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SCSL-04-15-T  
(30599 — 30619)

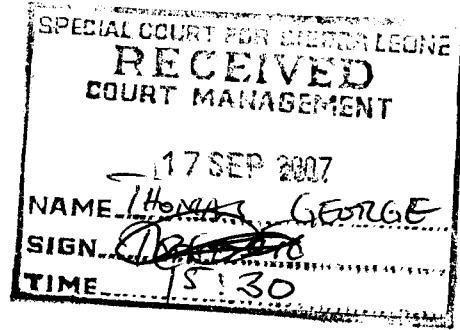
THE SPECIAL COURT FOR SIERRA LEONE

30599

Before: Justice Benjamin Itoe, Presiding  
Justice Bankole Thompson  
Justice Pierre Boutet

Registrar: Herman von Hebel

Date Filed: 17 September 2007



The Prosecutor

-v-

Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao

Case No:SCSL-2004-15-T

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Submission by the Registrar pursuant to Rule 33 (B) of the Rules of Procedure and Evidence in relation to the Sesay Team's "Application for Judicial Review of the Registry's Refusal to Provide Additional Funds for an Additional Counsel as Part of the Implementation of the Arbitration Decision of 26 April 2007" dated 5 September 2007

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Office of the Prosecutor  
Mr Pete Harrison  
Mr Reginald Flynn

Defence Counsel for Issa Hassan Sesay  
Mr Wayne Jordash  
Ms Sareta Ashraph

Defence Counsel for Morris Kallon  
Mr Shekou Touray  
Mr Charles Taku  
Mr Melron Nicol-Wilson

Defence Counsel for Augustine Gbao  
Mr John Cammegh

## A. Introduction

1. In its application, the Sesay Defence Team has set out what it considers to be the relevant history to the present application.<sup>1</sup> To the extent that the history leading up to the award of the arbitrator is factual it is not disputed by the Registrar nor does the Registrar propose to repeat that history save to distinguish, where appropriate, any selectiveness on the part of the Sesay Defence Team in making its case in its application for judicial review.
2. As a preliminary remark, the Registrar takes exception to the sometimes offensive language used in the Application accusing the Registrar, *i.a.*, of irrationality and partisanship, which shows a considerable lack of respect for the Special Court and its organs. In this context also, the Registrar strongly objects to the fact that the Deputy Registrar, Ms Binta Mansaray, is referred to as “Secretary to the Registrar”<sup>2</sup>. This comment is entirely improper in a professional context.
3. The Registrar, in its submissions below, will endeavour to respond to the most relevant arguments raised in the Sesay Defence Team’s application. However, the fact that a number of additional arguments have not been specifically rebutted does not imply that the Registrar is in agreement with that argument or that the argument has any merit.
4. The Sesay Defence Team seeks a judicial review of the Registrar’s decision as regards the implementation of the arbitration decision of 26 April 2007, with specific reference to the Registrar’s refusal to fund an additional Counsel for the currency of Mr Sesay’s defence case on the grounds of “irrationality”. The standard of review is whether the Registrar “failed to observe any basic rules of natural justice or to act with procedural fairness toward the person affected by the decision, or if he has reached a decision which no sensible person who has applied his mind to the issue could have reached (‘the reasonableness test’)<sup>3</sup>”.

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<sup>1</sup>Application for Judicial Review of Registry’s Refusal to Provide Additional Funds for an Additional Counsel as Part of the Implementation of the Arbitration Decision of 26<sup>th</sup> April 2007 (hereinafter “Application for Judicial Review”), paragraphs 9-25 inclusive.

<sup>2</sup> Application for Judicial Review, p. 7, paragraph 24.

<sup>3</sup> Prosecutor v Milan Martić, IT-95-11-PT, Decision on Defence’s Motion for Review of Registrar’s Decision Denying Additional Legal Aid Funds, 6<sup>th</sup> December 2005, page 3.

5. The Registrar is hard pressed to see irrationality in its implementation of the Arbitrator's award to the Sesay Defence Team. The test before the Trial Chamber is whether the refusal of the Registrar to fund additional Co-Counsel for the Sesay Defence Team outside of the additional funds, agreed between the parties following negotiations, to be made available to the Team in implementing the arbitration award is so unreasonable/irrational a decision that no reasonable body/person could have come to it.
6. The issue is not whether the Sesay Defence Team considers the implementation unreasonable, irrational or unfair in any way. It is whether the Registrar has implemented properly and in good faith the Arbitrator's award. In our submission, this has been done. In fact, the Registrar endeavoured to accommodate the Sesay Defence Team beyond the strict terms of the award.

