IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED MEXICAN STATES Petitioner, v. LION MEXICO CONSOLIDATED L.P. Respondent.	Case No. 1:21-cv-03185 (TFH)

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE PETITION TO VACATE AN ARBITRAL AWARD AND OPPOSITION TO THE CROSS-PETITION TO CONFIRM, RECOGNIZE, AND ENFORCE AN ARBITRAL AWARD

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Petitioner United Mexican States ("Mexico"), by and through its attorneys, Pillsbury Winthrop Shaw Pittman LLP, respectfully submit this Reply Memorandum of Law in further support of the Petition to Vacate an Arbitral Award (the "Award") and in opposition to the Cross-Petition to Confirm the Award rendered against it and in favor of Respondent Lion Mexico Consolidated L.P. ("Lion").[1]

I. PRELIMINARY STATEMENT

This is a relatively simple case. The arbitral tribunal did not like the constraints of the governing arbitration agreement and openly stated it was rejecting the "literal reading" of the law. *See* Becker Decl., Ex. 1, ¶¶ 356-358. In support of its action, the tribunal cited another part of the governing law (the FTC Notes of Interpretation) that expressly and directly conflicted with its interpretation. *Id*. at ¶ 358. It also tersely cited to three arbitral awards in a footnote (one of the citations was to the wrong part of the cited award) without examining whether the awards in fact supported its position (they did not). *Id*.; *see also* Pet., ¶¶ 54-58. In doing so, the tribunal plainly acknowledged a clear, governing legal principle, and then rejected it. The tribunal's actions fall squarely within 9 U.S.C. § 10(a)(4) and the related doctrine of manifest disregard of law. The tribunal's half-hearted attempt to justify its action, without regard to the substance of the sources it cited, does not support a contrary result. Otherwise, 9 U.S.C. § 10(a)(4) would be deprived of its intended meaning.

[1] Any other capitalized terms not otherwise defined herein shall have the same meaning as Mexico's Petition to Vacate the Arbitral Award ("Pet."). References to "Becker Decl." are to the Declaration of Stephen Becker, dated December 6, 2021.

II. THE AWARD SHOULD BE VACATED AND THE CROSS-PETITION DENIED

In the Petition, Mexico explained that pursuant to 9 U.S.C. § 10(a)(4), an award may be vacated when the arbitrators "exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." Pet., ¶ 39. Mexico explained that the tribunal had exceeded its power and manifestly disregarded the law when it acknowledged the correct reading of the relevant NAFTA provision, Article 1105, and then chose to disregard it. *Id*. at ¶¶ 39-75. In response, Lion argues that the tribunal did not exceed its powers, and that Mexico simply disagrees with the outcome and is improperly attempting to appeal the tribunal's decision. Resp. MOL, at 12-14. Nonetheless, Lion then proceeds to engage with the merits of the decision and claims it was rightly decided. *Id*. at 14-18. Lion further argues that manifest disregard of the law, as a ground for vacatur, is no longer available and that Mexico, in any event, has not shown that the tribunal manifestly disregarded the law. *Id*. at 18-23. Lion then asks the Court to confirm the Award. *Id*. at 24. Each of these arguments is incorrect, as explained below. Mexico has shown that the tribunal exceeded the scope of its authority and manifestly disregarded the law by acknowledging the ordinary meaning of Article 1105 and then refusing to apply it. The Award should be vacated.

A. The Tribunal Exceeded its Power by Disregarding the "Literal Meaning" of Article 1105

Mexico explained in the Petition that the tribunal exceeded its powers when it decided to disregard the meaning of Article 1105 in favor of an unsupportable interpretation that allowed the tribunal to achieve its desired result. Pet., ¶¶ 39-75. In response, Lion argues that Mexico simply wishes to appeal the tribunal's decision. Resp. MOL, at 12-18. Lion is wrong for several reasons.

