



1 THE LAW OFFICE OF LYNN COYLE, P.L.L.C.  
2 Christopher Benoit  
3 Texas Bar. No. 24068653  
4 chris@coylefirm.com  
5 2515 N. Stanton Street  
6 El Paso, Texas 79902  
7 (915) 532-5544  
8 (915) 532-5566 Facsimile  
9 EARTHRIGHTS INTERNATIONAL  
10 Marco Simons  
11 D.C. Bar No. 492713  
12 marco@earthrights.org  
13 1612 K Street N.W., Suite 401  
14 Washington, DC 20006  
15 (202) 466-5188  
16 (202) 466-5189 Facsimile

17 Attorneys for All Applicants

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF ARIZONA**

20 Alberto Salcido-Romo, §  
21 Francisco Ramón Miranda, §  
22 Francisca Garcia-Enriquez, §  
23 and Oscar Ramírez-Gamez, §

24 Applicants, §

25 Southern Copper Corporation §

26 Respondent. §  
27  
28

CIVIL NO: MC-16-0035-PHX-DLR

§ In re Application of  
§ Alberto Salcido  
§ Romo, Francisco Ramón  
§ Miranda, Francisca  
§ Garcia Enriquez, and  
§ Oscar Ramírez Gamez for an  
§ Order Granting Leave to Issue  
§ Subpoenas for the Taking  
§ of Discovery Pursuant to  
§ 28 U.S.C. § 1782

LO

1 Applicants Alberto Salcido-Romo, Francisco Ramón Miranda,  
2 Francisca Garcia-Enriquez, and Oscar Ramírez-Gamez  
3 ("Applicants") hereby apply to the Court for an order pursuant  
4 to 28 U.S.C. § 1782 to obtain discovery from Respondent Southern  
5 Copper Corporation ("SCC" or "Respondent").<sup>1</sup> Applicants seek  
6 this discovery for use in pending foreign proceedings in which  
7 Applicants are identified as aggrieved parties or plaintiffs,  
8 and for use in a related foreign proceeding that they plan to  
9 initiate once they have completed what has already been a year-  
10 long factual investigation, and for which they need sufficient  
11 evidence at the outset.<sup>2</sup>  
12

13  
14 Applicants respectfully request oral argument at the Court's  
15 earliest convenience.

16 **I. JURISDICTION AND VENUE**

17 This Court has federal question jurisdiction pursuant to 28  
18 U.S.C. § 1331 in that this matter arises under 28 U.S.C. § 1782.  
19 Venue is proper in the District of Arizona pursuant to 28 U.S.C.  
20 § 1391 because Respondent SCC's corporate headquarters is  
21 located in Phoenix, and thus SCC resides in the District.  
22

23  
24 <sup>1</sup> Although Applicants could proceed with this Application *ex parte*, e.g., *In*  
25 *re Letters Rogatory From the Tokyo District, Tokyo*, 539 F.2d 1216, 1219 (9th  
Cir. 1976), they have chosen instead to serve this Application on the  
Respondents.

26 <sup>2</sup> Section 1782(a) provides: "The district court of the district in which a  
27 person resides or is found may order him to give his testimony or statement  
28 or to produce a document or other thing for use in a proceeding in a foreign  
or international tribunal, including criminal investigations conducted before  
formal accusation . . . upon the application of any interested person . .  
." 28 U.S.C. § 1782(a).

1  
2 **II. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 Applicants are residents of agricultural communities along  
4 the banks of the Sonora and Bacanuchi Rivers in the State of  
5 Sonora in Northern Mexico. These communities rely on access to  
6 clean water from these rivers to raise their crops and  
7 livestock, and on deep wells throughout the area for drinking  
8 water, irrigation, and livestock. Just to the North of these  
9 communities lies the Buenavista del Cobre ("BVC") mine, one of  
10 the largest copper-mining operations in the world. BVC is  
11 located in the town of Cananea, less than fifty miles south of  
12 the Arizona border.  
13  
14

15 On August 6, 2014, over 10 million gallons of highly toxic  
16 mining process waste spilled from a new copper leaching plant in  
17 the BVC mine complex that was still under construction, and into  
18 the Bacanuchi River, a tributary of the Sonora River.<sup>3</sup> The spill  
19 directly impacted more than 24,000 people in seven different  
20 communities when it severely contaminated nearly 120 miles of  
21 the Sonora River.<sup>4</sup> Nearly eighteen months after the spill, the  
22  
23

24 <sup>3</sup> See, e.g., Trevizo, Perla, "Livelihoods washed away by toxic spill in  
25 Sonora," *Arizona Daily Star*, October 4, 2014, available at  
26 [http://tucson.com/news/local/livelihoods-washed-away-by-toxic-spill-in-sonora/article\\_5b8007ef-82f1-5db1-901f-c4fba8cc1b06.html](http://tucson.com/news/local/livelihoods-washed-away-by-toxic-spill-in-sonora/article_5b8007ef-82f1-5db1-901f-c4fba8cc1b06.html). The August 6, 2014  
chemical spill at BVC mine is hereinafter referred to as "the spill."

