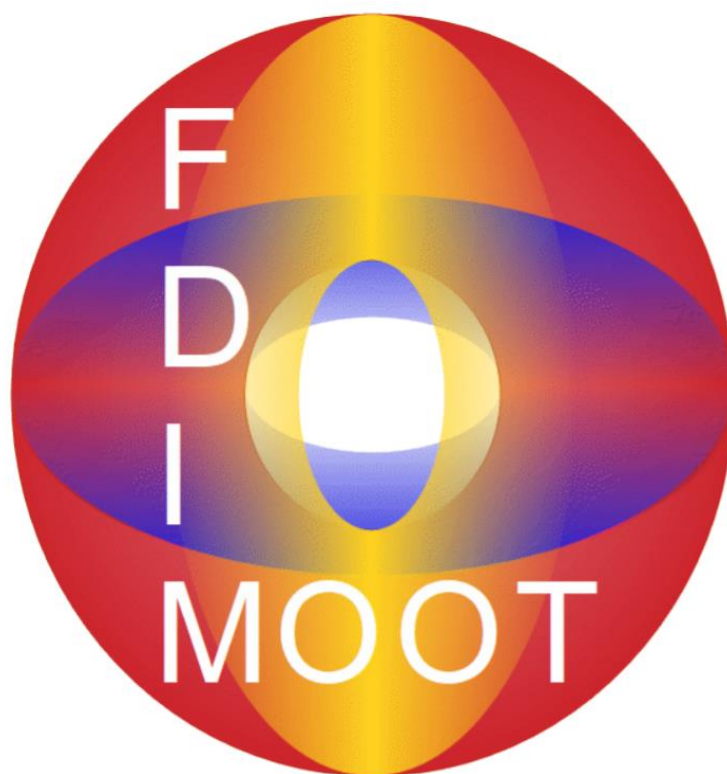


FDI MOOT CASE 2022



FOREIGN DIRECT INVESTMENT INTERNATIONAL ARBITRATION MOOT

Global Orals: 3-6 November, 2022

The 2022 case was elaborated by the Case Committee consisting of Smrithi Bhaskar, Ian Chiang, Peter Knowlton, Fredrik Lindmark, and Lucía Vilaseca, under the supervision of the FDI Moot's Review and Advisory Boards.

TABLE OF CONTENTS

	REQUEST FOR ARBITRATION.....	1
	CLAIMANT’S EXHIBIT C1 – Cannabis (Cultivation and Promotion) Act	8
6	CLAIMANT’S EXHIBIT C2 – Authorization of Investment	12
	CLAIMANT’S EXHIBIT C3 – The Rhekian Daily, 3 September 2010	13
	CLAIMANT’S EXHIBIT C4 – The Viking Podcast, 31 May 2017.....	15
	CLAIMANT’S EXHIBIT C5 – The Rhekian Observer, 27 April 2015.....	16
	CLAIMANT’S EXHIBIT C6 – Twitter post, 3 August 2016.....	17
	CLAIMANT’S EXHIBIT C7 – Claimant’s Loan Application	18
12	Notice of Registration of ICSID Case No. ARB/22/151	19
	<i>Re: Sutton Holdings Inc. vs. The Republic of Rhekia (Request for Arbitration) - ICSID Case No. ARB/22/151</i>	20
	RESPONDENT’S EXHIBIT R1 – Emergency Press Statement of Mr. Rokari.....	28
	RESPONDENT’S EXHIBIT R2 – Donald & Daisy v. Rhekia	30
	PROCEDURAL ORDER NO. 1	35
18	MEMORIAL ON JURISDICTION	42
	CLAIMANT’S EXHIBIT C8 – Witness Statement of Bunkan Bagels	45
	COUNTER-MEMORIAL ON JURISDICTION	48
	RESPONDENT’S EXHIBIT R3 – Communiqué by Inga Magnusson	51
	PROCEDURAL ORDER NO. 2.....	53
	ANNEX I – STATEMENT OF UNCONTESTED FACTS.....	55
24	ANNEX I, EXHIBIT 1 – The Daily Viking, Issue 102, 2009.....	68
	ANNEX I, EXHIBIT 2 – The Daily Viking, Issue 101, 2007.....	69
	ANNEX I, EXHIBIT 3 – The Daily Viking, Issue 103, 2010.....	70
	ANNEX I, EXHIBIT 4 – The Daily Viking, Issue 104, 2016.....	71
	ANNEX II – ATHABASCA–RHEKIA BIT.....	72
	AUTHENTIC ENGLISH VERSION OF THE ATHABASCA–RHEKIA BIT	72
30	AUTHENTIC RHEKIAN VERSION – ARTICLE XIII	86
	JOINTLY ACCEPTED ENGLISH TRANSLATION OF RHEKIAN VERSION OF ARTICLE XIII	87

THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

42

SUTTON HOLDINGS INC.

CLAIMANT

V.

48

THE REPUBLIC OF RHEKIA

RESPONDENT

54

REQUEST FOR ARBITRATION

28 JUNE 2021

60

Claimant

Sutton Holdings
15 Hamppu Avenue
Mbanje
Republic of Athabasca
T: +58 788 96
contact@sutton.com.ab

66

Counsel for Claimant

Prof. D. Konopie
Mar & Associates
547 Gañjikā St.
Potiguaya
Republic of Athabasca
kon.d@mar.com.ab

72

78 I. INTRODUCTION

1. Sutton Holdings Inc (“**Sutton Holdings**” or the “**Claimant**”), a company incorporated under the laws of the Kingdom of Athabasca (“**Athabasca**”), hereby submits its request for arbitration against the Republic of Rhekia (“**Rhekia**” or the “**Respondent**”) pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States (the “**ICSID Convention**”).

84 II. JURISDICTION

2. By submitting this Request for Arbitration, Sutton Holdings accepts the standing offer made by Rhekia to arbitrate investment disputes with investors from Athabasca, as expressed in Article XIV of the Agreement Between the Kingdom of Athabasca and the Republic of Rhekia Concerning the Encouragement, Promotion and Protection of Investments (“**Athabasca–Rhekia BIT**” or “**BIT**”) dated 15 September 2011:

96 *“Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Chapter III. This consent and the submission of a claim to arbitration by the disputing investor shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute.”* [Emphasis added.]

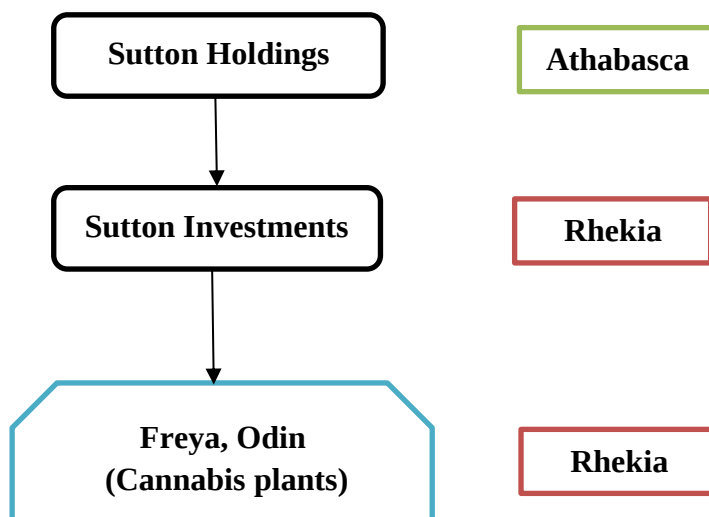
3. The present dispute arises out of an “investment” as provided under Article 25 of the ICSID Convention. Sutton Holdings is bringing a claim with respect to the assets of its wholly-owned subsidiary, Sutton Investments (or “**Sutton**”), which owns and operates a cannabis plant in Rhekia.

4. As defined in Article I(1) of the BIT, an “investment” is:

102 *“[A]ny kind of asset invested in the territory of one Contracting Party in accordance with its laws and regulations, owned or controlled directly or indirectly, by an investor of the other Contracting Party and includes in particular: (a) Tangible and intangible property, including rights, such as mortgages, liens and pledges; (b) Shares, stocks, bonds and any other forms of participation in companies or enterprises.”* [Emphasis added.]

- 108 5. Sutton Holdings is incorporated under the laws of Athabasca, while Sutton Investments is a locally incorporated entity under the laws of Rhekia. Figure 1 illustrates Sutton Holdings’ ownership of Sutton Investments:

114



120

Figure 1: *Sutton Holdings' corporate structure*

III. SUMMARY OF RELEVANT FACTS

3.1. The Investment

126

6. Following the international trend at the turn of the century, Rhekia began a strong campaign to promote the inflow of investments. Despite being a historically conservative and religious country, a liberal current in Rhekia led to the legalization of cannabis. This in turn gave rise to the opening of foreign investments in the up-and-coming cannabis industry, both for domestic and foreign consumption. Rhekia's favorable climate and its vast, flat fields are also well suited for growing these crops, which was a major selling point made by Rhekia when it attempted to attract foreign investment into the cannabis industry.

132

7. In a bid to promote foreign investments, including in its fledgling cannabis industry, Rhekia entered into several BITs with other countries. This included the Athabasca–Rhekia BIT in 2011. Rhekia also joined the ICSID Convention in 2010.

8. Sutton Holdings' investment was structured through a locally incorporated entity, Sutton Investments, as per the Rhekian Cannabis (Cultivation and Promotion) Act of 2010. A copy of the Rhekian Cannabis (Cultivation and Promotion) Act is enclosed as [CLAIMANT'S EXHIBIT C1].

138

9. Sutton Holdings complied with all requirements under Rhekian domestic law and obtained necessary licenses and authorizations in June 2012. A copy of the license granted to Sutton Holdings is enclosed as [CLAIMANT'S EXHIBIT C2].

10. Subsequently, Sutton Investments began work on the construction of its production sites. The construction of these production sites was completed in late 2013 and production began in early 2014. Sutton had two plants: Freya, located west of
144 Stockholm; and Odin, located just north of Stockholm.

3.2.The Civil War

11. In 2014, soon after Sutton began production in Rhekia, the political situation became tense, with the population being deeply divided over the recent legalization of cannabis. The legalization of the use of cannabis, as well as the permitting of foreign investments into this industry in Rhekia was the result of a new political alliance advocating for the
150 recreational use of cannabis, the Rhekian Development Front.

12. After the Rhekian Development Front managed to secure a majority in the government in 2010, Rhekia began to progressively decriminalize various substances, starting with cannabis. The Claimant kept a close eye on events and noted that the other political factions in Rhekia were not pleased about this development, particularly the more conservative bloc, whose members started to publicly demonstrate about the new and
156 more liberal laws on substances. A copy of an opinion piece published in *The Rhekian Daily*, a newspaper in Rhekia with significant influence and outreach, is enclosed as [CLAIMANT'S EXHIBIT C3].

13. In return, outspoken members of the pro-cannabis alliance countered with their own demonstrations. However, these demonstrations increasingly became heated, with rumors that these demonstrators were paid by cannabis manufacturers. Suffice to say,
162 those rumors are completely baseless and untrue.

14. This political divide eventually led to a civil war breaking out in Rhekia in 2014. Armed militia bands seized power in cities across the country. In some places, Rhekia's military refused to fight the rebels and instead defected, which increased the level of instability and violence throughout Rhekia.

15. Throughout the conflict, Sutton's cannabis production plants Freya and Odin were
168 ransacked and looted, causing enormous losses to Sutton. The damage to Freya's facilities also consisted of shootings, physical attacks, and incendiary devices such as petrol bombs. Meanwhile, the damage to Odin could only be described as complete obliteration. Armed Rhekian soldiers occupied entire facilities within Odin and used it as a garrison and fortifications for military defense.

16. Eventually, when Odin was overrun by militia groups, Rhekian troops decided to
174 detonate explosives, allegedly to keep the militia groups away from supplies stored

inside. Suffice to say, nothing remained of Sutton's investment in Odin following that explosion; it was a desolate wasteland littered with landmines.

17. It is also submitted that the cultivable lands to which Sutton holds title were severely damaged. Some of these were in the immediate vicinity of Freya and Odin, but there were also several others. This has made it impossible to continue operations for several years. Overall, the damage to Sutton's production plants and cultivable lands were a result of gunfire, fires, explosions, and physical violence carried out by either the Rhekian military, or the rebels. A copy of an interview with Sutton Investments' CEO, Mr. Ned Flanders, published in *The Viking Podcast* is enclosed as **[CLAIMANT EXHIBIT C4]**.

18. In 2017, the war concluded after the Rhekian government and the militia groups agreed to an armistice. After several weeks of election, Mr. Eilert Flyen took control of the capital of Rhekia. After several weeks, following a referendum strongly favoring him, he was proclaimed President of Rhekia by Rhekia's parliament.

19. Following the change in leadership of the executive branch of government, Sutton was able to commence operations in Rhekia again in late 2017, after a lengthy and costly reconstruction process.

20. While it is not possible to pinpoint exactly who was responsible for the looting and destruction of Sutton's production plants and lands, the Claimant holds Rhekia responsible for its entire losses for the following reasons.

21. Throughout the conflicts, and despite several written requests from Sutton Investments' CEO, as well as several media reports, the Rhekian government appeared entirely unconcerned about the military situation, as well as the attacks on Sutton's assets. Rhekia took no immediate action in terms of condemning the attack, or in terms of offering assistance to Sutton Investments. Mr. Anthony Rokari, the Deputy Minister for Home Affairs, declined to meet with representatives from Sutton Investments. In his response, Mr. Rokari merely informed the Claimant that the Rhekian authorities were aware of reports of armed conflict occurring at the Sutton plants, but that there were other matters of greater priority which required the attention and resources of the Rhekian authorities.

22. However, both during and after the civil war, several media reports have surfaced alleging that the true reason why the Rhekian government was unconcerned about these attacks was because of its belief that Sutton Investments was involved in funding the armed militia attacks. Further, a well-known whistle-blower claimed online that she had "*concrete evidence*" in the form of internal memos circulated within high-ranking officials of the Rhekian government, confirming that the government's view was that

Claimant was part of the “*nefarious*” and “*morally corrupt*” cannabis industry, and that Sutton Investments was funding these armed militia attacks [CLAIMANT’S EXHIBITS C5; C6].

23. These preposterous allegations are, of course, baseless and untrue. They are nothing more than a poor attempt to excuse Rhekia’s dismal performance in attempting to stop the civil war and preventing the extensive damage that has been done to the Claimant’s investments. In fact, the Claimant has deep concerns that the allegations against Sutton may have been made in an attempt to conceal widespread corruption: The Claimant’s investigations have also unearthed well-founded suspicions that some Rhekian military groups deserted to rebel groups when offered money. Thus, Rhekia has not only failed to honor its obligations to protect Sutton’s investments, but it has also directly or contributorily caused damage to Sutton’s good reputation through its inaction. Rhekia is not the only market in which Sutton operates, and Sutton has had to deal with boycotts and lost opportunities in several markets abroad following the release of evidence showing Rhekia’s wrongful assumptions that Sutton has been funding armed militia groups.

24. In fact, Sutton Investments’ fresh equity offer, that it floated in a bid to rebuild its business, was all but sabotaged by statements made by Rhekian Government officials on an investigation into the links between Sutton Investments and the militias. In addition to this, Sutton Investment’s bid for a loan from the State Bank of Braavos was rejected, citing proposed action by the Rhekian State against Sutton Investment’s, and the statements of Rhekian officials. [CLAIMANT’S EXHIBITS C7]. According to Sutton’s quantum experts’ calculations, Sutton’s losses for these moral damages are estimated to be at least USD 10,000,000. These are losses for which Sutton holds Rhekia accountable. These would adequately compensate Sutton Investments for the extensive increased costs they have incurred on combating the ill-effects of wrongful media reports, based on Rhekian State officials’ statements, as well as the lost loans and investments into its business. These damages are not an economic loss faced by the Claimant as a result of the wrongful act of the state of Rhekia, but rather is indicative of the reputational harm that has been caused to the Claimant due to the wrongful act of the State. As a result, the Claimant submits that it is entitled to moral damages, over and above any compensation that is awarded by the Tribunal for the physical losses Sutton has faced with respect to its investments in Rhekia.

25. Due to Rhekia’s deliberate inaction in trying to stop the armed conflict directed at Sutton’s production plants, the Claimants’ assets have been fundamentally impaired. During the conflict, the cannabis crops being grown in Sutton’s plants were largely razed by fire. Moreover, the production plants’ infrastructure has suffered extensive damage from gunfire, arson, and explosions. Sutton estimates that it was deprived of

profits from the sale of cannabis for three years following the attacks, as its production plants essentially had to be rebuilt.

