

The Honorable Lonny R. Suko

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TECK METALS LTD.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

10	TECK METALS LTD.,)	Case No. CV-05-411-LRS
11)	
12	Plaintiff,)	
13	v.)	LETTER OF REQUEST FOR
14)	INTERNATIONAL JUDICIAL
15	CERTAIN UNDERWRITERS AT)	ASSISTANCE PURSUANT TO THE
16	LLOYD’S, LONDON AND CERTAIN)	HAGUE CONVENTION ON THE
17	LONDON MARKET INSURANCE)	TAKING OF EVIDENCE ABROAD
18	COMPANIES)	IN CIVIL OR COMMERCIAL
19)	MATTERS
20	Defendants.)	
21)	

TO: Senior Master
Foreign Process Section
Royal Courts of Justice
Strand
London WC2A 2LL
England

FROM: The Honorable Lonny R. Suko, Chief United States District Judge
United States District Court for the Eastern District of Washington

In accordance with Article 3 of The Hague Convention of 18th March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“The Hague Convention”), the undersigned hereby respectfully requests an order requiring the testimonies of the following named individuals: Mr. James Teff, Mr. Bill Maitland,

1 and Mr. Nigel Webb, who are resident within your jurisdiction and whose testimony is
2 intended to be given and used in the trial of this action. This Request is made for the
3 purposes of the trial of the above cause of action, which is presently pending before
4 the United States District Court for the Eastern District of Washington and is
5 necessary in the interests of justice and for the purpose of a full and fair determination
6 at trial of the matters in issue amongst the parties in the pending proceedings.

7 I. Persons to Whom the Executed Request is to be Returned and Requesting
8 Judicial Authority

9 The Honorable Lonny R. Suko
10 United States District Court for the Eastern District of Washington
11 William O. Douglas Courthouse
12 25 South Third Street
13 Yakima, Washington 98901
14 United States

15 Mark J. Plumer
16 Orrick, Herrington & Sutcliffe LLP
17 1152 15th Street, N.W.
18 Washington, D.C. 20005
19 United States

20 II. Identity of the Individuals to be Examined, By and Through Their Designated
21 Representative or Representatives, Having Personal Knowledge of the Subject
22 Matter Areas Identified

23 James Teff

24 Bill Maitland

25 Nigel Webb

26 III. The Parties and Their Attorneys

27 A. Plaintiff: Teck Metals Ltd. (“Teck”) is a Canadian corporation organized
28 under the laws of Canada, having its principal place of business at 550 Burrard
Street, Vancouver, British Columbia V6C 0B3. Teck is represented by Jerry J.

1 Moberg, Esq. of the firm of Jerry Moberg & Associates located at 451
2 Drummond Drive, Ephrata, Washington 98823, United States, Mark J. Plumer,
3 Esq. and David F. Klein, Esq. of the firm of Orrick, Herrington & Sutcliffe LLP
4 located at 1152 15th Street, N.W., Washington, D.C. 20005, United States of
5 America, and Daniel J. Dunne, Esq., of the firm of Orrick, Herrington &
6 Sutcliffe LLP located at 701 Fifth Avenue, Suite 5600, Seattle, Washington
7 98104, United States.

8 B. Defendants: Certain Underwriters at Lloyd's, London and Certain
9 London Market Insurance Companies (collectively "London Insurers").
10 Certain Underwriters at Lloyd's, London ("Lloyd's Insurers") are compromised
11 of pre-1993 unincorporated syndicates whose principal place of business is in
12 London, England. Certain London Market Insurance Companies ("London
13 Companies") are various companies doing business in the London insurance
14 market during the 1970's and 1980's. London Insurers are represented by Ray
15 L. Wong, Esq. and Brian A. Kelly, Esq. of the firm of Duane Morris located at
16 One Market Plaza, Spear Tower, Suite 2200, San Francisco, California 94105,
17 United States, and Gabriel Baker, Esq. and Benjamin Roesch, Esq. of the firm
18 of Lane Powell PC located at 1420 Fifth Avenue, Suite 4100, Seattle,
19 Washington 98101-2338, United States.

20 IV. Nature and Purpose of the Proceedings

21 Plaintiff Teck's view of the case, as articulated by Teck, is as follows. London
22 Insurers do not stipulate to the following points and the Court does not adopt these
23 points as findings of fact or law, or in any way sanction, approve or adopt the views
24 set forth below. Instead, these are contested issues to be resolved at trial.
25

26 Statement of Plaintiff Teck:

27 The proceedings for which evidence is required is a civil action filed by Teck in
28 the United States District Court for the Eastern District of Washington. Teck has

1 alleged breach of contract and seeks a declaratory judgment against London Insurers
2 regarding Teck's rights to insurance coverage under third party liability umbrella
3 insurance policies issued by London Insurers to Teck during the years 1972 to 1986.
4 Teck's claims for insurance coverage arise out of certain underlying environmental
5 claims asserted against Teck by the United States Environmental Protection Agency,
6 the Confederated Tribes of Colville Reservation and certain of its individual members,
7 and the State of Washington. Those underlying claimants have alleged that Teck is
8 legally obligated to pay damages on account of environmental property damage to the
9 Columbia River and Franklin D. Roosevelt Lake in Washington State, allegedly
10 caused by operations at Teck's lead and zinc smelting facility in Trail, British
11 Columbia (collectively "Lake Roosevelt Claims"). London Insurers have denied
12 coverage under the policies of insurance they issued to Teck for the Lake Roosevelt
13 Claims.

