PCA Case No. 2023-20

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, SIGNED ON 27 AUGUST 1993, AND ENTERED INTO FORCE ON 11 MAY 1997

(the "Treaty")

- and -

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

(the "UNCITRAL Rules")

- between -

LYNTON TRADING LTD. (UNITED STATES OF AMERICA)

(the "Claimant")

- and -

THE REPUBLIC OF ECUADOR

(the "Respondent", and together with the Claimants, the "Parties")

DISSENTING OPINION OF ADOLFO E. JIMÉNEZ

Tribunal
Prof. Eduardo Siqueiros Twomey (Presiding Arbitrator)
Mr. Adolfo E. Jiménez
Prof. Jorge Viñuales

Registry and Secretary
Mr. Julian Bordaçahar
Permanent Court of Arbitration

26 September 2025

1. It is with some reluctance that I dissent from the Final Award on jurisdiction issued by the majority. There is little disagreement on the underlying facts but I am unable to reach the same conclusions as the majority based on the applicable law and the corporate status of the investor. This dissenting opinion uses the same terms that appear on the List of Defined Terms and Abbreviations in the Final Award.

2. The Final Award leaves a small Nevada corporation active in the United States that never lost its right to sue or be sued in its home jurisdiction blocked from pursuing a claim under the Treaty. Claimant was always owned and controlled by the same two individuals, Roberto Cuadrado, a Spanish national, and Luis Fuentealba, a Chilean national. During all relevant times, Mr. Cuadrado was primarily based in the United States. He led Claimant's activities from the United States. He actively pursued business opportunities in the United States in the gaming industry. Claimant, the investors' Nevada holding company, was used to hold their joint interests pursuing business opportunities in Latin America and the United States. Because Mr. Cuadrado operated from the United States from 2008 to today using Lynton to hold their joint investments and business opportunities and the entity never lost standing to initiate a claim, I dissent.

3. My dissent can be stated succinctly. Lynton's status as a corporation and its capacity to sue or be sued is subject to Nevada law. Nevada law determines whether the Claimant legally existed and could own assets under state law and this was conclusively decidedby the Supreme Court of Nevada, the highest court in the state. The majority correctly turns to Nevada law to determine Claimant's status, but it erroneously adopts Respondent's misreading of Nevada law and does not recognize that at no time did Claimant lose its capacity to sue or the retroactive effect of restoration. Although the majority limits its decision on jurisdiction to Respondent's Denial of Benefits objection, it relies on Respondent's erroneous interpretation of Nevada law to support its decision.

4. Respondent advanced arguments and statutory interpretations on issues of Nevada law that were inapplicable, contrary to the plain statutory meaning and lacking legal support. The LLC Dissolution Statute, the LLC Continuation after Dissolution Statute and Respondent's repeated allegations that Claimant was liable for a possible fine of up to $10,000 have no application to Claimant. At no time was Claimant dissolved or required to be dissolved under Nevada law. Claimant was not subject to a fine of up to $10,000 which only applies where a company fails to file the initial organizational documents (the articles of organization).[1] It is undisputed Claimant filed its initial organizational documents, but Respondent still maintained it was subject to this

[1] NRS §86.213(1).

large fine. At no time was Claimant unable or incapacitated under Nevada law to bring a claim because it failed to file its annual reports.

5. Claimant's capacity to sue or be sued was conclusively decided by binding precedent in *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 126 Nev. 578 (Nev. 2010).[2] In *AA Primo*, the Nevada Supreme Court held that a company's ability to sue and be sued was not forfeited when its charter was revoked. The right to "transact business" and the capacity of a company to sue or be sued are two different things.[3] Respondent's own expert acknowledges that "a domestic LLC is permitted to sue and be sued despite a revoked charter"[4] A revoked entity may bring or maintain a lawsuit.[5] It is untrue that Nevada law in any way precluded Claimant from initiating a claim because its charter had been revoked. This argument was specifically rejected by the Nevada Supreme Court in its decision observing that a revoked charter carries no fine aside from a $75 penalty reinstatement fee and recognizing the lapsed filing and a loss of capacity to sue is not a consequence of an administrative default.[6]

6. Respondent maintains that a claimant's legal standing (*ius standi*) is a jurisdictional requirement and must be assessed at the time the arbitration is initiated.[7] Because Claimant never lost the capacity to sue or bring a claim, Claimant had no impediment to file its arbitration claim. Claimant had full legal standing to initiate a claim, send notices and pursue a recovery. That was the case at the time the arbitration was initiated. There is no need to address possible exceptions to legal standing at the time of filing the arbitration under the facts in this case.

