

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Daniel W. Kappes and Kappes, Cassiday & Associates**

(Claimant)

**v.**

**Republic of Guatemala**

(Respondent)

**ICSID Case No. ARB/18/43**

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**PROCEDURAL ORDER NO. 15**

***Members of the Tribunal***

Ms. Jean E. Kalicki, President of the Tribunal

Mr. John M. Townsend, Arbitrator

Prof. Zachary Douglas QC, Arbitrator

***Secretary of the Tribunal***

Ms. Daniela Argüello

***Assistant to the Tribunal***

Dr. Joel Dahlquist

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20 July 2022

## **I. PROCEDURAL HISTORY**

1. On 16 June 2022, the Respondent wrote to the Tribunal in relation to three issues: (i) a request that the Tribunal order Claimants to correct the Spanish translation of their Post-Hearing Brief, on the basis that the quality of the translation did not comport with the Tribunal's requirements as set out in Procedural Order No. 4; (ii) a request to submit evidence in relation to the "ongoing consultation process undertaken by MEM in related to Progreso VII Derivada Project" ("**Progreso VII**") (*i.e.*, that "the notification and invitation sent to Exmingua to participate in the consultation process be made part of the record"); and (iii) a request to reallocate 15 minutes at the Closing Hearing from its rebuttal argument to its closing argument (with the result that the Respondent would have 2.0 hours for its closing argument and 30 minutes for its rebuttal).
2. By invitation of the Tribunal, on 20 June 2022 the Claimants filed a response to the Respondent's letter of 16 June 2022, agreeing to Guatemala's Requests (i) and (iii), and strongly opposing the introduction of new evidence "of the purportedly 'ongoing consultation process related to Progreso VII' and of purported 'significant developments' in this process" (Guatemala's request (ii)).
3. By letter of the same date, the Respondent filed observations on Claimants' letter, without prior request for leave, reiterating its request to introduce into the record "the notification received by Exmingua to participate in the consultation process in relation to" Progreso VII.
4. On 22 June 2022, the Tribunal admitted the Respondent's letter of 22 June 2022 over the Claimants' objection, and invited the Claimants to file a response by 27 June 2022. The Tribunal also informed the Parties that no further correspondence on this issue would be admitted without prior request for leave.
5. On 23 June 2022, the Claimants submitted a revised Spanish translation of their Post Hearing Brief, in accordance with their agreement to do so conveyed in their letter of 20 June 2022.
6. On 27 June 2022, the Claimants filed their response to the Respondent's letter of 22 June 2022, further opposing the Respondent's request to introduce new evidence into the record and requested that the Tribunal deny the Respondent's request.

## **II. THE TRIBUNAL'S ANALYSIS AND DECISION**

7. The Tribunal has carefully considered all arguments reflected in the Parties' correspondence as described above, as well as the standard set out in Procedural Order No. 1. Taking all considerations into account, it decides as follows:

*Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*  
(ICSID Case No. ARB/18/43)  
Procedural Order No. 15

- A. The Tribunal grants, on consent, the Respondent's request to reallocate 15 minutes at the Closing Hearing from its rebuttal argument to its closing argument.
- B. The Tribunal grants the Respondent's request to submit the two proposed new exhibits on the status of Progreso VI consultations which were identified in the Respondent's letter of 16 June 2022;
- C. In light of the above, the Tribunal's ruling of 19 May 2022 is reversed insofar as that ruling pertained to the Claimants' request to submit into evidence three news publications reporting upon recent developments in the CGN case, concerning the MEM-led consultations for the Fénix mine, with the result that the Claimants shall be permitted to submit these as new exhibits;
- D. The Parties are requested to produce these two categories of exhibits (the "**Supplemental Exhibits**"), titled with the next-in-order C- or R- exhibit numbers as appropriate, **by Monday, 25 July 2022**;
- E. Any application by either Party for leave to submit rebuttal evidence directly related to the Supplemental Exhibits, or to recall any witness for questioning strictly limited to the Supplemental Exhibits, must be presented **by Friday, 29 July 2022**, and any response to such application must be presented by the other Party **by Wednesday, 3 August 2022**. The Parties may not submit reply or rejoinder submissions in relation to these applications;
- F. Subject to the Tribunal's ruling on any applications in paragraph E above (which may result in adjustment of the schedule), each Party may submit written comments, not to exceed 5 pages, on the relevance or lack of relevance of the Supplemental Exhibits, by simultaneous submission on **Friday, 19 August 2022**; and
- G. No further comments are to be submitted thereafter on the subject of the Supplemental Exhibits (*i.e.*, no requests for replies to the simultaneous submissions in paragraph F above).

[signed]

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Ms. Jean Kalicki  
President of the Tribunal  
Date: 20 July 2022