



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CARLA LACEY and BARBARA
SIEGFRIED, on behalf of themselves
and all other similarly situated
stockholders of SOUTHERN
COPPER CORPORATION, and
derivatively on behalf of
SOUTHERN COPPER
CORPORATION,

Plaintiffs,

v.

GERMÁN LARREA MOTA-
VELASCO, OSCAR GONZÁLEZ
ROCHA, EMILIO CARRILLO
GAMBOA, ALFREDO CASAR
PÉREZ, XAVIER GARCÍA DE
QUEVEDO TOPETE, DANIEL
MUÑIZ QUINTANILLA, LUIS
MIGUEL PALOMINO BONILLA,
GILBERTO PEREZALONSO
CIFUENTES, JUAN REBOLLEDO
GOUT, CARLOS RUIZ
SACRISTÁN, ENRIQUE
CASTILLO SÁNCHEZ
MEJORADA, LUIS CASTELAZO
MORALES, AND GRUPO
MÉXICO S.A.B. DE C.V.,

Defendants,

-and-

SOUTHERN COPPER
CORPORATION,

Nominal Defendant.

C.A. No. 11779-VCG

**PUBLIC VERSION FILED
DECEMBER 10, 2015**

VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT

Plaintiffs Carla Lacey and Barbara Siegfried (collectively, “Plaintiffs”), on behalf of themselves and all other similarly situated public stockholders of Southern Copper Corporation (“Southern Copper” or the “Company”), and derivatively on behalf of nominal defendant Southern Copper, bring the following Verified Class Action and Derivative Complaint (the “Complaint”) against the Company’s controlling stockholder Grupo México S.A.B. de C.V. (“Grupo México”) and the board of directors of Southern Copper (the “Southern Copper Board” or “Board”). The allegations of the Complaint are based on the knowledge of Plaintiffs as to themselves, and on information and belief, including the investigation of counsel and review of publicly available information and internal Company documents produced in response to Plaintiffs’ demand for the inspection of books and records pursuant to Section 220 of the Delaware General Corporation Law (the “Section 220 Demand”),¹ as to all other matters.

INTRODUCTION

1. This case arises from serial abuses of power by Southern Copper’s acknowledged controlling stockholder, Grupo México. As set forth in detail

¹ In connection with Plaintiffs’ Section 220 Demand and investigation, on August 17, 2015, Plaintiffs entered into a tolling agreement with Defendants that tolled all applicable limitations periods in order to ensure the full preservation of all of Plaintiffs’ rights.

below, Grupo México has exploited its control over Southern Copper by causing the Company to assume meaningful risk in connection with a massive construction project, the benefits of which have been usurped by Grupo México through an arrangement that will transfer hundreds of millions—or even billions—of dollars in revenue from the Company and its subsidiaries to its controlling stockholder.

2. Southern Copper is an integrated producer of copper and other minerals, and operates mining, smelting and refining facilities in Peru and Mexico. As of September 30, 2015, Grupo México owned 87.4% of Southern Copper’s outstanding common stock. A majority of the current 11-member Southern Copper Board are directly interested in and/or affiliated with Grupo México, and individuals associated with Grupo México occupy a number of the Company’s most powerful and influential executive positions.

3. In 2005, Southern Copper formed Mexico Generadora de Energia S. de R. L. (“MGE”) as a special purpose vehicle to develop, construct, own, operate and maintain two natural gas-fired power plants. Once built, all of the power plants’ electrical output was to be used for Southern Copper’s Mexican mining operations.

4. In May 2010, Southern Copper granted a \$350 million line of credit to MGE for the construction of the power plants (the “MGE Loan”).

5. In the first quarter of 2012, *after* the project was well on its way to completion and *after* Southern Copper had assumed nearly all of the construction and finance risks associated with the power plants, Grupo México caused the Company to sell MGE to Grupo México for \$150 million (the “MGE Sale”).² Additionally, at the same time, Grupo México paid \$150 million to Southern Copper to partially reduce the total debt under the MGE Loan.

6. [REDACTED]

[REDACTED] a clear violation of the Company’s certificate of incorporation (the “Charter”), which requires review of material related-party transactions such as the MGE Sale by a committee of independent directors.

7. In addition to violating the Charter, the MGE Sale was unfair to the Company and was not subject to any procedural safeguards. When Grupo México appropriated the power plants from Southern Copper, the plants were well on their way to completion, were on-schedule and on-budget, were being financed by the Company and had a built-in revenue stream (*i.e.*, the future provision of power to Southern Copper’s subsidiaries). The MGE Sale was simply not negotiated at

² The first United States Securities and Exchange Commission (“SEC”) filing to reference the MGE Sale was the Company’s Form 10-K filed on February 28, 2013.

arm's-length, and Grupo México knew the Company would still need the power generated by MGE to run its Mexican operations.

8. In late 2012, a few months after Grupo México acquired MGE from the Company, Grupo México caused Southern Copper to enter into a twenty-year agreement to buy power from MGE. This long-term power supply agreement (the "Power Supply Agreement")³ is unfair to Southern Copper for a number of reasons, including (a) it effectively guarantees Grupo México hundreds of millions – if not billions – of dollars in revenue that will flow to it from Southern Copper's subsidiaries. [REDACTED]

[REDACTED] and (c) it allows Grupo México to sell power to third parties and generate profits that should (and would) have flowed to Southern Copper but for the unfair MGE Sale.

9. Around that same time, the outstanding balance on the MGE Loan was restructured as subordinated debt of MGE (the "MGE Loan Amendment").⁴ Under the restructuring, rather than having to immediately repay the debt, Grupo

³ The first SEC filing to reference the Power Supply Agreement was the Company's Form 10-Q filed on April 30, 2013.

⁴ The first SEC filing to reference the MGE Loan Amendment was the Company's Form 10-K filed on February 28, 2013.

México was instead permitted to repay the MGE Loan using a percentage of future profits from its operation of the power plants.

10. Thus, the MGE Loan Amendment effectively provided risk-free financing for Grupo México. If the project proves profitable – which it likely will as a result of the 20-year, multi-billion dollar Power Supply Agreement with the Company – Grupo México will garner all the profits. If the project is a failure, Grupo México can seemingly walk away from its debt obligation.

11. The Power Supply Agreement and the MGE Loan Amendment also violate Southern Copper's Charter. Neither the Power Supply Agreement nor the MGE Loan Amendment was subjected to the requisite prior independent committee review. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Through this action, Plaintiffs seeks to, among other things, hold Grupo México and the members of the Southern Copper Board accountable for their breaches of fiduciary duty and hold the Company accountable for its breach of contract (*i.e.*, violation of the Charter).

THE PARTIES

13. Plaintiff Carla Lacey is a stockholder of Southern Copper and has been a stockholder of Southern Copper at all material times alleged in this Complaint.

14. Plaintiff Barbara Siegfried is a stockholder of Southern Copper and has been a stockholder of Southern Copper at all material times alleged in this Complaint.

15. Nominal defendant Southern Copper is an integrated producer of copper and other minerals, and operates mining, smelting and refining facilities in Peru and Mexico. Southern Copper is a majority-owned, indirect subsidiary of Grupo México, through Americas Mining Corporation (“AMC”), and is incorporated in the State of Delaware with its corporate headquarters located at 1440 East Missouri Avenue, Suite 160, Phoenix, Arizona. Southern Copper’s common stock trades on the New York Stock Exchange (“NYSE”) under the ticker symbol “SCCO”.

