

**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. 10
CLAIMANTS' REQUEST FOR EXECUTION OF DECLARATIONS IN PROTECTIVE
ORDERS**

Tribunal

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

Secretary of the Tribunal

Ms. Celeste E. Salinas Quero

March 16, 2021

I. Procedural Background

1. On February 25, 2021, the Claimants requested that the Tribunal sign two declarations attached to two Protective Orders (the “Declarations”). Separately, the Claimants also requested that the Respondent sign such Declarations.
2. The Claimants indicated that they intended to submit with their Reply documents and transcripts of depositions produced by third parties as part of a discovery in pending bankruptcy proceedings (the “Chapter 15 Discovery”). The use of those materials in this arbitration is subject to two Confidentiality Agreements entered into between one of the Claimants on behalf of all Claimants and the third parties of the Chapter 15 Discovery. These Confidentiality Agreements were stipulated into two Protective Orders requiring that any other entity, person or representative who is allowed to view the evidence produced subject to the Protective Orders must execute the Declarations attached to those Orders. According to the Declarations, its signatories, among others, submit to the jurisdiction of the U.S. District Court for the Southern District of New York with respect to the provisions of the Protective Orders.
3. On March 4 and 10, 2021, the Respondent objected to signing the Declarations and requested guidance from the Tribunal and that the Tribunal indicate whether it intended to sign the Declarations.
4. On March 8, 2021, the Claimants asked the Tribunal to order the Respondent to sign the Declarations, or alternatively, to be granted an extension to provide the Respondent with a redacted version of its Reply.

II. The Tribunal’s Analysis

5. The Arbitral Tribunal has carefully considered the Parties’ submissions and has found there are three key considerations which, in its view, justify the conclusion that the Members of the Arbitral Tribunal are under no obligation to sign the Declarations in connection with the two Protective Orders.
6. *Firstly*, the Arbitral Tribunal finds that the Claimants’ reading of Section 25.5 of Procedural Order No. 1 contradicts the principle of immunity as enshrined in the same Procedural Order in Section 26.2. In particular, the Arbitral Tribunal considers that Section 25.5 of Procedural Order No. 1 does not oblige the Arbitral Tribunal nor the Parties (here, the Respondent) to sign the Declarations. For ease of reference, those sections are reproduced below:

“25.5. Supporting witness statements, expert reports, exhibits or legal authorities submitted with any pleading may not be disclosed to any third party. To the extent any Party refers to or provides in a submission evidence covered by or subject to non-disclosure agreements (or similar agreements preventing disclosure or protecting confidentiality) or confidentiality orders entered by other courts (for example, protective orders), the Tribunal and the Parties will be subject to and must comply with the provisions of any such non-disclosure agreements or confidentiality orders.”

“[...]

26.2 The parties agreed that no member of the Tribunal shall be under any legal obligation to make any statement to any party or any person about any matter concerning the arbitration; nor shall any party seek to make any member of the Tribunal a witness or participant in any legal or other proceedings arising out of or in connection with the arbitration.”

7. *Secondly*, Respondent convincingly pointed to the general risks associated with the signature of these Declarations. The Arbitral Tribunal finds unpersuasive the Claimants’ argument that only persons in breach of the order would effectively be subjected to the jurisdiction of the Courts of the United States.
8. *Thirdly*, the Arbitral Tribunal notes the specific timing of the Claimants’ request within the agreed procedural calendar. While this fact is not in itself sufficient to justify a refusal to sign the Declarations, the Arbitral Tribunal accepts Respondent’s submission that prior consultation and notice would indeed have been appropriate.
9. The Arbitral Tribunal points out that its decision does not preclude the Claimants from availing themselves of the procedures established in this Arbitration for the protection of confidential information. While in the situation at stake, Claimants’ specific request to sign the Declarations cannot be accepted by the Tribunal, the integrity of the proceedings and the right for each Party to present its case is guaranteed by the available framework, which provides for the possibility of protecting the confidentiality of certain materials used in this Arbitration, as regulated in Procedural Order No. 3.

III. Order

10. For the reasons set out above, the Arbitral Tribunal finds that neither its Members nor the Respondent are obliged to sign the Declarations in connection with the two Protective Orders.
11. On March 12, 2021, the Arbitral Tribunal has extended the time limits for the submission of the Reply and the Rejoinder by one week each. The Claimants are effectively granted additional time to organize and present their submission in conformity with the present Procedural Order.
12. Accordingly, the Reply shall be submitted by March 22, 2021, and the Rejoinder by June 21, 2021. The remainder of the procedural calendar is accordingly adjusted as follows:

Pleading	Time limit	Due Date
1128 Submissions (Non-disputing NAFTA parties)	2 weeks from the submission of the Rejoinder	Monday, July 5, 2021
Comments to 1128 Submissions (Claimants and Respondent)	2 weeks from the submission of the 1128 Submission	Monday, July 19, 2021
Witness Notifications (Claimants and Respondent)	4 weeks from the due date of the Comments to 1128 Submissions	Monday, August 16, 2021
Pre-Hearing Organizational Meeting (if necessary) (Tribunal, Claimants, Respondent)	Within 3 weeks from the due date of witness notifications	Not later than August 30, 2021

On behalf of the Tribunal,

[Signed]

Professor Diego P. Fernández Arroyo
Presiding Arbitrator
Date: March 16, 2021
Seat of arbitration: Toronto, Canada