First, all of the authorities that Lion cites in support of its contention that "courts do not recognize mere disagreement as grounds to vacate a foreign arbitral award" are inapposite. In *United Paperworks v. Misco*, the Supreme Court addressed the standard of review applied to labor disputes, to which the Federal Arbitration Act ("FAA") does not apply, and for which the Supreme Court stated there is a particular preference for "private settlement of labor disputes without the intervention of government ...." *United Paperworks Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36-37, 40 n. 9 (1987). *LLC SPC Stileks v. Moldova*, for its part, addresses issues regarding the primary decision-maker of arbitrability (i.e., whether a claim or type of dispute is arbitrable) and not a challenge to an arbitration award pursuant to 9 U.S.C. § 10(a)(4). *See LLC SPC Stileks v. Republic of Mold.*, 985 F.2d 871, 877-78 (D.C. Cir. 2021) (discussing who decides the question of arbitrability and giving deference to the tribunal's decision). Finally, in *BG Group v. Argentina*, the Supreme Court addressed Argentina's challenge that the tribunal exceeded its powers, but applied the standard articulated in *Stolt-Nielsen*, the very same standard Mexico discussed in its Petition. *See BG Grp. PLC v. Republic of Arg.*, 572 U.S. 25, 44-45 (2014); Pet., ¶ 64. In sum, none of the authorities cited by Lion refute Mexico's contention that the tribunal cannot ignore the plain language of the arbitration agreement (here contained in the Treaty) when rendering its Award and that, in doing so, the tribunal exceeded its authority. *See* Pet., ¶¶ 40, 64.

Second, Lion is wrong when it claims that the "Tribunal acted well within its powers when it interpreted and applied Article 1105… so § 10(a)(4) does not provide a basis for vacating the Award." Resp. MOL, at 13. Article 1131 of NAFTA states that "[a] Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law." Becker Decl., Ex. 2, Art. 1131 (emphasis

added). Yet here, the tribunal expressly refused to apply Article 1105 in accordance with the agreement as written. *Id*., Ex. 1, ¶¶ 356-358 (acknowledging the "literal reading of Art. 1105 of NAFTA" and then discarding it). Thus, the tribunal acted outside of the scope of its authority.[2]

The applicable rules of international law, also referenced in Article 1131, only reinforce this conclusion. The Vienna Convention on the Law of Treaties (the "VCLT") provides, among other things, the rules of interpretation for international treaties, such as the NAFTA.[3] Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331. Article 31(1) of the VCLT provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." *Id*. As the tribunal itself acknowledged, the ordinary meaning of Article 1105 is that it only provides protections to investments, and not investors. Becker Decl., Ex. 1, ¶ 356. In accordance with Article 31, therefore, the tribunal should have interpreted Article 1105 accordingly.

For these same reasons, Lion's argument regarding the submission of the United States also fails. *See* Resp. MOL, at 17-18. Mexico's argument was not that the tribunal had no authority to interpret Article 1105, as Lion appears to suggest. The point is that such authority is

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[2] Lion asserts that "Mexico… took a contrary position during the hearing, acknowledging that Article 1105 protects investors…." Resp. MOL, at 13-14. However, in the quote referenced by Lion, Mexico is discussing the claims that a claimant may assert under the Treaty and the exhaustion of remedies requirement—not the scope of Article 1105's protection. *See* Conlon Decl., Ex. C, Hearing Transcript, July 22, 2019, at 312:3-313:2.

[3] Although the United States Government has not formally joined the VCLT, it has affirmed that the content of the treaty reflects customary international law as accepted by the United States. *See* U.S. Dep't of State, *Vienna Convention on the Law of Treaties*, January 20, 2017, https://2009-2017.state.gov/s/l/treaty/faqs/70139.htm ("The United States signed the [VCLT] on April 24, 1970. The U.S. Senate has not given its advice and consent to the treaty. The United States considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties.").

circumscribed. The tribunal was not vested with the power to disregard the text of the NAFTA and effectively dispense its own brand of justice. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp*., 559 U.S. 662, 671-672 (2010); *Hill v. Wackenhut Servs. Int'l*, 971 F. Supp. 2d 5, 10 (D.D.C. 2013). The Award shows that the tribunal did just that and therefore exceeded its authority. *See, e.g., Swift Industries, Inc. v. Botany Industries, Inc.*, 466 F.2d 1125 (3rd Cir. 1972) (vacating award for manifestly disregarding the relevant contract provision).

