



November 15, 2018

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**VIA ELECTRONIC FILING**

Mr. Mark Langer  
Clerk of Court  
United States Court of Appeals  
for the District of Columbia Circuit  
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Re: *Anatolie Stati, et al. v. Republic of Kazakhstan*, No. 18-7047

Dear Mr. Langer:

Pursuant to D.C. Cir. R. Rule 28(j), appellant Republic of Kazakhstan (“Kazakhstan”) informs the Court that on November 6, 2018, the Amsterdam Court of Appeal in the Netherlands (the “Dutch Court”) issued the attached decision (“Decision”), in which it granted Kazakhstan the opportunity to substantiate its fraud claim following disclosures of further documents by the Stati Parties.<sup>1</sup> The decision means that the Dutch Court will not render a judgment on the Stati Parties’ application to enforce the arbitral award without an in-depth examination of all evidence supporting Kazakhstan’s allegations that the award was obtained by the Stati Parties’ fraud on the Tribunal. *See* Decision ¶¶ 2.15-2.23.

The Dutch Court’s decision was issued after written submissions by the parties (including a “statement of defence with exhibits” by Kazakhstan) and an extensive oral hearing on June 22, 2018. *Id.* § 2. The decision is based on the parties’ respective allegations and counter-allegations (not evidence), *id.* ¶ 2.21, and the court set a February 5, 2019 date for Kazakhstan to make further written submissions on its fraud defense, and ordered that the oral hearing would resume thereafter. *Id.* § 3.

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<sup>1</sup> Attached is a certified English translation and the original Dutch decision dated November 6, 2018.

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The fraud defense the Dutch Court will examine is the same one that the district court in this case declined, in erroneous reliance on the doctrine of futility, to permit Kazakhstan to present. *See* Opening Br. 45-56; Reply Br. 19-27. The decision below therefore stands in stark contrast not only to the decision of the English High Court, *see* Opening Br. 16-18, Reply Br. 23 & n.8, but also to the Dutch Court's present determination that the arbitral award at issue cannot be enforced under the New York Convention without a full examination of Kazakhstan's allegations of fraud and the extensive evidence relevant to those allegations.

Sincerely,

/s/ Jonathan S. Franklin

Counsel for Appellant

Attachment

**CERTIFICATE OF COMPLIANCE**

This letter complies with the type-volume limitations of Fed. R. App. P. 28(j) because the body of the letter contains 308 words. This letter complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the letter has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman typeface.

/s/ Jonathan S. Franklin

Jonathan S. Franklin

November 15, 2018

Counsel for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing Rule 28(j) letter with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on November 15, 2018. Service upon participants in the case who are registered CM/ECF users will be accomplished by the appellate CM/ECF system.

/s/ Jonathan S. Franklin  
Jonathan S. Franklin

November 15, 2018

Counsel for Appellant