

**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

PROCEDURAL ORDER NO. 23

ON THE ORGANIZATION OF THE HEARING

Tribunal

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

Secretary of the Tribunal

Ms. Patricia Rodríguez Martín

25 March 2022

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I. INTRODUCTION

1. Pursuant to Section 21.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on 11 March 2022 (the “**Pre-Hearing Call**” or “**PHC**”) to discuss the outstanding procedural, administrative and logistical matters in preparation for the hearing scheduled for **24 April 2022 to 1 May 2022** (the “**Hearing**”). Participating in the video conference were:

Arbitral Tribunal:

Prof. Diego P. Fernández Arroyo	President of the Tribunal
Mr. Gabriel Bottini	Arbitrator
Mr. Andrés Jana Linetzky	Arbitrator

ICSID Secretariat:

Ms. Patricia Rodríguez Martín	Secretary of the Tribunal
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On behalf of the Claimants:

Mr. Juan P. Morillo	Quinn Emanuel Urquhart & Sullivan LLP
Mr. David M. Orta	Quinn Emanuel Urquhart & Sullivan LLP
Mr. Philippe Pinsolle	Quinn Emanuel Urquhart & Sullivan LLP
Ms. Dawn Y. Yamane Hewett	Quinn Emanuel Urquhart & Sullivan LLP
Ms. Julianne F. Jaquith	Quinn Emanuel Urquhart & Sullivan LLP
Mr. Gregg Badichek	Quinn Emanuel Urquhart & Sullivan LLP
Ms. Ana Paula Luna Pino	Quinn Emanuel Urquhart & Sullivan LLP

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Mr. Woo Yong
Chung

Quinn Emanuel Urquhart & Sullivan LLP

Mr. Juan P. Morillo

Quinn Emanuel Urquhart & Sullivan LLP

On behalf of the Respondent:

Mr. Orlando Pérez
Gárate

Dirección General de Consultoría Jurídica de
Comercio Internacional, Secretaría de Economía

Mr. Francisco Diego
Pacheco Román

Dirección General de Consultoría Jurídica de
Comercio Internacional, Secretaría de Economía

Mr. Alan Bonfiglio
Ríos

Dirección General de Consultoría Jurídica de
Comercio Internacional, Secretaría de Economía

Mr. Rafael Alejandro
Augusto Arteaga
Farfán

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Ms. Laura Mejía
Hernández

Dirección General de Consultoría Jurídica de
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Ms. Virginia Isabel
Pérez del Castillo

Dirección General de Consultoría Jurídica de
Comercio Internacional, Secretaría de Economía

Mr. Eduardo Frago
Jacob

Dirección General de Consultoría Jurídica de
Comercio Internacional, Secretaría de Economía

Mr. Stephan E.
Becker

Pillsbury Winthrop Shaw Pittman LLP

Mr. Alejandro
Barragán

Tereposky & DeRose LLP

2. During the Pre-Hearing Call, the Parties and the Tribunal discussed the draft procedural order circulated to the Parties on 1 March 2022, and the Parties' joint statement of 9 March 2022 advising the Tribunal of any agreements reached on the open items in the draft procedural order, as well as their respective positions where no agreement was reached. An audio recording of the Pre-Hearing Call was made and uploaded to Box on the same day. The Parties

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also discussed the Claimants' request submitted on 10 March 2022, although the Tribunal granted Respondent one week (i.e. until 18 March 2022) to properly answer such request.

3. Having considered the Parties' positions, this Order sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. Date and Venue

4. The Hearing will take place in person at the ICSID facilities in Washington D.C. located at 1225 Connecticut Avenue NW, subject to the arrangements detailed in **Annex B**.
5. Online participation may on an exceptional basis be requested by a Participant and approved by the Tribunal. There will be a remote connection via Zoom ("**Hearing Platform**") to allow the participation of attendees connecting to the Hearing remotely (as previously approved by the Tribunal). The details to join the Hearing Platform will be shared by the ICSID Secretariat in advance of the Hearing and the Hearing Platform will be available via the same link throughout the entire Hearing.¹
6. Should any future sanitary restriction or regulation in connection with the COVID-19 pandemic make it inviable to conduct the Hearing in-person as planned, the Tribunal will discuss next steps with the Parties, including whether the Hearing could still be held in an entirely remote format on the same dates planned.

