INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

GOLDGROUP RESOURCES, INC. (Canada),

Claimant,

v. ICDR Case No. 50-20-1400-0226

DYNARESOURCE DE MEXICO, S.A. DE C.V. (Mexico), and DYNARESOURCE, INC. (U.S.A.);

Respondents.

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Arbitration Agreement entered into by the above-named parties, and dated September 1, 2006, and having been duly sworn and having duly heard the proofs and allegations of the parties, do hereby AWARD as follows:

The Parties and the Arbitration Agreement

1. This matter comes before me as sole arbitrator in a dispute between Goldgroup Resources, Inc. ("Goldgroup"), a British Columbia corporation, with its principal place of business in Vancouver, British Columbia, Canada, and Respondents Dynaresource, Inc. ("DynaUSA"), a Texas corporation, with its principal place of business in Irving, Texas, U.S.A. and Dynaresource de Mexico, S.A. de C.V.

("DynaMexico"), a Mexican *sociedad anomina* with its registered office in Mazatlan, Mexico. Collectively, DynaUSA and DynaMexico are referred to herein as "Respondents."

2. DynaUSA, DynaMexico, and Goldgroup are parties to the Earn In/Option Agreement dated September 1, 2006 (the "Option Agreement").[1]

3. Article 8.5 of the Option Agreement states:

> 8.5 Governing Law/Jurisdiction. Subject to the applicability of Mexican law in respect to the shares of DynaMexico and the acquisition thereof, the venue and jurisdiction for any disputes related to this Agreement shall be in Denver, Colorado.

4. Article 8.16 of the Option Agreement states:

> 8.16 Dispute Resolution
>
> All questions or matters in dispute under this Agreement shall be submitted first to mediation and then if no resolution to binding arbitration pursuant to the terms hereof.
>
> (a) Any dispute shall first be submitted to a mediator, selected by the parties, by agreement at a neutral location, agreed to by the parties. All costs of the mediation shall be borne equally by the parties to the dispute.
>
> (a) It shall be a condition precedent to the right of any party to submit any matter to arbitration pursuant to the provisions hereof, that any party intending to refer any matter to arbitration shall have given not less than 10 days' prior notice of its intention to do so to the other party, together with the particulars of the matter in dispute. On the expiration of such 10 days, the party who gave such

[1] Ex. A to Verified Demand for Arbitration.

> notice may proceed to refer the dispute to arbitration as provided in paragraph (b).
>
> (b) The party desiring arbitration shall refer the dispute to binding arbitration in Denver, Colorado under the Rules of the American Arbitration Association ("AAA") by a single arbitrator selected by the parties. If the parties cannot agree, an arbitrator from the Denver area shall be selected by the AAA office in Denver. The arbitrator's decision shall be final, binding and non-appealable and may be enforced in any court. The parties shall each pay a pro rata share of the arbitrator's and AAA's charges for the arbitration. The arbitrator may, in his or her sole discretion, award attorneys' fees and out-of-pocket expenses to that party which the arbitrator, in its sole discretion, determines is the prevailing party.

5. The Option Agreement was "executed and effective as of" September 1, 2006 by Keith Piggott, C.E.O., and Thomas Lamb, President, on behalf of Goldgroup; by K.D. Diepholz ("Diepholz"), President, and Charles Smith, Secretary, on behalf of DynaMexico; and by K.D. Diepholz, Chairman/CEO, and Charles Smith, CFO, on behalf of DynaUSA.

The Arbitral Proceedings

(a) Pre-hearing proceedings

6. Goldgroup commenced this arbitration on March 10, 2014, by filing its Verified Demand for Arbitration. In the Verified Demand, Goldgroup named DynaMexico, DynaUSA, and Mr. Diepholz as Respondents.

7. At that time, Goldgroup was represented by Carlos Loperena and Alejandro Flores Patiño of Loperena, Lerch y Martin del Campo, Campeche 315, Piso 3, Col. Hipódromo Condesa, Mexico City, Mexico 06170 and Christopher Toll, Diego Hunt, and Kevin McAdam of Holland & Hart LLP, 6380 S. Fiddlers Green Cir., Suite 500, Greenwood Village, Colorado 80111.

8. On April 10, 2014, Respondents' lawyer, R. Bradley Lamberth of Steed Flagg Lamberth LLP, 1010 W. Ralph Hall Parkway, 2nd Floor, Rockwall, Texas 75032, wrote to the International Centre for Dispute Resolution ("ICDR"), and acknowledged receipt of the Verified Demand for Arbitration. According to Mr. Lamberth's letter, the letter was the three named Respondents' "response to Claimant's Verified Demand for Arbitration." The letter stated:

> Without waiver of any rights, arguments or defenses that they may have Respondents hereby refuse to submit to the ICDR/AAA for arbitration because, inter alia, Claimant's alleged disputes are not subject to a valid arbitration clause, are not within the scope of a valid arbitration clause, and/or Claimant has waived any arbitration right it might have had. These issues must be determined before a valid arbitration may proceed, and they are solely the province of a state or federal court having jurisdiction over each individual Respondent.

9. By letter to the parties dated June 20, 2014, the ICDR confirmed the appointment of the undersigned as sole arbitrator.

(i) Goldgroup's claims and Respondents' defenses

10. On July 29, 2014, Goldgroup submitted its Amended Demand for Arbitration. There, Goldgroup dropped Mr. Diepholz as a Respondent, and proceeded only with claims against the DynaUSA and DynaMexico entities.

11. In the Amended Demand for Arbitration, Goldgroup alleged the following claims: breach of contract (against both Respondents), declaratory judgment (against both Respondents), conversion (against DynaUSA), unjust enrichment (against DynaUSA), breach of fiduciary duty (against DynaUSA), for an accounting (against both Respondents), and civil conspiracy (against both Respondents).

12. On August 28, 2014, on behalf of Respondents DynaUSA and DynaMexico, Respondents filed "Respondents' Request to Dismiss or Stay Arbitration; And, Respondents' Objections, Response and Defenses to Amended Demand for Arbitration" (the "Response"). As its title suggests, the Response presented a comprehensive defense to the claims alleged in the Amended Demand for Arbitration, including both jurisdictional objections and defenses on the merits of Goldgroup's claims.

13. In summary, as to jurisdiction, the Response argued that the arbitration should be stayed in favor of a lawsuit that Respondents commenced in Denver, Colorado, *DynaResource de Mexico, S.A. de C.V. and DynaResource, Inc. v.*

Goldgroup Resources, Inc., Civil Action No. 1:14-cv-01527-MSK-KMT, United States District Court for the District of Colorado (the "Colorado Federal Court Lawsuit"). In the Colorado Federal Court Lawsuit, Respondents argued that the arbitration should be enjoined (a) for lack of a valid arbitration agreement; (b) because Goldgroup's claims fall outside the scope of the arbitration agreement; and/or (c) because Goldgroup waived its rights to arbitrate because of a lawsuit that Goldgroup commenced against Respondents in Federal Court in Mazatlan, Sinaloa, Mexico ("the Sinaloa, Mexico Lawsuit").[2] In the alternative, Respondents argued that the arbitration should be dismissed for substantially the same reasons as argued in the Colorado Federal Court Lawsuit.

14. As to the merits, Respondents alleged multiple legal and factual defenses including, for example: (a) Goldgroup's claims fail to state a claim upon which relief can be granted because Goldgroup's claims are not cognizable under Mexican law; (b) Goldgroup lacks standing; (c) Goldgroup failed to obtain authorization from "DynaMexico's shareholders" before bringing the claim for breach of fiduciary duty; (d) under Mexico law, any claim for breach of duties relating to the management and ownership of a corporation must be brought for the benefit of, and any award must be directed to and received by DynaMexico; (e) the breach of fiduciary duty claim is barred under Article 8.14 of the Option Agreement; (f) Goldgroup's claim for an

[2] *See* Respondents' Verified Amended Complaint for Declaratory and Injunctive Relief [Docket No. 19], filed September 8, 2014 in the Colorado Federal Court Lawsuit.

order amending the June 2000 Powers of Attorney held by DynaMexico's President is not a claim cognizable under Mexico law and is not within the ambit of the Option Agreement; (g) Goldgroup's claims to modify the Powers of Attorney are barred by the doctrine of ratification; (h) Goldgroup's claims for a declaration that the Powers of Attorneys were amended or modified by the Option Agreement fail for lack of proper consent and authorization and because they are not a subject of the Option Agreement, expressly or impliedly; (i) Goldgroup's claims are barred, in whole or in part, by its unclean hands and wrongful conduct, its comparative and contributory fault, and by its breaches of duties to Respondents; (j) Goldgroup's claims are barred under the business judgment rule; (k) Goldgroup's assertions that it has been somehow "deprived" of two positions on DynaMexico's Board is not a claim and, in any event, is barred; (l) Goldgroup's claim for conversion is barred because the issuance of additional stock by DynaMexico to DynaUSA in May 2013 does not constitute a conversion of any "property" of Goldgroup or for which Goldgroup has either legal title or the right to possess; (m) Goldgroup's claim for unjust enrichment is barred, either because it is not cognizable under Mexican law or because of existence of the Option Agreement; (n) Goldgroup's civil conspiracy is barred, either because it is not cognizable under Mexican law or because DynaUSA and DynaMexico cannot conspire with each other; (o) Goldgroup's claims are barred,

in whole or in part, based on account stated; and (p) Goldgroup has failed to mitigate its damages, if any.

15. When they submitted the Response, Respondents were represented by Brian S. Tooley, Katherine Haight, and Keith D. Tooley of Wellborn Sullivan Meck & Tooley, P.C., 1125 17th Street, Suite 2200, Denver, Colorado, and Mr. Lamberth and Jennifer Cloud of Steed Dunhill Reynolds Murphy Lamberth LLP, 1010 W. Ralph Hall Parkway, Suite 100, Rockwall, Texas.

