

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**PETERIS PILDEGOVICS
SIA NORTH STAR**

Applicants on Annulment

v

KINGDOM OF NORWAY

Respondent on Annulment

(ICSID Case No. ARB/20/11 – Annulment Proceeding)

NORWAY'S APPLICATION FOR SECURITY FOR COSTS

8 November 2024

A. Introduction

1. Norway hereby applies for security for (i) its costs in these Annulment Proceedings, and (ii) the interest due under the Award in this case dated 22 December 2023 on the sums of USD 597,307.04 and EUR 809,724.07 owing from Claimants, now Applicants, to Norway.¹ Security is requested in the sum of USD 1,000,000 to be deposited in an escrow account or provided as an unconditional and irrevocable bank guarantee within 14 days of the *ad hoc* Committee's Order. Norway makes this request in the context of its responsibility and accountability for uses of public money, and its duty to ensure that the public interest and public property is properly protected.
2. For the reasons set out further below:
 - 2.1 It is clear that the Applicants are impecunious, and initiated these annulment proceedings without sufficient resources to fund even ICSID's costs under the ICSID Administrative and Financial Regulations;
 - 2.2 There are exceptional and (although strictly unnecessary to demonstrate) urgent circumstances in this case which immediately prejudice Norway's interests as an Award creditor (and indeed the interests of ICSID), namely North Star's application for bankruptcy protection in the Latvian domestic courts;
 - 2.3 The amounts already owing to Norway under the 22 December 2023 Award were made subject to the payment of interest, and the continuing non-payment is thus increasing Norway's financial exposure;
 - 2.4 Further, the relief (as well as the quantum of relief sought) is reasonable and proportionate in this case.
3. This request is made under Article 47 of the ICSID Convention, which provides that the Tribunal may "*recommend any provisional measures which should be taken to*

¹ Norway does not seek security for the principal sums owing, because that debt (unlike the interest on it) is not the direct result of the initiation of these annulment proceedings.

preserve the rights of either party”. See also ICSID Arbitration Rule 39(1)² which provides that

At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.

4. Despite the use of ‘recommend’ in the language of these provisions, provisional measures such as security for costs, if ordered, are binding.³
5. Norway applies for these measures to safeguard its right to reimbursement of its costs and losses in the event that it prevails in resisting the annulment of the Tribunal’s Award of 22 December 2023 and the *ad hoc* Committee grants Norway some or all of its costs of these annulment proceedings.

B. The Applicants are impecunious and will be unable to satisfy any adverse costs Award made against them

6. The Applicants are plainly incapable of satisfying any adverse costs Award made against them in these proceedings. This is clear from, among other things, the following facts.
7. *First*, the Applicants have been unable to make timely payments to ICSID to discharge their obligations under the Administrative and Financial Regulations. Thus:

7.1 On 27 February 2024, ICSID requested that the Applicants made an advance payment of USD 200,000 to cover the costs of the “*initial phase of the proceedings*”.⁴

² PO-1 has not formally been issued, but it appears to be agreed that the 2006 Arbitration Rules govern this annulment proceeding.

³ **RL-0275-ENG** *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia’s Request for Security for Costs, 13 August 2014, para. 49; **RL-0277-ENG** *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent’s Application for Security for Costs), 13 April 2020, para. 68.

⁴ February 27, 2024 (second letter) from Leah W Njoroge, ICSID, to the Parties.

- 7.2 On 23 April 2024, following an email from Norway enquiring about the status of this payment,⁵ ICSID confirmed that a payment of only USD 52,000 had been made.
- 7.3 On 15 May 2024, following the Applicants’ failure to make the remainder of the payment, the Applicants wrote to ICSID confirming that they “*would not oppose a suspension of the proceedings*”, noting that it was “*difficult for the Applicants to provide any specific timetable on when the remainder of the funds will be provided*”.
- 7.4 On 17 May 2024, the proceedings were duly suspended. On 18 July 2024, ICISD wrote the parties to explain that, if payment was not received by 15 August 2025, the Secretary-General intended to discontinue the proceedings.
- 7.5 On 7 August 2024, the Applicants requested a one-month extension to that deadline. That extension was granted by ICSID on 9 August 2024, without seeking Norway’s view on the same.
- 7.6 Finally, on 16 September 2024, ICSID confirmed that it had received the remainder of the initial call for funds.
8. A party’s delays in making payments under the Administrative and Financial Regulations, in particular where proceedings are suspended, is evidence of the fact that party will be unable and/or unwilling to satisfy an adverse order for costs.⁶
9. Secondly, on 22 October 2024, North Star [REDACTED] entered legal protection from bankruptcy under Latvian law. North Star’s bankruptcy application describes its financial position, [REDACTED] [REDACTED].⁷
10. The stated purpose of the bankruptcy application is to “*settle all its creditors against whom the Company’s obligations have already fallen due*”, and to “*develop and agree*

⁵ **A-0137** Application for Legal Redress submitted by SIA North Star to the Court of the Vidzeme Suburbs of Rigas City on 22 October 2024.