14 London Insurers have raised more than 30 affirmative defenses. Among these,
15 they allege that Teck is not entitled to coverage because it failed to notify London
16 Insurers of the Lake Roosevelt Claims in a timely fashion and were prejudiced as a
17 result and concealed, failed to provide or misrepresented relevant and material facts at
18 the time of contracting.

19 London Insurers consent to this request for international judicial assistance.

20
21 V. Evidence to be Obtained

22 The United States District Court for the Eastern District of Washington
23 respectfully requests that, in the interests of justice, you cause to be taken, by your
24 proper and usual process, the testimony of three witnesses: (1) James Teff, (2) Bill
25 Maitland, and (3) Nigel Webb. As described more fully below, the testimony of
26 Messrs Teff, Maitland, and Webb is necessary for the just and proper resolution of the
27 proceedings before this Court.
28

1 VI. Subject Matter of Requested Testimony

2 A. James Teff

3 Teck alleges as follows:

4 Teck seeks testimony from Mr. Teff in three areas.

5
6 London Insurers have identified the Jansen Green Syndicate as the “leader”
7 syndicate on all but one of the policies issued to Teck. On information and belief, Mr.
8 Teff handled claims for the Jansen Green Syndicate. In the current litigation, London
9 Insurers have not identified or produced any other individual from the Jansen Green
10 Syndicate with responsibility for handling claims.

11 Mr. Teff also held the title of General Manager, Specialist Claims Unit at
12 Equitas Management Services Limited (“Equitas”). Equitas was an entity formed in
13 1996 to administer claims against all pre-1993 non-life Syndicates at Lloyd’s. On
14 information and belief, during at least a portion of the 1990’s and early 2000’s, Mr.
15 Teff had responsibility for and knowledge concerning virtually all major
16 environmental claims brought under policies issued before 1993, including Teck’s
17 claim. On information and belief, Mr. Teff first received notice of a claim from Teck
18 in 2002. In this regard, Mr. Teff’s testimony is critical regarding the timing of Teck’s
19 notice.

20 As the person responsible for all major environmental claims against Lloyd’s
21 Insurers after 1996, Mr. Teff was in the unique position to understand how Lloyd’s
22 Insurers customarily responded when they received notice of a claim. London
23 Insurers have alleged what they “would” have done if Teck’s notice were provided
24 earlier. Mr. Teff’s testimony is critical to rebutting the alleged prejudice London
25 Insurers claim to have suffered as a result of Teck’s allegedly untimely notice.

26
27 Mr. Teff formed the Environmental Claims Group (“ECG”) in or about
28 December of 1984. The ECG was comprised of a number of senior claims officials at

1 syndicates and companies in the London insurance market all of whom sought to
2 coordinate the claims position of London market insurers with respect to common
3 questions of insurance coverage for environmental claims (then just emerging). This
4 was considered important, because the group members were well aware that insurers
5 in London had taken disparate coverage positions with respect to other large-scale
6 claims, such as asbestos claims. As such, the ECG circulated letters and memoranda
7 widely throughout the London market in an effort to win the more than 500 operating
8 syndicates and companies to their view. The actions and positions taken by the ECG
9 bear upon the arguments being made by London Insurers in this case. The Court
10 already has found that the ECG is relevant to the issues in this action.

11 B. Bill Maitland

12 Teck alleges as follows:

13
14 Teck seeks testimony from Mr. Maitland relating to (1) the underwriting of the
15 policies issued by London Insurers to Teck and any communications to or from Teck
16 or its agents relating to the policies, and (2) knowledge by Jansen Green Syndicate
17 underwriters of the risks associated with mining and smelting companies. London
18 Insurers allege that Teck concealed, failed to provide, or misrepresented relevant and
19 material facts at the time of contracting. Thus far, London Insurers have identified
20 only one living London underwriter, Richard Youell, and he had no recollection of any
21 distinct communications with Teck or its agents at the time of contracting. Mr.
22 Maitland was an underwriter at the Jansen Green Syndicate, the Lloyd's Insurer who
23 was the "lead" underwriter of all but one of the Teck policies. Furthermore, Mr.
24 Maitland was identified by Mr. Youell as someone who participated in the
25 underwriting of the Teck policies. As an underwriter at the Jansen Green Syndicate
26 who underwrote mining risks, Teck also seeks to depose Mr. Maitland about his
27 knowledge regarding the known risks associated with issuing liability insurance to
28 mining and smelting companies.

