



Warsaw, 4 May 2012

To: Bob Bacher Law Office

22 Granal Str.
02-0202 Castlewood
Reinoland
Phone: (0) 606-96- 27
Fax: (0) 860-31-10
E-mail: b.bacher@bacher.re

To: Den & Martinez Law Firm

To the attention of: Edvard Martinez

4 City Square
50-202 Capital City
Antylland
Phone: (0) 242-62- 00
Fax: (0) 821-72-72
E-mail: martinez@lawoffice.an

Subject: Case No SA 219/2011 – Procedural Order No 2

Dear Mr Bacher, dear Mr Martinez,

The Arbitral Tribunal hereby confirms receipt of the requests concerning the procedure and the facts of the case made by the parties. The members of the Tribunal have discussed the issues and decided to make the following clarifications regarding:

1. The Applicable Law

- 1.1.** For the purpose of this Moot, it can be assumed that Antylland, Reinoland and Poland are all signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

1.2. Moreover, they have all adopted Article 7 Option I of the UNCITRAL Model Law on International Commercial Arbitration (as amended in 2006).

2. The original contract between the parties concluded on 27 May 2008

2.1. The contract between Fireproof Security S.L. and Antylland Constructions S.A., concluded on 27 May 2008, was the first contract between the two parties.

3. The economic situation of Fireproof Security

3.1. The information regarding the economic situation of Fireproof Security, as given by Mr Bacher in the Statement of Claim, can be assumed to be true. Fireproof Security had to pay its suppliers, some of which had already filed payment claims.

3.2. Antylland Constructions was not aware of Fireproof Security's profit margin concerning the project at hand. At the request of the Arbitral Tribunal, Fireproof Security did not disclose its price calculation.

4. The settlement concluded between the parties on 30 January 2011

4.1. The Arbitral Tribunal was provided a complete version of the Settlement between the parties. It is, however, silent with regard to the issue of how possibly arising disputes should be dealt with.

4.2. The Settlement contains a list of the participants during the oral negotiations and the signing of the agreement. Mr Prospe as well as Mr Keisen were both present and legally represented by their lawyers during the entire process.

4.3. It can be deduced from the protocol to the previous negotiations that some provisions were suggested by Fireproof Security. The provision in § 5 para. 4 regarding the exclusion of further contractual penalties, for instance, was proposed by Mr Keisen.

5. The position and authority of Ms Cabra

5.1. At the request of the Claimant, the Respondent provided an additional excerpt of its entry in the Commercial Register, proving that Ms Cabra has been Deputy General Manager of Antylland Constructions S.A. since May 2007. She is still working in this position. The excerpt

contains only a rather general description of her tasks in the company, but does not point out any specific scope of authority.

- 5.2.** Further, Ms Cabra submitted a statement indicating that she did not have a chance to successfully contact Mr Prospe during his vacation. There is no record of any subsequent communication between Ms Cabra and Mr Prospe regarding the works for which Fireproof Security is claiming payment under notice No 96-B53 DES.

6. The installment of the F-90 Windows

- 6.1.** It is common to implement F-90 windows with G-90 glazing, double-boarded plasterboard panels and 1000 °C resistant mineral wool, and was also necessary in the project at hand to comply with the relevant fire regulations.
- 6.2.** As the general contractor, Antylland Constructions was responsible for hiring a drywall builder.
- 6.3.** Antylland Constructions alleges that the contract contains a clause stipulating Fireproof Security's duty to hand over the certification for the windows. So far, this fact has not been disputed by Fireproof Security.
- 6.4.** In the fourth stage of work of the project, 82 windows (type F-90) were installed. However, the parties did not provide the Arbitral Tribunal with any official document proving the quantity of destroyed or defective windows. The value of the defects and amount of costs for any repairs is unknown to the Arbitral Tribunal.

7. The partial inspections

- 7.1.** Fireproof was informed about the inspection conducted on 23 September 2010 beforehand, and was invited to attend to it. In fact, it did not send any representative.
- 7.2.** The constitution of the commission and the results of the inspection correspond to the protocol in Exhibit R2. The aim of the inspection was for Antylland Constructions to prepare the acceptance of the works carried out by Fireproof Security in the fourth stage of work. According to the payment conditions set out in the contract, the first three stages had already been accepted by Antylland Constructions.
- 7.3.** Although the Arbitral Tribunal has not seen any document confirming the receipt of a message from Antylland Constructions to Fireproof Security regarding the defects, Fireproof Security does not dispute the fact that they were informed about the detected defects.
- 7.4.** The partial inspection scheduled for "*Thursday of next week*" – i.e. 2 December 2010 – according to the e-mail dated 23 November 2010, was organised by Antylland Constructions

as well. The purpose of this inspection was to hand over the completed building complex to Antylland Constructions' client.

7.5. It is not known to the Arbitral Tribunal whether Fireproof Security offered to repair the defects detected during the partial inspection of 23 September 2010. The fourth stage was the last one scheduled to be performed by Fireproof Security. Other than this, the Arbitral Tribunal does not have any information about whether the defects were repaired or not. Apart from this, Antylland Constructions did not raise any claim with regard to costs for the repair of the defects.

8. Structure of the parties' statements

8.1. The parties are free in the structure of their memoranda, within the frame of the regulations set out in the rules to the Moot. They should present and substantiate their arguments in the way they consider to be the most persuasive. However, amendments to the arbitral claims cannot be made at this stage of the proceedings.

Yours sincerely,

Mr Chairman
(on behalf of the Arbitral Tribunal)