16. Defendant Germán Larrea Mota-Velasco (“Germán Larrea”) has served as Southern Copper’s Board Chairman since December 1999 and as a director of the Company since November 1999. Germán Larrea previously served as the Company’s Chief Executive Officer (“CEO”) from December 1999 to October 2004. In addition, Germán Larrea has been Chairman, President and CEO

of Grupo México—the Company’s controlling stockholder—since 1994. Germán Larrea also served as Chairman and CEO of Grupo Minera México since 1994—until its acquisition by Southern Copper in 2005—and serves as Chairman and CEO of Grupo Ferroviario Mexicano (Grupo México’s railroad division) since 1997. Previously, Germán Larrea served as Grupo México’s Executive Vice Chairman and has been a member of Grupo México’s board of directors since 1981. He is also chairman of the board of directors and CEO of Empresarios Industriales de México, S.A. de C.V. (“EIM”).

17. Defendant Oscar González Rocha (“González Rocha”) has served as Southern Copper’s President since December 1999, and has also served as the Company’s CEO since October 2004. Between 2012 and 2014, González Rocha received almost \$5 million in total compensation for his service as Southern Copper’s President and CEO.⁵ González Rocha has served as a member of the Southern Copper Board since November 1999. Previously, González Rocha served as the Company’s President, General Director, and Chief Operating Officer (“COO”) from December 1999 to October 20, 2004. In addition, González Rocha has been the President and CEO of AMC—a subsidiary of Grupo México through

⁵ González Rocha’s total compensation for serving as Southern Copper’s President and CEO was \$1,587,002 in 2012, \$1,603,307 in 2013, and \$1,535,285 in 2014.

which Grupo México controls Southern Copper—since November 2014, has been a director of Grupo México since April 2002 and was an alternative director of Grupo México from 1998 to April 2002. He was a director of Asarco LLC (“Asarco”), an affiliate of the Company, beginning in August 2010.

18. Defendant Emilio Carrillo Gamboa (“Carrillo Gamboa”) has served as a member of the Southern Copper Board since May 2003. Carrillo Gamboa received director fees from Southern Copper of \$113,744, \$91,194, and \$108,000 in 2012, 2013, and 2014, respectively. In addition, Carrillo Gamboa served as a member of the board of directors and audit committee of Grupo México-Asarco from 1992 to 2013. Carrillo Gamboa is and has been a director and a member of the audit committee of Grupo México since 2004. Carrillo Gamboa is a member of the Board’s audit committee who ostensibly ratified the Company’s entry into the Power Supply Agreement with MGE.

19. Defendant Alfredo Casar Pérez (“Casar Pérez”) has served as a member of the Southern Copper Board since October 2006. Casar Pérez received director fees from Southern Copper of \$83,744, \$70,184, and \$78,682 in 2012, 2013, and 2014, respectively. Casar Pérez has been a member of the board of directors of Grupo México since 1997. Additionally, Casar Pérez has been a member of the board of directors of Ferrocarril Mexicano, S.A. de C.V., an

affiliated company of Grupo México, since 1998 and has been its CEO since 1999. Previously, Casar Pérez served as a General Director and a member of the board of directors of Compañía Perforadora México, S.A. de C.V., and México Compañía Constructora, S.A. de C.V., two subsidiaries of Grupo México.

20. Defendant Xavier García de Quevedo Topete (“García de Quevedo”) has served as a member of the Southern Copper Board since November 1999 and as the Company’s Chief Operating Officer (“COO”) since April 2005. Between 2012 and 2014, García de Quevedo received approximately \$4.5 million in total compensation for his service as Southern Copper’s COO.⁶ In addition, since November 2014, García de Quevedo has served as the President of Grupo México’s infrastructure division, and he has been a director of Grupo México since April 2002. Prior to these roles, García de Quevedo served as President and CEO of AMC, a wholly owned subsidiary of Grupo México through which Grupo México controls Southern Copper, from September 2007 through October 2014. From December 2009 to June 2010, he was Chairman and CEO of Asarco, an affiliate of the Company. He was previously President of Asarco from November 1999 to September 2001. García de Quevedo began his professional career in

⁶ García de Quevedo’s total compensation for serving as Southern Copper’s COO was \$1,270,514 in 2012, \$1,393,913 in 2013, and \$1,916,012 in 2014.

1969 with Grupo México. During his more than 32 years with Grupo México, García de Quevedo was responsible for developing the company's integration strategy. Additionally, he was directly responsible for the development of the copper smelter, refinery, precious metal and rod plants of Grupo México, headed the process for the acquisition of railroad concessions for Grupo México, and the formation of Grupo Ferroviario Mexicano, S.A. de C.V. and its partnership with Union Pacific.

21. Defendant Daniel Muñiz Quintanilla ("Muñiz") has served as a member of the Southern Copper Board since 2008. Muñiz received director fees from Southern Copper of \$77,744, \$70,184, and over \$72,682 in 2012, 2013, and 2014, respectively. Muñiz has been Grupo México's Chief Financial Officer ("CFO") since April 2007.

22. Defendant Luis Castelazo Morales ("Castelazo Morales") has served as a member of the Southern Copper Board since 2010. Castelazo Morales received director fees from Southern Copper of \$83,744, \$70,184 and \$78,682 in 2012, 2013 and 2014, respectively. Castelazo Morales has also been a General Director of EIM since 2008.

23. Defendant Juan Rebolledo Gout ("Rebolledo") served as a member of the Southern Copper Board from 2003 to September 30, 2015. Rebolledo received

director fees from Southern Copper of \$77,744, \$70,184 and over \$72,682 in 2012, 2013 and 2014, respectively. In addition, Rebolledo has been International Vice President of Grupo México since 2001.

24. Defendant Luis Miguel Palomino Bonilla (“Palomino”) has served as a member of the Southern Copper Board since March 2004. Palomino received director fees from Southern Copper of \$95,744, \$105,984 and over \$114,000 in 2012, 2013 and 2014, respectively. Palomino is a member of the Board’s audit committee who ostensibly ratified the Company entering into the Power Supply Agreement with MGE.

25. Defendant Gilberto Perezalonso Cifuentes (“Perezalonso”) has served as a member of the Southern Copper Board since June 2002. Perezalonso received director fees from Southern Copper of \$83,744, \$86,984 and \$90,000 in 2012, 2013 and 2014, respectively. Perezalonso is a member of the Board’s audit committee who ostensibly ratified the Company’s entry into the Power Supply Agreement with MGE.

26. Defendant Carlos Ruiz Sacristán (“Ruiz Sacristán”) has served as a member of the Southern Copper Board since February 2004. Ruiz Sacristán received director fees from Southern Copper of \$71,744, \$70,184 and over \$72,000

in 2012, 2013 and 2014, respectively. Ruiz Sacristán was also formerly the Chairman of the board of directors of Asarco.

27. Defendant Enrique Castillo Sánchez Mejorada (“Castillo Sánchez Mejorada”) has served as a member of the Southern Copper Board since 2010. Castillo Sánchez Mejorada received director fees from Southern Copper of \$83,744, \$70,184 and over \$96,682 in 2012, 2013 and 2014, respectively. From April 2012 until April 2014, Castillo Sánchez Mejorada served on the board of directors of Grupo Aeroportuario del Pacífico, S.A.B. de C.V., a Mexican airport operator in which Grupo México is a major stockholder.

28. The defendants listed in paragraphs 16 through 27 above are collectively referred to herein as the “Director Defendants.”

