IN THE MATTER OF
AN ARBITRATION UNDER THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Alicia Grace; Ampex Retirement Master Trust; Apple Oaks Partners, LLC; Brentwood Associates Private Equity Profit Sharing Plan; Cambria Ventures, LLC; Carlos Williamson-Nasi; 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; 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.

United Mexican States

Respondent

CLAIMANTS' POST-HEARING BRIEF

September 9, 2022

Juan P. Morillo
David M. Orta
Philippe Pinsolle
Gabriel F. Soledad
Dawn Y. Yamane Hewett
Alexander G. Leventhal
Serafina Concannon
Kayla A. Feld
Julianne Jaquith
Gregg Badichek
Ana Paula Luna Pino
Woo Yong Chung

Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street N.W., Suite 900
Washington, D.C. 20005
United States of America
juanmorillo@quinnemanuel.com
davidorta@quinnemanuel.com
philippepinsolle@quinnemanuel.com
dawnhewett@quinnemanuel.com

Counsel for Claimants

Orlando Pérez Gárate
General Director
Legal Consultant on International Commerce

Economy Secretariat
Calle Pachuca #189
Piso 19
Colonia Condesa
C.P. 06140
Delegación Cuauhtémoc
Ciudad de México, México
orlando.perez@economia.gob.mx
hugo.romero@economia.gob.mx

Counsel for Respondent

TABLE OF CONTENTS

Page

I. INTRODUCTION AND EXECUTIVE SUMMARY 1

II. THE FACTS ESTABLISHED FOLLOWING THE EVIDENTIARY HEARING 7

A. The Claimants' Investment In México Was A Low-Risk Investment 7

B. The Claimants Relied On México's Commitments To Support The Claimants' Investment And Not To Subject It To Corruption 12

C. Pemex Officials Commissioned The Additional Rigs While Oro Negro Operated The Initial Rigs With Great Success 16

D. After A Report To Pemex's CEO Showed That Oro Negro Paid No Bribes, Pemex Sought To Deprive Oro Negro Of Funds 21

E. As Oro Negro Experienced Payment Issues With Pemex, Individuals Close to Mexican Officials Offered To "Fix" Those Issues Through Corruption 24

F. Seamex (And Other Pemex Operators) Received Better Treatment Than Oro Negro And There Is No Commercial Justification For That Treatment—The Only Credible Explanation Is That They Paid to Play 30

G. In 2017, Mexican Officials Improperly Engaged In Secret Discussions With Oro Negro's Bondholders (Seamex's Owners), Who Sought To Take Over The Oro Negro Rigs 39

H. Mexican Officials Within Pemex Purported To Terminate The Oro Negro Contracts After Oro Negro Refused To Participate In México's Pay-To-Play System—Not For Any Commercially Or Contractually Justifiable Reason 47

I. After Termination, Mexican Officials Within Pemex Refused To Comply With Pemex's Obligations Under The Oro Negro Contracts And With Law For No Justifiable Reason 56

J. México Used Its Police Powers To Allow The Bondholders To Seize The Oro Negro Rigs 61

K. México Has Abused—And Continues To Abuse—Its Police Powers To Intimidate and Harass the Claimants 70

III. THE TRIBUNAL'S QUESTIONS: THE LEGAL CONSEQUENCES OF THE ESTABLISHED FACTS 72

A. México's Arbitrary And Discriminatory Treatment Of The Claimants And Their Investments Breached NAFTA Articles 1105 And 1110—Whether As The Result Of Corruption Or Not (Question 3) 73

B. Corruption—The Only Explanation For México's Prejudicial Conduct—Leads To A Separate Breach Of NAFTA Articles 1105 And 1110 (Questions Nos. 1 And 2) 80

1. The Evidentiary Hearing Established That Mexican Officials Sought Bribes From Oro Negro And Retaliated Against Oro Negro When It Refused (Question 2) 81

2. The Corrupt Acts of Mexican Officials Violated México's NAFTA Obligations (Question 1)..85

C. These Breaches Are Attributable To México Alone (Question No. 4)..................92

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. This Post-Hearing Brief is submitted on behalf of the Claimants pursuant to paragraph 48 of Procedural Order No. 23.[1] In this submission, the Claimants address the four questions posed by the Tribunal on May 18, 2022.[2] Those four questions raise three distinct issues:

I. **Abuse of Power** (Question 3): What is the legal basis of the "abuse of power" concept and its relevance within the NAFTA?

II. **Corruption** (Questions 1 and 2): What methodology can or must the Tribunal apply in assessing the existence of a causal link between evidence of corruption and a breach of the NAFTA? And what is the interplay between a transnational public policy against corruption and a breach of the NAFTA?

III. **Attribution** (Question 4): What is the legal basis for the concept of estoppel and its relevance within the NAFTA proceedings for questions of attribution?

2. These questions track the Claimants' claims on the merits: *i.e.*, that México breached its NAFTA obligations by *inter alia* arbitrarily and discriminatorily preventing Oro Negro from accessing funds owed to it and thus forcing the company into liquidation, and also by subjecting the Claimants' investment to corruption and bribery. They also track the Claimants' assertions that México is responsible for the acts of its *empresa productiva del Estado*, Pemex (in addition to the acts of its prosecutors, tax authorities, and judges), and that México is estopped from arguing otherwise.

3. It is clear from the facts established at the Evidentiary Hearing that México breached its

---

[1] For the avoidance of doubt, all abbreviations are the same as in the Claimants' Reply except where indicated.

[2] The Claimants do not address jurisdiction or damages (which are not covered by the Tribunal's Questions). The Claimants would, of course, be obliged to do so if the Tribunal wishes to entertain submissions on those issues. In particular, the Claimants would welcome the opportunity to update their damages valuation as of the date of the Final Award.

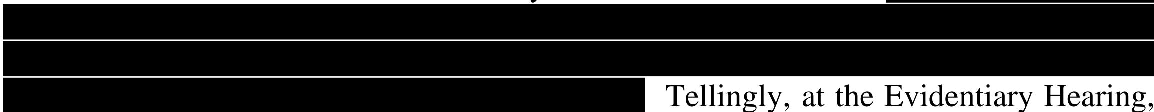
obligations under the NAFTA and must bear the consequences of those breaches:

- The Claimants' investment was low-risk. While México has argued throughout this arbitration that the Claimants assumed the risk of fluctuating oil prices, they did not. In exchange for supplying state-of-the-art rigs and experienced staff, Oro Negro received a fixed daily rate and México promised to pay that rate no matter what.
- In investing in Oro Negro, the Claimants relied on three key representations by México: (1) México, which "backed" Pemex,[3] would support the Claimants' investments; (2) México would not subject those investments to corruption; and (3) México would contract up to twelve rigs from Oro Negro. Those commitments, however, were not honored.
- Mexican officials in Pemex, through individuals they used as "*operadores*", sought bribes from Oro Negro. At the Evidentiary Hearing, México did not challenge Mr. Cañedo's testimony that Oro Negro received numerous solicitations from "*operadores*" seeking to force Oro Negro to pay bribes to Mexican officials to fix the various problems caused by those officials, including severe and continuous payment delays leading to serious liquidity problems for Oro Negro.
- Mexican officials treated Oro Negro unfavorably *after* Oro Negro repeatedly refused to engage in the corruption sought by these officials. At the Evidentiary Hearing, México's witnesses were unable to explain (1) the massive payment delays; (2) rig cancellations; and (3) drastic rate reductions to which Pemex subjected Oro Negro. There can only be one explanation: Mexican officials were seeking to force Oro Negro to participate in México's pay-to-play system.
- Seamex received *much more favorable treatment* than Oro Negro—without any justification. México's witnesses conceded that Oro Negro's main competitor, Seamex, obtained more favorable contracts from Pemex (at the same time that Pemex reneged on its promise to commission three new rigs from Oro Negro) although Seamex's rigs were inferior (as the unchallenged evidence of industry expert Duncan Weir establishes)—but México could not offer any reason why. In fact, Pemex's former CEO, Mr. González Anaya, at the Evidentiary Hearing, conceded that the Seamex contracts, with their more favorable economic terms and their bullet-proof no cancellation features, were an "*anomolia*."[4] The red flags of corruption here in the Seamex-Pemex/México relationship could not be more stark. No doubt, Seamex *was* willing to participate in México's pay-to-play system.
-

[3] English Tr. 484:17-485:7 (Spanish Tr. 534:16-535:4) (Mr. Cañedo).

[4] Spanish Tr. 1572:14-16 (English Tr. 1406:5-7) (Mr. González Anaya); *see also* Spanish Tr. 1569:1-9 (English Tr. 1402:18-1403:1-4) (Mr. González Anaya ("*P: ¿Puede explicar al Tribunal un poco más por qué el caso de Seamex era diferente? R: Sí. En que el contrato de Seamex tenía una cláusula de no terminación. Era el único contrato en esta clase de contratos.*").

- Mexican officials in Pemex terminated the Oro Negro Contracts for no justifiable reason and refused to pay Oro Negro any money owed to it. México's witnesses conceded at the Evidentiary Hearing that the justification put forward by Pemex for termination was wrong, that México was not transparent with Oro Negro or its investors for the reasons for the termination, and could not identify any justifiable basis for termination. Nor could they explain why Pemex failed to honor its obligations to make outstanding and unchallenged payments to Oro Negro or comply with court decisions. Clearly, México was seeking to advance the objectives of a more "friendly" supplier (*i.e.*, Seamex). Again, astonishingly, México's own expert tried to justify this utter lack of transparency by "opining" that México did not have an obligation to be transparent with Oro Negro or its investors about the real reasons for the termination.[6]

- México's tax, prosecution, and judiciary authorities prevented Oro Negro from accessing its funds on bogus grounds, leading to the taking of the Oro Negro Rigs. A September 2018 decision by a local judge ordering the seizure of over USD 100 million in Oro Negro's funds was based on evidence fabricated by México's tax authorities.  Tellingly, at the Evidentiary Hearing, México's criminal law expert, Mr. Paz, who testified on the supposed validity of the criminal case, was forced to concede that the basis for his conclusion that the decision was valid under Mexican law was flawed.[7]

4. In light of these established facts, there can be no doubt about México's various violations of NAFTA or the answers to the Tribunal's questions.

5. **Abuse of Power** (Question 3): México breached its obligations under the NAFTA because its treatment of the Claimants was arbitrary, discriminatory, non-transparent, and in breach of the Claimants' legitimate expectations (Article 1105) and also because México substantially deprived

---

[5] Exhibit **C-350 (Highly Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[6] Spanish Tr. 1800:5-9 (English Tr. 1598:3-7) (Mr. Asali).

[7] Spanish Tr. 2017: 6-13 (English Tr. 1773:13-18) (Mr. Paz).

the Claimants of their investments (Article 1110). This is true independent of the Claimants' showing that Mexican officials had corrupt motives.

6. Mexican officials within Pemex deprived Oro Negro of its funding for no justifiable reason (commercial or otherwise) by delaying (and then suspending) payment owed to Oro Negro, canceling standing orders for rigs from Oro Negro, and then terminating the Oro Negro Contracts without paying Oro Negro amounts owed to it. Thereafter, México's tax, criminal, and judicial authorities acted in a clear abuse of power (1) to seize Oro Negro's funds on the basis of fabricated evidence sanctioned by a compromised judge—allowing for the expropriation of Oro Negro's rigs after Oro Negro, left with no funds, entered liquidation—and (2) to open no fewer than twelve baseless, retaliatory, and abusive tax and criminal investigations on falsified grounds in a bid to prevent the Claimants from bringing claims in this arbitration.

7. México has suggested that this dispute is merely contractual—it is not. While Oro Negro entered into contracts with a State organ, Pemex, México's conduct at issue here goes well beyond a contractual breach claim and the four corners of Pemex's contracts with Oro Negro. The Claimants have proven that various state governmental agencies, acting in concert and utilizing the extensive power of the Mexican State, acted to destroy their investments in México. And, even when they were acting through Pemex, Mexican officials effectively eviscerated Oro Negro's contractual rights (for example, destroying Claimants' investments to benefit Seamex and the other Bondholders, illegally terminating the Oro Negro Contracts without paying the contractual penalty or overdue sums, and flouting court decisions ordering Pemex to continue performing its obligations so as to starve Oro Negro of cash and ensure that the Bondholders could then take the steps needed to take the Rigs) with the impunity that only an *empresa productiva del Estado* could be assured of.

8. Moreover, it is the act of México's tax authorities (who fabricated evidence), prosecutor (who brought a bogus request to seize Oro Negro's funds on the basis of that "evidence"), and corrupt State judge (who granted that request), which ultimately consummated México's expropriation by permanently depriving Oro Negro of its assets.

9. México's abuse of power went even further than that. México opened twelve criminal and tax investigations on clearly spurious grounds. Those baseless investigations and the subsequent actions of the corrupt prosecutors and the State judge who issued the orders starving Oro Negro of further cash and sanctioning the takeover of the rigs puts to rest the false suggestion that it was not México, but a private company or (companies) that destroyed the Claimants' investments.

10. **Corruption** (Questions 1 and 2): Mexican officials took these actions for corrupt motives, which constitutes an independent breach of México's obligations under NAFTA Article 1105.

11. The Tribunal must assess the copious evidence of corruption on the basis of a balance of probabilities as it does all other assertions of fact. In so doing, it may look to circumstantial evidence or "red flags" of corruption, as well as the Claimants' direct evidence of corruption. The evidence on record leaves only <u>one conclusion</u> for why Mexican officials acted in the prejudicial way that they did: corruption. For example:

- The unambiguous report commissioned by Pemex's disgraced CEO Emilio Lozoya shows that Mexican officials sought information on whether Oro Negro had engaged in corruption, and afterwards Pemex began to delay payments to Oro Negro and canceled the commissioning of new rigs from Oro Negro.
- The unchallenged accounts of solicitations from "*operadores*" confirm that the only way to "fix" Oro Negro's problems with Pemex would be to participate in México's "pay-to-play" system.
- México now concedes that Seamex was treated more favorably even though its rigs were inferior, no doubt, because Seamex maintained a close relationship with Mexican officials in Pemex (many of whom are now employed by Seamex's owners). Again, the stark admission of Mr. González Anaya during the Evidentiary Hearing that the Seamex contracts were an "*anomalia*" is a blistering red flag that proves Claimants' allegations that those who participate in the "pay-to-play" system were rewarded handsomely and those

who did not perished.[8]

- [redacted] This, of course, would further benefit the corrupt government officials who would be in a position to take further bribes from Seamex after giving it more business.
- There are also numerous indicia that the decision to seize Oro Negro's funds was obtained through corruption, just as the false evidence linking Oro Negro to money laundering was shown to be fabricated by México's tax authorities.

12. México's failure to take effective action against all of this corruption is both (1) a violation of the Claimants' legitimate expectations that México would do so and (2) a violation of the Minimum Standard of Treatment of international law (and also arbitrary and discriminatory).

13. **Attribution** (Question 4): There can be no doubt that México is responsible for Pemex's actions—just as it is responsible for the actions of its tax, prosecution, and judiciary authorities. This is not only because Pemex is considered a State organ under Mexican law, but also because Pemex and México have admitted so much in various fora, including before this Tribunal. They have argued that Pemex and its subsidiaries are "all organs of the federal government of México,"[9] that Pemex possessed an "administrative *ius variandi* power" to terminate Oro Negro's contracts notwithstanding what the contracts said;[10] that Pemex terminated those contracts for "reasons of public interest";[11] and that Pemex was "backed by the Mexican Government."[12] International law—like

[8] Spanish Tr. 1572:14-16 (English Tr. 1406:5-7) (Mr. González Anaya).

[9] *Alvarez del Castillo et al. v. P.M.I. Comercio Internacional, S.A. de C.V.*, Motion to Dismiss (Feb. 16, 2016), pg. 9 (emphasis added), **CL-91**.

[10] Spanish Tr. 1771:4-8 (English Tr. 1573:10-14) (Mr. Asali).

[11] Attached as Exhibit **C-93** is the authorization of Pemex's Board of Directors resulting in the termination of the Oro Negro Contracts. Each of Pemex's letters terminating the Oro Negro Contracts (Exhibits **C-M.1 – C-M.5**) cite to that authorization. This was confirmed by México's witnesses. *See* Spanish Tr. 1784:11-18 (English Tr. 1585:1-6) (Mr. Asali).

[12] English Tr. 474:3-13 (Spanish Tr. 534:16-535:4) (Mr. Cañedo).

all legal systems—dictates that México cannot now renege on its prior representations.

14. México must pay for the clear violations of its NAFTA obligations. The Claimants have suffered grave financial (and personal) prejudice as a result of these breaches. Only this Tribunal can ensure that this severe and pervasive injustice is reversed.

15. In this Post-Hearing Brief, the Claimants address (**II**) the facts established at the Evidentiary Hearing before (**III**) answering the Tribunal's Questions and explaining the legal consequences of the established facts.

II. THE FACTS ESTABLISHED FOLLOWING THE EVIDENTIARY HEARING

16. Below the Claimants highlight key facts that were established at the Evidentiary Hearing and cannot be disputed.

A. The Claimants' Investment In México Was A Low-Risk Investment

17. Throughout this arbitration (and at the Evidentiary Hearing), México has claimed that Oro Negro's business model was inherently risky because of (1) volatility in the price of oil;[13] (2) the *Remi Mixto* nature of its contracts (meaning that Oro Negro supplied not only rigs but also manpower);[14] and (3) Oro Negro's decision to finance the purchase of rigs, in part, through the issuance of debt.[15]

18. The Evidentiary Hearing has established that none of these assertions are true.

i. First, Oro Negro's contracts did not depend on the price of oil.