Third, the tribunal's decision was not correctly decided. The FTC Notes of Interpretation, in fact, supports Mexico's position. In the FTC Notes of Interpretation, the NAFTA Free Trade Commission reaffirmed that "article 1105(1) prescribes the customary international law minimum standard of treatment to be afforded to investments of investors of another Party." Becker Decl., Ex. 4, at Section B, ¶ 1 (emphasis added). Lion incorrectly claims that Mexico did not refer to the FTC Notes of Interpretation during the arbitration. *See* Resp. MOL, at 15, n. 10. However, Mexico submitted the FTC Notes of Interpretation in the arbitration as Exhibit RL-107 and the tribunal clearly relied on this document in rendering its decision. *See* Second Becker Decl., ¶ 4 and Ex. A; Becker Decl., Ex. 1, ¶ 358.

Lion argues that this Court may not serve as an appellate court for the tribunal's decision, Resp. MOL, at 13, but then proceeds to discuss the merits of the decision and cite to precedents on which the tribunal itself did not rely, in essence adding its own gloss to the tribunal's ruling. *Id*. at 15-16. The Award, however, should be evaluated based on its own contents and reasoning. *Republic of Arg. v. AWG Grp. Ltd.*, 211 F. Supp. 3d 211, 343 (D.D.C. 2016) ("Review of arbitral awards… is 'not an occasion for *de novo* review.'" (quoting *Scandinavian Reins Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 71 (2d Cir. 2012)). Mexico has already explained how the cases cited by the tribunal do not support its position. *See* Pet., ¶¶ 54-58. Lion does not

address the substance of those cases; it simply provides some quotations that are out of context. Resp. MOL, at 15. None of the authorities the tribunal cited in support of its decision to disregard the plain text of Article 1105 supports such an outcome.

The Court should not accept Lion's invitation to make new legal findings, but in any event, the additional cases cited by Lion are not useful to it. In *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploración y Prod.*, cited by Lion to this Court but not to the tribunal, the court was recounting what was stated in a notice of dispute, rather than endorsing a particular view of Article 1105. *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploración y Prod.*, 962 F. Supp. 2d 642, 652 (S.D.N.Y. 2013).

In the *S.D. Myers* case (not cited by the Lion tribunal), the tribunal used confusing and imprecise language, but summarized that the violations of the NAFTA it found by stating that "[i]n[]so[]far as this conduct caused harm to [the claimant] by injuring its investment, Myers Canada, CANADA must pay compensation to [the claimant]." *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, Nov. 13, 2000, ¶ 301 (emphasis added), *available at* https://www.italaw.com/sites/default/files/case-documents/ita0747.pdf. In other words, the tribunal's ruling was based on the treatment of the investment.

Lion cites to the very April 2001 ruling of the *Pope & Talbot* tribunal that the three NAFTA governments, through the NAFTA Free Trade Commission, corrected by the issuance of the Notes of Interpretation in July 2001. *Pope & Talbot, Inc. v. Government of Canada*, UNCITRAL, Award in Respect of Damages, May 31, 2002, ¶¶ 8-10 (explaining that the FTC issued the Notes of Interpretation in response to its award on the merits), *available at*

https://www.italaw.com/sites/default/files/case-documents/ita0686.pdf.[4] The Lion tribunal did not cite to the *Pope & Talbot* award.

The *Mobil Investments v. Canada* case (also not cited by the Lion tribunal) was brought on behalf of both the investors and their investments in Canada, and therefore the tribunal had no need to address the limitation of Article 1105 to investments. *See Mobil Investments Canada Inc. et al. v. Canada*, ICSID Case No. ARB(AF)/07/4, Request for Arbitration, Nov. 1, 2007, p.1 and ¶¶ 7-11, *available at* https://www.italaw.com/sites/default/files/case-documents/italaw6213.pdf.

In any event, Mexico again emphasizes that the arbitration award at issue should be evaluated on its own contents and reasoning.

