

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Titan Consortium 1, LLC,

Petitioner,

v.

The Argentine Republic,

Respondent.

Civil Action No. 1:21-cv-02250 (JMC)

Petitioner’s Statement of Undisputed Material Facts

Pursuant to Local Rule 7(h), Petitioner Titan Consortium 1, LLC (“Titan”) respectfully submits this Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

1. Three Spanish companies—Teinver S.A. (“Teinver”), Transportes de Cercanías S.A. (“Transportes”), and Autobuses Urbanos del Sur S.A. (“Autobuses”) (collectively, “Claimants”)—invested in two Argentinian airlines, Aerolíneas Argentinas S.A. and Austral-Cielos (the “Airlines”) in 2001 by acquiring a 99.2% stake in the Airlines’ Spanish parent company. ECF No. 1-1, Ex. A (“Award”) ¶¶ 176-79, 370-72, 376, 481.

2. Claimants’ investment in the Airlines was protected by a bilateral investment treaty between Argentina and Spain—the Agreement between the Argentine Republic and the Kingdom of Spain on the Promotion and Protection of Investments. *See* ECF No. 1-3 (“Argentina-Spain Treaty”), arts. III(1), IV(1), V.

3. Article X of the Argentina-Spain Treaty provides that a “[d]isput[e] arising between a Party and an investor of the other Party in connection with [covered] investments” can be “submitted to an international arbitral tribunal . . . [a]t the request of either party to the dispute”

upon satisfaction of prearbitration grievance procedures. Argentina-Spain Treaty, art. X(1), (3).

4. Article X further provides that the arbitration may be conducted in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention,” ECF No. 1-2), so long as Argentina and Spain are both parties to the Convention. Argentina-Spain Treaty, art. X(4).

5. Argentina, Spain, and the United States have been parties to the ICSID Convention at all relevant times. *See* ICSID, *List of Contracting States and Other Signatories of the Convention* (Aug. 25, 2024), <https://icsid.worldbank.org/sites/default/files/ICSID%203/2024%20-%20Aug%2025%20-%20ICSID%203%20-%20ENG.pdf>.

6. Claimants filed a request with the International Centre for Settlement of Investment Disputes (“ICSID”) for arbitration under the ICSID Convention on December 11, 2008. Declaration of Matthew S. Rozen in Support of Petitioner’s Motion for Summary Judgment (“Rozen Decl.”) Ex. C (“Request for Arbitration”); Award ¶¶ 6-7.

7. In their request for arbitration, Claimants “invoked [Argentina]’s advance consent to ICSID arbitration contained in the [Argentina-Spain Treaty].” Award ¶¶ 6-7; *see* Request for Arbitration ¶¶ 42, 54 (“Argentina consented to ICSID jurisdiction when it signed and ratified the [Treaty].”).

8. Claimants alleged in their request that Argentina had violated the Argentina-Spain Treaty by expropriating their investment in the Airlines; failing to accord fair and equitable treatment to their investment; and impairing Claimants’ management, maintenance, use, and sale of their investment. Request for Arbitration ¶ 11 & nn.6, 7, 9 (citing Argentina-Spain Treaty, arts. III(1), IV(1), V); *accord* Award ¶ 473.

9. In response, Argentina “consented to ICSID arbitration to resolve the investment

dispute.” Award ¶ 474.

10. On December 21, 2012, the ICSID arbitral tribunal (“Tribunal”) issued a Decision on Jurisdiction holding that Claimants had “satisfied the requirements” of Article X of the Treaty when they initiated ICSID arbitration proceedings and rejecting Argentina’s arguments to the contrary. Award app. I ¶¶ 136, 333.

11. The Tribunal issued its Award on July 21, 2017. *See* Award ¶¶ 865, 925, 1040, 1068, 1147(a)-(c).

12. In the Award, the Tribunal found that Argentina had acquired the Airlines in 2008 “by way of expropriation without notice to . . . Claimants” or any compensation except a “symbolic” payment of 1 Argentine peso. Award ¶¶ 166, 843, 855.