19. It was Pemex, not Oro Negro, that bore the risk of fluctuations in the price of oil in exchange for continuous access to state-of-the-art rigs and highly-experienced crews. As Oro

---

[13] SOD, ¶¶ 761-62.

[14] English Tr. 419:6-9 (Spanish Tr. 464:11-14) (Mr. Cañedo). Ms. Lozano confirmed this. Spanish Tr. 1363:19-1364:3 (English Tr. 1220:6-10) (Ms. Lozano).

[15] Spanish Tr. 214:9-215:1 (English Tr. 198:1-12) (México's Opening Presentation).

Negro's CEO, Gonzalo Gil, explained at the Evidentiary Hearing: "That's why we are in the services business, because <u>we don't speculate with the price of oil</u>."[16]

20. Thus, Pemex would be responsible for paying Oro Negro a <u>fixed Daily Rate</u>, defined as a price per day in US Dollars for the use of the Rigs during the defined contract period. For example, the Primus Contract provided, in its Article 3, that the contract period would be 1,030 days and, in its Article 6, that the contract price would be USD 159,000 plus tax.[17] The Daily Rate would be <u>paid regardless of whether the Rigs were used or not</u>.[18]

21. Moreover, the contracts <u>did not provide for any automatic or other adjustment to the Daily Rate based on fluctuations in the price of oil</u> or Pemex's revenue (they only provided for adjustments in Oro Negro's favor for changes in labor rates[19]). Pemex could terminate the Rig Contracts for a number of reasons—including "duly justified reasons"—however, in that case, it would have to pay a <u>penalty of the full contractual backlog</u> (the "**Liquidated Damages**" or "**Contractual Penalty**").[20]

22. <u>Second</u>, the *Remi Mixto* nature of the Oro Negro Contracts meant that Oro Negro was offering something that its competitors were not—and its contracts reflected no additional risk linked to the price of oil.

---

[16] English Tr. 542:5-6 (Spanish Tr. 591:14-16) (Mr. Gil).

[17] Oro Negro Primus Contract, Exibit **C-E.1**.

[18] While the contracts were amended to allow for suspension, this was only following amendments in 2015 and 2016 that were imposed by Pemex. *See e.g.*, June 26, 2015 Primus Contract Amendment, Exhibit **C-H.1**; June 26, 2015 Laurus Contract Amendment, Exhibit **C-H.2**; June 26, 2015 Fortius Contract Amendment, Exhibit **C-H.3**; June 26, 2015 Decus Contract Amendment, Exhibit **C-H.4**; November 14, 2016 Fortius Contract Amendment, Exhibit **C-I.1;** November 14, 2016 Decus Contract Amendment, Exhibit **C-I.2**; November 14, 2016 Impetus Contract Amendment, Exhibit **C-I.3**; November 14, 2016 Laurus Contract Amendment, Exhibit **C-I.4**; November 14, 2016 Primus Contract Amendment, Exhibit **C-I.5**.

[19] *See e.g*. Oro Negro Primus Contract, Exhibit **C-E.1**; Oro Negro Laurus Contract, Exhibit **C-E.2**; Oro Negro Fortius Contract, Exhibit **C-E.3**; Oro Negro Decus Contract, Exhibit **C-E.4**; Oro Negro Impetus Contract, Exhibit **C-E.5**.

[20] *See e.g.* Oro Negro Primus Contract, Exhibit **C-E.1**; Oro Negro Laurus Contract, Exhibit **C-E.2**; Oro Negro Fortius Contract, Exhibit **C-E.3**; Oro Negro Decus Contract, Exhibit **C-E.4**; Oro Negro Impetus Contract, Exhibit **C-E.5**; *see also* Appendix G.

23. José Antonio Cañedo-White, one of Oro Negro's founders, explained at the Evidentiary Hearing that a *Remi Mixto* contract meant that Oro Negro could "provide[] a benefit for Pemex, that they [Pemex] shouldn't carry that cost" of rig crews while, at the same time, allowing Oro Negro "to bring the best crews to manage state-of-the-art equipment."[21] This is because with the *Remi Mixto* contracts, it was Oro Negro who bore the cost of providing the specialized crews who operated the rigs, not Pemex.

24. This was in stark contrast to the established incumbents. Oro Negro's competitors were largely private, family-owned businesses that flourished in a system that focused entirely on cost and neglected technology, innovation, and efficiency.[22]

25. In creating Oro Negro, the company's sponsors—**Gonzalo Gil White**, **José Antonio Cañedo-White**, and **Carlos Williamson Nasi** (the "**Sponsors**")—sought to create a different type of Mexican rig supplier. They tapped their over-70 years of collective experience in global financial markets (at some of the world's most prestigious and successful financial institutions[23]) and deep knowledge of México's energy sector (through their company Axis Capital Management, which provided several billion USD in financing to México's energy sector)[24] to identify a key opportunity. At the time, México was undergoing the "Mexican Moment": México sought to recover its daily oil production rates and achieve reserve replenishment by contracting up to 60 new oil rigs to add to its fleet and replace older, less efficient rigs.[25]

---

[21] English Tr. 419:6-9 (Spanish Tr. 464:11-14) (Mr. Cañedo). Ms. Lozano confirmed this. Spanish Tr. 1363:19-1364:3 (English Tr. 1220:6-10) (Ms. Lozano).

[22] Reply, ¶¶ 56-59.

[23] First Gil Statement, **CWS-1**, ¶ 3-4; Second Cañedo Statement, **CWS-6**, ¶ 50; Williamson Statement, **CWS-8**, ¶ 12; English Tr. 401:13-22 (Spanish Tr. 444:3-15) (Mr. Cañedo).

[24] First Gil Statement, **CWS-1**, ¶ 3; First Cañedo Statement, **CWS-2**, ¶¶ 15; Williamson Statement, **CWS-8**, ¶ 72.

[25] English Tr. 420:4-19 (Spanish Tr. 465:15-466:12) (Mr. Cañedo); English Tr. 321:11-322:5 (Spanish Tr. 360:21-361:16) (Mr. Warren).

26. The Sponsors' business plan was straightforward—as confirmed at the Evidentiary Hearing: Oro Negro would purchase state-of-the-art oil rigs at a cost per unit of approximately USD 240 million, which it would finance through (1) USD 600 million in equity contributions from US and other experienced investors and (2) the issuing of debt on Norwegian bond markets, the world's most sophisticated offshore industry capital market.[26] At the same time, Oro Negro would acquire Todco, an established drilling company with a longstanding history.[27] This would allow Oro Negro to offer a service that most of its competitors did not: highly-experienced staff to operate the state-of-the-art rigs.[28]

27. Third, Oro Negro's debt-levels were sustainable, particularly, in light of its fixed Daily Rate contracts, provided that México, through Pemex, observed its obligations under the Rig Contracts and provided México, through Pemex and its other State organs, did not take steps to illegally benefit Oro Negro's competitors, like Seamex, or otherwise take steps to illegally obstruct or hinder Oro Negro's operations.

28. At the Evidentiary Hearing, **Frederick J. Warren**, a sophisticated investor with over a half-century of experience in equity markets, confirmed that his analysis of Oro Negro's business model led him to conclude that Oro Negro was "relatively low risk" and that its debt-level was "easily sustainable" because the "the long-term contracts that we're getting from Pemex would be sufficient to support the purchase of the Rigs and the debt levels that we were seeking, and that we could pay off the debt and have the Rigs to continue to produce attractive revenues in the future."[29]

---

[26] English Tr. 472:3-8 (Spanish Tr. 522:16-20) (Mr. Cañedo).

[27] English Tr. 504:12-14 (Spanish Tr. 555:12-14) (Mr. Gil).

[28] English Tr. 419:5-10 (Spanish 464:10-16) (Mr. Cañedo).

[29] English Tr. 375:2-12 (Spanish Tr. 413:16-414:4) (Mr. Warren) ("So, I looked at this as having an--and, as I said, when we got the five rigs, we had an annual run rate of revenue of 300 million and an EBITDA of 200 million. We had a debt load of about 750 or something; it went to 900. So, that was an easily sustainable debt level for the level of

29. Mr. Warren, who was one of the first investors in Apple Computers (today one of the world's five most-valuable companies[30]) believed that Oro Negro would be another successful investment. On the basis of this analysis, he made Oro Negro "the largest investment that I have."[31] He also recommended Oro Negro to sophisticated U.S. investors who trusted him, including the families of Thomas Watson (IBM founder) and W.R. Grace Chemicals, as Mr. Warren confirmed (the "**Investors**").[32]

30. As also explained by Mr. Cañedo at the Evidentiary Hearing, while he knew that Pemex's revenue may fluctuate with the changing price of oil, there was no reason to believe that Pemex would not honor its commitments: (1) "Pemex was Investment Grade, it had represented in the issuance of bonds that is backed by the Mexican Government"—meaning that Pemex was a reliable debtor; (2) Pemex had represented that it had "hedged most of [its] future sales"—meaning that Pemex was insulated against fluctuations in the price of oil; and (3) Pemex also represented that it had a sufficient budget for all of the contracts that it signed—meaning that it should have all cash on hand to pay those contracts.[33] This was important because Pemex's budget was not tied to oil revenues—which would go directly to the Mexican Government through a *sui generis* tax regime—but instead was approved by the Mexican Government.[34] As a result, as Mr. Cañedo

profitability we had. And we had several more years of contract value to support that. So, we could make it through these periods of declining oil price. And that's what gave me a lot of comfort for the risk level of this investment.") (emphasis added).

[30] English Tr. 318:19-319:5 (Spanish Tr. 358:1-10) (Mr. Warren).

[31] English Tr. 375:16 (Spanish Tr. 414:9) (Mr. Warren).

[32] English Tr. 319:6-19 (Spanish Tr. 358:10-359:3) (Mr. Warren).

[33] English Tr. 474:3-484:19 (Spanish Tr. 524:10-534:16) (Mr. Cañedo); *see also* English Tr. 486:19-487:5 (Spanish Tr. 536:12-21) (Mr. Cañedo); Oro Negro Decus Contract, Exhibit **C-E.4**.

[34] *See e.g.*, Petróleos Mexicanos Law, Official Journal of the Federation (Aug. 11, 2014), **CL-0083**, Art. 100 ("*Petróleos Mexicanos y sus empresas productivas subsidiarias* […] *se sujetarán sólo al balance financiero y al techo de gasto de servicios personales que, a propuesta de la Secretaría de Hacienda y Crédito Público apruebe el Congreso de la Unión, así como al régimen especial en materia presupuestaria previsto en el presente Capítulo*."); Art. 101

explained, "there was nothing related to oil prices" nor "to the solvency of the issuer of the Contract."[35]

B. The Claimants Relied On México's Commitments To Support The Claimants' Investment And Not To Subject It To Corruption

31. The Claimants also invested in Oro Negro (and in México) because México promised to support the Claimants' investment and not subject the investment to corrupt acts, like bribery and illegal conspiracies with Oro Negro's competitors and creditors. México has claimed that Oro Negro did not rely on any representations by México.[36]

32. Following the Evidentiary Hearing, these facts can no longer be denied.

33. First, México committed expressly to support the Claimants' investment in México.

34. In a "two hours one-on-one off to the side"[37] conversation during a 2011 dinner, Pemex's CEO Juan José Suárez Coppel assured Mr. Warren of "the commitment […] of the Mexican Government to fund this major program"[38] – *i.e.*, México's bid to increase its daily production rate by contracting new, more efficient rigs. He also confirmed that Mr. Suárez "committed" to contracting 20% of the 60 new rigs that were needed.[39] Mr. Cañedo also confirmed that multiple sources within Pemex made the same representations.[40]

("*En la elaboración de su presupuesto anual, Petróleos Mexicanos y sus empresas productivas subsidiarias observarán lo siguiente: […] La Secretaría de Hacienda y Crédito Público comunicará a Petróleos Mexicanos, a más tardar el 15 de junio, la estimación preliminar de las variables macroeconómicas para el siguiente ejercicio fiscal.*").

[35] English Tr. 474:7-474:19 (Spanish Tr. 524:15-525:5) (Mr Cañedo).

[36] Spanish Tr. 290:18-22 (English Tr. 261:10-12) (México's Opening Presentation).

[37] English Tr. 321:12 (Spanish Tr. 360:22) (Mr. Warren).

[38] English Tr. 321:13-15 (Spanish Tr. 360:21-361:4) (Mr. Warren).

[39] English Tr. 321:21-322:5 (Spanish Tr. 361:11-16) (Mr. Warren) ("And we talked about what share of that 60 might be appropriate for Oro Negro, and he said he thought about 20 percent of that would be appropriate and that they would be committed to. And that seemed to be a good number consistent with what Oro Negro was liking to do or wanted to do.").

[40] English Tr. 420:11-421:5 (Spanish Tr. 466:1-21) (Mr. Cañedo) ("Now, in the Board, the information regarding Pemex representations came from different sources. Management--obviously, Mr. Gil--provided information from

35. This was only logical. México was in desperate need of the types of high-quality rigs that Oro Negro could provide and could not find any. By the time Oro Negro secured commitments for its rigs, Pemex had carried out 17 public tenders to find satisfactory rigs—but all 17 failed.[41] For these reasons, México made serious commitments to Oro Negro.

36. Of course, implicit in those commitments to contract up to twelve rigs was the commitment that México would not use its sovereign powers to eviscerate Oro Negro's contract rights once contracts were signed or conspire with its creditors and chief competitor to take the rigs.

37. Second, México committed not to subject the Claimants' investments to solicitations of bribery or other corrupt acts.

38. Pemex's CEO Mr. Suárez also assured Mr. Warren that the Claimants' investment would be free from the pressures of corruption. He explained that Pemex was committed to anti-corruption practices—and, in particular, compliance with the Foreign Corrupt Practices Act ("**FCPA**") as (1) Pemex had issued bonds on the US markets (in the words of Mr. Suárez) "in full compliance with the U.S. securities laws, including all the transparency and the [F]CPA kinds of rules"[42] and (2) also planned to issue equity in the future as the "Mexican Moment" was "a big opportunity for México to transition from kind of an emerging market kind of oil and gas company to a mature market kind of country and company."[43]

39. This came against the backdrop of over two decades of international and national

---

his communications with senior officials. Manuel Olea also confirmed what he knew. Our COO in Ciudad del Carmen confirmed from the guys in the operations that they had received instructions to start contemplating the works that these Platforms were going to do in--for them. We had confirmations from Luis Ramirez Corzo that he had also been confirmed from other Pemex officials regarding this, and we had confirmation from the representative of Temasek, who had a very close relationship with a person by the name of Mario Beauregard, who I believe was the CFO of Pemex at the time, who also confirmed that he had received from him that information.").

[41] English Tr. 540:10-541:3 (Spanish Tr. 589:19-590:14) (Mr. Gil).

[42] English Tr. 323:9-18 (Spanish Tr. 363:1-11) (Mr. Warren).

[43] English Tr. 323:22-324:3 (Spanish Tr. 363:15-18) (Mr. Warren).

commitments to prevent corruption, culminating in the Energy Reform. In numerous treaties and pieces of domestic legislation, México had agreed, for example, to punish bribery[44] and to imprison public servants and others who engaged in corrupt practices.[45] Moreover, México promised that the Energy Reform was "*un paso decidido rumbo a la modernización del sector energético de nuestro país*", including by seeking to "[c]*ombatir de manera efectiva la corrupción en el sector energético*" and "*sancionar a quienes realicen actos u omisiones que constituyan conductas ilícitas o prácticas indebidas, para obtener beneficios económicos ilegítimos*."[46] Pemex itself had stated in filings with U.S. regulators that "[c]ertain rules have been enacted in order to promote a culture of ethics and prevent corruption in our daily operations" and also that it had fined former officers of Pemex, including for illegally diverting funds and for not complying with budgetary laws and regulations[47]—suggesting that México was already abiding by these promises in Pemex.

40. In its contracts with Oro Negro, México, through Pemex, promised that it would not engage in corruption—on which the Claimants rightly relied. Specifically, in Declaration 3 and Article 27 of the Rig Contracts, Pemex promised not to engage in corruption:

> *3. Declaración conjunta:*
>
> *Las partes manifiestan que durante las negociaciones y para la celebración del presente Contrato se han conducido con apego a las Reglas de la Cámara de Comercio Internacional para el Combate a la Corrupción y que durante la ejecución del Contrato se comprometen a actuar entre ellas y hacia terceros, con apego a lo previsto en la cláusula "Anticorrupción".*

[44] Inter-American Convention against Corruption, Exhibit **CL-222** at 2-5.

[45] OECD Anti-Bribery Convention, Exhibit **CL-0192** at 6-10.

[46] Energy Reform – Executive Summary, https://www.gob.mx/cms/uploads/attachment/file/164370/Resumen_de_la_explicacion_de_la_Reforma_Energetica11_1_.pdf, Exhibit **C-94**, pp. 3, 22 (emphasis added).

[47] Petróleos Mexicanos, Form 20-F (2012), Exhibit **C-89B** at p. 162.