IV. PRAYER FOR RELIEF

252 26. In light of the above, Sutton Holdings respectfully requests the Tribunal to:

a. Find that the Republic of Rhekia has breached the Athabasca–Rhekia BIT by failing to intervene and protect Sutton Investments’ cannabis plants during the events which occurred between 2014 and 2017, and therefore Rhekia is in breach of Article V of the Athabasca–Rhekia BIT, specifically by failing to provide Full Protection and Security to the Claimant’s investments;

258

b. Award compensation to Sutton Holdings for an amount of no less than USD 45,000,000 in damages, and USD 10,000,000 in compensation for moral damages;

c. Order Rhekia to fully reimburse Sutton Holdings for the costs and expenses incurred in connection with these arbitration proceedings.

264 V. PROCEDURAL MATTERS

27. In view of the above, pursuant to Article 37 of the ICSID Convention, Sutton Holdings requests that the ICSID Secretary-General appoint a three (3) member arbitral tribunal. Sutton Holdings hereby nominates Ms. Rachel Green as one of the arbitrators, whose details are as follows:

270

Ms. Rachel Green
Attorney-at-Law,
Faizus & Co.,
Ash Street,
Cloyla
Email: r.green@faizus.cl

276

28. Sutton Holdings further requests that the proceedings shall be conducted in English, with the English version of the BIT prevailing.

282

For and on behalf of the Claimants,
Prof. D. Konopie
Mar & Associates

CLAIMANT’S EXHIBIT C1 – Cannabis (Cultivation and Promotion) Act



288

Gazette of the Republic of Rhekia

Act 489/2010 of the Republic of Rhekia

Cannabis (Cultivation and Promotion) Act

Promulgated by the Parliament of the Republic of Rhekia at its 9th Session, on September 17th, 2010.

294

Article 1: Objectives of the Cannabis Act

The objective of this Act is to protect the population of Rhekia from the risks associated with illegal trade and trafficking of drugs, seeking, through the Government’s intervention, to remedy the devastating social, economic, and health consequences of the use of psychoactive substances.

Article 2: Activities related to cannabis, subject to Government control

300

The Government shall control and regulate the activities of import, export, plantation, cultivation, harvest, production, and acquisition in any way, storage, marketing and distribution of cannabis and its derivatives through the institutions to which it grants legal mandate, in accordance with the provisions of this law.

Article 3: Activities deemed to be in the public interest

306

Any act to protect, promote and improve the public health of the population through a policy aimed at minimizing any potential risks and damage arising from the use of cannabis, and/or which promotes proper information, education and prevention of the misuse of cannabis, are declared to be of public interest.

To achieve this purpose, the Government shall undertake any measures it deems appropriate to control and regulate any activities related to cannabis and its derivatives as provided under this Act.

312

Article 4: Regulation of activities

All entities that intend to pursue any of the activities described in Article 2 (import, export, plantation, cultivation, harvest, production, acquisition in any way or form, storage, marketing and distribution of cannabis and its derivatives) shall be incorporated in Rhekia.

318

In addition, before conducting any activity described in Article 2, an entity shall be required to obtain authorization from the Cannabis Regulation and Control Institute (“**CRCI**”), as established under Article 7, and shall be subject to inspections by the Ministry of Public Health on a yearly basis, or as often as the Ministry of Public Health deems appropriate.

To obtain an authorization from the CRCI, the following information must be provided:

324

- a) Identification of the natural person or entity that will conduct the activities, being a Rhekian national;
- b) Description of the activities to be conducted and the time of commencement of activities;
- c) Location where the facilities will be installed;
- d) Characteristics of the seeds and type of plantations to be built and used;
- e) Percentage of tetrahydrocannabinol and cannabidiol of the products, which shall be periodically tested in laboratories of the Ministry of Public Health.
- f) Estimated production volumes per year;
- g) Proceedings and safety measures to be applied; and
- h) Purpose for which the product will be used.

330

Article 5: Health and education of the population and the users

(Intentionally omitted)

Article 6: Prohibition of advertising or promoting recreational cannabis

(Intentionally omitted)

336

Article 7: Creation of the Cannabis Regulation and Control Institute

(Intentionally omitted)

Article 8: Functions of the CRCI

The CRCI shall be in charge of, and is vested with all powers as it may deem reasonably necessary to perform the following functions:

- 342 a) Issuing the authorizations for cannabis producers or related entities. In this regard, the CRCI shall have authorization to obtain any information reasonably required including but not limited to the categories of information under Article 4, as well as to inspect the premises.
- b) Keeping and maintaining a registry of all authorized entities or natural persons.
- c) Reporting any findings, including that of non-compliance, to the Ministry of Public Health.
- 348 Specifically, to conduct these activities, the CRCI shall have broad powers of inspection, and may require from individuals additional information or documentation at any time.

Article 9: Promotion of scientific research related to cannabis

(Intentionally omitted)

Article 10a: Permissible medicinal uses of cannabis

354 In order to conduct the activities described in Article 2 that are related to cannabis for medicinal use, the licenses referred to in Article 4 must be obtained, including an authorization from the CRCI and reports of yearly inspections by the Ministry of Public Health.

Article 10b: Permissible recreational use of cannabis

Cannabis for recreational use shall be commercialized only in pharmacies authorized by the Ministry of Public Health.

The details of consumers shall be recorded in a consumer registry maintained by the CRCI.

360 ***Article 11: Domestic production of cannabis for personal use***

Domestic production of cannabis is authorized, being “domestic production” understood as that which is carried out by natural persons, intended for personal use, that does not exceed four cannabis plants, or 480 grams per year.

366 Only Rhekian nationals and permanent residents of Rhekia who are above the age of 18 may be owners or involved, whether through a corporation or as an individual, in the domestic production of cannabis. They shall be included in a domestic producer registry, maintained by the CRCI.

Signed at Aker Brygge, Rhekia on the 17th day of September 2010.

Karl Blomstsson

Mr. Karl Blomstsson

President of the Republic of Rhekia



Hans Agustinssen

Mr. Hans Agustinssen

Minister of Public Health of the Republic of Rhekia

378 *(Rhekian version intentionally not reproduced)*

CLAIMANT'S EXHIBIT C2 – Authorization of Investment



Cannabis Regulation and Control Institute

Authorization N° 1511/2012

Entity: Sutton Investments

June 10th, 2012, Aker Brygge, Rhekia.

CONSIDERING:

- (1) Sutton Investments' request for an authorization to conduct the activities included in Article 2 of the Cannabis (Cultivation and Promotion) Act of 2010;
- (2) Sutton Investments' compliance with Article 4 of the Cannabis (Cultivation and Promotion) Act of 2010, being a nationally incorporated entity and having submitted all the required documentation; and
- (3) the favorable decision of the representatives of the Ministry of Public Health after inspecting the future premises on April 15th, 2012.

The CRCI HEREBY decides:

To GRANT Sutton Investments the authorization required to conduct the activities of import, export, plantation, cultivation, harvest, production, acquisition in any way, storage, marketing and distribution of cannabis and its derivatives, as described in Article 2 of the Cannabis (Cultivation and Promotion) Act.

To EXTEND the authorization until June 10th, 2021.



Yan Paul Trei

President of the Board of Directors of the CRCI

CLAIMANT'S EXHIBIT C3 – The Rhekian Daily, 3 September 2010

THE RHEKIAN DAILY

Opinion: Legalizing cannabis goes against everything Rhekia stands for

3 September 2010

In March 2010, the coalition government that had only recently come into power passed the Cannabis (Cultivation and Promotion) Act. We have grave reservations about the potentially disastrous impact that this will have on our society. It is clear that this is a step too far in the wrong direction.

First of all, there is no doubt that the Act was recklessly passed, built on the false promises made in the course of political campaigning in the hopes of capturing the votes of our youth. There is, however, simply insufficient medical and empirical evidence that recreational use of cannabis will not pose unforeseen dangers to users and to our society. The politicians who sit in their ivory towers, who voted in favor of the Act are blind to these dangers. They would have you believe that cannabis is a "safe" substance and is devoid of any harm. This is clearly not the case. We urge all members of our society to carefully scrutinize and evaluate the factual basis of the reckless claims made by these irresponsible "liberal" politicians.

The passing of the Act will also have long-lasting and severe consequences on our social mores and culture. With each day, we are seeing our youth corrupted by the allure of dangerous substances that lull their mind into a sluggish haze. No doubt, the very politicians who voted in favor of this Act will see it as a gateway to legalizing even more dangerous substances in the future. This would be a sure-fire path to ruin the Rhekian youth.

Not to mention, the recreational use of cannabis will surely dilute the long and historic culture of Rhekia. We have always been a proud nation, driven by a strong agriculturally-driven economy. We cannot let our lush and fertile fields be used for nefarious purposes such as the cultivation of dangerous drugs. Moreover, it is most curious why the

government is paying so much heed to the “culture” of these would-be “Vikings” and their so-called “celebration” of Sigurblót, when they are the minority demographic. Does the government mean for us to abandon our proud culture and return to prehistoric conditions, and to take after Norse Paganists? What is next - should we pick up swords and rush to battle so that we may die “honorable” deaths and go to Valhalla?

Once again, we urge you, members of our great nation, to think about Rhekia’s future if left in the hands of the current government. Already, we hear whispers of political and social unrest. Even the government is highly divided over this issue. Pick up your pens (not your swords!), mobilize each other, and fight for change. Our sources in high places tell us that there is much dissent among the ranks of this coalition government. You must not fear the revolution of the cultured and enlightened; you must join them to repel the barbaric tendencies that are polluting our government. The Legalization of Cannabis Act must be repealed.

This opinion piece is submitted by the Rhekian Citizens’ Action for Rights and Freedoms, a policy think-tank group advocating for your rights, and for the best interests of Rhekia. You can rest assured that all of our work and opinion pieces are thoroughly backed by empirical data and scientific research. As a matter of policy, we do not declare our funding, nor any sources of potential or actual conflict of interests.

CLAIMANT'S EXHIBIT C4 – The Viking Podcast, 31 May 2017



In an interview with the Viking Podcast, Ned Flanders, Sutton Investments' CEO declared that their plants are "virtually dead" after the civil war outbreak in Rhekia.

Mr. Flanders visited the premises of the Viking Podcast, to share how the cannabis plants owned by Sutton Investments are nowadays, after the attacks that occurred during the civil war in Rhekia.

Mr. Flanders, going back to the beginning, could you explain what damages the plants suffered back in 2016?

Actually, the plants suffered from gunfire, fires, explosions and physical violence during those years. I cannot choose the exact words to describe the horror that Freya and Odin suffered. I remember having dinner with my family one

day, watching the news, and suddenly seeing videos of Freya on fire. Entirely on fire. Such image is impossible to forget.

At the time it was reported that the Government sent some military units. Is it true?

Yes, they did send some units, but certainly not enough. Imagine trying to stop a fire in a 1.800 m² processing plant and offices, with around ten men and no equipment? Unbelievable.

Among Rhekians there are some rumors going on. Is it true that you and other high ranked employees made requests to the Government?

Of course! We would never sit with our arms crossed

while our work is being destroyed. We worked for years to install these state-of-the-art plants.

So, how are the plants now?

Nowadays? Dead. They are virtually dead. Apart from having to rebuild the premises entirely, the soil was also heavily damaged, up to the point that it will not be possible to use that soil for crops. Not for months, and even not for years. A very sad situation, which the Government should assume and repair.

One last question, considering that scenario you portrayed, were you able to visit the plants recently?

Unfortunately yes. Not the plants, just their remains.

CLAIMANT'S EXHIBIT C5 – The Rhekian Observer, 27 April 2015

462

The Rhekian Observer

Has our government left the cannabis industry high and dry?



By Rass Skyler, published on 27 April 2015

For months now, Rhekia has been engulfed in a deadly civil war. As our cities burn, our buildings have been pillaged and the body count grows, there is no longer any doubt that our government has completely failed to protect its industries, and citizens, and cannot act in our interests.

Of course, this is hardly a surprise, given that it was a coalition which won by a bare margin, and cobbled together through promises to opportunistic “progressive” lobbyists and sycophants that Rhekia will liberalize its economy. From the start, it was clear that the political partnership would be a very tenuous one. It has also been reported, from reliable insider sources, that there is a great deal of dissent within the coalition government.

While some factions are keen to continue with the legalized recreational use of cannabis, others are convinced, albeit with the benefit of a great deal of hindsight that it was simply premature to push through with legal reforms without first convincing the conservative demographic of the great benefits to the economy and quality of life.

The infighting among the government may shed some light on why it has seemingly ignored the cannabis investors’ appeal for help. Even though it has been widely reported that the cannabis production plants have been directly attacked by armed groups on numerous occasions and that these plants have suffered extensive damage, the government has not effectively responded in subduing these attacks.

We have also received reports that the cannabis investors, chief among which is the powerful Sutton Investments, had written to Mr. Anthony Rokari, to meet and to express their concerns.

However, we have been informed that Mr. Rokari had allegedly flatly declined to meet with the representatives from the cannabis industry, and had only brusquely replied that “*we can’t be seen taking a side*” and that “*there were matters of greater concern to prioritize, especially the third party innocent investors*”.

While we are unable to confirm the veracity of this information, it would appear that if this is true, Mr. Rokari seems to be casting some blame at the cannabis investors.

CLAIMANT'S EXHIBIT C6 – Twitter post, 3 August 2016

468

474

480

486

← **Tråd**

 **Lucy the Rhekian** ✓
@RhekianBsnsBlog

I have concrete evidence (internal memos!) from high-ranking Rhekian government staff that the attacks on Sutton Investments' facilities are deliberately being ignored by authorities because they are part of the "nefarious" and "morally corrupt" cannabis industry... [#rhekia](#) [#civilwar](#) [#anarchynow](#)

[Oversett tweeten](#)

7:33 p.m. · 3. aug. 2016 · Twitter for iPhone

57 Retweets 5 sitat-Tweets 404 likerklikk

 Tweet svaret ditt Svar

 **Perry Mason** ✓ @PerryMason
Svar til @PerryMason
This is devastating news... Really Rhekia?!?... 🤔🤔

 7  13  162 

 **Sawya tha Lawya** @sawyalawya
Svar til @PerryMason
Indeed... By the way, doesn't Rhekia have a BIT with Athabasca?

 4   3 

⋮ [Vis svar](#)

 **Perry Mason** ✓ @PerryMason
Svar til @sawyalawya
This isn't the proper forum to speak my mind about this, but I suppose what you are getting at is the potential for Athabaskan investors to bring a claim against Rhekia? Lol, it seems like a clear-cut case to me. 😊

   1 

Søk på Twitter

Relevante personer

**Lucy the Rhekian** ✓
@RhekianBsnsBlog

Følg

Covering the situation in Rhekia. Every day things are just getting worse and worse. I'm here to tell the world!

Hva skjer?

Nyheter fra Rhekia · 5 timer siden

**Not All Villains Wear Capes:
A tragic story of the Rhekian
"uniformed officers" pillaging...**

#ArbitrationRoulette

Play FREE for Billions!

Promotert av TheArbitraryLottery

Populært i Rhekia

#InternetDown??

Trender med [wifi-poisoning](#), [5G-radiation](#)

Underholdning · Populært

Banye East

21,3k tweets

Klever's Arb News · 1 time siden

**New blog posts are up! Atha-
basca's new petroleum contracts
signal a new era for foreign in....**[Vis mer](#)

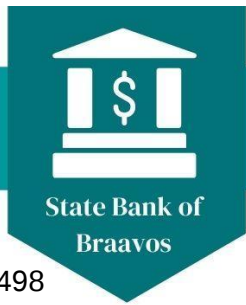
Bruksvilkår Personvernpolicy

Retningslinjer for informasjonskapsler

Informasjon om Ads Mer ... © 2021 Twitter, Inc.

492

CLAIMANT’S EXHIBIT C7 – Claimant’s Loan Application



498

23 August 2017

Mr. Ujval Raik,
Business Expansion Director,
Sutton Investments

Sub: Your Loan Application No. 211104

504 Dear Mr. Raik

Thank you for your application to the State Bank of Braavos, for a loan to expand Sutton Investments’ production plants located in Rhekia.

510 Further to an in-depth examination of your enterprise, your financial standing, and the documentation that was submitted to us, we regret to inform you that the State Bank of Braavos will be unable to extend a line of credit to you at this time. Though you are a current and trusted client of the Bank, a thorough examination of the circumstances of your investment in the Republic of Rhekia, including the possibility of civil and criminal action against you within Rhekia, precludes us from extending further credit to you at this time.

Please be advised that this letter does not modify any existing lines of credit you have availed with us.

516 On behalf of the State Bank of Braavos, I thank you for your trust in us, and hope that we can continue to serve you better. For any concerns about your loan application review, please feel free to get in touch with me.