(ii) Procedural Order No. 1

16. On August 29, 2014, I set a Preliminary Hearing Scheduling Conference at the offices of Sherman & Howard L.L.C., 633 17th Street, Suite 3000, Denver, CO 80202. I also directed Goldgroup to submit a brief in response to the Response by or before September 9, 2014, and gave Respondents the right to submit a reply brief by or before September 16, 2014. The parties provided these submissions as directed.

17. On September 11, 2014, the Preliminary Hearing was held as scheduled. Mr. Toll and Mr. McAdam appeared in person on behalf of Goldgroup, and Mr. Brian Tooley and Ms. Haight appeared in person on behalf of Respondents. Mr. Loperena and Mr. Flores attended by phone on behalf of Goldgroup, and Mr. Lamberth appeared by phone on behalf of Respondents.

18. On September 12, 2014, I set oral argument on Respondents' jurisdictional objections for September 25, 2014 at Sherman & Howard's Denver

offices. Subject to resolution of the jurisdictional objections, the parties also were directed to provide certain information regarding their availability for a hearing on the merits and for a further status conference in November 2014. Finally, in follow up to discussions at the September 11, 2014 Preliminary Hearing, the parties were directed to advise whether they objected to the application of the June 1, 2014 version of the ICDR's International Dispute Resolution Procedures. In case of objection, the June 1, 2010 version would apply because the arbitration was commenced before June 1, 2014.

19. On September 17, 2014, Respondents objected to the application of the June 1, 2014 International Dispute Resolution Procedures. Accordingly, on the same date, I directed that the June 1, 2010 International Dispute Resolution Procedures would apply. Elsewhere herein, these Dispute Resolution Procedures are referred to as the "Rules."

20. Before the oral argument on September 25, 2014, both parties submitted supplemental legal authorities for me to consider.

21. The oral argument proceeded as scheduled on September 25, 2014. Mr. Toll and Mr. McAdam appeared in person for Goldgroup, with Mr. Loperena and Mr. Flores participating by phone. Mr. Brian Tooley and Ms. Haight appeared for Respondents, with Mr. Lamberth participating by phone. Mr. Namén Téllez Neme of Téllez Neme, Reguera Tornel, S.C., Montes Urales 727 – PH, Col. Lomas de

Chapultepec, Del. Miguel Hidalgo, Mexico, D.F. 11000, also participated by phone on Respondents' behalf.

22. In Procedural Order No. 1 dated September 30, 2014, Respondents' Motion to Dismiss or Stay was granted in part and denied in part.

23. As noted in Procedural Order No. 1, Article 15 of the Rules expressly give an arbitrator jurisdiction to resolve the precise sort of jurisdictional objections that Respondents raised here:

> **Pleas as to Jurisdiction**
>
> **Article 15**
>
> 1. The tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
>
> 2. The tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
>
> 3. A party must object to the jurisdiction of the tribunal or to the arbitrability of a claim or counterclaim no later than the filing of the statement of defense, as provided in Article 3, to the claim or counterclaim that gives rise to the objection. The tribunal may rule on such objections as a preliminary matter or as part of the final award.

These are the Rules that Respondents agreed to apply here and the Rules that the parties incorporated into the Option Agreement. Thus, the Rules are binding upon the parties.

24. Procedural Order No. 1 dismissed Goldgroup's claims for unjust enrichment and conversion because those claims did not fall within the scope of the arbitration agreement in Article 8.16 of the Option Agreement, and thus were not arbitrable. *See* Article 15(1) of the Rules.

25. Procedural Order No. 1 deferred decision on "all other objections to arbitrability (including without limitation, Respondents' defense of waiver of the right to arbitrate) to a later time, as permitted under the Rules." *See* Article 15(3) of the Rules.

(iii) Choice of Law

26. At the September 25, 2014 oral argument, the parties hotly contested whether Goldgroup's claims were subject to Colorado law (as Goldgroup argued) or to Mexican law (as Respondents argued). The choice of law issue was not material to the decision in Procedural Order No. 1 regarding arbitral jurisdiction (*i.e.*, the decision would have been the same regardless of the substantive law applicable to Goldgroup's claims). Nonetheless, because the choice of law was in dispute, it was an issue that needed to be agreed or resolved, pursuant to Article 28 of the Rules.

27. Thus, Procedural Order No. 1 also directed the parties to try to agree concerning the law that should be applied to the remaining claims and defenses and to file a joint status report by October 14, 2014 regarding whether they had reached agreement, and if so, as to which law should apply.

28. In their October 14, 2014 Status Report, the parties reported that they had agreed that Mexican law should apply to Goldgroup's claims for breach of fiduciary duty, accounting, and civil conspiracy, but continued to dispute the law applicable to the claims for breach of contract and declaratory judgment. By email dated November 10, 2014, Mr. Toll gave notice that Goldgroup agreed that "Mexican law will apply to all claims in the arbitration"—*i.e.*, the same as Respondents' position. Accordingly, as agreed among the parties, the claims are subject to Mexican law.

29. In his November 10, 2014 email, Mr. Toll and the other lawyers from Holland & Hart withdrew from representing Goldgroup in the arbitration, with only Mr. Loperena and Mr. Flores remaining as Goldgroup's counsel.

(iv) November 11, 2014 Status Conference, Procedural Order No. 2, Procedural Order No. 3, and the submission of pre-hearing memorials

30. Procedural Order No. 1 also set a further pre-hearing Scheduling Conference for November 11, 2014, at Sherman & Howard's Denver offices. The conference was held as scheduled. Mr. Loperena and Mr. Alejandro Flores appeared by telephone on Goldgroup's behalf. Mr. Brian Tooley and Ms. Haight appeared in person on Respondents' behalf, with Mr. Lamberth, Mr. Téllez, and Mr. Raul Vale

Fernandez, Blvd. M. Ávila Camacho 40-1908, Torre Esmeralda, Lomas de Chapultepec, 11000 Mexico DF, participating by telephone. The ICDR also participated by telephone.

31. Based on the discussions at this Scheduling Conference, I issued Procedural Order No. 2. With the parties' concurrence regarding the dates and procedures, Procedural Order No. 2 set the merits hearing for June 1-5 and 8-10, 2015, as well as deadlines for memorials and other pre-hearing matters.

32. On November 25, 2014, Goldgroup filed its Second Amended Demand for Arbitration (the "Second Amended Demand"), as permitted under Procedural Order No. 2. The Second Amended Demand alleges claims for breach of contract (first claim—against both parties), declaratory judgment (second claim—against both parties), conversion (third claim—against DynaUSA), unjust enrichment (fourth claim—against DynaUSA), breach of fiduciary duty (fifth claim—against DynaUSA), for an accounting (sixth claim—against both DynaUSA and DynaMexico), and civil conspiracy (seventh claim—against both DynaUSA and DynaMexico). Although the labels attached to the claims are the same as in the earlier iterations of the Demand for Arbitration, each of the claims in the Second Amended Demand was re-cast as a claim under Mexican law.

33. On December 9, 2014, Respondents filed their "Amended Response and Statement of Defense (Appearing Under Protest)." Once again, Respondents

presented jurisdictional objections and defenses on the merits of Goldgroup's claims that were substantially similar to the objections and defenses included in their previous submissions. On January 20, 2015, to correct a typographical error, Respondents submitted a new page 16 to this pleading.

34. Also on January 20, 2015, Mr. Brian Tooley provided notice that Ms. Haight, Mr. Keith Tooley, and he, along with Mr. Lamberth and Ms. Cloud, were withdrawing (with Respondents' consent) from representing Respondents in this arbitration and that only Mr. Téllez and Mr. Fernandez would be representing Respondents in this arbitration going forward. Another lawyer, Sawyer Neeley of Sayles Werbner PC, 4400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270, who was copied on certain correspondence, also provided notice that he was also withdrawing from representing Respondents.

35. Procedural Order No. 3 dated January 20, 2015 amends Procedural Order No. 2 to address this change of counsel.

36. Consistent with the schedule in Procedural Order No. 2, Goldgroup submitted its Opening Memorial on January 27, 2015, along with various exhibits and a declaration from Mr. Keith Piggott ("Piggott Decl."). Respondents submitted their Opening Memorial on March 3, 2015, along with exhibits but without any witness evidence. Goldgroup submitted its Reply Memorial on April 6, 2015, and

Respondents submitted their reply on May 11, 2015 (still without any witness evidence).

(v) Procedural Order No. 4

37. On May 18, 2015, the arbitration was suspended for administrative reasons related to payment of required deposits, and on May 28, 2015, the merits hearing set for June 1, 2015 was postponed.

38. By email dated July 8, 2015, after the reasons for the suspension were removed, and after further discussions with and the agreement of all parties, the merits hearing was re-set for September 9-10, 2015 in Denver (the dates that Mr. Téllez requested in his July 8, 2015 email). At Goldgroup's request, I also agreed to issue a subpoena to compel the testimony of Mr. Diepholz, DynaUSA's Chairman and Chief Executive Officer, who did not submit a witness statement. I denied Goldgroup's request (which Respondents opposed in Mr. Téllez's June 26, 2015 email) for me to appoint an expert on Mexican law. Finally, I directed the parties to arrange for a court reporter to transcribe the hearing.

39. After additional colloquy, and given the fact that Mr. Diepholz is under Respondents' control, Respondents agreed (as stated in Mr. Téllez's July 10, 2015 email) that Mr. Diepholz would come to Denver to testify in person.

40. At Respondents' request (*see* Mr. Téllez's July 14 and July 20, 2015 emails), in order to accommodate Mr. Diepholz's travel schedule, the hearing was

rescheduled from September 9-10, 2015 to November 16-17, 2015. Mr. Téllez's July 24, 2015 email confirmed that these dates were acceptable to Respondents. With the parties' agreement (*see, e.g.*, Mr. Téllez's July 28, 2015 email), a telephonic Final Pre-Hearing Scheduling Conference was set for November 9, 2015.