¹ Other logistical details (e.g., testing, connectivity, equipment and set up, etc.) will be handled through correspondence directly by the secretary of the Tribunal.

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B. Order of Proceedings and Schedule

7. Each day, the Hearing will start at 9:00 AM and it will conclude by 5:30 PM. There will be two coffee breaks of 15 minutes each (one in the morning and one in the afternoon), and a lunch break of 1 hour each day.
8. The Parties shall seek to agree on the order of proceedings (bearing in mind Section 29 of this Order) using the format contained in **Annex A** and send their joint proposal to the Tribunal by **8 April 2022**.
9. The Hearing Schedule established in Annex A shall be subject to any such modification as the Tribunal may deem necessary or appropriate in the course of the Hearing, in particular, on account of any delay or interruption due to technical difficulties. If any segment of the time allocated in the Hearing Schedule proves not to be needed, the Parties shall be prepared to move promptly on to the next item in the Schedule.

C. Time Allocation

10. The time allocation shall be guided by the principles established in Section 22.4 of Procedural Order No. 1 (reproduced below):

22.4 The principle of equal allocation of time between the disputing parties shall be observed in the conduct of all hearings. Each party shall be permitted to use the time allocated to it as it sees fit.

11. Considering the start and end times, each Hearing day shall comprise a total of 8 hours and 30 minutes. A total of 1 hour and 30 minutes a day shall be reserved for breaks (including lunch break). Thus, excluding the time reserved for breaks, there will be a total of 7 hours of working time in each Hearing day, out of which 1 hour a day will be reserved for housekeeping and Tribunal questions. The remaining time in a day (6 hours) will be available for use by the Parties. Accordingly, considering the total number of Hearing days (8 days), each Party will have a total of 24 hours.

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12. Time shall be kept using the chess-clock method. The Secretary of the Tribunal shall keep the time and report at the end of each morning and afternoon session the total time that each Party has used and the amount it has remaining.
13. Time spent during questions posed by the Tribunal and on answers to those questions, as well as time for administrative or organizational matters, will not be counted against the time of any Party. Time used for housekeeping or to resolve technical difficulties shall be counted against the time reserved for housekeeping or against the Tribunal's reserved time, if needed.
14. Pursuant to Section 22.4 of Procedural Order No. 1, each Party may use the time available to it at each stage of the Hearing in the manner it desires, subject to the following:
 - a. *Opening Statements*. Each Party shall be allowed a maximum of 2 hours and 30 minutes for its Opening Statement. There shall be no Rebuttal Opening Statements.
 - b. *Closing Statements*. There shall be no oral closing statements. In lieu of closing statements, the parties will submit post-hearing briefs together with their responses to any questions by the Tribunal.
 - c. *Direct Examination of Fact Witnesses*. The direct examination of a fact witness shall not exceed 15 minutes.
 - d. *Direct Examination of Expert Witnesses*. The direct examination of an expert witness shall not exceed 30 minutes. The Tribunal may authorize an expert to make an oral presentation instead of a direct examination.
15. The Tribunal emphasizes that the Parties are expected to use each Hearing day efficiently and to avoid unnecessary slippage (*e.g.* delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day, or in unusual circumstances the time allocation of the Parties, bearing in mind principles of predictability, equal treatment, and a fair opportunity for the Parties to be heard.

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D. Documents for Use at the Hearing

1. Electronic Core Bundle

16. There shall be a single Electronic Core Bundle in USB form, to be prepared jointly by the Parties, which shall be uploaded to a designated sub-folder in the BOX filesharing platform by **Friday, 8 April 2022**.