27 <sup>4</sup> See, e.g., Duarte, José Roberto Cisneros, "A un año del derrame en el río  
28 Sonora, pobladores aún esperan reparación" [A year after the Sonora River  
spill, residents still wait for relief], *CNN México*, available at  
<http://www.cnnmexico.com/nacional/2015/08/04/a-1-ano-del-derrame-en-el-rio->

1 residents of these communities continue to suffer from its  
2 devastating effects, as they wait for the companies that own and  
3 operate the mine to take full responsibility for repairing the  
4 resulting damage and adequately compensate its victims.

5  
6 By this 28 U.S.C. § 1782 application, Applicants properly  
7 seek to obtain discovery, in the form of production of documents  
8 and a Rule 30(b)(6) deposition, in support of six pending  
9 Mexican court proceedings, called "writ of *amparo*" actions,<sup>5</sup> in  
10 addition to a related environmental lawsuit that they plan to  
11 initiate before a Mexican tribunal once they have finalized an  
12 ongoing environmental investigation.

13  
14 Section 28 USC § 1782 allows "interested person[s]" to seek  
15 discovery of documents from persons or entities that reside or  
16 are "found" in this District. The Court may grant the requested  
17 discovery when the information sought is "for use in" foreign  
18 proceedings. *Id.* In assessing the appropriateness of such a  
19 request, courts must also consider various discretionary  
20 factors. See *Intel Corp. v. Advanced Micro Devices, Inc.*, 542  
21 U.S. 241, 263-64 (2004).  
22  
23  
24

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25 sonora-pobladores-aun-esperan-reparacion.

26 <sup>5</sup> Under Mexican law, a writ of *amparo* proceeding is a type of constitutional  
27 challenge to the action of a government entity or other similar authority.  
28 LMC Decl. ¶ 2. An *amparo* is similar in nature to a request for injunctive  
relief in the US judicial system because it seeks to cause a government  
authority, or similar authority such as a corporation, to either take or  
cease taking a particular action. *Id.*

1 Here, Applicants seek discovery that falls squarely in the  
2 purview of Section 1782. First, this Application satisfies each  
3 of Section 1782's statutory prerequisites. SCC "resides" and  
4 "is found" in this District, the discovery is "for use in"  
5 foreign proceedings, and the Applicants are "interested  
6 person[s]" in those proceedings. 28 U.S.C. § 1782(a).  
7

8 Applicants seek discovery "for use in" six pending Mexican  
9 *writ of amparo* proceedings. Applicants also seek discovery "for  
10 use in" an environmental lawsuit before a Mexican court that  
11 they plan to file once they have completed their investigation.  
12 To prevail in this lawsuit, Applicants will have to establish  
13 facts sufficient to show: (1) the baseline state of the  
14 environment in the affected areas prior to the spill; (2) the  
15 nature and cause of the damage to the environment in the wake of  
16 the spill; (3) actions or omissions by the Companies that  
17 contributed to the spill; and (4) the knowledge of the Companies  
18 that their acts or omissions could foreseeably cause the  
19 environmental damage in question. See Exhibit C, Decl. of Luis  
20 Miguel Cano ("LMC Decl.") ¶ 7.  
21  
22

23 To marshal the evidence necessary to prevail in these  
24 proceedings, Applicants seek discovery of information or  
25 documentation that will shed a light on the role of the  
26 Companies - which are at least 99% owned by Respondent - in one  
27 of the worst environmental disasters in recent Mexican history  
28

1 and its continuing impacts on nearby communities.