29. Defendant Grupo México has its corporate headquarters at Edificio Parque Reforma, Campos Eliseos No. 400, 12th Floor, Col. Lomas de Chapultepec, Mexico City, Mexico 11000. Grupo México owns 100% of AMC, which, in turn, owned 87.4% of Southern Copper’s common stock as of September 30, 2015.

SUBSTANTIVE ALLEGATIONS

A. Grupo México Controls Southern Copper

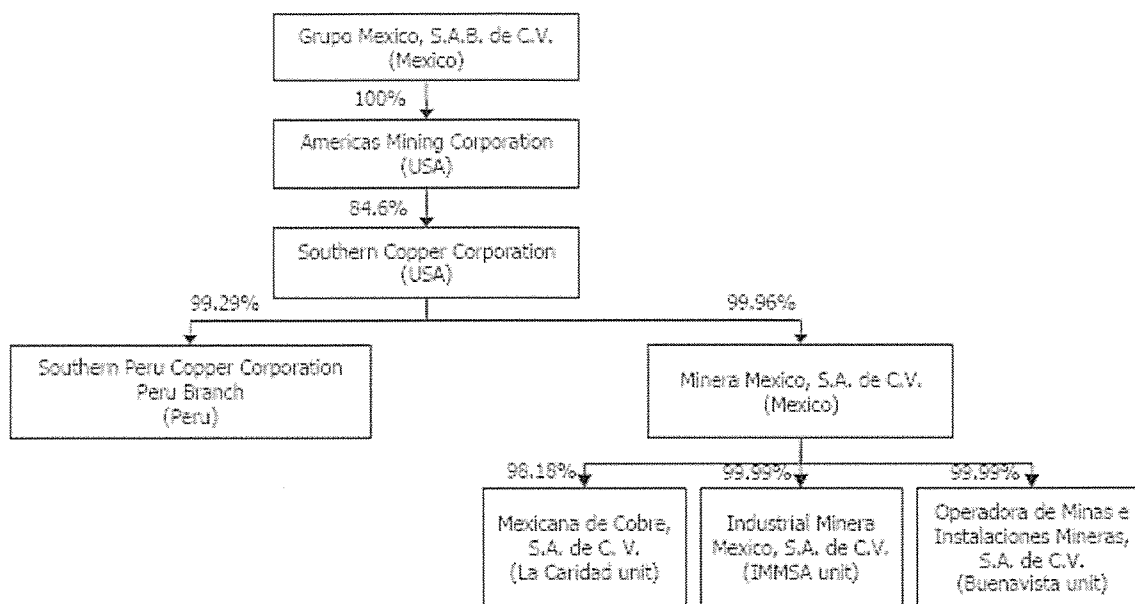
30. Grupo México is a Mexico-based holding company whose principal purpose is holding shares of stock in other corporations engaged in (1) the mining, processing, purchase and sale of minerals and other products, and (2) railway and other related services.

31. The Larrea family (the “Larrea Family”) controls a majority of the capital stock of Grupo México.

32. As of December 31, 2014, Grupo México, through its wholly-owned subsidiary AMC, owned 84.6% of Southern Copper’s capital stock.⁷

33. The chart below depicts Southern Copper’s organizational structure as of December 31, 2014:

⁷ As of December 31, 2011, Grupo México – through its ownership of AMC – owned approximately 80.9% of Southern Copper’s outstanding common stock. Grupo México’s ownership of Southern Copper stock has increased in recent years and, as of September 30, 2015, Grupo México owned 87.4% of Southern Copper’s outstanding common stock.



34. Southern Copper concedes in its public filings that Grupo México controls the Company. According to Southern Copper’s Form 10-K filed with the SEC on March 2, 2015 (the “10-K”):

We are controlled by Grupo Mexico, which exercises control over our affairs and policies and whose interests may be different from yours.

At December 31, 2014, Grupo Mexico owned indirectly 84.6% of our capital stock. Certain of our and Minera Mexico’s officers and directors are also directors and/or officers of Grupo Mexico and/or of its affiliates. We cannot assure you that the interests of Grupo Mexico will not conflict with our minority stockholders.

Grupo Mexico has the ability to determine the outcome of substantially all matters submitted for a vote to our stockholders and thus exercises control over our business policies and affairs, including the following:

- the composition of our Board of Directors and, as a result, any determinations of our Board with respect to our business direction and policy, including the appointment and removal of our officers;
- determinations with respect to mergers and other business combinations, including those that may result in a change of control;
- whether dividends are paid or other distributions are made and the amount of any dividends or other distributions;
- sales and dispositions of our assets;
- the amount of debt financing that we incur; and
- the approval of capital projects.

35. Similarly, Southern Copper's annual meeting proxy statement filed with the SEC on March 27, 2015 states that:

We are a controlled company as defined by the rules of the NYSE. Grupo Mexico owns indirectly 84.6% of our stock as of December 31, 2014 and controls the voting power for the election of directors. We have taken advantage of the exceptions to the corporate governance rules of the NYSE. (Emphasis added)

36. Individuals associated with Grupo México also occupy a number of Southern Copper's most powerful and influential positions, including the following:

- Defendant Germán Larrea, Grupo México's Chairman, President, CEO and controlling stockholder, serves as Southern Copper's Board Chairman;

- Defendant González Rocha, a Grupo México director, serves as Southern Copper's President and CEO;
- Defendant García de Quevedo, the President of Grupo México's infrastructure division and a director of Grupo México, serves as Southern Copper's COO;
- Agustin Avila Martinez serves as the Controller of both Grupo México and Southern Copper;
- Vidal Muhech Dip, Grupo México's Corporate Director of Engineering and Construction, serves as the Company's Vice President, Projects; and
- Juan Rodriguez Arriaga, who has spent the last 26 years working for Grupo México, serves as Southern Copper's Vice President, Commercial.

37. Additionally, as explained *infra* in sub-section I of the section entitled "Demand On The Board Is Excused As Futile," a majority of the members of the Southern Copper Board are either directly interested in or affiliated with Grupo México.

38. Southern Copper engages in a number of related-party transactions with Grupo México and other Grupo México related entities, all of which constitute further indicia of control over Southern Copper and its operations. These related-party transactions include, among others:

- Southern Copper's payment of \$13.9 million in 2014 to Grupo México for certain accounting, legal, tax, financial, treasury, human resources, price risk and hedging, purchasing,

procurement and logistics, sales and administrative and other support services;

- Southern Copper's payment of \$22.7 million in 2014 primarily for freight services provided by Ferrocarril Mexicano, S.A. de C.V., a subsidiary of Grupo México;
- Southern Copper's payment of \$61.4 million in 2014 for engineering and construction services provided by México Proyectos y Desarrollos, S.A. de C.V. and affiliates, all of which are subsidiaries of Grupo México;
- Southern Copper's payment of \$3.1 million in 2014 for drilling services provided by Compañía Perforadora Mexico, S.A.P.I. de C.V., a subsidiary of Grupo México;
- Southern Copper's 2014 purchase of \$47.9 million in scrap and other residual copper minerals from Asarco LLC, a subsidiary of Grupo México; and
- Southern Copper's 2014 purchase of power for \$7.6 million from Eolica El Retiro, S.A.P.I. de C.V., an indirect subsidiary of Grupo México.

