, the Supreme Court cautioned against applications that "conceal [] an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country." 541 U.S. at 264. The Application reflects just such an effort, as evidenced by the fact that (1) the Applicants have made no attempt to obtain the discovery through any of the six pending cases in Mexico and (2) Mexican discovery procedures are controlled closely by the judge handling the matter; judges do not generally permit expansive American-style discovery that Applicants seek here. (Ex. A, Bolaños Silva Decl., at ¶¶ 4-7, 23.) Under these circumstances, courts have concluded that the applicant's failure to first attempt discovery measures in the foreign jurisdiction indicates that it is using Section 1782 to circumvent foreign discovery procedures. *See, e.g.*, *In re Babcock Borsig AG*, 583 F. Supp. 2d 233, 241 (D. Mass. 2008) ("While there is no 'exhaustion' requirement for seeking discovery under § 1782, the district court may, in its discretion, properly consider a party's failure first to attempt discovery measures in the foreign

jurisdiction."); *Degitechnic*, 2007 WL 1367697 (holding that the first, third, and fourth Intel factors weighed against discovery directed at Microsoft U.S. for use against its French subsidiary because the applicant could have obtained discovery from the subsidiary in the foreign tribunal but made no attempt to do so).

In addition, corporate representative depositions have different legal consequences in Mexican courts. (Ex. A, Bolaños Silva Decl., at ¶ 22.) To obtain such pretrial witness testimony, a party must request leave from the court. (*Id.*) The court has the discretion to grant or deny the request. (*Id.* at ¶¶ 4-7, 22.)

The Court should conclude that the third *Intel* factor weighs in SCC's favor because applicants have made no attempt to obtain any of the proposed discovery through the courts in Mexico despite currently having six cases pending in Mexican courts and instead have rushed to the U.S. to avoid discovery procedures in Mexico. In these circumstances – where all of the requested documents and proposed deponent are located in Mexico – there is no basis to authorize the requested discovery.

D. The Proposed Discovery Is Overly Intrusive and Burdensome.

The breadth of the proposed document requests far exceeds what is generally permitted in Section 1782 discovery. *See Kreke*, 2013 WL 5966916, at *7 ("[C]ourts should be more inclined to grant applications that seek either a single document or only those documents relating to a particular event."). The proposed discovery – which seeks documents from SCC and all of its foreign subsidiaries on thirteen different topics – would require an expensive and time-consuming search in the files of several companies in Mexico. The intrusiveness and burdensome nature of the proposed discovery weighs

the fourth *Intel* factor heavily in SCC's favor. *In re Application of Auto-Guadeloupe Investissement S.A., for an Order to Take Discovery Pursuant to 28 U.S.C. Section 1782*, No. 12 MC 221 RPP, 2012 WL 4841945, at *10 (S.D.N.Y. Oct. 10, 2012) (fourth *Intel* factor counsels against approval of discovery that "compel[s respondent] to undertake an unduly burdensome, time-consuming, and expensive search"). That is especially true here, where the materials requested are located in Mexico and could be obtained directly through the discovery process in Mexican courts.

This case is factually similar to that of *Fischer*, in which the movant, FACC, sought discovery from Primus, a U.S. corporate parent of St. Bernard, an U.K. corporation. FACC argued that it needed documents from Priums to support its claims in litigation in British courts between FACC and St. Bernard. 2008 WL 5210839, at *1. As is the case here, the discovery demands at issue included document requests regarding the actions of the foreign subsidiary and subpoenas for depositions of representatives of its U.S. parent. *Id.* The *Fischer* court denied the Section 1782 request based solely on its finding that FACC's requests were by definition unduly burdensome "primarily because FACC . . . failed to show why the information it seeks could not be obtained" in foreign proceedings. *Id.* at *3. The court concluded that the motion to compel responses to subpoenas issued to Primus should be denied. *Id.*

As in *Fischer*, Applicants can obtain all the relevant information it needs for their case in Mexico against the Mexican Companies from the parties themselves. Any information it seeks from SCC is at best duplicative and more accurately a pretext for

Applicants to engage in fishing expedition so it can file more lawsuits against the Mexican Companies. The court should not permit such misuse of Section 1782.

CONCLUSION

Petitioners' failure to meet its burden to show that it meets the Section 1782 statutory requirements requires denial of the Application. Even if Applicants meet the statutory requirements, an evaluation of the discretionary factors demonstrates the impropriety of Petitioners' discovery requests. The proposed discovery requires production of documents from Mexico and the deposition of a Mexican national for use in a Mexican legal proceeding, which is counter to the purposes for which Section 1782 was intended. The Application should be denied.

DATED: April 29, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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