

**IN THE MATTER OF AN ARBITRATION UNDER THE  
NORTH AMERICAN FREE TRADE AGREEMENT**

**- and -**

**THE ARBITRATION RULES OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

**- between -**

**Alicia Grace; Ampex Retirement Master Trust; Apple Oaks Partners, LLC; Brentwood Associates Private Equity Profit Sharing Plan; Cambria Ventures, LLC; Carlos Williamson-Nasi in his own right and on behalf of Axis Services, Axis Holding, Clue and F. 305952; Carolyn Grace Baring; Diana Grace Beard; Floradale Partners, LLC; Frederick Grace; Frederick J. Warren; Frederick J. Warren IRA; Gary Olson; Genevieve T. Irwin; Genevieve T. Irwin 2002 Trust; Gerald L. Parsky; Gerald L. Parsky IRA; John N. Irwin III; José Antonio Cañedo-White in his own right and on behalf of Axis Services, Axis Holding and F. 305952; Nicholas Grace; Oliver Grace III; ON5 Investments, LLC; Rainbow Fund, L.P.; Robert M. Witt; Robert M. Witt IRA; Vista Pros, LLC; Virginia Grace**

*Claimants*

**v.**

**The United Mexican States**

*Respondent*

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**PROCEDURAL ORDER NO. 19**

**ON THE CLAIMANTS' REQUEST IN RELATION TO EXHIBIT CR-36 AND ON THE ORGANIZATION OF THE HEARING**

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*Tribunal*

Prof. Diego P. Fernández Arroyo, President  
Mr. Andrés Jana Linetzky, Arbitrator  
Mr. Gabriel Bottini, Arbitrator

*Secretary of the Tribunal*

Ms. Patricia Rodríguez Martín

October 22, 2021

## **I. Procedural Background**

1. In Procedural Order No. 18, the Tribunal requested the Parties to discuss the extension and modalities of the Hearing in this case and to communicate the results of their discussions by 11 October 2021. In particular, the Tribunal asked the Parties to consider how many additional hearing days would be necessary and whether they were agreeable to hearing the expert witnesses online, in dates to be fixed.
2. On 5 October 2021, the Claimants sent a communication to the Tribunal, requesting that the Tribunal order the Respondent to produce all data and information underlying Exhibit CR-36 to the second damages expert report of Dr. José Alberro, or strike the exhibit and the parts of Dr. Alberro's report that rely upon this exhibit. The Claimants argued that, in using Exhibit CR-36 in its analysis without providing the underlying data and without explaining the methodology used to prepare it, Dr. Alberro failed to meet the requirements of Article 5(2)(e) of the International Bar Association's Rules on the Taking of Evidence (the "**IBA Rules**").
3. On 7 October 2021, the Tribunal invited the Respondent to comment on the Claimants' communication by 14 October 2021.
4. On 11 October 2021, the Claimants informed the Tribunal that the Parties had been unable to reach an agreement in relation to the extension and the modality of the Hearing. The Claimants further confirmed their agreement with the Tribunal's suggestion to have opening statements and fact witnesses during the first week of the Hearing, and expert witnesses and closing statements during a second week. The Claimants also informed the Tribunal of their preference that the first week of the Hearing take place in person but confirmed their agreement to hold the second week of the Hearing virtually, via a videoconferencing platform. Finally, the Claimants also proposed dates in which their counsel team, witnesses and experts would be available for the second week of the Hearing.
5. On 12 October 2021, the Respondent sent a letter to the Tribunal in relation to the organization of the Hearing. Among others, the Respondent argued that only three additional days were necessary for the second part of the Hearing (i.e. not a full week). The Respondent argued against having closing statements during the Hearing and suggested to reserve the last day of the Hearing for Tribunal questions, with the Parties filing post-hearing briefs instead. The Respondent also proposed that the entire Hearing be held virtually, considering the travel restrictions in force due to the COVID-19 pandemic. Finally, the Respondent confirmed the availability of its counsel team and experts for holding the second week of the Hearing on the dates proposed by the Claimants.
6. On 14 October 2021, the Respondent filed its response to the Claimants' communication of 5 October 2021 in relation to Exhibit CR-36. The Respondent objected to the Claimants'

request, arguing that Dr. Alberro explained the methodology he followed in relation to Exhibit CR-36. The Respondent pointed to Dr. Alberro's Second Expert Report, where he explained that the data underlying Exhibit CR-36 had been created by Westwood Global Energy Group's RigLogix, which is the only provider of information on rigs used in the Mexican Gulf Coast during the period 2017-2021. Therefore, Dr. Alberro was not in a position to provide the "underlying data" to Exhibit CR-36.

## **II. The Tribunal's Analysis**

### **A. The Claimants' request in relation to Exhibit CR-36**

7. The Tribunal understands that the Claimants' request is twofold. On the one hand, the Claimants request information related to the underlying data used to prepare Exhibit CR-36. On the other hand, the Claimants request clarification concerning the terminology used.
8. On the first issue, the Tribunal finds that the explanations provided by the Respondent are sufficient in light of the IBA Rules.
9. On the second issue, the Tribunal can accept that the terminology used by Dr. Alberro to prepare Exhibit CR-36 may require some further explanations. Therefore, the Arbitral Tribunal invites the Parties to directly confer in good faith regarding any question related to the terminology used in the expert report.

### **B. Hearing dates and format**

10. The Tribunal has decided that the first week of the Hearing shall take place in person, between 25-29 April 2022, as originally contemplated, and that Saturday 30 April 2022 shall be held in reserve. All factual witnesses called by the Parties shall be heard in this first week of the Hearing.
11. The Tribunal takes note of the Respondent's concern in relation to the travel restrictions imposed by the United States of America in response to the COVID-19 pandemic. However, given that travel restrictions may change before the Hearing, the Tribunal considers that it would be advisable to discuss the specific venue of the Hearing at a later date, closer to the Hearing.
12. The second week of the Hearing will be held virtually, through a video-conferencing platform to be agreed by the Parties. For the time being, the Tribunal suggests reserving an entire week for the second part of the Hearing, irrespectively of the number of days to be ultimately used. As to the specific dates for the second week of the Hearing, the Tribunal is not available on the dates proposed by the Parties but suggests the following alternative dates: 18-22 July 2022 or 25-29 July 2022.

13. Expert witnesses will be heard on the second week of the Hearing. The Tribunal will decide at a later stage whether closing arguments will be presented during this week or whether the Parties will file post-hearing briefs in lieu of closing arguments.

### III. Order

14. On the basis of the foregoing considerations, the Tribunal decides as follows:
  - a. the Claimants' request to strike CR-36 from the record is rejected;
  - b. the Parties are invited to confer in relation to the terminology used in the CR-36; and
  - c. the first week of the Hearing shall be held on 25-30 April 2021 in person, as originally contemplated; and the second week of the Hearing will be held virtually, at a date to be determined by the Tribunal and the Parties. The Parties shall confirm their availability for holding the second week of the Hearing on any of the alternative dates proposed by the Tribunal, by **29 October 2021**. Fact witnesses will be heard on the first week of the Hearing, and expert witnesses will be heard during the second week of the Hearing.

On behalf of the Tribunal,

[Signed]

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Professor Diego P. Fernández Arroyo  
President of the Tribunal  
Date: October 22, 2021  
Seat of the arbitration: Toronto, Canada