2 Second, the discretionary factors enumerated by the Supreme  
3 Court also favor granting this Application: (1) SCC is not a  
4 named or contemplated party in any of the foreign proceedings;  
5 (2) the Mexican courts resolving these cases will be receptive  
6 to Section 1782 assistance; (3) this Application does not  
7 conceal an attempt to circumvent foreign proof-gathering  
8 restrictions and is a good faith effort to obtain probative  
9 evidence; and (4) the discovery sought is not unduly intrusive  
10 or burdensome. See *Intel Corp.*, 542 U.S. at 256-266.  
11

12 Accordingly, Applicants respectfully request that the Court  
13 grant this Section 1782 application as expeditiously as  
14 possible.  
15

### 16 **III. FACTUAL BACKGROUND**

17 According to its 2015 annual report filed with the U.S.  
18 Securities and Exchange Commission ("SEC"), SCC "is one of the  
19 largest integrated copper producers in the world." Exhibit D,  
20 Southern Copper Form 10K for the fiscal year ended December 31,  
21 2014, p. 3, available at  
22 [https://www.sec.gov/Archives/edgar/data/1001838/0001104659150154](https://www.sec.gov/Archives/edgar/data/1001838/000110465915015406/0001104659-15-015406-index.htm)  
23 [06/0001104659-15-015406-index.htm](https://www.sec.gov/Archives/edgar/data/1001838/0001104659-15-015406-index.htm). SCC has mining, smelting and  
24 refining facilities in Peru and Mexico, and also carries out  
25 exploration in Argentina, Chile and Ecuador. *Id.* SCC conducts  
26 its Mexican operations through its subsidiary, Minera Mexico,  
27  
28

1 S.A. de C.V. A subsidiary of Minera Mexico, Operadora de Minas  
2 e Instalaciones Mineras, S.A. de C.V., operates BVC, an open-pit  
3 copper mine, which is located in Mexico at the site of one of  
4 the world's largest copper ore deposits. *Id.*<sup>6</sup> Southern Copper  
5 is incorporated in Delaware with headquarters in Phoenix,  
6 Arizona, and its shares are traded on the New York Stock  
7 Exchange. *Id.*<sup>7</sup>

9 On August 6, 2014, a spill of over 10 million gallons of  
10 copper sulfate occurred at SCC's BVC mine in Sonora, Mexico,  
11 which Mexican Environment Minister Juan José Guerra Abud called  
12 "[t]he worst natural disaster provoked by the mining industry in  
13 the modern history of Mexico." Montes, Juan, "Grupo Mexico to  
14 Face Major Cleanup Fees After Spill," *The Wall Street Journal*,  
15 August 26, 2014.<sup>8</sup> The spill originated in an area of the BVC  
16 mine named the SX-EW III plant, which was still under  
17 construction at that time. The SX-EW III plant included several  
18 leaching ponds containing the toxic mixture of copper sulfate.  
19 Construction defects in these leaching ponds was a direct cause  
20 of the spill. Exhibit E, Southern Copper Form 10Q for the

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23 <sup>6</sup> According to SCC's 2014 Form 10-K p. 4, Southern Copper owns a 99.96% share  
24 of Minera Mexico, which in turn owns a 99.99% share of Operadora de Minas e  
Instalaciones Mineras. Ex. D.

25 <sup>7</sup> NYSE ticker: SCCO; Central Index Key: 0001001838.

26 <sup>8</sup> SCC and its subsidiaries are part of the Grupo Mexico family of companies.  
27 Grupo México, S.A.B. de C.V. ("Grupo Mexico") is a Mexican holding company  
28 that owns a 100% stake in Americas Mining Corporation, a U.S. corporation,  
which in turn owns an 84.6% stake in Southern Copper. See Ex. D, Southern  
Copper 2014 Form 10K, pp. 4-5 (Organizational Structure chart).

1 fiscal quarter ended October 30, 2015, pp. 16-17, available at  
2 <http://www.sec.gov/Archives/edgar/data/1001838/00011046591507453>  
3 [8/a15-17848\\_110q.htm](http://www.sec.gov/Archives/edgar/data/1001838/000110465915074538/a15-17848_110q.htm).

4 According to Guillermo Haro, head of the Federal Attorney's  
5 Office for Environmental Protection ("PROFEPA"), the total  
6 cleanup costs for the spill could reach "hundreds of millions or  
7 billions" of Mexican pesos (a hundred million pesos at the time  
8 was roughly \$7.7 million). *Id.* This amount does not include  
9 penalties and fees imposed on Grupo Mexico and its subsidiaries  
10 by Mexican authorities, or monetary damages that may be awarded  
11 through private litigation to those affected by the spill.  
12

13  
14 The Applicants are individual community members from  
15 Aconchi, Ures, and Bacanuchi - all communities located on the  
16 banks of the Sonora River which was the primary waterway  
17 polluted by the Spill. The water they use for their families  
18 and farms has been significantly impacted by the Spill. The  
19 Applicants are members of the Sonora River Basin Committees  
20 ("Committees"). LMC Decl. ¶ 1.  
21