41. Procedural Order No. 4 dated August 24, 2015, confirmed these dates and the previous directions regarding a court reporter, and set a September 10, 2015 deadline for any party to request a subpoena for testimony.

42. On September 10, 2014, Goldgroup requested that I issue a subpoena for Mr. Diepholz. On September 14, 2014, Mr. Téllez sent an email stating, "On behalf of the respondents confirmed that Mr. Diepholz will be present in person at the hearing in Denver. Therefore, we consider unnecessary subpoena requested by Goldgroup." On the same date, I wrote to the parties: "Based on Respondents' representations, a subpoena is unnecessary, given that Mr. Diepholz will be present in person at the hearing in Denver and thus available for cross-examination."

(vi) Procedural Order No. 5

43. On October 13, 2015, the ICDR notified the parties and the arbitrator by email that the ICDR had learned of a press release issued by DynaUSA. According to the press release, a court in Mexico City, Mexico had issued an order that purported to enjoin the parties and the American Arbitration Association ("AAA") from going forward with the arbitration (the "Mexico City litigation"). The ICDR requested that

the parties provide comment and that Respondents provide a copy of the court order referenced in the press release.

44. On October 19, 2015, Respondents, through Mr. Loperena and Mr. Flores, responded to the ICDR's request as follows:

> Regarding your request of information about the press release issued by Dyna, Goldgroup answers the following:
>
> Goldgroup has no knowledge of the actions mentioned in said press release.
>
> Goldgroup has informed us that the complaint was never served to Goldgroup, it does not recognize any of the claims mentioned in such press release and is of its belief that such claims are without merit. The Company is reviewing its options and intends to exercise all of its legal rights in order to have the purported judgement discussed in the Release disregarded, set aside or otherwise overturned, and further will seek damages for misrepresentation against Dyna and all relevant parties.

45. On October 19, 2015, Mr. Téllez asked for a five-day extension to provide comments and an English translation of the court order that Respondents mentioned in their press release. Mr. Téllez provided this translation by email on November 9, 2015.

46. The telephonic Final Pre-Hearing Scheduling Conference took place on November 9, 2015. Mr. Loperena and Mr. Flores appeared for Goldgroup, and Mr. Téllez and Mr. Vale appeared for Respondents.

47. During the conference, Respondents argued that the arbitration should be suspended in light of the order from the court in the Mexico City litigation.

Goldgroup disagreed, and argued that the arbitration should proceed. Among other reasons, Goldgroup argued that the Court in the Colorado Federal Court Lawsuit (*i.e.*, the lawsuit Respondents had commenced to enjoin the arbitration) had held that at least some of Goldgroup's claims were arbitrable and that the arbitration thus should proceed.

48. In accordance with directions issued during the Scheduling Conference, the parties submitted copies of relevant briefs and court orders from the Colorado Federal Court Lawsuit.

49. After considering the parties' arguments and supporting materials, I issued Procedural Order No. 5 dated November 11, 2015, which denied Respondents' application to suspend the arbitration. As explained there, and as detailed above, after Respondents raised their jurisdictional objections in 2014, both sides submitted for decision in this arbitration the question of whether Goldgroup's claims are arbitrable and the threshold question of whether I have jurisdiction to decide the arbitrability issue. These questions were resolved in Procedural Order No. 1. This decision is binding on the parties.

50. As described in Procedural Order No. 5 and herein, since Procedural Order No. 1, the arbitration has gone forward. Consistent with the schedule to which the parties agreed, each party has filed two written memorials in which each party argued its views on the merits of the case. Indeed, although the memorials,

collectively, continued to touch on the jurisdictional issue, the bulk of the parties' submissions focused on the merits of the claims and defenses under Mexican law.

51. As further described in Procedural Order No. 5, in the Colorado Federal Court Lawsuit, Respondents sought a declaration that the claims in the arbitration are not arbitrable, just as they did in this arbitration. Goldgroup moved to dismiss the lawsuit, arguing that the Colorado Federal Court lacks subject matter jurisdiction to decide any of Respondents' claims. *But Respondents disagreed, and vigorously argued that the Colorado Federal Court should decide the disputed arbitrability issues.*[3] Next, Respondents moved for summary judgment, and urged the Colorado Federal Court to decide, as a matter of law, that Claimant's claims are non-arbitrable.[4]

52. By order dated September 29, 2015, the Colorado Federal Court (Chief Judge Marcia Krieger) denied Respondents' motion for summary judgment and Claimant's motion to dismiss for lack of subject matter jurisdiction, and held that at least some of Claimant's claims (as well as Respondents' defenses) are arbitrable. As the Colorado Federal Court explained:

---

[3] *See, e.g., Plaintiffs' Response to Motion to Dismiss*, filed October 10, 2014 at 22-27.
[4] *See, e.g., Plaintiffs' Motion for Summary Judgment on All Claims for Declaratory Relief and Permanent Injunction*, filed October 22, 2014, and *Plaintiffs' Reply in Support of Motion for Summary Judgment on All Claims for Declaratory Relief and for Preliminary and Permanent Injunction*, filed November 26, 2014.

> [I]t is apparent to the Court that Goldgroup's Amended Demand for Arbitration expressly invokes provisions of the Option Agreement and that at least some of its claims are, at least facially, based on alleged breaches of the terms of that Agreement. Although the Plaintiffs assert a litany of arguments as to why arbitration should not proceed – the Option Agreement expired by its terms, Goldgroup has waived the ability to invoke arbitration in the U.S. by agreeing to DynaMexico's Bylaws . . . Mexican courts are already hearing the same matters, Goldgroup should be judicially estopped from raising these claims, the claims are meritless, etc.--nearly all of these are matters that are outside the narrow scope of this Court's threshold arbitrability determination and are more properly addressed to the arbitrator. The Court need only consider the Plaintiffs' contention that the "expiration" of the Option Agreement operated to extinguish any agreement by the parties to arbitrate; after all, if the Agreement has unambiguously expired, the parties' agreement to arbitrate would no longer be valid.
>
> The Court rejects that argument out of hand. . . Thus, the Court finds that the Option Agreement remains in effect in some respects, and thus, the parties' agreement to arbitrate disputes arising under that Agreement remain operative as well.

Opinion and Order Denying Motion to Dismiss and Denying Motion for Summary Judgment, slip op. at 13-14 (September 29, 2015)(the "Opinion and Order").

53. Based on the English translation of the order in the Mexico City litigation, sometime after the arbitration was commenced, Respondents sued Claimant in Mexico for damages for defamation. At some point in those proceedings, Respondents also asked the Mexican court to declare that the claims in the arbitration are not arbitrable.

54. Goldgroup, which contends that it never was properly served, never appeared in the case, which went forward without Goldgroup's participation. The AAA was named as a defendant, but likewise was never properly served, and thus did not appear in the Mexican City litigation either.

55. In response to Respondents' request (now for the third time and in a third forum) for a decision regarding whether Goldgroup's claims in this arbitration are arbitrable, the Mexican court held by order dated October 6, 2015, that the claims are not arbitrable. The Mexican court's order says that it precludes the AAA from hearing the arbitration, but did not purport to make any order concerning any arbitrator. Based on the evidence that both parties have presented, the Mexican court was not informed of either Procedural Order No. 1 or the Colorado Federal Court's September 29, 2015 Opinion and Order.

53. By shuffling from arbitrator to court to court in the hope of finding, through trial and error, a decision maker who would rule in favor of its position, Respondents appear to fundamentally misunderstand the nature of orders in arbitrations and court proceedings. When the parties submit an issue to an arbitrator or a court for a decision, they are bound by the arbitrator's or court's order, even if they disagree with that order, including Procedural Order No. 1 and the Colorado Federal Court's Opinion and Order. Thus, a disappointed party does

not have the right to continue to litigate or arbitrate by "shopping" the issue in forum after forum until that party finally achieves the result that it wants.

54. Rather, any challenge to an arbitrator's order or award should be presented to the arbitrator or as a challenge to recognition and enforcement under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Likewise, any challenge to the Colorado Federal Court's order should be presented to the Colorado Federal Court or (when possible) to the United States Court of Appeals for the Tenth Circuit.

55. Thus, Procedural Order No. 5 reaffirmed that the hearing on the merits set for November 16, 2015 would proceed as previously scheduled.

56. In reaction to Procedural Order No. 5, Mr. Téllez stated in his November 13, 2015 email that Respondents would not attend the November 16 hearing because Respondents contended that the order from the court in the Mexico City litigation was "way more mandatory than your resolutions and even the Denver judge (sic) resolution." Mr. Téllez's assertion is wrong for the reasons explained above.[5]

57. In reply to Mr. Téllez's email, by email to the parties dated November 13, 2015, I stated:

[5] Moreover, as discussed in more detail below, by litigating in a Mexican court, during the pendency of this arbitration, to try to stop this arbitration from going forward, Respondents breached the Option Agreement, and are liable for damages to Goldgroup.

> I acknowledge receipt of Mr. Téllez's email, and his comments are noted.
>
> All parties are invited to participate in the hearing, and will be provided a full and fair opportunity to present their respective positions. Pursuant to Article 23 of the International Dispute Resolution Procedures (June 1, 2010), however, the hearing will go forward regardless whether Respondents choose to participate. After the conclusion of the hearing, I will enter my award based on the evidence presented.
>
> I look forward to seeing counsel for both parties and their witnesses in Denver at 9:00 a.m. on Monday.

Respondents did not reply.

