

## Slovakian mining dispute revived at ICSID



*A talc mine*

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After being defeated on jurisdiction in an ICSID case last year, US energy company EuroGas says it is submitting a fresh claim against Slovakia over revoked rights to one of the world's largest talc deposits that it now estimates to be worth up to €22 billion. Its Canadian co-claimant is seeking to annul the last decision.

According to press reports, Utah-based EuroGas intends to submit a claim to ICSID in the next two months concerning Slovakia's withdrawal of its rights to the Gemerská Poloma mine in 2004, despite three decisions of its own Supreme Court declaring such action illegal.

The chairman of the board of directors Wolfgang Rauball told press: "Based on new evidence gained over the past two months, EuroGas has ordered its US lawyers to sue the Slovak Republic again at ICSID."

He explained that the value of the new claim will be much greater than the last one, between €8 billion and €22 billion, as a result of new talc reserves that have been found. The last claim was for US\$1.65 billion.

EuroGas's former co-claimant, Canadian company Belmont Resources, is trying a different tack. In a press release last week, it confirmed it is seeking the annulment of the ICSID decision declining jurisdiction with a view to being restored as claimant and continuing the original arbitration.

This raises the possibility of two arbitrations proceeding in parallel over the same dispute, admits Rauball.

EuroGas is believed to be represented by lawyers from Holland & Hart in Salt Lake City, Utah, who acted for it on the last claim, though they have not confirmed their involvement.

Vancouver-based Belmont confirms in the press release that it has re-engaged Paris-based law firm Derains & Gharavi, which originally acted for EuroGas too until a conflict of interest made it necessary for it to step down.

Belmont adds that the legal costs of the action are “being borne by a third party as previously agreed.” Following an order of the tribunal, this was named in the last proceeding as Luxembourg-based third party funder La Francaise.

In the last case, Slovakia was represented by Squire Patton Boggs in New York, Prague and London. The firm continues to represent the state in the annulment proceeding though has yet to be instructed to fight the new claim.

None of the lawyers wished to comment for this article.

EuroGas and Belmont brought their ICSID claim against Slovakia over the talc mine in 2014, under the 1992 US-Czechoslovakia and 2010 Canada-Slovakia bilateral investment treaties. Last August, an all-French tribunal composed of **Pierre Mayer**, **Emmanuel Gaillard** and **Brigitte Stern** declined jurisdiction over the claim in an award that was later published on the ICSID website, along with the pleadings and a video recording of the hearings.

The tribunal accepted evidence from Slovakia that EuroGas was a resurrection of a Utah company of the same name, which had held the licence to operate the mine but went bankrupt in 2004. Despite arguments that the two companies had merged, it found that the second EuroGas had no interest in the mine.

As recorded in the award, in October 2016 the US Bankruptcy Court for the District of Utah approved an agreement whereby the trustee in bankruptcy abandoned whatever interest it had in mine to the second EuroGas for US\$150,000, following a reopening of the bankruptcy to investigate additional property of the estate that had not been dealt with in 2004.

Slovakia objected to the agreement, according to the court because it stood to benefit in the arbitration if it were not approved, and subsequently appealed the court decision. On 21 November last year, the US 10th Circuit dismissed the appeal, finding that the country had not established it was a “‘person aggrieved’ other than by implicating the arbitration.”

In relation to Belmont’s claim, the majority of the tribunal, Mayer and Stern, held in the decision on jurisdiction that the company’s dispute with Slovakia arose at the time that the state withdrew the mining licence in 2004, even though court actions in Slovakia occurred after that time.

For an investor to bring a claim under the Canada-Slovakia BIT, the dispute must have come about no more than three years before the BIT entered force in 2012. The tribunal therefore held Belmont lacked jurisdiction.

Gaillard, appointed to the panel by the claimants, issued a 12-page dissent, saying that a dispute cannot arise until all of its constituent elements have finally come into existence.

In its press release, Belmont suggests its annulment application is based on Gaillard’s dissent, arguing that “the actual dispute arose after the critical date of March 14, 2009 and, as a result, falls squarely within the tribunal’s jurisdiction *ratione temporis* provision found at Article XV(6) of the 2010 Canada Slovakia BIT.”

At the time of the award, Gharavi told *GAR*: “The majority of the tribunal composed of distinguished retired academics got it wrong on the practical legal issue of when the dispute crystallised by holding that it arose back at the time of the initial taking [of the mining licence] in December 2004.”

“The majority also turned a blind eye to letters from Slovakia to EuroGas in 2012 and from Slovakia to Belmont in 2014 in which the state expressly represented that, pending conclusion of local court proceedings, the dispute was not yet ripe. These letters further expressed that, until its notice of dispute in December 2013, Slovakia was not aware of a dispute with Belmont. They were not considered by the tribunal.”

Vojtech Agyagos, CEO and president of Belmont, says: "If the definitive annulment decision is made in our favour, Belmont will be automatically be restored as a claimant in the *Belmont-EuroGas vs Slovak Republic* arbitration, and the arbitration will proceed as if no prior verdict had been made."

The companies allege that after their rights to operate the talc mine were revoked, former Slovakian economy minister Pavol Rusko offered them to Amsterdam-based Mondo Minerals, the world's second largest talc producer, in return for a payment of €5 million to his political party. Press reports suggest a representative of Mondo rejected and reported the offer. Rusko denies the allegation.

In October, Rusko was arrested on suspicion of ordering the murder of his former business partner Sylvia Volzová in 1997 by contacts in the criminal underworld. He denies the allegation, which is still under investigation. The murder never took place and Volzová is still alive.

*In the Belmont Resources annulment proceeding (registered by ICSID in December)*

## **Ad hoc annulment committee**

*Yet to be appointed*

### **Counsel to Belmont**

- Derains & Gharavi

Partners **Hamid Gharavi** and **Emmanuel Foy** in Paris

### **Counsel to Slovakia**

- Squire Patton Boggs

[EuroGas Inc and Belmont Resources Inc v Slovak Republic \(ICSID Case No. ARB/14/14\)](#)

Tribunal

- **Pierre Mayer** (France) (chair)
- **Emmanuel Gaillard** (France) (appointed by the claimants)
- **Brigitte Stern** (France) (appointed by Slovakia)

### **Counsel to EuroGas Incorporated**

- Derains & Gharavi (from June 2014 to June 2016)

Partners **Hamid Gharavi** and **Emmanuel Foy** in Paris

- Holland & Hart (from June 2016 to August 2017)

Partners **Mona Lyman Burton** and **Maureen Witt** in Salt Lake City

## **Counsel to Belmont Resources**

- Derains & Gharavi (from June 2014 to the present)

Partners **Hamid Gharavi** and **Emmanuel Foy** in Paris

## **Counsel to Slovakia**

- Squire Patton Boggs

Partner **Stephen Anway** in New York, partner **Rostislav Pekař** in Prague, partner **David Alexander** in Columbus, partner **Raúl Mañón** in Miami, partner **Alexis Martinez** and associate **Maria Polakova** in London and associate **Eva Cibulková** in Bratislava