22 The Applicants, through the Committees, have filed six  
23 pending Mexican writ of *amparo* proceedings. LMC Decl. ¶ 2. To  
24 prevail in these actions, Applicants must establish facts  
25 sufficient to show that: (1) the companies that own and operate  
26 the BVC mine (the "Companies") maintained operations without a  
27 required Dangerous Waste Management Plan (Case 144/2015); (2)  
28



1 the Companies restarted normal operations at the BVC mine after  
2 the spill without an approved Environmental Remediation Plan  
3 (Case 185/2015); (3) post-spill testing of water quality in  
4 community wells did not apply internationally-accepted standards  
5 for levels of toxic chemicals (Case 834/2015); (4) the Companies  
6 planned and executed expansions of the BVC mine and its  
7 operations without engaging in meaningful consultation with  
8 affected communities required under Mexican and international  
9 law (1006/2015); (5) the Companies unlawfully concealed from  
10 affected communities full information regarding how money in the  
11 trust fund established with the purpose of supporting remedial  
12 action and providing compensation to those adversely affected by  
13 the spill will be distributed, or the criteria for that  
14 distribution (116/2015); and (6) the Companies failed to obtain  
15 required authorizations to construct a new copper leaching  
16 plant, which was the originating point of the spill (279/2015).  
17  
18  
19 LMC Decl. ¶ 3.  
20

21 **IV. NATURE OF INFORMATION AND DOCUMENTS SOUGHT**

22 Applicants seek the categories of information or  
23 documentation from SCC related to the August 6, 2014, spill at  
24 the BVC Mine listed in their Request for Production of  
25 Documents, attached as Exhibit A to this Application.  
26 Applicants also seek a Rule 30(b)(6) corporate representative  
27 deposition, as set forth in the deposition notice attached as  
28

1 Exhibit B.

2       These narrow requests relate directly to the six pending  
3 *writ of amparo* actions and to the environmental lawsuit that  
4 Applicants and their Mexican counsel are currently investigating  
5 and intend to initiate as soon as they have completed their  
6 investigation. The environmental lawsuit will complement and  
7 expand upon the pending *writ of amparo* actions. While the  
8 *amparo* actions demand that the responsible government actors and  
9 corporate entities ensure the mine's compliance with all  
10 applicable laws, the environmental action is focused on the  
11 owning and operating companies' obligation to make whole the  
12 victims of the spill. See LMC Decl. ¶ 7.

15       The evidence sought from SCC will assist the Mexican courts  
16 in determining the legal responsibility of the owners and  
17 operators of the mine, as well as relevant Government  
18 authorities, for environmental cleanup, making whole those  
19 adversely affected by the spill, and preventing future  
20 environmental disasters at the mine. There is every reason to  
21 believe that SCC, as the fully controlling parent of the Mexican  
22 companies that own and operate the mine, possesses this critical  
23 evidence relevant to the six pending *writ of amparo* proceedings  
24 and the contemplated environmental lawsuit before Mexican  
25 courts. See LMC Decl. ¶ 11.



1 First, SCC resides in this District. See Exhibit D,  
2 Southern Copper 2014 Form 10K, p. 1 (SCC's "principal executive  
3 offices" are located in Phoenix, Arizona).

4 Second, Applicants seek discovery for use in proceedings  
5 before foreign tribunals, specifically, in six writ of *amparo*  
6 actions that are pending before Mexican courts, LMC Decl. ¶¶ 2-  
7 3, and an environmental lawsuit that Applicants and their  
8 Mexican counsel intend to file shortly, LMC Decl. ¶¶ 5, 8. To  
9 establish the "for use" prong, discovery need not be "necessary"  
10 in the foreign proceedings nor must it be sought following the  
11 filing of foreign litigation. *Mees v. Buiter*, 793 F.3d 291, 299  
12 (2d Cir. 2015). Rather, applications are appropriate so long as  
13 the foreign proceeding is "within reasonable contemplation."  
14 *Intel*, 542 U.S. at 259 (noting that the statute requires only  
15 "that the evidence is eventually to be used in such a  
16 proceeding"). Indeed, the foreign proceeding need not even be  
17 imminent. *United States v. Sealed 1, Letter of Request for*  
18 *Legal Assistance from the Deputy Prosecutor General of the*  
19 *Russian Federation*, 235 F.3d 1200, 1203 (9th Cir. 2000) (holding  
20 that "neither the plain language of the [§ 1782] statute nor  
21 Ninth Circuit precedent imposes an imminence requirement.").  
22  
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26 There is no question that the six writ of *amparo* actions  
27 are pending and that the discovery is being sought "for use" in  
28 that litigation. The *amparo* actions will require information

1 regarding consultation with affected communities prior to the  
2 construction and operation of the SX-EW III plant and the  
3 leaching pond where the spill occurred; efforts to create both  
4 an Environmental Remediation Plan and maintenance of a Dangerous  
5 Waste Management Plan for the mine in question; consultation  
6 with communities regarding the management of money in the  
7 alleged remedial trust fund following the spill; and the  
8 relationship between mine operations and obligatory mine  
9 authorization for the SX-EW III copper leaching plant in the BVC  
10 mine. LMC Decl. ¶ 3.