(b) The merits hearing and post-hearing proceedings

56. The hearing on the merits was held on Monday, November 16, 2015, at Sherman & Howard's Denver offices. Appearing on behalf of the Claimant were Mr. Loperena and Mr. Flores. Also present were Mr. Piggott, Chairman and CEO of Goldgroup Mining, Inc., and Ellie K. Liebenow, Registered Professional Reporter, Hunter+Geist, Inc., Denver, Colorado, who served as the reporter for the hearing. Although both Respondents actively participated in the arbitration from the outset, and although Respondents were aware of the hearing and had agreed to its date and location and to produce Mr. Diepholz for cross-examination, no one appeared on behalf of either Respondent at the hearing and Mr. Diepholz likewise did not appear.

57. At the hearing, I heard argument from Mr. Flores and Mr. Loperena and testimony from Mr. Piggott. In addition, Goldgroup submitted a notebook with

printed copies of PowerPoint slides and copies of various exhibits and legal authorities that were the focus of Goldgroup's presentation at the hearing ("Claimant's Hearing Materials").

58. The hearing concluded during the afternoon of November 16, 2015.

59. After the hearing, I issued Procedural Order No. 6 dated November 17, 2015. This order addressed post-hearing submissions and procedures. As directed in Procedural Order No. 6, Goldgroup provided Claimant's Hearing Materials to Respondents, and Respondents were given the opportunity to provide written comments by November 25, 2015. Despite receiving copies of Claimant's Hearing Materials on November 18, 2015, Respondents did not provide any written comments on November 25 or at any time thereafter.

60. Pursuant to Procedural Order No. 6, Goldgroup also provided Respondents with a copy of the written transcript of the hearing. Respondents provided no comments.

61. Under Procedural Order No. 6, each party was invited to submit invoices in support of any claim for costs (including attorneys' fees) and to comment in writing on any materials that the opposing party submitted. In response to Procedural Order No. 6, Goldgroup submitted various invoices concerning costs. In response to Procedural Order No. 6, Respondents did not submit any materials, and did not comment on the materials that Goldgroup submitted.

62. On December 15 and 17, 2015, I asked the parties if they had any further testimony or evidentiary submissions that they wished for me to consider. Neither party made further submissions. I declared the proceedings closed on January 5, 2016.

(c) Impact of Respondents' decision to stop participating in the arbitration

63. As a preliminary matter, before I resolve the merits of the parties' respective claims and defenses, it is appropriate to comment further on Respondents' decision to stop participating in the arbitration. Articles 23(2) and (3) of the Rules permit an arbitration to proceed and for the arbitrator to enter an award, despite a party's failure to appear at a hearing or its failure to provide requested evidence or to take other steps in the proceedings.

64. Here, no question exists that Respondents received appropriate notice of the November 16, 2015 hearing. Respondents agreed to this date, and also agreed to present Mr. Diepholz for cross-examination. Further, no dispute exists that Respondents received notice of Procedural Order No. 5 (denying the application to suspend the arbitration) and Procedural Order No. 6 (setting various deadlines for post-hearing submissions).

65. Article 23 provides that a party's failure to participate could be excused if there is "sufficient cause," as determined by the Tribunal. Here, Respondents' decision--after Procedural Order No. 5's denial of Respondents' application to

suspend--was not "sufficient cause" for Respondents to stop participating in the arbitration or to renege on its agreement to present Mr. Diepholz for cross-examination. For the reasons detailed above, Respondents submitted the issue of arbitrability for my decision, and are bound by Procedural Order No. 1 and the subsequent Procedural Orders and directions issued in this matter.

66. Moreover, Respondents had no right to pursue their arbitrability challenges in the Mexican City litigation. At Article 8.5 of the Option Agreement, Respondents agreed that the "venue and jurisdiction for any disputes" under the Option Agreement would be in Denver, Colorado. This is in addition to Respondents' agreement at Article 8.16 of the Option Agreement to arbitrate "[a]ll questions and matters in dispute" under the Option Agreement in Denver. Thus, by commencing and continuing the Mexico City litigation, Respondents breached the Option Agreement.

67. Respondents cannot use their own breaches of their obligations to justify their decision suddenly to stop participating in the arbitration on the eve of the merits hearing. Respondents' suggestion that the Mexican court's order precludes them from participating is irrelevant. By commencing and pursuing Mexican litigation, Respondents created the situation of which they complain, and Respondents' machinations could not and did not excuse their failures to continue to participate in the arbitration or Mr. Diepholz's failure to appear for cross-examination.

Resolution of Goldgroup's Claims and Respondents' Defenses

(a) Overview of the Option Agreement

68. As detailed in Recitals A-D of the Option Agreement, DynaMexico owned a mining concession and related assets (the "Existing Property") in Sinaloa, Mexico. On behalf of DynaMexico, Goldgroup applied for an additional mining concession of approximately 65,000 hectares on DynaMexico's behalf (the "Additional Mining Concession"), and agreed to contribute the Additional Mining Concession to DynaMexico upon execution of the Option Agreement. Together, as stated in Recital B, the Option Agreement refers to the Existing Property and the Additional Mining Concession as the "SJG Property."

69. In exchange for its contribution of the Additional Mining Concession, Goldgroup was granted the right to purchase up to a 50% equity interest in DynaMexico, with the right to convert the interest into an ownership interest in DynaUSA. Further, at Recital D, the parties stated their "wish to cooperate in the exploration and development of the SJG Property, on the terms and conditions hereinafter set forth" in the Option Agreement.[6]

70. Article 1 of the Option Agreement sets out the terms under which Goldgroup could exercise its rights and purchase stock in DynaMexico. The purchase was to occur in four stages beginning June 15, 2007 and ending March 15, 2011, and

[6] Option Agreement, Recitals A-D.

to acquire the 50% interest in DynaMexico, Goldgroup was to pay a total of USD$18,000,000.00 to DynaMexico.[7]

71. Goldgroup completed payment of the USD$18 million in 2011, and was granted the shares in DynaMexico.[8]

72. The Option Agreement contains various provisions regarding how the parties' relationship was to be governed, both during the period when Goldgroup was still making payments to acquire its interest in DynaMexico *and thereafter.* For example:

a. Article 7.3, "DynaMexico's Board of Directors," states that upon execution of the Option Agreement, DynaMexico's board was to consist of three directors, with two directors appointed by Goldgroup and one by DynaUSA. Upon Goldgroup's completion of the share purchase, the board was to have five directors, with two directors appointed by Goldgroup and two by DynaUSA, with the fifth director to be appointed jointly.[9]

b. Articles 7.4 and 7.5 provide procedures concerning director removals and resignations and filling director vacancies. Article 7.6 addresses the competence of directors appointed.[10]

---

[7] Option Agreement, Art. 1.
[8] Ex. **C-20**, Piggott Decl. ¶ 7.
[9] Option Agreement, Art. 7.3
[10] Option Agreement, Art. 7.4, 7.5 and 7.6.

c. Article 7.7 prohibits the parties from engaging in certain actions that would conflict with the exploration and development of the SJG Property.[11]

d. Article 7.9 establishes a Management Committee, which is to oversee "Expenditures," as defined in Article 1.4 of the Option Agreement.

> A committee (the "Management Committee") shall oversee the Expenditures and shall be comprised of 3 persons, one designated by DynaUSA and two designated by Goldgroup. The Board of DynaMexico shall oversee the keeping of DynaMexico in good standing and proper working order, and the Management Committee shall oversee the Expenditures and matters not related to keeping DynaMexico in good standing and proper working order. All Expenditures shall be expended in accordance with a budget approved by the Management Committee prior to such expenditure. The Management Committee shall be responsible for delivering quarterly reports to the Board of Directors of DynaMexico.[12]

Article 1.4 defines "Expenditures" as follows:

> "Expenditures" means the sum of all costs of maintenance and operation of the SJG Property (including without limitation all maintenance of concessions and rights/interests in the SJG Property), all expenditures on the exploration and development of the SJG Property, and all other costs and expenses of whatsoever kind or nature, including without limitation the Ejido agreement, those of a capital nature, incurred or chargeable with respect to the exploration of the SJG Property, and the placing of the SJG Property into commercial production.

---

[11] Option Agreement, Art. 7.7.

[12] Option Agreement, Art. 7.9. The parties re-affirmed their intention to work through the Management Committee in the Memorandum of Understanding dated July 29, 2008 (Ex. B to Ex. 3 to *Respondents' Amended Response and Statement of Defense (Appearing Under Protest)*).

e. Article 7.10 provides a right of first refusal in the event that either Goldgroup or DynaUSA sought to sell its shares in DynaMexico to a third party.[13]

(b) Events after Goldgroup completed its purchase of the 50% interest in DynaMexico that have resulted in the Parties' dispute

73. Although the parties disagree concerning the legal consequences, the basic facts underlying the dispute presented in this arbitration were not seriously disputed. After Goldgroup paid the required USD$18 million and became at 50% shareholder in DynaMexico, Goldgroup appointed Mr. Piggott and John Sutherland as directors.[14] At or about the same time, DynaMexico had USD$2.769 million in working capital.[15]

74. The parties cooperated, more or less amicably, until approximately June 2011.[16] At or about that time, DynaMexico's Board of Directors commissioned an independent expert (Mr. Giroux), approved by the Canadian Securities Commission, to complete a report (NI 43-101), which Canadian law required Goldgroup to submit, concerning gold reserves at the SJG Property.[17] Mr. Diepholz disagreed with the results of the report because it showed fewer gold reserves at the SJG Property than Mr. Diepholz contended were there and based on what he claimed he had been told by his independent advisers.[18] As a result, Mr. Diepholz tried to convince Mr. Giroux

---

[13] Option Agreement, Art. 7.10.
[14] Ex. C-20, Piggott Decl. ¶ 7.
[15] *Id.*
[16] *Id.* at ¶ 9.
[17] Hearing Trans. at 46-47; 118-120 (Piggott Testimony).
[18] *Id.* at pp. 48-49.

to change his report to state a higher amount of gold reserves, but Mr. Giroux refused.[19] Despite the disagreement between Mr. Diepholz and Mr. Giroux over reserves, Goldgroup believed that it was obligated to publish the results of Mr. Giroux's report, as required under Canadian law.[20]

75. This incident resulted in the cessation of communication (and cooperation) between the parties.[21] Instead of managing the affairs of DynaMexico through its Board of Directors and Management Committee as agreed in the Option Agreement, Mr. Diepholz, through a power of attorney granted to him in 2000 (years before the Option Agreement), managed DynaMexico unilaterally, as if Goldgroup were not a shareholder, the Management Committee did not exist, and Mr. Piggott and Mr. Sutherland were not directors.[22]

76. As Mr. Piggott testified, there have been no meetings of DynaMexico's Board of Directors since 2011 when the NI 43-101 report was issued, and the Management Committee stopped meeting at or around the same time, and thus did not approve budgets or oversee Expenditures.[23]

---

[19] *Id.*
[20] Ex. C-20, Piggott Decl. ¶ 9.
[21] *Id.*
[22] *Id.* at ¶ 10.
[23] Hear. Trans. at 70-72.