39. Further evidence of Grupo México's control and domination over Southern Copper is the fact that then-Chancellor Strine previously found that Grupo México – which at that time held *less* Southern Copper ownership and similar Board representation – was the Company's controller, and rendered a \$1.2 billion judgment against Grupo México for its role in forcing Southern Copper (then named Southern Peru Copper Corporation) to substantially overpay Grupo México for certain assets. *See In re S. Peru Copper Corp. S'holder Derivative Litig.*, 52 A.3d 761 (Del. Ch. 2011).

B. Southern Copper Creates MGE

40. In 2005, Southern Copper formed MGE as a special purpose vehicle to develop, construct, own, operate and maintain two substantially identical natural gas-fired power plants, each with a net generation capacity of approximately 250MW, for a total of 500MW (the “Project”) in the City of Nacozari de Garcia, in the state of Sonora in northern Mexico.

41. Once built, all of the Project’s electrical output was to be delivered to two affiliates: Mexicana de Cobre, S.A. de C.V. (“MexCobre”) and Buenavista del Cobre, S.A. de C.V. (“Buenavista” and, together with MexCobre, the “Consumer Partners”). The Consumer Partners were (and remain) 100% owned by Minera Mexico S.A. de C.V. (“Minera Mexico”), which is 100% owned by Southern Copper.

42. The Project was poised for success because, among other things, (a) the Company needed the local power source and (b) the Project was critically important to Minera Mexico’s mining operation.

43. The construction of the Project occurred on land owned by MGE, which is within MexCobre’s property.

44. In May 2010, the Company’s Mexican operations granted a \$350 million line of credit to MGE for the construction of the power plants (previously

defined as the “MGE Loan”). The MGE Loan was due on December 31, 2012 and carried an interest rate of 4.4%.

45. Construction of the first power plant began in August 2011 and construction of the second power plant began in April 2012.⁸

C. Southern Copper Sells MGE To Grupo México

46. In the first quarter of 2012, *after* the Project was well on its way to completion and *after* Southern Copper had assumed nearly all of the construction risk associated with the Project, the Company sold MGE to Grupo México. Specifically, Controladora de Infraestructura Energetica Mexico, S. A. de C. V. (“CIEM”), an indirect subsidiary of Grupo México, acquired 99.999% of MGE through a capital subscription of 1,928.6 million Mexican pesos (approximately \$150 million), reducing Minera Mexico’s ownership in MGE to less than 0.001% (previously defined as the “MGE Sale”).⁹

47. As a consequence of this transfer, MGE became an indirect subsidiary of Grupo México. Additionally, at the same time, MGE paid \$150 million to the

⁸ MGE completed construction of the first power plant in June 2013 and completed construction of the second plant in the second quarter of 2014.

⁹ The Project was being built in two overlapping phases, and by November 2012 construction of phase one and two were approximately 88% and 51% complete, respectively.

Company's Mexican operations, partially reducing the total debt under the MGE Loan.

48. The MGE Sale violated the Company's Charter, which mandates that transactions between Grupo México and Southern Copper above a \$10,000,000 dollar threshold must be approved by a committee of independent directors. Specifically, Article Nine of the Charter states that:

The Corporation shall not engage in any Material Affiliate Transaction unless it has been the subject of prior review by a committee of the Board of Directors with at least three members, each of whom is an Independent Director¹⁰ (any such committee, an "Affiliate Transactions Committee"). For purposes of this ARTICLE NINE, a "Material Affiliate Transaction" shall mean any transaction, business dealing or material financial interest in any transaction, or any series of related transactions, between Grupo México or one of its affiliates (other than the Corporation or any of the Corporation's subsidiaries), on the one hand, and the Corporation or one of the Corporation's subsidiaries, on the other hand, that involves consideration of more than \$10,000,000 in the aggregate.

49. Because the MGE Sale involved the transfer of power plants worth hundreds of millions (if not billions of dollars) between Grupo México and its affiliates, on the one hand, and the Company and its affiliates, on the other hand,

¹⁰ Article Eight of the Charter states that: "Independent Director" means a director who satisfies the independence requirements of the New York Stock Exchange Listed Company Manual, or, if the principal United States listing of the Common Shares is on another United States securities exchange or inter-dealer quotation system of a registered national securities association, the equivalent requirements of the applicable rules and regulations of that exchange or association.

the MGE Sale fit squarely within the category of related-party transactions described in Article Nine of the Charter and therefore required the prior review of an independent committee of Southern Copper directors. Nonetheless, the MGE Sale was never subjected to any review, approval or ratification by any committee of the Board, let alone *prior* review by an independent committee of the Board. Indeed, based on the documents produced in response to Plaintiffs' Section 220 Demand, [REDACTED]

[REDACTED]

50. In addition to violating the Charter, the terms of the MGE Sale were not fair to the Company. Because the Board was not even involved in any deliberation of the merits or negotiation of the MGE Sale, there was nobody to protect or bargain on behalf of the interests of the Company. Members of the Board did not even have the opportunity to engage a financial or legal advisor to help deliberate or negotiate the MGE Sale if they had cared to.

51. The MGE Sale was also unfair because the Project was well on its way to completion, was on-schedule, was on-budget, was being financed by the Company (which even after the MGE Sale still carries a portion of this debt on its balance sheet today). Perhaps more importantly, however, was the Project's built-in revenue stream in the future provision of power to the Company's subsidiaries –

demand for a majority of MGE's output that was not at risk. There was no need for a sale of MGE, particularly on terms unduly favorable to the Company's controller – Grupo México.

52. Additionally, at the time of the MGE Sale, construction risk was mitigated by the existence of [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].¹¹ As such, the Company bore the substantial construction risk associated with a massive construction project in Central America, then Grupo México appropriated the benefits of the Project once the Project reached an advanced stage and the risk had plummeted to a reasonably low level.

D. Grupo México Causes Southern Copper To Enter Into The Unfair Power Supply Agreement And MGE Loan Amendment

53. Further magnifying the unfairness of the MGE Sale, in December 2012,¹² Grupo México caused the Company to enter into a long-term agreement to

¹¹ [REDACTED]

¹² Though the Company's disclosures indicate that the Power Supply Agreement was entered into on December 31, 2012, it appears that it was actually entered into at least one month earlier. See "S&P rates Mexico Generadora de Energia notes

buy power from MGE. Specifically, MGE entered into a twenty-year energy self-supply agreement (previously defined as the “Power Supply Agreement”) with Southern Copper-owned Consumer Partners [REDACTED]

54. On December 31, 2012, the outstanding balance of \$184 million on the MGE Loan was restructured as subordinated debt of MGE (previously defined as the “MGE Loan Amendment”).¹³

55. Notably, in connection with the MGE Sale, Southern Copper did not require that Grupo México immediately repay the debt outstanding under the MGE Loan. Instead, the Company allowed MGE (*i.e.*, Grupo México) to repay this debt using a percentage of its profits from *future* operation of the power plants, yet with apparently no required payments.¹⁴

“BBB,” Reuters, November 16, 2012, available at <http://www.reuters.com/article/idUSWNA964620121116> (noting MGE’s entry into the Power Supply Agreement).

¹³ The \$184 million included \$146.4 million drawn on the line of credit through December 31, 2011, and \$37.6 million drawn in 2012.

¹⁴ At March 31, 2015 the remaining balance of the MGE Loan was \$161.2 million and was recorded as a non-current related-party receivable on the Company’s condensed consolidated balance sheet. Thus, Southern Copper remained unfairly saddled with MGE’s debt.