17. The Electronic Core Bundle shall contain all pleadings, witness statements, exhibits, legal authorities and Tribunal decisions and orders on file to date, with a unified hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

Electronic Hearing Bundle:

01. Pleadings

- A. Claimants
- B. Respondent

02. Witness Statements (with exhibits)

- A. Claimants
- B. Respondent

03. Expert Reports (with exhibits)

- A. Claimants
- B. Respondent

04. Factual Exhibits

- A. Claimants
- B. Respondent

05. Legal Authorities

- A. Claimants
- B. Respondent

06. Tribunal's Rulings and Procedural Orders

07. Correspondence

18. To ensure operation of the hyperlinked index in BOX, if feasible, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the single zip file make uploading it to BOX not possible, the Parties may simply upload the Electronic Hearing Bundle to a designated sub-folder in the BOX filesharing platform organized in sub-folders using the structure indicated above, including a consolidated (but non-hyperlinked) index.

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19. In addition, the Parties shall distribute the Electronic Core Bundle USB at the onset of the Hearing to: (i) each Member of the Tribunal (3 copies); (ii) the Secretary of the Tribunal (1 copy); and (iii) interpreters (3 copies).²

2. Demonstrative Exhibits

20. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the rule on demonstrative exhibits reproduced below.

21. Demonstrative exhibits shall be used in accordance with Section 18.8 of Procedural Order No. 1 reproduced below:

18.8 Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at the hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the exhibit(s) from which it is derived. Each party shall share a copy of demonstrative exhibits pertaining to a specific hearing presentation with the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and the interpreter(s) at a time of its choosing, but no later than immediately before the specific hearing presentation for which the demonstrative exhibits were prepared.

22. Section 18.8 of PO1 is amended such that an electronic copy of each demonstrative exhibit shall be distributed by the Party intending to use it *via* an electronic mail sent to the entire case email distribution including the other Party, the Secretary of the Tribunal, the Members of the Tribunal, to the court reporters and to the interpreters as necessary no later than 1 hour *prior* to its use, in order to facilitate offline access to the demonstrative exhibits by the Hearing Participants. It is advisable to transmit the demonstrative exhibits to the members of the Tribunal, the ICSID Secretary, the court reporters and to the interpreters earlier than 1 hour prior to the demonstrative exhibit's use.

23. In addition, promptly after the conclusion of the Hearing day in which the corresponding Demonstrative exhibit is used, the Parties shall upload each Demonstrative exhibit to the case

² Additional copies may be required for the court-reporters (2) in case they attend in-person.

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folder in the electronic file sharing system (“BOX”), with the required CD-__ or RD-__ number.

3. Examination Bundles

24. At the beginning of each witness or expert direct examination, the Party who is putting forward the witness or expert will provide the witness or expert with copies of his or her signed statements or reports.
25. During cross-examination, the Parties will refer to exhibits and legal authorities that already form part of the record of the case, using the Electronic Hearing Bundle.
26. The Party examining a witness shall upload an electronic copy of the cross-examination bundle (and direct examination, if applicable) to a designated folder in the BOX filesharing platform and send an email to the entire case email distribution including the other Party, the Secretary of the Tribunal, the Members of the Tribunal, the court reporters and the interpreters as necessary with the link to the designated BOX folder, no later than 15 minutes in advance of each testimony; but no witness or expert shall review such bundle before testifying. Documents will be shown electronically by each Party and displayed in screens in the hearing room.
27. The witnesses and experts are entitled to ask to be shown a full copy of any exhibit or authority on which they will be questioned (*i.e.*, they are not to be restricted to reviewing excerpts of documents shown on a screen).