1 C. Nigel Webb

2 Teck alleges as follows:

3 Teck seeks testimony from Mr. Webb regarding the handling of Teck's claim by
4 Lloyd's Insurers following the receipt of notice of the Lake Roosevelt Claims by
5 Lloyd's Insurers and his handling of other similar claims on behalf of Lloyd's
6 Insurers. On information and belief, Mr. Webb had direct responsibility for handling
7 Teck's claims on behalf of Lloyd's Insurers. His testimony is necessary, because
8 London Insurers claim Teck's notice was late and prejudicial. In particular, London
9 Insurers have alleged what they "would" have done if Teck's notice were provided
10 earlier. Mr. Webb's testimony about what Lloyd's Insurers actually did is critical to
11 rebut the alleged prejudice London Insurers claim to have suffered as a result of
12 Teck's allegedly untimely notice. His testimony is also important to demonstrate that
13 Lloyd's Insurers handling of other, similar claims likewise demonstrates that Lloyd's
14 Insurers "would" not have acted differently even if notice was provided sooner.

15 End of Statement of Plaintiff Teck

16
17 This is the end of the summary of the allegations and alleged facts that have
18 been provided to me by Teck. London Market Insurers contest and do not stipulate to
19 the allegations and alleged facts. This Court has not sanctioned, adopted or accepted
20 these allegations, and the Court expresses no opinion on the truth or accuracy of the
21 allegations.

22 VII. Procedure Requested

23 It has been explained to this Court that the powers of the English High Court of
24 Justice to assist this Court's endeavors to obtain evidence in the United Kingdom are
25 listed in Section 2 of the Evidence (Proceedings under Other Jurisdictions) Act of
26 1975, and that such assistance may not be provided, *inter alia*, when the evidence is
27 sought to be used for pre-trial purposes leading to a train of inquiry which might
28

1 produce direct evidence for the trial. In consideration of the evidence and arguments
2 presented to this Court by the parties, this Court finds that the evidence requested is
3 not being sought for reasons of mere pre-trial discovery, but is rather being sought to
4 be used as proof in the actual trial in these proceedings.

5 After reviewing the papers submitted in support of the motion for issuance of
6 this Letter of Request, this Court is satisfied that this Request is necessary and
7 convenient to produce evidence which will assist this Court in the resolution of certain
8 of the issues to be decided at the trial of this matter.

9 In order to assist Teck in the process of securing the deposition of Mr. James
10 Teff, as well as in the deposition itself, Teck has retained the following counsel from
11 your jurisdiction:

12 David Stern, Esq.
13 11 Stone Building
14 Lincoln's Inn
15 London
16 United Kingdom

17 Simon Cockshutt
18 Orrick Herrington & Sutcliffe
19 107 Cheapside
20 London EC2V 6DN
21 DX: 557 London/City
22 United Kingdom

23 Teck's United States counsel, Mark J. Plumer, Esq. or David F. Klein, Esq.,
24 intends to conduct the questioning of the witness, under the supervision of Teck's
25 London counsel. London Insurers' United States counsel will attend the deposition
26 and may conduct questioning of the witness. Teck's United States counsel and
27 London Insurers' United States counsel will object to questions when necessary, to the
28 extent permitted under the laws of the United Kingdom or other applicable laws. To
the extent objections are not permitted, those objections shall be preserved and not
waived.

1 Teck, which is the party noticing this deposition, has assured this Court that it
2 will pay the usual service fees and witness fees, if any are required, for the time spent
3 by the above-listed witnesses in giving their testimony in accordance with your civil
4 rules of procedure. Teck has further assured this Court that it will reimburse the
5 judicial authorities of United Kingdom for the costs incurred in executing the Letter of
6 Request.

7 The Court therefore requests that in the interests of justice you cause by your
8 proper and usual process, said witnesses to appear before a duly appointed examiner,
9 then and there to make answer on his oath or affirmation, the questions put to him, the
10 subject matter of which is identified above, and cause the evidence of said witnesses to
11 be recorded verbatim by a Court Reporter and recorded by video if and as permitted
12 by applicable court rules, and that you authorize the Commissioner to authenticate the
13 deposition taken on the examination. Trial is set for May 2, 2011. Discovery is now
14 in progress, with a fact discovery deadline of January 3, 2011.

15
16 WITNESS, Lonny R. Suko, United States District Court for the Eastern District of
17 Washington, this 23rd day of November, 2010.

18
19
20 Dated: November 23, 2010

21 ***s/Lonny R. Suko***

22 _____
23 Honorable Lonny R. Suko
24 Chief United States District Judge
25 United States District Court for the Eastern District
26 of Washington