> *VIGÉSIMA SÉPTIMA.—CLÁUSULA ANTICORRUPCIÓN*
>
> ***PEP** durante la ejecución del Contrato se obliga a rechazar dinero o cualquier tipo de compensación o dádiva que pudiera predisponerle a favorecer al ARRENDADOR u otorgarle ventajas inapropiadas; así como ejecutar actos u omisiones que tuvieran por objeto o efecto evadir los requisitos o normas establecidas o simular el cumplimiento de éstas.*[48]

41. México's bankruptcy law expert, Mr. Asali, confirmed that "*Oro Negro* […] *tenía todo derecho en descansar en estas representaciones por parte del Estado y de Pemex que iban a cumplir con estas obligaciones de anticorrupción y que iban a abstenerse de cualquier conducta que pudiera ser corrupta*."[49]

42. Oro Negro's Sponsors had experience doing business in México (and, in particular, in México's energy sector). However, based on México's commitments, they believed that they could create a new type of energy company—as Mr. Cañedo explained at the Evidentiary Hearing:

> So, we were confident at the beginning that that was going to change. We had the representations. We saw the numbers. They were—you know, trying to get to all the big players to come in. We even had other companies trying to see that we can joint venture. We wanted to start, like, a different company with a different--we didn't want to have all the legacy of the bad practices.[50]

43. Oro Negro was founded on the belief that business could be done in México without succumbing to corruption. At the Evidentiary Hearing, México's own witness, and former Pemex CEO, José Antonio González Anaya, confirmed in an unqualified manner that this was possible. He responded "*[s]í, sin duda*" to the question of whether *"[s]e puede hacer negocios en México prescindiendo de la corrupción.*"[51]

44. These promises were critical not only to the Sponsors' decision to create Oro Negro, but

---

[48] *See e.g.*, Oro Negro Primus Contract, Exhibit **C-E.1**, p. 5, Art. 27 (emphasis added).

[49] Spanish Tr. 1778:6-14 (English Tr. 1579:14-20) (Mr. Asali).

[50] English Tr. 487:18-488:2 (Spanish Tr. 537:8-537:15) (Mr. Cañedo) (emphasis added).

[51] Spanish Tr. 1589:16-22 (English Tr. 1421:4-9) (Mr. González Anaya).

also to the Investors' decision to commit significant capital to the project. At the Evidentiary Hearing, Mr. Warren confirmed that the Investors decided to invest based on his own strong recommendation, which, itself, was based on the assurances that were made to him. He also confirmed that he would not have invested nor would he have invited the other U.S. investors to invest in México but for these commitments that were made to him.[52]

C. Pemex Officials Commissioned The Additional Rigs While Oro Negro Operated The Initial Rigs With Great Success

45. The Claimants have explained that, after Pemex committed to contract up to 12 rigs, Oro Negro ordered five initial rigs—the *Primus*, *Laurus*, *Decus*, *Fortius*, and *Impetus* (the "**Initial Rigs**" or the "**Oro Negro Rigs**").[53] It did so—as Oro Negro's witnesses have explained—on commitments by Mexican officials in Pemex to contract 12 initial rigs and their encouragement to order such rigs.[54] As the table below shows, contracts for those rigs (the "**Oro Negro Contracts**") were signed in parallel with, or several months after, delivery of the each rig to Oro Negro.[55]

	Primus	Laurus	Decus	Fortius	Impetus
Delivery to ON	11/16/2012	5/16/2013	3/30/2014	10/23/2013	12/30/2014
Date of Contract with Pemex	4/23/2013	4/23/2013	1/27/2014	1/13/2014	12/18/2015
Rig went into operation	6/2013	11/2013	6/2014	2/2014	5/2016

46. In addition, as Messrs. Gil, Cañedo, and Warren explained at the Evidentiary Hearing, Oro

[52] English Tr. 321:11-322:11; 323:14-324:7; 332:14-22 (Spanish Tr. 360:21-362:1; 363:5-364:1; 371:18-372:3) (Mr. Warren).

[53] English Tr. 321:2-322:11 (Spanish Tr. 360:11-362:1) (Mr. Warren); English Tr. 429:4-12 (Spanish Tr. 475:16-476:2) (Mr. Cañedo); English Tr. 540:1-541:7 (Spanish Tr. 589:11-590:16) (Mr. Gil).

[54] English Tr. 321:2-322:11 (Spanish Tr. 360:11-362:1) (Mr. Warren); English Tr. 429:4-12 (Spanish Tr. 475:16-476:2) (Mr. Cañedo); English Tr. 540:1-541:7 (Spanish Tr. 589:11-590:16) (Mr. Gil).

[55] This table is based on the information contained in Exhibits **C-E.1**-**E.5** (Oro Negro Contracts), **C-I.1**-**I.5** (2016 Amendments), and **CLEX 13** (Infield Rig Data).

Negro ordered three additional rigs—the *Supremus*, *Animus*, and *Vastus* (the "**Additional Rigs**" or the "**New Rigs**")—on the commitments of Mexican officials in Pemex to contract those rigs.

47. Commissioning the Additional Rigs from Oro Negro was only logical. México does not deny that Oro Negro provided impeccable service with the Initial Rigs. Oro Negro's performance was effectively perfect as its rigs were operational on average 99.5% of the time and Oro Negro had a superior safety record (not to mention its superior financial results).[56] While México suggested that Oro Negro's management had "*una falta de experiencia*" and that its management "*ordenaron la construcción de nuevas plataformas sin considerar la volatilidad del propio mercado*,"[57] that is wrong. In support, México offers two uncompelling arguments. First, México's suggestion that the departure of Ares (a major US private equity fund) and Temasek (a Singaporean state investment fund) from Oro Negro in 2015 proves this[58] ignores Mr. Warren's explanation at the Evidentiary Hearing, that their departure was due to "an extortion demand" by a Temasek representative (leading to the departure of Temasek) and Ares' discomfort with the situation.[59] Second, México seeks to distort an email from summer 2017, in which Mr. Warren complained that management was not providing him with all financial reports.[60] However, at the Evidentiary Hearing, Mr. Warren explained that this email came during exceptional circumstances: "the Company management was extraordinarily busy on the topics of [2017 amendment] negotiations, and the amount of information that we were getting was kind of limited

---

[56] Second Gil Statement, **CWS-5**, ¶ 17; PDF Showing Uptime Percentage Per Rig (*Primus, Laurus, Fortius, Decus, Impetus*) (2013-2016), Exhibit **C-290**.

[57] See Spanish Tr. 214:9-20 (English Tr. 198:1-13) (México's Opening Presentation).

[58] English Tr. 548:9-14 (Spanish Tr. 597:20-598:6) (Mr. Gil).

[59] English Tr. 362:9-363:8 (Spanish Tr. 399:7-400:6) (Mr. Warren).

[60] English Tr. 339:8-14 (Spanish Tr. 377:13-17) (Mr. Warren).

at the Board level because things were moving so fast and were so chaotic."[61]

48. At the Evidentiary Hearing, México also alleged that there was no "*obligación de Pemex de contratar las plataformas específicamente de Oro Negro*" and that "*no hay ni un solo documento que apoye*" any representations.[62] However, that too is wrong.

49. First, Oro Negro's witnesses have confirmed that México made express commitments. They explained that those officials in Pemex (who "never communicated in writing") "were urging us to be able to procure more assets for them" as Pemex "had a fleet of very old, dated assets that it needed to replace, and at the same time as it was expanding the fleet" and its "biggest concern was securing assets to be able to meet [its] production objectives."[63]

50. Not only did México fail to challenge that evidence on cross-examination at the Evidentiary Hearing, it has offered no witness evidence to rebut the Claimants' assertions.[64] It could have produced the individuals who made those representations as witnesses—such as, Rafael Aguilar (Pemex Exploración y Producción); Baudelio Prieto de la Rosa (Deputy Director of Drilling of PEP); Gustavo Hernandez (CEO of Pemex E&P); José Suárez Coppel (former Pemex CEO); Javier Hinojosa (Chief of Staff of the CEO of Pemex E&P)—but chose not to. This is because those individuals would be obliged to admit that Mexican officials asked Oro Negro to procure the Additional Rigs and promised Oro Negro that Pemex would contract them.

51. Second, and very importantly, the contemporaneous documents show that México promised to contract the Additional Rigs and prove that México made the verbal commitments to

---

[61] English Tr. 339:15-21 (Spanish Tr. 377:17-22) (Mr. Warren).

[62] Spanish Tr. 234:15-235:2; 233:6-15 (English Tr. 214:4-10; English Tr. 213:4-10) (México's Opening Presentation).

[63] English Tr. 540:10-541:3 (Spanish Tr. 589:19-590:14) (Mr. Gil) (emphasis added).

[64] For example, Maria Luz Lozano Rodríguez admitted that she (like México's other witnesses) had no knowledge of whether any commitments were made to the investors or not. Spanish Tr. 1205:18-1206:1 (English Tr. 1084:8-12) (Ms. Lozano).

do so.

52. México's own document—a November 6, 2013 Pemex internal report—confirms that "*Oro Negro ha pasado de una empresa inexistente a una empresa que cuenta con más de 8 plataformas*" (*i.e.*, the five Initial Rigs and three Additional Rigs).[65]

53. This is consistent with the Claimants' own contemporaneous exchanges. For example, in a January 9, 2015 email, Mr. Warren confirmed that Mr. Gil "reported during our Board call this morning on his meeting [during the naming ceremony of the *Impetus*] with Gustavo Hernandez the CEO of Pemex E&P who confirmed Pemex's intention to execute contracts for our next 4 jack-up rigs [*i.e.,* the Impetus and the Additional Rigs] at a day rate in the $150,000 (sic) for a term of at least 3 years and possibly up to 5 years."[66] Likewise, in a January 14, 2015 email, Mr. Gil recounted that Javier Hinojosa, Mr. Hernandez's Chief of Staff, had confirmed what Mr. Hernandez had said at the *Impetus* naming ceremony—*i.e.,* that "the Impetus and the Vastus [one of the Additional Rigs] are confirmed for a direct assignment [*i.e.,* directly and not through a tender process] and did not rule out the same possibility for the remaining rigs under construction; but in any event, they will be absorbed by Pemex."[67] Again, at the Evidentiary Hearing, México declined to cross examine the Claimants' witnesses on these documents.

54. Finally, México's failure to produce documents that clearly exist only confirms that those documents would show that México promised Oro Negro that it would contract the Additional Rigs. In document production, the Tribunal ordered production of "[t]he documents related to Pemex's refusal to contract the New Rigs (*Supremus, Animus,* and *Vastus*)" (Request No. 1). México, however, produced no documents—even though such documents must exist—as the 2013

---

65 Pemex Report on Oro Negro (Nov. 6, 2013), Exhibit **C-267** (emphasis added).

66 Email from F. Warren to Oro Negro Board of Directors (Jan. 14, 2015), Exhibit **C-308**.

67 Email from G. Gil to Oro Negro Board of Directors (Jan. 14, 2015), Exhibit **C-307**.

report (which was conveniently not disclosed by México) confirms.

55. México does not contest that the Tribunal has the authority to draw the appropriate adverse inferences from its failure to produce documents. Article 9(5) of the IBA Rules provides that when a party "fails without satisfactory explanation to produce any Document […] the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party." NAFTA tribunals have found that it is "entirely reasonable […] to make an inference based on [a State's] failure to present evidence on [a certain] issue."[68] México failed to produce documents requested by the Claimants and granted by the Tribunal that clearly exist, based on other documentary evidence the Claimants were able to procure and testimony from its own witnesses, and failed to provide any compelling reason for why it cannot produce these documents. As detailed in their Reply and as permitted by Article 9(5) of the IBA rules, the Claimants request the appropriate adverse inferences.[69], [70]

56. While México claimed at the Evidentiary Hearing that "*el Tribunal puede estar seguro de que la demandada hizo un esfuerzo de buena fe en su búsqueda y así se lo informó*," [71] the testimony of México's own witnesses shows that this is false. México's witness, Maria Luz Lozano Rodriguez, confirmed that, prior to the start of this arbitration, Pemex's internal legal department collected all documents in a litigation hold from employees in relation to Oro Negro,

---

[68] *See e.g.*, *Feldman v. United Mexican States*, Award, ¶ 178 (Dec. 16, 2002), Exhibit **RL-0078**; *United Parcel Servs. of Am., Inc. v. Gov't of Can.*, Decision of the Tribunal Relating to Canada's Claim of Cabinet Privilege 15 (Oct. 8, 2004), ¶¶ 13-15, Exhibit **CL-282**; *Pope & Talbot Inc. v. Gov't of Can.*, Decision by Tribunal (Sept. 6, 2000), ¶¶ 1.3-1.8, Exhibit **CL-283**.

[69] *See* Reply, ¶ 127.

[70] As discussed throughout this submission, México also failed to produce documents responsive to the Claimants' Document Requests Nos. 2-3, 7-10, 11, 13, 15, 20-21, 28, 25, 26, 24-34, 42, 48, 51, which clearly do exist based on other documentary evidence the Claimants were able to procure and testimony from its own witnesses. The Claimants thus request the appropriate adverse inferences, as detailed in their Reply and requested at the Evidentiary Hearing. *See* Reply, ¶¶ 167, 184, 186, 207, 217, 225, 228, 252, 257, 268, 333, 348, 353, 356, 365, 373, 385, 392, 398, 401, 455, 872; *see also* Claimants' Opening Statement, Demonstrative Exhibit **CD-1**, at slides 110-11.

[71] Spanish Tr. 285:11-15 (English Tr. 257:5-6) (México's Opening Presentation).

which included "emails, documents, memoranda, reports, notes."[72] Clearly, the 2013 Report—and other documents—would have been amongst those. México, however, produced nothing. This failure—as well as México's failure to produce numerous other documents that, its witnesses confirmed, do exist—must draw the conclusion that those documents would be adverse to México's case.

D. After A Report To Pemex's CEO Showed That Oro Negro Paid No Bribes, Pemex Sought To Deprive Oro Negro Of Funds

57. It is beyond dispute that, in or around 2014, Oro Negro began to experience problems with Pemex. Those problems were twofold:

- **Payment Delays**: Pemex began to delay payments owed to Oro Negro for up to 200 days on average—meaning that Oro Negro would sometimes have to wait over a year for payment.[73]
- **Delay of the Additional Rigs**: Pemex delayed, and then never took the Additional Rigs, which Oro Negro had commissioned in March through June 2013[74]—after it had contracted the *Primus* and *Laurus* with Oro Negro but before contracting with Oro Negro for the *Decus*, *Fortius*, and *Impetus*.[75]

58. México has suggested that these delays were due to cash flow problems resulting from the declining price of oil.[76] However, that is wrong.

59. First, as Mr. Cañedo explained at the Evidentiary Hearing, payment delays began "way before anything happened to the oil price."[77]

60. Second, México's claim is inconsistent with the fact that Mexican officials commissioned five new rigs from Seamex at the same time. If it was *really* facing cash flow issues, it would not

[72] Spanish Tr. 1235:13-16 (English Tr. 1110:2-5) (Ms. Lozano).

[73] *See e.g.*, English Tr. 470:6-15 (Spanish Tr. 520:15-521:5) (Mr. Cañedo); English Tr. 591:15-592:14 (Spanish Tr. 642:13-643:17) (Mr. Gil); First Gil Statement, **CWS-1**, ¶67; Second Gil Statement, **CWS-5**, ¶62.

[74] Exhibit **C-114** - **C-122** are the three construction contracts and their amendments.

[75] Exhibits **C-E.1**-**E.5**.

[76] English Tr. 189:15-190:6(Spanish Tr. 204:6-205:1) (México's Opening Presentation).

[77] English Tr. 469:9-11 (Spanish Tr. 519:17-19) (Mr. Cañedo).

have done so.

61. Third, and in any event, Pemex's reduced revenues should not have caused any delays in payment to Oro Negro because Pemex had represented that it had sufficient financial reserves to pay Oro Negro.[78] It did not stop Pemex from paying competitors on time—as Mr. Cañedo explained that he had learned from the Sponsors' business at Axis.[79] And it did not stop Pemex from contracting with Seamex at significantly higher day rates than those offered by Oro Negro for inferior rigs and with inexplicably favorable contractual clauses in favor of Seamex.[80] Nor did it stop Pemex from engaging in spending sprees on discretionary purchases—such as the purchase of a fertilizer company and helicopters for senior staff—which had no commercial purpose.[81]

62. When Oro Negro complained, Pemex retaliated. It prevented Oro Negro from issuing invoices by withholding signatures from Pemex officials that Oro Negro was required to obtain in order to issue the invoices, further delaying payment.[82]

63. At the Evidentiary Hearing, both Mr. Asali, México's bankruptcy law expert, and México's fact witnesses[83] agreed that Pemex must comply with its contractual obligations—"*Pemex, ya después de acordar cláusulas, obligaciones en un contrato, debería cumplir todas esas obligaciones con la parte contratante*"[84]—and that Pemex's failure to pay outstanding amounts

---

[78] English Tr. 474:3-484:19 (Spanish Tr. 524:10-534:16) (Mr. Cañedo); *see also* English Tr. 486:19-487:5 (Spanish Tr. 536:12-21) (Mr. Cañedo); Oro Negro Decus Contract, Exhibit **C-E.4**.

[79] English Tr. 470:1-5 (Spanish Tr. 520:10-14) (Mr. Cañedo).

[80] *See* Weir Expert Report, **CER-7**, Sections IV and V.

[81] English Tr. 381:7-12; 486:19–487:2 (Spanish Tr. 420:20-421:4; 536:12-18) (Mr. Cañedo).

[82] English Tr. 469:16-470:15 (Spanish Tr. 520:1-521:5) (Mr. Cañedo); First Gil Statement, **CWS-1**, ¶57; Second Gil Statement, **CWS-5**, ¶61.

[83] Spanish Tr. 1019:6-11 (English Tr. 930:3-7) (Mr. Servín); Spanish Tr. 795:11-12 (English Tr. 739:9-10) (Mr. Loustaunau).

