

**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*

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**PROCEDURAL ORDER NO. 22**

**ON REMOTE PARTICIPATION AT THE HEARING, THE EXAMINATION OF MR. TRON AND MR. DEL VAL AND THE SUBMISSION OF ADDITIONAL DOCUMENTS TO THE RECORD**

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*Tribunal*

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

*Secretary of the Tribunal*

Ms. Patricia Rodríguez Martín

25 March 2022

## **I. Procedural Background**

1. On 8 March 2022, the Respondent wrote a letter to the Tribunal updating its list of witnesses to be called at the upcoming Hearing. Among others, the Respondent indicated that it no longer required the presence of Mr. Charles Duncan Weir and Mr. Manuel Elías Tron (“**Mr. Tron**”) at the upcoming Hearing.
2. On 9 March 2022, the Tribunal invited the Claimants’ comments on the Respondent’s communication.
3. Also on 9 March 2022, the Respondent wrote a letter to the Tribunal further to Procedural Order No. 20, where the Respondent indicated the individuals that would have to connect remotely to the Hearing and informing the Tribunal of the reasons why they would not be able to attend in person.
4. On 10 March 2022, in response to the Tribunal’s invitation, the Claimants informed the Tribunal that they would like to examine Mr. Tron at the Hearing. On the same date, the Claimants sent a letter to the Tribunal requesting:
  - i. leave from the Tribunal to submit into the record of the proceeding a number of additional factual exhibits and legal authorities, which according to the Respondent, would:
    - a. further demonstrate Claimant Carlos Williamson-Nasi’s ownership and control of Clue, S.A. de C.V. (“**Clue**”);
    - b. illustrate recent and ongoing corruption at Pemex and in Mexico;
    - c. support the Claimants’ position that the NAFTA permits dual nationals to bring arbitral claims under the UNCITRAL Rules; and
  - ii. that the Tribunal order Respondent to produce Oro Negro’s former Chief Legal Officer, Mr. Alonso Del Val Echeverría (“**Mr. Del Val**”) at the upcoming Hearing for cross-examination. Although Mr. Del Val is not a witness in this case, the Claimants argue that they should be allowed to cross-examine Mr. Del Val because the Respondent has submitted as exhibits and relied on Mr. Del Val’s written and oral testimony provided in connection with an arrest warrant in México.
5. On 11 March 2022, the Tribunal invited the Respondent to comment on the Claimants’ request by 18 March 2022.
6. On that same date, the Parties and the Tribunal held a pre-hearing meeting to discuss outstanding logistical, administrative and procedural matters related to the Hearing. During

the pre-hearing call, the Claimants confirmed that they wished to call Mr. Tron to the Hearing and deferred to the Tribunal regarding whether it would like to examine Mr. Weir. The Parties also briefly discussed the Claimants' request of 10 March 2022.

7. On 18 March 2022, the Respondent filed its written response to the Claimants' Request. In summary, the Respondent argued that the Claimants' request to submit new documents related to Mr. Williamson's Nasi's ownership of Clue is an attempt to submit a new round of submissions, when they could have responded to the Respondent's arguments in their Reply. As to the other two categories of documents requested by the Claimants, the Respondent argued that there are no exceptional circumstances that would justify authorizing the Claimants to submit them at this stage of the proceeding. Finally, the Respondent also objected to the examination of Mr. Del Val because according to the Respondent, Mr. Del Val does not participate in the proceedings (he is not a witness in this case) nor does the Respondent exercise any control over him.

## **II. The Tribunal's Analysis**

### **a. Remote participation by some of the Respondent's legal counsel team and witness**

8. The Tribunal takes note of the Respondent's expressed desire for several individuals to participate remotely in the Hearing. The Tribunal finds that a decision on remote participation is best made closer to the dates of the Hearing, in order to afford all concerned individuals an additional opportunity to make, where possible, the necessary arrangements to attend in person. The Parties are accordingly invited to inform the Tribunal **by 8 April 2022** of the identity of all individuals seeking to attend the Hearing remotely. Each request shall indicate, for each individual, the concrete reasons of the impediment justifying the need of a remote participation.

### **b. Mr. Tron's examination at the Hearing**

9. The Tribunal takes note of the Claimant's expressed desire to examine Mr. Tron at the Hearing. The Tribunal understands that while it has not formally been presented with a request, the Claimant's expressed desire nevertheless calls for a decision. The Tribunal recalls that pursuant to Section 20.2 of Procedural Order No. 1, each party may, subject to the Tribunal's approval, call to testify any of its own witnesses. In the present case, the Tribunal has not been provided with sufficient elements to justify the need for Mr. Tron to be examined at the Hearing.

