

NO. 06-1188

**IN THE SUPREME COURT OF
THE UNITED STATES**

TECK COMINCO METALS, LTD.,

Petitioners,

v.

JOSEPH A. PAKOOTAS, DONALD R. MICHEL, AND
THE STATE OF WASHINGTON,

Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

SUPPLEMENTAL BRIEF FOR THE STATE OF WASHINGTON

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SUPPLEMENTAL BRIEF FOR THE STATE OF WASHINGTON

Respondent State of Washington submits this supplemental brief pursuant to Rule 15(8), to address a new argument raised by Petitioner Teck Cominco Metals, Ltd. (Teck) in its supplemental brief filed December 4, 2007.

Upon invitation from this Court, the United States agrees with Respondents that Teck fails to meet the criteria for review, and that certiorari should be denied. See Brief for the United States as Amicus Curiae (U.S. Br.) at 6-7, 14-20. The United States agrees there is no circuit split on the issue of "arranger liability," nor any important federal question that would warrant interlocutory review despite the preliminary posture of this case. See U.S. Br. at 6-7, 14-20.

With one exception, Teck's supplemental brief does little more than repeat its past arguments for why this Court should grant review on the merits. However, based on the United States' suggestion that Respondents' citizen suit claims are moot, Teck now argues for the first time that this Court must grant certiorari to correct an error "once noticed" below, and must vacate the decision below. See Supplemental Brief of Petitioner (Pet. Supp. Br.) at 2, 4-6. There is no basis for this claim. Neither mootness nor vacatur were questions presented or relief sought in the Petition for a Writ of Certiorari (Petition). Any potential mootness of some of Respondents' claims does not now provide a separate new basis for this Court to grant certiorari, nor would vacatur even be appropriate under the facts. If anything, potential mootness issues serve to highlight the preliminary posture of this case, which the United States agrees "counsels strongly against this Court's review." See U.S. Br. at 6.