**B. History of events**

7. On 26 April 2007, the Arbitrator, Berthan Macaulay (Jnr) handed down his award. The Arbitration was on two issues. The first issue was whether the Defence Office's interpretation of Article 4 of the Legal Service Contract (LSC), as drafted, in relation to all the Defence Teams was correct; i.e. that the consideration payable to the Teams included expenses such as DLA and flight costs. The Arbitrator found that the Defence Office interpretation of the LSC was correct. There have since been budgetary changes applicable to all Defence Teams to separate DLA from the total payments to be made to Defence Teams. In practical terms, funds that would previously be allocated for DLA is now available for fee payment for Counsel i.e Counsel can bill and be paid more hours under the monthly budgetary limit.
8. The second issue was the determination of the complexity of Issa Sesay's case such as to 'warrant the provision of additional resources under the special considerations clause of the Legal Service Contract'. The Arbitrator found:

"That the case against Issa Sesay on its own and/or in relation to the other cases at the Special Court, is sufficiently serious, complex or sizeable to amount to exceptional circumstances as to warrant the provision of additional resources under the special considerations clause in the Legal Service Contract"

In the circumstances I order the 2<sup>nd</sup> Respondent to assess the *payment of additional fees* (our emphasis) due the Claimant.<sup>4</sup>

9. The Arbitrator did not indicate what kind of additional resources should be provided, let alone make an award for additional fees to engage another Counsel.
10. Under Article 22 of the Directive on the Assignment of Counsel, the decision rendered in the arbitration constitutes final adjudication of the dispute.
11. Following the award, both parties held meetings to negotiate how the additional fees were to be quantified (which hours were properly chargeable over the years, whether these hours were to be assessed for reasonableness and therefore fall to be part of additional fees due, as well as whether work previously assessed as reasonable but unpaid because of financial constraints under the Legal Service Contract would now be payable)<sup>5</sup>. The implementation of the award, *i.e.* the payment of additional fees due, took considerable time because of the complexity of quantifying those fees.
12. At no stage during the negotiations until the final meetings on 20 and 21 June 2007 when agreement was reached as to the amount of additional fees to be paid did the issue of funds for additional counsel become raised. It was agreed that a 40% enhancement of the \$25,000 maximum monthly payment to the team under the LSC would properly compensate the Team in the implementation of the arbitration award.
13. The principle of enhancement is used in allowing a percentage mark-up of costs, usually in a publicly funded/legal aid regime, to take into account work of, *i.a.*, exceptional complexity or work done with exceptional competence, skill or expertise or work done with exceptional dispatch. It therefore serves, in this case, as an appropriate approach to reflect the complexity of the case and compensate the Defence Team. The proper approach in determining whether a fee-earner ought to benefit from an enhancement in costs is to look at whether the case is significantly 'out of the ordinary'. If the determination is positive, then regard is

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<sup>4</sup> Award of the Arbitrator, Berthan Macaulay (Jnr) made on the 26<sup>th</sup> Day of April 2007, paragraph 7.16.

<sup>5</sup> **Annex A** to this Submission: Defence Office computation of the difference between the hourly rate (based on their case plans) the Sesay Team members were actually paid following assessment of their bills and the hourly rate they would have received had they been paid at the rates in the LSC for the period between November 2003 to November 2006.

had to the responsibility accepted by the fee-earner, the care, speed and economy with which the case was prepared and the novelty, weight and complexity of the case. This principle therefore allowed the Registrar to adequately and properly compensate the Sesay Defence Team for the complexity of the work it carries out in its case and takes into account the Arbitrator's award that its case is complex such as to warrant additional resources and additional payment under the terms of the award. Further, it provided a basis for future compensation and reasonable remuneration in the case.

14. At the initial meeting on 21 May 2007 between Shakiratu Sanusi, Legal Taxing Officer, Defence Office, Sareta Ashraph, Co-Counsel Sesay Defence Team and Sophie Frediani of the Registrar's Office, the idea of an enhancement percentage as a way of assessing the amount of additional fees due was put to the Sesay Team<sup>6</sup>. The quantification of the additional payment to be made initially came from the Sesay Team itself based on time billed in the past and an informed estimation of the work it would need to do in future. This afforded a calculation of the funds the Team would require for it to be properly compensated for the work necessitated by the complexity of its case. It was based on this calculation, the Defence Office's own calculations and the ensuing negotiations that it was agreed that a 40% enhancement would properly and adequately compensate the team in the form of additional fees. At no time did the Sesay Defence Team's quantification of additional payment due to it include the costs of employing additional Co-Counsel for future work.
15. Based on the agreed 40% enhancement it was finally agreed that the Sesay Team would receive a back payment of \$370,000 distributed intra team as the team saw fit to cover the period between November 2003 and November 2006. This amount represents approximately a 40% enhancement in relation to their contractual fees which used to be \$25,000 maximum per month. Thereafter, the team would also benefit from the 40% enhancement until the completion of the hearings in the case. The monthly financial limit for the Sesay Defence Team was thereby

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<sup>6</sup> **Annex B** to this Submission, Notes of Meeting to discuss Sesay Team proposal on Quantification of Special Considerations, 21 May 2007.

increased from \$25,000 to \$35,000 from December 2006 until the end of the hearings in its case. Additionally and exceptionally, the Registrar agreed to the provision of an international investigator for 4 months.