7. Respondent goes further astray arguing that because the LLC Revival Statute does not restore legal capacity, the capacity to sue does not apply retroactively. Under the LLC Revival Statute, the revival of a company, "relates back to the date on which the limited-liability company's charter… was revoked and… revives the limited-liability company's charter and right to transact business as if such right had at all times remained in full force and effect".[8] The majority accepts Respondent's argument that the LLC Revival Statute only restores an LLC's right to transact business retroactively, not legal standing. In the absence of such language, the Respondent argues that an LLC's capacity to sue is presumed to be restored only prospectively. But the statute is understandably silent as to legal capacity, because legal capacity was never lost. Nevada's

[2] CL-181.

[3] CL-181, *AA Primo*, 245 P.3d at 585.

[4] RER-1, Jordan T. Smith, ¶36 citing *AA Primo Builders, LLC*, 126 Nev. at 586-87, 245 P.3d at 1196.

[5] CL-181, *AA Primo*, 245 P.3d at 588.

[6] CL-181, *AA Primo,* 245 P.3d at 588-89.

[7] Memorial, ¶¶ 120-124.

[8] C-002, Nevada Revised Statutes, §86.580.

legislature would not have included a provision to revive or restore something that was never lost. Respondent relies on a false premise which leads to faulty reasoning. Regrettably, Respondent's persistent misapprehension of the LLC Revocation Statute, the LLC Revival Statute and the Nevada's Supreme Court decision in *AA Primo*,[9] leads to an incorrect conclusion about Claimant's status that is contrary to Nevada law. An analysis of Nevada's corporation statutes confirms the interpretation. Nevada's corporation code contains a reinstatement provision and a revival provision that are essentially identical to Nevada's LLC statutes.[10] In *Redl v. Heller*, 120 Nev. 75 (2004), the Nevada Supreme Court allowed a corporation that had its charter revoked for more than five years to maintain a lawsuit establishing that the revival statute in Nevada is available for an unlimited amount of time and a corporation is not barred from initiating a lawsuit even with a revoked charter.[11]

8. Respondent failed to meet its burden to support its allegations based on *ius standi* advancing arguments that rely on wrong interpretations and legal conclusions concerning the capacity of a Nevada corporation to initiate a claim. Respondent used the incorrect assumptions regarding Claimant's standing and status to support its Denial of Benefits defense.

9. In deciding Respondent's Denial of Benefits defense, the majority was very much swayed by Claimant's 12-year period when its charter was revoked and Respondent's arguments that it reflects a decision not to engage in business activities. It is undoubtedly a very long time. But once again, Claimant's rights and legal status depend entirely on Nevada law which we cannot selectively apply. Whether we like it or not, the revival of a corporation restores the right to transact business retroactively without limitation as if such right had at all times remained in full force and effect. As explained by Claimant's expert, Prof. Merritt B. Fox, "with revival, it is as though the revocation never happened."[12] The majority gives the LLC Revival Statute no effect. Under Nevada law, Claimant's revival requires the Tribunal to consider Claimant's activities, because under Nevada law Claimant's right to transact business is restored retroactively "as if such right had at all times remained in full force and effect."[13] Respondent muddies the application of the LLC Revival Statute, by turning to the LLC Dissolution Statute and the LLC Continuation after Dissolution Statute which have no application here while confusing and ignoring the terms of the LLC Revival Statute.

[9] Counter-Memorial, ¶¶125-126.

[10] CER 4, Expert Opinion of Prof. Merritt B. Fox, p. 34-35 citing NRS §78.180 and NRS §78.730.

[11] Id.

[12] CER 4, Expert Opinion of Prof. Merritt B. Fox, p. 33.

[13] C-002, Nevada Revised Statutes, §86.580.

10. Article I(2) of the Treaty denies the benefits of the Treaty where a claimant is a company controlled by nationals of a foreign country through a company that has no substantial business activities in the territory of its incorporation. The majority first rejects the substantial business activity of Mr. Cuadrado that occurred after 2008 in the United States by accepting Respondent's arguments that activities that occurred while Claimant's charter was revoked should be disregarded. As previously discussed, this disregards the clear terms of the LLC Revival Statute and restricts a Nevada corporation in contravention of Nevada law. Respondent cannot on the one hand argue that Claimant's charter was revoked according to Nevada law and then argue that the Tribunal should give no effect to the Nevada statute that "revives the limited-liability company's charter and right to transact business as if such right had at all times remained in full force and effect".[14]

11. The Final Award wipes away Claimant's substantial business activities because its right to transact business had been revoked for failing to file its annual reports for a period of 12 years. The fact that Claimant would fail to adhere to its filing requirements is alarming, but the LLC Revival Statute does not nullify its business activities. On the contrary, it validates all its business transactions without limitation, and they are deemed effective as if a revocation had never happened.[15] Again, Claimant's status in Nevada is subject exclusively to Nevada law. Respondent cannot cherry pick provisions in the statutes to nullify the activities that should be recognized under the Treaty. The LLC Revival Statute controls and it validates the activities of a corporation that has been revived.

