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October 30, 1990

Davor Harasic Yaksic, Esquire
c/o Sheraton Carlton Hotel
16th & K Streets, N. W.
Washington, D.C. 20006

Dear Mr. Harasic:

It was a pleasure to meet with you and Messrs. Powell and Holzworth today.

Based on the guidelines which you outlined for us, our firm can commit to provide a report to the Government of the Republic of Chile on or before December 15, 1990. The report would: 1) examine the various legal options open to the Government, including both domestic (U.S.) and international options; and 2) evaluate the probability of success of each of the options. This evaluation would include an assessment of the evidence.

In considering international options, we will focus initially on the 1914 Treaty, but there are several other treaties which bear examination, as well. In examining relevant treaties, we will consider both the forum aspects and the possibility that one or more of the treaties may enunciate a substantive standard which could be incorporated into a domestic remedy, as well. We will also examine the International Court of Justice as a possible forum. On the other hand, since the report you request is one which will examine legal remedies, we will not attempt to comment on the possible outcomes of continued diplomatic discussions.

On the domestic side, there are three possibilities. One of them, (a resolution of reference by one of the Houses of Congress to the Court of Claims), will be given only the briefest treatment in light of the concerns which we both have as to its feasibility and in light of your concerns about the appropriateness of the Republic of Chile seeking such a

ATTORNEYS AT LAW

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resolution. Of the other two (a suit for a taking in the Court of Claims or a suit under the Federal Tort Claims Act in a United States District Court), we can already advise you that the Federal Tort Claims Act suit is the more likely to have some chance of success. Our report will, however, consider the taking claim and the reasons why it is unlikely to succeed based on established legal doctrines in this country. If your government were to decide that a suit should be filed under the Federal Tort Claims Act, the preferable forum for such a suit would be the United States District Court for the Eastern District of Pennsylvania which sits in Philadelphia. We will explain the reasons why that is so in the report.

Should we be retained for this project, I would be the partner responsible for the engagement. I would be assisted by partners and associates in our offices in Philadelphia and Washington. Our Los Angeles office may also be of assistance because of its proximity to the University of California at Davis. Messrs. Herzog and Adler, whom you met today, would be part of our team. We also have the capability to deal directly in Spanish.

As we understand the assignment, we believe it will be necessary to spend some time with the scientists at the University of California at Davis, plus those scientists at SERCCAL Laboratories whose work is cited in the October 2, 1990 press release issued by the Asociacion de Exportadores de Chile. In addition, we may want to retain our own consulting scientist to assist in the evaluation of the work done by these other institutions and by the FDA.

With respect to matters of Chilean law, we would propose to rely on your advice, or, to the extent you felt it necessary, upon such other attorney in Chile whom you may recommend. As you know from our conversation, we are particularly concerned about the subrogation question; but we would also want to examine whether the government could act in a parens patriae role for its citizens and whether there is any other doctrine under Chilean law by which the government could "stand in the shoes" of the exporters and importers who initially suffered the losses.

Further, we would wish to consult a responsible official of the Chilean government who could reliably inform us whether the government suffered any injury apart from the

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payments made to exporters, the loss incurred in connection with the debt-swap mechanism, and the loss of taxes. An example might be out-of-pocket expenses incurred in investigations which were necessary in order to protect the rights of Chilean citizens. While the sums may be small in comparison to the total loss suffered, such damages may give the government standing to appear in a U.S. Court.

All of the consultations noted above could be arranged, of course, either in the U.S. or in Santiago. We believe it would be more efficient (from the standpoint of the utilization of lawyer's time) to do it in the U.S., but we would be prepared to do it in either location.

In the course of preparing our report we expect to draw heavily upon David Holzworth, counsel for the Exporters Association. While we will draw our own independent conclusions, we are aware of the considerable knowledge Mr. Holzworth has of this whole matter. As you know, we have recently worked closely with Mr. Holzworth in a related matter.

We believe that the report can be prepared at a fee in the range of \$220,000 to \$260,000, and we would be willing to commit not to exceed \$260,000, with reduction from that number in the event our time is less than presently expected. Our out-of-pocket expenses, including retention of any consultants, would be in addition to our fee. We would bill upon completion of the report and would expect prompt payment.

For your information, I am enclosing a small brochure about our Firm entitled "Recent Representative Engagements."

Sincerely,

John G. Harkins, Jr. p R34

John G. Harkins, Jr.

Enclosure