

OUR WORK

Latham Secures Significant Victory for the Dominican Republic in ICSID Arbitration

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Cross-office team wins contract-based dispute in an arbitration governed by Dominican law and seated in Washington, D.C.

Latham successfully represented the Dominican Republic in an ICSID Additional Facility arbitration against Australia-based mining company, EnviroGold (Las Lagunas) Limited (EnviroGold), a subsidiary of the Australian mining company PanTerra Gold, in a dispute concerning a project for the development of a tailings processing facility (the Las Lagunas tailings dam).

The arbitration was brought in 2020 by EnviroGold who alleged breaches of a contract signed in 2004 to execute an environmental remediation project around an old gold tailings dam in the Dominican Republic. The highly complex project involved removing gold tailings from the dam, reprocessing them in a facility to extract their remaining gold, remediating the existing tailings dam, and re-depositing the tailings at the site. The claimant sought compensation in excess of US\$25 million dollars, plus costs, and was left nearly empty-handed by a unanimous arbitral tribunal decision.

EnviroGold's principal claim in the arbitration was that the Dominican government failed an adequate site for the construction of a new dam for the deposit of processed tailings when the original site was unavailable.

EnviroGold sought over US\$15 million in damages which it claimed were the higher expense it had incurred by re-depositing the tailings in the same dam, as opposed to building a new one for that purpose.

The arbitral tribunal dismissed EnviroGold's claims in full, accepting the evidence presented during the case showing that EnviroGold had voluntarily decided to re-deposit the tailings irrespective of the Government's obligation to secure another site for the project. EnviroGold also claimed that the Dominican Republic breached a clause exempting it from several taxes and had levied penalties on certain royalty payments improperly. EnviroGold sought a declaration that it owed no further royalties or net profit sharing (which amounted to several million dollars). The Tribunal awarded EnviroGold only US\$3 million in damages in connection with this claim, and refused to declare that it owed no further amounts to the government.

Because the Tribunal awarded the Dominican Republic over US\$2 million in legal costs, the net effect of the award leaves the Claimant nearly empty-handed, and still owing significant amounts to the Government under the contract.

The arbitration team was led by partner Fernando Mantilla-Serrano (Paris) and counsel Santiago Bejarano (New York), along with associate Matias Zambrano (Paris), all of whom cross-examined witnesses during the hearing in Washington, D.C. and presented oral opening and closing arguments before the Tribunal.

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