12. The majority also does not recognize the activities cited by Claimant because it finds they are not attributable to Lynton, and they are not substantial. I disagree.

13. Claimant's recordkeeping, compliance and administration was atrocious. It did not adhere to corporate formalities. It did not properly maintain records. It did not properly document ownership or governance. I do not take issue with the majority on this point. But under the Treaty and international law, Lynton does not lack jurisdiction to bring a claim because there were substantial business activities.

14. Claimant's record-keeping might be relevant to consider jurisdiction to the extent it showed the entity was merely a shell company not engaged in substantial business activities in the United States. That is not the case here. Roberto Cuadrado was actively engaged in business activities from the United States. His presence in the United States is undisputed. His activities investigating and pursuing business activities are well documented. This is in contrast to the facts in *Pac-Rim*

[14] C-002, NRS §86.580.

[15] Id.

v. El Salvador, where the claimant had changed its nationality, there being no distinction between its geographical activities before and after the change in nationality and the role of claimant in the territory being passive. [16]

15. There is no evidence that Claimant's two owners engaged in treaty shopping or that it was in any way being used to gain treaty access. Mr. Cuadrado operated extensively from the United States and his activities were in partnership with Mr. Fuentealba through Lynton, the Nevada entity they created.

16. The majority applies a heightened standard that is beyond the terms of the Treaty to discard Mr. Cuadrado's activities in the United States. Denial of benefits provisions in international treaties are designed to block treaty shopping and attempts to acquire treaty protection by using shell companies in jurisdictions where they have no real presence. As explained by Professor Bianchi citing the *Amto v. Ukraine* decision, "the purpose of the [denial of benefits clause] is to exclude from [] protection investors which have adopted a nationality of convenience."[17] The purpose of denial of benefits clauses is to "counter the phenomenon of shell companies", *i.e*. companies with no activity beyond what is necessary to maintain their corporate existence, not holding companies.[18] Respondent ignores the fact that Roberto Cuadrado regularly resided in the United States since 2008. He led Lynton's activities from the United States.

17. "Activities" do not require transactions, operations, closings or revenues. The Treaty does not require that the corporate entity generate revenues. It does not require that Claimant have a lease. It does not require it pay taxes, have employees, pay social security contributions, engage accountants, close transactions or even succeed. It does not require a brick-and-mortar operation and it does not require maintaining regular business hours. It does not require business formalities. The above should not be discarded. These are all factors that should be examined, but only to evaluate if the corporation is a sham and determine whether there are no substantial business activities in the corporation's jurisdiction. If the only thing a corporate entity does in a jurisdiction is hold an annual meeting, open a bank account and prepare financial statements, it may very well be a sham created for purposes of treaty shopping if it has no presence in the jurisdiction and there is no activity to pursue business opportunities. A two-member company may not hold formal meetings of members or prepare financial statements, but it may be actively engaged in business activities in a jurisdiction. The absence of board meetings and financial statements does not disqualify Claimant from Treaty protection especially when the evidence shows the members

[16] CL-147 *Pac-Rim v. El Salvador*, ICSID Case No. ARB 0912, ¶4.72-73.

[17] CER-3, Expert Report of Professor Bianchi, ¶87.

[18] Counter Memorial, ¶38; Rejoinder, ¶46; CER-3, Expert Report of Professor Bianchi, ¶10-14.

communicated regularly as partners pursuing business opportunities with one of the two members in the United States. Physical presence in the jurisdiction should carry much weight.

18. "Activities" does include business meetings, agreements, opening of subsidiaries and a continuing presence in the jurisdiction. Lynton was used as a holding company for the group.[19] It opened WWTS, LLC., WWTS Group, Inc. and Orange Business in Florida to execute on potential business opportunities. The bulk of Lynton's revenues were coming from Ecuador at the time of expropriation with hardly any revenues being generated in the United States [20] This does not erase Roberto Cuadrado's presence in the United States and his substantial activity pursuing opportunities in the country.