16. During the final negotiation meetings on 20 and 21 June 2007, Lead Counsel raised the issue of additional funds to employ another Co-Counsel and presented arguments predicated, *i.a.*, on the level of experience of present Co-Counsel. The Registrar did not concede, explicitly or implicitly, that there was a need for additional Co-Counsel. The purpose of the meeting was to discuss additional funds for the Defence team as a result of the arbitration award.
17. The Registrar, on the contrary, did not see any reason for the provision of such additional funds for that purpose. In the first place, the distribution of funds and composition of a Defence Team, based on the requirements of a case, rests with Lead and Assigned Counsel and is approved by the Defence Office in compliance with that office's procedures. It should be noted that some Defence Teams at the Special Court, within their allocated budget, use more than one defence counsel, at the discretion of the Lead Counsel. In other words, Lead Counsel did have the possibility, certainly in the context of the 40% enhancement, to recruit additional Co-Counsel if he wished so.
18. Second, it is generally understood that Co-Counsel are required to be in a position to assume the duties of the Lead Counsel. This can certainly be expected of a Co-Counsel who has been at the case for a long time, as in the present case. The Registrar, therefore, fails to understand why Lead Counsel expressed concern at this stage and observes that such concerns should have been addressed by the Lead Counsel himself in good time.
19. However, to accommodate the Sesay Defence Team, the Registrar agreed to consider the Team's request for additional Counsel by proposing, from future funds that would be available to the Team based on the 40% enhancement, to stagger the release of those funds at the appropriate stage to enable another Counsel to be hired, with the monthly cap reverting to a lower rate to accommodate the Team's staffing requirements<sup>7</sup>. The reversion to a lower rate

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<sup>7</sup> Annex C to this Submission, Letter from Mr Herman von Hebel to Mr Wayne Jordash, 1 August 2007.

was proposed to take place after the end of the Sesay defence case when it is anticipated that the workload for the Sesay Defence Team would decrease.

20. In effect, during the Sesay defence case, up to 80% enhancement (\$45,000 per month) would be made available to the Defence Team. The use of these resources would have enabled the Team to employ another Co-Counsel based on the assessment of Lead Counsel of the needs of his client's case. At the conclusion of the Sesay defence case, and during the defence case of the other two co-accused, the maximum monthly amount would revert to \$25,000 (the 40% enhancement *i.e.* \$10,000 having been previously released during the Team's defence case) because the Team's workload would be significantly reduced, as conceded by the Team during negotiations<sup>8</sup>.
21. It is expected that the Sesay defence case will last longer than that of his two co-accused. In effect, the creative solution offered by the Registrar would have made funds available at a time the Team requires it, for the duration it requires it and any reversion to a lower rate would have subsisted only as long as the defence case of the two co-accused was ongoing. It is, therefore not a question of "claw back" but rather an advance payment with an obligation to reimburse only the (presumably shorter) time period of the defence case of the two co-accused. It should be noted that, under this arrangement, the Team could already have availed itself of additional support (including an additional team member of the Lead Counsel's choosing). The alleged lack of resources and manpower claimed by the Defence Team are, therefore, entirely of its own making.
22. Again, it needs to be stressed here that the Sesay Team's application for special considerations, the arbitration decision and the subsequent negotiations were for additional funds. In its application for Special Consideration of 25 November 2005, the Sesay Team refers in the introduction to an earlier request to the Registrar on 27 May 2005 for additional funds to allow the team to engage another Co-Counsel. It then goes on to state that its application (that of 25

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<sup>8</sup> See **Annex B** to this Submission.

November 2005) is 'a new application for Special Consideration due to the size and complexity of the case against Sesay'<sup>9</sup>. The application states:

"It is submitted the approach of the defence case and the consequential increase in the work and attendant responsibilities... will increase the workload of the present team to a degree which will make it impossible to adequately defend the accused and prepare the defence without additional funds."<sup>10</sup>

[...]

"[t]he Sesay Team requires additional funds in order both to prepare the case and continue to receive reasonable remuneration given the anticipated increase in work towards the end of the Prosecution case and through the Defence case."<sup>11</sup>

23. The issue of additional funds specifically to employ another Counsel in addition to the present Co-Counsel was only properly raised in the final meetings on implementation of the award (and prior to the application of 25 November 2005). No projections of costs for hiring additional Co-Counsel formed part of the calculations or negotiations until the final stages. When it *was* raised by the Defence Team, the Registrar considered it and offered a solution that it considered cost-effective in the circumstances and which would have occasioned no delay in the proceedings.
24. Back payment in the amount of \$370,000 has now been made to the team members. This fact has been omitted in the Sesay Defence Team's Application of Judicial Review.
25. It is the Registrar's view that the decision rendered in the arbitration has been properly implemented with the agreed 40% enhancement of the team's contracted monthly payments and that there has been final adjudication of the dispute.

### **C. Comparison with other Defence Teams, in particular the Taylor Defence Team**

26. Throughout the Application, reference is made to other defence teams. Such comparison is ill-conceived, if not contradictory to the Sesay Defence Team's own earlier submissions, as set out below:

<sup>9</sup> Application for Special Consideration for the Sesay Defence, 25 November 2005, p. 1, 4<sup>th</sup> paragraph.

<sup>10</sup> *Ibid.*

<sup>11</sup> Application for Special Consideration for the Sesay Defence, 25 November 2005, p. 16, E: Financial Reasoning.