E. Witness and Expert Examinations

28. The Parties have provided notice of the witnesses and experts to be examined in accordance with Section 20 of Procedural Order No. 1.
 - a. The Claimants have called the following Respondent’s fact and expert witnesses:
 - Carlos Treviño (fact witness, testifies in Spanish);

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- María Luz Lozano (fact witness, testifies in Spanish);
- José Antonio González Anaya (fact witness, testifies in Spanish);
- Rodrigo Loustaunau (fact witness, testifies in Spanish);
- Miguel Ángel Servín Diago (fact witness, testifies in Spanish);
- Erick Jiménez (fact witness, testifies in Spanish);
- Javier Paz (expert, testifies in Spanish);
- Jorge Asali (expert, testifies in Spanish);
- José Alberro (expert, testifies in English);

b. The Respondent has called the following Claimants' fact and expert witnesses:

- Gonzalo Gil White (fact witness, testifies in English/);
- Frederick J. Warren (fact witness, testifies in English/);
- José Antonio Cañedo White (fact witness, testifies in English/);
- Alfonso M. López Melih (expert, testifies in /Spanish);
- José Luis Izunza Espinosa (expert, testifies in Spanish);
- Pablo T. Spiller and Carla Chavich (expert, testify in English/).

c. Pursuant to Procedural Order No. 18, the Tribunal called Mr. Avi Yanus to testify as a fact witness. Mr. Yanus is a fact witness and will testify in English.

29. Sequence of examination: Fact witnesses produced by the Claimant shall testify first, followed by fact witnesses produced by the Respondent. Experts shall then testify individually in order according to subject-matter categories: mercantile/bankruptcy law; criminal law; oil industry; and damages. Within each subject-matter category, experts produced by the Claimants shall testify first, followed by experts produced by the Respondent. The party producing each witness shall designate the order in which they will testify.

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30. The rules and procedure concerning the conduct of examinations are established in paragraphs 20.6 to 20.9 of Procedural Order No. 1, and are as follows:

a. Scope of Examination:

- Witnesses and experts shall be examined by each Party under the control of the Tribunal. The Tribunal may examine the witness or expert at any time during the hearing. Witnesses and experts shall make a declaration of truthfulness.
- Direct examination is given in the form of witness statements and expert reports. However, the Party presenting the witness or expert may conduct a brief direct examination at the hearing, limited to the content of their corresponding witness statement or expert report. At the request of such Party, the Tribunal may authorize an expert to make a short oral presentation of no more than 30 minutes.
- Subject to the control and direction from the Tribunal, the witness or expert may be cross-examined on the contents of the witness statement or expert report, the witness or expert's credibility and on issues that, despite not being addressed in his or her witness statement or expert report, are issues that the witness knows or should reasonably be expected to know or issues on which the expert should reasonably be able to provide an opinion. Re-direct examination shall be limited to the subject of cross-examination.

b. Sequestration:

- Prior to their examination, fact witnesses shall not be present in the hearing room, nor in an Overflow room; discuss the oral arguments or the testimony of any other witness who has already testified prior to giving his or her testimony; read any transcript of oral arguments or oral testimony; or listen to or watch any audio or video recording of the oral arguments or oral testimony. A fact witness shall remain in the respective Party's Break-Out room, which shall not

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be connected to the Hearing, until called to the hearing room by the Tribunal to testify.

- These restrictions do not apply to a fact witness who is also a Party, who may be present in the hearing room during the Parties' opening statements. A fact witness who is also a Party shall testify first.
- Fact witnesses (including those who are also a Party) shall be allowed in the hearing room after having given their oral evidence. Expert witnesses may attend the hearing at any time, including during opening statements.
- If a fact witness or expert's examination is interrupted and must continue on the following session, the witness or expert may not speak or contact any of the Parties, their representatives or counsel until the examination is completed. In addition, the cross-examination bundle shall not be accessible to the witness and participants if the fact witness' or expert's examination is interrupted and must continue in the following session.
- In order to avoid down time during the Hearing, as a general rule, each witness/expert shall be available for examination half a hearing day before and after the time at which his/her examination is scheduled.

F. List of Participants

31. Each Party shall provide its respective List of Participants for the Hearing ("**List of Participants**") no later than **Friday, 8 April 2022**, using the format provided in **Annex C**. Each Party shall designate those Hearing Participants who will have an active speaking role ("**Active Participants**"), and those who will be passive attendees ("**Passive Participants**"). In the same communication, each Party shall identify all individuals seeking to attend the Hearing remotely. Each Party shall indicate, for each individual, the concrete reasons of the impediment justifying the need of a remote participation.