Finally, Lion's public policy arguments about standing and Mexico's purported attempts to expand the scope of 9 U.S.C. § 10(a)(4) are either irrelevant or overblown. The issue is not one of standing—as Lion acknowledges the tribunal found it had jurisdiction to hear the dispute—but the agreed protections and limitations of the NAFTA. As Mexico explained in its Petition, the NAFTA provided certain specific protections to encourage foreign investment—it did not seek to insure foreign investors against all business risk. Pet., ¶¶ 24-27, 41-51, 61. The obligation of fair and equitable treatment under the NAFTA was expressly intended to be provided to investments of investors, and not investors themselves. *Id*. at ¶¶ 48, 52-53. Other

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[4] Moreover, the tribunal's findings of a violation of Article 1105 were based on Canada's treatment of the claimant's "Investment," defined as "a wood products company that manufactures and sells softwood lumber. It harvests timber in the province of British Columbia, and it operates three softwood lumber mills in the southern interior of British Columbia…." *Pope & Talbot, Inc. v. Government of Canada*, UNCITRAL, Interim Award, June 26, 2000, ¶ 4, *available at* https://www.italaw.com/sites/default/files/case-documents/ita0674.pdf; *Pope & Talbot, Inc. v. Government of Canada*, UNCITRAL, Award on the Merits, Apr. 10, 2001, ¶¶ 181,195 (finding "treatment of the Investment" breached Article 1105), *available at* https://www.italaw.com/sites/default/files/case-documents/ita0678.pdf.

types of protections are extended to investors, in particular the obligation against discrimination based on national origin. *Id*. at ¶¶ 46-47. Interpreting the NAFTA in accordance with its protections and its limitations properly effects the intended result of the Treaty when it was negotiated by the parties.

Similarly, it is not true that Mexico seeks to expand the scope of review pursuant to 9 U.S.C. § 10(a)(4). It is well-established that "the Court must vacate an award that disregards the parties' agreement in favor of the arbitrator's 'own view of sound policy.'" *Hill*, 971 F. Supp. 2d at 10 (quoting *Stolt-Nielsen*, 559 U.S. at 672). What Mexico seeks here is in line with that precedent and not an expansion of it.

Strangely, Lion also claims that the extent of Article 1105's protection was not a key issue in the case and that Mexico devoted little briefing to this point. Resp. MOL at 9 n. 8. Notably, Lion does not dispute that the finding of liability rests entirely on the tribunal finding that Article 1105 extended protections to investors and not just investments. *See* Pet., ¶ 60. Further, Mexico devoted eleven paragraphs (three pages) to this argument in its Counter-Memorial, which was only 335 paragraphs and 89 pages in total. Becker Decl., Ex. 3, ¶¶ 134-144. Many of Mexico's other important arguments received the same amount of attention in the briefing. *See generally id.* To the extent there remains any doubt, the importance of the issue is established by the fact that the tribunal expressly addressed it in the Award. Becker Decl., Ex. 1, ¶¶ 356-358.

Thus, for all of these reasons, Mexico has shown, and Lion has failed to refute, that the tribunal exceeded its authority by expanding the scope of Article 1105 beyond its acknowledged limits and the Award should be vacated.

B. The Tribunal Manifestly Disregarded the Law Regarding Article 1105

As discussed below, (i) Lion is wrong to argue that manifest disregard of the law is no longer applicable in the D.C. Circuit, and (ii) the arbitral tribunal's actions plainly amounted to a manifest disregard of the law.

1. Manifest Disregard of the Law Still Applies in the D.C. Circuit

Lion argues that manifest disregard of the law is no longer the law in this circuit because of *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576 (2008) and because the D.C. Circuit has not permitted vacatur on the basis of manifest disregard of the law since *Hall Street*. *See* Resp. MOL, at 22-23. However, the D.C. Circuit, even when given the opportunity to do so, has declined to overrule the application of manifest disregard of the law. *See Selden v. Airbnb, Inc.*, 4 F.4th 148, 160 n. 6 (D.C. Cir. 2021) ("we need not resolve whether manifest disregard remains a ground for vacating an arbitration award."). As Lion itself acknowledges, there is a split among the circuits regarding the continuing viability of the doctrine, with several circuits finding the doctrine survives *Hall Street*. *Sutherland Global Servs. v. Adam Techs. Int'l SA de C.V.*, 639 F. Appx. 697, 699 (2d Cir. 2016) (noting that manifest disregard of law was a judicial gloss on 10(a)(4)); *Wachovia Sec. LLC v. Brand*, 671 F.3d 472, 483 (4th Cir. 2012) (holding manifest disregard of the law survives *Hall Street*); *Coffee Beanery, Ltd. v. WW, LLC*, 300 F. Appx. 415, 419 (6th Cir. 2008) (same); *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1281 (9th Cir. 2009) (same). Finally, the reason that the D.C. Circuit has not recently reversed an award on the basis of manifest disregard of the law is because vacatur on this ground, in general, is rarely granted.[5] But, there can be no dispute that the D.C. Circuit has previously recognized manifest

