

**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. 27

ON MR. TREVIÑO'S WITNESS STATEMENT

Tribunal

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

Secretary of the Tribunal

Ms. Patricia Rodríguez Martín

18 April 2022

I. Procedural Background

1. On 6 April 2022, the Respondent sent a letter informing the Tribunal that Mr. Carlos Treviño would not attend the Hearing and requesting that Mr. Treviño's two witness statements remain on the record.
2. On 11 April 2022, the Claimants submitted their comments to the Respondent's request.

II. The Parties' Positions

3. The Respondent claims that Mr. Treviño has not responded to the Respondent's efforts to contact him regarding the Hearing. The Respondent claims that Mr. Treviño will probably not attend the Hearing due to the corruption investigation initiated against him by México's Office of the Attorney General. The Respondent argues that it has no authority to interfere in criminal matters. It appears that Mr. Treviño has decided to withdraw his participation in all matters involving the Mexican government. The Respondent argues that Mr. Treviño's failure to appear at the Hearing is, in the present case, justified and that there are exceptional circumstances that warrant keeping Mr. Treviño's witness statements on the record. The Respondent emphasizes that separate evidence – already on the record – supports Mr. Treviño's statements.
4. The Claimants argue that the present circumstances do not justify Mr. Treviño's absence from the Hearing. If Mr. Treviño has effectively chosen to withdraw his participation in all matters involving the Mexican government, then, according to the Claimants, the Respondent would lack his consent to continue to use his witness statements in this proceeding. The Claimants understand that allowing the witness statements to remain on the record would violate Claimants' due process rights, in the sense of making it impossible for them to cross-examine a key witness presented by the Respondent at the Hearing.

III. The Tribunals Analysis

5. The Tribunal recalls that, as a matter of principle – as reflected in the IBA Rules on Taking Evidence – when a witness fails to appear at the Hearing, it makes sense to disregard that witnesses' testimony. The Tribunal of course accepts that, exceptionally, specific and established circumstances may justify the non-appearance of a witness. However, in such cases, the Tribunal may only consider a request to keep witness statements on the record when doing so would not violate a Party's right to present its case.
6. In the present case, the Tribunal considers that the Respondent has not presented sufficient elements to justify Mr. Treviño's absence during the Hearing. The Tribunal emphasizes that the principles of fairness and equality of arms cannot be ignored in deciding on such a request and that keeping the witness statements on the record would significantly affect the Claimants'

procedural rights. The Tribunal takes note of the Respondent's position that the separate evidence, already on the record, supports Mr. Treviño's statements.

IV. Order

7. Accordingly, the Tribunal rejects the Respondent's request that Mr. Treviño's two witness statements remain on the record.

On behalf of the Tribunal,

[Signed]

Professor Diego P. Fernández Arroyo
President of the Tribunal
Date: 18 April 2022
Seat of the arbitration: Toronto, Canada