[84] Spanish Tr. 1771:22-1772:10 (English Tr. 1574:3-11) (Mr. Asali).

was a breach of its obligations.[85] However, none of México's witnesses offered any justification for these breaches in light of the reality that they pre-date any drop in the price of oil.

64. This alone is a breach of México's obligations under the NAFTA because it was arbitrary and discriminatory and in clear breach of México's obligations under the NAFTA. However, there can be only **one conclusion** for why México did: Mexican officials were seeking to force Oro Negro to engage in México's pay-to-play system.

65. These sudden payment and delivery delays came just after a report commissioned by Pemex's CEO, Emilio Lozoya, who had been named to the post in December 2012 by Enrique Peña Nieto when he became President of México. After almost four years at the helm of Pemex (December 2012 through February 2016), it was revealed that Mr. Lozoya had engaged in the same type of corrupt actions that led to the destruction of Oro Negro. Notably, Mr. Lozoya has admitted to awarding lucrative contracts to Brazilian construction company Odebrecht on the orders of President Peña Nieto as compensation for Odebrecht's substantial contributions to Mr. Peña Nieto's election campaign.[86] Mr. Lozoya is now in jail on corruption charges.[87] Since his arrest, Mr. Lozoya has explained that at least two of México's fact witnesses in this arbitration—Messrs. Treviño and González Anaya—knowingly engaged in corruption at Pemex.[88]

66. At some point in 2013, less than a year into his role as CEO, Mr. Lozoya commissioned an internal report about Oro Negro (the "**Lozoya Report**"), delivered to him on November 6, 2013.[89]

---

[85] Spanish Tr. 1786:16-1787:1 (English Tr. 1586:19-1587:2) (Mr. Asali).

[86] *Denuncia de Emilio Ricardo Lozoya Austin* (Aug. 11, 2020), Exhibit **C-254**.

[87] Spanish Tr. 1431:4-7 (English Tr. 1281:16-18) (Mr. González Anaya).

[88] *Denuncia de Emilio Ricardo Lozoya Austin* (Aug. 11, 2020), Exhibit **C-254**.

[89] Lozoya Report (Nov. 6, 2013), Exhibit **C-267**. México has not sought to identify who wrote the Lozoya Report or explain why it was commissioned. None of its witnesses address this, and it has produced no documents on point (including the Lozoya Report itself). However, the report speaks for itself.

The Lozoya Report concluded that Oro Negro had engaged in no corruption, but rather its success was the product of hard work, experience, and expertise:

> […] *los accionistas cuentan con un contrato privado entre ellos anti-corrupción bastante fuerte, y en la investigación realizada no se han encontrado indicios de lo contrario. Si no que ha sido una compañia que conocía la necesidad, aprovecho el know-how de sus integrantes y obtuvo beneficios extraordinarios. […] Aunque es una empresa de reciente constitución apenas un año y medio de vida ha sido un esquema planeado por casi una década* […][90]

67. The Lozoya Report ended with the cryptic promise from its authors that the group of authors "*seguirá investigando*."[91] It is no coincidence that, shortly thereafter, Oro Negro began to experience serious problems with Pemex. That statement obviously meant that Mexican officials would continue to seek to leverage Oro Negro.

68. These acts are clear breaches of México's obligations—regardless of *why* México acted in this manner. However, it is now clear after the Evidentiary Hearing why México did so: corruption.

E. As Oro Negro Experienced Payment Issues With Pemex, Individuals Close to Mexican Officials Offered To "Fix" Those Issues Through Corruption

69. When Oro Negro began to experience these problems, numerous individuals came forward offering to act as an "operator" or "*operador*"[92] to "fix" Oro Negro's problems with Pemex. Oro Negro rejected these solicitations:

- **First "Pay-to-Play" Request**: In February 2015, Andrés Caire, acquaintance of Mr. Cañedo, contacted Mr. Cañedo via email (**C-260**) seeking to speak about "*temas importantes*." Mr. Caire offered to help resolve Oro Negro's problems by "fast-tracking" payments, counseling Mr. Cañedo "not to worry about the FCPA"—a clear indication that, in order to fast-track payments, bribes would need to be paid.[93]
- **Second "Pay-to-Play" Request**: Messrs. Gil and Cañedo met with Javier Lopez Madrid,

---

[90] Pemex Report on Oro Negro (Nov. 6, 2013), Exhibit **C-267** (emphasis added).

[91] Pemex Report on Oro Negro (Nov. 6, 2013), Exhibit **C-267**.

[92] Mr. González Anaya conceded that an "*operador*" is understood to be "*un intermediario a través del cual se hace […] la solicitud de corrupción por parte de un funcionario público*." *See* Spanish Tr. 1412:13-1414:7 (English Tr. 1263:8-1264:21) (Mr. González Anaya).

[93] First Cañedo Statement, **CWS-2**, ¶¶ 19-20; Second Cañedo Statement, **CWS-6**, ¶¶75-77.

a Spanish businessman known to be close to Mr. Lozoya.[94] Mr. Lopez Madrid advised that the best way to facilitate a good relationship with Pemex was through Froylan Gracia García, the Executive Coordinator for Mr. Lozoya.[95] Mr. Gracia García has been reported to be "[e]*l mejor amigo y mano derecha de Lozoya" and "la ruta de la corrupción durante el gobierno de Lozoya*."[96]

- **Third "Pay-to-Play" Request**: In 2016, Mr. Cañedo met with an important executive at Perforadora Latina ("**Latina**"), an Oro Negro competitor, who told Mr. Cañedo that Oro Negro did not know how to "operate" with Pemex.[97] The executive suggested that Oro Negro and Latina merge and fall under Latina's control because Latina would be able to pay bribes to Pemex.[98]
- **Fourth "Pay-to-Play" Request**: At the Evidentiary Hearing, Mr. Cañedo also recounted that, after this arbitration commenced, former Mexican Attorney General Daniel Francisco Cabeza de Vaca solicited a bribe of over USD 86 million in exchange *inter alia* for reinstating Oro Negro's contracts with Pemex.[99] Mr. Cabeza de Vaca threatened: "[y]ou may think or feel that you are very safe in the United States, but remember that the Mexican Government also always has the way of reaching you and getting you back to México and bringing you back to México ."[100]

70. México has sought to challenge this evidence with two inapposite criticisms—each of which were put to rest at the Evidentiary Hearing.

71. First, México claimed that this evidence is not credible because "*en esencia, se basan en declaraciones testimoniales de los directivos de Oro Negro, quienes tienen un interés evidente en este arbitraje y obviamente en su resultado*."[101] However, México did not seek to challenge this testimony on cross-examination at the Evidentiary Hearing.

72. In any event, however, the pattern of conduct described by the Claimants' witnesses is

---

[94] First Cañedo Statement, **CWS-2**, ¶ 22; Second Cañedo Statement, **CWS-6**, ¶ 79.

[95] First Cañedo Statement, **CWS-2**, ¶ 22; Second Cañedo Statement, CWS-6, ¶ 79.

[96] *Froylan García, la ruta de la corrupción durante el gobierno de Lozoya*, GLOBAL ENERGY (May 28, 2019), Exhibit **C-262**; *El mejor amigo y mano derecha de Lozoya: Froylan Garcia*, EL TIEMPO (Aug. 19, 2020), Exhibit **C-264**.

[97] First Cañedo Statement, **CWS-2**, ¶ 21; Second Cañedo Statement, **CWS-6**, ¶ 78.

[98] First Cañedo Statement, **CWS-2**, ¶ 21; Second Cañedo Statement, **CWS-6**, ¶ 78.

[99] English Tr. 383:3-387:7 (Spanish Tr. 422:16-427:6) (Mr. Cañedo).

[100] English Tr. 385:14-18 (Spanish Tr. 425:13-17) (Mr. Cañedo).

[101] Spanish Tr. 241:11-16 (English Tr. 219:19-220:1) (México's Opening Statement).

consistent with the evidence on record of how corruption works in México, and these bribery attempts are clear "red flags" of corruption that help to establish that the corruption alleged here by Claimants undoubtedly occurred.[102] Numerous Pemex employees have confirmed to Black Cube investigators that such a system—*i.e.,* where "a company comes and offers to be the point of contact for some form of remuneration to receive better terms"—is "something that is known to be a utilized and common practice."[103] Even México's own witness, Mr. González Anaya, confirmed that an "*operador*" can be understood as "*un intermediario a través del cual se hace* […] *la solicitud de corrupción por parte de un funcionario público*."[104]

73. The Evidentiary Hearing revealed that none of México's witnesses can credibly speak to the Claimants' assertions.

74. In Procedural Order No. 27, the Tribunal decided to disregard the evidence of **Carlos Alberto Treviño Medina**, Pemex's CEO from November 2017 through November 2018, because he failed to appear at the Evidentiary Hearing. Mr. Treviño alleged that he "*nunca tuve conocimiento*"[105] of any corrupt acts, but Mr. Lozoya has accused him (as he has México's other witness, Mr. González Anaya) of taking kick-backs from Odebrecht.[106]

75. **José Antonio González Anaya**, Mr. Treviño's predecessor as CEO of Pemex from February 2016 through November 2017, has been accused by his own predecessor, Mr. Lozoya, of corrupt acts.[107] It is clear that these three men (Messrs. Lozoya, González Anaya, and Treviño) fostered a culture of corruption at Pemex. Messrs. González Anaya and Treviño (along with

---

[102] First Cañedo Statement, **CWS-2**, ¶ 18; Second Cañedo Statement, **CWS-6**, ¶¶ 68-70.

[103] SOC, Appendix H, Excerpt No. 1.

[104] *See* Spanish Tr. 1412:20-1413:11 (English Tr. 1263:13-1264:21) (Mr. González Anaya).

[105] First Witness Statement of Carlos Alberto Treviño Medina, ¶ 43.

[106] *Denuncia de Emilio Ricardo Lozoya Austin* (Aug. 11, 2020), Exhibit **C-254**, pp. 31 *et seq*.

[107] *Denuncia de Emilio Ricardo Lozoya Austin* (Aug. 11, 2020), Exhibit **C-254**, pp. 43 *et seq*.

Mr. Servín) worked together at the IMSS (*Instituto Mexicano del Seguro Social*) and Mr. González Anaya recommended Mr. Treviño to succeed him as Pemex CEO.[108]

76. In any event, Mr. González Anaya 's testimonial attempt in support of México's case (even beyond corruption) is not credible because he is likely appearing as a witness in this proceeding in exchange for assurances that the Mexican Government will not prosecute him. Mr. González Anaya conceded that the presence of his criminal counsel, Eduardo Amerena, had been *a* condition for his appearance.[109] There are, no doubt *other* conditions as well.

77. **Miguel Ángel Servín Diago**, Pemex's Head of Procurement, claimed in his witness statement that "*jamás hubiera permitido que mi equipo realizara algún tipo de conducta ilícita,*" but José Carlos Pacheco, a Pemex official from 1993 through 2017, has singled him out as being a central figure in Pemex's corruption.[110]

78. **Maria Luz Lozano Rodríguez**, a Pemex employee (*Subgerente de Contratación de Perforación y Servicios a Pozos*) who was part of a Working Group that negotiated modifications to contracts with Pemex's suppliers, conceded at the Evidentiary Hearing that she had no knowledge of, or access to, the high-level interactions that led to the commitments to contract the Additional Rigs or any negotiations with Oro Negro and other service providers.[111]

79. **Rodrigo Loustaunau Martínez**, Pemex's 31-year old Head of Litigation, had no communications with any Claimants or Oro Negro executives or employees.[112] Mr. González

---

[108] Spanish Tr. 1413:11-22 (English Tr. 1264:22-1266:6) (Mr. González Anaya).

[109] Spanish Tr. 1396:5-1397:15 (English Tr. 1249:1-1250:7) (Mr. González Anaya).

[110] SOC, Appendix H, Excerpts Nos. 5 and 6.

[111] Spanish Tr. 1203:13- 1205:7 (English Tr. 1082:11-1083:22) (Ms. Lozano).

[112] Spanish Tr. 785:12-17 (English Tr. 730:17-20) (Mr. Loustaunau) ("*P: ¿Quién fue el administrador de los contratos de Oro Negro? R: Me parece que era un gerente o subdirector de Pemex Perforación y Servicios. No recuerdo quién -- el nombre en este momento no lo recuerdo."*). Spanish Tr. 780:5-18 (English Tr. 726:10-727:1) (Mr. Loustaunau) (*P: "[D]ice, en el párrafo 7, que usted propiamente –6 propiamente, perdón, no formó parte de ese*

Anaya (who did not even know who Mr. Loustaunau was[113]) testified that Jorge Kim, Pemex's General Counsel and Mr. Loustaunau's ultimate superior, made the decision to terminate the Oro Negro Contracts and Mr. Loustaunau confirmed that he took instructions from his immediate superior, Mr. Guati Rojo, Head of Litigation at the time.[114] Pemex, however, failed to put forward either of those individuals as witnesses.

80. In reality, none of México's witnesses can provide any credible evidence on the bribery solicitations to which the Claimants' witnesses attest.

81. Second, México questioned why Oro Negro did not report the corruption solicitations to the authorities. However, the Claimants *did* report México's corrupt practices to the U.S. Department of Justice and the Securities and Exchange Commission, as the Claimants' witnesses confirmed at the Evidentiary Hearing.[115] In any event, Mr. Cabeza de Vaca's threats to "get[some Claimants] back to México,"[116] as well as the twelve criminal and tax investigations and four sets of arrest warrants issued only since the Request for Arbitration, lays bare why Oro Negro executives did not report these solicitations to Mexican authorities.

82. By contrast, México has failed to investigate the very serious allegations of corruption in Pemex and in México's tax, prosecutor, and judiciary authorities raised in this arbitration and corroborated by multiple individuals. There has been no criminal investigation. At the Evidentiary

---

grupo. ¿Verdad?—R: Así es, yo no formé parte de ese grupo. Atendí a los temas que traía el grupo cuando se vislumbraba que no había un posible arreglo o cuando se empezaban a dificultar las negociaciones, ahí se me pedía mi asesoría para explorar las cláusulas de salida que había en los contratos que se firmaron.").

[113] Spanish Tr. 1455:5-10 (English Tr. 1301:10-16) (Mr. González Anaya). This demonstrates that Mr. Loustaunau was a marginal actor.

[114] Spanish Tr. 1454:18-21 (English Tr. 1301:1-4) (Mr. González Anaya); Spanish Tr. 766:7-15 (English Tr. 714:5-15) (Mr. Loustaunau). In addition, Mr. González Anaya confirmed that he did not know who Mr. Loustaunau was, demonstrating that Mr. Loustaunau was a marginal actor in Pemex.

[115] English Tr. 380:2-382:3 (Spanish Tr. 419:9-11) (Mr. Cañedo).

[116] English Tr. 385:14-18 (Spanish Tr. 425:13-17) (Mr. Cañedo).

Hearing, Mr. Loustaunau claimed that Pemex's internal investigation of corruption found no cases of corruption,[117] but this is not credible given (1) Mr. Loustaunau's own contradictory and incredulous testimony—for example, his feigned ignorance of high-profile, public events in México (such as Mr. Lozoya's prison sentence for corruption[118]) and refusal to answer when asked whether there is a practice of leaving records of Pemex meetings[119] (amongst other inconsistencies and inaccuracies in his testimony)—as well as (2) México's failure to produce any "communications related to the solicitation of bribes from Gonzalo Gil White and José Antonio Cañedo White" (Request No. 13), although the Tribunal ordered it to do so. Those communications should have included references to any purported Pemex internal report (if not the report itself). México's failure to produce these documents is all but an admission that any such investigation, if it did exist, uncovered corruption within Pemex.

83. Importantly, México's <u>own president</u>, Andrés Manuel Lopez Obrador, has conceded that "there was '<u>a lot' of corruption at the state-owned oil company Pemex during the previous administration</u>."[120]

---

[117] First Witness Statement of Rodrigo Loustaunau Martínez, ¶ 51.

[118] Spanish Tr. 807:2-7 (English Tr. 749:7-11) (Mr. Loustaunau) ("*P: Bien. Usted sí sabe que el señor Lozoya ha sido acusado de corrupción. ¿Verdad? R: No tengo conocimiento de que haya sido acusado de corrupción. Tengo conocimiento que está atravesando procesos penales, pero no de corrupción*.").

[119] Spanish Tr. 948:12-18 (English Tr. 871:6-11) (Mr. Loustaunau) ("*Es el Tribunal que se lo pregunta: si usted puede afirmar que no hay ninguna obligación ni práctica de dejar constancia de las reuniones, del contenido. SEÑOR LOUSTAUNAU: Pues sí, no hay una obligación legal de levantar una minuta o dejar constancia de las reuniones.*").

[120] *AMLO alleges 'a lot' of corruption drove México's prior oil reforms,* WORLD OIL (July 15, 2020), Exhibit **C-249** (emphasis added).

F. Seamex (And Other Pemex Operators) Received Better Treatment Than Oro Negro And There Is No Commercial Justification For That Treatment—The Only Credible Explanation Is That They Paid to Play

84. At the Evidentiary Hearing México denied that Oro Negro's competitors received more favorable treatment.[121] But that suggestion has also been proven false after the Evidentiary Hearing.

85. Seamex leased five rigs to Pemex (the "**Seamex Rigs**") through contracts (the "**Seamex Contracts**") signed with Pemex in 2014 and 2015[122]—at the very same time that Pemex decided to delay delivery of the Additional Rigs (which it ultimately did not take). Oro Negro had articulated the terms for those Additional Rigs and those terms were far superior to Seamex's. In effect, Pemex dumped Oro Negro's Rigs and took the Seamex Rigs. This made no commercial sense.