[5] Notably, the fact that courts do not routinely overturn arbitration awards on the basis of manifest disregard of the law assuages any concerns about a court easily substituting its own judgment. *See* Resp. MOL, at 23.

disregard of the law as a valid ground for vacatur. *See*, *e.g., Lessin v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 481 F.3d 813, 816 (D.C. Cir. 2007); *Al-Harbi v. Citibank, N.A.*, 85 F.3d 680, 682 (D.C. Cir. 1996). Therefore, unless and until the D.C. Circuit decides to overturn that precedent, manifest disregard of the law remains a valid basis for vacating an award within this Circuit. *Affinity Fin. Corp. v. AARP Fin., Inc.*, 794 F. Supp. 2d 117, 120 (D.D.C. 2011) ("In the absence of any guidance from the Supreme Court or the Circuit, it is prudent to assume that the 'manifest disregard' standard remains good law.").

2. The Arbitral Tribunal Manifestly Disregarded the Law

As Mexico explained in its Petition, the "arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether", which amounts to a manifest disregard of the law. *Coyne v. Hewlett-Packard Co*., 308 F. Supp. 3d 207, 211 (D.D.C. 2018); Pet., ¶¶ 52-75. In response, Lion argues that the tribunal did not disregard the language of Article 1105, but instead decided that it "would not view the language in isolation…." Resp. MOL, at 19-20. Lion also claims that the interpretation of Article 1105 is not "well-defined, explicit, and clearly applicable" and chalks up Mexico's argument as "nothing more than a mere disagreement with the Tribunal's decision." *Id*. at 20-21. Lion's arguments are without merit.

When the tribunal stated that the "literal reading of Art. 1105 of NAFTA" affords fair and equitable treatment protection only to investments and not investors, that was an acknowledgment that this limitation is the ordinary meaning of the words in that provision. *See* Becker Decl., Ex. 1, ¶ 356. Black's Law Dictionary defines "literal" as "according to language; following expression in words." *See* Black's Law Dictionary, *What is LITERAL*, https://thelawdictionary.org/literal/ (accessed Feb. 24, 2022). That definition continues with the statement that "[a] literal construction of a document adheres closely to its words, without

making differences for extrinsic circumstances; a literal performance of a condition is one which complies exactly with its terms." *Id*. (emphasis added). The Merriam-Webster Dictionary similarly defines "literal" as "according with the letter of the scriptures" or as "adhering to fact or to the ordinary construction or primary meaning of a term or expression[.]" *See* Merriam-Webster Dictionary, *literal*, https://www.merriam-webster.com/dictionary/literal (accessed Feb. 24, 2022). Notwithstanding its acknowledgement of the content of Article 1105, the tribunal then stated it would not apply the ordinary meaning of the text. Becker Decl., Ex. 1, ¶¶ 357-358. Mexico has already explained why those reasons were unjustified, both in its Petition and *supra*.

It is equally untrue that the ordinary meaning of Article 1105 is not well-defined, explicit, and clearly applicable. Indeed, Lion does not appear to argue that Article 1105 is not explicit or clearly applicable, only that it is not well-defined, and that this interpretation has not been followed by others. Resp. MOL, at 20-21. However, in *Mesa Power v. Canada*, cited by Lion, the Court discussed how the interpretation of "fair and equitable treatment" is disputed—not whether it applies to investments or investors. *See Mesa Power Grp., LLC v. Gov't of Canada*, 255 F. Supp. 3d 175, 189 (D.D.C. 2017) (discussing how "fair and equitable treatment" was a vague standard).

Further, to the extent that it is relevant, several tribunals have adopted this distinction, finding that the language provides protection only to investments and not investors. In *Nelson v. Mexico*, for example, the tribunal held that

> [f]rom the text of the treaty, it is clear that the obligation of fair and equitable treatment is limited to the treatment of 'investments of investors.' Therefore, before reviewing Claimant's allegations of unfair and inequitable treatment, the Tribunal must first clarify what is the investment that, according to Claimants, suffered from unfair and inequitable treatment.