77. Instead of cooperating with Goldgroup to appoint the fifth member to DynaMexico's board of directors, as contemplated under Article 7.3 of the Option Agreement, DynaUSA refused and the Board continues to have only four members.[24]

78. As noted above, Article 7.9 of the Option Agreement vests in the Management Committee the authority to approve a budget that includes all Expenditures (as defined in the Option Agreement, Article 1.4), which must be expended in accordance with this approved budget. As Mr. Piggott testified, despite this provision, DynaUSA (through its Chairman and CEO, Mr. Diepholz) caused DynaMexico to incur various Expenditures without any authorization from the Management Committee.[25] These Expenditures, which Goldgroup contends were inappropriate, include the following:[26] (a) expenses to pay technical personnel to create a new drilling report; (b) unnecessary overhead costs; (c) the sale of a tractor for USD$535,000.00;[27] (d) an invoice from DynaUSA to DynaMexico for USD$1,044,952.00 in costs related to legal proceedings that DynaUSA commenced against Goldgroup and billed to DynaMexico;[28] (e) an invoice from DynaUSA to DynaMexico for USD$806,932.00, plus interest of USD$541,915.00 on an intercompany loan from DynaUSA to DynaMexico that dated back to 2001;[29] (f) payments under contracts with affiliated entities, including a contract with DynaMinas

[24] Ex. **C-20**, Piggott Decl. at ¶ 12.
[25] *Id.* at ¶ 13.
[26] *Id.*
[27] Ex. **C-4** to Claimant's Opening Memorial.
[28] Ex. **C-3** to Claimant's Opening Memorial.
[29] Ex. **C-5** to Claimant's Opening Memorial.

(a DynaUSA subsidiary), which has been paid the bulk of the revenues from the SJG Property.

79. Goldgroup does not argue that it was inappropriate for Mr. Diepholz to have a power of attorney, but instead points out that he could not use the power of attorney in a manner inconsistent with the Option Agreement's provisions.[30] Thus, Goldgroup argues that regardless of any power of attorney, any Expenditures that were incurred without Management Committee approval were unauthorized and in breach of the Option Agreement.

80. On May 17, 2013, Mr. Diepholz purported to convene a meeting of the shareholders of DynaMexico, but provided no notice to Goldgroup, the other 50% shareholder.[31] At this meeting, without Goldgroup's participation or agreement, DynaUSA and DynaMexico approved the issuance of new DynaMexico shares to DynaUSA as repayment of an alleged loan from DynaUSA to DynaMexico.[32] As a result, Goldgroup's 50% ownership in DynaMexico was diluted to 20%.[33] Goldgroup then commenced legal proceedings in Mexico against DynaUSA and DynaMexico, and brought claims under Mexican corporate law to challenge the formalities of the shareholders' meeting and reverse the "fraudulent capitalization of share capital," but

[30] Hearing Trans. at 58-61.
[31] Ex. **C-20**, Piggott Decl. ¶ 11.
[32] *Id. See also* Ex. **C-1**, Minutes of General Extraordinary Shareholders Meeting, May 17, 2013.
[33] Ex. **C-20**, Piggott Decl. ¶ 11.

did not bring claims for breach of the Option Agreement.[34] As discussed further below, Respondents contend that Goldgroup's commencement of these proceedings waived Goldgroup's right to arbitrate Goldgroup's claims in this arbitration.

81. In December 2012, DynaUSA sued Goldgroup in a Texas court.[35] Goldgroup defended the lawsuit, and raised the Option Agreement's arbitration clause as a defense, among other defenses, as discussed further below. After litigating for approximately 1.5 years and with Goldgroup incurring over USD$1 million in legal fees, DynaUSA dropped the lawsuit.[36]

82. Since then, as also discussed further below, Respondents have sued Goldgroup in Colorado and Mexico City, Mexico.

(c) Arbitral jurisdiction

(i) Goldgroup's claims and whether they present "questions or disputes under" the Option Agreement

83. In its Opening Memorial, and in contrast to its Second Amended Demand, Goldgroup asserted only four claims: (a) breach of contract against DynaUSA and DynaMexico (¶¶25-50); (b) failure to observe good faith obligations imposed by Mexican law against DynaUSA (¶¶51-77);[37] (c) for an accounting against

---

[34] *Id.*; Hearing Trans. at 40-41 (Loperena argument).
[35] Ex. **C-20**, Piggott Decl. ¶ 14.
[36] *Id.*
[37] In the Second Amended Demand (¶¶ 24-32), the claim was captioned as one for breach of fiduciary duty, although the substance of the claim was for breaches of duties of good faith that Goldgroup contends are implied under the Option Agreement through various provisions of the Mexican Federal Civil Code.

DynaUSA and DynaMexico (¶¶78-81); and (d) civil conspiracy against DynaUSA and DynaMexico (¶¶82-88).

84. In its Opening Memorial and at the hearing, Goldgroup made important concessions and clarifications regarding its claims and the relief that it is seeking:

a. As acknowledged in its Opening Memorial, Goldgroup is not pursuing the conversion and unjust enrichment stated in the Second Amended Demand.[38] Thus, I need not consider these claims further. Further, although the Second Amended Demand (¶¶ 12-13) includes a claim for "declaratory judgment," Goldgroup is no longer pursuing this claim separately, but only as part of the relief sought under its breach of contract and breach of good faith claims.[39] Similarly, at the hearing, Goldgroup argued it is no longer separately pursuing a claim for an accounting, but wants an accounting as part of the relief under its breach of contract and breach of good faith claims.[40]

b. At the hearing, Goldgroup conceded that Mexican law does not permit a claim for civil conspiracy but only for criminal conspiracy, and acknowledged that its civil conspiracy claim is really only a reiteration of its breach of contract and breach of good faith claims.[41] Thus, I need not consider a separate civil conspiracy claim further.

---

[38] Claimant's Opening Memorial at 15 n. 32.
[39] *Id.*
[40] Hearing Trans. at 86-91.
[41] Hearing Trans at 91-93.

c. Finally, at the hearing, Goldgroup reaffirmed that it is *not* seeking to recover any damages from DynaMexico, but only from DynaUSA.[42]

85. As noted, in Article 8.16 of the Option Agreement, the parties agreed to arbitrate "all questions or matters in dispute under this Agreement." Thus, as a threshold matter, I must determine whether Goldgroup's remaining claims present "questions or matters in dispute under" the Option Agreement.

86. *Breach of contract.* The parties do not dispute that Article 8.16 is broad enough to encompass all claims for breach of the Option Agreement. Indeed, as Respondents concede in their May 8, 2015 Reply to Goldgroup's Opening Memorial (¶2): "However, *the arbitrator has jurisdiction to resolve issues held under the Agreement*, the defendants do not accept the jurisdiction to solve company problems arising from the daily administration of DynaMexico" (emphasis added).

87. Goldgroup's first claim (breach of contract) is, by definition, a "question or matter in dispute under" the Option Agreement. Thus, the breach of contract claim is arbitrable, as are any other claims that are, in substance, breach of contract claims.

88. *Breach of good faith obligations under Mexican law.* According to paragraphs 51-77 of Goldgroup's Opening Memorial, this claim is for breach of obligations of good faith that Goldgroup contends are implied under the Option Agreement by various provisions of Mexican law. For example, Goldgroup points to Article 1796 of

[42] *Id.* at 78-79.

the Mexican Federal Civil Code: "From the time they are perfected, contracts obligate the parties not only to that expressly agreed, but also to the consequences which according to their nature result from good faith, custom and usage or the law."[43] Thus, this claim presents "questions or matters in dispute under" the Option Agreement, and thus is arbitrable.

89. *Accounting.* According to paragraphs 78-81 of Goldgroup's Opening Memorial, this remedy is available under Articles 2563 and 2569 of the Mexican Federal Civil Code, Article 287 of the Mexican Commercial Code, and the Option Agreement. As indicated, Goldgroup argued at the hearing that Article 2569 of the Federal Civil Code and Article 287 of the Commercial Code should be interpreted to mean that an accounting is a permissible remedy for a claim for breach of contract and breach of good faith. In any event, as presented, these are also "questions or matters in dispute under" the Option Agreement, and thus are also arbitrable.

(ii) The Option Agreement remains in effect after Goldgroup's purchase of shares in DynaMexico.

90. Respondents also argue that Goldgroup's claims under the Option Agreement are non-arbitrable because Respondents say that the Option Agreement (including without limitation, its arbitration clause) expired once Goldgroup purchased stock in DynaMexico through exercise of its rights under the Option Agreement. Respondents' contention fails because it ignores that the Option

[43] Ex. **C-8** to Claimant's Opening Memorial.