86. Charles Duncan Weir, an offshore rig expert with over 30 years' experience in offshore jack-up drilling rigs around the world, confirmed that the Oro Negro Rigs were (1) capable of operating in deeper water; (2) employed more efficient drilling capability with additional safety features; and (3) had greater storage capacity, resulting in decreased operating costs for Pemex.[123]

87. Mr. Weir also confirmed that the Seamex Contracts included (1) higher daily rates; (2) lengthier contract tenors; (3) no clause allowing Pemex to terminate the Seamex Contracts, much less for a "duly justified reason;" (4) performance bonuses; and (5) no performance penalties.[124]

88. This meant that the Seamex Contracts were <u>substantially more valuable</u> (almost

---

[121] Spanish Tr. 232:3-13 (English Tr. 213:1-9) (México's Opening Statement).

[122] First Gil Statement, **CWS-1**, ¶ 44.

[123] Weir Expert Report, **CER-7**, ¶¶ 20-53, 63, 68.

[124] Weir Expert Report, **CER-7**, ¶¶ 63, 76, 86.

USD 1 billion more) than the Oro Negro Contracts, as Mr. Warren confirmed.[125] They also contained <u>much more favorable terms</u>. In particular, the absence of any termination provision meant that the Seamex Contracts were—in the words of Seamex's own 2014 Earnings Call—"absolutely secure."[126]

89. México does not refute this. Mr. Weir's evidence is the <u>only expert evidence</u> on record as México <u>did not submit an expert report</u> to rebut Mr. Weir's evidence and <u>declined to cross-examine</u> Mr. Weir at the Evidentiary Hearing. Mr. Weir's evidence, therefore, is <u>unchallenged</u>.

90. However, at the Evidentiary Hearing, México sought to dispel this evidence with three misguided allegations, none of which withstands scrutiny.

91. <u>First</u>, México alleged that it cannot be true that Seamex received more favorable treatment because Pemex terminated Seamex's contract for the *West Pegasus* vessel in late 2016.[127] However, at the Evidentiary Hearing, Mr. Loustaunau conceded that Pemex <u>did not actually terminate</u> the *West Pegasus* contract, but simply <u>let it lapse</u> at the "*conclusión natural del plazo*."[128] Moreover, the *West Pegasus*, as Mr. Cañedo explained, had "<u>very different equipment</u>" working in "deep waters where México produces zero barrels of oil" (not shallow waters, where almost all of México's production is located, and which is where the Oro Negro Rigs were equipped to work).[129]

92. <u>Second</u>, México claims that, in 2019, Pemex suspended payments to Seamex—as Mr. Loustaunau testified for the first time at the Evidentiary Hearing.[130] But México has produced

---

[125] English Tr. 324:17-325:1 (Spanish Tr. 364:8-15) (Mr. Warren).

[126] Seadrill Limited, Q4 2014 Earnings Call (Feb. 26, 2015), Exhibit **C-169**.

[127] Spanish Tr. 760:6-11 (English Tr. 709:2-6) (Mr. Loustaunau).

[128] Spanish Tr. 944:9-19 (English Tr. 867:10-19) (Mr. Loustaunau).

[129] English Tr. 423:18-21 (Spanish Tr. 467:13-16) (Mr. Cañedo) (emphasis added).

[130] Spanish Tr. 775:9-15 (English Tr. 722:3-9) (Mr. Loustaunau).

no evidence that any payments were suspended—much less explained *why* such payments were suspended (due to the suspicion that they were procured by corruption or otherwise).

93. Third, México argued that a table produced with Ms. Lozano's witness statement—and prepared for this arbitration[131]—shows that the Daily Rates in the Oro Negro Contracts were consistent with other suppliers' rigs.[132] However, at the Evidentiary Hearing, Ms. Lozano conceded that this table is misleading because it does not show *inter alia* (1) the type of rig (premium vs. standard), (2) the year of the rig's construction (which would have an impact on its efficiency), (3) the tenor of the contract (which would impact the total value of the contract), (4) whether the contract is a *Remi Mixto* contract or whether the price of rig staff is not included, etc.[133] Nor has México produced the underlying documents that were allegedly used to populate this report.[134] In any event, Ms. Lozano admitted that—even without this crucial information—the table shows that Seamex's Daily Rates were far greater than all other suppliers.[135]

94. The **only conclusion** that can be drawn from this discriminatory treatment—which is itself a breach of México's obligations under NAFTA Article 1105—is that México accorded more favorable treatment to Seamex because those competitors participated in México's pay-to-play system.

95. First, the terms of the Seamex Contracts are highly unusual and irregular. At the Evidentiary Hearing, Mr. González Anaya conceded that he was aware of no other Pemex contract

---

[131] Spanish Tr. 1358:6-9 (English Tr. 1215:2-6) (Ms. Lozano).

[132] *See e.g.*, Spanish Tr. 215:19-216:9 (English Tr. 199: 4-14) (México's Opening Presentation).

[133] Spanish Tr. 1358:6-1363:9 (English Tr. 1215:3-1219:20) (Ms. Lozano); Spanish Tr. 811:12-813:20 (English Tr. 753-754) (Mr. Loustaunau).

[134] Spanish Tr. 1348:17-1350:11; 1254:12-1257:3 (English Tr. 1207:3-1208:12; 1128-1129) (Ms. Lozano).

[135] Spanish Tr. 1363:3-9 (English Tr. 1219:15-20) (Ms. Lozano).

that had a termination provision like the Seamex Contracts[136] and, he tellingly called the Seamex Contracts an "*anomolia*."[137] As Mr. Servín conceded, all other Pemex contracts contained a provision like the one in the Oro Negro Contracts because all Pemex contracts are based on a model contract.[138] Seamex's should have been the same, but were not.

96. Second, unlike the Oro Negro Contracts, the Seamex Contracts were negotiated at the highest levels of Pemex—inconsistent with Pemex's own guidelines—and no doubt the result of close ties between Seamex's owners and Pemex's highest management.

97. Seamex is a joint venture between (1) Seadrill Limited ("**Seadrill**"), a company owned and controlled by John Fredrikson, a Norwegian born Cypriot shipping billionaire, and (2) Fintech Investments, Ltd. ("**Fintech**"), the investment firm of Mexican billionaire David Martínez.[139]

98. Fintech was not specialized in either the shipping or energy industry, but instead in corporate and sovereign debt. However, Mr. Martinez's ties to Pemex's CEOs Messrs. Lozoya, González Anaya, and Treviño, and even to President Peña Nieto himself, run deep. Mr. González Anaya confirmed at the Evidentiary Hearing that [redacted]

[redacted]

[redacted].[140] [redacted]

[136] Spanish Tr. 1569:3-9 (English Tr. 1402:21-1403:4) (Mr. González Anaya).

[137] Spanish Tr. 1572:14-16 (English Tr. 1406:5-7) (Mr. González Anaya).

[138] Spanish Tr. 1182:12-18 (English Tr. 1065:7-12) (Mr. Servín).

[139] Adversary Complaint, ¶ 65, Exhibit **C-140**. *See also* English Tr. 460:19-461:6 (Spanish Tr. 511:1-10) (Mr. Cañedo); Spanish Tr. 1028:6-8 (English Tr. 937:5-7) (Mr. Servín); Spanish Tr. 1397:19-1398:22 (English Tr. 1250:11-1251:12) (Mr. González Anaya).

[140] Spanish Tr. 1421:4-18 (English Tr. 1271:8-21) (Mr. González Anaya) ("[redacted] .") (emphasis added).

[141] [142] [143] Moreover, Mr. Warren stated at the Evidentiary Hearing that Pemex's former CFO told him that "David Martinez and **Lozoya** were partners early on and were able to help **Peña Nieto** to become elected to Governor of the State of México, and thereafter they were able to bring a lot of businesses and industry to the State of México, which helped Peña Nieto's candidacy for President."[144] Mr. Warren also testified that he was told by the same former CFO of Pemex that this cozy connection between **Lozoya, Martínez,** and **Peña Nieto** explained the favorable treatment that Seamex received as "this was basically the payoff" for their support.[145]

99. At the Evidentiary Hearing, Mr. Cañedo explained that "[the Seamex contracts] were negotiated directly by the CEO of Pemex, and they were negotiated very quickly,"[146] while other contracts (like Oro Negro's) were negotiated with procurement staff, as Pemex's guidelines

---

[141] Spanish Tr. 1420:9-22 (English Tr. 1270:15-1271:4) (Mr. González Anaya).

[142] Spanish Tr. 1421:1-9 (English Tr. 1271:5-12) (Mr. González Anaya) ("").

[143] *See* Spanish Tr. 1472:16-1476:9 (English Tr. 1316:15-1319:6) (Mr. González Anaya); (**Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**), Exhibit **C-347**; (**Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**), Exhibit **C-377**.

[144] English Tr. 325:15-20 (Spanish Tr. 365:10-16) (Mr. Warren) (emphasis added).

[145] English Tr. 325:22-326:1 (Spanish Tr. 365:17-19) (Mr. Warren).

[146] English Tr. 463:10-12 (Spanish Tr. 513:18-20) (Mr. Cañedo).

provide.[147] México's witnesses also confirmed this. Mr. Loustaunau, for example, conceded that he had no knowledge of any other contracts being negotiated at the CEO level without including Pemex staff.[148] Mr. Servín confirmed that "the only one that we did not negotiate was with Seadrill."[149]

100. Third, México produced no documentary, witness, or expert evidence to rebut the reality that the Seamex Contracts made no commercial sense.

101. At the Evidentiary Hearing, none of México's witnesses could explain *why* Seamex obtained such favorable contracts. Mr. Servín, for example, could provide no explanation for the exceptional no-termination clause and no examples of any other Pemex contracts with such a provision.[150] Mr. Servín also testified that, when he asked why this was, he was simply told that "*ese había sido parte de lo que se había acordado con ellos*."[151] México's witnesses repeated the same casuistic refrains: "*la situación con la compañía Seadrill era muy diferente a la situación que se tenía con Oro Negro*."[152] And again, worth repeating, Mr. González Anaya even conceded very tellingly that the Seamex Contracts were an "*anomalía*."[153]

102. Moreover, México has failed to produce any documents in relation to the Seamex Contracts—even though the Tribunal ordered production of "documents related to Pemex's contracting of five rigs from Seamex in 2014 and 2015" (Request No. 2); "documents related to

---

[147] Second Gil Statement, **CWS-5**, ¶¶ 50-51; English Tr. 463:7-16 (Spanish Tr. 513:14-514:3) (Mr. Cañedo); English Tr. 505:8-506:10 (Spanish Tr. 556:6-557:9) (Mr. Gil).

[148] Spanish Tr. 806:13-807:1 (English Tr. 748:20-749:6) (Mr. Loustaunau).

[149] Spanish Tr. 1028:18-19 (English Tr. 937:15-16) (Mr. Servín).

[150] Spanish Tr. 990:7-994:17 (English Tr. 904:22-909:4) (Mr. Servín).

[151] Spanish Tr. 1181:17-1182:1 (English Tr. 1064:14-18) (Mr. Servín).

[152] *See e.g.*, Spanish Tr. 947:3-6 (English Tr. 869:21-870:2) (Mr. Loustaunau). *See also* Spanish Tr. 1050:20-1051:4 (English Tr. 955:13-17) (Mr. Servín).

[153] Spanish Tr. 1572:14-16 (English Tr. 1406:5-7) (Mr. González Anaya).

any investigation into Oro Negro's complaints to Pemex regarding discriminatory treatment against Oro Negro and favorable treatment of other vendors, such as Seamex" (Request No. 3); "documents and communications regarding the terms of the Seamex Contracts" (Request No. 15); "documents related to the negotiations regarding the amendments to the Seamex Contracts" (Request No. 42); amongst others.

103. These documents—minutes of meetings, emails, other correspondence, internal reports, analysis, etc.—clearly do exist—as México's witnesses confirmed at the Evidentiary Hearing. For example, Ms. Lozano confirmed that "[t]here are minutes for each of the meetings in Pemex."[154] Likewise, Mr. González Anaya confirmed that México "would have had to have undertaken [] an analysis before making the decision to contract."[155] And, similarly, Mr. Servín confirmed that—with all service providers—there were minutes of meetings, negotiation tables, emails, draft contracts, and other documents.[156]

104. This is only logical. Pemex (like other Mexican state agencies) is subject to the Law on Transparency (as Mr. Servín confirmed) and is under an obligation to act with transparency.[157] Mexican officials in Pemex cannot act without leaving a trail of their decisions. Mr. Servín confirmed that these documents—for all suppliers (Seamex and others)—are within Pemex's files.[158] Clearly, responsive documents *do* exist and are adverse to México's case.

105. Finally, this is confirmed by *direct* evidence that Seamex (and other competitors) engaged in corruption.

[154] Spanish Tr. 1368:13-14 (English Tr. 1224:19-20) (Ms. Lozano).

[155] Spanish Tr. 811:15-812:4 (English Tr. 753:3-11) (Mr. Loustaunau).

[156] Spanish Tr. 1029:8-1030:10 (English Tr. 938:2-22) (Mr. Servín).

[157] Spanish Tr. 1176:21-1177:9 (English Tr. 1060:12-20) (Mr. Servín).

[158] Spanish Tr. 1028-1031 (English Tr. 937-939) (Mr. Servín).

106. At the Evidentiary Hearing, Mr. Warren explained that Pemex's former CFO, Ignacio de Quesada, confirmed that the Seamex Contracts were a quid-pro-quo for Mr. Martínez's support for President Peña Nieto: "Then they [Messrs. Lozoya and Martinez] were very involved in getting him [President Peña Nieto] elected President, and this was basically payoff for that success. Lozoya became the CEO of Pemex, and Martínez became the 50 percent owner […] of Seamex, and got those favorable terms."[159]

107. In addition, several former Pemex officials and insiders have confirmed to Black Cube investigators that Seamex obtained more favorable contracts because of Seamex's corrupt relationship with Pemex and President Peña Nieto. **Gustavo Escobar Carré**, Pemex's Chief Procurement Officer and a Pemex employee between 2013 and 2016 (when the Seamex Contracts were awarded) confirmed that the Seamex Contracts are "protected contracts" and that Mr. Martínez "was the one that pushed it [*i.e.*, the Seamex Contracts] through."[160] Mr. Escobar noted that Seamex "already had everything prepared for the arrival of five platforms with '*palomaso*,'" which, he explained, "means that you already have approval, acceptance, the agreement."[161] **José Carlos Pacheco**, a Pemex employee from 1993 and Vice President of Pemex Perforación y Servicios, confirmed that Seamex's "contracts are protected."[162] **Luis Sergio Guaso Montoya**, Pemex's Deputy Director of Strategic Planning and an employee between 1990 and 2016, stated that it was "*muy probable*" that the Seamex Contracts were more favorable because it paid bribes.[163]

---

[159] English Tr. 325:21-326:5 (Spanish Tr. 365:16-366:1) (Mr. Warren) (emphasis added).

[160] SOC Appendix H, Excerpt No. 11 and 12 (emphasis added).

[161] SOC Appendix H, Excerpt No. 13 (emphasis added).

[162] SOC Appendix H, Excerpt No. 16 (emphasis added).

[163] SOC Appendix H, Excerpt No. 1 (emphasis added).

108. While México did not challenge Mr. Warren's testimony in cross-examination, it has called the statements of Pemex employees "*opiniones subjetivas [y] comentarios vagos*," which were "*obten[ido] de manera ilegal, mediante engaños y mentiras*."[164] But that is clearly wrong. Those statements are neither subjective nor vague; they could not be more clear. Moreover, Mr. Yanus confirmed at the Evidentiary Hearing (1) that the Black Cube recordings reflect the unadulterated statements of their targets, (2) that the recordings are not made illegally as Black Cube obtains legal advice before pursuing its engagement, and (3) that Black Cube even works with a local investigation firm to ensure that it complies with local regulations.[165] México's hollow attempt to exclude this evidence only underscores how uncomfortable it is with this very real evidence of corruption in respect of Seamex.

109. Seamex is the most public example of Oro Negro's discriminatory treatment. But there are others. For example, it is public knowledge that Mexican officials paid the contractual penalty to ODH, but did not pay the penalty to Oro Negro. México, however, has declined to produce any documents on competitors despite being ordered to produce "documents related to or prepared in connection to Pemex's award of contracts to jack-up rigs above 300 feet in water depth" (Request No. 48) and "documents related to Pemex's contracts, contract suspensions, and contract amendments with all its jack-up rig providers" (Request No. 51). No doubt, those documents do exist and would show that all competitors were also treated more favorably.

110. While Seamex's relationship with Mexican officials, at first, had little to do with Oro Negro,

---

[REDACTED] Exhibit **C-310 (Highly Confidential – Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[164] Spanish Tr. 243:7-10 (English Tr. 221:5-7) (México's Opening Presentation); Spanish Tr. 205:14-18 (English Tr. 190:19-21) (México's Opening Presentation).

[165] English Tr. 621:19-622:22; 623:17-19; 627:14-18; 628:2-11 (Spanish Tr. 678:2-679:10; 680:4-6; 683:13-17; 684:1-9) (Mr. Yanus).

Seamex's desire to take over the Oro Negro Rigs aligned with the desire of Mexican officials in Pemex to get rid of Oro Negro and replace it with a rig supplier that would participate in Pemex's pay-to-play system.

G. In 2017, Mexican Officials Improperly Engaged In Secret Discussions With Oro Negro's Bondholders (Seamex's Owners), Who Sought To Take Over The Oro Negro Rigs

111. At the Evidentiary Hearing, México's witnesses conceded that it would be improper and irregular for Mexican officials in Pemex (1) to seek to impose rate reductions that would lead to Oro Negro's insolvency and (2) to engage in secret discussions with Oro Negro's Bondholders (who were also owners of Oro Negro's competitor, Seamex) to coordinate against the interests of Oro Negro.