27. The purpose of the preliminary meeting of 21 May 2007 was not to “ensure remuneration equal to other defence teams at the court”<sup>12</sup>, but to implement the decision of the arbitrator. The arbitrator, in his award, assessed the Sesay defence case on the basis of its own complexity. Throughout the arbitration, the Sesay Defence Team was claiming the contrary, i.e. that their case was more complex than any others.
28. The statement that there was agreement to “ensure back pay and future parity with the other teams”<sup>13</sup> is equally misconceived.
29. In particular, the Sesay Defence Team now seeks an Order for the same contractual terms as the Taylor Defence Team. The Registrar strongly objects to the insinuations by the Sesay Defence Team that Registrar had, out of ‘irrationality’ and a partisan approach, given “preferential treatment to the Taylor Defence Team”<sup>14</sup>. The Registrar followed the order of the Trial Chamber in providing resources, following an assessment of the Trial Chamber of adequate resources required. The argument that any decision maker with regard to defence resources (in this case, Trial Chamber II) is under an obligation to compare the case at hand with the Sesay case is irrational and lacks any legal or factual basis.
30. As stated above, the resources provided for the Taylor Team were specifically ordered by the Trial Chamber based on the specific circumstances of that case, including issues of complexity, geographical scope of the case, distances between The Hague as basis for the proceedings and Sierra Leone and Liberia as base for investigations and other relevant factors. The Registrar complied with the Order in so providing the resources to that Team and the terms of the contract between the Taylor Team and the Registrar must be distinguished from that between the Registrar and any other defence team.
31. Further, the Arbitrator’s award, having taken into account the Sesay Defence Team’s written and oral representations, was for ‘additional payment’ in relation to the case against Mr Sesay without comparison to any contractual terms binding on any other defence team or case before the Special Court.

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<sup>12</sup> Application for Judicial Review, p. 5, paragraph 14.

<sup>13</sup> Application for Judicial Review, p. 8, paragraph 32.

<sup>14</sup> Application for Judicial Review, p. 10, paragraph 39.

**D. Conclusion**

32. In conclusion, the Registrar wishes to reiterate that:

1. The allocation of additional funds had been the result of an arbitration award, based on a request for special consideration;
2. The back-payment and overall increase of 40% is in full compliance with the award and was agreed upon with the Defence Team.;
3. The issue of additional Co-Counsel was only raised in discussions following the award and only when the discussions had nearly come to a conclusion;
4. The Registrar did and does not see the need for an additional Co-Counsel *per se*, but was willing to provide funds to be used for the temporary extra reinforcement of the Defence Team. Overall, this could have led to extra resources for the defence over and above the 40% enhancement. The Registrar continues to fail to understand why the Defence refused to accept such an offer. In making this offer, the Registrar complied with the reasonableness test described in paragraph 4 above. The Applicant did not prove any failure on the Registrar's part to comply with basic rules of natural justice or procedural fairness nor that the latter had reached a decision that no sensible person could have reached;
5. In view of the above, the Sesay Defence Team's application for judicial review is not only misconceived but also frivolous.

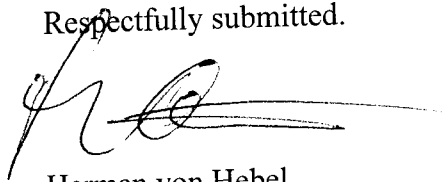
**D. Relief requested**

33. The Registrar respectfully asks the Trial Chamber that:

1. The application be dismissed for lack of merit;
2. That the Trial Chamber issues a finding that the motion is frivolous in accordance with Rule 73 (D) of the Rules of Procedure and Evidence.

Respectfully submitted.

Freetown, 17 September 2007



Herman von Hebel  
Registrar

ANNEX A

July 2003 - November 2004	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	457	450	450	450	80.00	36,000.00	90.00	40,500.00	90.00	36,000.00	0	340.00	0.00	350.00	0.00	36,000.00	0	0.00
																		4,500.00
																		4,500.00

March - May 2005	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Abdul Serry Kamal	35.02			35.02	80.00	2,801.60	110.00	3,852.20	110.00	2,256.00	7	340.00	2,380.00	500.00	3,500.00	4,636.00	6.82	545.80
Wayne Jordash	357	350	350	275.5	80.00	22,040.00	90.00	24,795.00	90.00	22,040.00	27	340.00	9,180.00	350.00	9,450.00	31,220.00	0	0.00
Sareta Ashraph	362	350	350	241.5	40.00	9,660.00	90.00	21,735.00	90.00	9,660.00	27	170.00	4,590.00	350.00	9,450.00	14,250.00	0	0.00
Eleanor Hutchison	263	130		130	20.00	2,600.00				2,600.00	0	0.00	0.00			2,600.00	0	0.00
																		19,960.00

June - August 2005	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Abdul Serry Kamal	135.6			135.6	80.00	10,848.00	110.00	14,916.00	110.00	7,704.00	7	340.00	2,380.00	500.00	3,500.00	10,084.00	39.3	3,144.00
Wayne Jordash	394.5	350	350	291	80.00	23,280.00	90.00	26,190.00	90.00	23,280.00	21	340.00	7,140.00	350.00	7,350.00	30,420.00	0	0.00
Sareta Ashraph	359	350	350	322	40.00	12,880.00	90.00	28,980.00	90.00	12,880.00	18	170.00	3,060.00	350.00	6,300.00	15,940.00	0	0.00
Ellen Roger	209	140		140	20.00	2,800.00				2,800.00	0	0.00	0.00			2,800.00	0	0.00
Saltwa Chowdhury	183	133		130	20.00	2,600.00				2,600.00	0	0.00	0.00			2,600.00	0	0.00
																		22,460.00

