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VIA FAX & E-MAIL
January 12, 2007

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The Secretary of the Tribunal - ICSID Case No. ARB/05/10
International Centre for the Settlement of Investment Disputes
1818 H Street N.W. – Mail Stop U3-301
Washington, D.C. 20433, USA

Re: Malaysian Historical Salvors, Sdn, Bhd v. Malaysia, ICSID Case No. ARB/05/10

Dear Mr. Onwuamaegbu:

Malaysia's January 9, 2007 letter to the Tribunal misapprehends or deliberately mischaracterizes the information contained in MHS's Comments on the issue of "investment" within the meaning of Article 25(1) of the ICSID Convention (the "Comments").

Malaysia's letter is unauthorized. At a minimum, the author of the letter should have obtained leave from the Tribunal before submitting it.

The information and facts contained in the Comments are a further recitation and elaboration of the facts and evidence submitted by MHS to the Tribunal prior to the Comments. The information and facts contained in the Comments provide more specificity and further reinforcement for the Tribunal to conclude that ICSID has jurisdiction in this case. The Comments, once again, *inter alia*, listed the numerous tasks that MHS performed and the risks that MHS took to locate the wreck of the DIANA and its cargo, to survey and recover the cargo, to prepare the cargo for sale, to arrange for the sale of the recovered valuable items by

auction in Europe; and further explained how Malaysia benefited from MHS's activities – all of which are relevant to the issue of whether there was an "investment."

We note that Malaysia does not contest or dispute the facts contained in the Comments or in MHS's previous submissions to the Tribunal. Malaysia has treated MHS's work on the DIANA project with silence. Throughout this proceeding, Malaysia's arguments have not been based on disputed facts, but rather on the sufficiency of facts and applicable law. Malaysia's argument has been and continues to be that the facts, which are not in dispute, do not constitute "investment," "consent," "approval," etc.

Malaysia has, *inter alia,* taken MHS's property in violation of the UK/Malaysia BIT and international law, and its judicial system has illegally refused to afford MHS the ability to vindicate its rights against the Malaysian government. Malaysia's letter is yet another example of its efforts to distract and delay the action of this Tribunal – consistent with its past pattern and practice, in Malaysia and this Tribunal, of making specious arguments and abusing judicial process to forestall, delay, hinder, obstruct, and evade justice.

For the reasons stated above, Malaysia's January 9 letter is demonstrably void of merit and credibility, and the Tribunal should disregard it. Additionally, with respect to the issue of credibility, the Tribunal will recall that the letter and all other submissions to this Tribunal by Malaysia come from the same Malaysia, which most notably, has firmly and unequivocally (and ridiculously), on May 25, 2006, stated that the UK/Malaysia BIT, which entered into force in 1988, does not cover any British investments in Malaysia even though British investors are one of the largest foreign investors in Malaysia. *See,* Transcript of Frankfurt Hearing. 140:9-25; 141:1-15, and pp. 10-11 of MHS's Post-Jurisdiction Hearing and Notes, June 26, 2006.

MHS continues to await the Tribunal's decision that ICSID has jurisdiction in this case.

Respectfully submitted,

Hal Eren

Bruno A. Ristau