56. The 20-year Power Supply Agreement was entered into on or around December 6, 2012. By November 2012, MGE (then owned by Grupo México), was already marketing bonds backed by MGE's assets and the Power Supply Agreement. Thus, even if the Southern Copper Board cared to negotiate the Power Supply Agreement at that point, which it did not, from a practical perspective it was already too late.

57. The Power Supply Agreement and the MGE Loan Amendment are grossly unfair to the Company for a litany of reasons.

58. *First*, the MGE Loan Amendment provided risk-free financing for Grupo México. If the Project proves profitable – which is likely as a result of its advanced stage as well as the 20-year, multi-billion dollar Power Supply Agreement – Grupo México garners all the profits. If the Project is a failure, Grupo México can seemingly walk away from the debt obligation because the debt was restructured to be payable out of the profits (if any) generated by the power plants. Thus, Southern Copper and its stockholders appear to bear all of the risk without a corresponding share of the potential upside.

59. *Second*, the Power Supply Agreement all but assured Grupo México a healthy rate of return on its “purchase” of the power plants from Southern Copper. During calendar year 2014, Southern Copper purchased \$178.4 million in power

from MGE. During the first three quarters of 2015, the Company has already purchased approximately \$97.1 million in power from MGE. If Southern Copper continues to purchase a comparable amount of power from MGE for the remaining 17 years of the Power Supply Agreement, Grupo México will garner billions of dollars in revenue from Southern Copper alone.

60. *Third*, the Power Supply Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Pursuant to the Power Supply Agreement, the Consumer Partners are required to pay or reimburse MGE for, among other things, the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61. *Fourth*, the Power Supply Agreement allows Grupo México to sell power to third parties. According to the 10-K, “[i]t is expected that MGE will supply approximately 12% of its power output to third party energy users.” This provision of power to third parties generates additional profits for Grupo México/MGE that would have inured to Southern Copper’s benefit had Grupo México not compelled the Company to transfer the power plants on terms unfavorable to the Company.

62. *Fifth*, if the Power Supply Agreement is terminated for any reason,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**E. The Southern Copper Audit Committee Ostensibly “Ratifies”
The Power Supply Agreement**

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. However, based on the documents produced in response to Plaintiffs' Section 220 Demand, [REDACTED]

[REDACTED] Indeed, in light of the conflicts plaguing Southern Copper's management team, it would have been impossible to engage in or even approximate arm's-length bargaining in a transaction in which Grupo México was the counterparty.

66. [REDACTED]

[REDACTED]

15 [REDACTED]

[REDACTED]

67. The Company's entry into the Power Supply Agreement also violated Article Nine of the Charter. As explained above, Article Nine requires review by an independent committee of the Southern Copper Board *prior* to the Company's entry into any transaction with Grupo México valued at more than \$10 million.

[REDACTED]

68. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DERIVATIVE ALLEGATIONS

70. Plaintiffs bring this action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duties and other misconduct by the Southern Copper Board and Grupo México, the Company's controlling stockholder.

71. Plaintiffs currently own Southern Copper stock and have owned Southern Copper stock continuously during the relevant period.

72. Plaintiffs will adequately and fairly represent the interests of Southern Copper and its stockholders in enforcing and prosecuting their rights, and have retained counsel competent and experienced in stockholder derivative litigation.

DEMAND ON THE BOARD IS EXCUSED AS FUTILE

73. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

74. Plaintiffs have not made any demand on the Board to institute this action against the Defendants. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

75. The Southern Copper Board consists of eleven directors: Defendants Germán Larrea, González Rocha, Carrillo Gamboa, Casar Pérez, García de Quevedo, Muñiz, Palomino, Perezalonso, Sacristán, Castillo Sánchez Mejorada and Castelazo Morales. A majority of these directors are incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action.

76. Such demand would be futile and useless, and is thereby excused, for at least three independent reasons: (a) a majority of the Southern Copper Board was comprised of individuals who were interested in the MGE Sale, Power Supply Agreement and MGE Loan Amendment (the “Transactions”) and/or not independent of Grupo México, which was interested in the Transactions; (b) the Transactions were not the product of a valid exercise of business judgment; and (c) Grupo México is Southern Copper’s controlling stockholder and stood on both

sides of the Transactions such that each of the Transactions is subject to entire fairness review.

**I. A Majority Of The Eleven-Member Board Was Either
Interested In The Transactions Or Not Independent Of Grupo México**

77. *Defendant Germán Larrea* is both interested in the Transactions and not independent of Grupo México, which was interested in the Transactions. Germán Larrea is the controlling stockholder of Grupo México, the counterparty to the unfair Transactions. It would be against his own economic interest to initiate and pursue derivative claims challenging the Transactions, which were unfairly beneficial to Grupo México. Putting aside his controlling equity stake in Grupo México, Germán Larrea is nonetheless conflicted with respect to determining whether to pursue claims related to the Transactions. He serves as Grupo México's Chairman, President and CEO, and thus has a fiduciary duty to advance the interests of Grupo México. Initiating and pursuing claims challenging the Transactions would be antithetical to Germán Larrea's fiduciary duty to advance the interests of Grupo México.

78. *Defendant González Rocha* is not able to objectively and disinterestedly determine whether to initiate and prosecute claims relating to the Transactions. First, González Rocha is Southern Copper's President and CEO. If he were to initiate and prosecute claims adverse to the interests of Grupo México,

he could be removed from his principal source of employment and income.¹⁷ From 2012 to 2014, González Rocha received more than \$4.5 million for his service as the Company's President and CEO. Second, González Rocha serves as President and CEO of AMC—the subsidiary through which Grupo México controls Southern Copper. Thus, González Rocha is plagued by the same “dual fiduciary” conflict afflicting Germán Larrea. Third, González Rocha's independence is further compromised by his multi-decade relationship with Grupo México and the Larrea family. Fourth, as of December 31, 2014, González Rocha owned more than 3 million shares of Grupo México. Thus, he is directly and materially interested in the Transactions as they increase the value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him. For all of these reasons, González Rocha cannot objectively and disinterestedly determine whether to initiate and prosecute claims relating to the Transactions.

79. *Defendant Carrillo Gamboa* cannot objectively and disinterestedly determine whether to initiate and prosecute claims relating to the Transactions.

¹⁷ This threat is real. Indeed, the 10-K confirms that “Grupo Mexico has the ability to determine the outcome of substantially all matters submitted for a vote of stockholders,” *which includes “the composition of [the Company’s] board of directors” or “the appointment and removal of [the Company’s] officers.”* (Emphasis added)

Carrillo Gamboa has served as a member of the Southern Copper Board since 2003 and a member of the Grupo México board of directors since 2004. Because Carrillo Gamboa has conflicting fiduciary duties to the Company, Grupo México and the stockholders of each of those two companies, it would be impossible for him to exercise the independent judgment necessary to determine whether to initiate and aggressively prosecute claims relating to the Transactions. Moreover, Carrillo Gamboa and the Larrea family—who themselves control a majority of Grupo México’s common stock—have a multi-decade relationship. Carrillo Gamboa’s loyalty to the Larrea family has been rewarded through his re-nomination to the Grupo México-Asarco board each year from 1992 to 2013, to the Grupo México Board each year since 2004 and to the Southern Copper Board each year since 2003. If Carrillo Gamboa were to take action adverse to Grupo México’s economic interest, he would likely be stripped of his prestigious and lucrative directorships affiliated with Grupo México and the Larrea family. Finally, based upon his ownership as of December 31, 2014, the value of Carrillo Gamboa’s holdings in Grupo México exceeds the value of his holdings in Southern Copper.¹⁸

¹⁸ As of December 31, 2014, Carrillo Gamboa owned 194,174 shares of Grupo México stock. As of December 4, 2015, Grupo México’s stock trades at \$2.10 per share. Thus, Carrillo Gamboa’s Grupo México holdings are valued at approximately \$407,765.40. As of December 31, 2014, Carrillo Gamboa owned

Thus, Carrillo Gamboa is directly interested in the Transactions as they increase the value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him.

