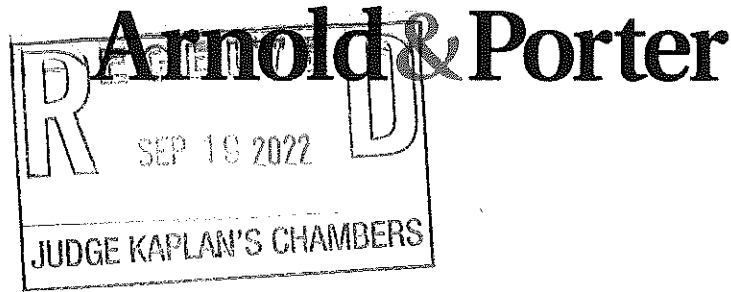
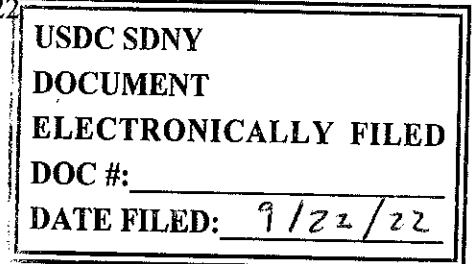


MEMO ENDORSED



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September 16, 2022



VIA FEDEX

Hon. Lewis A. Kaplan
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearle Street
New York, NY 10007

Re: *In re: Application of Webuild S.p.A. and Sacyr S.A.*, Case No. 1:22-mc-00140 – request to strike Second Expert Report of Christoph Schreuer

Dear Judge Kaplan:

On behalf of the Republic of Panama, we write concerning Webuild S.p.A's recent filing of the Second Expert Report of Christoph Schreuer ("Second Schreuer Report") in the above-captioned case. ECF No. 57. For the reasons that follow, the Second Schreuer Report should be stricken as an unauthorized filing.

On September 12, 2022, Webuild moved for leave to file (i) a sur-reply of up to 20 pages and (ii) a second opinion from Mr. Schreuer to rebut the opinion of Panama's expert Mr. Barton Legum. ECF No. 53. As Webuild noted in its motion for leave, Panama and WSP "would not oppose Webuild filing a sur-reply," on condition that such sur-reply was limited to issues arising from *ZF Automotive US Inc. v. Luxshare Ltd.*, 142 S. Ct. 2078 (2022), and did not exceed 10 pages in length. However, Webuild stated that Panama and WSP indicated that they would oppose the submission of a second opinion from Christoph Schreuer. ECF No. 53, at 1.

Indeed, on August 17, 2022, in response to Webuild's August 16 letter motion concerning its anticipated motion for leave, Panama had submitted a letter response to this Court, specifically objecting to Webuild's request to submit a rebuttal expert opinion from Christoph Schreuer with its proposed sur-reply. ECF No. 47. Panama pointed out that a second submission from Mr. Schreuer is unnecessary and would not assist the Court in its disposition of this case. That is particularly evident because Mr. Schreuer's prior report already sought to offer impermissible legal opinion about the interpretation of 28 U.S.C. § 1782, which is a question of U.S. law. ECF No. 47, at 2. Panama reserved its right to oppose Webuild's motion for leave.

On September 13, 2022, the Court granted in part and denied in part Webuild's motion for leave. The Court granted the motion only "to the extent that Webuild may file

Arnold & Porter

Hon. Lewis A. Kaplan
September 16, 2022
Page 2

a surreply of up to 10 pages to address ZF.” The Court expressly stated that Webuild’s motion was “otherwise denied.” ECF No. 55.

Contrary to the plain language of the Court’s order, on September 15, 2022, Webuild not only filed a 10-page sur-reply,¹ but also submitted a 19-page “Second Opinion” from Mr. Schreuer. Webuild states in its sur-reply that it “interprets the Court’s order as permitting its submission of the Second Schreuer Report” and that “[i]f Webuild is mistaken in this interpretation, it understands that the Court will disregard the Second Schreuer Report and consider only this Sur-Reply memorandum.” ECF No. 56, at 1 n.1.

Panama respectfully submits that Webuild is indeed mistaken in its interpretation of the Court’s order, which unequivocally granted Webuild’s motion only “to the extent that Webuild may file a surreply of up to 10 pages to address ZF.” ECF No. 55. It “otherwise denied” Webuild’s motion—meaning that it rejected Webuild’s separate request to submit the Second Schreuer Report. The proper course of action in this situation is not for the Court to simply “disregard” Webuild’s unauthorized filing, but to strike it from the record. Accordingly, Panama requests that Second Schreuer Report be stricken and excluded from the record of this proceeding. Alternatively, if the Court would prefer that it do so, Panama is prepared to file a formal motion to strike the Second Schreuer Report.

Respectfully Submitted,

/s/ Samuel Lonergan
Samuel Lonergan

cc: Carolyn B. Lamm, counsel for Webuild
David Hille, counsel for Webuild
Raymond DeLuca, counsel for WSP USA
Jeffery Mullen, counsel for WSP USA

¹ The sur-reply also includes an 18-page annex that was previously attached to the proposed Second Schreuer Report. *Compare* ECF No. 56-1 *with* ECF No. 53-2, at PDF pp. 21-39.

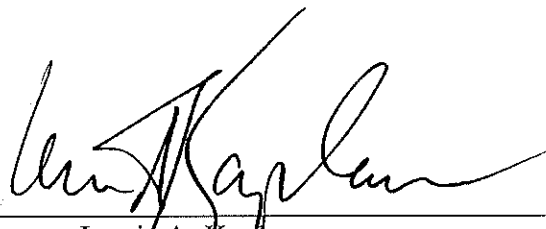
Memorandum Endorsement

Application of Webuild S.p.A, 22-mc-0140 (LAK)

The letter motion of the Republic of Panama to strike a Second Expert Report of Christoph Schreuer (Dkt 57), is granted. Notwithstanding the arguments in Webuild's letter, dated September 20, 2022, which the Court regards as exceptionally tenuous, the clear import of the Court's endorsed order of September 13, 2022 (Dkt 55) was to permit Webuild to file a surreply memorandum of up to 10 pages to address *ZF*. The point of denying the rest of Webuild's application was precisely to foreclose the submission both of a longer surreply and the request to file a second expert report.

SO ORDERED.

Dated: September 21, 2022

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", written over a horizontal line.

Lewis A. Kaplan
United States District Judge