112. Mr. Loustaunau conceded that, under the Oro Negro Contracts, Pemex could not impose rate reductions that were not accepted by the rig supplier.[166] Mr. González Anaya also conceded that it was not reasonable for Pemex to seek amendments that would result in a rig supplier going bankrupt:

> *P. ¿Estaría de acuerdo que imponer modificaciones o en insistir en modificaciones que resultarían que el proveedor de Pemex tendría que declarar bancarrota no seria razonable por parte de Pemex? ¿Si o no?*
>
> *R. Si fuera cierto, si.*[167]

113. Likewise, Mr. Servín conceded that it "*no hubiera sido lo correcto*" for Mexican officials within Pemex to discuss imposing crushing rate reductions with a rig supplier's debtors.[168] Mr. González Anaya went even further and conceded that it would be "*impropia*" and "*anormal*"

[166] Spanish Tr. 796:11-12 (English Tr. 740:6-7) (Mr. Loustaunau) ("*Desde luego que no se puede alcanzar una reducción de la tarifa sin el consentimiento del proveedor. Eso también*.").

[167] Spanish Tr. 1438:4-1439:16 (English Tr. 1288:18-1289:2) (Mr. González Anaya) (emphasis added).

[168] Spanish Tr. 1099:18-1100:1 (English Tr. 996 :1-5) (Mr. Servín).

for Mexican officials within Pemex to take actions with the Bondholders *contrary to Oro Negro's interests*:

> *[COÁRBITRO JANA:] A usted le mostraron estos -- algunos correos donde, no sé, por lo menos se hacen o se refieren a la posibilidad de haber existido actuaciones conjuntas entre funcionarios de Pemex y los bonistas a efectos de coordinarse, déjeme decirlo así, y con ello actuar en contra de Oro Negro o actuar de una manera que fuera contrario a los intereses a lo menos que Oro Negro en ese momento estaba buscando en los Tribunales. […]*
>
> *Yo le preguntaría, usted fue director general de Pemex, usted entendería que una situación como esa sería una situación altamente irregular, ¿no?*
>
> *SEÑOR GONZÁLEZ ANAYA: Sí. ¿Cuando dices irregular te refieres anormal o...?*
>
> *COÁRBITRO JANA: Impropia.*
>
> *SEÑOR GONZÁLEZ ANAYA: Sí, seguro*
>
> *COÁRBITRO JANA: Más allá de normal o no, eso no lo sé.*
>
> *SEÑOR GONZÁLEZ ANAYA: Por eso quería preguntar.*
>
> *COÁRBITRO JANA: Impropia me refiero.*
>
> *SEÑOR GONZÁLEZ ANAYA: Sí.*[169]

114. Yet, that is precisely what Mexican officials in Pemex did—as the evidence on record clearly shows.

115. First, Mexican officials in Pemex knew that the permanent rate reductions that Pemex sought to impose in 2017 (the "Proposed 2017 Amendments") would have led to Oro Negro's insolvency—but pushed through with these amendments nonetheless.

116. The Proposed 2017 Amendments would have prolonged the suspension of two of the Oro Negro Contracts and permanently reduced the Daily Rates of the three other Oro Negro Contracts by up to 27% based on a formula indexed to global average of day rates for jackup rigs (which did

[169] Spanish Tr. 1576:8-1578:20 (English Tr. 1409:10-1410:22) (Mr. González Anaya) (emphasis added).

not even distinguish between premium and conventional rigs).[170] This would not have left Oro Negro with enough funds to repay its Bondholders. Therefore, those amendments were a direct threat to the solvency—and future—of the company.

117. Pemex knew this—as Mr. Servín confirmed.[171] Oro Negro informed Pemex that it could not survive the rate reduction without debt relief[172]—and the Bondholders also informed Pemex that Oro Negro could not survive the new rate reduction.[173] However, Mexican officials ignored that information and threatened openly that Pemex would <u>seek to terminate</u> the Oro Negro Contracts.[174]

118. On the evidence of Pemex's witnesses at the Evidentiary Hearing, that was clearly improper and abnormal. However, at the same time, payment delays accelerated—applying further pressure on Oro Negro. By September 2017, Pemex owed Oro Negro <u>USD 113 million</u> in past-due, unpaid amounts—USD 90 million of which had accrued during 2017 alone.[175] This would further aggravate Oro Negro's financial situation.

119. <u>Second</u>, Mexican officials engaged in secret discussions with Oro Negro's Bondholders (the owners of Seamex) who sought to take over the Oro Negro Rigs.

---

[170] First Gil Statement, **CWS-1**, ¶ 59.

[171] Spanish Tr. 1025:21-1026:11 (English Tr. 935:8-17) (Mr. Servín) ("*P: Y también había comunicado que mantener la tasa diaria a un monto de 116.300, que es lo que estaba proponiendo Pemex, no era viable financieramente para Perforadora, a menos que Perforadora pudiera de alguna manera modificar, reestructurar su deuda con sus acreedores. R: Sí, ese era el dicho de Oro Negro. P: Y eso es lo que usted entendía y la razón por la cual usted entendía que Perforadora no estaba aceptando o no podía aceptar, tal como fue propuesto por Pemex, las modificaciones de 2017. R: Sí, así nos lo comunicó*.").

[172] First Witness Statement of Miguel Ángel Servín Diago, ¶ 57 ("*El Sr. Ercil nos informó sus preocupaciones por Perforadora Latina y Oro Negro, y mencionó que las modificaciones a los contratos de estas empresas podían generar problemas en sus obligaciones crediticias*.").

[173] Correo de ARCM del 25 de abril de 2017, Exhibit **R-167**.

[174] *See* Second Gil Statement, **CWS-5**, ¶ 67 ("In August 2017, I received a call from Luis Ramírez Corzo ('Mr. Ramírez Corzo'), the President of Oro Negro's Executive Committee and the former CEO of Pemex, who told me that a contact at Pemex had informed him it planned to terminate the Oro Negro Contracts and there was nothing Oro Negro could do to avoid this outcome.").

[175] First Gil Statement, **CWS-1**, ¶ 57.

120. By the time of the Proposed 2017 Amendments, Oro Negro's Bondholders were comprised principally of Seamex's owners. México does not deny this and it was no secret amongst the Bondholders [176]

121. It is likely that Seamex's owners used their special relationship with Mexican officials within Pemex to obtain knowledge about Oro Negro's situation and snatch up the bonds, paying between USD 243 million to USD 351 million, although they knew that, if Oro Negro defaulted on the bonds, they would be able to take possession of assets worth approximately USD 750 million—far more than what they paid for the bonds.[177]

122.

- ."[179]
-

[176] Exhibit **C-352** (**Highly Confidential – Subject to Protective Order and Procedural Order Nos. 1 and 3**).

[177] Reply ¶ 172.

[178] Exhibit **C-342** (**Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**); Exhibit **C-350** (**Highly Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**); Exhibit **C-350** (**Highly Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**); , Exhibit **C-276** (**Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**).

[179] , Exhibit **C-342** (**Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**).

[180]

[181]

- ."[182]

123.

.[183]

124.

"[184]

---

[180] Exhibit **C-350 (Highly Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[181] Exhibit **C-350 (Highly Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[182] Correo electrónico del Sr. Alp Ercil de agosto de 2017, Exhibit **R-309**.

[183] , Exhibit **C-276 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[184] , Exhibit **C-276 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[REDACTED]"[185]

125. [REDACTED]

[REDACTED]"[186] [REDACTED]

[REDACTED]"[187]

126. This explains why, in 2017, the Bondholders flatly refused to engage in any discussion regarding restructuring of Oro Negro's debt (even though the Bondholders had agreed to modification of the terms of the debt at the time of the 2015 and 2016 Amendments) and warned that "creditors are not afraid to call a default in this market."[188] It also explains why the Bondholders made "public disclosures in the capital markets, supporting the position from Pemex that represented a 30 percent permanent reduction to our contractual backlog."[189]

127. At the Evidentiary Hearing, México's witnesses offered two hopeless (and, with respect,

---

[185] [REDACTED], Exhibit **C-276 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[186] [REDACTED], Exhibit **C-351 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[187] [REDACTED], Exhibit **C-377 (Confidential – Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[188] Email from A. Ercil to G. Gil (Aug. 3, 2017), Exhibit **C-274**. *See e.g.*, [REDACTED], Exhibit **C-345 (Confidential - Subject to Protective Order)**; [REDACTED], Exhibit **C-362 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**; Letter from Bondholders (Aug. 11, 2017), Exhibit **C-146**; [REDACTED], Exhibit **C-273 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[189] English Tr. 537:9-11 (Spanish Tr. 587:7-10) (Mr. Gil).

absurd) defenses to the incontrovertible documentary evidence of México's collusion with the Bondholders and Seamex.

128. *First*, [190] [191]—alleging that the Bondholders and Seamex officers invented references to Mexican officials within Pemex, which, Mr. González Anaya claimed "happens all the time in México, and everywhere."[192] That suggestion, however, defies logic. While Pemex suppliers and others may seek to "name drop" Pemex officials to impress counterparties, it is absurd to suggest that the Bondholders and Seamex officers invented—contemporaneously over the course of several months—

129. *Second*, México's witnesses alleged that, in the meetings that, they accept, did take place, the Bondholders were actually trying to help Oro Negro.[193] However, that too is directly inconsistent with the contemporaneous documents,

130. There is only **one conclusion** that can be drawn from the existence of

---

[190] *See e.g.*, Spanish Tr. 900:13-902:16 (English Tr. 828:16-830:15) (Mr. Loustaunau) ("*P: En el párrafo 10 de su declaración, usted dice que atendió -- asistió a una reunión con los tenedores de bonos – perdón, entre Pemex y abogados del despacho Cervantes Sainz a finales de septiembre de 2017. ¿Correcto? R: SEÑOR LOUSTANAU: Sí, correcto. ... P: Y con la excepción de esa reunión, usted dice que usted nunca asistió a una reunión con tenedores de bonos o representantes de los tenedores de bonos de Oro Negro en ninguna otra ocasión. R: Así es.*").

[191] *See e.g.*, Spanish Tr. 1095:5-15 (English Tr. 992:7-13) (Mr. Servín) ("*P: Para ese entonces, Oro Negro ya había solicitado el concurso mercantil ante los tribunales mexicanos y, ante el inminente litigio que podía comenzar, dejé en claro que cualquier aspecto jurídico se tratara y se resolviera para esa vía y con la dirección jurídica, siendo esta el área pertinente de Pemex." R: Correcto. P: Y dice que no se volvió a reunir con miembros de ese despacho. R: Correcto.*").

[192] Spanish Tr. 1564:10-18 (English Tr. 1398:21-1399:4) (Mr. González Anaya).

[193] *See e.g.*, Spanish Tr. 1097:2-6 (English Tr. 993:17-20) (Mr. Servín) (stating that the Bondholders were "*abogaba por los intereses de ambas empresas, es decir, que llegáramos a un acuerdo favorable para las empresas, para que dichas empresas no cayeran en un default con sus -- con su grupo de acreedores*").

[REDACTED]

131. This is all the more apparent as México has failed to produce any documents (even in relation to meetings that it concedes took place): "documents regarding meetings between Pemex officials or their agents and the Bondholders or their agents regarding the 2017 Amendments" (Request No. 10) and communications between Pemex and the Bondholders "regarding the meetings to discuss the 2015 Amendments, 2016 Amendments, 2017 Amendments, and the Oro Negro Contract terminations" (Request No. 11).

132. Clearly, those documents exist and show that Pemex and the Bondholders colluded to push Oro Negro into default. México's witnesses have conceded that "Pemex created a comparative matrix" for suppliers;[194] employees kept electronic agendas;[195] "there are minutes for each of the meetings in Pemex";[196] they exchanged internal and external correspondence on issues of importance;[197] and "Pemex created files for each provider," including with internal reports and analysis.[198] At the Evidentiary Hearing, México's witnesses could not explain why these documents were not produced.[199] Nor can México claim that it was unable to locate responsive

[194] Spanish Tr. 1214:1-12 (English Tr. 1091:13-22) (Ms. Lozano).

[195] Spanish Tr. 1230:12-19 (English Tr. 1105:16-1106:2) (Ms. Lozano).

[196] Spanish Tr. 1368:13-14 (English Tr. 1224:19-20) (Ms. Lozano).

[197] Spanish Tr. 1367:9-11(English Tr. 1223:15-16) (Ms. Lozano).

[198] Spanish Tr. 1211:5-7 (English Tr. 1089:5-7) (Ms. Lozano). *See also* Spanish Tr. 1027:2-7; 1030:1-1033:21 (English Tr. 936:4-8; 939-941) (Mr. Servín).

[199] Mr. Loustaunau, for example, repeated the same unresponsive refrain when questioned by the Tribunal: "*Es el Tribunal que se lo pregunta: si usted puede afirmar que no hay ninguna obligación ni práctica de dejar constancia*

documents that do exist. Ms. Lozano even explained that, prior to the start of this arbitration, Pemex's internal legal department collected all documents from employees in relation to Oro Negro in a litigation hold, which included "emails, documents, memoranda, reports, notes."[200]

133. In any event, there can be no doubt that México acted on the coordination it discussed with the Bondholders. [REDACTED], Pemex terminated the Oro Negro Contracts.

H. Mexican Officials Within Pemex Purported To Terminate The Oro Negro Contracts After Oro Negro Refused To Participate In México's Pay-To-Play System—Not For Any Commercially Or Contractually Justifiable Reason

134. On October 5, 2017, Mexican officials within Pemex purported to terminate the Oro Negro Contracts. With the exception of one of the contracts,[201] Pemex claimed to do so on the basis of Article 3 of the DACS (an administrative directive entitled *Dispocisiones Administrativas de Contratacion en Materia de Adquisiciones Arrendamientos, Obras y Servicios de las Actividades Sustantivas de Caracter Productivo de Petroleos Mexicanos y Organismos Subsidiarios*). That provision, the Termination Notices claimed, created an ongoing obligation to obtain the best market offers—even during the performance of the contracts.[202] Pemex claimed that <u>Article 3 of the DACS</u> allowed it to terminate the Oro Negro Contracts because <u>Oro Negro had not accepted</u>

---

de las reuniones, del contenido. SEÑOR LOUSTAUNAU: Pues sí, no hay una obligación legal de levantar una minuta o dejar constancia de las reuniones."). Spanish Tr. 948:12-18 (English Tr. 871:3-11) (Mr. Loustaunau). *See generally,* Spanish Tr. 947:20-949:9 (English Tr. 870:16-872:1) (Mr. Loustaunau).

[200] Spanish Tr. 1235:13-16 (English Tr. 1110:2-5) (Ms. Lozano).

[201] Primus Termination Notice (Oct. 5, 2017), Exhibit **C-160**; Laurus Termination Notice (Oct. 5, 2017), Exhibit **C-161**; Fortius Termination Notice (Oct. 5, 2017), Exhibit **C-162**; Decus Termination Notice (Oct. 5, 2017), Exhibit **C-163**; Impetus Termination Notice (Oct. 5, 2017), Exhibit **C-164**.

[202] *See e.g.*, Primus Termination Notice (Oct. 5, 2017), Exhibit **C-160** ("*En el <u>artículo 3</u>, fracción tercera y último párrafo, de las DACS está previsto que <u>durante la ejecución de los contratos</u>, uno de los principios a considerarse es el de la <u>COMPETITIVIDAD</u>, referenciado como las "condiciones y criterios para promover la competencia entre /os interesados y <u>estar en posibilidad de obtener las mejores ofertas de/ mercado</u>.*") (emphasis added).

the Proposed 2017 Amendments while other suppliers had accepted similar amendments.[203] This, the Termination Notices said, was a "duly justified" reason to terminate the Oro Negro Contracts because termination was in the "*interés público*" pursuant to the DACS as Pemex would be obtaining "*el máximo valor económico*."[204]

135. México's invocation of the "*interés público*" and the DACS is proof in point that this is not a contractual dispute. México now admits that it purported to be acting in its sovereign capacity when it terminated the Oro Negro Contracts.

136. In any event, however, the evidence of México's witnesses at the Evidentiary Hearing also confirms that there was no justifiable basis for termination of the Oro Negro Contracts—which in itself is a breach of México's obligations under the NAFTA. Indeed, this was an unprecedented and draconian measure to which Pemex resorted for no other rig supplier, as Mr. González Anaya confirmed at the Evidentiary Hearing: "*Solo en el caso de Oro Negro, cuando no se llegó a un acuerdo, pues entonces ya terminamos todos. Y fue el único caso*."[205]

137. First, the DACS could not serve as a valid basis for termination of the Oro Negro Contracts.

138. While Mr. Loustaunau claimed at the Evidentiary Hearing that the DACS applies to contracts even after a contract is concluded,[206] that cannot be. Article 3 of the DACS applies to

---

[203] *See e.g.*, Primus Termination Notice (Oct. 5, 2017), Exhibit **C-160** ("*A la fecha no se ha logrado formalizar ningún acuerdo con el ARRENDADOR que permita armonizar las condiciones contractuales con el estado que guarda la industria petrolera a nivel internacional, de tal suerte que se pueda dar cumplimiento a los principios de competitividad y eficiencia que regulan el ejercicio del gasto por parte de PPS. Sin embargo con otros arrendadores de equipos de perforación análogos al del ARRENDADOR, si se han concretado renegociaciones con reducción de las tarifas del arrendamiento originalmente pactadas sin que se establezcan cargas o condicionantes inviables por la aceptación de la tarifa reducida*.") (emphasis added).