12           Regarding the environmental lawsuit, although imminence is  
13 not required, Mexican counsel for the Applicants attests that it  
14 will be filed shortly. LMC Decl. ¶ 9. The environmental  
15 lawsuit will require proof of the baseline state of the  
16 environment in the affected areas prior to the spill; the nature  
17 and cause of the damage to the environment in the wake of the  
18 spill; the actions or omissions by the companies owning or  
19 operating the mine that contributed to the cause of the spill;  
20 and the knowledge of the companies owning or operating the mine  
21 that their acts or omissions could foreseeably cause the  
22 environmental damage in question. LMC Decl. ¶ 7.

23           In Mexico's legal system, unlike our own, sufficient  
24 evidence of the claims must be presented at the time of filing  
25 of the environmental action. LMC Decl. ¶ 10. Because the  
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1 requested discovery is necessary to support the Applicants'  
2 evidentiary burden at the initial stage of the environmental  
3 lawsuit, it is not necessary to wait until filing to obtain the  
4 discovery. "[R]equiring an applicant to wait until the stage in  
5 the foreign proceeding in which the materials are to be used  
6 before [using Section 1782] - which might entail multiple,  
7 separate applications - would be contrary to the statute's aim.  
8 . . ." *Mees*, 793 F.3d at 300; see also *Bravo Express Corp v.*  
9 *Total Petrochemicals & Refining U.S.*, 613 Fed. Appx. 319, 323  
10 (5th Cir. 2015) (finding that discovery is appropriate prior to  
11 litigation in jurisdictions where the initial filing requires  
12 inclusion of relevant evidence).  
13  
14

15 Third, Applicants are "interested person[s]." Applicants  
16 are individuals who live in communities in the Sonora River  
17 Basin that were directly impacted by the August 2014 spill. In  
18 addition, through the Committees of which they are members,  
19 Applicants are parties to the six pending writ of *amparo*  
20 actions, and they are intended parties to the planned  
21 environmental lawsuit. See LMC Decl. ¶ 1. For these reasons,  
22 Applicants have firmly satisfied the statutory prerequisites  
23 under 28 U.S.C. § 1782.  
24  
25

26 **B. The discretionary factors favor the grant of**  
27 **discovery.**

28 Once the statutory requirements are met, "a district court

1 may grant discovery under § 1782 in its discretion." *Mees*, 793  
2 F.3d at 298. This discretion "must" be exercised in light of  
3 the statute's twin aims: "providing efficient means of  
4 assistance to participants in international litigation in our  
5 federal courts and encouraging foreign countries by example to  
6 provide similar means of assistance to our courts." *Id.* (citing  
7 and quoting *Schmitz v. Bernstein Liebhard & Lifshitz, LLP*, 376  
8 F.3d 79, 83-84 (2d Cir. 2004) (court's discretion "is not  
9 boundless")) (internal quotation marks omitted).  
10

11 The Supreme Court identified four factors that "bear  
12 consideration" by district courts in exercising their discretion  
13 to grant a Section 1782 application: (1) whether the person  
14 from whom discovery is sought is a party in the foreign  
15 proceeding; (2) the nature of the foreign tribunal, the  
16 character of the foreign proceedings, and the receptivity of the  
17 foreign tribunal to federal-court assistance; (3) whether the  
18 request "conceals an attempt to circumvent foreign proof-  
19 gathering restrictions or other policies of a foreign country or  
20 the United States"; and (4) whether the request is unduly  
21 intrusive or burdensome. *Intel Corp.*, 542 U.S. at 264-65.  
22

23 Since these factors are discretionary, not mandatory, a  
24 failure to meet any of them does not preclude discovery. For  
25 example, in *Intel*, the Supreme Court noted as to the first  
26 factor that "when the person from whom discovery is sought is a  
27  
28

1 participant in the foreign proceeding . . . the need for §  
2 1782(a) aid generally is not as apparent as it ordinarily is  
3 when evidence is sought from a nonparticipant," because the  
4 foreign tribunal itself can order the party to produce the  
5 evidence. 542 U.S. at 264. Nonetheless, although the  
6 respondent was a party to the underlying case, the Supreme Court  
7 refused to preclude discovery, instead remanding to the lower  
8 courts to determine what if any judicial assistance to the  
9 foreign tribunal was appropriate. *Id.* at 246, 264, 266.