80. *Defendant Casar Pérez* cannot objectively and disinterestedly consider a demand to initiate litigation against Grupo México. Casar Pérez has been associated with Grupo México and its controller, Germán Larrea, for 18 years. In addition to his position as a Southern Copper director, Casar Pérez is also a director of Grupo México. This fact alone compromises Casar Pérez's independence with respect to initiating claims against Grupo México. Casar Pérez's connections with Grupo México go well beyond just these two directorships. Casar Pérez has been CEO of Ferrocarril Mexicano, S.A. de C.V.—a subsidiary of Grupo México—since 1999, and a member on its board of directors since 1998. Casar Pérez has also served as a director of Compañía Perforadora México, S.A. de C.V. and México Compañía Constructora, S.A. de C.V., each of which is affiliated with Grupo México. If Casar Pérez were to take action adverse to Grupo México or Germán Larrea's economic interests (*e.g.*, initiating litigation challenging the Transactions), Casar Pérez could be removed as CEO of

14,515 shares of Southern Copper. As of December 4, 2015, Southern Copper's stock trades at \$26.79 per share. Thus, Carrillo Gamboa's Southern Copper holdings are valued at approximately \$388,856.85.

Ferrocarril Mexicano, S.A. de C.V. and stripped of his Grupo México-related directorships. Additionally, based upon his ownership as of December 31, 2014, the value of Casar Pérez's holdings in Grupo México exceeds the value of his holdings in Southern Copper.¹⁹ Thus, Casar Pérez is directly interested in the Transactions because they increase the value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him.

81. *Defendant García de Quevedo* cannot objectively and disinterestedly consider a demand to initiate and aggressively prosecute the derivative claims asserted herein. García de Quevedo is the COO of Southern Copper and the President of Grupo México's infrastructure division. If García de Quevedo were to take actions adverse to the interests of Grupo México and Germán Larrea, García de Quevedo could be removed from his principal sources of employment. García de Quevedo is also a Grupo México director and has a fiduciary duty to act in the best interest of Grupo México. Initiating and prosecuting claims that are adverse

¹⁹ As of December 31, 2014, Casar Pérez owned 2,329,478 shares of Grupo México stock. As of December 4, 2015, Grupo México's stock trades at \$2.10 per share. Thus, Casar Pérez's Grupo México holdings are valued at approximately \$4,891,903.80. As of December 31, 2014, Casar Pérez owned 3,625 shares of Southern Copper. As of December 4, 2015, Southern Copper's stock trades at \$26.79 per share. Thus, Casar Pérez's Southern Copper holdings are valued at approximately \$97,113.75.

to Grupo México's economic interest would be inconsistent with García de Quevedo's fiduciary duty owed to Grupo México. Additionally, García de Quevedo's independence is further compromised by his **32-year** tenure with Grupo México. Furthermore, based upon his ownership as of December 31, 2014, the value of García de Quevedo's holdings in Grupo México exceeds the value of his holdings in Southern Copper.²⁰ Thus, García de Quevedo is directly interested in the Transactions as they increase the value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him. For all of these reasons, García de Quevedo cannot disinterestedly and independently consider whether to investigate or prosecute the claims alleged herein.

82. ***Defendant Muñiz*** cannot objectively and disinterestedly consider a demand to initiate and aggressively prosecute the derivative claims asserted herein. Muñiz is Grupo México's CFO. If Muñiz were to take action adverse to Grupo México's economic interest, Muñiz could be removed from his principal source of

²⁰ As of December 31, 2014, García de Quevedo owned 1,256,934 shares of Grupo México stock. As of December 4, 2015, Grupo México's stock trades at \$2.10 per share. Thus, García de Quevedo's Grupo México holdings are valued at approximately \$2,639,561.40. As of December 31, 2014, García de Quevedo owned 3,638 shares of Southern Copper. As of December 4, 2015, Southern Copper's stock trades at \$26.79 per share. Thus, García de Quevedo's Southern Copper holdings are valued at approximately \$97,462.02.

employment and income. Additionally, as of December 31, 2014, Muñiz owned over 183,787 shares of Grupo México – and no stock in Southern Copper. Thus, Muñiz is directly interested in the Transactions as they increase the value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him.

83. *Defendant Castelazo Morales* cannot objectively and disinterestedly consider a demand to initiate and prosecute the derivative claims alleged herein. In addition to his service as a Southern Copper director, Castelazo Morales also serves as a General Director of EIM, a company at which Germán Larrea – Grupo México’s controlling stockholder – serves as Chairman and CEO. Thus, Castelazo Morales would not pursue claims adverse to the economic interests of Grupo México and Germán Larrea and put his directorships in jeopardy. Additionally, based upon his ownership as of December 31, 2014, the value of Castelazo Morales’ holdings in Grupo México exceeds the value of his holdings in Southern Copper.²¹ Thus, he is directly interested in the Transactions as they increase the

²¹ As of December 31, 2014, Castelazo Morales owned 65,493 shares of Grupo México. As of December 4, 2015, Grupo México’s stock trades at \$2.10 per share. Thus, Castelazo Morales’s Grupo Mexico holdings are valued at approximately \$137,535.30. As of December 31, 2014, Castelazo Morales owned 2,025 shares of Southern Copper. As of December 4, 2015, Southern Copper’s stock trades at \$26.79 per share. Thus, Castelazo Morales’s Southern Copper holdings are valued

value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him.

84. *Defendant Ruiz Sacristán* cannot objectively and disinterestedly consider a demand to initiate and prosecute the derivative claims alleged herein. In addition to serving as a Southern Copper director, Ruiz Sacristán was formerly the Chairman of the board of directors of Asarco, another affiliate of Grupo México. Initiating and prosecuting claims adverse to Grupo México and Germán Larrea's economic interest could jeopardize Ruiz Sacristán's relationship with Germán Larrea and the valuable directorships and connections associated with that relationship. Additionally, as of December 31, 2014, Ruiz Sacristán owned over 70,000 shares of Grupo México. Thus, he is directly interested in the Transactions as they increase the value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him.

85. *Defendant Castillo Sánchez Mejorada* cannot objectively and disinterestedly consider a demand to initiate and prosecute the derivative claims alleged herein. In addition to his service as a Southern Copper director, Castillo Sánchez Mejorada formerly served as a director of Grupo Aeroportuario del Pacífico, S.A.B. de C.V., a Mexican airport operator in which Grupo México is a

at approximately \$54,249.75.

major stockholder. Additionally, based upon his ownership as of December 31, 2014, the value of Castillo Sánchez Mejorada's holdings in Grupo México exceeds the value of his holdings in Southern Copper.²² Thus, he is directly interested in the Transactions as they increase the value of his Grupo México equity, and any amendment or rescission of the Transactions would be financially detrimental to him.

86. Thus, a majority of the eleven-member Board is incapable of objectively and disinterestedly considering a demand to investigate or prosecute the derivative claims alleged herein, and demand on the Board is excused as futile.