**c. Claimants' request to order the examination of Mr. Del Val's at the Hearing**

10. The Tribunal turns to the Claimants' request that the Respondent be ordered to produce at the upcoming Hearing for cross-examination Oro Negro's former Chief Legal Officer, Mr. Del Val. The Tribunal takes note of the Parties' divergent characterization of the testimony of Mr. Del Val and the Claimants' assertion that the testimony has a functional equivalent of a witness statement. Claimants argue that they should have the opportunity to cross-examine Mr. Del Val "to test his evidence, including to test whether this is evidence that he freely gave without duress by [the Respondent]", and to otherwise "assess his credibility on these issues."
11. The Tribunal rejects the Claimants' request as the testimony in question is not formally a witness statement. The Tribunal takes note of the Claimants' emphasis that Respondent did not submit a written affidavit from Mr. Del Val "likely as a tactical decision to attempt" to preclude them from challenging this statement. It is, however, not for the Tribunal to appreciate any Party's "tactical decisions" and to derogate from the established procedural framework. The Tribunal will evidently assess on a case-by-case basis the probative value and credibility of any type of document properly referred to by any of the Parties throughout the course of the proceedings.

**d. Claimants' request to submit additional documents into the record**

12. From the outset, the Tribunal recalls that it has already accepted the additional submission of evidence into the record. Such possibility exists pursuant to § 18.3 of Procedural Order No. 1 "in exceptional circumstances with leave from the Tribunal, to be granted upon a showing of good cause." The question again is whether the Claimants' request meets the high threshold established in Procedural Order No. 1. The Tribunal must in this regard distinguish the three types of documents referred to by the Claimants.
13. Firstly, as concerns documents related to Mr. Williamson's ownership and control of Clue, the Tribunal notes the Claimants' emphasis on a mistake in the Respondent's Reply and that, in its view, the documents are "relevant and material to correcting Respondent's inaccuracies and misrepresentations." While the Tribunal recalls that it can certainly not allow what would amount to a new round of submissions, in the present exceptional circumstances of the unfortunate recent passing of Mr. Williamson and where the latter's standing to bring a claim is challenged, the Claimants' request satisfies the requirements of § 18.3 of Procedural Order No. 1.
14. Secondly, as concerns the news articles and investigative reports relating to "the widespread corruption in México and particularly within Pemex" and which, according to Claimants, have become available only since the filing of the Reply and were not available before, the Tribunal recalls firstly that as the guardian of transnational public policy, it

certainly aims to remain particularly attentive to matters of corruption, at all times of the proceedings. The Tribunal takes note that the Respondent calls into doubt the probative value of these articles and reports to “prove” the existence of corruption and emphasize the late request by the Claimants, which effectively makes it impossible to prepare any reasonable response prior to the hearing.

15. The Tribunal understands that, as presented by the Claimants, the items (i) listed in the Claimants’ letter dated 10 March 2022 specifically relate to Mr. Treviño, while the other items (ii) and (iii) are more generally related to descriptions of a “corruption scheme” in Mexico, and *inter alia* within Pemex. At this stage of the proceedings, the Tribunal finds that only the items (i), i.e. “news articles by the Mexican and international press, including, Reforma, el Financiero, El País, Bloomberg, Infobae, and Forbes regarding the arrest order and Interpol’s red notice against Mr. Treviño” may exceptionally be submitted into the record.
16. Thirdly, as concerns the recent legal authorities that were not available at the time of the filing of their Reply and that, in Claimants view, are relevant to Claimants’ position that the NAFTA permits dual nationals to bring arbitral claims under the UNCITRAL Rules against one of the states of their nationality and does not require dual nationals to be dominant and effective nationals of the other state of their nationality, the Tribunal finds that the Claimants have not established the existence of exceptional circumstances which could justify the submission into the record of the six legal authorities listed in the Claimants’ letter dated 10 March 2022.

### III. Order

17. The Tribunal accordingly:
  - i. invites the Parties to inform it **by 8 April 2022** of the identity of all participants which request to attend the Hearing remotely. The requests shall indicate, for each participant, the reasons for the need of such remote participation;
  - ii. rejects the Claimant’s request to allow the examination of Mr. Tron at the Hearing;
  - iii. rejects the Claimants’ request to order the Respondent to produce Mr. Del Val at the upcoming Hearing for cross examination; and
  - iv. grants the Claimants leave to submit the following factual exhibits and legal authorities into the record of this proceeding:
    - a. additional evidence concerning Mr. Williamson’s ownership and control of Clue, including audited financial statements of Clue and stock certificates of Clue; and

b. news articles by the Mexican and international press, including, *Reforma*, *el Financiero*, *El País*, *Bloomberg*, *Infobae*, and *Forbes* regarding the arrest order and Interpol's red notice against Mr. Treviño.

On behalf of the Tribunal,

[Signed]

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Professor Diego P. Fernández Arroyo  
President of the Tribunal  
Date: 25 March 2022  
Seat of the arbitration: Toronto, Canada