11 These factors strongly favor granting the requested  
12 discovery in the present case.

- 14 1. Respondent is not a party or contemplated party  
15 to any Mexican proceedings involving Applicants.

16 Section 1782 discovery is particularly warranted where the  
17 respondent is not a party in the foreign litigation, since  
18 nonparties may be outside the foreign tribunal's jurisdiction,  
19 and their evidence is therefore otherwise unavailable. *Intel*,  
20 542 U.S. at 264; accord *Chevron Corp. v. E-Tech Int'l*, 2010 WL  
21 3584520, at \*4 (S.D. Cal. Sept. 10, 2010). That is precisely  
22 the circumstance here. Applicants have not filed any legal  
23 proceedings against SCC in Mexico, nor do they have plans to  
24 initiate such legal proceedings in the future. Applicants' six  
25 writ of *amparo* actions currently pending before Mexican courts  
26 are directed at SCC's Mexican subsidiaries and various Mexican  
27  
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1 government entities, not at SCC itself. And while BVC Mine is  
2 located in Mexico, SCC is a U.S. company incorporated in  
3 Delaware with its headquarters in Phoenix, apparently outside  
4 the jurisdiction of Mexico's courts. See LMC Decl. ¶ 12.

5 This is not a situation where the "foreign tribunal has  
6 jurisdiction over [Respondent], and can [itself] order  
7 [Respondent] to produce evidence." *Id.* at 264. "[O]n this  
8 ground alone the first *Intel* factor is satisfied." *In re Roz*  
9 *Trading Ltd.*, Case No. 1:068 cv-02305-WSD, 2007 WL 120844 at \*2  
10 (N.D. Ga. Jan. 11, 2007).

11  
12  
13 2. The discovery sought is relevant to and necessary  
14 for pending foreign proceedings.

15 The discovery sought from SCC is undeniably relevant to  
16 Applicants' six writ of *amparo* actions currently pending in  
17 Mexican courts, and to the Mexican environmental action that  
18 Applicants plan to initiate shortly. Relevant information is  
19 "presumptively discoverable under § 1782." *In re Bayer AG*, 146  
20 F.3d 188, 195-96 (3d Cir. 1998). In addition, The Federal Rules  
21 of Civil Procedure govern Section 1782 discovery, which allow  
22 discovery of relevant evidence irrespective of whether the  
23 information is admissible. *Weber v. Finker*, 554 F.3d 1379, 1385  
24 (11th Cir. 2009).

25  
26 Applicants seek documents and a Rule 30(b)(6) deposition  
27 that will shed light on, among other things: (1) the adherence  
28

1 of the companies that own and operate the mine to applicable  
2 Mexican environmental laws, (2) the companies' knowledge of  
3 conditions that caused the spill, (3) the companies' role in  
4 causing those conditions or failure to prevent them, (4) the  
5 nature and extent of damage to the environment caused by the  
6 spill and its effects on nearby communities, and (5) the  
7 companies' efforts to date to repair that damage and adequately  
8 compensate communities in the spill's impact zone. All of this  
9 information will be highly relevant in the six pending writ of  
10 *amparo* actions and as part of the evidentiary burden in the  
11 impending Mexican environmental lawsuit. See *infra* Section  
12 IV(A); LMC Decl. ¶¶ 9-10, 13.

15 In sum, Applicants seek discovery to be used both in their  
16 six pending writ of *amparo* actions and in the environmental  
17 lawsuit that they plan to file as soon as they complete their  
18 ongoing factual investigation. Therefore, this discretionary  
19 factor weighs in Applicants' favor.

21 3. Mexican courts would accept federal court  
22 assistance under Section 1782.

23 The Mexican tribunals in which the pending writ of *amparo*  
24 actions have been filed, and in which the planned environmental  
25 lawsuit will be filed, will accept evidence produced through  
26 discovery in the United States; there is no bar to admitting  
27 such evidence. LMC Decl. ¶ 14; *Concorcio Minero S.A. v. Doe Run*  
28

