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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 In Re: Ex Parte Application Pursuant To
10 Section 204 Of The Federal Arbitration Act
11 and A.R.S. § 12-1507 For An Order To
12 Provide Documents And/Or Appear
13 Remotely And Testify In A Foreign
14 Arbitration Hearing

No. MC-24-00015-PHX-DLR

ORDER

15 At issue is Petitioner Insurance Company of British Columbia’s (“ICBC”) Ex Parte
16 Application Pursuant To Section 204 Of The Federal Arbitration Act and A.R.S. § 12-1507
17 For An Order To Provide Documents And/Or Appear Remotely And Testify In A Foreign
18 Arbitration Hearing (Docs. 1 and 2), ex parte motion for expedited consideration (Doc. 6),
19 and supplemental memorandum (Doc. 8). ICBC seeks leave to issue subpoenas to Quick
20 Silver Transportation, LLC (“Quick Silver”), and the Arizona Department of
21 Transportation (“ADOT”), both of whom reside or are located within this District, to
22 produce certain insurance policy coverage documents and/or appear remotely and testify
23 via videoconference at an upcoming arbitration scheduled to take place in British
24 Columbia, Canada, on May 22, 2024. ICBC attached copies of draft subpoenas as Exhibits
25 A and Exhibits B to its application.

26 ICBC seeks leave principally under 28 U.S.C. § 1782, which provides that upon
27 application by any interested person, the Court may order a person residing within its
28 District to produce documents or give testimony for use in a foreign proceeding. “There

1 are thus three threshold requirements for compelling discovery under § 1782: (1) the person
2 from whom discovery is sought must ‘reside’ or be ‘found’ in the district; (2) the discovery
3 must be for use in a proceeding in a foreign tribunal; and (3) the applicant must be an
4 ‘interested person.’” *In re Godfrey*, 526 F. Supp. 2d 417, 418 (S.D.N.Y. 2007). If these
5 requirements are met, “[t]he statute authorizes, but does not require,” the district court to
6 compel the requested discovery. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S.
7 241, 255 (2004). In exercising its discretion to grant or deny a request under § 1782, the
8 court considers several factors, including: (1) whether the “person from whom discovery
9 is sought is a participant in the foreign proceeding;” (2) the nature and character of the
10 foreign proceeding, and whether the foreign court is receptive to judicial assistance from
11 the United States; (3) whether the request is an attempt to circumvent foreign proof-
12 gathering restrictions; and (4) whether the discovery request is “unduly intrusive or
13 burdensome.” *Id.* at 264-66. In weighing these factors, the Court must be mindful of “the
14 twin aims of the statute: providing efficient means of assistance to participants in
15 international litigation in our federal courts and encouraging foreign countries by example
16 to provide similar means of assistant to our courts.” *In re Metallgesellschaft AG*, 121 F.3d
17 77, 79 (2d Cir. 1997) (internal quotations and citation omitted).

18 ICBC’s application satisfies the three threshold requirements for relief under §
19 1782. Quick Silver and ADOT both reside in this District, and ICBC is an interested person
20 because it is a party to the arbitration proceeding. ICBC seeks discovery for use in an
21 arbitration proceeding in British Columbia, Canada. The Supreme Court recently held that
22 “only a governmental or intergovernmental adjudicative body constitutes a ‘foreign or
23 international tribunal’ under § 1782. Such bodies are those that exercise governmental
24 authority conferred by one nation or multiple nations.” *ZF Automotive US, Inc. v. Luxshare,*
25 *Ltd.*, 596 U.S. 619, 638 (2022). Although purely private commercial arbitration panels do
26 not fall within this definition, the Supreme Court left open the possibility that other types
27 of arbitration panels could be covered by the statute if they sufficiently exercise
28 governmental authority. *Id.* at 633. The Court finds such to be the case here.