[204] *See e.g.*, Primus Termination Notice (Oct. 5, 2017), Exhibit **C-160** ("*Como corolario de lo anterior se concluye que, se actualizan causas justificadas para ejercer el derecho contractual de Terminar Anticipadamente el CONTRATO, por razones de interés público; es decir, que esa decisión le aporte el máximo valor económico, con base en criterios de legalidad, eficiencia, eficacia, economía, racionalidad, austeridad y tomando en cuenta el principio de competitividad para obtener las mejores ofertas· del mercado*.") (emphasis added).

[205] Spanish Tr. 1581:6-9 (English Tr. 1413:15-17) (Mr. Anaya).

[206] Spanish Tr. 853:6-17 (English Tr. 788:3-14) (Mr. Loustaunau).

"*procedimientos de contratación*"—*i.e.*, the process of concluding contracts—not the performance of the contracts, once concluded.[207] This is only logical. If the DACS—and, in particular, their purported obligation to obtain best rates—applied even during the performance of a contract, that would mean that Pemex could terminate a contract at will. That cannot be. Article 1797 of the Mexican Civil Code, which both experts agree applies to the Oro Negro Contracts,[208] clearly states that "[l]*a validez y el cumplimiento de los contratos no puede dejarse al arbitrio de uno de los contratantes*."[209] Tellingly, Mr. Loustaunau also confirmed that termination could not be a " *ejercicio discrecional*"[210] and that "*no se puede alcanzar una reducción de la tarifa sin el consentimiento del proveedor*."[211]

139. Second, México's witnesses conceded that there was no evidence that Pemex could obtain "*el máximo valor económico*" from other rig suppliers.

140. México never put forward any evidence that "*hay otros en el mercado que nos ofrecen precios mejores*"[212] (as Mr. Loustaunau claimed at the Evidentiary Hearing). That is clearly because no such evidence exists.

141. In any event, even if other rig suppliers had accepted analogous amendments and Oro Negro had rejected them (which is not true), that did not mean that termination would lead to "*el máximo valor económico*." Pemex would still have to pay Oro Negro the Contractual Penalty.

---

[207] *Disposiciones administrativas de contratación en materia de adquisiciones, arrendamientos, obras y servicios de las actividades sustantivas de carácter productivo de Petróleos Mexicanos y Organismos Subsidiarios (DACS), 6 de enero de 2010*, Exhibit **R-0052**.

[208] Spanish Tr. 1839:10-14 (English Tr. 1630:12-15) (Mr. Asali) ("*Ahora, me parece que, como principio contractual, es indiscutible que el 1797, la validez y el cumplimiento de los contratos no puede quedar al arbitrio de una sola de las partes*."). *See also* First Lopez Expert Report, **CER-1**, ¶53.

[209] Federal Civil Code, Official Journal of the Federation (Jun. 3, 2019), Exhibit **CL-195**.

[210] Spanish Tr. 941:13-14 (English Tr. 865:2-3) (Mr. Loustaunau).

[211] Spanish Tr. 796:10-12 (English Tr. 740:6-7) (Mr. Loustaunau).

[212] Spanish Tr. 861:20-862:4 (English Tr. 795:14-21) (Mr. Loustaunau).

Another rig supplier would therefore need to accept Daily Rates so far below Oro Negro's that it would offset that penalty. And, moreover, the Oro Negro Contracts contain no mention of the DACS. It is an internal Mexican administrative document—with no impact on the Parties' contractual relationship.

142. Third, Oro Negro, under duress by Pemex officials and seeing no other alternative at the time, actually did accept the Proposed 2017 Amendments.

143. It accepted them in principle on August 11, 2017,[213] and, on September 29, 2017, Oro Negro's legal counsel, responded to a September 20, 2017 email from Pemex with line edits to the 2017 Proposed Amendments.[214] At the Evidentiary Hearing, Mr. Gil explained that the Proposed 2017 Amendments that Pemex sent on September 20, 2017 "did not conform to the markup that we had sent to Pemex"—for example, they provided that Pemex would not pay for any time spent between locations, which would have turned on its head the take-or-pay nature of the contracts.[215] For this reason, Oro Negro did not sign the Proposed 2017 Amendments, but instead sent back a mark-up.

144. At the Evidentiary Hearing, México's witnesses were forced to admit that there was no basis for Pemex to conclude that Oro Negro did not accept the Proposed 2017 Amendments. This was merely a pretext for termination. Each of their purported justifications were shown to be false.

145. *First*, at the Evidentiary Hearing, México's witnesses denied that Oro Negro had *ever* responded to Oro Negro's September 20, 2017 email, which, they suggested, proved that Oro

---

[213] *Comunicación de Oro Negro del 11 de agosto de 2017*, Exhibit **R-228**.

[214] Email from A. Del Val to L. Sanchez and J. Ceballos (Sept. 29, 2017) p. 418, Exhibit **C-338**.

[215] English Tr. 523:7-524:11 (Spanish Tr. 573:13-574:19) (Mr. Gil).

Negro rejected the Proposed 2017 Amendments.[216] However, that is false. Oro Negro responded on September 29, 2017.[217]

146. When asked whether he was aware that Oro Negro responded to Pemex's September 20 email, Mr. Loustaunau responded "[n]*o lo recuerdo*" and "[l]*o que tengo concimiento es que pues no, nomás nunca llegaron los convenios firmados*."[218] Mr. Loustaunau's oblique response suggests that he *was* aware of the September 29 response, but simply chose not to reveal the truth.

147. *Second*, México's witnesses argued that Oro Negro had taken *too long* to respond (*i.e.*, the process to agree to the Proposed 2017 Amendments was too slow).[219] However, Ms. Lozano confirmed that the timing of negotiation and conclusion of the Proposed 2017 Amendments was fully consistent with that of the 2016 Amendments. The 2016 Amendments were agreed upon June 30, 2016, but not signed until November 14, 2016—five months later—to memorialize that agreement in principle into language acceptable to both parties.[220] Similarly, the Proposed 2017 Amendments were agreed upon in principle on August 11, 2017—just over one month before the September 29, 2017 email—and would have taken some time to finalize and sign.

---

[216] *See* Spanish Tr. 881:1-11 (English Tr. 812:19-813:4) (Mr. Loustaunau); Spanish Tr. 1169:1-11 (English Tr. 1053:13-22) (Mr. Servín); Spanish Tr. 1333:9-21 (English Tr. 1193:3-10) (Ms. Lozano); Spanish Tr. 1584:9-21 (English Tr. 1416:10-20) (Mr. González Anaya).

[217] Email from A. Del Val to L. Sanchez and J. Ceballos (Sept. 29, 2017) p. 418, Exhibit **C-338**.

[218] Spanish Tr. 881:15-17 (English Tr. 813:8-9) (Mr. Loustaunau).

[219] Spanish Tr. 1040:12-22 (English Tr. 947:6-14) (Mr. Servín) ("*Al no tener retroalimentación, les mandamos para formalización los convenios modificatorios y no recibimos respuesta. Y después nos enteramos que habían solicitado un concurso mercantil. Y ahí nos dimos cuenta, como también lo comento en mis testimoniales, que pareciera que Oro Negro lo único que quería era ganar tiempo y no tenía ninguna intención de firmar los convenios modificatorios, y es ahí donde se toma la decisión de darle para adelante a las terminaciones anticipadas*"."); Spanish Tr. 1585:13-17 (English Tr. 1417:13-17) (Mr. González Anaya) ("*Nos habían mandado un mail en donde nos dijeron: estamos de acuerdo con las condiciones. Y pasaron no sé, dos o tres meses, ya esa parte no la recuerdo, que no firmaron. Entonces, pues engañado estaba*").

[220] Spanish Tr. 1339:10-1340:1 (English Tr. 1198:11-21) (Ms. Lozano) ("*P: En 2016, Oro Negro confirmó su acuerdo con las modificaciones propuestas por Pemex por vía de una carta enviada el 30 de junio de 2016. ¿Correcto? R: Sí. P: Pero no se formalizaron los convenios modificatorios hasta el 14 de noviembre de 2016. ¿Es correcto? R: Sí. P: Entonces, entre la fecha que aceptó Oro Negro y la formalización de los convenios modificatorios, pasaron cuatro meses y medio.. ¿Correcto? R: Sí*").

148. *Third*, México's witnesses alleged that Oro Negro's bankruptcy (or *Concurso Mercantil*) filing on September 11, 2017 proved that Oro Negro would not accept the Proposed 2017 Amendments.[221] However, that too is not credible.

149. Oro Negro filed for *Concurso* on September 11, 2017 because its advisors "both on the financial side as well as on the legal side" counseled it to do so as *Concurso* was the only option that "protected all stakeholders, and was consistent with our fiduciary duty [was] to seek the protection of the Courts, to preserve the assets of the Company, and have the time to be able to have a restructuring"—as Mr. Gil confirmed at the Evidentiary Hearing.[222] Throughout the world, companies exercise their right to file for bankruptcy to maintain the *status quo*, protect assets, and re-organize their debt—just as Oro Negro did. This was all the more justified here where Mexican officials (1) had threatened to terminate the Oro Negro Contracts if Oro Negro did not accept the Proposed 2017 Amendments and (2) those amendments would have led to Oro Negro's insolvency.

150. At the same time, Oro Negro was committed to concluding the Proposed 2017 Amendments. Oro Negro stated explicitly in its *Concurso* filing that it was in the process of negotiating Daily Rates.[223] It responded to Pemex's September 20, 2017 email *after* filing for *Concurso* and sought to meet with Mexican officials in a bid to agree upon the Proposed 2017

---

[221] Spanish Tr. 1060:16-1061:4 (English Tr. 964:5-14) (Mr. Servín) ("*P: Pero internamente en Pemex la interpretación de que Oro Negro haya solicitado ser declarada en concurso mercantil se interpretó como no solo sorprendente, pero como que Oro Negro no quería firmar los convenios y no estaba seriamente participando ya en las negociaciones con Pemex. R: Sí, era sí, era claro para nosotros que una vez que Oro Negro había optado por solicitar el concurso mercantil, ya no había una opción para tener una negociación con ellos*."); Spanish Tr. 1076:11-14 (English Tr. 977:5-8) (Mr. Loustaunau) ("*R: No, lo que yo digo es que una vez que Oro Negro opta por el concurso mercantil, la decisión de Petróleos Mexicanos fue dar por terminados los contratos*. "); Spanish Tr. 1585:8-18 (English Tr. 1417:9-19) (Mr. González Anaya) ("*Entonces, a la hora que uno va sumando los elementos, no teníamos opción. Y yo hago, aunque no soy el juez, una caracterización: yo me sentí engañado, porque nos habían dicho por escrito que estaban de acuerdo. […] yo no sé si enojadísimo como se dijo en el mail, pero engañado sí me sentí*.").

[222] English Tr. 527:15-528:4 (Spanish Tr. 577:19-578:9) (Mr. Gil).

[223] *Escritura del Acta de Fe de Hechos que Otorgo a Solicitud de "Perforadora Oro Negro", Sociedad de Responsabilidad Limitada de Capital Variable* (2017), Exhibit **C-338**.

Amendments *even after* Pemex purported to terminate the Oro Negro Contracts.[224]

151. If Pemex *really* had sought to terminate the Oro Negro Contracts because of the *Concurso* filing, it would have done so on the basis of Article 17 of the Oro Negro Contracts which purports to provide that Pemex could seek to terminate if Oro Negro became subject to a *Concurso Mercantil*.[225] However, under Article 17, Pemex would have to give Oro Negro an opportunity to withdraw its *Concurso* filing[226] (not to mention that Pemex would have to pay a substantial penalty to Oro Negro).[227] Clearly, Mexican officials in Pemex did not want to take the risk of giving Oro Negro the opportunity to withdraw its *Concurso* filing and prevent termination.

152. **Only one conclusion** can be drawn from México's termination of the Oro Negro Contracts: Mexican officials decided to terminate the Oro Negro Contracts because Oro Negro refused to participate in México's pay-to-play system and sought to support the Bondholders in their bid to take over the Oro Negro Rigs and operate them under the flag of Seamex (which *was* willing to participate in this corrupt system).

153. This is confirmed by <u>Pemex's Mr. Pacheco</u> who explained that Oro Negro's failure to pay bribes was its "*principal problema*":

> *BC: Y… ¿<u>Pero pierda la empresa por no pagar coima</u>?*
>
> *P: Pues ese el problema. <u>Ese el principal problema</u>. Pero lo peor es que fueron*

---

[224] Email from A. Del Val to L. Sanchez and J. Ceballos (Sept. 29, 2017) p. 418, Exhibit **C-338**; Jun. 18, 2019 Expert Accounting Report provided by Perforadora to the PGJCDMX. Exhibit **C-77**; Email from A. Del Val to Oro Negro Executives (Sept. 29, 2017), Exhibit **C-278**, Email from M. Villegas to A. Del Val (Jan. 18, 2018), Exhibit **C-414**.

[225] Oro Negro Primus Contract, Exhibit **C-E.1**, Art. 17 ("*Rescisón adminsitrativa PEP podrá, en cualquier momento rescindir administrativamente el contrato, sin necesidad de declaración judicial o arbitral, en caso de que el ARRENDADOR se ubique en cualquiera de los quientes supuestos:* […] *b) Sea declarado o sujeto a concurso mercantil, quiebra o suspensión de pagos, o cualquier otra figura análoga*.").

[226] Spanish Tr. 1246:10-13 (English Tr. 1120:5-8) (Ms. Lozano).

[227] This provision is likely invalid and inoperative as a matter of Mexican law. Lopez Expert Report, **CER-1**, ¶33 ("*la LCM expresamente prohíbe pactar la terminación de un contrato o de cualquier forma agravar la situación de un comerciante deudor después de que un deudor presente su solicitud de concurso y mucho menos porque el deudor haya presentado una solicitud de concurso*").

> *y se declararon en bancarrota, porque a veces es una de las armas de la izquierda, pero nunca se pensaron que Pemex iba a actuar como actuó.*[228]

154. It is also confirmed by the constant coordination between Mexican officials in Pemex and the Bondholders. Pemex was able to terminate the Oro Negro Contracts before Oro Negro obtained an injunction on October 5, 2017 because [REDACTED] [229] Under Mexican law, however, a *Concurso* filing is confidential so that the party filing for *Concurso* may obtain injunctive relief (as both Messrs. Lopez Melih and Asali confirmed at the Evidentiary Hearing).[230] [REDACTED]"[231] [REDACTED]."[232]

155. Moreover, México's failure to produce documents that its witnesses admitted at the Evidentiary Hearing do exist can only be explained by the fact that such documents would confirm that Mexican officials decided to terminate the Oro Negro Contracts because Oro Negro refused to participate in México's pay-to-play system.

156. The Tribunal ordered Pemex to produce "documents related to Pemex's decision to not

---

[228] Appendix H, Excerpt No. 20.

[229] [REDACTED] 013, Exhibit **C-276** (**Confidential – Subject to Protective Order and Procedural Order Nos. 1 and 3**).

[230] *See e.g.*, Spanish Tr. 1818:15-1819:13 (English Tr. 1613:10-1614:4) (Mr. Asali); *see also* Spanish Tr. 1740:1-7 (English Tr. 1545:17-21) (Mr. Lopez Melih).

[231] [REDACTED], 013, Exhibit **C-276** (**Confidential – Subject to Protective Order and Procedural Order Nos. 1 and 3**). A press article had reported on September 19, 2017 that Oro Negro had filed for *Concurso* – a clear breach of the confidentiality of the *Concurso* filing under Mexican law – but that press article did not report that Oro Negro had sought injunctive relief. "Va Oro Negro a concurso mercantil," Reforma, 19 de septiembre de 2017, Exhibit **R-301**.

[232] [REDACTED], Exhibit **C-276**, (**Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**).

execute the 2017 Amendments" (Request No. 7) and "documents related to the Oro Negro Contract terminations" (Request No. 8). Pemex, however, produced no documents—even though those documents must exist.

157. It is simply not credible that Pemex's termination of contracts worth close to USD 1 billion was discussed only orally until it was memorialized in the Termination Notices—and that no reports or drafts were prepared. Again, México's witnesses actually confirm that responsive documents do exist. For example, Ms. Lozano admitted that Pemex created a comparative matrix of contracts, as well as an analysis of them[233] and also that the task force appointed to deal with terminations prepared minutes, and that she took personal notes at those meetings.[234] Ms. Lozano also confirmed that numerous documents referenced in a 2017 Action Plan exist.[235] None of those documents, however, were produced.

158. The reality is—as Ms. Lozano conceded—that the decision to terminate the Oro Negro Contracts had been taken well in advance of Oro Negro's September 29, 2017 response[236]—no doubt, a reflection of the fact that the *Concurso* filing and negotiation of the 2017 Amendments had little to do with termination. México's failure to produce documents that do exist leads to the conclusion that Mexican officials terminated the Oro Negro Contracts—invoking their administrative law *ius varandi* powers—to destroy Oro Negro and gift its rigs to Seamex.

159. Mexican officials' refusal to cause Pemex to comply with its obligations after termination only confirms this conclusion.

---

[233] Spanish Tr. 1214:10-12; Spanish Tr. 1246:10-13 (English Tr. 1091:20-22; English Tr. 1120:5-8) (Ms. Lozano).

[234] Spanish Tr. 1226:18-22 (English Tr. 1102:12-14) (Ms. Lozano).

[235] Spanish Tr. 1287:10-1288:13 (English Tr. 1155:4-1156:3) (Ms. Lozano).