1 *Res. Corp.*, 2011 WL 4550200 at \*3 (E.D. Mo. Sept. 30, 2011)  
2 (concluding that there is a presumption in favor of foreign  
3 tribunal receptivity and there was no evidence to rebut the  
4 presumption that Peruvian tribunals would be receptive to  
5 federal court assistance in civil proceedings). Regardless,  
6 there is no requirement that the evidence be admissible in the  
7 Mexican proceeding for it to be discoverable under Section 1782.  
8 *Brandi-Dohrn v. IKB Deutsche Industriebank Ag*, 673 F.3d 76, 81-  
9 82 (2d Cir. 2012) (noting that "there is no statutory basis for  
10 any admissibility requirement"); *Weber*, 554 F.3d at 1385  
11 (permitting discovery "for context" and holding that evidence  
12 need not be actually used in the foreign proceeding); *In re Roz*  
13 *Trading Ltd.*, 2007 WL 120844 at \*2 (finding it proper to grant §  
14 1782 request, even if the foreign panel would not compel similar  
15 discovery or ultimately decides not to accept the specific  
16 discovery).

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20 As the Ninth Circuit has recognized, "federal courts, in  
21 responding to [§ 1782] requests, should not feel obliged to  
22 involve themselves in technical questions of foreign law  
23 relating to . . . the admissibility before such tribunals of the  
24 testimony or material sought." *In re Request for Judicial*  
25 *Assistance from the Seoul Dist. Criminal Court*, 555 F.2d 720,  
26 723 (9th Cir. 1977). Indeed, the Supreme Court held that a  
27 Section 1782 application may be granted even in the face of the  
28

1 foreign tribunal's express opposition. See *Intel Corp.*, 542  
2 U.S. at 265 (holding that Section 1782 discovery could be proper  
3 despite the fact that the foreign tribunal "ha[d] stated in  
4 *amicus curiae* briefs to this Court that it does not need or want  
5 the District Court's assistance"); see also *In re Chevron Corp.*,  
6 749 F. Supp. 2d 141, 161 (S.D.N.Y. 2010) (even if foreign court  
7 opposed the requested subpoenas, "such opposition would not be  
8 dispositive"), *aff'd* 409 Fed. Appx. 393 (2d Cir. 2010).

10 Here, the courts in which the *amparo* actions are pending  
11 will entertain admission of information sought if it is obtained  
12 and presented in a timely manner. LMC Decl. ¶ 15. In addition,  
13 the jurisdiction in which Applicants anticipate filing the  
14 environmental lawsuit will accept evidence supporting the  
15 elements of the claim. For these reasons, this factor weighs in  
16 Applicants' favor.

18 4. This application does not conceal an attempt to  
19 circumvent foreign proof-gathering restrictions.

21 This factor turns on an inquiry into "whether the discovery  
22 is being sought in bad faith." *Chevron Corp. v. Shefftz*, 754 F.  
23 Supp. 2d 254, 262 (D. Mass. 2010); accord *Minatec Fin. S.A.R.L.*  
24 *v. SI Group Inc.*, Civ. No. 1:08-CV-269 (LEK/RFT), 2008 WL  
25 3884374 at \*7-8 (N.D.N.Y. Aug. 18, 2008). Where, as here, the  
26 foreign tribunal lacks jurisdiction to compel the respondent to  
27 provide evidence, there is no attempt to circumvent foreign  
28

1 proof-gathering restrictions through a Section 1782 request. See  
2 *In re Chevron Corp.*, 709 F. Supp. 2d 283, 292-93 (S.D.N.Y.  
3 2010), *aff'd Chevron Corp. v. Berlinger*, 629 F.3d 297 (2d Cir.  
4 2011);<sup>9</sup> LMC Decl. ¶ 13. This application is a good faith effort  
5 to obtain relevant evidence for use in pending and anticipated  
6 Mexican civil proceedings.  
7

8 Moreover, the information sought is not inherently  
9 undiscoverable in Mexico, and the Mexican judiciary would  
10 consider the evidence if Applicants can acquire it elsewhere.  
11 See LMC Decl. ¶ 15. But even if this particular evidence were  
12 inherently undiscoverable in Mexico, that would not bar  
13 Applicants' discovery. As the Supreme Court has ruled, Section  
14 1782(a) does not require that evidence sought in the United  
15 States would be discoverable in the foreign tribunal. *Intel*,  
16 542 U.S. at 247, 253, 259-62; *accord In re Chevron Corp. (Uhl,*  
17 *Baron, Rana & Associates)*, 633 F.3d 153, 163 (3d Cir. 2011)  
18 (granting Chevron discovery regardless of whether foreign court  
19 denied Chevron the same documents, because court might offer  
20 limited discovery yet accept relevant evidence if procured  
21 without its assistance); *In re Chevron Corp.*, 753 F. Supp. 2d  
22 536, 540 (D. Md. 2010). This is so because "[a] foreign nation  
23 may limit discovery within its domain for reasons peculiar to  
24  
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<sup>9</sup> *Accord In re Republic of Ecuador*, No. C-10-80225 MISC CRB (EMC), 2010 WL 3702427, at \*4 (N.D. Cal. Sept. 15, 2010); *In re Republic of Ecuador*, 2:11-mc-00052 GSA, 2011 WL 4089189 at \*3 (E.D. Cal. Sept. 12, 2011).