Agreement, by its own terms, expressly continues to govern certain aspects of the parties' relationship after the stock purchase was completed.

91. Under Article 1424 of the Mexican Commercial Code, disputes that fall within the scope of an arbitration agreement must be arbitrated unless "it is proven that said agreement is null, void, inoperative, or of impossible implementation."[44] The U.S. Federal Arbitration Act is in accord.[45] Here, the arbitration clause in the Option Agreement is valid and enforceable, as is the Option Agreement itself.

92. As Chief Judge Krieger observed in her September 29, 2015 Opinion and Order, which rejected Respondents' "expiration" argument:

> The Option Agreement contains no express provision setting a date by which it would terminate. Moreover, although certain obligations of the parties under the Option Agreement could be fully completed at some point in time (*e.g.* Goldgroup completed its capital contributions according to the stated schedule and Dyna Mexico completed its obligation of allowing Goldgroup to appoint two Board members), the Option Agreement contains other provisions that impose obligations on the parties that seemingly continue indefinitely or which have yet to be completed. For example, nothing in Article 7.9 of the Option Agreement suggests that the Management Committee's oversight over expenditures would expire at any point in time, and thus, the Option Agreement remains in force and effect as to that matter. Similarly, Article 7.3 calls for the selection of a fifth Director, an event which Goldgroup alleges has yet to occur. Once again, at least as it relates to that provision, the Option Agreement has yet to be completed.

---

[44] Art. 1424, *Mexican Commercial Code Annotated*, 2012 Bilingual Edition, Translated and Updated by J. Vargas (submitted by Respondents as an authority for me to consider in resolving Respondents' jurisdictional objections).

[45] *See* Federal Arbitration Act, 9 U.S.C.§ 2.

Opinion and Order at 14. I agree with this analysis.

93. In summary, the plain language of the Option Agreement demonstrates that it was intended to continue to govern certain aspects of the parties' affairs even if and even after Goldgroup exercised its rights under the Option Agreement to purchase stock in DynaMexico.

94. Respondents' related contention[46] that Mexican law prohibits an agreement outside of DynaMexico's bylaws concerning matters related to the governance of DynaMexico is ill-conceived and wrong. Respondents point to no provision in DynaMexico's bylaws or Mexican law that would invalidate the Option Agreement or render its arbitration clause unenforceable. Further, DynaMexico's bylaws are dated April 1, 2000,[47] while the Option Agreement is dated September 1, 2006. Given that DynaUSA and DynaMexico agreed to the Option Agreement *after* DynaMexico was formed and its bylaws went into effect, Respondents' own conduct demonstrates that they understood and were willing to be bound by the Option Agreement, including the provisions related to (for example) seats on the board of directors and the Management Committee.

95. Respondents' assertions ignore the cardinal principle of Mexican law (stated at Article 78 of the Mexican Commercial Code) that contracts are enforceable

---

[46] *See, e.g., Respondents' Amended Response and Statement of Defense* (12-9-14) at ¶ 5.
[47] Ex. **2** to *Respondents' Amended Response and Statement of Defense* (12-9-14) at ¶ 5.

and should be enforced.[48] As Goldgroup points out, consistent with basic Mexican law contract interpretation principles, DynaMexico's bylaws and the Option Agreement should be read together. Respondents point to no Mexican law authority that would compel a different result.

96. Moreover, by arguing that the Option Agreement should be interpreted to have expired upon the completion of Goldgroup's investment and thus negate, for example, the provision regarding appointment of the fifth member of DynaMexico's board of directors after Goldgroup completed its investment, Respondents also disregard Article 1853 of the Federal Civil Code. Article 1853 requires contracts to be interpreted to produce effects, and Respondents' expiration argument cannot be reconciled with this section.[49]

(iii) Goldgroup has not waived the right to arbitrate its claims.

97. Respondents also contend (and Goldgroup denies) that Goldgroup waived its rights to arbitrate the claims in this arbitration. Over the course of the arbitration, Respondents have relied on both Mexican law and U.S. federal court cases in support of their waiver submissions.[50] In substance, Respondents contend that if a party files a lawsuit concerning an arbitrable claim, the party waives the right to arbitrate that claim and that a party's failure to invoke its right to arbitrate when

---

[48] *See* Ex. **C-7** to Claimant's Opening Memorial.
[49] Ex. **C-8** to Claimant's Opening Memorial.
[50] *See, e.g., Respondents' Amended Response and Statement of Defense (Appearing Under Protest)* (12-9-14) at 3-4 and 30-32; *Respondents' Request to Dismiss or Stay Arbitration; And, Respondents' Objections, Response and Defenses to Amended Demand for Arbitration* (8-28-14) at 8-9.

defending a claim in litigation also waives its rights to arbitrate that claim. Under either Mexican law or U.S. law, Goldgroup has not waived its right to arbitrate, for the reasons explained below.

98. Respondents argue that Goldgroup waived its right to arbitrate by commencing a lawsuit in Mazatlan, Mexico (the "Mazatlan Litigation") in 2014. There, according to the initial complaint in that action,[51] Goldgroup sought declarations that the 2013 shareholders' meeting called without notice to Goldgroup was invalid, that the issuance of additional shares was void, and that the 2012 Financial Statements of DynaMexico were not properly approved. Goldgroup also sought preliminary injunctive relief with regard to the shares, and the Court granted a preliminary injunction in Goldgroup's favor.[52]

99. Under Article 21.3 of the Rules, "[a] request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate." Thus, under the Rules (which are incorporated into the Option Agreement), Goldgroup's efforts to obtain a preliminary injunction from the Mexican court did not waive the right to arbitrate.

100. Likewise, Goldgroup did not waive its right to arbitrate by bringing the claims pleaded in the Mazatlan Litigation. As both parties agree, the scope of the arbitration clause in the Option Agreement is relatively narrow, and only covers

---

[51] Ex. **4** to *Respondents' Amended Response and Statement of Defense* (Appearing Under Protest) (12-9-14).
[52] *Respondents' Amended Response and Statement of Defense (Appearing Under Protest)* (12-9-14) at pp. 3-4.

"questions or matters in dispute under this Agreement," rather than (for example) claims "arising out of or relating to" the Option Agreement.[53]

101. As a result, the arbitration clause applies to a smaller number of claims than the universe of claims that could arise between the parties based on their relationship. As a practical matter, this means that neither Goldgroup nor Respondents would be able to assert all possible claims that they might have against the other in either arbitration or in court. Instead, the limited scope of the arbitration clause necessarily leaves open the possibility of both arbitrable and non-arbitrable claims arising out of the same facts. In other words, litigation and arbitration concerning similar claims can both proceed simultaneously without necessarily waiving arbitration rights.

102. Here, based on the initial complaint in the Mazatlan Litigation, Goldgroup did not bring claims for breach of the Option Agreement, but for violations of Mexican General Law of Commercial Companies concerning, for example, technical requirements for calling and providing notice of a shareholders' meeting.[54] The alleged violations are not "questions or matters in dispute under this Agreement," and thus fall outside the scope of the Option Agreement's arbitration clause. This means that both the claims in this arbitration, which focus on breaches

---

[53] *Id.* at 4 n.2 (describing the arbitration clause as "narrow"); 7 ("This narrow arbitration clause does not apply to any dispute 'arising out of,' 'related to,' 'in connection with' or 'touching upon' the expired Option Agreement.").

[54] Ex. **4** to *Respondents' Amended Response and Statement of Defense (Appearing Under Protest)* (12-9-14).

of the Option Agreement, and the claims in the Mazatlan litigation can proceed simultaneously, and the Mazatlan Litigation is not a waiver of Goldgroup's arbitration rights.

103. Respondents also contend that Goldgroup waived its arbitration rights because Goldgroup participated in litigation that *Respondents* commenced in a Dallas, Texas, U.S.A state court (the "Texas Litigation").[55] In the Texas Litigation, Respondents sued Goldgroup on multiple theories arising out of the parties' relationship,[56] and dismissed the lawsuit immediately before Mr. Diepholz was supposed to testify.[57] In defense, Goldgroup raised the arbitration clause in the Option Agreement, along with various other defenses.[58] Again, given the relatively narrow scope of the arbitration clause in the Option Agreement, Goldgroup did not waive its arbitration rights in the Texas litigation, but instead reaffirmed them.

(d) Resolution of Goldgroup's Claims

104. Under Article 78 of the Mexican Commercial Code: "In mercantile agreements, each party assumes his obligation in the manner and terms he has chosen; the validity of the commercial transaction depends neither on compliance with formalities nor on specific requirements." In other words, commercial contracts

[55] Although not discussed in Respondents' Memorials, at pp. 3-4 of *Respondents' Amended Response and Statement of Defense (Appearing Under Protest)*, Respondents reference various other lawsuits that Respondents commenced against Goldgroup in Mexico. Respondents have provided no evidence that would allow any meaningful analysis of any "waiver" resulting from these proceedings. Thus, to the extent that Respondents relies on these lawsuits in support of the waiver defense, the waiver defense still fails.

[56] Ex. **3** to *id.*

[57] Hearing Trans. at 83-84 (Piggott Test.).

[58] Ex. **3** (pp. 29-31) to *Respondents' Amended Response and Statement of Defense (Appearing Under Protest)* (12-9-14).

generally are enforceable as drafted. Measured against this standard, no doubt exists that Respondents have failed to do what they are obligated to do under the Option Agreement.

105. ***Breach of obligations concerning the appointment of the fifth director of the Board of Directors (Article 7.3).*** Under Article 7.3, the Board of Directors of DynaMexico must consist of five directors, with two directors to be appointed by Goldgroup, two by DynaMexico, and the fifth director to be appointed by agreement of the Goldgroup and DynaMexico. By failing and refusing to work with Goldgroup to appoint the fifth director, Respondents have breached their obligations under Article 7.3 of the Option Agreement. Therefore, Goldgroup is entitled to declaratory relief, as detailed further below.