Warm regards,

Vishakha Choudhary,

522 *Business Loan Manager,*
State Bank of Braavos,

Republic of Arkia



INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

1818 H STREET, NW | WASHINGTON, DC 20433 | USA
TELEPHONE (202) 458 1534 | FACSIMILE (202) 522 2615
WWW.WORLDBANK.ORG/ICSID

20 July 2021

528 **Sutton Holdings Inc.**
15 Hamppu Avenue
Mbanje
Republic of Athabasca
T: +58 788 96
contact@sutton.com.ab

534 *and*

The Republic of Rhekia
State Secretary General
Ministry of Economy
43 Åndalsnes Street
540 5478 Aker Brygge
Republic of Rhekia
T: +145 88 63 35
t.ragnar@moe.gov.rh

Notice of Registration of ICSID Case No. ARB/22/151

546 On 20 July 2021, pursuant to Article 36 of the ICSID Convention and Rules 6 and 7 of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (“**Institution Rules**”) the Request for Arbitration against the Republic of Rhekia, as submitted by Sutton Holdings Inc. dated 28 June 2021, was registered.

552 Pursuant to Rule 7(b) of the Institution Rules, all communications and notices relating to this proceeding will be sent to the above addresses as stated in the Request for Arbitration, unless otherwise indicated.

The Request for Arbitration has detailed the number of arbitrators and the method of their appointment. I invite the parties to constitute an Arbitral Tribunal in accordance with this, as soon as possible and in accordance with Articles 37 to 40 of the ICSID Convention.

Pursuant to Rule 7(f) of the ICSID Institution Rules, a list of the members of ICSID Panels of Conciliators and of Arbitrators is enclosed.

558 Finally, pursuant to Rule 7(e) of the ICSID Institution Rules, I remind the parties that this registration of the Request for Arbitration is without prejudice to the powers and functions of the Tribunal with regard to jurisdiction, competence and the merits.

Enclosed: List of the members of the Panel of Arbitrators of the Centre [intentionally omitted].

-signed-

564

Secretary-General

58 Vulkan Av.
 4857 Sofienberg
 Republic of Rhekia
jonas.j@fire.com.rh
tills.t@fire.com.rh

BRANN ASSOCIATES LLP

570

19 August 2021

576

VIA EMAIL:

To: International Centre for Settlement of Investment Disputes

cc: *[intentionally omitted]**Re: Sutton Holdings Inc. vs. The Republic of Rhekia (Request for Arbitration) - ICSID Case*

582

No. ARB/22/151

To whom it may concern,

588

Brann Associates LLP represents the Republic of Rhekia. This letter is submitted in response to Sutton Holdings' Request for Arbitration, received by the Republic of Rhekia on 1 August 2021. Rhekia respectfully submits that the allegations made by Sutton Holdings in the Request for Arbitration are incorrect, incomplete, and unsubstantiated. Rhekia rejects all claims made by Sutton Holdings and objects to the Tribunal's jurisdiction to hear the claims.

I. SUMMARY OF RELEVANT FACTS

594

1. The Republic of Rhekia considers it necessary to provide the Tribunal with a detailed explanation of the facts in order for the Tribunal to fully appreciate and consider the issues arising in this case.

2. Several years ago, in an attempt to foster economic growth to its economy, Rhekia signed a number of BITs, including the Agreement between the Kingdom of Athabasca and the Republic of Rhekia Concerning the Encouragement, Promotion and Protection of Investments, 2011 ("**Athabasca-Rhekia BIT**"), and joined the ICSID Convention in 2010.

600

3. Rhekia has faced a certain degree of political turbulence in recent years that has unfortunately caused some measure of inconvenience to its foreign investors. However, Rhekia has always warmly welcomed its investors, and is firmly committed to maintaining a positive and stable economic environment. Rhekia is also certain that despite the challenges that the country has faced in recent times, it has met all its obligations owed to investors under the BITs signed with its partner States.

4. Beginning in 2014, following a radical change in the government and domestic policy, a number of internal conflicts broke out in Rhekia. These conflicts arose from political and cultural fault lines, most prominently over the issue of decriminalizing the production, use and sale of cannabis.

5. Rhekia acknowledges that the internal conflicts led to frequent defections on both sides of the conflict and the initiation of paramilitary groups that may have claimed to have represented both sides. While this is of no particular consequence to the dispute at hand, Rhekia also wishes to assure its investors and the international community that it does not condone such conduct. Rhekia is committed to investigating all individuals suspected of involvement in paramilitary groups and upon concluding its findings, will prosecute such individuals to the fullest extent of the law. As such, Rhekia does not dispute that any international responsibility that arises from any wrongdoing (which, however, Rhekia unequivocally denies) shall be attributable to it.

6. Despite the tragedy of Rhekia's internal conflicts, Rhekia has continued to honor its obligations under the Athabasca–Rhekia BIT, and unequivocally denies all allegations that it is in breach of it. Rhekia has continuously provided and channeled its resources and aid in support of investors during these trying times.

7. Indeed, on 2 July 2016, Mr. Anthony Rokari, the Deputy Minister for Home Affairs in Rhekia stated in an emergency Parliamentary speech that Rhekia had strategically deployed its armed forces to subdue the armed conflict in key areas in its financial districts. Mr. Rokari also stated that the Government had consulted with key stakeholders, including its most important investors, over how to best deploy its limited resources. A copy of Mr. Rokari's speech is enclosed as [RESPONDENT'S EXHIBIT R1].

II. THE TRIBUNAL DOES NOT HAVE JURISDICTION TO HEAR THE CLAIM

8. Notwithstanding the fact that Rhekia has plainly fulfilled its international obligations towards its foreign investors, Rhekia respectfully submits that the Tribunal lacks jurisdiction to hear this dispute.

2.1. The Claimant has not exhausted local remedies

9. First, the Claimant has not complied with the requirements set forth in Article XII of the Athabasca–Rhekia BIT.

10. Article XII (2) of the BIT states:

“Disputes concerning the interpretation and application of the terms of this Agreement and which have not been amicably settled shall not be referred to arbitration in accordance with Article XIII of this Agreement, unless 18 months have passed from the time that an investor submits the dispute to the judicial bodies of a Contracting Party.” [Emphasis added.]

11. Article XII thus prescribes the requirement that the Claimant must first show that it has exhausted local remedies within 18 months, before bringing an arbitration claim under Article XIII. It is well established that an exhaustion of local remedies clause is a mandatory requirement which, if the Claimant fails to satisfy, deprives the Tribunal of its jurisdiction to hear the dispute.

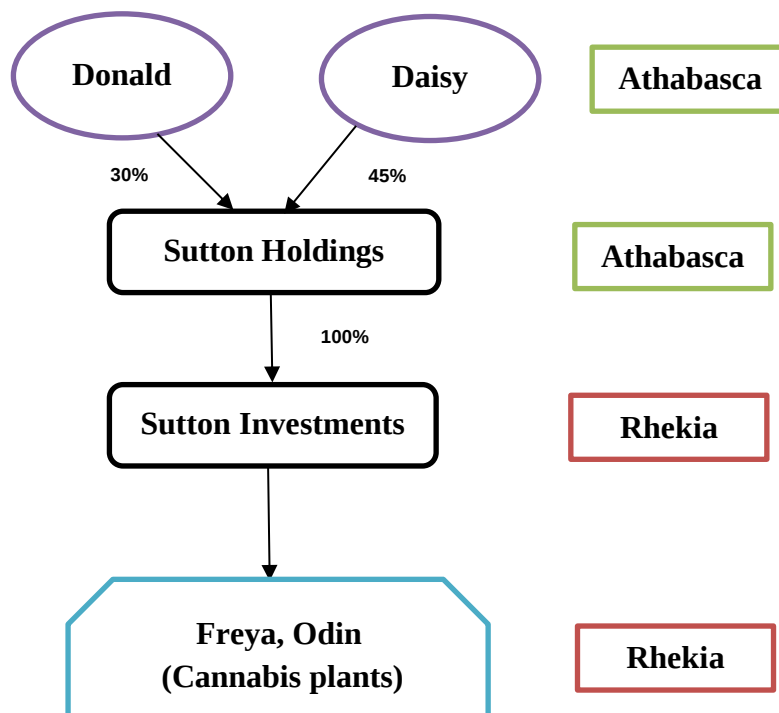
12. At the time of making its Request for Arbitration, the Claimant has not commenced any claim in the Rhekian courts. Accordingly, it follows that the Tribunal does not have jurisdiction to hear the present dispute.

2.2. Sutton Holdings is barred from pursuing its claim due to the principle of *res judicata*

13. In its Request for Arbitration, the Claimant omitted a crucial aspect of this dispute. While it is true that the cannabis plant is owned by Sutton Investments (a Rhekian company) which is in turn entirely owned by Sutton Holdings (an Athabaskan company), the Claimant has conveniently omitted to mention a crucial fact in the present dispute: that Sutton Holdings has shareholders who had already commenced an investment arbitration claim against the Republic of Rhekia and lost.

14. As shown during the arbitral proceedings where the shareholders lost, the complete picture of the corporate structure of the investment in question is provided in Figure 1.

672



678

Figure 1: *Corporate Structure of the Claimant*

684

15. In 2017, Ms. Daisy and Mr. Donald, who own the majority of the shares of Sutton Holdings (specifically 75% of all the shares, of which 45% is owned by Daisy and 30% by Donald) (the “**Shareholders**”), initiated arbitration proceedings against Rhekia under the Athabasca–Rhekia BIT. While unsuccessful in their claim, the Shareholders correctly brought their claim first to the courts of Rhekia in accordance with Article XII. The Shareholders claimed that owing to the extensive damage that the cannabis plant suffered, they had ultimately suffered reflective losses when the values of their shares fell rapidly. This, according to the Shareholders, demonstrated that the State of Rhekia had indirectly expropriated their investment.

690

16. In November 2020, a tribunal (the “**Previous Tribunal**”) issued an award dismissing the claim. The Previous Tribunal considered, among other things, that there were insufficient grounds to conclude that Rhekia had expropriated the Shareholders’ investments. A copy of the Previous Tribunal’s Award dated 28 November 2020 is enclosed as [RESPONDENT’S EXHIBIT R2].

696

17. Against this backdrop, after very recently having prevailed against the largest shareholders of Sutton Holdings, the Respondent was surprised to receive the Request for Arbitration from the Shareholders’ company, Sutton Holdings. The Respondent has

always recognized that the Shareholders essentially owned or controlled Sutton Holdings, and that they had raised their earlier claim entirely in accordance with Article XIII and XII of the BIT. In fact, the Respondent did not object to the Previous Tribunal's jurisdiction, as a display of its staunch support for the ISDS system.

18. The Respondent regrets that its display of good faith was clearly not reciprocated by the Claimant. The Claimant is now essentially attempting to get a second bite of the cherry on the question of whether “it has incurred loss or damage by reason of, or arising out of, that breach” under Article XIII, regardless of whether the subject matter of the dispute would essentially be identical to the claim which was previously considered and dismissed by the Previous Tribunal.

19. The Respondent cannot fathom how this would be in keeping with basic notions of fairness in international law, in particular the well-established principle of *res judicata*. If the Tribunal hears the present claim brought by the Claimant, the case will essentially relate to the same subject matter, the same cause of action, and the same parties. With respect, it would become a grievous example of a retrial; it would be yet another string in the bow of the arbitration working groups manufacturing countless “publications” on the state of investor-state dispute resolution.

III. THE CLAIMANT’S REQUESTS FOR COMPENSATION ARE MISCONCEIVED

20. The Claimant argues it is entitled to damages stemming from the Respondent’s failure to provide Full Protection and Security and for moral damages. However, this request is problematic for a number of reasons.

a. The Claimant is not entitled to damages for the alleged breach of the FPS standard

21. Although the Claimant argues that the Respondent failed to provide the Claimant’s investments Full Protection and Security (“FPS”), this is not true. Rhekia provided the highest level of protection that Rhekia was able to, given the circumstances, to the Claimant’s work sites, which were located in remote locations.

22. Additionally, the Respondent would not be required to pay compensation to the Claimant even if Rhekia had failed to provide FPS. This is because, the Compensation for War Losses clause (Article VI of the BIT) only provides that Rhekia is prohibited from discriminating in how it compensates investors *if* Rhekia chooses to compensate investors suffering losses due to a civil war. Because the Respondent has not compensated any investors for losses due to a civil war, the Respondent is not obligated to compensate the Claimant.

732 **b. The Claimants are not entitled to moral damages**

23. The Claimant's arguments on moral damages are misconceived. Notwithstanding the Respondent's stance that it has not derogated from its obligations under the BIT, the Respondent also submits that in the event of any such derogation, a claim for moral damages is an attempt by the Claimant to obtain punitive damages, which is prohibited under the BIT.

738 24. The Claimant has failed to meet the high threshold set by arbitral Tribunals to justify
an award for moral damages and has further failed to satisfy an important prerequisite
for such a claim, namely malice on the Respondent's part. The Claimant's exhibits also
fail to provide sufficient evidence of moral harm, as well as of its causal link with the
Respondent's actions. As a result, even if the Tribunal were to find the Respondent in
violation of the Athabasca–Rhekia BIT, no award of moral damages is due to the
744 Claimant.

25. In any event, the quantum of moral damages claimed is unreasonable and amounts to
an attempt by the Claimant to be compensated higher than the quantum of actual loss it
allegedly suffered.

IV. PRAYERS FOR RELIEF

26. For all of the abovementioned, Rhekia requests the Tribunal to:

750 a. Declare that it lacks jurisdiction over the dispute.

In the alternative:

b. Declare that the Claimant's requests are inadmissible.

c. Declare that the Claimant's claims shall be entirely rejected and that the Respondent
did not violate the BIT, specifically Article V.1 (FPS).

d. In case the Tribunal finds that the Respondent has violated the BIT, find:

756 i. that the Claimants are not entitled to any compensation for its alleged failure
to provide Full Protection and Security to the Claimant's investments
because the 'Compensation for War Loss' clause operates as *lex specialis*,
displacing the FPS *lex generalis* obligation;

ii. that, pursuant to the 'Compensation for War Loss' clause, the Respondent is
only obliged to compensate investors for their losses on a non-discriminatory

762 basis and no obligation arises in this instance because the Respondent has not compensated any investors; and

iii. that no compensation for moral damages is due.

and

e. Order the Claimant to bear all the costs and expenses associated with this arbitration.

768 **V. PROCEDURAL MATTERS**

27. Rhekia appoints Prof. Martin Williams as arbitrator, whose details are as follows:

Prof. Martin Williams,
Professor of Law,
National University of Urael,
Knowledge Corridor,
774 Urael
Email: m.williams@ueael.edu

28. Rhekia agrees that the proceedings shall be conducted in English.

29. For the avoidance of doubt, the Republic of Rhekia expressly reserves its right to submit any procedural matter, objection, defenses, privileges, immunities, claims and counterclaims related to the issue of the present letter.

780 Sincerely,



Advokat Jonas Haraldsen
Brann Associates LLP
Counsel for Respondent

786 ***Contact information for the Republic of Rhekia and its counsels:***

792 ***Respondent***
Republic of Rhekia
Ragnar Eriksen
State Secretary General
Ministry of Economy

798

43 Åndalsnes Street
5478 Aker Brygge
Republic of Rhekia
T: +145 88 63 35
t.ragnar@moe.gov.rh

804

Counsel for Respondent
Advokat Jonas Haraldsen
Brann Associates LLP
58 Vulkan Av.
4857 Sofienberg
Republic of Rhekia
jonas.j@fire.com.rh
tills.t@fire.com.rh

RESPONDENT'S EXHIBIT R1 – Emergency Press Statement of Mr. Rokari

810

EMERGENCY PRESS STATEMENT OF MR. ANTHONY ROKARI

By the Office of the Ministry for Home Affairs

Parliamentary session RK/P/FDI//2016/S/6 on 2 July 2016

816

1. My fellow Rhekians, it is with a somber heart that I address you.

2. Over the last months, tension has steadily brewed along the fault lines which run through our proud society. When this government passed the Cannabis (Cultivation and Promotion) Act in 2010, we did so with the hopes that Rhekia would step into the modern age, embrace the ways of the world, and for our economy to reap the fruits of our labor.

822

3. Regretfully, Rhekia has entered into a state of civil war. We are working to subdue all threats from these terrorist groups who seek to undermine our Rhekian ideals of democracy, harmony and prosperity. I make this statement to address several matters and to assure the citizens of our great country that this government has matters under control and will be able to subdue the conflicts, and to assuage certain concerns raised by our valued investor partners.

828

4. I note that there have been a number of attacks on several cannabis production plants, including that of Sutton Investments. While this is a regrettable state of affairs, I must emphasize that Rhekia had to prioritize certain objectives and the utilization of its military forces. What I can say is that there are a number of high-priority areas which urgently required our attention. This included the financial districts and the areas in which our government and civil service are based. These were not only areas where essential services are based, but would have also allowed the Rhekian military and government to consolidate its resources in order to better deal with the uprising militias.

834

5. At present, due to operational reasons, I am unable to disclose further details relating to the Rhekian military's allocation of its resources.

6. I also note that it has been widely reported that the government has received urgent requests for assistance from investors in the region who may have or were in the proximity of armed conflict. I can confirm that we have indeed received such requests.

840

7. However, I will take this opportunity to refute certain allegations that have been levelled against my office. Certain irresponsible media reporters have alleged that we have ignored

these requests. Others border on the malicious in asserting that we have condoned or even encouraged the attacks against the cannabis plants. Needless to say, these allegations are completely without basis and are categorically denied. To put it bluntly, these reports are fake news.