1 its own legal practices, culture, or traditions - reasons that  
2 do not necessarily signal objection to aid from United States  
3 federal courts." *Intel*, 542 U.S. at 261.<sup>10</sup>

4       Indeed, where, as here, the foreign tribunal would accept  
5 information discovered in the United States, whether that  
6 tribunal itself permits the discovery of the same information is  
7 irrelevant. As the Supreme Court held, to preclude discovery in  
8 such circumstances "would serve only to thwart § 1782(a)'s  
9 objective to assist foreign tribunals in obtaining relevant  
10 information that the tribunals may find useful but, for reasons  
11 having no bearing on international comity, they cannot obtain  
12 under their own laws," and thus "would be senseless." *Id.* at  
13 262.

14       In sum, Section 1782 "authorize[s] discovery which, in some  
15 cases, would not be available in foreign jurisdictions"; "[i]f  
16 district courts were free to refuse discovery based upon [such]  
17 unavailability . . . § 1782 would be irrelevant to much  
18 international litigation, frustrating its underlying purposes."  
19 *In re Metallgesellschaft AG*, 121 F.3d 77, 80 (2d Cir. 1997).  
20 Thus, where a foreign court might be receptive to section 1782  
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25 <sup>10</sup> Nor may a district court refuse Section 1782 discovery because a foreign  
26 tribunal has not yet considered a similar discovery request. *In re*  
27 *Metallgesellschaft AG*, 121 F.3d 77, 79 (2d Cir. 1997). Because such a  
28 "quasi-exhaustion requirement" finds no support in the statute's plain  
language and contravenes its express purpose of improving assistance to  
foreign tribunals by imposing additional burdens on applicants, imposing such  
an extra-statutory requirement is an abuse of discretion. *Id.*

1 evidence, even if it declined to order production of the same  
2 evidence, "it would be a stretch to conclude that the section  
3 1782 proceeding was an attempt to circumvent [foreign]  
4 restrictions that somehow was offensive to the [foreign] court."  
5 *Chevron Corp. (Uhl, Baron, Rana & Associates)*, 633 F.3d at 163.

6  
7 Therefore, because Applicants seek discovery in good faith  
8 and do not seek to circumvent any foreign proof gathering  
9 restrictions, this factor likewise weighs in favor of granting  
10 discovery.

- 11 5. The discovery sought is narrowly tailored to the  
12 needs of the anticipated Mexican proceedings, and  
13 is neither burdensome nor intrusive.

14 Discovery under Section 1782 is governed by the Federal  
15 Rules of Civil Procedure, and may be as broad as the Rules  
16 allow. See, e.g., *In re 28 U.S.C. § 1782*, 249 F.R.D. 96, 106-07  
17 (S.D.N.Y. 2008); *Fleischmann v. McDonald's Corp.*, 466 F.Supp.2d  
18 1020, 1029 (N.D. Ill. 2006). Here, Applicants' discovery  
19 requests are limited in time and scope to information relevant  
20 to the specific Mexican proceedings that are currently pending  
21 or that Applicants intend to initiate shortly. In addition, the  
22 requests are confined to facts surrounding one particular event  
23 that occurred on August 6, 2014, its causes, and its aftermath.  
24 See LMC Decl. ¶ 13. The limited discovery sought from SCC is  
25 thus neither unduly intrusive nor burdensome and falls well  
26  
27  
28

1 within the scope of discovery that the Federal Rules allow.

2 **VI. CONCLUSION**

3 The information sought by this Application is essential to  
4 the full and fair adjudication of the Mexican proceedings. For  
5 the foregoing reasons, Applicants respectfully request that the  
6 Court enter an Order granting leave to serve SCC with the  
7 discovery attached to this Application as Exhibits A and B.  
8

9 **RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of April 2016.**

10  
11   
12

13 \_\_\_\_\_  
14 Christopher Benoit, Esq.  
15 THE LAW OFFICE OF LYNN COYLE, PLLC  
16 Marco Simons, Esq.  
17 EARTHRIGHTS INTERNATIONAL

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that, on the 11<sup>th</sup> day of April 2016, I obtained  
20 a summons and began the process of serving this Application upon  
21 Southern Copper Corporation.  
22

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Christopher Benoit