⁶ **RL-0275-ENG** *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia’s Request for Security for Costs, 13 August 2014, para. 81.

⁷ **A-0137**, p.2.

with its creditors a plan ... which would best restore the solvency of the company". In other words, North Star is on its own admission insolvent and unable to pay its creditors (which include Norway) and is in a position in which it needs to be restored back into solvency.

11. The bankruptcy application notes that *"due to the fact that the Company's business activities have not been possible this year, no actual income has been generated during the year."* That sits uneasily with the statement made by the Applicants in their Reply submissions on the Continued Stay of Enforcement, only 6 months before the bankruptcy application, that: *"North Star does have assets and does have revenues"*.⁸ However:

11.1As to assets, the Applicants cited North Star's FY 2022 accounts. As Norway has already stated in its letter of 10 October 2024 to the Tribunal, that document is no longer accurate in that it does not account for the fact that North Star's position has changed significantly following the sale of two of its vessels for scrap. The bankruptcy application records that *"none of the vessels is currently used for the Company's economic activities."*

[REDACTED]

12. As a result of those two factors, namely (a) the sale of two of North Star's vessels for scrap; [REDACTED] there is little to no prospect of North Star's income increasing in such a way that it can lift itself out of bankruptcy. Contrary to the position stated by the Applicants, therefore, it appears that North Star does *not* have assets or revenues, or certainly does not have sufficient assets or revenues to satisfy any adverse costs Award.

⁸ Applicants' Reply Submissions on Continuation of the Stay of Enforcement at para. 15.

⁹ Claimant's Memorial in the Arbitration, ¶216(a)-(b).

13. *Thirdly*, Norway is not responsible for the Applicants' dire financial situation. The measures relied on by the Claimants (now Applicants) in the underlying arbitration proceedings took place as long ago as 2016-2017, but as recently as 2020 the Claimants' (now Applicants') counsel wrote to Norway in the following terms: "*the Claimants have substantial resources at their disposal and are both capable and willing to support the full cost of this matter without recourse to third-party funding*".¹⁰
14. Further, insofar as the Applicants, despite the above record, seek to allege that the actions of Norway in preventing them from harvesting snow crab are the real cause of their impecuniosity, that argument does not withstand scrutiny. It has been found *as a matter of fact* that it was measures implemented by Russia which prevented North Star from harvesting snow crab. Thus, the Award (which is not under any form of factual appeal) found that:
- [267] *The evidence before the Tribunal is that North Star's four vessels took the great majority of their catch in the Russian sector of the Loop Hole, which was where the greatest concentration of snow crab was to be found at the relevant time.*
- [493] *The real damage to North Star (and, by extension, to Sea & Coast) came about as a result of the September 2016 Russian ban on foreign vessels taking snow crab in the Russian part of the Loop Hole. While Norway understandably maintained close contact with Russia in relation to the snow crab stock in the Loop Hole, Norway cannot be held responsible for the actions of the Russian Federation. To the extent that it was the Russian action which caused the Claimants' loss, there has been no breach of the BIT and there can be no compensation in these proceedings.*
15. In these annulment proceedings, there is no appeal from those facts (nor could there be – *ad hoc* committees are not appeal bodies).
16. *Fourthly*, the Applicants have not satisfied the costs order in the Award and remain significantly and, as interest accrues, increasingly, indebted to Norway.
17. Taken together, all of these factors demonstrate that there is no realistic prospect that the Applicants will be able and willing to satisfy any adverse costs Award made against

¹⁰ **R-0465-ENG** Claimants' letter to Norway of 8 May 2020.

them and in favour of Norway. Without security, it will effectively be impossible for Norway to enforce and execute any adverse costs Award against the Applicants.

18. Indeed, the effect of these circumstances go beyond simply the interests of Norway, and affect ICSID itself. There is every reason for concern that the Applicants may be unable to make payments in respect of ICSID's fees. They have so far been able to make payments only with the assistance of substantial latitude, extensions and part-payments, as set out above.

C. Necessity, Proportionality and Urgency

19. Whether exceptional circumstances exist is largely a question of financial factors such as whether the Applicants can satisfy an adverse costs order, which have been addressed above.¹¹
20. Even were it the case, however, that impecuniosity alone does not *ipso facto* justify an order for security for costs, in this case the security sought by Norway is necessary, urgent and proportional to preserve its rights.¹²
21. For the reasons set out above, it is clearly necessary for the *ad hoc* Committee to grant the relief sought by Norway. If the relief is not granted there is a serious risk that any eventual costs Award made in favour of Norway by the *ad hoc* Committee will be practically useless. Norway's losses will have been increased because the annulment proceedings will have been continued at Norway's expense, and payment of the costs plus interest already awarded will have been further postponed.
22. There is no separate requirement of urgency.¹³ However, if there were, it would be satisfied in this case:

¹¹ **RL-0281-ENG** *Vercara, LLC (formerly Security Services, LLC, formerly Neustar, Inc.) v. Republic of Colombia*, ICSID Case No. ARB/20/7, Decision on Security for Costs, 27 September 2023, para. 85.