- 846
8. The fact of the matter is that this government and my office had consulted with experts and key stakeholders, which included our most important investors, to allow all feedback and concerns to be fairly voiced. I can confirm that one such consultation session did take place on 1 July 2016 and that we had invited two prominent persons in the cannabis industry, Mr. Hugh Highmountain and Mr. Budd Hogg, to represent their industry's concerns. However, given the volatility of the current situation, we regret that the records and attendance of all such meetings are highly confidential and therefore, cannot be disclosed.
- 852
9. Given the thorough and expedient measures that the government has taken, it cannot now lie in the mouth of these detractors to say that we have ignored the concerns of the affected industry. Rather, it is clear that we have given due consideration to these concerns, and ultimately we made a judgment call on how to best protect Rhekia's interests.
- 858
10. As you may know, the cannabis industry is a global multi-billion industry. It had - and continues to have great potential for growth for Rhekia's economy. We see the cannabis industry as a vital part of Rhekia's growing and modern economy. I emphasize this to reassure our partners who have invested in Rhekia's fledgling cannabis industry that your concerns have been seriously and carefully noted, and that the government is deeply committed to upholding its obligations to you and to Rhekia. We will emerge from this together stronger and more prosperous than ever before.
- 864

RESPONDENT’S EXHIBIT R2 – Donald & Daisy v. Rhekia

THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES
ICSID CASE NO. ARB/01/224/17

In the matter of the arbitration between

MR. DONALD

AND

MS. DAISY

CLAIMANTS

v.

REPUBLIC OF RHEKIA

RESPONDENT

AWARD
28/11/2020

Members of the Tribunal

Astrid Tørr Landsby
Ragnar Sol
Bjørn Stein

Secretary of the Tribunal

Beatrice Xativa

[The English translation of the award is reproduced. For the avoidance of doubt, other parts of the award are intentionally not reproduced in the excerpt below.]

912

I. PROCEDURAL BACKGROUND

1. On 6 January 2017 the International Centre for Settlement of Investment Disputes (hereinafter “**ICSID**”), received a request for arbitration submitted by Mr. Donald and Ms. Daisy (hereinafter the “**Shareholders**”), against the Republic of Rhekia.
- 918 2. In their request for arbitration, the Shareholders claimed that the Republic of Rhekia had violated the Athabasca–Rhekia Bilateral Investment Treaty (the “**BIT**”), due to an indirect expropriation of the shares they owned in an Athabaskan company, which in turn owns a cannabis plant in Rhekia.
- 924 3. Before filing the request for arbitration, the Shareholders had submitted their claim under the High Court of Rhekia, which issued a final decision in 2016, under an expedited process installed after the Rhekian civil conflict. There, the Shareholders made claims that, essentially, their shares had (i) been expropriated; and (ii) diminished in value as a result of negligence on the part of Rhekia during the conflict. These claims were made with reference to both domestic Rhekian law and with reference to Rhekia’s obligations under the BIT. The Shareholders lost on all counts before the High Court, which forms the background for the present claim before the Tribunal.

930 II. THE PARTIES

4. The present dispute is between the Shareholders and the Republic of Rhekia. It raises the question whether the Republic of Rhekia has breached the BIT by virtue of the civil war that arose in the country, which damaged the production facilities and consequently affected the value of the shares of the Shareholders. The Shareholders argue that, due to the situation that occurred in Rhekia, they suffered a reflective damage to the value of the shares. Therefore, they claim that there was an indirect expropriation of their investment.
- 936 5. The Shareholders own a majority (75%) of the shares of the Athabaskan company “Sutton Holdings”. This company owns two cannabis production sites located in Rhekia, named “Freya” and “Odin”, through its locally incorporated entity “Sutton Investments”.
- 942 6. In the year 2014, the civil uprising in Rhekia led to several attacks on the plants, causing severe damage to the facilities, which forced Sutton to stop all production until 2017. This caused a decrease in the value of its shares. Donald and Daisy’s shares, which had

a value of USD 46 in early 2014, before the civil tension begun to increase, decreased to USD 13.4 by the end of 2015, and USD 0.32 in 2016. Thus, Donald, the owner of 30% of the shares in Sutton Holdings, and Daisy, owner of a 45% share, were affected. They now claim that due to their reflective shareholder rights, the acts and omissions of Rhekia towards Sutton's cannabis plants had a causal impact on their shares and their rights as shareholders.

7. The Republic of Rhekia argued that this situation could not be interpreted as an expropriation under the BIT, in that there was no forced deprivation of the shares, and thus, no direct expropriation. Neither was there any indirect expropriation, as there was virtually no deprivation of the Shareholder's rights, let alone a substantial deprivation, as required by the case law.

III. CONSTITUTION OF THE ARBITRAL TRIBUNAL AND COMMENCEMENT OF THE PROCEEDINGS

[Intentionally not reproduced]

IV. JURISDICTIONAL PHASE OF THE PROCEEDINGS

[Intentionally not reproduced]

V. MERITS PHASE OF THE PROCEEDINGS

[Intentionally not reproduced]

VI. FACTUAL BACKGROUND

[Intentionally not reproduced]

VII. LEGAL BACKGROUND

[Intentionally not reproduced]

VIII. JURISDICTION

8. *[Intentionally not reproduced]*

9. It is not disputed that the Shareholders are investors and that they own an investment covered under the BIT. The Shareholders are natural persons with Athabaskan nationality in accordance with Article I(2)(a) of the BIT, and they own an investment in the form of shares in accordance with Article I(1)(b) of the BIT.

984 10. Furthermore, it is not disputed that the Shareholders are entitled to claim in accordance
with Article XIII of the BIT. They are claiming for a so-called reflective shareholder
loss “*on behalf of an enterprise that they own or control directly or indirectly*” which
was subjected to various attacks and lootings from 2014 onwards. Each of the
Shareholders, “*has incurred loss or damage by reason of, or arising out of, that breach*”
990 under Article XIII(b)(ii) of the BIT. The Tribunal therefore considers that there is
consent to arbitrate under Article XIII.

IX. THE ALLEGED VIOLATIONS

11. *[Intentionally not reproduced]*

996 12. As a result of the abovementioned attacks, the Shareholders submit that their
shareholding lost value because of the sudden and catastrophic damages suffered by
Sutton’s production plants. They allege that, despite maintaining ownership of their
shares, they were subjected to substantial interference with its rights, up to the point
that they became almost useless. Therefore, Rhekia’s actions amount to an indirect
expropriation of their investment.

1002 13. The Republic of Rhekia submits that the shift in the value of the shares is not only
inherent to shares themselves, but could not amount to an indirect expropriation in this
case, as the shareholders still have their investment, and did not suffer a “*substantial
deprivation*”. As a starting point, the Tribunal notes that there were, and are, many
shareholders in Sutton Holdings. It was only the Shareholders that considered it
necessary to pursue this claim due to the shift in the value of their shares

1008 14. Moreover, the Tribunal notes that indirect expropriation is protected under the BIT.
While the Shareholders are protected against indirect expropriation, the Tribunal
considers that an investor cannot expect to have absolute stability in an unstable market
such as cannabis extraction, in a historically traditional country, such as Rhekia. The
Tribunal considers that Rhekia’s actions have, at least in part, contributed to the
destruction of the cannabis production plants. The passiveness apparently displayed by
Rhekia throughout the so-called civil war is particularly culpable. The Tribunal uses
1014 the word “*apparently*”, because during the course of this arbitration the Respondent has
not provided any comments or evidence as to its involvement and role in the damages
sustained by Sutton’s investments. Meanwhile, the Shareholders’ counsel offered
considerable arguments and, at least, provided some substantiation by way of exhibits.
The Tribunal can therefore only draw adverse inferences from Rhekia’s choice not to
participate in this respect and accepts the Shareholders’ portrayal of the facts.

1020 15. Nevertheless, the Claimants in the present dispute are *shareholders* of the enterprise
that suffered the damages in question. In this respect, the Tribunal notes that the

particular market has to be considered and given considerable weight: The Shareholders have invested in a business in which it was widely known, if not notorious, that governmental regulations and health protection institutions, operating under the vigilant eyes of the media, and a politically active electorate, continuously monitor the use and impact of cannabis and its derivatives, either in its medicinal or recreational use. Indeed, this very market could have contributed to the situation that occurred in Rhekia in 2014.

16. Furthermore, the Tribunal also notes that the market price of shares constantly shifts in value, being a volatile asset, which depends on the context in which it is placed. Therefore, the Shareholders cannot reasonably hold Rhekia liable for a mere change in value.

X. COSTS OF THE PROCEEDING

[Intentionally not reproduced]

XI. DECISION OF THE TRIBUNAL

For the reasons set forth above, the Tribunal unanimously:

- a. HOLDS that the present dispute is admissible and within the Tribunal's jurisdiction;
- b. DECLARES that the Respondent has not breached its obligations under the Athabasca–Rhekia BIT, as its actions did not amount to an indirect expropriation of the shares; and
- c. DECLARES that all other claims are hereby dismissed.

Made in Aker Brygge, Rhekia, in the Rhekian language.

28 November 2020



Bjørn Stein
(Arbitrator)



Astrid Tørr Landsby
(President)



Ragnar Sol
(Arbitrator)

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE No. ARB/22/151

In the arbitration proceeding between

Sutton Holdings Inc.

(Claimant)

1068

v.

The Republic of Rhekia

(Respondent)

ICSID Case No. ARB/22/151

1074

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Ms. Sasha Triks, President of the Tribunal

1080

Ms. Rachel Green, Arbitrator

Prof. Martin Williams, Arbitrator

Secretary of the Tribunal

Mr. Steve Laufeyson

1086

5 September 2021

Introduction

The first session of the Arbitral Tribunal was held on 5 September 2021, at the seat of the Centre in Washington, D.C. The session was adjourned at 1 p.m.

1092 Participating in the first session were:

Members of the Tribunal

Ms. Sasha Triks, President of the Tribunal

Ms. Rachel Green, Arbitrator

Prof. Martin Williams, Arbitrator

ICSID Secretariat:

1098 Mr. Steve Laufeyson, Secretary of the Tribunal

Attending on behalf of the Claimant:

[...] *[Intentionally omitted]*

Attending on behalf of the Respondent:

[...] *[Intentionally omitted]*

The Tribunal and the parties considered the following:

1104 [...] *[Intentionally omitted]*

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to the ICSID Arbitration Rule 19, the first Procedural Order sets out the Procedural Rules that the Claimant and the Respondent (the “**Parties**”) have agreed to, and the Tribunal has determined shall govern this arbitration.

1110 1. **Applicable Arbitration Rules**

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, and the Official Rules of the Foreign Direct Investment International Arbitration Moot, as agreed between the Parties. In the event of any

inconsistency between the two, the latter shall prevail to the extent of such inconsistency.

1116

2. Constitution of the Tribunal and Tribunal Members' Declarations

2.1. The Tribunal was constituted on 3 September 2021 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

1122

2.2. Members of the Tribunal submitted their signed declarations in accordance with Rule 6(2) of the ICSID Arbitration Rule. Copies of these declarations were distributed to the Parties by the Centre.

2.3. The Members of the Tribunal have confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

1128

2.4. The contact details of each member of the Arbitral Tribunal are as follows:

Ms. Sasha Triks
Mahiks and Partners LLP
14 Paper Street,
Sandhurst Square, Scaeya
Email: s.triks@mahiks.com

Ms. Rachel Green
Attorney-at-Law,
Faizus & Co.,
Ash Street,
Cloyla
Email: r.green@faizus.cl

Prof. Martin Williams,
Professor of Law,
National University of Urael,
Knowledge Corridor,
Urael
Email: m.williams@ueael.edu

3. Fees and Expenses of Tribunal Members

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum of Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

1134

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

1140

3.2.2. Subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

1146

4. Presence and Quorum

4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

[...] *[Intentionally omitted]*

1152

6. Power to Fix Time Limits

[...] *[Intentionally omitted]*

7. Secretary of the Tribunal

[...] *[Intentionally omitted]*

1158

8. Representation of the Parties

8.1. Each party shall be represented by its counsel (as below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimant
Prof. D. Konopie
Mar & Associates
547 Gañjikā St.
Potiguaya
Republic of Athabasca
kon.d@mar.com.ab

For Respondent
Advokat Jonas Haraldsen
Brann Associates LLP
58 Vulkan Av.
4857 Sofienberg
Republic of Rhekia
jonas.j@fire.com.rh
tills.t@fire.com.rh

9. Apportionment of Costs and Advance Payments to ICSID

[...] *[Intentionally omitted]*

1164

10. Place of Proceeding

10.1. Washington, D.C. shall be the place of the proceeding.

10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.

1170

10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Languages, translation, and interpretation

11.1. English is the procedural language of the arbitration.

1176

11.2. Documents filed in any other language must be accompanied by a translation in English.

1182 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.

11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.

1188 12. Routing of Communications
[...] *[Intentionally omitted]*

13. Number of copies and method of filing of parties' pleadings
[...] *[Intentionally omitted]*

1194 14. Organisation of Hearing

14.1. Having regard to the Parties' submissions on the organization of pleadings, and with regard to the Respondent's objections to the jurisdiction of this Tribunal, the Tribunal determines the following organization of hearings and fixes the procedural calendar for the Parties' submissions.

1200 14.2. Though the Parties' have raised issues that would require different stages to address, (jurisdiction/admissibility, merits, and remedies), Parties' and the Tribunal have agreed that they shall address issues in the following two stages alone. During Stage 1 the Tribunal will hold a hearing on the listed issues, and as soon as possible after the hearing, decide on the same.

STAGE I/Main Stage:

- 1206
- i. Whether the Tribunal has jurisdiction over the present dispute, in light of the Respondent's claim of the application of the *res judicata* rule;
 - ii. Whether the Tribunal has jurisdiction over the present dispute, in light of the application of the exhaustion of local remedies rule under the relevant BIT;
 - iii. Whether the Respondent violated its obligation to provide Full Protection and Security to the Claimant's investments contained within Article V; and
 - iv. Whether Compensation for War Losses clause (Article VI) precludes the Claimants from receiving compensation;
 - 1212 v. Whether the Claimant is entitled to compensation for moral damages.

STAGE II/Quantum Stage:

- i. The Tribunal will address the questions of quantum of damages, if any, as well as the costs of the proceedings and their allocation among Parties in this stage.

1218 14.3. The Tribunal will schedule the second stage of the proceedings and set a timetable for its conduct in consultations with the Parties after the Tribunal issues its decision on the issues of jurisdiction, liability and available remedies.

15. Production of Documents

[...] [*Intentionally omitted*]

1224 16. Written Submissions

16.1. The parties shall submit a memorial and a counter-memorial, detailing their submissions, including legal authorities relied on.

1230 16.2. Only one round of written submissions shall be made by the Parties. The Claimants' Memorial on jurisdiction, liability and remedies shall be submitted to the Tribunal no later than 13 September 2022; the Counter-Memorial on jurisdiction, liability and remedies, if any, is to be submitted to the Tribunal no later than 20 September 2022. The Tribunal may direct parties to submit skeleton briefs if it finds them necessary for the proper consideration of the dispute.

17. Witness Statements, Expert Reports and other evidence

1236 17.1. Parties agree that the evidence that may be relied on in the arbitration will be limited to (i) facts and assertions contained in the Request for Arbitration and the Response to Request for Arbitration, as well as the "Statement of Uncontested Facts" as will be agreed to between the parties, and appended to a Procedural Order (with no admission being made by either of the Parties as to correctness of the inferences from facts asserted by the other Party in its respective submission); (ii) publicly available information and (iii) responses to the questions presented by the Parties' counsel in accordance with the procedure laid down below:

1242

17.1.1. By 1 June 2022 factual questions that require clarification shall be posted in accordance with the procedure described in <https://fdimoot.org/Rules.pdf>;

1248 17.1.2. The Parties shall then confer and seek to agree as soon as practicable on the responses to those questions. The Parties' agreed responses shall be appended to the case file at <https://fdimoot.org/problem.pdf>;

17.1.3. By 15 August 2022, another set of factual questions may be posted in accordance with the same procedure referenced above. The responses to those questions shall be appended as described above.

1254 17.2. Witness statements and expert reports shall be filed separately from the parties' pleadings.

1260 17.3. Neither party shall be permitted to submit any testimony that has not been filed, unless the Tribunal determines that exceptional circumstances exist.

17.4. Each witness statement and expert report shall be signed and dated by the witness.

17.5. Parties are to jointly submit a Statement of Uncontested Facts. The Tribunal understands that the Parties are already working amicably on this.

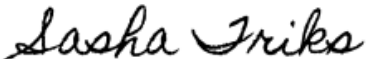
1266 18. Examination of Witness and Experts
[...] *[Intentionally omitted]*

19. Records of Hearings and Sessions
[...] *[Intentionally omitted]*

1272 20. Post-Hearing Memorials and Statement of Costs
[...] *[Intentionally omitted]*

21. Publication
21.1. All parties consent to ICSID publication of the award, and any order or decision issued in the present proceedings.