1 The claimant in the arbitration proceeding is a Canadian citizen who was injured
2 after being struck by a motor vehicle in Scottsdale, Arizona. British Columbia
3 Underinsured Motorist Protection (“UMP”) coverage helps cover an injured Canadian
4 citizen’s damages when an at-fault driver does not have enough insurance coverage, but
5 the amount of recovery must be offset against any other insurance that would have been
6 available to the injured claimant. All drivers in British Columbia must purchase minimum
7 coverage, including UMP, from ICBC. And Canadian provincial law Regulation s.148.2(1)
8 requires coverage disputes to be resolved either by private arbitration by consent or, in the
9 absence of consent, by arbitration under the Arbitration Act of British Columbia through
10 B.C. International Commercial Arbitration Centre (“BCICAC”), a non-profit entity. The
11 arbitration at issue here is *not* a private arbitration by consent; it is an arbitration under the
12 Arbitration Act through BCICAC. Under these circumstances, the Court finds that
13 arbitration under the Arbitration Act through BCICAC is more akin to a governmental
14 authority than a purely private, commercial body.

15 As for the discretionary factors, Quick Silver and ADOT are not parties to the
16 foreign proceeding; there is no reason to believe the BCICAC arbitration panel would be
17 unreceptive to judicial assistance from the United States (to the contrary, ICBC
18 successfully obtained similar assistance from this Court during an earlier phase of this
19 arbitration, *see* Doc. 6 in Case No. 2:23-mc-00018-PHX-SMB); there is no evidence that
20 ICBC is attempting to circumvent foreign proof-gathering restrictions; and on their face,
21 the proposed subpoenas do not appear unduly intrusive or burdensome. To the extent Quick
22 Silver or ADOT feel otherwise, they may raise their objections after being served with the
23 subpoenas.

24 Accordingly,

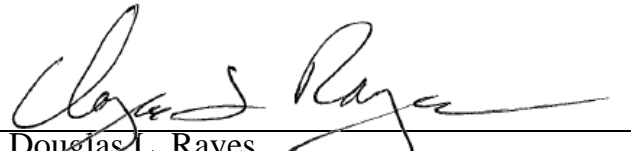
25 **IT IS ORDERED** that ICBC’s motion for expedited consideration (Doc. 6) is
26 **GRANTED.**

27 **IT IS FURTHER ORDERED** that ICBC’s Ex Parte Application Pursuant To
28 Section 204 Of The Federal Arbitration Act and A.R.S. § 12-1507 For An Order To Provide

1 Documents And/Or Appear Remotely And Testify In A Foreign Arbitration Hearing
2 (Docs. 1 and 2) is **GRANTED** as follows:

- 3 1. ICBC may issue the subpoenas attached to the application as Exhibit A (the
4 “Subpoena To Produce Documents, Information, Or Objects Or To Permit
5 Inspection Of Premises In A Civil Action”), pursuant to the Federal Rules of
6 Civil Procedure, and pursuant thereto require Quick Silver and ADOT to
7 produce the requested insurance policy coverage documents on or before May
8 15, 2024, and that the place for production shall be at: (i) The Law offices of
9 Evans, Dove, Nelson, Fish & Grier PLC, 2650 E. Southern Ave, Mesa, AZ
10 85204; or (ii) At any other location mutually agreeable to the Applicant and the
11 subpoenaed parties.
- 12 2. ICBC is granted leave to issue the subpoenas attached to the application as
13 Exhibit B (the “Subpoena to Appear and Testify At A Hearing Or Trial In A
14 Civil Action”), pursuant to the Federal Rules of Civil Procedure, and pursuant
15 thereto require Quick Silver and ADOT to appear and testify remotely as
16 witnesses at the foreign Arbitration Hearing scheduled to take place in British
17 Columbia, Canada, on May 22, 2024 at 10:00 a.m., and that the appearance be
18 via videoconference from: (i) The Law offices of Evans, Dove, Nelson, Fish &
19 Grier PLC, 2650 E. Southern Ave, Mesa, AZ 85204; or (ii) At any other location
20 mutually agreeable to the Applicant and the subpoenaed parties.

21 Dated this 9th day of May, 2024.

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25 Douglas L. Rayes
26 United States District Judge
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