Mr. Joshua Dean Nelson v. United Mexican States, ICSID Case No. UNCT/17/1, Final Award, June 5, 2020, ¶ 312, *available at* https://www.italaw.com/sites/default/files/case-

documents/italaw11557_0.pdf. In *Grand River Enterprises Six Nations v. United States*, the tribunal stated:

> The required treatment must be accorded to 'investments of investors of another Party.' Article 1105 provides no scope for individual investors' claims that they have received treatment contrary to international law, except as that treatment affects a covered investment. Some of the Claimants' Article 1105 claims are presented in terms that emphasize their treatment as individual investors, not the treatment of their investments.

Grand River Enterprises Six Nations v. United States, UNCITRAL, Award, Jan. 12, 2011, ¶ 117, *available at* https://www.italaw.com/sites/default/files/case-documents/ita0384.pdf.[6] In *Belokon v. Kyrgyzstan*, as a final example, the relevant treaty included similar language to Article 1105 and the tribunal refused to consider alleged breaches of the fair and equitable treatment standard that related only to the former directors and management of the investment and not the investment itself. *Valeri Belokon v. The Kyrgyz Republic*, UNCITRAL, Award, Oct. 24, 2014, ¶¶ 245, 251, *available at* https://www.italaw.com/sites/default/files/case-documents/ITA%20LAW%207008_0.pdf. Lion's claim that no tribunal has ever adopted this reading is plainly wrong. *See* Resp. MOL, at 20-21.

Finally, Lion misses the point of Mexico's examples in its attempts to "distinguish" them. *See id.* at 21.[7] The issue in each of those cases was not ignoring context, as Lion mistakenly suggests. These cases are examples of where a tribunal ignored the ordinary language of the relevant agreement or well-established law to achieve a desired result and the court in each case vacated the award for manifest disregard of the law. *See* Pet., ¶¶ 67-75. They are plainly on

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[6] Ultimately the tribunal did not have to make further findings on this issue because it found no possible violation of Article 1105.

[7] Lion also argues that foreign arbitral awards are to be provided more deference than U.S. arbitration awards, Resp. MOL at 21, but the case Lion cites in support says no such thing. *See generally Belize Soc. Dev., Ltd. v. Gov't of Belize*, 668 F.3d 724 (D.D.C. 2012).

point here where the tribunal did the same. Thus, the court should find that the tribunal manifestly disregarded the law and vacate the award. *Coyne*, 308 F. Supp. 3d at 211.

C. The Award Should Not Be Confirmed Because It Should Be Set Aside

Lion has moved to confirm the Award pursuant to section 9 of the FAA. *See* Resp. MOL at 24. As an initial matter, the Award is subject to the New York Convention and Chapter 2 of the FAA. 9 U.S.C. § 202; *see also* Pet., ¶ 5. Therefore, Chapter 1 of the FAA applies to the extent it is not in conflict with Chapter 2. 9 U.S.C. § 208. Pursuant to 9 U.S.C. § 207, "[t]he court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." One of the grounds for refusal to enforce an award in the New York Convention is that the award "has been set aside or suspended by a competent authority of the country in which, or under the laws of which, that award was made." New York Convention, Art. V(1)(e), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 39. Here, the Award was made in Washington, D.C. and therefore this district has primary supervisory jurisdiction. *Termorio S.A. E.S.P. v. Electranta S.P.*, 487 F. 3d 928, 935 (D.C. Cir. 2007). As established above, this Court should vacate the Award because the arbitrators exceeded their authority and manifestly disregarded the law pursuant to 9 U.S.C. § 10(a)(4). The Court cannot confirm a vacated Award. 9 U.S.C. § 207; *Termorio*, 487 F. 3d at 930 ("we hold that, because the arbitration award was lawfully nullified by the country in which the award was made, appellants have no cause of action in the United States to seek enforcement of the award under the FAA or the New York Convention."). Thus, Lion's cross-motion to confirm the Award should be denied.

III. CONCLUSION

For all of these reasons, and those stated in the Petition, Petitioner United Mexican States respectfully requests this Court enter an order vacating the Award pursuant to 9 U.S.C. § 10 and 9 U.S.C. § 207 because the tribunal has exceeded its powers and acted in manifest disregard of law. Petitioner further requests that this Court award any other relief that this Court deems necessary and proper.

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