1278 22. Other Matters
[...] *[Intentionally omitted]*

1284 

1290 Sasha Triks
President of the Tribunal
Date: 5 September 2021

THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
ICSID CASE NO. ARB/22/151

1296

SUTTON HOLDINGS INC.

CLAIMANT

v.

1302

THE REPUBLIC OF RHEKIA

RESPONDENT

1308

MEMORIAL ON JURISDICTION
17 SEPTEMBER 2021

1314

Claimant

Sutton Holdings
15 Hamppu Avenue
Mbanje
Republic of Athabasca
T: +58 788 96
contact@sutton.com.ab

1320

Counsel for Claimant

Prof. D. Konopie
Mar & Associates
547 Gañjikā St.
Potiguaya
Republic of Athabasca
kon.d@mar.com.ab

1326

1332

I. INTRODUCTION

- 1338 1. Sutton Holdings Inc. (“**Claimant**”) hereby confirms receipt of the Republic of Rhekia’s (“**Respondent**”) preliminary response to the Request for Arbitration (the “**Response**”).
2. The Claimant notes that the Respondent has objected to the Tribunal hearing the claims on two grounds. The Claimant respectfully submits its Memorial on Jurisdiction (the “**Memorial**”) in response. The Claimant will show that the Respondent’s objections to the jurisdiction of this Tribunal have no merit.

1344 II. RES JUDICATA

3. The Respondent alleges that the Claimant is barred from pursuing its claim due to the principle of *res judicata*. The Respondent refers to the ICSID case of *Mr. Donald and Ms. Daisy v. The Kingdom of Rhekia, Award, 28 November 2020* and submits that the present case relates to the same subject matter, the same cause of action, and the same parties.
- 1350 4. The Claimant brings attention to the fact that *Daisy & Donald v. Rhekia* was erroneously decided based on the Rhekian version of the Athabasca–Rhekia BIT, which led the Tribunal to the wrong conclusion that it had jurisdiction to hear that case.
5. It is noteworthy that the Award does not mention or consider that the BIT has two authentic languages - English and Rhekian. However, Article XIII(b)(ii) of the BIT contains a small but very significant discrepancy in the two official languages. While the Rhekian version of the BIT could be construed to the effect that it allows for reflective shareholder losses, the English version of Article XIII clearly does not permit that: a claimant can only make a claim that “the enterprise has incurred loss or damage” under XIII(b)(ii), which precludes the possibility of claiming for reflective shareholder losses whatsoever.
- 1356 6. While both language versions are authentic, the Claimant submits that the English version of the BIT takes precedence over the Rhekian version. Where one language version contains a wording with a wider scope than the other version, the narrower version should always be preferred. This is especially true where a dispute settlement clause is concerned, such as Article XIII of the BIT.
- 1362 7. Moreover, the BIT was entirely negotiated by the parties in the English language. Mr. Bunkan Bagels, a representative of Athabasca in the treaty negotiations in the Athabasca–Rhekia BIT, distinctly recalls that the negotiators were working on a shared and secured document over an online platform [CLAIMANT’S EXHIBIT C7].
- 1368

8. The tribunal in *Daisy & Donald v Rhekia* therefore ought to have interpreted the Athabasca–Rhekia BIT according to its English version. Had it correctly done so, the tribunal ought to also have found that it would not have had jurisdiction to hear the case before it. Thus, considering that *Daisy & Donald v Rhekia* should never have been heard by the tribunal and was wrongly decided, it would be unreasonable to consider that the doctrine of *res judicata* bars the Claimant from pursuing its claim in the present case.

9. In any event, the Claimant submits that the doctrine of *res judicata* is inapplicable, due to a lack of identity of subject matter, cause of action or parties between the two disputes.

1380 III. EXHAUSTION OF LOCAL REMEDIES

10. The Respondent also disputes the Tribunal’s jurisdiction on the basis that the Claimant has not shown that it has exhausted local remedies as required under Article XII of the Athabasca–Rhekia BIT.

11. While it is not disputed that Article XII ordinarily imposes a requirement to initiate proceedings in Rhekia’s domestic legal system before commencing arbitration proceedings under Article XIII of the BIT, the Claimant submits that Article XII does not apply in the present case. It is well established that an investor such as the Claimant only has an obligation to exhaust local remedies insofar as local litigation proceedings can realistically be achieved within the stipulated timeframe.

12. Given the heavy disruptions and delays caused by the civil war in Rhekia, it is submitted that Article XII would not advance any meaningful purpose and merely frustrates legitimate attempts of investors to seek recourse through investor-state arbitration proceedings. It would be futile to require the Claimant to have to first file a claim in the domestic courts of Rhekia before it is allowed to seek relief by way of arbitration proceedings.

13. The Claimant reserves the right to make further written submissions on the issues of *res judicata* and whether it is required to exhaust local remedies prior to the hearing scheduled in November 2022.

IV. PRAYER FOR RELIEF

14. For all of the abovementioned, the Claimant requests the Tribunal to declare that it has jurisdiction over the dispute.

1404

CLAIMANT’S EXHIBIT C8 – Witness Statement of Bunkan Bagels

IN THE MATTER OF AN ARBITRATION

BEFORE

1410

**THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

ICSID CASE NO. ARB/22/151

SUTTON HOLDINGS INC.

CLAIMANT

1416

v.

THE REPUBLIC OF RHEKIA

RESPONDENT

1422

WITNESS STATEMENT OF MR. BUNKAN BAGELS

I, Bunkan Bagels, formerly a Senior Special Counsel at Athabasca’s Ministry of Foreign Affairs, Department of International Law and Treaties (hereinafter the “**Ministry**”), will say as follows:

1428

1. I have reviewed the pleadings filed in this arbitration to date. This witness statement sets my evidence in respect of the matters set out in those pleadings. The fact that I do not address a point specifically should not be taken to be an admission in any way.

2. All the facts set out below are within my personal knowledge and true, except where I indicate otherwise, in which event the same are true to the best of my belief.

1434

3. I am fully proficient in both English and Rhekian languages (being the very reason for my inclusion into the Athabaskan BIT negotiating team). I have reviewed all of the legal documents and email exhibits. I confirm that I understand all of the documents which I have mentioned below.

1440

4. I worked at the Ministry between April 2000 to June 2010.

- 1446 5. Starting in late 2008, Rhekia's Minister of Trade and Fisheries visited a number of countries in the region, apparently to show that Rhekia was welcoming foreign investments and in an attempt to sign free trade agreements. I recall that the Rhekian Minister came to the Ministry in Athabasca on one occasion in March 2009, after which it became known to staff that we would begin negotiations on a bilateral investment treaty between Athabasca and Rhekia. This was when the Athabaskan negotiation team first met with the Rhekian team.
6. From August 2009, negotiation rounds took place approximately every six weeks, in Vasta, Athabasca and Cittegaz, Rhekia, interchangeably.
- 1452 7. While our team had a bit of experience dealing with these sorts of negotiations, Rhekia's team seemed to be on the younger side. I found this to be surprising, as the wording of a bilateral investment treaty can be a very big deal. I would have expected Rhekia to send its most prominent experts on international law (or at least someone who had not just graduated from law school). Perhaps it was because of their young age, but I noticed that our Rhekian colleagues often went "clubbing" after our banquet dinners, something we - the Athabaskan delegates - were never invited to.

1458
8. In any event, while most of the Rhekian team seemed to have Norse roots, I was not able to detect any Rhekian accent when they spoke English, so I gathered that young Rhekians these days must be completely bilingual (this was also confirmed to me by one of the Rhekian delegates, Ms. Lisa Gunnarsen, at a banquet). Although I am very proficient in Rhekian, I did not need to use Rhekian much during the negotiations.

1464
9. On that note, I will say that I was impressed that the negotiations were exclusively conducted in English and the level of professionalism that the Rhekian team displayed. We discussed exclusively in English and the Rhekian team introduced us to an advanced software called "Google Docs", where we collaborated on drafting in English. I do recall that there might have been a file called "Rhekian Draft" on the so-called "Google Drive" folder (which, and I am not entirely sure about this, seemed to contain text), but if my memory serves me right this was never opened and discussed during the negotiations.

1470
10. As the Rhekian team was rather inexperienced, very few of the clauses caused much contention. One of these was Article XIII, which was essentially copy pasted from Athabasca's Model BIT in our draft. At the very end of our fifth round of negotiations, the Rhekian delegation conveyed that it was important that the treaty does not exclude shareholders' rights to claim for reflective losses. I distinctly recall that Ms. Lisa Gunnarsen, an exceptionally impressive young lawyer, made a very convincing argument to this respect, and suggested a slightly different wording to Article XIII. While I was completely convinced by her argument and ready to accept her proposed changes, my supervisor responded that Athabasca would need to consider this carefully and return to them with an answer, as all of our investment treaties have a consistent wording on this point.

1476

1482
11. This was the last round of negotiations in which I was involved. During the banquet dinner after the fifth round, I approached Ms. Gunnarsen and asked if they were going clubbing, and she

1488 invited me to join. Based on the stamps on my hand the next day, I believe we went to Dada, Vics, Sir Teen and Destination. Unfortunately, I was feeling a bit under the weather the next day, so I had to call in sick. That did not stop my supervisor from just walking right into my hotel room, however. He told me that Ms. Gunnarsen had approached him and informed him that I had acted very unprofessionally the night before. My supervisor suggested that maybe it was time for me to move on, and that was my last day of working for the Ministry.

1494 12. Returning then to Article XIII. It is plain as day that the English version of the final treaty contains the exact wording that was proposed in our first draft, not the one proposed by Rhekia. I therefore do not understand why the Rhekian version has a different wording than the English version, especially since we never negotiated the Rhekian version.

1500 13. It is my understanding that the two delegations met for their sixth and final round in the winter of 2010. The treaty was signed on 10 March 2011 by Karl Blomstsson, President of the Republic of Rhekia at the time, and James Wilson, the then Prime Minister of the Kingdom of Athabasca. The Rhekian version available on the websites of the Ministry was provided by the Republic of Rhekia and merely uploaded for information.

1506 15 September 2021

Bunkan Bagels

1512 Bunkan Bagels

THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
ICSID CASE NO. ARB/22/151

1518

SUTTON HOLDINGS INC.

CLAIMANT

1524

V.

THE REPUBLIC OF RHEKIA

RESPONDENT

1530

COUNTER-MEMORIAL ON JURISDICTION
30 SEPTEMBER 2021

1536

Respondent

Republic of Rhekia
Ragnar Erikson
State Secretary General
Ministry of Economy
43 Åndalsnes Street
5478 Aker Brygge
Republic of Rhekia
T: +145 88 63 35
t.ragnar@moe.gov.rh

1542

1548

Counsel for Respondent

Advokat Jonas Haraldsen
Brann Associates LLP
58 Vulkan Av.
4857 Sofienberg
Republic of Rhekia
jones.j@ire.com.rh
tills.t@fire.com.rh

1554

1560

1566

I. INTRODUCTION

1. The Respondent hereby submits its Counter-Memorial on Jurisdiction.
2. The Respondent respectfully submits that the Claimant's defenses on jurisdiction are misguided. It firmly maintains that the Tribunal has no jurisdiction to hear the claims set forth by the Claimant.

1572

II. RES JUDICATA

3. The Respondent takes note that the Claimant's Memorial on Jurisdiction does not address most of the Respondent's objections with respect to *res judicata*, but only addresses the Previous Tribunal's finding that it had jurisdiction in *Daisy & Donald v Rhekia*. With respect, this is an inconsequential point that has no implications on the dispute at hand, which for cost reasons deserves only a summary response.

1578

4. The Previous Tribunal rightly conducted its analysis of whether it had jurisdiction based on the Rhekian version of the BIT. Indeed, as admitted by the Claimant, this language version has equal authenticity to the English version.

5. The concept of "arbitration without privity" means that an investor can accept a standing offer to arbitrate under a treaty. When there are two authentic language versions, an investor can simply choose which language version under which it wishes to initiate the proceedings. There is therefore no reason to conduct an analysis of which treaty version prevails. In *Daisy & Donald v Rhekia*, the Shareholders initiated the dispute under the Rhekian version of the BIT, and the Previous Tribunal was right to conduct its analysis under the Rhekian version.

1584

6. As mentioned in the Response to the Request for Arbitration, and as the Tribunal no doubt is aware, Rhekia is a staunch supporter of the ISDS system. Indeed, Rhekia considers that the object and purpose of bilateral investment treaties is precisely to permit investors to make claims directly against states. Thus, even if the Previous Tribunal should have conducted an analysis of which language version prevails, the Previous Tribunal would have concluded that the Rhekian version takes precedence over the English version.

1590

7. Furthermore, the Claimant is incorrect in its submission that the negotiations and drafting history of the Athabasca–Rhekia BIT favors the English version of the BIT. On the contrary, in its communications with Athabasca, Rhekia was always clear that it wanted to be very accommodating of ISDS because it benefits both Rhekian investors

1596

in Athabasca and *vice versa*. While the proposal in Rhekia’s communication (and confirmed in Exhibit R3) did not make it into the English version of the BIT, this must have been due to an unfortunate oversight or typographical error. In any event, the communication shows that the Rhekian version should be given precedence (or at least equal weight) on this particular point [RESPONDENT’S EXHIBIT R3].

III. EXHAUSTION OF LOCAL REMEDIES

8. Article XII of the Athabasca–Rhekia BIT prescribes that an investor must first submit its dispute to the Rhekian courts for a period of at least 18 months before it may submit the dispute to arbitration.

9. The parties to the BIT have agreed that the clear procedure set out in Article XII must be complied with before an investor may have recourse to arbitration proceedings. Indeed, this is reflected in the wording of Article XII(4), which makes clear that this requirement is a “*condition of [a Contracting Party’s] consent to arbitration*”. Accordingly, strict compliance with Article XII(4) is mandatory, as it determines whether the parties had consented to the Tribunal’s jurisdiction over the present claim.

10. Due to the jurisdictional nature of this requirement, any exception to this requirement under Article XII(3) must be exercised exceptionally, and would not be satisfied in the present circumstances. Contrary to the Claimant’s suggestions, Article XII clearly does not create any such exception permitting derogation from the rule.

11. In any case, it is simply premature for the Claimant to assert that it is futile for them to first commence a claim in the domestic courts of Rhekia. Given that the civil war in Rhekia has been brought to an end, and that Rhekia’s judiciary has not only been restored to full capacity but has also been enhanced through its transition into providing virtual services and using computerized processes, there is no basis for the Claimant to speculate that it would face unreasonable delays in initiating domestic proceedings. The fact remains that notwithstanding the civil war, the Rhekian courts have performed remarkably in continuing to hear cases.

12. Accordingly, given that the Claimant has failed to comply with the requirement that it must first submit its claim to the Rhekian courts, the tribunal does not have jurisdiction to hear the claim.

13. The Respondent fully reserves its rights to make further written submissions on the jurisdictional issues of *res judicata* and whether the Claimant has exhausted local remedies prior to the hearing scheduled in November 2022.

1638

RESPONDENT'S EXHIBIT R3 – Communiqué by Inga Magnusson

1644

Ms. Inga Magnusson
Minister of Economy
Ministry of Economy
43 Åndalsnes Street
5478 Aker Brygge
Republic of Rhekia
T: +145 88 63 35

Jacob McInblyre
Head of Division
Ministry of Foreign Affairs
Department of International Law and Treaties

1650

COMMUNIQUÉ



Dear Sirs and Mesdames,

1656

As You will be aware, I, the undersigned, am the Minister of Economy of the Republic of Rhekia ("Rhekia"). I have been continuously sitting in this role for the past twenty (20) years. As Minister of Economy, I am responsible for the negotiations of Rhekia's economic treaty commitments.

It is with utmost pleasure that I write to inform You that, as of yesterday, our Parliament has ratified the Athabasca–Rhekia BIT.

1662

On behalf of Rhekia, I wish to congratulate Your delegates and our delegates on their tremendously successful collaboration; which I feel represents our States' close and long-standing friendship. I also express our heartfelt gratitude for Your hospitality during these negotiations. Our delegates have spoken very highly of the warm reception they received in Athabasca.

On behalf of Rhekia, I also note that:

Negotiations between our delegates - for the Republic of Rhekia - and Your delegates - for the Kingdom of Athabasca ("Athabasca") - for the Athabasca–Rhekia Bilateral Investment Treaty, took place from August 2009, until the Treaty was signed 10 March 2011.

1668

As You are aware, Rhekia has a policy that all of its bilateral treaties be concluded in, at least, English and Rhekian, as these are both the official and equal languages of Rhekia. Like all other

Rhekian treaties, the Athabasca–Rhekia BIT was therefore negotiated and concluded in both English and Rhekian languages.

