

INTERNATIONAL CENTRE FOR DISPUTE
RESOLUTION

Big Sky Juice, LLC, dba Afghanistan Natural Beverage, Claimant

v.

Overseas Private Investment Corporation, Respondent

ICDR Case No. 50 195 T 00233 12

FINAL AWARD

The undersigned Arbitrator, having been duly designated in accordance with the below mentioned arbitration agreement between Big Sky Juice, LLC (doing business as Afghanistan Natural Beverage) (“Big Sky” or “Claimant”) and Overseas Private Investment Corporation (“OPIC” or “Respondent”) dated April 11, 2007, and having been duly sworn, and having duly heard the allegations and proofs of Claimant and Respondent (referred to herein collectively as the “Parties” and individually as a “Party”), does hereby award as follows:

I. Introduction

This Final Award is made pursuant to the international arbitration rules (the “International Rules”) of the International Centre for Dispute Resolution (the “ICDR”) of the American Arbitration Association (the “AAA”) and the May 2008 Guidelines for Arbitrators Concerning Exchanges of Information (the “ICDR Guidelines”).

Claimant Big Sky is a limited liability company organized under the laws of the State of Colorado, having its place of business at 2452 Patterson, Suite 303, Grand Junction, CO 81505.

Respondent OPIC is a United States governmental agency established pursuant to *inter alia* 22 U.S.C. § 2191 *et seq.*, having its principal offices at 1100 New York Avenue, N.W., Washington, D.C. 20527.

The Parties entered into an Insurance Contract on April 11, 2007 (the “Insurance Contract”), covering Big Sky’s Investment (as defined therein) in Afghanistan Natural Beverage (“ANB”).

Section 10.04 of the Insurance Contract provides for submission of any controversy or claim arising out of or relating to the Insurance Contract to arbitration under the International Rules.

10.04 Arbitration

Any controversy or claim arising out of or relating to this contract shall be determined by arbitration in Washington, D.C. according to the then prevailing International Arbitration Rules of the American Arbitration Association. The number of arbitrator shall be three. Unless the Investor initiates arbitration, OPIC’s liability shall expire one year after OPIC

notifies the Investor of its final determination regarding an application for compensation. A decision by the arbitrator shall be final and binding, and any court having jurisdiction may enter judgment on it.

Notwithstanding the provision in Section 10.04 calling for three arbitrators, the Parties agreed at a conference call among the ICDR and the Parties on June 29, 2012 to proceed with the arbitration before a tribunal of one arbitrator rather than three arbitrators. The ICDR confirmed that agreement in a letter of the same date to the Parties.

In accordance with Section 10.04 of the Insurance Contract, the seat of this arbitration is Washington, D.C.

Section 10.07 of the Insurance Contract specifies that the Insurance Contract “shall be governed by and construed and enforced in accordance with the law of the State of New York as if all Parties were residents of that State.” Accordingly, New York law governs the substantive rights and obligations of the Parties under the Insurance Contract.

The undersigned Arbitrator issued a Partial Final Award in this matter dated February 21, 2014 (the “Partial Final Award”), a copy of which is appended hereto and incorporated by reference herein as if fully set forth herein. Terms defined in the Partial Final Award shall have their respective defined meanings when used herein.

Pursuant to the Partial Final Award, Respondent’s Dispositive Motion was granted and Claimant’s Statement of Claim was dismissed in full with prejudice. The Partial Final Award further required the Parties to comply with the process for submissions regarding apportionment of fees, costs and expenses set forth in Part VII of the Partial Final Award. Except with respect to that process for submissions regarding apportionment of fees, costs and expenses, the Partial Final Award was in full settlement of all claims submitted in this arbitration proceeding and, to the extent any such claim is not specifically mentioned herein, it was denied in the Partial Final Award.

2. Background

This Final Award addresses the issues reserved in Part VII of the Partial Final Award for further resolution, relating to apportionment of fees, costs and expenses of the arbitration. Pursuant to Part VII of the Partial Final Award, Respondent OPIC submitted to the tribunal Respondent’s Cost Submission dated March 7, 2014, with supporting schedules. In that Costs Submission, OPIC seeks US\$254,735.65 in fees, costs and expenses, plus 9% interest accruing from the date of this Final Award. In specific, OPIC seeks reimbursement of its share of the costs of the arbitration charged by the ICDR (US\$10,598.75), the attorneys’ fees and costs of counsel Debevoise & Plimpton LLP (US\$238,637.90) and expert witness fees and costs of certified public accountants Matson, Driscoll & Damico LLP (US\$5,499.00). OPIC seeks interest on the fees, costs and expenses awarded at the rate of 9% per annum simple interest, based on the default interest rate set out in New York C.P.L.R. § 5004.

