

**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. 24

ON THE RESPONDENT'S REQUEST TO AMEND A NUMBER OF EXHIBITS

Tribunal

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

Secretary of the Tribunal

Ms. Patricia Rodríguez Martín

7 April 2022

I. Procedural Background

1. On 29 March 2022, the Respondent wrote a letter to the Tribunal, reiterating its request for leave to amend Exhibit R-0359 with a correct corresponding file entitled “Clue-Shareholder Log II” and further requested the Tribunal's leave to correct three additional mistakes in relation to Exhibits R-0132, R-0282 and the final pages of the report by Dr. Alberro. According to Respondent, the sole purpose of its request is to correct errors in order to be able to correctly present the documentation which was already cited in the Respondent's pleadings. The Respondent emphasizes that for each of its requests, the requested amendment would not cause any prejudice to the Claimants. Accordingly:
 - i. the amendment to Exhibit R-0359 would not cause any harm to the Claimants since it is a document that they themselves produced and that is precisely referred to in the Rejoinder;
 - ii. the amendment to Dr. Alberro's reports would not cause any harm to the Claimants, as they would allow them to be able to see in full the signature sheets of the reports that, due to an involuntary error, appear redacted;
 - iii. the amendment to Exhibit R-0132 would not cause any harm to the Claimants since it is a document that is referred to and transcribed in paragraph 165 of the Statement of Defense; and
 - iv. the amendment to Exhibit R-0282 would not cause any harm to the Claimants since it is a document that is referred to on page 3 of Exhibit R-0276 and was used to prepare Exhibit R-0275.
2. On 31 March 2022, the Tribunal invited the Claimants to comment on the Respondent's request by 4 April 2022.
3. On 4 April 2022, the Claimants filed their comments to the Respondent's request. The Claimants do not oppose the Respondent's request to submit the corrected signature pages of Dr. Alberro's First and Second Expert Reports. The Claimants, however, argue that the rest of the documents for which Respondent has sought leave of the Tribunal to submit constitute new evidence that is not part of the record of this proceeding. The Claimants emphasize that the Respondent's request should be assessed in accordance with Section 18.3 of Procedural Order No. 1, which allows for the submission of additional documents after the filing of a Party's respective last written submission only in exceptional circumstances with leave from the Tribunal and to be granted upon a showing of good cause. According to the Claimants, the only circumstances identified by Respondent in support of its requests were its own errors, which Claimants do not believe qualify as “good cause” justifying the submission of new evidence at this stage of the proceeding.

II. The Tribunal's Analysis

4. The Tribunal is sensitive to the Claimants position that they “do not necessarily object Respondent’s request [...] and will ultimately leave it up to the discretion of the Tribunal.” The Tribunal confirms again that the submission of new documents at this late stage of the proceedings can only exceptionally be accepted, as provided for in Section 18.3 of Procedural Order No. 1.
5. In the present case, the Tribunal notes that Respondent itself acknowledges the existence of errors, the existence of which is not denied by Claimants. In fact, Claimants emphasize that Respondent's “general review” of its prior submissions appears to have been prompted by the Claimants’ earlier highlighting of an error with respect to Exhibit R-0359. The Tribunal finds that, in principle, the submission of new documents to correct an error may satisfy the threshold set out in Section 18.3 of Procedural Order No. 1. The Tribunal recalls that the Claimants have been offered an opportunity to comment on each of the Respondent's request and notes the Claimants' specific comments on the probative value of R-0359.
6. The Tribunal finds that in the present circumstances, without prejudging the probative value of any of the documents at issue, the four requests submitted by the Respondent all satisfy the requirements set out in Section 18.3 of Procedural Order No. 1.

III. Order

7. The Tribunal grants Respondent leave to:
 - a) Amend Exhibit R-0359 and upload it to the ICSID Box so that the document “Clue-Shareholder Log II” can be recorded in the file.
 - b) Amend Dr. Alberro's Expert Reports so that the signature sheets do not contain redactions.
 - c) Amend Exhibit R-0132 and upload it to the ICSID Box so that the minutes of the 6 April 2017 meeting between Perforadora Oro Negro and Pemex can be included in the file.
 - d) Amend Exhibit R-0282 so that the amendment agreement of 9 August 2017 of the contract related to the “La Covadonga” platform can be part of it and upload it to the ICSID Box.

On behalf of the Tribunal,

[Signed]

Professor Diego P. Fernández Arroyo

President of the Tribunal

Date: 7 April 2022

Seat of the arbitration: Toronto, Canada