II. The Transactions Were Not The Product Of A Valid Exercise of Business Judgment

87. As detailed herein, the processes leading to each of (a) the MGE Sale, (b) the Power Supply Agreement, and (c) the MGE Loan Amendment were heavily conflicted, fatally flawed and in violation of the Company's corporate foundational documents. Among other things, (a) Grupo México and Southern Copper

²² As of December 31, 2014, Castillo Sánchez Mejorada owned 600,000 shares of Grupo México. As of December 4, 2015, Grupo México's stock trades at \$2.10 per share. Thus, Castillo Sánchez Mejorada's Grupo México holdings are valued at approximately \$1,260,000.00. As of December 31, 2014, Castillo Sánchez Mejorada owned 6,025 shares of Southern Copper. As of December 4, 2015, Southern Copper's stock trades at \$26.79 per share. Thus, Castillo Sánchez Mejorada's Southern Copper holdings are valued at approximately \$161,409.75.

management did not alert the Board about the transfer of the power plants, eliminating any chance that the Board could form a committee of independent directors to try to replicate arm's-length bargaining against the controller despite the requirement under the Charter that it do so; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Neither the conduct of Grupo México nor the Southern Copper Board warrants the protections of the business judgment rule.

88. Moreover, the Transactions are so one-sided (*i.e.*, slanted in favor of Grupo México) that they are beyond the bounds of reasonable judgment and are inexplicable on any grounds other than bad faith.

89. Thus, demand on the Board is excused as futile.

III. **Demand Is Excused As A Matter Of Law Because Each Of The Transactions Is Subject To Entire Fairness Review**

90. Grupo México and the Board's conduct in connection with each of the Transactions are subject to review under the entire fairness standard for at least two independent reasons. *First*, as detailed *supra*, Grupo México is the Company's

controlling stockholder and stood on both sides of the Transactions. Among other things, Grupo México owns more than 87% of Southern Copper's outstanding common stock and dominates the Company's boardroom and executive offices. Indeed, Southern Copper concedes in its public filings that Grupo México controls the Company.

91. Furthermore, Grupo México exerted *actual* control in connection with the Transactions. Grupo México's control and domination with respect to the Transactions was so strong that the Southern Copper Board [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

92. *Second*, as detailed in the "Parties" section and the immediately preceding section, a majority of the members of the Southern Copper Board in office at the time of the Transactions were either financially interested in the Transactions or not independent of Grupo México and Germán Larrea, who were interested in the Transactions.

COUNT I

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST GRUPO MÉXICO AS

SOUTHERN COPPER'S CONTROLLING STOCKHOLDER

93. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

94. As detailed herein, Grupo México is Southern Copper's majority and controlling stockholder and was at all relevant times alleged herein. As a controlling stockholder of a Delaware corporation, Grupo México owes the Company and its stockholders the utmost fiduciary duties of due care and loyalty.

95. Without first informing the Southern Copper Board, Grupo México improperly and selfishly caused the Company to abandon its well-functioning and advanced construction of certain needed power plants and instead initiated Grupo México's purchase of MGE.

96. Grupo México deprived the Board of the opportunity to consider or review the MGE Sale prior to its consummation, or to take any action to mitigate Grupo México's conflict of interest. Grupo México also deprived the Board of the opportunity to form a committee of independent directors to deliberate and negotiate this massive related-party transaction, as required by the Company's Charter.

97. The MGE Sale was an abuse of power by Grupo México and resulted in unfair terms for Southern Copper, which was deprived of full and fair value for MGE.

98. The Power Supply Agreement was an abuse of power by Grupo México and resulted in unfair terms for Southern Copper and undue accommodations and protections for Grupo México.

99. The MGE Loan Amendment was an abuse of power by Grupo México and resulted in terms far more favorable to Grupo México than could have ever been reached through arm's-length negotiation.

100. Southern Copper has been harmed by Grupo México's breaches of fiduciary duty in causing the Company to enter into the unfair Transactions.

COUNT II

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

101. The Director Defendants, as Southern Copper directors and officers, owe the Company the utmost fiduciary duties of due care and loyalty. By virtue of their positions as directors and/or officers of Southern Copper and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control

and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each of the Director Defendants was required to, among other things: (a) use their ability to control and manage Southern Copper in a fair, just and equitable manner; and (b) act in furtherance of the best interests of Southern Copper and its stockholders, and not in furtherance of their own interests or others' interests.

102. The Director Defendants breached their fiduciary duties by failing to safeguard the Company's interests in the face of clearly conflicted transactions.

103. The Director Defendants breached their fiduciary duties in connection with the Transactions by, among other things: (a) failing to inform themselves regarding Southern Copper's strategic alternatives with respect to a sale of MGE; (b) failing to protect the Company from Grupo México and Southern Copper management's conflicts in the MGE Sale, Power Supply Agreement and MGE Loan Amendment, (c) deliberately, recklessly and/or self-interestedly acquiescing to transactions unfair to the Company, and (d) failing to abide by the terms of the Charter.

COUNT III

DERIVATIVE CLAIM FOR BREACH OF CONTRACT AGAINST THE DIRECTOR DEFENDANTS

104. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

105. Under Delaware law, the certification of incorporation of a corporation constitutes a multi-party contract among the corporation, the directors and officers of the corporation and the stockholders of the corporation.

106. Each of the MGE Sale, the Power Supply Agreement and the MGE Loan Amendment violated Article Nine of the Charter.

107. Article Nine of the Charter is an essential and indispensable part of the Charter, and was included for the protection of Southern Copper and its minority stockholders from an abuse of power by Grupo México, the Company's controlling stockholder.

108. The MGE Sale, the Power Supply Agreement and the MGE Loan Amendment each caused significant financial harm to the Company.

109. The Company has no adequate remedy at law.

COUNT IV

DERIVATIVE CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST THE DIRECTOR DEFENDANTS

110. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

111. Under Delaware law, the certification of incorporation of a corporation constitutes a contract among the corporation, the directors and officers of the corporation, and the stockholders of the corporation.

112. The Director Defendants are charged with – and obligated to adhere in good faith to – the terms and intentions of the Charter.

113. By causing and/or allowing the MGE Sale, the Power Supply Agreement and the MGE Loan Amendment, the Director Defendants violated their duties of good faith and fair dealing, and the Company has been harmed as a result.

114. The Company has no adequate remedy at law.

COUNT V

TORTIOUS INTERFERENCE WITH CONTRACT AGAINST GRUPO MÉXICO

115. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

116. Under Delaware law, the certification of incorporation of a corporation constitutes a contract among the corporation, the directors and officers of the corporation, and the stockholders of the corporation.

117. Grupo México was aware of Article Nine of the Charter at the time of the MGE Sale, the Purchase Power Agreement and the MGE Loan Amendment.

118. Grupo México knowingly and intentionally caused the Company to enter the MGE Sale, the Power Supply Agreement and the MGE Loan Amendment in violation of Article Nine of the Charter.

119. The Company has no adequate remedy at law.

COUNT VI

DERIVATIVE CLAIM FOR USURPATION OF CORPORATE OPPORTUNITY AGAINST GRUPO MÉXICO

120. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

121. Southern Copper created MGE and initiated the Project for the purpose of supplying its Mexican operations with power.

122. Prior to the MGE Sale, all of the power to be generated by MGE would be owned by the Company. If there was excess power beyond that needed to supply Southern Copper's Mexican operations, the Company owned such power and could sell it to third parties.