19. WWTS Group, Inc. was a Florida corporation created on 15 April 2011 with Roberto Cuadrado as the sole director of this company. Florida public records do not identify shareholders of corporations and Respondent's search for the information in a public record is understandably futile. The Shareholder Agreement dated 4 May 2011 between WWTS Group, Inc. and the Claimant establishes Claimant as the sole shareholder.[21]

20. On 17 January 2013, Claimant entered into an agreement with Cantor Fitzgerald & Co., one of the most powerful investment advisory firms in the United States.[22] The record shows it took over two years of discussions and negotiations before entering into the agreement. This record alone evidences substantial business activity. An agreement of this type does not come about without a great deal of research, discussion, analysis and consideration. The agreement together with the substantial number of emails and communications evidence meetings, negotiations and Claimant's highly engaged interest and activity in search of business opportunities and possible investments.[23] Roberto Cuadrado testified that this was done under the "Lynton umbrella" and part of Lynton's business which uses the WWTS name (WWTS LLC, WWTS Group, Inc. and WWTS Ecuador). Mr. Cuadrado testified WWTS was the trade name used for all companies under Lynton.[24] The references to "your group's activities"[25] and "you and your partner," were references to Mr. Cuadrado's business partner, Luis Fuentealba.[26] Mr. Cuadrado testified "all the businesses I carried out with Mr. Fuentealba were included under the umbrella of 'Lynton

[19] Transcript of the Jurisdictional Hearing, Day 1, 71:20 – 71:25 and Day 2, 20:01-05.

[20] Transcript of the Jurisdictional Hearing, Day 2, 26:01 – 26:13

[21] C-121, Shareholder agreement between Lynton Trading and WWTS Group Inc. (4 May 2011).

[22] C-135, CWS-1, Cuadrado WS, ¶39.

[23] C-135 (The agreement is governed by New York law), C-108, CWS-3, Cuadrado WS, ¶¶10-12.

[24] Transcript of the Jurisdictional Hearing, Day 2, 25:01 – 25:06.

[25] C-137; CWS-3 Cuadrado WS, ¶12.

[26] C-139; CWS-3 WS ¶13.

Group.'"[27] The agreement contracted Cantor Fitzgerald to be Claimant's exclusive financial advisor and placement agent in connection with the acquisition of Dania Jai-Alai in Broward County, Florida to raise $50,000,000 to $75,000,000 in financing.[28] I give this engagement great weight along with the necessary activity to reach this agreement. It alone establishes substantial business activities. It is sufficient proof that Lynton was not a sham company, and it was active in the jurisdiction.

21. The record further establishes substantial activity in connection with other potential acquisitions. A Mutual Nondisclosure Agreement was entered into with RBA Capital LLC dated 9 December 2010 and Roberto Cuadrado.[29] The agreement defines Mr. Cuadrado as "WWTS." It is unclear what specific entity he was acting for but Roberto Cuadrado testified it was in connection with the purchase of video gaming machines in Illinois.[30] The activity was corroborated through correspondence with Camille Chee-Awai of Cari Bloom Holdings.[31] There were also meetings with lobbyist Seth Gordon and Jose Luis Castro of Merchant Banking regarding lobbying for changes in Florida law and leasing slot machines to Hialeah Park Casino.[32] There were more activities and business activities involving other third parties that are summarized in the Counter-Memorial. [33]

22. The creation and activities of Orange Business LLC further establish Lynton's substantial business activities in the United States.[34] It is a Florida limited liability company established on 3 August 2009. In its 2009 foreign ownership filing before the Ecuador's Superintendencia de Compañias, WWTS Ecuador S.A. declared that Orange Business LLC was a shareholder of WWTS Ecuador S.A. Although the initial filing lists a NARIA LLC as a shareholder, the 2010 filing listed Claimant as a shareholder. The majority appears to discount Orange Business LLC because ownership is not otherwise documented, and it was eventually abandoned. The connection to Lynton is apparent from the testimony of Roberto Cuadrado, the ownership interest in WWTS Ecuador, Inc and the Mr. Cuadrado's control over the entity.

[27] Transcript of the Jurisdictional Hearing, Day 2, 20:03-05.

[28] C-135.

[29] C-112.

[30] CWS-3, Cuadrado WS. ¶ 19; Transcript of the Jurisdictional Hearing, Day 2, 22:07 – 22:17 (RBA Capital LLC was not yet in existence on 9 December 2010, but Mr. Cuadrado testified he was speaking with Ricardo Rivas at that time).

[31] Id., ¶17.

[32] Id.