106. ***Breach of obligations concerning the Management Committee (Article 7.9).*** As described, under Article 7.9 of the Option Agreement, the Management Agreement is to continue to operate and "oversee the Expenditures and matters not related to keeping DynaMexico in good standing and proper working order." Expenditures are to be expended in accordance with a Management Committee-approved budget. As also described, since June 2011, Respondents have refused to work through the Management Committee, and DynaMexico has incurred Expenditures that were not authorized in a Management Committee-approved budget. By disregarding the Management Committee and incurring unauthorized

Expenditures, Respondents have breached their obligations to Goldgroup under Article 7.9.

107. Respondents seek to justify their conduct by relying on the powers of attorney granted to Mr. Diepholz in 2000.[59] Respondents are wrong. Mr. Diepholz's powers of attorney must be read in conjunction with the Article 7.9 of the Option Agreement, and the powers of attorney do not negate or circumvent the Management Committee's sole authority to approve budgets authorizing Expenditures, to oversee those Expenditures, and otherwise to perform as described in Article 7.9.[60]

108. As a result of Respondents' breaches, Respondents must account to Goldgroup for all Expenditures that DynaMexico has incurred since June 2011. Further, any Expenditures that have been incurred since June 2011 that were not included in a budget approved by the Management Committee were improper, and must be refunded to DynaMexico. To the extent that Mr. Diepholz caused DynaMexico to incur Expenditures not authorized by the Management Committee, it can reasonably be inferred that he (as DynaUSA's Chairman and CEO) was acting on DynaUSA's behalf. Thus, as a shareholder in DynaMexico, DynaUSA must refund to DynaMexico the unauthorized Expenditures that it (through Mr. Diepholz or otherwise) caused DynaMexico to incur.

---

[59] *See generally* Respondents' Opening Memorial at 7-9

[60] Nor can the powers of attorney be used to negate or circumvent any of Goldgroup's other rights under the Option Agreement, including, for example, Goldgroup's rights under Article 7.4 concerning the board of directors.

109. Article 1.4 defines "Expenditures" broadly, but definition focuses on "costs and expenses," not upon the sale of assets. The amounts for which DynaUSA must reimburse DynaMexico include, without limitation, the amount of USD$1,044,952.46 (detailed in Claimant's Exhibit C-3) for various legal expenses that DynaUSA originally paid. By contrast, the amounts that DynaMexico must reimburse do not include the proceeds from the sale of the tractor (detailed in Claimant's Exhibit C-4) because the sale itself was not a cost or expense. On the other hand, if as a result of the tractor's sale, DynaMexico incurred Expenditures that the Management Committee did not authorize, DynaUSA should reimburse those Expenditures to DynaMexico.

110. ***Breaches related to the dilution of Goldgroup's 50% interest in DynaMexico.*** As described above, in May 2013, Mr. Diepholz convened a meeting of DynaMexico's shareholders without notice to Goldgroup, and then caused DynaMexico to issue new DynaMexico shares to DynaUSA, purportedly as payment of an intercompany loan from DynaUSA to Dyna Mexico. As of the date of the Option Agreement, Respondents represented in Article 4(p) that "DynaMexico has no outstanding loans." Thus, the alleged justification for the issuance of the new shares appears to be suspect, at best. Nonetheless, as a result of the new shares, Goldgroup's 50% interest in DynaMexico, for which it paid USD$18 million, was diluted to 20%.

111. By issuing the new shares, Respondents deprived Goldgroup of the benefit of its bargain under the Option Agreement, and thus breached their obligation of good faith to Goldgroup, which is an implied term of the Option Agreement under Article 1796 of the Federal Civil Code.[61]

112. As Goldgroup correctly points out, it is ludicrous to think that Goldgroup (or any party) would agree to pay USD$18 million for a 50% equity interest in DynaMexico (plus board seats and other rights under the Option Agreement) and then face dilution without prior notice or without Goldgroup's consent.

113. Assuming for the sake of argument that the debt claimed by DynaUSA was real and due, Respondents had various options instead of diluting Goldgroup. For example, they could have renegotiated the payment terms or they could have seen that DynaMexico repaid the alleged debt through a loan from a third party (*e.g.*, a bank).

114. Against this background, Respondents' actions in suddenly declaring the "debt" to be due and "repaying" the debt with new DynaMexico shares can only rationally be viewed as bad faith effort to deprive Goldgroup of its bargained-for rights under the Option Agreement.

---

[61] *See* Ex. **C-8** to Claimant's Opening Memorial. *See also* Ex. **C-6(j)** to Claimant's Hearing Materials (As the Mexican federal courts have held, "[T]he principle of good faith should take priority throughout the contractual process, from the preliminary dealings until their normal culmination of performance and the consequent exhaustion of their bidding contents.").

115. Although Goldgroup is entitled to a declaration that Respondents breached their obligation of good faith under the Option Agreement and otherwise acted in violation of Goldgroup's rights under the Option Agreement, I lack the authority to grant Goldgroup's request that I order Respondents to hold a shareholder's meeting to unwind the issue of the new shares. Given the relatively narrow scope of the arbitration clause in Article 8.16 of the Option Agreement, this remedy should more appropriately be raised in the Mazatlan Litigation, the Mexican court proceedings where Goldgroup is asserting its non-arbitral claims for breaches of DynaMexico's bylaws and the General Law of Commercial Companies.[62]

116. ***Breaches related to lawsuits commenced by Respondents.*** Goldgroup also contends that Respondents breached the Option Agreement by suing Goldgroup in the Colorado Federal Court Lawsuit, the Mexico City Litigation, and the Texas Litigation. I agree, in part.

117. *Colorado Federal Court Lawsuit.* In the Colorado Federal Court Lawsuit, Respondents sought a declaration that the claims in this arbitration are non-arbitrable and other relief. Simultaneously, Respondents argued the same jurisdictional issues in this arbitration. By commencing the Colorado Federal Court Lawsuit and by continuing to litigate even after I determined that I had jurisdiction to determine the jurisdictional questions, Respondents breached their obligations to arbitrate under Article 8.16.

---

[62] *See* Claimant's Hearing Materials at 33.

118. As a result, Goldgroup seeks to recover the attorneys' fees and related costs that it incurred in connection with the Colorado Federal Court Lawsuit. In support, Goldgroup has submitted invoices from Holland & Hart, which pertain both to that firm's representation of Goldgroup in the Colorado Federal Court Litigation and in this arbitration. The invoices, which cover the period from November 20, 2013 through November 23, 2015, total USD$354,513.91.

119. Holland & Hart is a well-respected firm. The hourly rates charged ranged from USD$230.00 per hour to USD$565.00 per hour. I find that these hourly rates are reasonable for rates for paralegals, associate attorneys, and partner attorneys in the Denver, Colorado area. Moreover, based on the invoices, a significant portion of the work was performed by timekeepers (including Diego Hunt and K.C. McAdam) whose billing rates ranged from USD$230.00-USD$350.00 per hour.

120. Based on my understanding of the nature and complexity of the issues presented in the Colorado Federal Court Litigation and in the arbitration, I find that a total of USD$325,000.00 is a reasonable and appropriate amount of damages for breach of the Option Agreement or as attorney fees and out-of-pocket expenses that I have discretion under Article 8.16(a)(b) of the Option Agreement to award to Goldgroup as the prevailing party. Thus, DynaUSA must pay this amount to Goldgroup.

121. I decline to award the entire USD$354,513.91 claimed because Holland & Hart spent certain time arguing that arbitral jurisdiction existed over claims for conversion and unjust enrichment that I found were not arbitrable and arguing that Colorado law should apply before ultimately stipulating that Mexican law should apply.

122. *Mexico City litigation.* Goldgroup also argues that I should order DynaUSA to pay all legal fees that Goldgroup incurs in the Mexico City litigation. Goldgroup did not submit any invoices in connection with the Mexico City litigation. Thus, although I am not able to award a specific amount of fees, I find that Respondents flagrantly and in bad faith breached their obligations under Article 8.16 of the Option Agreement by seeking to enjoin this arbitration in the Mexico City litigation. Thus, Respondent DynaUSA must promptly reimburse Goldgroup for all amounts that Goldgroup incurs to challenge the Mexican court's order concerning arbitrability.

123. *Texas Litigation.* This lawsuit was captioned, *DynaResource, Inc. and DynaResource de Mexico, S.A. de C.V. v. Goldgroup Mining, Inc., Goldgroup Resources, Inc., Keith Piggott and John Sutherland*, Case No. DC-12-15031, 14th Judicial District, Dallas County, Texas. In the Texas Litigation, Respondents brought the following claims: (a) declaratory relief concerning Mexican corporate law issues related to the their ownership interests in DynaMexico and the ownership of information concerning the

SJG Project; (b) alleged breaches of a corporate resolution; (c) breach of fiduciary duty, misappropriation of trade secrets, and usurpation of a corporate opportunity; (d) tortious interference and business disparagement; (e) unjust enrichment; and (f) conspiracy.[63]

124. In defense, Goldgroup argued, *inter alia*, that the Texas court should either (a) dismiss the lawsuit in favor of the Mexican courts under the theory of *forum non conveniens;* (b) in the alternative, based on the argument that the claims "related to" the Option Agreement, enforce the forum selection clause in Article 8.5 of the Option Agreement and require the claims to be brought in Denver, Colorado; or (c) in the alternative, order that the claims must be arbitrated under Article 8.16 of the Option Agreement.

125. As described, Respondents dismissed the Texas Litigation on the eve of Mr. Diepholz's testimony, without any ruling on the Texas Motion to Dismiss.[64]

126. Based on Goldgroup's description of Respondents' claims in the Texas Litigation, it appears that none of those claims were arbitrable under the Option Agreement. Thus, in connection with the Texas litigation, Respondents did not breach Article 8.16 of the Option Agreement.

