

**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

PROCEDURAL ORDER NO. 28

**ON NEW LEGAL AUTHORITIES SUBMITTED
WITH THE POST-HEARING BRIEFS**

Tribunal

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

Secretary of the Tribunal

Ms. Patricia Rodríguez Martín

20 September 2022

I. Procedural Background

1. On 9 September 2022, the Parties filed their respective Post Hearing Briefs (“PHBs”). On 15 September 2022, the Respondent informed the Tribunal that it had uploaded its pleadings as well as the supporting legal authorities to ICSID’s file sharing platform established for this case, pursuant to Section 15.2 of Procedural Order No. 1 (“PO1”).
2. On 16 September 2022, the Claimants sent an email to the Tribunal objecting to the Respondent’s submission of 17 new legal authorities (RL-222 through RL-238) together with its PHB. In Claimants’ view, Section 24.1 of PO1 makes clear that no new legal authorities are to be submitted with the PHBs; and Section 18.1 of PO1 defines “documentary evidence” to include “exhibits and legal authorities”. Should the Tribunal deem that the new legal authorities are relevant, the Claimants requested that they be given an opportunity to submit additional legal authorities in response.
3. On the same date, the Respondent objected to the Claimants’ interpretation of Section 18.1 of PO1. In particular, the Respondent argued that Section 18.1 of PO1 (which refers to Section 24.1 of PO1) only refers to “factual exhibits”, which must be filed with the main pleadings, not “legal authorities”. Moreover, the Respondent argued that the new legal authorities submitted with the PHBs were filed to respond to the Tribunal’s questions to the Parties which concerned new legal issues that had not been dealt with by the Parties throughout these proceedings. Finally, the Respondent alleged that the Claimants have also cited to new legal authorities in their PHBs (footnotes 328-329),¹ the only difference being that they chose not to submit those authorities to the record. The Respondent confirmed that they would not dispute the submission of those new legal authorities to the record.

II. The Tribunal’s Analysis

4. Given that both Parties have referred in their PHBs to legal authorities that were not in the record of this arbitration, the Tribunal is minded to give both Parties the opportunity to comment on the new legal authorities relied upon by the other Party.² The Parties may submit additional responsive legal authorities together with their submissions, which shall not exceed 10 pages. The deadline for the Parties’ submission is 27 September 2022.
5. The Tribunal expects that this will be the Parties’ final submissions on this issue. Neither Party shall be permitted to submit additional evidence to the record, except in exceptional circumstances with leave from the Tribunal pursuant to Section 18.3 of PO1.

¹ The Claimants cite the following two legal authorities which do not have an exhibit number and do not appear to form part of the record of this case: *LMC v. Mexico*, ICSID Case No. ARB(AF)/15/2, Award (Sept. 20, 2021) and *Hydro and others v. Albania*, ICSID Case No. ARB/15/28, Award (Apr. 24, 2019).

² All legal authorities relied on by the Parties must be submitted to the record and numbered consecutively throughout these proceedings in accordance with Section 18.5 of PO1.

III. Order

6. On the basis of the foregoing considerations, the Tribunal invites both Parties to comment on the new legal authorities submitted by or referred to by the other Party in their PHBs. Any such comments shall not exceed 10 pages and shall be submitted by 27 September 2022.

On behalf of the Tribunal,

[Signed]

Professor Diego P. Fernández Arroyo
President of the Tribunal
Date: 20 September 2022
Seat of the arbitration: Toronto, Canada