RDC RAILROAD DEVELOPMENT CORPORATION

RDC paid in full under CAFTA claim against the Republic of Guatemala

Pittsburgh, Pennsylvania, USA / December 3, 2013 — Railroad Development Corporation (RDC) today confirmed that it had been paid the full $14.6 million awarded in its six-year international arbitration against the Republic of Guatemala brought under the Dominican Republic-Central America Free Trade Agreement (CAFTA). On June 29, 2012, a Tribunal of the International Centre for Settlement of Investment Disputes (ICSID) unanimously ruled that Guatemala had violated the minimum standard of treatment set forth in Article 10.5 of CAFTA by engaging in conduct that was "arbitrary, grossly unfair, [and] unjust" towards RDC and awarded RDC full reparations.

RDC's Guatemalan affiliate, Ferrovías Guatemala (FVG), was awarded a 50-year concession by the Government of Guatemala in 1997 to revive, operate and develop the assets of FEGUA, the national railway of Guatemala which had been closed by the government in 1996. The requirements of the concession were considered unprecedented since it involved the revival of a completely-abandoned national railway by the private sector. After RDC successfully revived and operated the railway for seven years, the Government of Guatemala issued a Presidential decree in August, 2006 which declared the rolling stock contract of FVG's concession "*lesivo"* or "harmful to the interests of the State." The decree was issued by the Government after RDC refused to give into the Government's extortionate demands to renegotiate and surrender its key economic rights under the concession contracts. The *lesivo* decree caused FVG's railway business to collapse due to the environment of commercial uncertainty and political maneuvering. Ultimately, RDC was forced to shut down FVG's operations in Guatemala: the last train ran in September 2007 and since then the railway has literally disappeared, with even steel bridges being stolen for scrap in broad daylight (photos). RDC's ICSID claim was the first to use the investor-state dispute resolution mechanism under Chapter 10 of CAFTA.

After RDC successfully defeated two sets of jurisdictional objections raised by Guatemala, and following a hearing on the merits, the Tribunal issued its finding that Guatemala violated the CAFTA minimum standard of treatment which requires each state party to provide fair and equitable treatment and full protection and security to investors of the other parties. The Tribunal found that Guatemala used the "*lesivo* remedy…under a cloak of formal correctness allegedly in defense of the rule of law, [but] in fact for exacting concessions [from RDC] unrelated to the finding of *lesivo*."

As compensation for Guatemala's breach, RDC was awarded full reparations. The Tribunal awarded RDC damages and compound interest and also ordered Guatemala to pay for certain administrative expenses of the Tribunal. The compound interest and administrative cost awards were based upon the Tribunal's determination that Guatemala had caused an unnecessarily protracted jurisdictional phase and other postponements in the proceedings.

The Tribunal also determined that, upon full payment of the award by Guatemala, RDC must surrender its entire 82% interest in FVG to Guatemala or its nominee, thereby relinquishing any rights RDC might have under the railway concession. With the payment, RDC has been replaced by the Government of Guatemala as FVG's majority shareholder.

MORE >>

RDC's U.S. legal team consisted of C. Allen Foster, Kevin E. Stern, Ruth Espey-Romero, Regina Vargo and Precious Murchison of the international law firm Greenberg Traurig, LLP (www.gtlaw.com). Commenting on behalf of the Firm, Mr. Foster stated, "This first case under CAFTA established legal principles which will be applicable to future investment treaty cases and which will guide governments and foreign investors alike, including jurisdictional guidelines and principles relating to the definition of a 'covered investment,' the standard for 'fair and equitable treatment' and the circumstances in which costs will be awarded. The overall result demonstrates that governments must respect investments made by nationals of the contracting parties and that their expectation backed rights can be vindicated. It was an honor for our Firm to work with the consummate professionals at Railroad Development Corporation, who had the commitment and perseverance to carry this case to a successful conclusion."

RDC's Guatemalan counsel, Juan Pablo Carrasco of Diaz-Durán & Asociados Central-Law (www.central-law.com), commented, "RDC did not come to Guatemala for a long international litigation; it came to rebuild and operate a railroad for the benefit of the Guatemalan economy and citizenry. However, its commitment to Guatemala did not waver when it was blocked by the system. Instead, it vowed to change the system for the better, and that was achieved in this case. This result is an important precedent for Guatemala which strengthens the rule of law and shows that stability and protection of foreign investment is the key for the future development of the country."

RDC and FVG Chairman Henry Posner III commented, "The loss of the railway for a second time was a national tragedy, and it can truly be said that there were no winners in this case. But this now offers Guatemala the opportunity to once again look to the international railway investment community to develop the urban train, dry canal, Mexican rail link and other projects that the country aspires to. In this regard we pledge our full cooperation and support."

RDC is a privately held Pittsburgh-based railway management and investment company. For more information about RDC and its investment and management activities in the USA, Latin America and Europe, please visit www.RRDC.com.

CONTACTS:

RDC:	Robert A. Pietrandrea, *President*	Tel. (412) 928 0777
Diaz-Durán:	Juan Pablo Carrasco de Groote	Tel. +502 2383 6000
Greenberg Traurig:	C. Allen Foster	Tel. (202) 331 3100

# # # #