[33] Counter-Memorial on Jurisdiction, pp. 17-31.

[34] CWS-1, Cuadrado WS, n. 3.

23. Claimant submitted a 14-page table in its Counter-Memorial listing documents it maintains evidence Lynton's activities between February 2006 and April 2024.[35] The collection of activities is supported with extensive cites to contemporaneous documentary evidence. The table has 54 entries and is persuasive to establish that substantial activity occurred. The activity was led by Roberto Cuadrado from the United States. The activity was commercial, profit-driven and of no other nature. The activity was all connected to Claimant's business and its purpose.[36]

24. Corporations large and small frequently use nominee managers when they establish corporations. Claimant used a nominee manager named Aldyne Ltd. in the Republic of Seychelles at the time the entity was opened. [37] It was authorized and able to act for Claimant. Respondent argues that only the activities executed by Aldyne Ltd. should be considered in evaluating the existence of substantial business activities. The activities of a member of a limited liability company cannot be discarded especially where the activity at issue is that of a member holding a 50% interest and operating in the United States and is primarily responsible for the Claimant's operations.

25. The actions and activities of the two members of the limited liability company carry the most weight. The activities of Roberto Cuadrado, the 50% owner of Lynton, should control. His activities on behalf of the group cannot be dismissed when analyzing the existence of substantial business activities and his activities were substantial. Holding otherwise suggests that a manager has superior authority to the members of a limited liability company.

26. The majority's definition of "substantial business activities" requires there be a voluminous number of important business transactions. This may be easily achieved by a large conglomerate or a substantial corporation. But investors afforded protection under the Treaty are not limited to large corporations with employees and extensive operations. The majority rejects Prof. Bianchi's opinion that the "threshold is not high" to establish substantial business activities.[38] Under the majority's analysis, "limited promotional efforts without further development" are insufficient to establish "substantial business activities." This of course suggests that "activities" alone do not suffice. The Final Award is requiring more beyond mere activities. It expands the term "activities" arguing that the term "importante" in Spanish requires there also be positive results stemming from any promotional activities. The activities must lead to actual transactions that generate revenues. But that is not what the Treaty says. As explained by Prof. Bianchi, such an interpretation would run counter to the object and purpose of the Treaty.[39]

[35] Counter-Memorial on Jurisdiction, pp. 17-31.

[36] Id.

[37] C-104 and C-110.

[38] CER-3, Expert Report of Professor Bianchi, ¶ 145.

[39] CER-3, Expert Report of Professor Bianchi, ¶ 129-135.

27. There is no discernable difference between "business" and "commercial" when used to describe "activities." "Activities" is the controlling term, and "no substantial business activities" means there must be an absence of substantial business activities or commercial activities to support a denial of benefits defense under the Treaty. Claimant has provided ample evidence of the activities undertaken and their connection to Lynton.[40] A substantial activity is all that is required, and Claimant has an abundance of substantial business activities in the United States. Denying treaty protection on this record imposes requirements on a two-member limited liability company not contained in the Treaty and opens the door for analysis that goes beyond what is required to defend against treaty shopping or to prevent an abuse of treaty rights. There is no evidence of either in this case. This heightened scrutiny is contrary to the terms of the Treaty and opens the door to protracted proceedings auditing a company's business compliance and operations regardless of its substantial business activities that will lead to unnecessary prolonged inquiry and argumentation.

28. "The existence of a 'genuine connection' between the company and the state of incorporation is the necessary prerequisite for the home state to have an interest in the protection of the company."[41] "The object of assessment by an arbitral tribunal is not the magnitude of the business on the territory of the home State but the genuineness of the business. Consequently, in assessing the facts of the case, arbitral tribunals, arguably, should be guided by the elements that can detect whether the activities in the home state are real or legitimate."[42]

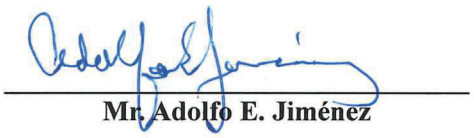
29. Although Claimant's records are highly deficient, Nevada law established that it never lost the capacity to sue, it was revived and fully restored and qualified under the laws of Nevada to validate all its activities during all relevant times. It provided ample evidence that it was active in the United States engaged in substantial business activities. For the above reasons, I dissent in the Final Award.

Place of the arbitration: Paris, France

[40] Counter-Memorial on Jurisdiction, pp. 17-31.

[41] CER-3, Expert Report of Professor Bianchi, ¶ 108.

[42] Id.



Mr. Adolfo E. Jiménez

Date: 26 September 2025