1674 As Your negotiators were aware of, it was considered to be of utmost importance that we conclude a treaty with the highest degree of protection to foreign investors in order to attract foreign investments. During negotiations, Rhekian delegates therefore expressed that it was essential that the Treaty allows for reflective shareholder losses, which is a feature that Rhekia has been consistent on in almost all of its modern BITs. In Rhekia’s view, this is rightly reflected in Article XIII of the Rhekian version of the BIT. Like all translations, there will always be certain linguistic limitations that need to be accounted for by our respective treaty translators. However, in this instance, I recognize that our respective translators have fallen short in that there is a small discrepancy.

1680 Nevertheless, and as You recall, English and Rhekian versions were signed simultaneously by our respective government representatives. In consideration thereof, and for the avoidance of any doubt, I wish to underline that both English and Rhekian versions of the BIT are of equal authenticity.

1686  *Ms. Inga Magnusson*

Ms. Inga Magnusson LL.M.

Ministry of Economy, Republic of Rhekia

16 September 2011

1692

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

Sutton Holdings Inc.

(Claimant)

1698

v.

The Republic of Rhekia

(Respondent)

ICSID Case No. ARB/22/151

1704

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Ms. Sasha Triks, President of the Tribunal

1710

Ms. Rachel Green, Arbitrator

Prof. Martin Williams, Arbitrator

Secretary of the Tribunal

Mr. Steve Laufeyson

1716

9 January 2022

1. Updated Organization of the Hearing

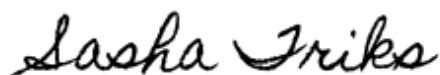
1.1. The Tribunal notes that the disputing Parties have agreed, by way of correspondence, to file a preliminary set of written arguments to assist the Tribunal in its decision in respect of the objections to the Tribunal's jurisdiction to hear the claim. The Tribunal is agreeable to this arrangement.

1.2. Notwithstanding the above arrangement, the Tribunal further directs the disputing Parties to fully address the Tribunal on both jurisdictional and substantive issues at the oral hearings scheduled in November 2022.

1.3. To assist the Tribunal, the Parties have filed a set of written submissions consisting of the Request for Arbitration, Respondent's Letter of Response, Claimant's Memorial on Jurisdiction, and Respondent's Counter-Memorial on Jurisdiction. However, for the following stages, the Parties are not restricted to the scope of arguments raised in their preliminary submissions.

1.4. The Parties have agreed upon a Statement of Uncontested Facts, as produced below (**ANNEX I**). The Tribunal is grateful to the Parties for working together amicably to provide the Tribunal with the undisputed facts.

1.5. The Tribunal notes that the Parties have jointly submitted (i) the English language version of the Athabasca-Rhekia BIT, and (ii) the Rhekian language version of (part of) Article XIII. The Parties have also jointly submitted and agreed upon (iii) an English translation of (part of) Article XIII of the Rhekian version, in compliance with Procedural Order No. 1. These are produced below (**ANNEX II**).



Sasha Triks

President of the Tribunal

Date: 9 January 2022

ANNEX I – STATEMENT OF UNCONTESTED FACTS

I. The countries of Rhekia and Athabasca

- 1752 1. The Republic of Rhekia is a developing country, which borders the Kingdom of Athabasca, as well as the Saks Ocean. On the whole, the relationship between the countries in this region have been peaceful, marked by prosperous years of trade, commerce and the movement of people between its borders.
- 1758 2. The Kingdom of Athabasca is a highly developed country, blessed with rich veins of gold, cobalt and other ores and minerals. It has three cities, Bancroft, Mapleton, and Maynooth, which form cultural centers within the local region. Athabasca has a highly skilled workforce, and a native English-speaking population. Its economy is well-diversified; it is not only one of the world's largest cobalt exporters but is also a regional financial hub. Many investors and conglomerates are known to set up headquarters in Mapleton and use its location in Athabasca as a base for expansion plans in the region.
- 1764 3. With the exception of the mountainous region on the north side of the island, Rhekia is a flat country with little elevation. The vast majority of its terrain consists of large rolling plains lush with vegetation. Historically, Rhekia has been a largely agriculture-driven economy, with more than 60% of its workforce being employed in farming, or agro-processing ventures. Although the northern part is more or less uninhabitable because of its rocky and sandy landscape, its geysers and a small inactive volcano called Leif are popular sites among tourists. Rhekia's two main population centers are its capital, Stockholm, and commercial center Copenholm.
- 1770



1776

4. Rhekia was completely uninhabited prior to its discovery by Saksan Viking explorers, who established vast settlements on the island, in 910 AD. The Saksans explored Rhekia, establishing settlements across its territories. The Saksans settled in Rhekia and developed their own cultures, habits and beliefs, heavily drawing from their ancestral Viking influence. Eventually, and over time, a distinct Rhekian culture began to form. As a result of the Rhekians' love for their ancestral Viking language, and because of an influx of English-speaking Athabascan immigrants during the 19th and 20th centuries, both the Rhekian and English languages were declared the official languages of Rhekia at the time of its independence. Since then, both languages are used as the language of instruction across Rhekia, and all official and governmental communications are made in both languages simultaneously.

1782

II. Developments in Rhekia

1788

5. Since 2001, successive Rhekian governments have focused their efforts on fostering its economy, with a focus on training its workforce and ensuring rapid industrial development. Upon ensuring a strong, yet fledgling, domestic manufacturing industry, Rhekia decided to open up its doors to foreign investments, in a bid to capitalize on its vast lands and skilled population.
6. As part of its efforts to invite and promote foreign investments within its territory, Rhekia entered into a series of bilateral investment treaties and created various domestic

- 1794 ease-of-doing-business policies. During this period, Rhekia entered into about 14 BITs, including a BIT with Athabasca in 2011. Rhekia also signed the ICSID Convention in 2010, which was immediately ratified in Rhekia’s parliament in the same year. All of Rhekia’s BITs are concluded in both English and Rhekian.
- 1800 7. The liberalization of Rhekia’s economy coincided with a global movement for the use of medical cannabis. Countries near Rhekia started regulating the use of marijuana for regulated medical usage. While some countries only permitted the personal cultivation and growth of cannabis, others fully decriminalized its growth, sale and consumption or reduced penalties for its sale while permitting its limited use as a medicine.
- 1806 8. Rhekians watched the global move towards cannabis legalization with great interest. Many Rhekians, especially the middle class were interested in moving towards full legalization of recreational cannabis usage. A large amount of support for cannabis legalization came from an unexpected source, a Norse Paganist group known to indulge in cannabis (particularly during the religious celebration of Sigurblót, a Rhekian festival celebrating the arrival of summer). Together, these groups pushed for the legalization of recreational cannabis in Rhekia. They not only placed emphasis on the growing body of research that touted the benefits of cannabis consumption, but also the topography of Rhekia, which included large swathes of cultivable land that was conducive to the domestic production of cannabis [ANNEX I, EXHIBIT 1].
- 1812 9. These social shifts in Rhekia were accompanied by a change in the political climate as well. In recent memory, Rhekian governments have always been headed by conservative-leaning parties, the most popular in recent times being the Justice and Tradition Party. However, by 2005, a new coalition government, the Rhekian Development Front, had developed a strong and committed voter base, based on their continued support for liberalization across a host of sectors, including on cannabis consumption [ANNEX I, EXHIBIT 2].
- 1818 10. The Rhekian Development Front’s newfound success came from their support from two existing Rhekian political parties and their respective constituencies: Norse Pagan social-conservatives (the “**Norse Party**”) and middle-class progressives (the “**Liberal Party**”). The social conservatives in the Norse Party were largely based in rural areas and partook in marijuana consumption as part of religious rituals and ceremonies. In contrast, the middle-class progressives in the Liberal Party, located largely in the highly metropolitan cities of Stockholm and Copenhagen, supported the nascent marijuana industry for its recreational and medicinal benefits. This shift in Rhekia’s political landscape was documented in a series of articles in one of Rhekia’s well-known newspapers, *The Daily Viking*.
- 1824

11. Between 2005 and 2010, the Rhekian Development Front improved its performance over each election until eventually winning a small majority in the national elections of March 2010 [ANNEX I, EXHIBIT 3].

1830 12. Among other things, this new coalition government introduced a bill - the Cannabis (Cultivation and Promotion) Act, to decriminalize and legalize the medicinal and recreational use of cannabis. However, they faced significant opposition, both before and after their election into power. The bill was fiercely contested both in Rhekian Parliament, as well as in public discourse, with the Rhekian Development Front managing to pass the bill by a margin of 127 to 121 votes.

1836 III. Investing in Rhekia

1842 13. Several pro-legalization advocacy groups seized this opportunity by organizing educational programs to explain the purported benefits of recreational use of cannabis, as well as establishing its influence by reaching out to the media, politicians, and other persons of influence. These efforts paid off, as by 2010, cannabis was legalized for medicinal and recreational use. On 17 September 2010, the Cannabis (Cultivation and Promotion) Act was passed. This, coupled with interest from two large global cannabis industry leaders Cannabliss and Sutton Holdings to set up production sites in Rhekia, prompted the government to permit these investments, and to permit the production and consumption of cannabis domestically as well. This decision was prompted under political pressure from business elites recognizing the tremendous potential and scope of the cannabis industry.

1848 14. Recognizing that cannabis could be a contentious sector, the Rhekian Parliament deliberated over enacting legislation and regulations to effectively govern enterprises involved in the cultivation, extraction, production and sale of cannabis, prior to permitting foreign investments.

1854 15. One particular requirement under the Rhekian Cannabis (Cultivation and Production) Act of 2010 stipulated that all cannabis enterprises were to be locally incorporated under Rhekian law. Foreign investment in this sector was fully permitted, but had to be routed through a domestically incorporated company. The Rhekian government set up the Cannabis Regulation and Control Institute (“**CRCI**”) in order to effectively regulate this sector. A series of mandatory licenses had to be obtained from the Rhekian government and the CRCI concerning the production and risk assessment of the cannabis products, as well as the routine reporting of the business activities of the enterprise, including a thorough audit of finances in order to ensure compliance with anti-money laundering and corruption rules in Rhekia.

1860

16. In the year 2012, multiple companies decided to invest in the cannabis cultivation sector. This included the building of cultivation sites (both outdoor and greenhouse), as

1866 well as processing plants and extraction centers. These were set up in the region of Boreal, within Rhekia. At the same time, investment funds and economists predicted that Rhekia's new regulations were very likely to entice many more foreign investors seeking to secure a foothold in the nascent but rapidly growing cannabis industry.

17. One of the investors that set up this plant was Sutton Holdings, an Athabaskan company that was one of the two companies to show an initial interest in this sector in Rhekia. Among these initial investors, Sutton Holdings made the biggest bet towards cannabis production and processing in Rhekia, investing more than USD 60,000,000.

1872 18. In order to comply with the Cannabis (Cultivation and Promotion) Act of 2010, Sutton Holdings' investment was structured through a locally incorporated company, Sutton Investments, also established in 2012. Furthermore, an authorization had to be obtained from the CRCI which was granted in June 2012.

1878 19. After obtaining the authorization, as well as the necessary construction permits, Sutton Investments completed constructing the first of its premises in late 2013. The production facilities were operational in early 2014, consisting of: (i) a 9.800 m² main plan, named Odin; (ii) an 8.000 m² area covered for cultivation with controlled conditions of watering, temperature, humidity and sunlight for the optimal development of the crop, named Freya; (iii) a 1.800 m² processing plant on the site to dry and process crops, with pharmaceutical standards to guarantee quality control; and (iv) a building for personnel offices.

1884 **IV. Rhekia's shifting political climate**

20. Even after the passing of the legislation and regulations legalizing the recreational use of cannabis consumption, there remained social unrest in Rhekia. The passing of the bill provoked growing protests around the country, stirred by conservative political groups writing popular opinion pieces in the *Rhekian Daily*, Rhekia's national and most popular newspaper.

1890 21. One such article published in the *Rhekian Daily* lambasted the moves of the current government. The article alleged that "*the Act was recklessly passed, built on the false promises made in the course of political campaigning in the hopes of capturing the votes of our youth*" and that it would surely "*dilute the long and historic culture of Rhekia*". The article also asserted that legalizing cannabis was "*a sure-fire path to ruin Rhekian youth*" as it would surely be a "*gateway to legalizing even more dangerous substances in the future*". It concluded with a powerful call for action, "*Already, we hear whispers of political and social unrest. Even the government is highly divided over this issue. Pick up your pens, mobilize each other, and march for change.*"

1896

22. In November 2013, well-funded conservative interest groups pooled their resources and initiated litigation proceedings by way of a representative action in the Rhekian courts.

- 1902 The Rhekian Citizens' Action for Rights and Freedoms sought judicial review of the pro-legalization laws and regulations, and in particular, sought a declaration that such laws were unconstitutional on the grounds that they infringed public health and safety, public order, and public morality. This was immediately opposed by supporters of the legislation, who applied to be joined as interested parties to the claim.
- 1908 23. While Rhekia's development soared as a result of the liberalization of its economy, developments to its judicial and administrative systems were slower. The Rhekian judiciary was equipped to deal with a modest case load and had not yet adopted the use of modern technology in court proceedings, including the use of online case management protocols and systems. However, in a newly liberal Rhekia, complex commercial disputes, including investor-state disputes, had become more common, leading to a backlog in cases in the domestic courts.
- 1914 24. In recent years, the Rhekian judiciary had attempted to incorporate the use of technology in its processes, for instance by devising plans for the transition of court processes from paper-based to computerized, and to create an online repository of case law and resources. However, with the Rhekian judiciary having to concurrently deal with a heavier and more complex caseload involving sophisticated commercial disputes, its progress in adapting and using these technological advancements was delayed such that these modernization efforts had yet to bear much fruit by 2013. As a
- 1920 result, the backlog of cases persists to this day.
- 1926 25. Recognizing that the claim would have monumental legal significance and public controversy, the Rhekian Supreme Court ordered that the dispute be brought before it, bypassing the jurisdiction of the subordinate courts, by way of a "leapfrog" procedure. As a result of the significant backlog, however, the judicial review claim was scheduled to only be heard between late 2014 to 2015 at the earliest, even with the expedited "leapfrog" procedure. Regardless of this delay, this development was eagerly picked up and anticipated by the Rhekian media, the legal fraternity, and the public alike. At the same time, a considerable number of detractors also questioned the appropriateness of the Rhekian judiciary weighing in on such matters, arguing that it was essentially a political matter that was best decided in the voting booth and not before a number of unelected judges.
- 1932 26. In mid-2014, arguments began in the Rhekian Supreme Court, and was widely reported in the media, as was customary in Rhekia. Given the nature of the subject, verbatim accounts of the arguments in court were widely reported and read. This was accompanied by daily public debate on Rhekian national television, as well as in national dailies. While the dispute was still being heard, in 2014, the anti-cannabis movement came to a head, with individuals opposed to cannabis legalization protesting in the streets of major Rhekian cities of Stockholm and Copenhholm. Over the next few
- 1938 months, the scale of the protests increased dramatically as many Rhekians came out to

protest their government and its policies. In response, supporters of the government's recent actions also came out on the streets, in order to show support to their elected leaders.

- 1944 27. Eventually, clashes were reported between opposite groups of protestors. The frequency and intensity of public demonstrations soon increased, with protests not being limited to the issue of cannabis alone, but snowballing into large-scale rioting across Rhekia. Rhekian security forces were deployed all over in an attempt to ensure security. There were reports of some armed personnel firing at protestors, and using lethal force, that led to around 10 fatalities during these protests.
- 1950 28. The ongoing litigation in the Rhekian Supreme Court, as well as the sudden protests, led to significant uncertainty regarding the legality and validity of the Cannabis (Cultivation and Promotion) Act, as well as the established cannabis plants, including the Sutton plants. The effect of this prolonged legal and political uncertainty was seen in the price of Sutton Holdings' share prices, which began to decrease in 2014.
- 1956 29. Throughout these early protests, supporters of the incumbent government's actions used social media to encourage Rhekians to show their support for the government. Information and awareness programs sprung up on all major social media platforms, focusing on the employment generated by the cannabis industry in Rhekia, its medicinal benefits, and the significant positive economic impact that the Sutton plants had brought to the Rhekians.
- 1962 30. These programs also urged citizens to vocally support their government, and specifically its liberal approach to the cannabis industry. They also focused on the detrimental impact the reneging of the legalization of cannabis would have to domestic and foreign investments into this sector, and urged Rhekians to "*not permit the opposition from ruining its economic progress.*" These efforts caused a persistent rumor that the newly permitted Rhekian cannabis industry was funding these supporters and funding the current wave of public support towards the industry.
- 1968 31. Soon after the first deaths were reported from the civil unrest, a split occurred within the Rhekian Development Front. Some members of the Norse Party became concerned with the rapid changes amongst Rhekian society and publicly broke from the coalition. Although only a small number of politicians left the coalition, it lost its majority in the Rhekian Parliament. This quickly led to the Justice and Tradition Party taking back power in the Rhekian legislature towards the end of 2014, through a motion of no-confidence.
- 1974 32. On November 24, 2014, the Justice and Tradition Party, now formally in charge of the Rhekian Parliament and government, directed their security forces to confront protestors in the streets. This increased use of force by the new Rhekian government

inadvertently increased the violence and scale of protests as Rhekians of varying political ideologies turned against a government they viewed as violent and repressive.