¹² **RL-0277-ENG** *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 28.

¹³ **RL-0276-ENG** *Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020, para. 67.

22.1 North Star is insolvent and appears to be teetering on the brink of bankruptcy.

Mr Pildegovics has submitted no evidence of his ability to satisfy any eventual costs order. Indeed, he was unable even to pay ICSID's advance in accordance with the Administrative and Financial Regulations.

22.2 Further, the measures sought cannot await the outcome of these annulment proceedings and any eventual Award on costs, as well as the time that it would take to enforce and execute such an Award. In particular, North Star has applied for legal protection from bankruptcy from the Latvian Courts. On the face of Section 38 of the Latvian Insolvency Law, exhibited by the Applicants, measures that can apparently be implemented include (*inter alia*):

2) *the alienation of movable property or immovable property or encumbrance with rights in rem in order to achieve the extension of the time limit for meeting the creditors' claims, or satisfying the claims of creditors; [...]*

4) *reorganisation of the debtor – commercial company [...].*¹⁴

22.3 North Star's debts apparently amount to some [REDACTED]. That is significantly more than their asset position as per the Financial Year 2022 accounts of [REDACTED]—and the position now is in fact worse, given the subsequent sale of two of North Star's vessels for scrap. Given the existence of the protection proceedings it is very likely that, unless measures are taken now, the Applicants will simply have no money left once these proceedings conclude. Taking even a relatively optimistic view of the potential timetable, a decision on the annulment application is likely only to be available at the end of the 2025 at the very earliest.

23. The measures sought by Norway are also reasonable and proportionate. Norway seeks security in the amount of USD 1,000,000. This is significantly less than the average costs of a respondent State in annulment proceedings. (The mean costs of Respondents in annulment proceedings in 2017-2021 were USD 1.4m, and their median costs were USD 1.2m.¹⁵) Norway does not seek security for the principal sums owing under the 2023 Award, because that debt is not the direct result of the initiation of these

¹⁴ See also Section 39 which apparently envisages creditors in North Star taking shares in the company.

¹⁵ **RL-0282-ENG** British Institute of International and Comparative Law, *2021 Empirical Study: Costs, Damages and Duration in Investor-State Arbitration*, (June 2021), p. 24.

annulment proceedings and neither party should be able to use annulment proceedings as a means of improving their financial position. The 2023 Award stipulated, however, that interest was payable on the amounts awarded at the Secured Overnight Financing Rate ('SOFR') plus 2%, compounded twice yearly from 20 February 2024, which equals around USD 100,000 per year. Loss of the interest is the result of the initiation of the annulment proceedings, and Norway will be seeking to recover it.

24. The following further facts are relevant to proportionality, and generally to the need for an order for the Security for Costs in this case in the amount sought by Norway:

24.1 *First*, these are annulment proceedings. Norway has an Award in hand, and the onus is firmly on the Applicants to set it aside on the limited grounds set out in the Convention. The Applicants, as award debtors, owe sums to Norway which they have not paid.

24.2 *Secondly*, if and to the extent that the Applicants say (and demonstrate) that they cannot put the sums sought by Norway into an escrow account, Norway alternatively would be content with a bank guarantee (which would of course not require parting with the full sums of liquid cash sought by Norway as security). In that regard, whilst Mr Pildegovics has asserted that it is not possible for North Star to obtain a bank guarantee,¹⁶ he has not set out whether (and if so what) steps he has taken to identify whether North Star *could* obtain such a guarantee or whether he himself could personally obtain such a guarantee in favour of both Applicants (or even just for his own benefit).

24.3 *Thirdly*, the need for security is proportionate in an annulment proceeding of this breadth, involving 22 grounds of annulment seeking to attack the Award, Norway and its counsel, and the Tribunal,¹⁷ including allegations of improper behaviour on the part of Norway and its counsel. The Applicants' case will demand a substantial reopening of the underlying proceedings, including examination of the time spent by the Tribunal on its deliberations and the drafting the Award. The

¹⁶ WS-PP01 at ¶7.

¹⁷ According to the Table of Contents in the Applicants' Request for Annulment of the Award, 22 February 2024.

speculative nature of the grounds for annulment is a further reason that the measures should be granted in this case.

24.4 *Fourthly*, the Applicants do not deny that Norway could repay any sums found wrongfully to have been paid to Norway. Norway reconfirms that it would indeed do this. Norway's interest is not in stifling the Applicants' application for annulment: but that must be balanced against the fact that Norway has an Award in its favour which has gone unpaid, and is now having to expend further public sums in defence of the annulment application.

D. Conclusion and Relief Sought

25. For the reasons set out above, Norway respectfully requests the Tribunal to Order the Applicants to deposit USD 1,000,000 into an escrow account or provide the same sum as an unconditional and irrevocable bank guarantee within 14 days of the *ad hoc* Committee's Order, as well as its costs in respect of this Request for Security for Costs.

8 November 2024

Respectfully submitted on behalf of the Kingdom of Norway

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