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32. The List of Participants for the Hearing will contain personal data provided to ICSID in the context of the Hearing, including names and contact information, such as business email addresses and telephone numbers. This data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other participants providing services for the Hearing.
33. Non-Disputing NAFTA Parties may be authorized by the Tribunal to attend the Hearing and to make oral submissions during the Hearing if they ask to do so. The Tribunal shall notify the Non-Disputing Parties the date and time for making the oral submissions at the earliest convenience.

G. Interpretation

34. In accordance with Section 12.7 of Procedural Order No. 1, there shall be simultaneous Spanish-English and English-Spanish interpretation throughout the Hearing.
35. Hearing Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Hearing Participant.
36. It is planned that the interpreters will attend the Hearing in person.

H. Recordings of the Hearing

37. Pursuant to Section 23.1 of Procedural Order No. 1, sound recordings will be made of the Hearing.
38. The sound recordings shall be provided to the Parties and the Tribunal at the conclusion of the Hearing.
39. Except for the court reporters, who may make their own audio recording of the Hearing for the purposes of preparing the transcript, the Tribunal and the Parties agree that the attendees will not otherwise record the Hearing or any part of it, including *via* audio or video.

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I. Transcription

40. The provisions of PO 1, Sections 23.2 and 23.3 concerning transcription (reproduced below) apply:

23.2 Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session including sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.

23.3 The parties shall agree on any corrections to the transcripts within 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

41. ICSID has made arrangements to have English and Spanish verbatim transcripts available in real-time using Live Note or a similar software during the Hearing.

42. Should court reporters be participating remotely, the real-time court reporting shall be made available to the Participants via an online link connection to be provided by the court reporters. The connectivity details (links and instructions) to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Hearing.

43. Electronic versions of the transcripts will be provided to the Parties and the Tribunal on a same-day basis.

44. In the event of conflict between the English and the Spanish transcripts, the transcript in the original language in which the oral testimony or argument was given shall prevail, subject to the Tribunal’s approval.

J. Confidentiality

45. Pursuant to Section 22.5 of Procedural Order No. 1, the hearing shall be closed to the public.

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46. Moreover, all Participants in the Hearing must continue to comply with any applicable legal and ethical obligations with respect to confidentiality set out in Procedural Order No. 3 and in Section 25.5 of Procedural Order No. 1.
47. Participants providing services shall (i) keep confidential all documents and information coming to their knowledge as a result of their participation in the Hearing; (ii) not use, or authorize any other person to use, such documents and information other than for the purpose of performing their work at the Hearing; and (iii) dispose of all documents if printed, as confidential material, and delete all electronic copies that might be stored on personal devices when their Hearing-related work has been completed.

K. Post-Hearing Briefs

48. Pursuant to Section 24.1 of Procedural Order No. 1, the Tribunal shall decide at the hearing, after consulting with the Parties, the length, formal content and the date for the filing of the post-hearing briefs (see Section 14(b)). No new evidence may be submitted together with the post-hearing briefs, except in case of application of Section 18.3 of Procedural Order No.1.

L. Statement on Costs

49. As agreed in Section 24.2 of Procedural Order No. 1, at the conclusion of the hearing, after consulting with the Parties, the Tribunal shall determine the date when the cost submissions are to be filed.

M. Costs

50. The costs of the Hearing, including court reporting and interpretation, shall be paid from the case deposit established with ICSID, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.
51. Each Party shall be responsible for the costs associated with preparation of its Participants (any additional equipment, necessary internet connectivity, etc.), subject to the decision of the Tribunal as to which Party shall ultimately bear those costs.

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For and on behalf of the Tribunal,

[Signed]

Prof. Diego P. Fernández Arroyo

President of the Tribunal

Date: 25 March 2022