30609

Sep-05	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	130	100	100	100	80.00	8,000.00	110.00	11,000.00	100	80.00	8,000.00	110.00	11,000.00	0	340.00	0.00	500.00	0.00	8,000.00	0	0.00
Sareta Ashraph Salwa Chowdhury	145	125	125	125	40.00	5,000.00	90.00	11,250.00	125	40.00	5,000.00	90.00	11,250.00	0	170.00	0.00	350.00	0.00	5,000.00	0	0.00
	125	100		100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	0	0.00
																			15,000.00	0	0.00

3,000.00  
6,250.00  
9,250.00

Oct-05	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	136	120	120	120	80.00	9,600.00	110.00	13,200.00	120	80.00	9,600.00	110.00	13,200.00	0	340.00	0.00	500.00	0.00	9,600.00	0	0.00
Sareta Ashraph Salwa Chowdhury	110	100	100	100	40.00	4,000.00	90.00	9,000.00	100	40.00	4,000.00	90.00	9,000.00	0	170.00	0.00	350.00	0.00	4,000.00	0	0.00
	120	120		120	20.00	2,400.00			120	20.00	2,400.00			0	0.00	0.00			2,400.00	0	0.00
	75	50		50	20.00	1,000.00			50	20.00	1,000.00			0	0.00	0.00			1,000.00	0	0.00
																			17,000.00	0	0.00

3,600.00  
5,000.00  
8,600.00

Nov-05	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	167	155	155	127.4	80.00	10,192.00	110.00	14,014.00	127.4	80.00	10,192.00	110.00	14,014.00	22	340.00	7,480.00	500.00	11,000.00	17,672.00	0	0.00
Sareta Ashraph Salwa Chowdhury	190	177	177	176	40.00	7,040.00	90.00	15,840.00	176	40.00	7,040.00	90.00	15,840.00	22	170.00	3,740.00	350.00	7,700.00	10,780.00	0	0.00
	64	50		50	20.00	1,000.00			49.9	20.00	998.00			0	0.00	0.00			998.00	0.1	2.00
	170	150		150	20.00	3,000.00			142.95	20.00	2,859.00			0	0.00	0.00			2,859.00	7.05	141.00
																			32,309.00	0	143.00

7,342.00  
12,760.00  
20,102.00

30610

30611

Dec-05	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	119.5	100	100	100	80.00	8,000.00	110.00	11,000.00	100	80.00	8,000.00	110.00	11,000.00	6	340.00	2,040.00	500.00	3,000.00	10,040.00	0	0.00
Sareta Ashraph	182	150	150	149	40.00	5,960.00	90.00	13,410.00	149	40.00	5,960.00	90.00	13,410.00	6	170.00	1,020.00	350.00	2,100.00	6,980.00	0	0.00
Eleanor Hutchison	100	100	100	100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	0	0.00
Chantal Refahi	167	150		150	20.00	3,000.00			150	20.00	3,000.00			0	0.00	0.00			3,000.00	0	0.00
																			22,020.00	0	0.00

3,960.00  
8,530.00  
12,490.00

Jan-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	165	150	150	150	80.00	12,000.00	110.00	16,500.00	150	80.00	12,000.00	110.00	16,500.00	0	340.00	0.00	500.00	0.00	12,000.00	0	0.00
Sareta Ashraph	170	138	138	138	40.00	5,520.00	90.00	12,420.00	138	40.00	5,520.00	90.00	12,420.00	0	170.00	0.00	350.00	0.00	5,520.00	0	0.00
Eleanor Hutchison	130	130	130	130	20.00	2,600.00			130	20.00	2,600.00			0	0.00	0.00			2,600.00	0	0.00
Chantal Refahi	109	100	100	100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	0	0.00
																			23,120.00	0	0.00

4,500.00  
6,900.00  
11,400.00

Feb-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	135	120	120	120	80.00	9,600.00	110.00	13,200.00	120	80.00	9,600.00	110.00	13,200.00	1	340.00	340.00	500.00	500.00	9,940.00	0	0.00
Sareta Ashraph	166	150	150	147	40.00	5,880.00	90.00	13,230.00	147	40.00	5,880.00	90.00	13,230.00	1	170.00	170.00	350.00	350.00	6,050.00	0	0.00
Eleanor Hutchison	120	120	120	120	20.00	2,400.00			120	20.00	2,400.00			0	0.00	0.00			2,400.00	0	0.00
Chantal Refahi	165.5	151	151	151	20.00	3,020.00			151	20.00	3,020.00			0	0.00	0.00			3,020.00	0	0.00
																			21,410.00	0	0.00

3,760.00  
7,530.00  
11,290.00

Mar-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
	194	170	170	170	80.00	13,600.00	110.00	18,700.00	170	80.00	13,600.00	110.00	18,700.00	22	340.00	7,480.00	500.00	11,000.00	21,080.00	0	0.00
Wayne Jordash																					
	201	140	140	140	40.00	5,600.00	90.00	12,600.00	140	40.00	5,600.00	90.00	12,600.00	22	170.00	3,740.00	350.00	7,700.00	9,340.00	0	0.00
Sareta Ashraph																					
	126	100	100	100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00		2,000.00	0	0.00	
Chantal Refahi																			0.00	0	0.00
																			32,420.00		0.00