OPIC further requests leave to file a supplemental statement of costs covering fees and expenses incurred in reviewing the Partial Final Award and preparing Respondent's Costs Submission.

After a mutually agreed one week delay in the briefing schedule, Claimant Big Sky filed its Response to Costs Submission dated March 28, 2014, opposing Respondent OPIC's Costs Submission. In that Response, Big Sky argued that the Arbitrator lacks authority to order apportionment of costs unless contained in a provision so stating in the arbitration agreement or by mutual agreement between the Parties. Respondent Big Sky additionally argued that the sums requested by OPIC were unreasonable in the circumstances.

Although Part VII of the Partial Final Award authorized OPIC to submit a reply to Big Sky's responsive submission not later than one week thereafter, OPIC did not submit such a reply.

The Arbitrator has carefully reviewed all of costs submissions and evidence presented by the Parties in these proceedings under Part VII of the Partial Final Award, even if a particular filing, schedule or exhibit is not specifically mentioned in this Final Award.

2. Request to Further Supplement Costs Submission Denied

The Arbitrator denies OPIC's request for leave to file a supplemental statement of costs covering fees and expenses incurred in reviewing the Partial Final Award and preparing Respondent's Costs Submission. Information about those fees and expenses could have been included in the Costs Submission if collected on an expedited basis. Granting leave for a supplemental costs submission in those circumstances, as well as providing Claimant Big Sky an opportunity to review and comment on such a supplemental submission, would further delay completion of this arbitration and increase the costs of these proceedings.

3. Analysis

A. Applicable Standards

The Insurance Contract is silent as to allocation of fees, costs and expenses incurred in an arbitration with respect thereto. Citing to New York law in its Costs Submission, Respondent OPIC argued that the Arbitrator has authority to apportion fees, costs and expenses by virtue of the agreement of the Parties to the International Arbitration Rules, including Article 31 thereof. Also citing to New York law, Claimant Big Sky argued in its Response to Costs Submission that the Arbitrator lacks authority to apportion fees, costs and expenses:

“in order for attorneys' fees to be appropriately awarded in an arbitration, they must be provided for in a statute or in the parties' agreement to arbitrate, or they must be requested by the parties during the arbitration process (see *Matter of Matza v. Oshman, Helfenstein & Matza*, 33 A.D.3d 493, 494, 823 N.Y.S.2d 47 [1st Dept. 2006]; see also *Matter of Warner Bros. Records [PPX Enters]*, 7 A.D.3d 330, 331, 776 N.Y.S.2d 269 [1st

Dept. 2004] [where both sides are on record as having requested attorneys' fees, award of such fees is appropriate]).” See *Bear Stearns & Co. Inc. v. Int'l Capital & Mgmt. Co. LLC*, 32 Misc. 3d 607, 611, 926 N.Y.S.2d 826, 829-30 (N.Y. Sup. Ct. 2011).

First, the arbitration law governing this proceeding is not New York law, which only governs the substantive rights and duties of the Parties under the choice-of-law provision in the Insurance Contract. See, among many others, *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63-64 (1995), most recently applied in *MQDC, Inc. v. Steadfast Ins. Co.*, Case No. 12-CV-1424 (ERK)(MDG)(E.D.N.Y. December 6, 2013, not for publication) at 6-7. As an arbitration sited in Washington, D.C. (not New York), the Federal Arbitration Act, the arbitration law of the District of Columbia and the applicable arbitration rules govern the question of whether, and when, an arbitrator has authority to apportion fees, costs and expenses and rules limiting that authority.

The Federal Arbitration Act is silent regarding the arbitrator’s authority to apportion.

District of Columbia Code § 16-4421, which is the applicable provision of D.C. arbitration law, authorizes an arbitrator under clause (b) to award reasonable attorney’s fees and other reasonable expenses of arbitration “if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.” (emphasis added) Moreover, clause (d) thereof additionally provides that “An arbitrator's reasonable expenses and fees, together with other expenses, shall be paid as provided in the award.”