---

[63] *See* **Ex. 3** to *Respondents' Amended Response and Statement of Defense (Appearing Under Protest), Defendant Goldgroup Mining Inc. and Goldgroup Resources Inc.'s Special Appearance, and Subject Thereto, Motion to Dismiss, Etc.* at 12-16 (the "Texas Motion to Dismiss").

[64] Hearing Trans. at 84 (Piggott Testimony).

127. Likewise, based on the evidence in the record, I am unable to say that any of the claims "related" to the Option Agreement within the meaning of Article 8.5.

128. Moreover, given that Goldgroup's preferred remedy in the Texas Motion to Dismiss was a dismissal on *forum non conveniens* grounds in favor of the Mexican courts, the evidence does not support a finding that Goldgroup suffered damages *for breach of the Option Agreement* as a result of the Texas Litigation. Under Mexican law, damages must be the "immediate and direct consequence of the failure to perform an obligation, whether they have been caused or must necessarily be caused."[65] Based on the evidence presented, although Goldgroup incurred attorneys' fees and other costs in connection with the Texas litigation, Goldgroup has not established that those amounts were the "immediate and direct consequence of the failure to perform an obligation" under the Option Agreement.

Resolution of Respondents' Remaining Defenses

129. None of Respondents remaining defenses has any merit and several defenses are moot:

a. Although Respondents argued that Goldgroup's claims were not cognizable under Mexican law, Respondents are wrong, for the reasons demonstrated above.

[65] *See* Ex. **C-9** to Claimant's Opening Memorial (Mexican Federal Civil Code Art. 2110).

b. Contrary to Respondents' submissions, Goldgroup does have "standing" to bring its claims for breach of the Option Agreement, including the obligation of good faith thereunder.

c. Goldgroup has withdrawn its breach of fiduciary duty claim, and so I need not further address Respondents' defenses to this claim.

d. Goldgroup is not seeking an order amending or modifying the June 2000 Powers of Attorney, and I am not granting such an order.

e. Respondents have failed to present any evidence of Goldgroup's unclean hands, wrongful conduct, comparative and contributory fault, or breaches of duties to Respondents, and thus all of these defenses fail. The same is true of the defense of "account stated" and "failure to mitigate damages."

f. Respondents' business judgment rule defense also fails for lack of legal and evidentiary support.

g. Respondents' defense based on the assertion that a Mexican court has assumed jurisdiction over the additional shares of DynaMexico stock issued to DynaUSA also fails. As explained above, the claims in this arbitration are not in conflict with the non-arbitrable claims that Goldgroup has asserted in the Mazatlan Litigation for breach of DynaMexico's bylaws and provisions of Mexican corporate law related to shareholders' meetings.

Costs of the Arbitration

130. Pursuant to Article 8.16(a)(b) of the Option Agreement, I find that Goldgroup is the prevailing party in this arbitration and that it is entitled to recover the following "attorney fees and out-of-pocket expenses": (a) USD$2,795.00 for the transcript of the merits hearing; (b) reasonable attorneys' fees and other related costs that Goldgroup incurred in connection with this arbitration; and (c) all amounts paid to the ICDR for administrative fees and arbitrator fees.

131. The total amount for the ICDR's administrative fees and arbitrator fees is USD$85,613.00, and Respondents should bear this full amount, jointly and severally. Under Article 8.16(a)(b), each party was responsible for paying a "pro rata share of the arbitrator's and the AAA's charges for the arbitration." Respondents, however, have paid nothing. Instead, Goldgroup has paid Respondents' shares. Respondents thus are liable for any amounts that Goldgroup paid on their behalf, in addition to the amounts that Goldgroup paid on its own behalf.

132. Goldgroup presented invoices from the firm of Loperena, Lerch y Martin del Campo totaling USD$76,118.92 for Mr. Loperena's and Mr. Flores' fees and expenses, for the period from February 2014 through November 2015. I find that these fees and expenses are reasonable, as are their hourly rates (USD$375.00 per hour for Mr. Loperena and USD$330.00 per hour for Mr. Flores). Mr. Loperena and Mr. Flores represented Goldgroup well, and their fees appear to reflect considerable

efficiency, in light of the Respondents' very aggressive defense of these proceedings up to the time that Respondents stopped participating in November 2015. Thus, in addition to the amounts awarded with regard to Holland & Hart's fees, DynaUSA must pay USD$76,118.92 for Mr. Loperena's and Mr. Flores' fees and expenses.

Final Award

133. For the reasons set forth above, I hereby AWARD in favor of Goldgroup and against Respondents DynaMexico and DynaUSA the following declaratory and monetary relief:

a. The Option Agreement remains in full force and effect, and is enforceable, in accordance with its terms. This includes (without limitation) the arbitration clause in Article 8.16.

b. Respondents have breached their obligations to Goldgroup under the Option Agreement, as detailed above. Each breach of the Option Agreement is also a breach of Respondents' obligations of good faith, which arise under the Option Agreement, pursuant to Mexican law.

c. As provided in Article 7.3 of the Option Agreement, each of Goldgroup and DynaUSA are entitled to appoint two directors to the board of directors of DynaMexico, and the board of directors shall consist of five total members. Within no later than 30 calendar days from the date of this Award, Goldgroup and DynaUSA shall hold a meeting of the Shareholders of DynaMexico

for the purpose of appointing the fifth member of DynaMexico's Board of Directors, as required under Article 7.3 of the Option Agreement. Each of Goldgroup and Respondents shall act in good faith with respect to this appointment. The parties shall exchange, in writing, the names of potential candidates for the fifth director by no later than 10 calendar days from the date of this Final Award.

d.

i. As provided in Article 7.9 of the Option Agreement, the Management Committee continues to exist, and shall continue to exist unless and until the parties agree otherwise in writing. The Management Committee has all of the authority and responsibilities described in the Option Agreement. Thus, as provided in Article 7.9, the Management Committee has the authority to approve a budget for any "Expenditures" within the meaning of Article 1.4 of the Option Agreement. Any "Expenditures" that are not included in a budget approved by the Management Committee are improper and unauthorized. The powers of attorney granted to Mr. Diepholz before the date of the Option Agreement cannot be construed to authorize Mr. Diepholz to circumvent the Management Committee's power to approve and oversee Expenditures. Therefore, unless the parties agree otherwise in writing, neither he nor anyone else has any authority to cause DynaMexico to incur Expenditures that are not included in a budget approved by the Management Committee and overseen by the Management Committee.

ii. By no later than 20 calendar days from the date of this Award, Respondents must account to Goldgroup, in writing and with particularity and in detail, for any and all Expenditures that DynaMexico has incurred since June 2011. Further, any Expenditures that have been incurred since June 2011 that were not included in a budget approved by the Management Committee were improper, and must be refunded to DynaMexico by no later than 45 days from the date of this Award. To the extent that Mr. Diepholz caused DynaMexico to incur Expenditures that were not authorized by the Management Committee, I find that he (as DynaUSA's Chairman and CEO) was acting on DynaUSA's behalf. Thus, as a shareholder in DynaMexico, DynaUSA must pay to DynaMexico the full amount of unauthorized Expenditures that it (through Mr. Diepholz or otherwise) caused DynaMexico to incur from June 2011 through and including the date of this Award. The amounts that DynaUSA must pay to DynaMexico include, without limitation, the amount of USD$1,044,952.46 (detailed in Claimant's Exhibit C-3) for various legal and other expenses that DynaUSA originally paid.

e. By causing DynaMexico to issue new shares and thus dilute Goldgroup's 50% equity interest in DynaMexico, Respondents breached their obligations of good faith under the Option Agreement and otherwise acted in violation of Goldgroup's rights under the Option Agreement.

f. For the reasons explained above, Respondent DynaUSA must pay Goldgroup a total of USD$403,913.92 including (i) USD$325,000.00 for attorneys' fees and costs attributable to Holland & Hart; (ii) USD$2,795.00 for the cost of the hearing transcript; and (iii) USD$76,118.92 for attorneys' fees and costs attributable to Loperena, Lerch y Martin Del Campo.

g. The administrative fees and expenses of the ICDR, totaling USD$20,800.00, and the compensation and expenses of the arbitrator, totaling USD$64,813.00, shall be borne entirely by Respondents DynaUSA and DynaMexico, jointly and severally. Therefore, Respondent DynaUSA and DynaMexico, shall reimburse Goldgroup the sum of USD$85,613.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Goldgroup, upon demonstration by Goldgroup that these incurred costs have been paid.

h. By seeking to enjoin this arbitration in the Mexico City litigation, Respondents flagrantly and in bad faith breached their obligations under Article 8.16 of the Option Agreement and thus have caused harm to Goldgroup. Respondent DynaUSA must promptly reimburse Goldgroup for all amounts that Goldgroup incurs to challenge the order of the court in the Mexico City litigation concerning arbitrability.

i. To the full extent permitted by law, all relief granted to Goldgroup herein (whether declaratory, monetary or otherwise) is intended to be specifically enforceable.

55. All other claims and defenses are DENIED.

56. As provided in Article 8.16(a)(b) of the Option Agreement, this Award is final, binding, and non-appealable, and may be enforced in any court.

57. I hereby certify that, for the purposes of Article 1 of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in Denver, Colorado, United States of America.

August 24, 2016
Date

David B. Wilson
Sole Arbitrator

State of Colorado
City and County of Denver } SS:

I, David B. Wilson, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

August 24, 2016
Date

David B. Wilson
Sole Arbitrator

State of Colorado
City and County of Denver } SS:

On this 24th day of August 2016, before me personally came and appeared David B. Wilson, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

LISA R CRISSWELL
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20004004426
MY COMMISSION EXPIRES NOVEMBER 25, 2019