8,620.00  
10,980.00  
19,580.00

Apr-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
	140	110	110	110	80.00	8,800.00	110.00	12,100.00	110	80.00	8,800.00	110.00	12,100.00	4	340.00	1,360.00	500.00	2,000.00	10,160.00	0	0.00
Wayne Jordash																					
	146	120	120	120	40.00	4,800.00	90.00	10,800.00	120	40.00	4,800.00	90.00	10,800.00	4	170.00	680.00	350.00	1,400.00	5,480.00	0	0.00
Sareta Ashraph																					
	121	100	100	100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00		2,000.00	0	0.00	
Chantal Refahi																			0.00	0	0.00
Jared Kneitel																			2,000.00	0	0.00
	100.4	100	100	100	20.00	2,000.00	35.00	3,500.00	100	20.00	2,000.00	35.00	3,500.00	0	0.00	0.00	0.00	0.00	19,640.00	0	0.00

3,940.00  
6,720.00  
1,500.00  
12,160.00

May-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
	160	125	125	125	80.00	10,000.00	110.00	13,750.00	125	80.00	10,000.00	110.00	13,750.00	0	340.00	0.00	500.00	0.00	10,000.00	0	0.00
Wayne Jordash																					
	155	110	110	110	40.00	4,400.00	90.00	9,900.00	110	40.00	4,400.00	90.00	9,900.00	0	170.00	0.00	350.00	0.00	4,400.00	0	0.00
Sareta Ashraph																					
	173.5	100	100	100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00		2,000.00	0	0.00	
Chantal Refahi																			0.00	0	0.00
Jared Kneitel																			2,500.00	0	0.00
	174.3	125	125	125	20.00	2,500.00	35.00	4,375.00	125	20.00	2,500.00	35.00	4,375.00	0	0.00	0.00	0.00	0.00	18,900.00	0	0.00

3,750.00  
5,500.00  
1,875.00  
11,125.00

30612

30613

Jun-06	Time Billed	Time Claimed/ Approved by Sessy Team	Sessy Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved Paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	171.05	135	100	135	80.00	10,800.00	110.00	14,850.00	100	80.00	8,000.00	110.00	11,000.00	10	340.00	3,400.00	500.00	5,000.00	11,400.00	35	2,800.00
Sareta Ashraph	141	125	50	125	40.00	5,000.00	90.00	11,250.00	50	40.00	2,000.00	90.00	4,500.00	2	170.00	340.00	350.00	700.00	2,340.00	75	3,000.00
Jared Kneitel	164	162	100	162	20.00	3,240.00	35.00	5,670.00	100	20.00	2,000.00	35.00	3,500.00	0	0.00	0.00	0.00	0.00	2,000.00	62	1,240.00
Chantal Refahi	149	123.5	100	123.5	20.00	2,470.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	23.5	470.00
Marrisa Leaf	95.3	32	20	32	20.00	640.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	-68	-1,360.00
																			19,740.00		6,150.00

4,600.00  
2,860.00  
1,500.00  
8,960.00

Jul-06	Time Billed	Time Claimed/ Approved by Sessy Team	Sessy Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	198	160	105	160	80.00	12,800.00	110.00	17,600.00	103	80.00	8,240.00	110.00	11,330.00	21	340.00	7,140.00	500.00	10,500.00	15,380.00	57	4,560.00
Sareta Ashraph	155	123	100	123	40.00	4,920.00	90.00	11,070.00	100	40.00	4,000.00	90.00	9,000.00	21	170.00	3,570.00	350.00	7,350.00	7,570.00	23	920.00
Jared Kneitel	127	127	100	127	20.00	2,540.00	35.00	4,445.00	100	20.00	2,000.00	35.00	3,500.00	0	0.00	0.00	0.00	0.00	2,000.00	27	540.00
Chantal Refahi	125	100	110	100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	0	0.00
Marrisa Leaf	142.75	50	70	50	20.00	1,000.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	-30	-1,000.00
																			28,950.00		5,020.00

6,450.00  
8,780.00  
1,500.00  
16,730.00

Aug-06	Time Billed	Time Claimed/ Approved by Sessy Team	Sessy Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment	
Wayne Jordash	130	99	50	99	80.00	7,920.00	110.00	10,890.00	50	80.00	4,000.00	110.00	5,500.00	4	340.00	1,360.00	500.00	2,000.00	5,360.00	49	3,920.00	
Sareta Ashraph	150	118	100	118	40.00	4,720.00	90.00	10,620.00	100	40.00	4,000.00	90.00	9,000.00	4	170.00	680.00	350.00	1,400.00	4,680.00	18	720.00	
Jared Kneitel	135	135	100	135	20.00	2,700.00	35.00	4,725.00	100	20.00	2,000.00	35.00	3,500.00	0	0.00	0.00	0.00	0.00	2,000.00	35	700.00	
Chantal Refahi	69.5	50	65.5	50	20.00	1,000.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	-50	-1,000.00	

2,140.00  
5,720.00  
1,500.00

Marisa Leaf	98	50	78	50	20.00	1,000.00				100	20.00	2,000.00			0	0.00	0.00			2,000.00	-50	-1,000.00	
																					16,040.00		3,340.00
																							9,360.00