§ 16-4421. Remedies; fees and expenses of arbitration proceeding.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(d) An arbitrator's reasonable expenses and fees, together with other expenses, shall be paid as provided in the award.

Section 16-4421 is copied from the 2000 version of the Revised Uniform Arbitration Act. Clause (b) requires only “the agreement of the parties,” not that such agreement be contained in the text of the arbitration clause itself. Nothing in that provision or in general contract law forbids the Parties from reaching that agreement by incorporating into their contract another instrument granting express authority to the Arbitrator. That is exactly what the Parties did in the Insurance Contract.

By agreeing in Section 10.04 of the Insurance Contract to the use of the International Arbitration Rules in arbitrations conducted under that Section, the Parties have granted the Arbitrator

apportionment authority “by the agreement of the parties to the arbitration proceeding.” Article 31 of the International Arbitration Rules, to which the Parties agreed by explicitly accepting the application of the Rules to their dispute, grants to the tribunal authority to apportion such fees, costs and expenses. Article 31 of the International Arbitration Rules provides as follows:

The tribunal shall fix the costs of arbitration in its award. The tribunal may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case.

Such costs may include:

- a. the fees and expenses of the arbitrators;
- b. the costs of assistance required by the tribunal, including its experts;
- c. the fees and expenses of the administrator;
- d. the reasonable costs for legal representation of a successful party; and
- e. any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 21.

The references to Section 7513 of the New York Civil Practice Law and Rules in Claimant’s Response to Costs Submission are simply inapposite to an arbitration sited in Washington, D.C. In fact, the contrast between the language of N.Y. C.P.L.R. § 7513 (“[u]nless otherwise provided in the agreement to arbitrate...”) and the language of D.C. Code § 16-4421 (“by the agreement of the parties to the arbitration proceeding”) illustrates one relevant difference between District of Columbia law and New York law in this regard (emphasis added).

The Arbitrator further notes that Claimant Big Sky itself originally sought recovery of fees, costs and expenses in its Statement of Claim at page 7, although it now finds itself arguing to the contrary. As Big Sky wrote in its Response to Costs Submission at Para. 5 (although again referencing New York law), “where both sides are on record as having requested attorneys’ fees, award of such fees is appropriate,” citing to *Matter of Warner Bros. Records [PPX Enters]*, 7 A.D.3d 330, 331, 776 N.Y.S.2d 269 [1st Dept. 2004]. Additionally, Big Sky did not raise any objection to the power of the tribunal to order apportionment of fees, costs and expenses of arbitration in its Response when OPIC sought recovery of those sums in Respondent’s Motion for an Award Pursuant to Article 16(3).

Apart from the issue of the general authority of the Arbitrator, Big Sky also argues in Paragraphs 7 and 8 of its Response that OPIC only sought “interest and costs” in its Statement of Claim, but not attorney’s fees and expenses. In support, Claimant asserts (without citation to authority) that “A request for appropriate interest and costs does not equate to a request for attorneys fees.”

Neither Article 31 of the International Arbitration Rules nor the Arbitrator take such a narrow view of the term “costs.” Article 31 states clearly that the term “costs” includes *inter alia* “the reasonable costs for legal representation of a successful party.” Moreover, Respondent OPIC was in fact clear in its request. In Paragraphs 69 and 70 of Respondent’s Motion for an Award Pursuant to Article 16(3), OPIC specified that its request for “costs” employed that term as used in Article 31 of the Rules, including the costs of legal representation.

Thus, the tribunal has authority to apportion costs, fees and expenses incurred by the Parties in this arbitration, if the tribunal determines that apportionment is reasonable, taking into account the circumstances of the case. Moreover, such costs may include fees and expenses of the undersigned Arbitrator, fees and expenses of the ICDR and reasonable costs for legal representation of the successful party.

B. Apportionment is Reasonable in the Circumstances

Respondent OPIC has prevailed completely in its Motion for an Award Pursuant to Article 16(3). Pursuant to the Partial Final Award, that Motion was granted and Claimant’s Statement of Claim was dismissed with prejudice. The grounds for the rulings in the Partial Final Award were based on, *inter alia*, Claimant’s failure to provide information repeatedly requested by OPIC in its claims determination process. As explained in the Partial Final Award, Big Sky failed to comply with basic requirements of the Insurance Contract. Big Sky did not submit additional persuasive information on those issues in connection with its Response to the Motion for an Award Pursuant to Article 16(3). As also explained in the Partial Final Award, to the extent Big Sky did present additional evidence, even in circumstances where the Arbitrator had ruled that such evidence was redundant of evidence already in the record, it was not responsive to the requirements of the Insurance Contract or persuasive.