13. The Tribunal determined that Argentina had breached its obligations under the Argentina-Spain Treaty by: (1) failing to provide “fair and equitable treatment” to the Claimants’ investments within Argentina’s territory, in violation of Article IV(1) of the Treaty; (2) “interfering with” the management, maintenance, use, and sale of Claimants’ investments without justification, in violation of Article III(1); and (3) unlawfully “expropriating” the Airlines by taking them not in accordance with the law and failing to pay adequate compensation, in violation of Article V. Award ¶¶ 166, 865, 925, 1040, 1068, 1147(a)-(c); *see* Argentina-Spain Treaty, arts. III(1), IV(1), V.

14. The Tribunal ordered Argentina to pay \$320,760,000 in compensation, along with interest “compounded semi-annually at the six-month US Treasury Bill rate commencing on December 30, 2008 until payment in full.” Award ¶ 1147(d)-(e).

15. The Tribunal also ordered Argentina to pay \$3,494,807 “toward their reasonable legal and other costs of these proceedings,” along with interest at the six-month U.S. Treasury Bill

rate compounded semi-annually “from the date of th[e] Award until payment in full.” Award ¶ 1147(f).

16. On November 17, 2017, Argentina filed an application seeking annulment of the Award. ECF No. 1-1, Ex. B (“Annulment Decision”) ¶ 8.

17. An ICSID ad hoc committee (the “Annulment Committee” or the “Committee”) denied Argentina’s request for annulment on May 29, 2019. Annulment Decision ¶ 258(1).

18. Because the Annulment Committee determined that Argentina had “failed in all the arguments that it . . . advanced in order to seek the annulment of the Award,” it ordered Argentina to pay Claimants \$1,017,512 “on account of their representation costs.” Annulment Decision ¶¶ 256-57, 258(2).

19. The Annulment Committee also ordered Argentina to pay for “the entirety of the costs of the proceedings,” which were deducted from advances that Argentina had already paid. Annulment Decision ¶¶ 255-56.

20. On November 17, 2020, Titan executed an agreement with Teinver and Transportes in which those entities “assign[ed] to Titan” their “full title [in the Award] free of any security interest, lien or encumbrance . . . as well as any interest, rights or proceeds tied to the Award or the ICSID Arbitration.” Rozen Decl. Ex. A at 8-19, 15.

21. By its express terms, the assignment agreement entitled Titan to “assume absolute and exclusive control over the execution or monetization [of the Award] . . . based on its own judgment and decisions.” Rozen Decl. Ex. A at 15.

22. On November 30, 2020, Titan executed a virtually identical agreement with Autobuses in which Autobuses likewise assigned to Titan its “full title” in the Award and “any interest, rights or proceeds” tied to the Award or the arbitration. Rozen Decl. Ex. B at 8, 13.

23. By its express terms, this assignment agreement, too, gave Titan “absolute and exclusive control” over execution and monetization of the Award. Rozen Decl. Ex. B at 13-14.

24. As a result of these two assignment agreements, Titan now holds full title to the Award. *See* Award ¶ 1147; Rozen Decl. Exs. A-B. No other entity owns any portion of the Award. *See id.*

25. On November 19, 2021, Titan sent copies of the assignment agreements by certified mail to Argentina’s Office of the Attorney of the National Treasury, its Ministry of Foreign Affairs, and its U.S. Embassy. Rozen Decl. ¶ 8.

26. Titan’s mailing to Argentina requested that Argentina pay it the amounts owed under the Award and the Annulment Decision, along with the interest owed under the Award. Rozen Decl. ¶ 8.

27. On September 10, 2024, Titan sent additional copies of these same assignment agreements to Argentina’s counsel in this case. Rozen Decl. ¶ 9.

Dated: October 4, 2024

Respectfully submitted,

/s/ Matthew D. McGill
Matthew D. McGill, D.C. Bar #481430
mmcgill@gibsondunn.com
Matthew S. Rozen, D.C. Bar #1023209
mrozen@gibsondunn.com
Ankita Ritwik, D.C. Bar #1024801
aritwik@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

Attorneys for Titan Consortium I, LLC