- 1980 33. These protests, much larger and more violent than what occurred earlier, were the catalyst for a civil conflict breaking out in Rhekia in March 2015. Though it began as protests regarding the permitting of cannabis production and consumption within Rhekia, the protest uncovered deep fault lines within Rhekian society which ultimately led to the conflict. During the war, the Justice and Tradition Party that was in control was forced to temporarily retreat its military forces from the major cities of Stockholm and Copenhagen. International legal observers, such as the Congress for the Study of
- 1986 Conflicts, soon came to categorize the conflict as a non-international armed conflict and this was widely agreed upon within the international legal community.
34. This military retreat further exacerbated the issue, with large parts of the country becoming ungovernable, and descending into daily violence. The cities of Stockholm and Copenhagen were soon taken over by armed militia groups.
- 1992 35. In an attempt to quell the civil conflict, the Rhekian government attempted to use its military to reinforce its authority as the legitimate government of all territories, and also to disarm and push out militant groups from Stockholm and Copenhagen. The Rhekian military, however, was unable to achieve these objectives, and the militia takeover of these two cities stayed in place for a large part of 2016. In fact, according to some sources, in some pockets of Stockholm, Rhekian military officials refused to fight, instead defecting and joining forces with the militia, or deserting the military.
- 1998 Regardless of whether this was true, it led to increased instability in the region, with no hope for residents or the international press that normalcy would return soon [ANNEX I, EXHIBIT 4].
36. Another leading newspaper, the Daily Reporter, that reported on global affairs and was based out of Yukon, stated in an article dated 12 May 2016 that
- 2004 *“... the conflict in Rhekia has reached its zenith with the continued occupation of its major cities Stockholm and Copenhagen. Sources in Copenhagen have reported instances of the Rhekian military refusing to take up arms against the militia, led by its leader Yajat. Other sources from the Stockholm border have reported multiple instances of military personnel fleeing their camps, to join civilians within the city.”*

V. Attack on the Sutton Plants

- 2010 37. Unsurprisingly, the Sutton Plants, which in many ways proved to be a catalyst for the civil war, were also adversely affected. On 23 and 27 June 2016, Sutton’s production sites Freya and Odin were ransacked, respectively. It was not immediately clear who

was responsible for this. Both production sites contained a wide variety of production equipment, agricultural supplies, work camps, and greenhouses.

- 2016 38. Odin, Sutton's first plant located north of Stockholm, was attacked by a coordinated force of armed militia over the course of three days. The groups of armed militia, although sparse in numbers, executed guerrilla strikes against Odin's facilities using a variety of weaponry ranging from gunfire to incendiary devices such as crudely-made gasoline bombs. The security details employed by Sutton to protect Odin were quickly overwhelmed, surrendered, or simply abandoned their posts. This attack was widely reported along with aerial drone footage of Odin's burning facilities. The CEO of
- 2022 Sutton Investments made several public requests to the Rhekian government to assist their personnel at the Odin plant during the attack.
- 2028 39. In response, Rhekia mobilized a few military units within 48 hours of the attack on Odin, and ordered them to relieve Sutton's facilities. Rhekia's military moved north towards Odin from Stockholm and began to face strong military resistance the closer they got to Odin. Eventually, even though Rhekia's military was within sight of Odin, Rhekia's military was not able to break through to the facilities and quickly got bogged down in low-intensity fighting. By this time, the Odin plant had been damaged beyond immediate repair. Rhekia's military moved north towards Odin from Stockholm.
- 2034 40. Rumors began circulating almost immediately in the Rhekian and international press as to why Rhekia's military failed in its objective. Rhekian government and military officials blamed their performance on the well-equipped and trained rebels, which they claimed were receiving funding from the cannabis industry. On the other hand, some reports from Rhekian soldiers on the ground indicated widespread corruption and poor morale within Rhekia's own military as the reason for their poor performance.
- 2040 41. At this time, several media reports alleged that the reason the Rhekian government was unconcerned about these attacks was because the newly empowered conservative government in Rhekia believed that Sutton Investments was partly funding the armed militia within Rhekia. Some videos were published of Rhekian leaders publicly calling the cannabis industry "*nefarious*", and alleging their involvement in instigating and funding the civil conflict within Rhekia.
- 2046 42. Freya, Sutton's second plant, located in a somewhat isolated location far to the west in Freya, also consisted of agricultural buildings, work camps, and various equipment. Odin was located in an area where the authority of the Rhekian state was weaker than in the urban centers, and large numbers of anti-government protests had occurred prior to the official outbreak of the civil war. Because of this, Rhekia posted a large number of its most effective troops to that region. The soldiers took control of Freya and were billeting in the work camp accommodations. Over the course of the next few months,

Freya was slowly surrounded by armed militia groups and soon, the Rhekian soldiers found themselves surrounded and with dwindling supplies, especially food.

2052 43. On August 27, 2016, the armed groups surrounding Freya attempted to seize a number of buildings on the outskirts of Freya. From each building they occupied, the militias were able to seize valuable supplies, including much needed food. After failing to defend a number of these buildings, the Rhekian soldiers took the decision to raze all of the buildings they could not easily defend and retreated further into the center of Freya. In the following weeks, the armed militias' push towards Freya was slower and more cautious than before, having been delayed by concerns of an insufficient supply of food.

2058 44. By late October 2016, the Rhekian soldiers were running desperately short of supplies. Just before they were evacuated by an emergency airlift, the soldiers placed explosives inside all of the buildings in Freya responsible for agricultural production. Although they were purpose-built for cannabis, they would be able to grow food with a few adjustments. The Rhekian soldiers were ordered to destroy all buildings capable of agricultural production before they departed, which they did. The Rhekian Government was concerned that rebels taking control over food production sites would unduly prolong the civil war.

2064 45. By September 2016, the claim brought by the Rhekian Citizens' Action for Rights and Freedoms had yet to be completely heard by the Rhekian Supreme Court. As a result of the civil war, the claim had been continuously postponed. In fact, since the civil war started in 2014, Rhekia's courts have prioritized adjudicating criminal cases, rationalizing that these cases involved life and liberty, and hence required the judiciary's immediate attention and its already-scarce resources. Even so, the courts' capacity to hear such cases was greatly reduced, as the court personnel and law firms could not operate at full capacity. This state of affairs continued for 3 months.

2070 46. The situation deteriorated further by December 2016. The Rhekian authorities' intelligence units had picked up a possible bomb threat. Its analysts homed in on a single message posted on the dark web declaring that, "*these dastardly judges in Rhekia cannot decide the future of our country. If we incinerate their vaunted courtroom, gavels and wigs, we remove them of their power, they will see.*" However, despite the Rhekian authorities' best efforts, the message could not be traced to its original sender.

2076 2082 In the circumstances, with armed conflicts engulfing the surrounding districts, the government ordered the temporary barricading of the Rhekian Supreme Court, and ordered the immediate cessation of all physical operations, until the area could be secured by the military.

47. At the same time, Mr Richie Rable, Rhekia's Minister of Law directed Rhekia's judiciary to shift its operations online. Mr Rable declared that:

2088 *“I urge you to take heart in the midst of the civil unrest afflicting our great nation. Even during these trying times for our nation, the people’s access to justice must never cease. Just as courts in many parts of the world have, we will adapt - I have directed that our courtrooms shall move all operations online. This may take some time, but we are fully committed to ensuring that our citizens and investors have ready recourse to justice.”*

2094 48. Despite these statements, however, the reality was that the Rhekian courts, already strained under an increased case-load and the civil unrest, found it difficult to immediately establish a functioning virtual court. It took until early 2017 before the Rhekian courts obtained a secure and reliable connection to “Vroom”, a video conference platform and trained its judges and personnel to be adept in conducting online hearings.

2100 49. By March 2017, the Rhekian judiciary managed to establish a stable internet infrastructure for its transition into conducting virtual hearings. The Rhekian courts resumed hearing cases again, albeit at a reduced pace. By this time, its existing backlog of cases had built up even more considerably. The Rhekian High Court published an official circular stating that the estimated time required for a typical case to be heard at the first instance was between 16 to 18 months after it was first commenced.

2106 50. To date, the Claimant has not commenced any claim in the domestic Rhekian courts.

51. By April 2017, both the Rhekian military and the militia groups had been worn down by the months of conflict, and their resources and morale had been stretched to the breaking point. Recognizing that they were effectively in a gridlock, the government and representatives from all the militia groups agreed to a general armistice.

2112 52. The Rhekian Ministry of Home Affairs organized weekly press conferences following the armistice to provide its citizens updates on Rhekia’s track towards restoring normalcy. Many of Rhekia’s industry that had been affected were on the road to re-developing, and its population was certain that this resurgence of commerce and investment would greatly accelerate its rebuilding. Sutton Investments too decided to re-invest into its plants, so as to not face a total loss on its investments into Rhekia. To finance this, Sutton Investment sought to take a loan from the State Bank of Braavos, as well as issue fresh equity. Sutton Investments began these funding processes in July 2118 2017. In the same month, during a weekly press conference Mr Anthony Rokari included in his statement that the alleged links between the Claimant and the militia that began the civil uprising in Rhekia were actively being investigated by the Rhekian government, in accordance with the due processes of the law.

2124 53. Sutton Investment's fresh equity offer was scheduled for August 2017, where it was heavily undersubscribed. The request for a loan from Sutton Investments was also denied by the State Bank of Braavos.

2130 54. In May 2017, the Rhekian Supreme Court released its judgment on the constitutional challenge to the Cannabis (Cultivation and Promotion) Act. The Rhekian Supreme Court rejected the claim on the basis that there was insufficient evidence to find that the legalization of cannabis infringed public health and safety, public order, and public morality. The Rhekian Supreme Court also expressed that given the intense political and social implications of the matter, the substantive merits of the Act was essentially a political matter, to be resolved in Parliament in order to keep the balance in the separation of powers, and thus unsuitable for adjudication.

2136 55. An election was held and Mr. Eilert Flyen, previously a prominent militia commander running as an Independent candidate, was proclaimed as the new President of Rhekia by Rhekia's parliament. The election was conducted with transparent procedures and thorough reporting. The result was undisputed by all the political parties involved.

VI. Donald and Daisy v. Rhekia

2142 56. Sutton Holdings is a large MNC, headquartered in Athabasca. It invests in a number of sectors, mainly pharmaceuticals, cannabis, and related production sectors. It is a joint stock company, with a majority of shares (at the time of its investment into Rhekia) being held by Donald and Daisy, two Athabaskan nationals. In particular, Donald and Daisy held 75% of all the shares in Sutton Holdings (of which 30% was owned by Donald and 45% was owned by Daisy).

2148 57. The breakout of a civil conflict in Rhekia sent shockwaves through the international community, in part due to the high value of investments in this region. Specifically, Donald and Daisy of Sutton Holdings saw their share prices fall from USD 46 each at the end of 2014, to USD 13.4 each at the end of 2015, and to USD 0.32 in 2016. This rapid fall did not allow Donald or Daisy to sell their shares to recoup losses in due time. At the beginning of 2016, Donald and Daisy initiated litigation against Rhekia in an attempt to recover their losses.

2154 58. After a special and expedited litigation process that finalized in December 2016, Donald and Daisy ultimately lost on all counts, they commenced arbitration proceedings against Rhekia in January 2017. They claimed that the damage sustained to the Sutton Plants caused a significant reduction in the value of their shareholding in Sutton Holdings, and they were thus entitled to compensation from Rhekia under the Athabasca–Rhekia BIT.

59. Donald and Daisy, *inter alia*, claimed that Rhekia's actions amounted to an indirect expropriation of their shares, and therefore there was a breach of Article VIII of the BIT. In November 2020, the tribunal, set up under ICSID, pronounced its award. The

2160 Tribunal rejected Donald and Daisy's claim, stating that there was no substantial deprivation of the investment, and therefore no expropriation occurred.

VII. The Present Claim

60. In June 2021, Sutton Holdings decided to file a claim for arbitration under the Athabasca–Rhekia BIT, with the application of the ICSID Convention.

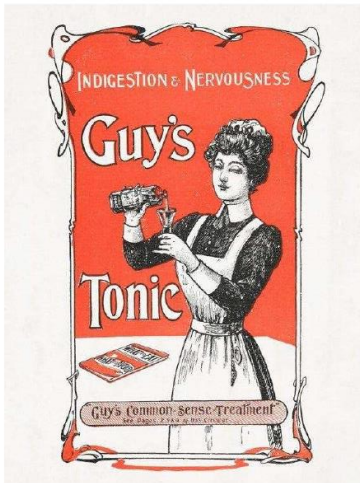
ANNEX I, EXHIBIT 1 – The Daily Viking, Issue 102, 2009

2166

2009

The Daily Viking

Your Trusted Source for Rhekian News!

Issue
#102

Doctors say Gin and Tonic “not actually a medicine” – Shocks Nation



Seen here “toking” on their preferred cannabis substance, this Norse Pagan doesn't let society tell them what to do

Marie Sherring

These Aren't Your Grandparent's Hippies! Pot-smoking Vikings Alarm and Surprise the Nation



Bellbottoms: Are they coming back in style? “No” says our resident stylist Jebbi Lilison

In the latest news guaranteed to shock (And some say appall) the nation, adherents to Norse Paganism within Rhekia have taken to publicly “toking” or “puffing on” cannabis!

Norse Pagans, a familiar site in the Rhekian countryside, have apparently been seen celebrating this year's Sigurblót festival celebrating the arrival of summer with what experts are calling “a joint”.

Although the Norse Pagans themselves claim to have partaken in this tradition for as long as they can remember, some of Rhekia's social conservatives aren't so sure!

One older couple on the main streets of Copenhohlm were quoted as saying “*This is madness! Back in my day this tomfoolery would not stand!*”

I seriously worry about the cultural and moral makeup of our great nation if these ‘celebrations’ continue.”

Others however are not so concerned.

This reporter spoke to many others also out and about in Copenhohlm that were very supportive of the Norse Pagans:

“I support the Norse Pagans and furthermore, would support the increased liberalization of cannabis laws in Rhekia, the current prohibition has failed.”

“I’ve never partaken personally, but I have nothing against other doing so!”

And there you have it, “weed” or “marijuana” seems to be an up and coming issue for our great country!

ANNEX I, EXHIBIT 2 – The Daily Viking, Issue 101, 2007

2007

The Daily Viking

Your Trusted Source for Rhekian News!

Issue
#101

This year's election was once again won by the incumbent Justice and Development Party, but the final vote results may surprise you!

Over the past decade the Rhekian Development Front (a coalition party made up of the Liberal Party and the Norse Party) has steadily increased their seat count each election.

This year they came the closest they have ever come to seizing power! Winning barely a dozen seats less than their opponents, the Justice and Development Party.

Justice and Development Party leader Karl Ragnarson was quoted as saying *"I'm totally not concerned, should I be?"*

Well as your ace-political reporter here at the *Daily Viking*, I'm here to tell you YES! The moribund leadership at the Justice and Development Party should be very afraid!

Even after the last vote was tallied and the election was officially called in favour of the Justice and Development Party, the attitude remained jubilant at the Rhekian Development Front's election headquarters.

Party officials and volunteers were incredibly pleased to see their electoral strategy continue to payoff.

Meanwhile at the Justice and Development Party Headquarters, officials seemed relieved to see they had won the election but also seemed anxious and nervous at how close the election had been.



Most Adaptable of All Razors
NOTE THE ANGLE STROKE

The stroke that you use with the Gillette is a matter of individual preference. The big fact is that the razor is adaptable to any face or any hand. Most men shave with a wavy beard pattern the sliding cut angle stroke. One stroke close the way to go. One long stroke the Gillette is the most adaptable of all razors. The most important thing to do is to use the Gillette Sales Company, 22 W. Second Street, Boston, U.S.A.

2010

The Daily Viking

Your Trusted Source for Rhekian News!

Issue
#103



Departing Justice and Tradition Party leader Karl Ragnarson does one final walk through Rhekia's Parliament after losing a vote of non-confidence in his government.

Mirjam Nilsson

A Change in the Halls of Power?

The latest updates to get you through the day

Huge news today as the Justice and Tradition Party lost a confidence vote, and for the first time in living memory for many Rhekians, our Parliament is not controlled by the Justice and Tradition Party!

Today marks the first day in power of the Rhekian Development Front, a coalition government between the unlikeliest of allies, the Norse Party and the Liberal Party!

The Rhekian Development Front has made the further liberalization of Rhekia's economy and society a main pillar of their election platform.

Clearly, Rhekians wanted change!

Whether the Rhekian Development Front will truly be as transformative as they promise will remain to be seen!