As a result, OPIC has been required to unnecessarily expend the time and effort of public officers and public resources in the claims determination and arbitration processes. Granting recovery of legal and expert fees and expenses, as well as the fees and expenses of the ICDR and the tribunal, is partial compensation for that effort. In addition, this arbitration award, like others issued in disputes between insured parties and OPIC, may become public in accordance with federal law and practice. Awarding recovery of fees, costs and expenses to a prevailing party may serve to discourage parties from pursuing poorly considered claims or defenses in such proceedings.

In light of the foregoing, the Arbitrator concludes it is reasonable in the circumstances of this case to apportion fees, costs and expenses of the arbitration to the account of Claimant Big Sky.

C. Costs for Legal Representation are Reasonable

Article 31 of the International Arbitration Rules permits apportionment of the costs of a prevailing party’s legal representation where those costs are reasonable. The costs of legal representation included fees and expenses of counsel and fees and expenses of experts engaged

to cooperate with counsel in preparation of the claim or defense and presentation of expert reports and expert evidence to the tribunal.

The Arbitrator has reviewed the fees and expenses of Debevoise & Plimpton and Matson, Driscoll & Damico set out in the schedules supporting the Costs Submission. The supporting schedules provide reasonable detail in the circumstances for purposes of determining the work done.

Big Sky argues on several grounds in its Response to Costs Submission that OPIC's legal fees are not reasonable in the circumstances.

10. OPIC's counsel argues that their fees were reasonable and justified, and that they managed this case efficiently. See Respondents' Costs Submission at Paragraph 7-9.

11. However, it should be noted that OPIC's counsel clocked in excess of 400 hours associated with its representation of the Respondent. This is approximately three times the number of hours Claimant's counsel devoted to representation of its client.

12. A few notable entries from OPIC's counsel are as follows: Benjamin M. Aronson logged 47.3 hours in May 2012 and 49.40 hours in July 2012; Olivia Cheng spent 36.8 hours in August 2013; and William Taft logged 50.4 hours in September 2013 and Olivia Cheng logged 31.30 in that same month, with nearly 50 additional hours logged by other members of the firm in that same month.

13. It is Claimant's position that OPIC's counsel billed excessively in this matter. Therefore, Claimant should not be taxed with attorney's fees in the amount of \$254,735.65.

14. OPIC's counsel's second argument is that the fees are appropriate given the amount in controversy. It is never appropriate to judge fee amounts based on the damages. It should cost no more to defend a matter involving 200,000.00 in damages than it does to defend a matter involving 2,000,000. Indeed, the measure should be the complexity of the case. This was a simple contract dispute.

Notwithstanding Big Sky's arguments in its Response to the contrary, the fees and expenses shown on the supporting schedules submitted by OPIC, as well as the hours incurred in doing that work, are reasonable in the judgment of the Arbitrator for the nature of the dispute and the legal and expert services required. The reasonableness of the sums required to defend a claim are not limited by the sums that a claimant expends in making its claim, especially in circumstances such as this dispute. The issues in dispute, relating to interpretation of a political risk insurance policy for an investment in Afghanistan, and a claim on the basis of political violence in that country, are sufficiently complex to explain the fees and expenses recorded by OPIC.

Therefore, in light of the foregoing, the Arbitrator concludes that the legal costs of representation of prevailing party OPIC are reasonable.

D. Interest

Respondent OPIC seeks in its Costs Submission an award of 9% simple interest on sums awarded in this Final Award, accruing from the date of this Final Award until paid in full.

Both the Federal Arbitration Act and the District of Columbia arbitration law, D.C. Code § 16-4401 *et seq.*, are silent as to an arbitrator's authority to order post-award interest. Article 28.4 of the International Arbitration Rules, though, empowers a tribunal to "award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law." As noted above, the Parties expressly agreed in Section 10.04 of the Insurance Contract to be bound by the International Arbitration Rules.