123. At some time prior to the MGE Sale, Grupo México learned of the opportunity for MGE to sell surplus power to third parties.

124. The sale of surplus power by MGE was a lucrative opportunity that the Company was ready and financially able to seize.

125. Using its control over Southern Copper, Grupo México appropriated this opportunity from the Company.

126. Currently, MGE sells 12% of its power generation in the open market, earning millions of dollars annually as a result.

127. Thus, Grupo México has deprived the Company of a lucrative corporate opportunity, and Grupo México is liable as a result.

CLASS ALLEGATIONS

128. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Southern Copper's common stock (except Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from Defendants' wrongful actions, as more fully described herein (the "Class").

129. This action is properly maintainable as a class action.

130. The Class is so numerous that joinder of all members is impracticable. The Company has thousands of stockholders who are scattered throughout the United States and the world. As of October 30, 2015, there were 785,376,170 shares of Southern Copper common stock issued and outstanding.

131. There are questions of law and fact common to the Class, including, *inter alia*, whether:

- a. The Company and the Director Defendants violated the Charter with respect to the MGE Sale, Power Supply Agreement and MGE Loan Amendment;
- b. The Company and the Director Defendants breached the implied covenant of good faith and fair dealing;
- c. Grupo México tortiously interfered with a contract by causing the Company and the Director Defendants to violate the Charter;
- d. The Board breached its fiduciary duties in causing the Company to violate the Charter; and
- e. Plaintiff and the other members of the Class are being and will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of damages.

132. Plaintiffs are committed to prosecuting the action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class, and Plaintiffs have the same interests as the other members of the Class. Plaintiffs are adequate representatives of the Class.

133. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of

conduct for Defendants or adjudications with respect to individual members of the Class that would, as a practical matter, be disjunctive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

134. The Director Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class, as a whole, is appropriate.

COUNT VII

DIRECT CLAIM FOR BREACH OF CONTRACT AGAINST SOUTHERN COPPER AND THE DIRECTOR DEFENDANTS

135. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

136. Article Nine of the Charter provides that the Company is prohibited from engaging in any material affiliate transaction unless the transaction has been subjected to *prior* review by a committee of at least three members of the Southern Copper Board, each of whom must satisfy the independence standards of the NYSE (or any other exchange or association on which the Common Stock is listed).

137. A material affiliate transaction is defined as a transaction, business dealing or material financial interest in any transaction, or any series of

transactions between Grupo México or one of its affiliates (other than Southern Copper or any of its subsidiaries), on the one hand, and Southern Copper or one of its subsidiaries, on the other hand, that involves aggregate consideration of more than \$10,000,000.

138. The MGE Sale was not subjected to prior review by the Board or any committee of the Board. Indeed, based on the documents produced in response to Plaintiffs' Section 220 Demand, [REDACTED]

[REDACTED] Thus, the MGE Sale violated the Charter.

139. The Power Supply Agreement was not reviewed prior to its execution by a committee of at least three members of the Board of Directors, each of whom must satisfy the independence standards of the NYSE (or any other exchange or association on which the Common Stock is listed).

140. The Power Supply Agreement therefore violated Article Nine of the Charter and is currently void and impermissible.

141. The MGE Loan Amendment was not reviewed prior to its execution by a committee of at least three members of the Southern Copper Board, each of whom must satisfy the independence standards of the NYSE (or any other exchange or association on which the Common Stock is listed).

142. The MGE Loan Amendment therefore violated Article Nine of the Charter and is currently void and impermissible.

143. A certificate of incorporation is part of a contract between the company, the directors and officers, and the stockholders.

144. Under Delaware law, stockholders have a direct right to enforce violations of corporate charters.

145. The Charter is understandably relied upon by Southern Copper stockholders, as it sets forth the terms of stockholders' agreement with the Company in their capacity as investors in the Company.

146. Further, the Company touts the related-party approval requirement of Article Nine of the Charter in its annual proxy statements.

147. This provision is designed to protect the Company and its stockholders from exactly what occurred here – an unchecked abuse of power by Grupo México that resulted in the unfair MGE Sale.

148. Stockholders have been harmed by a decrease in the value of their Southern Copper equity as a result of the Company's breach of contract, and have been harmed generally by a direct violation on the Charter.

149. Plaintiffs have no adequate remedy at law.

COUNT VIII

**DIRECT CLAIM FOR BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING AGAINST SOUTHERN COPPER
AND THE DIRECTOR DEFENDANTS**

150. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

151. The implied covenant of good faith and fair dealing specifically functions to protect stockholders' expectations that the Company and the Board will properly perform the contractual obligations under a corporation's certificate of incorporation and bylaws.

152. The Company and the Director Defendants caused or allowed the bad faith violation of Article Nine with each of the MGE Sale, the Power Supply Agreement and the MGE Loan Amendment.

153. Each of the MGE Sale, the Power Supply Agreement and the MGE Loan Amendment caused harm to the Company's stockholders through violation of the Charter and the resulting decrease in the value of stockholder equity as a result of the undue transfer of wealth to Grupo México.

154. Plaintiffs have no adequate remedy at law.

COUNT IX

**DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTIES
AGAINST THE DIRECTOR DEFENDANTS**

155. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

156. The Director Defendants, as Southern Copper directors and officers, owe the Company's stockholders the utmost fiduciary duties of due care and loyalty. By virtue of their positions as directors and/or officers of Southern Copper and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each of the Director Defendants was required to, among other things: (a) use their ability to control and manage Southern Copper in a fair, just and equitable manner; and (b) act in furtherance of the best interests of Southern Copper and its stockholders, and not in furtherance of their own interests or others' interests.

157. The Director Defendants breached their fiduciary duties by failing to abide by the terms of the Charter.

158. Plaintiffs have no adequate remedy at law.

COUNT X

DIRECT CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT AGAINST GRUPO MÉXICO

159. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

160. Under Delaware law, the certification of incorporation of a corporation constitutes a multi-party contract among the corporation, the directors and officers of the corporation, and the stockholders of the corporation.

161. Grupo México was aware of Article Nine of the Charter at the time of the MGE Sale, the Power Supply Agreement and the MGE Loan Amendment.

162. Grupo México knowingly and intentionally caused the Company to enter the MGE Sale, the Power Supply Agreement and the MGE Loan Amendment in violation of Article Nine of the Charter.

163. Plaintiffs have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment as follows:

- A. Finding that demand on the Demand Board is excused as futile;
- B. Finding Grupo México, in its capacity as controlling stockholder of Southern Copper, liable for breaching its fiduciary duties owed to Southern Copper;
- C. Finding the Director Defendants liable for breaching their fiduciary duties;

D. Finding the Company and the Director Defendants liable for breach of contract;

E. Finding the Company and the Director Defendants liable for breach of the implied covenant of good faith and fair dealing;

F. Finding Grupo México liable for tortious interference with contract;

G. Finding Grupo México liable for usurpation of corporate opportunity;

H. Requiring Southern Copper to improve its corporate governance practices and/or change the composition of the Board to better protect the Company and its stockholders from the undue influence of Grupo México;

I. Awarding the Company compensatory damages, together with pre- and post-judgment interest;

J. Finding this action properly maintainable as a class action;

K. Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants' and experts' fees; and

L. Awarding such other and further relief as is just and equitable.

ANDREWS & SPRINGER LLC

**FRIEDMAN OSTER & TEJTEL
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