However, what is clear, is that a period of transformative change is store for the future of Rhekia!

ANNEX I, EXHIBIT 4 – The Daily Viking, Issue 104, 2016

2178

2016

The Daily Viking

Your Trusted Source for Rhekian News!

Issue
#104

2184



2190

Oleksander Hobberson

The Case of the Missing Bullets?

Multiple Reports Indicate a Large Problem...

2196

Even as all Rhekians remain glued to their phones and TVs watching the scenes of horror unfold this past year the worst appears yet to come!

Allegedly, corruption is rampant in our glorious armed forces! Especially amongst the elites in our officer corps

Allegedly, corruption is rampant in our glorious armed forces! Especially amongst the elites in our officer corps!

Multiple individuals, who asked to be anonymous for their own safety, have reported their own officers are selling the army's supply of ammunition directly to the rebels!

Disturbing reports coming from the frontlines these days!

Apparently this is a common occurrence in corrupt and war-torn nations but I never imagined it would occur in our great country!

2202

2208

ANNEX II – ATHABASCA–RHEKIA BIT

AUTHENTIC ENGLISH VERSION OF THE ATHABASCA–RHEKIA BIT

**AGREEMENT BETWEEN THE KINGDOM OF ATHABASCA AND THE
REPUBLIC OF RHEKIA CONCERNING THE ENCOURAGEMENT,
PROMOTION AND PROTECTION OF INVESTMENTS**

Signed 10 March 2011 – Entered into force 15 September, 2011

The Government of the Kingdom of Athabasca and the Government of the Republic of Rhekia respectively on behalf of the Kingdom of Athabasca and the Republic of Rhekia (hereinafter referred to as “the Contracting Parties”),

DESIRING to further promote investment in order to strengthen the economic relationship between the Contracting Parties;

INTENDING to further create stable, equitable, favorable and transparent conditions for greater investment by investors of one Contracting Party in the Territory of the other Contracting Party;

RECOGNIZING the growing importance of the progressive liberalization of investment for stimulating initiative of investors and for promoting prosperity in both Contracting Parties; and

RECOGNIZING that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

HAVE AGREED AS FOLLOWS:

CHAPTER I: GENERAL PROVISIONS

ARTICLE I: Definitions

For the purposes of this Agreement, with regard to each Contracting Party:

1. The term "investment" means any kind of asset invested in the territory of one

Contracting Party in accordance with its laws and regulations, owned or controlled directly or indirectly, by an investor of the other Contracting Party and includes in particular:

- 2238 (a) Tangible and intangible property, including rights, such as mortgages, liens and pledges;
- (b) Shares, stocks, bonds and any other forms of participation in companies or enterprises;
- (c) A claim to money or a claim to performance having economic value, and associated with an investment;
- 2244 (d) Intellectual property, including rights with respect to copyrights and related patents, trademarks and trade names, industrial designs, trade secrets and know-how, and goodwill.
- (e) Any right conferred by law or contract, including rights to search for or utilize natural resources, and rights to manufacture, use and sell products; and
- (f) Reinvestment of returns and of principal and interest payments arising under load agreements

2250 2. The term "investor" means:

- (a) Any natural person having the citizenship of that Contracting Party in accordance with its legislation;
- (b) Any legal entity, including a corporation, company, firm, enterprise or association incorporated or constituted in the territory of that Contracting Party in accordance with its legislation;

2256 provided that the natural person or the legal entity is entitled in accordance with the legislation of that Contracting Party to make investments in the territory of the other Contracting Party.

3. *[Omitted]*

ARTICLE II: Admission of Investments

2262 Each Contracting Party shall admit the entry of investments made by investors of the other Contracting Party pursuant to its applicable laws and regulations.

CHAPTER II: PROTECTION TO INVESTMENT

ARTICLE III: National Treatment

- 2268
1. Without prejudice to its laws and regulations at the time the investment is made, each Contracting Party shall accord to investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the operation, management, maintenance, use, enjoyment or disposal of investments.
 2. Without prejudice to its laws and regulations at the time the investment is made, each Contracting Party shall accord to investments of investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the operation, management, maintenance, use, enjoyment or disposal of investments
- 2274

ARTICLE IV: Most Favored Nation Treatment

- 2280
1. Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to investors of any third State with respect to the operation, management, maintenance, use, enjoyment or disposal of investments.
 2. Each Contracting Party shall accord to investments of investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any third State with respect to the operation, management, maintenance, use, enjoyment or disposal of investments.

2286

ARTICLE V: Minimum Standard of Treatment

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
- 2292 2. For greater certainty, this Article prescribes the international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Contracting Party. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidence of State practice and *opinio juris*. A
2298 determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

ARTICLE VI: Compensation and Damages for Loss

- 2304 1. Investors of one Contracting Party whose investments in the territory of the other Party suffer losses due to war, armed conflict, revolution, state of national emergency, insurrection, civil disturbances or other similar events, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable treatment than that which the latter Contracting Party accords to its own investors or to investors of a third State.
- 2310 2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities; or

(b) Destruction of their property by its forces or authorities, which was not caused

in combat action or was not required by the necessity of the situation;
shall be accorded restitution or adequate compensation.

2316

ARTICLE VII: Expropriation and Compensation

1. Neither Contracting Party may expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization (“expropriation”), except:

- (a) For a public purpose;

- (b) On a non-discriminatory basis;

2322

- (c) In accordance with due process of law; and

- (d) In payment of compensation in accordance with paragraph 2 below.

2. Compensation shall:

- (a) Be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value because the intended expropriation had become publicly known earlier;

2328

- (b) Be paid without delay;

- (c) Include interest at a commercially reasonable rate, from the date of expropriation until the date of actual payment; and

- (d) Be fully realizable and freely transferable.

2334

3. An investor whose investment is expropriated, shall have the right to a prompt review of its case by a court or by any other competent authority, pursuant to the applicable laws of the corresponding Contracting Party, and to an assessment of such investment in accordance with the provisions set forth in this Article.

ARTICLE VIII: Transfers

[Omitted]

2340

ARTICLE IX: Subrogation

[Omitted]

ARTICLE X: Exceptions

[Omitted]

CHAPTER III: DISPUTE SETTLEMENT

ARTICLE XI: Purpose

2346

This Section shall apply to disputes between a Contracting Party and an investor of the other Contracting Party arising from an alleged breach of an obligation set forth in Chapter II entailing loss or damage.

ARTICLE XII: Consultation and Exhaustion of Local Remedies

2352

1. Any dispute arising out of an investment between an investor of a Contracting Party and another Contracting Party (collectively the “Disputing Parties”, individually a “Disputing Party”), shall, as far as possible, be settled amicably through consultation or negotiation.
2. Disputes concerning the interpretation and application of the terms of this Agreement and which have not been amicably settled shall not be referred to arbitration in accordance with Article XIII of this Agreement, unless 18 months have passed from the time that an investor submits the dispute to the judicial bodies of a Contracting Party.
3. Each Contracting Party requires that the exhaustion of local judicial remedies be a

2358

condition of its consent to arbitration under Article XIII of this Agreement.

4. With a view to settling the claim amicably, the disputing investor shall deliver to the disputing Contracting Party written notice of its intention to submit a claim to arbitration at least six months before the claim is submitted.

5. Such notice shall specify:

- (a) The name and domicile of the disputing investor and, where a claim is made by an investor for loss or damage to an enterprise, the name and domicile of the enterprise;
- (b) The provisions of Chapter II alleged to have been breached and other relevant provisions;
- (c) The issues and the factual and legal basis of the claim; and
- (d) The relief sought and the approximate amount of damages claimed.

ARTICLE XIII: Arbitration – Scope and Standing and Time Periods

1. Pursuant to this Chapter, an investor of a Contracting Party (a “Claimant”) may submit to arbitration a claim that the other Contracting Party (the “Respondent”) has breached an obligation set forth in Chapter II, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.
2. In the event that a Disputing Party considers that an investment dispute cannot be settled by consultation or negotiation pursuant to Article XII:

- (a) A Claimant, on its own behalf, may submit to arbitration a claim

- (i) That the Respondent has breached its obligations under Articles III, IV, V, VI and/or VII of this Agreement, and
- (ii) That the Claimant has incurred loss or damage by reason of, or arising out of, that breach; and

- (b) A Claimant, on behalf of an enterprise of the Respondent that is a juridical

2388

person that the Claimant owns or controls directly or indirectly, may submit to arbitration under this section a claim

- (i) That the Respondent has breached its obligations under Articles III, IV, V, VI and/or VII this Agreement, and
- (ii) That the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

3. A Claimant may submit the claim to arbitration under:

2394

- (a) The ICSID Convention, provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention;
- (b) The ICSID Additional Facility Rules, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention;
- (c) The UNCITRAL Arbitration Rules; or

2400

- (d) Any other arbitration rules, if the Disputing Parties so agree.

4. A Claimant may submit a claim to arbitration only if the investor consents to arbitration in accordance with the procedures set forth in this Section.

5. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Chapter.

2406

6. A dispute may be submitted not later than three (3) years from the date that the Claimant first acquired or should have first acquired knowledge of the events which gave rise to the dispute.

7. The Contracting Parties recognize that under this Article, minority non-controlling investors have standing to submit only a claim for direct loss or damage to their own legal interest as investors.

2412

ARTICLE XIV: Contracting Party Consent

Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Chapter III. This consent and the submission of a claim to arbitration by the disputing investor shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute.

2418

ARTICLE XV: Constitution of the Arbitral Tribunal*[Omitted]***ARTICLE XVI: Consolidation***[Omitted]***ARTICLE XVII: Place of Arbitration**

2424

*[Omitted]***ARTICLE XVIII: Indemnification***[Omitted]***ARTICLE XIX: Applicable Law**

2430

1. A tribunal established in accordance with this Chapter shall decide the submitted issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.
2. An interpretation jointly formulated and agreed upon by the Contracting Parties with regard to any provision of this Agreement shall be binding on any tribunal established under this Section.

ARTICLE XX: Awards and Enforcement of Awards

- 2436 1. Unless the Disputing Parties agree otherwise, an award which provides that a Contracting Party has breached its obligations pursuant to this Agreement may only award, separately or in combination:
- (a) Monetary damages and any applicable interest; or
 - (b) Restitution in kind, provided that the Contracting Party may pay pecuniary compensation in lieu of restitution.
2. Where a claim is submitted to arbitration for loss or damages to an enterprise:
- 2442 (a) An award of restitution in kind shall provide that restitution be made to the enterprise;
- (b) An award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
- (c) The award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
- 2448 3. Arbitral awards shall be final and binding solely between the Disputing Parties and with respect to the particular case.
4. The arbitral award will be publicly accessible, unless the disputing parties agree otherwise.
5. A tribunal may not award punitive damages.
- 2454 6. Each Contracting Party shall, within its territory, adopt all necessary measures for the effective enforcement of awards issued pursuant to this Article, and shall facilitate the enforcement of any award rendered within a proceeding in which it is a party.
7. A Disputing Party may not seek enforcement of a final award until:
- (a) In the case of a final award rendered under the ICSID Convention:
 - (i) One hundred and twenty (120) days have elapsed from the date in

2460

which the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) Revision or annulment proceedings have been completed; and

(b) In the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or any other arbitration rules selected by the disputing parties:

2466

(i) Three (3) months have elapsed from the date in which the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) A court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

2472

CHAPTER IV: SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

ARTICLE XXI: Scope

[Omitted]

ARTICLE XXII: Consultations and Negotiations

[Omitted]

ARTICLE XXII: Constitution of the Arbitral Tribunal

2478

[Omitted]

ARTICLE XXIII: Proceedings

[Omitted]

ARTICLE XXIV: Award

[Omitted]

ARTICLE XXV: Applicable Law

2484 [Omitted]

ARTICLE XXV: Costs

[Omitted]

ARTICLE XXVI: Interim Measures of Protection

[Omitted]

2490 **CHAPTER V: MISCELLANEOUS PROVISIONS**

ARTICLE XXVII: Application of the Agreement

This Agreement shall not derogate from:

(a) Laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;

(b) International legal obligations; or

2496 (c) Obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

that entitle investments or associated activities to treatment more favorable than that accorded by this Agreement in like situations.

ARTICLE XXVIII: Security & National Interests

2502 1. This Agreement shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with

respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Agreement shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Agreement.

2508

ARTICLE XXIX: Tax Policies

[Omitted]

ARTICLE XXX: Entry into Force, Duration and Termination

[Omitted]

2514 IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE in duplicate at Vasta, on the day of 10 March 2011 in the English and Rhekian languages, both texts being equally authentic.

2520 FOR THE GOVERNMENT OF THE KINGDOM OF ATHABASCA:

James Wilson

Mr. James Wilson, Prime Minister

FOR THE GOVERNMENT OF THE REPUBLIC OF RHEKIA:

Karl Blomstsson

Mr. Karl Blomstsson, President

2526

**AUTHENTIC RHEKIAN VERSION – ARTICLE XIII
(IN RELEVANT PART)**

Artikkel XIII: Voldgift - Rekkevidde og Standing og Frister

- 2532 1. I henhold til dette Kapitlet, kan en investor tilhørende en Avtalepart (en “Saksøker”) henwise til voldgift et krav om at den annen Avtalepart (den “Saksøkte”) har brutt sine forpliktelser under Kapittel II, og at investoren har lidt tap eller blitt skadelidende på grunn av, eller som følge av, at Saksøkte har brutt sine forpliktelser.
- 2538 2. Dersom en Tvistende Part anser det slik at en investeringstvist ikke kan løses i minnelighet eller ved forhandling i henhold til Artikkel XII:
- (a) Kan en Saksøker, på vegne av seg selv, henwise til voldgift et krav
- (i) Om at Saksøkte har brutt sine forpliktelser under Artikkel III, IV, V, VI og/eller VII i denne Avtale, og
- (ii) Om at Saksøkeren har lidt tap eller blitt skadelidende på grunn av, eller som følge av, at Saksøkte har brutt sine forpliktelser; og
- 2544 (b) Kan en Saksøker, på vegne av en sammenslutning i Saksøkte som er en juridisk person som Saksøkeren eier eller kontrollerer, direkte eller indirekte, henwise til voldgift et krav
- (i) Om at Saksøkte har brutt sine forpliktelser under Artikkel III, IV, V, VI og/eller VII i denne Avtale, og
- (ii) Om at den har lidt tap eller blitt skadelidende på grunn av, eller som følge av, at Saksøkte har brutt sine forpliktelser.
- 2550 3. En Saksøker kan henwise et krav til voldgift under:
- (a) Konvensjon om avgjørelse av tvister mellom stater og andre staters borgere om investeringer (ICSID-konvensjonen), forutsatt at den Tvistende Avtalepart og den annen Avtalepart har tiltrådt konvensjonen;
- 2556 (b) ICSIDs Regler for “Additional Facility”, forutsatt at enten den Tvistende Avtalepart eller den annen Avtalepart, men ikke begge, har tiltrådt ICSID-konvensjonen;
- (c) UNCITRALs Tvisteløsningsregler; eller

**JOINTLY ACCEPTED ENGLISH TRANSLATION OF RHEKIAN VERSION OF
ARTICLE XIII
(IN RELEVANT PART)**

2562

Article XIII: Arbitration – Scope and Standing and Deadlines

1. Pursuant to this Chapter, an investor of a Contracting Party (a “Claimant”) may submit to arbitration a claim that the other Contracting Party (the “Respondent”) has breached an obligation set forth in Chapter II, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.
2. In the event that a Disputing Party considers that an investment dispute cannot be settled by consultation or negotiation pursuant to Article XII:

2568

(a) A Claimant, on its own behalf, may submit to arbitration a claim

- (i) That the Respondent has breached its obligations under Articles III, IV, V, VI and/or VII of this Agreement, and
- (ii) That the Claimant has incurred loss or damage by reason of, or arising out of, that breach; and

2574

(b) A Claimant, on behalf of an enterprise of the Respondent that is a juridical person that the Claimant owns or controls directly or indirectly, may submit to arbitration under this section a claim

- (i) That the Respondent has breached its obligations under Articles III, IV, V, VI and/or VII this Agreement, and
- (ii) That it has incurred loss or damage by reason of, or arising out of, that breach.

3. A Claimant may submit the claim to arbitration under:

2580

- (a) The ICSID Convention, provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention;
- (b) The ICSID Additional Facility Rules, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention;
- (c) The UNCITRAL Arbitration Rules; or

2586

CONFIDENTIAL [watermark]

Certified to be a true translation of the attached copy document by Dr. Jasmine Jiang on 7 January 2022. Dr. Jasmine Jiang, government-authorized translator.

Jasmine Jiang



The undersigned Notary Public hereby certifies that Dr. Jasmine Jiang, government-authorized translator, signed this document.

2592 The signature is certified on the basis of the signature deposited in our register of signatories.

Rhekia Byfogdsembete, 9 January 2022

Kristen Skjel

Notary Public
Mrs. Kristen Skjel
Senior Advisor

2598