District of Columbia jurisprudence affords deference to an arbitrator's view of his authority to order interest. Thus, in *Laszlo N. Tauber, M.D. & Assocs. v. Trammell Crow Real Estate Services, Inc.*, 738 A.2d 1214 (D.C. 1999), construing an earlier D.C. arbitration statute, the District of Columbia Court of Appeals rejected the losing party's argument that "the arbitrator exceeded his powers by ... awarding interest at a rate of 8.25% from the date of the arbitration decision."

The Court of Appeals commenced its discussion by referring to District of Columbia precedent establishing a deferential standard of judicial review (citations omitted):

"Even if there were an ambiguity with respect to whether a matter was within the arbitrator's authority, the question must be resolved in favor of arbitration." Furthermore, "an order to arbitrate the particular [dispute] should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Id.*, at 1218.

Tauber, seeking to vacate the award, claimed that provisions of the District of Columbia Code providing for judicially-ordered interest following court judgment had the effect of denying the arbitrator the authority to order accrual of interest from the date of the arbitration award itself ("the arbitrator misinterpreted the agreement as permitting him to go beyond the statutory provisions with regard to ... the proper date from which the interest is calculated.") *Id.* (footnotes omitted) Applying the deferential standard of judicial review set out above, the District of Columbia appellate court rejected that argument.

Although not directly comparable in light of *inter alia* the terms of the underlying contracts and the request here for post-award interest rather than pre-award interest, the U.S. District Court for the District of Columbia in *Oehme, van Sweden & Associates, Inc. v. Pinchuk* (D.D.C. Civ. No. 12-05 (JDB), Nov. 6, 2012), also applied a deferential standard of judicial review to an

arbitrator's decision awarding pre-judgment interest on the basis of current District of Columbia arbitration law, the AAA Construction Arbitration Rules and provisions of the applicable contract.

The Arbitrator concludes that, under the International Arbitration Rules and applicable Washington D.C. arbitration law, the tribunal has authority to order payment of interest accruing on the awarded sums after the award date. If the tribunal did not order interest to accrue on an unpaid award, then a losing party would have an incentive to delay honoring the award unless and until ordered to do so by a court of law. The great majority of arbitration awards are not enforced in court action, though. Consequently, that incentive is very real.

Having determined that post-award interest is appropriate under International Arbitration Rules Article 28, taking into account the contract and applicable law, the Arbitrator now turns to determining the proper rate of interest.

Respondent OPIC seeks 9% per annum simple interest (consistent with the rate specified for accrual of interest on money judgments pursuant to New York C.P.L.R. § 5004). An interest rate of 9% is high, in view of interest rates charged in the markets, and might be considered punitive in impact in these circumstances. The Insurance Contract does provide for New York law to govern the Parties' rights and obligations thereunder. However, the Insurance Contract does not contain a contractual interest obligation. Therefore, the tribunal is not required to look to New York law for an appropriate post-award interest rate.

In the absence of such a contract provision, interest would ordinarily accrue on a court judgment at the applicable rate in the forum where the dispute is adjudicated, regardless of the governing law clause in the contract. Here, the forum is an arbitral tribunal sited in Washington, D.C., not a court or arbitration in New York. Of course, the statutory post-judgment interest rate for District of Columbia court judgments is not binding for an award issued by an arbitral tribunal sited in Washington, because that statute by its terms addresses only court judgments. The District of Columbia post-judgment statutory rate is, however, more closely connected with this arbitration than a statute governing New York court judgments. Moreover, the statutory formula for determining post-judgment interest in Washington D.C. is indirectly derived from market interest rates, not a fixed rate such as New York's (which is quite high in comparison with current market rates). Section 28-3302(c) of the District of Columbia Code specifies a post-judgment rate that is 70% of the rate set by the U.S. Secretary of the Treasury for underpayments of income taxes.

The rate of interest on judgments and decrees, where the judgment or decree is not against the District of Columbia, or its officers, or its employees acting within the scope of their employment or where the rate of interest is not fixed by contract, shall be 70% of the rate of interest set by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2744; 26 U.S.C. § 6621), for underpayments of tax to the Internal Revenue Service, rounded to the nearest full percent, or if exactly 1/2 of 1%, increased to the next highest full percent

The formula in 26 U.S.C. § 6621(2) to calculate the Federal interest rate for underpayments of income taxes is the then-current short-term Federal rate plus 3%:

(2) Underpayment rate

The underpayment rate established under this section shall be the sum of—

(A) the Federal short-term rate determined under subsection (b)[determined by the Secretary of the Treasury], plus

(B) 3 percentage points.

