

expenses incurred by TGH in connection with defending against Guatemala's unsuccessful application for annulment and in pursuing its own application for partial annulment. In particular, TGH was awarded costs and fees in the amount of \$416,048.12.¹

3. On January 16, 2017, TGH filed a petition to confirm the Final Award in the United States District Court for the District of Columbia (the "D.C. Court"). *See* D.D.C. Case No. 1:17-cv-00102.

4. Guatemala appeared and participated in the litigation before the D.C. Court, including by filing a motion to dismiss the petition for failure to state a claim, which was denied. *See, e.g.*, D.D.C. Case No. 1:17-cv-00102, ECF Nos. 23, 34.

5. In October 2018, TGH moved for judgment on the pleadings or, in the alternative, summary judgment against Guatemala. *See* D.D.C. Case No. 1:17-cv-00102, ECF No. 36. In response, Guatemala filed its own motion seeking summary judgment or, in the alternative, limited discovery or a stay. *See id.*, ECF No. 39.

6. On October 1, 2019, the D.C. Court granted TGH's motion for summary judgment and denied Guatemala's cross-motion in its entirety. *See* D.D.C. Case No. 1:17-cv-00102, ECF No. 48.

7. The D.C. Court subsequently entered an Order and Final Judgment (the "Final Judgment") on November 4, 2019, confirming the Final Award and damages in favor of TGH and against Guatemala in the following amounts:

¹ Of that amount, \$273,652.39 was awarded to compensate TGH for costs and expenses incurred in contesting Guatemala's application for annulment, and \$142,395.73 was awarded to compensate TGH for costs and expenses relating to its own application for partial annulment.

- a. \$21,100,552, plus interest on that amount at the U.S. prime rate plus two percent from October 21, 2010 until the date of payment in full, compounded annually (calculated as \$35,036,448 as of the date of the Final Judgment); *plus*
 - b. \$146,058 (calculated as \$142,395.73 in costs, plus statutory interest²), plus post-judgment interest at the statutory rate pursuant to 28 U.S.C. § 1961; *plus*
 - c. \$279,731 (calculated as \$273,652.39 in costs, plus statutory interest³), plus post-judgment interest at the statutory rate pursuant to 28 U.S.C. § 1961.⁴
8. As of the date of this Affirmation, and by virtue of the accruing interest on the Final Award, TGH is entitled to damages in the following amounts, all of which are immediately due and owing:
- a. \$36,966,216.42 (calculated as \$21,100,552 plus \$15,865,664.42 in accrued interest); *plus*,
 - b. \$148,304.05 (calculated as \$146,058 plus \$2,246.05 in accrued post-judgment interest); *plus*,
 - c. 284,032.65 (calculated as \$279,731 plus \$4,301.65 in accrued post-judgment interest),
 - d. For a total of **\$37,398,553.12**

² This interest amount, which accrued on and after December 19, 2016, was calculated using the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors for the Federal Reserve System, for the calendar week preceding December 19, 2016, which was 0.894% per annum.

³ This interest amount, which accrued on and after April 5, 2016, was calculated using the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors for the Federal Reserve System, for the calendar week preceding April 5, 2016, which was 0.620% per annum.

⁴ The applicable post-judgment interest rate pursuant to 28 U.S.C. § 1961, calculated using the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors for the Federal Reserve System, for the calendar week preceding November 4, 2019 (the date of entry of the Final Judgment) is 1.57% per annum.

9. As of the date of this Affirmation, the entirety of those amounts is unsatisfied and all \$37,398,553.12 remains unpaid. Furthermore, interest will continue to accrue on those amounts until the Final Judgment is satisfied.

10. The Final Judgment was not obtained by default in appearance or by confession of judgment. Rather, it was issued following TGH's motion for judgment on the pleadings or, in the alternative, summary judgment, which Guatemala opposed. *See* D.D.C. Case No. 1:17-cv-00102, ECF No. 36.

11. Guatemala has appealed the Final Judgment, and that appeal remains pending with the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"); however, both the D.C. Court and the D.C. Circuit have denied Guatemala's request for a stay pending appeal. *See* D.D.C. Case No. 1:17-cv-00102, ECF No. 62; *see also* D.C. Cir. Case No. 19-7153, Doc. No. 1843809 (May 21, 2020 Order denying stay pending appeal). Thus, there is no stay precluding immediate recognition and enforcement of the Final Judgment.

12. The D.C. Court has granted TGH's motion for an order, pursuant to 28 U.S.C. § 1610(c), that a reasonable amount of time had elapsed since the entry of Final Judgment and that, as a result, TGH "may pursue all permissible methods of attachment or execution of Guatemala's property to satisfy" the Final Judgment. *See* D.D.C Case No. 1:17-cv-00102, ECF No. 68. This ruling satisfies the requirements for the commencement of judgment enforcement proceedings against a foreign sovereign under the Foreign Sovereign Immunities Act.

13. Guatemala has two previously known addresses:

Ministro de Economía
Ministerio de Economía Guatemala
8a Avenida 10-43 zona 1
Ciudad de Guatemala
Guatemala

and

Procurador General de la Nación
Procuraduría General de la Nación
15 Avenida 9-69 zona 13
Ciudad de Guatemala
Guatemala

14. Accordingly, the Final Judgment should be recognized and treated “in the same manner as a judgment of the supreme court of this state,” and should “be enforced or satisfied in like manner.” CPLR 5402(b).

Dated: October 28, 2020
New York, N.Y.

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