Sep-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment	
Wayne Jordash	210	184	141	184	80.00	14,720.00	110.00	20,240.00	141	80.00	11,280.00	110.00	15,510.00	0	340.00	0.00	500.00	0.00	11,280.00	43	3,440.00	
Sareta Ashraph	181	160	145	155	40.00	6,200.00	90.00	13,950.00	145	40.00	5,800.00	90.00	13,050.00	0	170.00	0.00	350.00	0.00	5,800.00	10	400.00	
Jared Kneitel	130	130	120	124.5	20.00	2,490.00	35.00	4,357.50	120	20.00	2,400.00	35.00	4,200.00	0	0.00	0.00	0.00	0.00	2,400.00	4.5	90.00	
Chantal Refahi	62	59	50	50	20.00	1,000.00			50	20.00	1,000.00			0	0.00	0.00			1,000.00	0	0.00	
																			20,480.00			13,280.00

Oct-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment	
Wayne Jordash	179.5	139.5	110	135.5	80.00	10,840.00	110.00	14,905.00	110	80.00	8,800.00	110.00	12,100.00	2	340.00	680.00	500.00	1,000.00	9,480.00	25.5	2,040.00	
Sareta Ashraph	189.5	165	150	160	40.00	6,400.00	90.00	14,400.00	100	40.00	4,000.00	90.00	9,000.00	2	170.00	340.00	350.00	700.00	4,340.00	60	2,400.00	
Jared Kneitel	216.7	182	150	182	20.00	3,640.00	35.00	6,370.00	150	20.00	3,000.00	35.00	5,250.00	0	0.00	0.00	0.00	0.00	3,000.00	32	640.00	
Chantal Refahi	53	51	0	40	20.00	800.00			40	20.00	800.00			0	0.00	0.00			800.00	0	0.00	
Bronwyn Greive	81.9	50	50	50	20.00	1,000.00			50	20.00	1,000.00			0	0.00	0.00			1,000.00	0	0.00	
Stephanie Lefevre	116	75	75	75	20.00	1,500.00			75	20.00	1,500.00			0	0.00	0.00			1,500.00	0	0.00	
																			20,120.00			11,230.00

30614



30615

Nov-06	Time Billed	Time Claimed/ Approved by Sesay Team	Sesay Team Cap	Time on assessment	Team Rate	\$	Court Approved Rate	\$	Hours Paid	Rate Paid	\$	Court Approved paid Rate	\$	Court Days	Team Rate	\$	Court Approved Rate	\$	Amount Paid (Hours paid & Court days)	Assessed time - actual payment	Amount Differences in Assessed time less Actual payment
Wayne Jordash	159	123	100	118	80.00	9,440.00	110.00	12,980.00	100	80.00	8,000.00	110.00	11,000.00	0	340.00	0.00	500.00	0.00	8,000.00	18	1,440.00
Sareta Ashraph	222.5	180.5	165	175.5	40.00	7,020.00	90.00	15,795.00	165	40.00	6,600.00	90.00	14,850.00	0	170.00	0.00	350.00	0.00	6,600.00	10.5	420.00
Jared Kneitel	192.5	150.5	130	150.5	20.00	3,010.00	35.00	5,267.50	130	20.00	2,600.00	35.00	4,550.00	0	0.00	0.00	0.00	0.00	2,600.00	20.5	410.00
Bronwyn Greive	163.25	155	150	150	20.00	3,000.00			150	20.00	3,000.00			0	0.00	0.00			3,000.00	0	0.00
Stephanie Lefevre	148.3	144	125	125	20.00	2,500.00			125	20.00	2,500.00			0	0.00	0.00			2,500.00	0	0.00
Andrew Prefect	142	122	100	100	20.00	2,000.00			100	20.00	2,000.00			0	0.00	0.00			2,000.00	0	0.00
																			24,700.00		2,270.00

3,000.00  
8,250.00  
1,950.00

235,677.00

The Total sum is made up of the following breakdown figures:

1. Wayne Jordash	\$ 77,157.00
2. Sareta Ashraph	144,645.00
3. Jared Kneitel	13,875.00
<b>TOTAL</b>	<b>235,677.00</b>

Notes of Meeting to discuss Sesay Team Proposal on Quantification of Special Considerations

21/5/07 Defence Office

Shakiratu Sanusi (SS), Sareta Ashraph(SA), Sophie Frediani (SF)

10.00 -10.52

3 main issues

1. Retrospective payment from November 2003 – date to members of team at LSC recommended rates as opposed to lower rates actually paid to keep within monthly limit. Amount payable calculated using hours of work after assessment. Discuss the difference in figures between Sesay Team and Defence Office records. Team are keen that they are paid at reasonable rates (LSC recommended hourly and daily Court rates) for work properly done. Difference in figures relied on by team and Defence Office records. Consensus that if we are to rely on figures Defence Office record would be accurate as no breakdown given to team when payments made.
2. Outstanding payments made to team members borne by Counsel. SA advises that team will not be pushing this.
3. Pro bono hours. This will not be pushed. SS view that assessment is of time/hours claimed – basic taxation/assessment principle. To that end, any claim for pro bono hours not claimed unlikely to succeed. Acknowledge that team presented bills to reflect various requirements of Defence Office i.e to keep within budget.

Main issue is how best to come to agreement on quantifying ‘special considerations’. SS puts to SA enhancement (mark up) as a way forward. This principle can encompass the complexity of the case and the provision of services of an exceptional nature. It also has the advantage of limiting disputes over figures relied on by either party, possible vitiation of the contract by retrospectively changing key terms of the contract and rendering the assessment process nugatory.

Enhancement, in principle, is acceptable to Sesay Team. Areas to be negotiated are percentage and duration of enhancement i.e from when will it run?