The District of Columbia post-judgment rate under § 28-3302(c) is 70% of the resulting Federal rate, subject to rounding. According to the website for the District of Columbia Courts (<http://www.dccourts.gov/internet/globalcontentlocator.jsf>), for the calendar quarter beginning January 1, 2014 the District of Columbia formula produces a per annum rate of 2% simple interest. That rate has not changed for the succeeding calendar quarter. Taking into consideration the contract and applicable law, the tribunal considers the appropriate rate for accrual of interest on sums awarded hereby but remaining unpaid after the date of this Final Award to be 2% per annum simple interest (by reference to the annum rate of interest set out in D.C. Code § 28-3302(c) for post-judgment interest). Such post-award interest shall be calculated on the basis of a year of 360 days for the actual number of days elapsed.

The tribunal therefore orders that, if any amount awarded under this Final Award is not paid in full by the date 30 days after the date of this Final Award, then such interest shall accrue at such 2% per annum rate on the outstanding unpaid amount thereof from and after the date of this Final Award until paid in full.

The Arbitrator is aware that some (but not other) jurisdictions consider post-award interest to be the exclusive province of the courts and not within the authority of the arbitrators. The Arbitrator does not know the jurisdiction(s) in which this Final Award may be judicially enforced, if at all. Accordingly, to the extent such post-award interest is not permitted to be awarded in such a jurisdiction then, for purposes of that jurisdiction only, the award herein of post-award interest to Respondent OPIC shall be deemed severable and unenforceable without in any manner affecting any other provision of this Final Award or affecting the enforcement of the obligation of Claimant Big Sky to pay post-award interest as specified herein in any other jurisdiction.

E. Conclusion

In light of the foregoing, the Arbitrator concludes that Claimant Big Sky shall bear the fees, costs and expenses of this arbitration. In that connection, Respondent OPIC shall recover, and Big Sky shall pay, OPIC's share of the costs of the arbitration charged by the ICDR (\$10,598.75), the attorneys' fees and costs of counsel Debevoise & Plimpton LLP (\$238,637.90) and expert witness fees and costs of certified public accountants Matson, Driscoll & Damico LLP

(\$5,499.00). If Big Sky does not pay those sums in full by the date 30 days after the date of this Final Award, then to the fullest extent permitted by applicable law, interest shall accrue on the unpaid sum from the date of this Final Award until such sum is paid in full at the rate of 2% per annum simple interest calculated on the basis of a year of 360 days for the actual number of days elapsed.

AWARD

WHEREFORE, the undersigned Arbitrator hereby AWARDS as follows:

(a) Big Sky shall pay to OPIC the sum of Two Hundred Forty Four Thousand One Hundred Thirty Six Dollars and Ninety Cents (US\$244,136.90) for reimbursement of attorneys' fees and costs of counsel Debevoise & Plimpton LLP (\$238,637.90) and expert witness fees and costs of certified public accountants Matson, Driscoll & Damico LLP (\$5,499.00).

(b) The administrative fees and expenses of the International Centre for Dispute Resolution ("ICDR") totaling US\$9,200.00 and the compensation and expenses of the Arbitrator totaling US\$21,197.50, shall be borne entirely by Big Sky. Therefore, Big Sky shall reimburse OPIC the sum of US\$10,598.75, representing that portion of said fees, expenses, and compensation previously incurred by OPIC.

(c) If Big Sky shall not have paid to OPIC in full the amounts specified in Clauses (a) and (b) above by the date 30 days after the date of this Final Award, Big Sky shall, to the fullest extent permitted under applicable law, pay interest to OPIC on the amount of Two Hundred Fifty Four Thousand Seven Hundred Thirty Five Dollars and Sixty Five Cents (US\$254,735.65), being the sum of the amounts specified in Clauses (a) and (b) above, outstanding from time to time, at a per annum rate of 2% per annum, calculated on the basis of a year of 360 days for the actual number of days elapsed, for each day from and including the date of this Final Award to but excluding the day such outstanding amount is paid in full. To the extent such post-award interest is not permitted to be awarded in any jurisdiction then, for purposes of that jurisdiction only, this Clause (c) shall be deemed severable and unenforceable without in any manner affecting any other provision of this Final Award or the enforcement of this Clause (c) in any other jurisdiction.