Past Costs

20% enhancement on the monthly maximum figure put to SA from end of Prosecution case. SA rejected offered.

Percentage offered not acceptable. This amounts to an additional \$5000 per month from July 2006 until December 2007 when the RUF case is projected to end. Sesay team calculation of amount now due to it if the whole team were to be paid at the recommended rates amounts to some \$381300 from November 2003 - November 2006. This does not include bills from December – date which have yet to be submitted and assessed.

SA - 40% is the percentage enhancement from November 2003 – November 2006 would compensate the team in the amount claimed. SA will do further work on the figures but in essence an enhancement of around the 40% mark is what the team will be working on.

SF put to SA that claim for Special Consideration was in November 2005 and sounds out whether an enhancement from November 2005 as opposed to July 2006 when Prosecution case ended might be acceptable.

The team's position is that they want any enhancement to run from November 2003 when they started work on the case. The case did not suddenly become more complex. The complexity of the case is an inherent part of the case and any enhancement should reflect that.

#### Future Costs

Team has submitted as part of proposal a new case plan and stage plan following arbitration decision using LSC recommended rates. This comes to \$159,200 including travel and DLA for 3 months.

SS notes that contractual monthly limit remains \$25,000.

Puts to team for consideration proposal that would allow DO flexibility in dealing with fees. SA thinks their case will finish in September, possibly October after which the work will reduce considerably and therefore billing will reduce.

A proposal for the separation of DLA from the fees was put in the budget. If this is accepted that should free up some funds from contractual fees limit (\$42,000 over 6 months: May to December 2007. Figures based on team projections.) which may be used for fees.

Together with 20% enhancement from May – December 2007 on top of the monthly \$25,000, funds available to pay the team come to about \$221,400.

Thus:

Fees May – December \$25000 x 6	\$150,000
Projected DLA over 6 months	\$ 41,400
20% enhancement on \$25,000	<u>\$ 30,000</u>
Funds available to Team	\$221,400

At present Defence Office policy is that fees over any 3 months do not exceed \$75,000. It may be possible to take into account reduced work/billing on part of team from September/October onwards to ensure that team payments are not restricted to the monthly limit *as long as the overall fees do not exceed this available amount over the 6 month period.*

SA will consider this with Assigned Counsel.

In sum: -

- SA rejected offer of 20% enhancement from end of Prosecution case to end of trial
- Claim for probono hours will not be pursued
- Claim for outstanding payments made to former team members will not be pursued.
- Enhancement is agreed in principle as a means of quantifying claim of Special Considerations.
- For now, the percentage the team thinking of as adequate is in ball park of 40% but will let Registry/OPD know.
- Team wish to be informed if difficulty meeting their claim is financial or legal. If former, they are willing to consider and explore areas of agreement. If latter, they wish to be informed on which basis; particularly on any decision as to the duration of any enhancement agreed upon.
- Team will consider accepting 20% enhancement during trial period if it means they can be properly paid at recommended rates using funds freed up by separation of DLA from payments as well as the DO taking a long view of costs over the whole 6 months to take into account lower billings after the end of the Sesay defence case. This depends on budgetary allocations.



ANNEX C  
30619

**SPECIAL COURT FOR SIERRA LEONE**  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE  
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)  
UN Intermission 178 7000 or 178 (+Ext)  
FAX: +232 22 297001 or UN Intermission: 178 7001

1 August 2007

Mr Wayne Jordash  
Lead Counsel, Sesay Defence Team

Dear Mr Jordash,

I would like to refer to your letter to me dated 27 July 2007 and the subsequent e-mail correspondence.

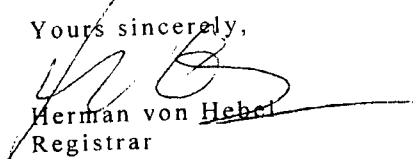
The Arbitration decision ordered the Court to 'assess the payment of additional fees' due to your team based on its finding that your client's case is "sufficiently serious, complex or sizeable to amount to exceptional circumstances as to warrant the provision of additional resources...". Both parties agreed to a 40% enhancement of your team's contracted monthly rates applied over the whole of your client's case. This 'enhancement' amounts to additional resources that we are obliged to provide. In addition, I exceptionally agreed to the provision of an international investigator for 4 months.

In our meeting, you also raised the need for another co-counsel during the presentation of the Sesay defence case at an estimated cost of USD 30,000. In reply, I stated that I would be willing to consider this request.

The solution I set out in my letter of 23 July 2007 aimed at assisting you with funding additional counsel, within the agreed rubric of the 40% enhancement. I, therefore, proposed to increase the cap to USD 45,000 during the presentation of the Sesay defence case to allow you to employ additional co-counsel, following the conclusion of which the cap will revert to its current contractual limit. At a practical level, we were prepared to release funds out of the total funds available with the 40% enhancement over the remaining period of the defence case in the way that best suits your team's organisation.

In your letter and subsequent e-mail messages, you stated that this arrangement does not meet your approval. I remain of the view, however, that the overall 40% increase as agreed is in full and faithful application of the arbitration decision and that the Registry is not obliged to go beyond this increase. My offer to temporarily further increase the cap to USD 45,000 stays, as set out in my letter. In case you would not be in agreement, I take it that the continued 40% increase during the entire duration of the case stays.

Yours sincerely,

  
Herman von Hebel  
Registrar