[236] Ms. Lozano testified that the issue had been removed from the task force named to negotiate and conclude the Proposed 2017 Amendments: "*P: ¿Sabe usted que -- entonces ya me está diciendo que para esta fecha ya se había salido el asunto de las manos del grupo de trabajo? R: Sí.*" Spanish Tr. 1337: 2-5 (English Tr. 1196:6-10) (Ms. Lozano).

I. After Termination, Mexican Officials Within Pemex Refused To Comply With Pemex's Obligations Under The Oro Negro Contracts And With Law For No Justifiable Reason

160. Once the Oro Negro Contracts were terminated, Mexican officials in Pemex refused to comply with Pemex's obligations under the Oro Negro Contracts and Mexican law—starving Oro Negro of badly needed cash. After the Evidentiary Hearing, it is clear that there was <u>no justifiable reason</u> for that.

161. <u>First</u>, Mexican officials in Pemex refused to pay the Contractual Penalty owed pursuant to Article 18(b) of the Oro Negro Contracts—even though Pemex expressly stated in the Termination Notices that it would pay "*los conceptos que se enlistan en los numerales 1 y 2 del inciso b) de la cláusula décimo octava, <u>así como la INDEMNIZAClÓN</u> tasada que se acordó en el numeral 3 de dicho inciso* […]."[237] Even as of today, Pemex has not paid the Contractual Penalty.

162. At the Evidentiary Hearing, México's witnesses had <u>no justification</u> for this. When asked at the Evidentiary Hearing why Pemex did not comply with its contractual obligations to pay the penalty, Mr. González Anaya—Pemex's CEO at the time—could provide <u>no answer</u>:

> *P… La notificación que ustedes expidieron decía claramente que Pemex debía este dinero. Hasta el día de hoy, señor, yo le hago la representación que Pemex no ha pagado ni un kilo a Oro Negro después de haberle terminado los contratos anticipadamente. Esto ocurrió ya hace varios años. Estamos hablando del 3 de octubre de 2017; estamos al año 2022. ¿Usted tiene idea o le puede explicar al Tribunal el por qué Pemex no ha hecho ese pago?*
>
> *R: No tengo la menor idea.*[238]

---

[237] *See e.g.*, Exhibits **C-M.1-M.4** (emphasis added).

[238] Spanish Tr. 1508:8-19 (English Tr. 1348:14-22) (Mr. González Anaya). *See also* Spanish Tr. 1002:19-1003:12 (English Tr. 916:8-21) (Mr. Servín) ("*P: Entonces, este es el pago al cual Pemex se obligó a hacer en caso de terminación anticipada y estamos de acuerdo que eso es lo que hizo PEP. PEP o Pemex terminó anticipadamente los contratos con Oro Negro. ¿Verdad? Si eso -- usted habla de eso en su declaración. R: Correcto. P: Y repito, otra vez, usted no tiene idea de por qué este pago no se hizo, aunque se debía bajo los contratos. R: No, como le explicaba, esa ya no era responsabilidad de DOPA.*").

163. Moreover, México produced no documents to explain why it failed to do so.[239]

164. Second, Mexican officials continued to refuse to pay to Oro Negro undisputed amounts owing to it under the Oro Negro Contracts—even after a Mexican Federal Court issued four decisions ordering Pemex to pay overdue amounts to Oro Negro.[240]

165. This made no sense. While Pemex had delayed payments in the past, it had never stopped them altogether. Pemex only paid more than a year after the *Concurso* filing and only after a September 4, 2018 decision by a Federal Court, which—in an unprecedented decision that speaks to the egregious conduct of Pemex—ordered Pemex to pay or else its CEO would be thrown in jail.[241] While Pemex did pay on this occasion, it alerted the Bondholders who obtained a corrupted criminal court decision to seize those funds (*infra*, Section I(J)).

166. There is no justification for this non-payment—much less México's failure to produce documents that would show why Mexican officials decided to withhold payment. The Tribunal ordered production of "documents or communications related to Pemex's failure to pay past due amounts under the Oro Negro Contracts" (Request No. 9). Again, however, México produced no documents. Yet, responsive documents must exist. It is absurd to suggest that there are no documents—no emails, meeting minutes, reports, payment records—in relation to why Pemex declined to pay over USD 100 million to one of its most important service providers—particularly as this was the subject of ongoing litigation. The obvious reason for this non-production is that

---

[239] While counsel for México suggested at the Evidentiary Hearing that Pemex declined to pay because Oro Negro had not signed a *finiquito*, there is no evidence of that on the record – nor is that an obligation in the Oro Negro Contracts themselves. *See* Spanish Tr. 1554:3-1555:10 (English Tr. 1389:4-1390:14) (Mr. González Anaya).

[240] Order to Pemex to Pay Prior Invoice (Jun. 18, 2018), Exhibit **C-138**; *Concurso* Court Order (July 24, 2018), Exhibit **C-157**; *Concurso* Court Order (Aug. 22, 2018), Exhibit **C-158**; *Concurso* Court Order (Sept. 4, 2018), Exhibit **C-159**.

[241] *Concurso* Court Order (Sept. 4, 2018), Exhibit **C-159**; First Gil Statement, **CWS-1**, ¶ 91; Letter from Perforadora to Concurso Court (Oct. 2, 2018), Exhibit **C-394**.

México knows that responsive documents exist, but would show that México was acting to advance a strategy to take over the Rigs.

167. Third, Mexican officials flouted (1) the October 5, 2017 injunction ordering Pemex not to terminate the Oro Negro Contracts—even after October 11, 2017 and December 29, 2017 court decisions found that this injunction had retroactive effect (and therefore nullified the October 3, 2017 Termination Notices)[242]—as well as (2) a February 20, 2019 court decision finding that Pemex's termination of the Oro Negro Contracts was illegal and invalid and ordering Pemex to comply with its obligations.[243]

168. Again, while the Tribunal ordered México to produce documents that would show why Pemex failed to comply (Requests Nos. 20 and 21), it produced nothing. The reason is that these documents would show that Pemex's conduct was clearly part of a careful strategy to vitiate any rights that Oro Negro had under the Oro Negro Contracts.

169. These actions are clear breaches of México's obligations under the NAFTA. While México alleges that "*se trata de una reclamación meramente contractual*,"[244] that is wrong. Mexican officials in Pemex acted to render the Claimants contractual rights worthless. They flouted their obligations to pay Oro Negro sums that—they did not deny—were owing, with knowledge that Pemex could act with impunity. Similarly, that they repeatedly failed to comply with court orders—with no consequence—is clearly not a "*reclamación meramente contractual*" but the act of a State organ ignoring its obligations at law.

170. There can only be **one explanation** for this conduct: Mexican officials sought to prevent

---

[242] October 5, 2017 Concurso Court Order, Exhibit **C-N**; October 11, 2017 Concurso Court Order, Exhibit **C-O**; December 29, 2017 Concurso Court Order, Exhibit **C-P**.

[243] Perforadora *amparo* against *Segundo Tribunal Unitario* October 25, 2019 ruling revoking *Juez Quinto de Distrito Civil* February 20, 2019 decision (Nov. 20, 2019), Exhibit **C-371**.

[244] Spanish Tr. 202 :16-17 (English Tr. 188:8-9) (México's Opening Presentation).

Oro Negro from accessing its funds in a bid to force Oro Negro into liquidation and transfer the Oro Negro Rigs to a more "friendly" operator (like Seamex).

171. This is clear from the contemporaneous evidence of meetings between the Bondholders (not to mention México's failure to produce documents that clearly do exist).

172. [245] For example:

- [247] [248]
-

[245] *See* Exhibit **C-372 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**; Exhibit **C-280 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**; Exhibit **C-339 (Confidential - Subject to Protective Order)**; , Exhibit **C-281 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[246] , Exhibit **C-379 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[247] , Exhibit **C-379 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[248] Exhibit **C-280 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**; Exhibit **C-339 (Confidential - Subject to Protective Order)**.

[249] Exhibit **C-281 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

."[250]

173. [251] However, that denial is simply not plausible in light of the overwhelming evidence.

174. ,[252] ."[253] ,[254] ,[255] ."[256]

175. Similarly,

---

[250] , Exhibit **C-282 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[251] *See e.g.*, Spanish Tr. 920:10-921:15 (English Tr. 846:3-847:5) (Mr. Loustaunau); Spanish Tr. 1113:11-1114:2 (English Tr. 1005:6-11; 1007:5-16) (Mr. Servín); Spanish Tr. 1563:8-16 (English Tr. 1397:22-1398:5) (Mr. González Anaya).

[252] *See e.g.*, Spanish Tr. 920:10-921:15 (English Tr. 846:3-847:5) (Mr. Loustaunau); Spanish Tr. 1111:13-19; Spanish Tr. 1007:5-16 (English Tr. 1005:6-11 English Tr. 1007:5-16 (Mr. Servín).

[253] , Exhibit **C-339 (Confidential - Subject to Protective Order)**.

[254] , Exhibit **C-281 (Confidential -Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[255] Exhibit **C-281 (Confidential -Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[256] , Exhibit **C-281** (**Confidential – Subject to Protective Order and Procedural Order Nos. 1 and 3**)

.[257]

.[258]

176. México's failure to produce any responsive documents, despite the Tribunal's orders, does its credibility no favors. During document production, the Tribunal ordered México to produce documents in relation to these meetings (*supra*, para. 131). At the Evidentiary Hearing, México's witnesses confirmed that such documents *do* exist (*supra*, para. 132).

177. The incredulous approach of México's witnesses and México's failure to produce responsive documents that clearly do exist only serve to confirm what is already stated in contemporaneous documents: that Mexican officials conspired with the Bondholders in a bid to take the Oro Negro Rigs and put them under the operation of Seamex.

178. These actions—and particularly Pemex's non-payment—ultimately led to the takeover of the Oro Negro Rigs.

J. México Used Its Police Powers To Allow The Bondholders To Seize The Oro Negro Rigs

179. On September 25, 2018, Judge Enrique Cedillo-Garcia ("**Judge Cedillo**"), a local México City judge, issued an order to seize all of the funds in Oro Negro's bank accounts (the "**Funds Seizure Order**").[259] That decision was the result of a request by México's prosecutors, acting on the basis of the fabricated evidence that the Bondholders obtained as a result of filing a June 18,

[257] Spanish Tr. 1457:19-1458:9; Spanish Tr. 1460:8-1461:16 (English Tr. 1304:12:18; English Tr. 1306:13-22) (Mr. González Anaya).

[258] Exhibit **C-281 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[259] Seizure Order (Sept. 25, 2018), Exhibit **C-23**.

2018 criminal complaint with the México's *Procuraduria General de la Republica* ("**PGR**").[260] The PGR complaint alleged—without providing any evidence or particulars—that Oro Negro had taken more funds than it required to maintain and operate the Oro Negro Rigs, thereby decreasing the payout to the Bondholders (the "Criminal Complaint").[261] The Funds Seizure Order was based on the prosecutor's statements about an excel file (the "**Fraudulent Excel File**"), which purported to show that Oro Negro issued fake invoices to 16 sham companies (the "**Sham Companies**").[262] That file was provided to PGR by México's tax authority, the *Servicio de Administración Tributaria* ("**SAT**").[263] The Funds Seizure Order was issued despite the fact that a Mexican federal court in a September 18, 2018 decision (the "**September 18, 2018 Decision**") *rejected* the very same request that the prosecutor sought from Judge Cedillo.[264]

180. The Funds Seizure Order left Oro Negro with no cash to continue operating. As a result, on May 15, 2019, the *Concurso* Court had no choice but to order that Oro Negro turn the Oro Negro Rigs over to the Bondholders, finding that "*la comerciante* [Oro Negro] *no aporta elementos que objectivamente generen convicción de que es suficiente para mantener y proteger a la plataforma*."[265] In September 2019, the Bondholders moved the Oro Negro Rigs outside of Mexican waters.[266] Their whereabouts are today unknown.

181. At the Evidentiary Hearing, México's criminal law expert, Mr. Paz, all but conceded that the Funds Seizure Order is a corrupted decision based on fraudulent evidence—and is invalid as a

---

[260] *See* Reply ¶¶ 291-294.

[261] *See* SOC, ¶¶ 220-223; Reply, Section II.H.

[262] *See* Reply, Section II.H.

[263] *See* Reply, Section II.H.

[264] Federal Seizure Denial, Exhibit **C-76**.

[265] Rig Return Order (May 15, 2019), Exhibit **C-150**, ¶¶ 8-9.

[266] *Concurso* Order (Nov. 25, 2019), Exhibit **C-421**; *Concurso* Order (Dec. 2, 2019), Exhibit **C-422**.

matter of Mexican law.

182. First, Mr. Paz conceded that it would be "absurd" to prosecute a criminal complaint that is not well-founded.[267] The PGR Complaint had no factual basis and did not even attempt to particularize the facts of any criminal violation. On September 18, 2018, a Mexican Court rejected these allegations without reserve.[268]

183. However, rather than ignore it, México's PGR opened a criminal investigation into Oro Negro, immediately requesting tax information on Oro Negro from México's tax authority, the SAT on June 25, 2018.[269] That is an indication, according to Mr. Paz's own testimony, that the Funds Seizure Order was tainted from the start.

184. Second, the Funds Seizure Order was grossly disproportionate. Judge Cedillo ordered that over USD 100 million in Oro Negro funds be seized to cover just USD 500,000 in alleged invoices issued to the Sham Companies by Oro Negro. Mr. Paz conveniently omitted to address this in his evidence.

185. Third, Mr. Paz conceded that relying only on the oral testimony of a prosecutor (as Judge Cedillo did in this case) "*no seria apropiado*":

> *P. ¿Y es su testimonio que es suficiente ese testimonio oral de un abogado sin ninguna otra evidencia para otorgar una orden de esta naturaleza?*
>
> *R: Así solo considerado, sin ningún otro dato de prueba, sí.*
>
> *P: No sería apropiado. ¿Correcto?*
>
> *R: Correcto*[270]

186. However, Judge Cedillo confirmed that the Funds Seizure Order was based only on the

---

[267] Spanish Tr. 2003:16-21 (English Tr. 1762:4-9) (Mr. Paz).

[268] September 18 Order, Exhibit **C-176**.

[269] Sept. 21, 2018 Interview of Ricardo Contreras (the "**Contreras Interview**"), Exhibit **C-2**.

[270] Spanish Tr. 2019:10-17 (English Tr. 1775:11-17) (Mr. Paz).

oral testimony of the prosecutor.[271]

187. Fourth, Mr. Paz (1) did not deny that the Fraudulent Excel File was obtained illegally because it was obtained without a court order and (2) conceded that his conclusion that the Funds Seizure Order was valid was based on the assumption that the evidence represented to Judge Cedillo was true—which México now admits was not.

188. *First*, the transmission of any information by the SAT to the PGR was illegal as the PGR "should have gone to a court, and they should have asked the Court to ask the SAT to provide the tax information," as the Claimants' criminal law expert, Mr. Izunza, confirmed at the Evidentiary Hearing.[272] Tellingly, Mr. Paz did not deny that the sharing of confidential tax information without a court order is illegal.[273]

189. Only Mr. González Anaya—who, as Minister of Finance at the time, had responsibility for the SAT—claimed that "*el SAT está obligado a proveer la información que le pida la Procuraduría General de la República,*"[274] but Mr. González Anaya himself concedes that he is not a lawyer and has no legal basis for his self-interested statement.[275]

190. *Second*, México itself has admitted that there is no link between Oro Negro and the Sham Companies—a fact that México conveniently omitted to provide Mr. Paz, who was forced to admit that his conclusion that the Funds Seizure Order was valid was therefore based on a false assumption and is thus incorrect.[276]

---

[271] Sept. 25, 2018 Judge Cedillo's order authorizing seizure of Perforadora's account issued in the Sham Companies Investigation, Exhibit **C-23**.

[272] Spanish Tr. 1865:3-6 (English Tr. 1651:18-20) (Mr. Izunza).

[273] Mr. Paz only states that (1) the PGR may seek tax information and (2) the principle of tax secrecy is not violated if transmitted to the PGR. Spanish Tr. 1990:16-1993:17 (English Tr. 1751:10-1754:3).

[274] Spanish 1484:8-9 (English Tr. 1327:1-3) (Mr. González Anaya).

[275] Spanish 1484:7-9 (English Tr. 1326:21-22) (Mr. González Anaya).

[276] Spanish Tr. 2017:6-13 (English Tr. 1773:13-18) (Mr. Paz).

191. A March 15, 2019 report by the SAT issued <u>after</u> Mr. González Anaya left his post as Minister of Finance (the "SAT Report") confirmed that "*<u>no se localizaron antecedentes</u> de la emisión de Comprobantes Fiscales Digitales por la contribuyente PERFORADORA ORO NEGRO, S. DE R-L. DE C.V., a nombre de las empresas señaladas en el inciso a) por los ejercicios del 2015 a la fecha*."[277]

192. Likewise, the September 18, 2018 Decision found that "*de tales datos de prueba <u>no se puede establecer que las cuentas</u> respecto de las cuales se solicita el aseguramiento y que el numerario, que en teoría contienen las mismas, <u>constituyen, respectivamente, el instrumento y objeto del delito en estudio</u>*."[278]

193. Mr. Paz acknowledged that his conclusion that the order was valid was based on the assumption that the evidence underlying the order showed a link between Oro Negro and the Sham Companies:

> *P: <u>Y si hubiera sido utilizada y no ocurrió, pues el sustento de estas órdenes se cae, ¿no?</u>*
>
> *R: Esa es un hipótesis para un debate que es distinto a este.*
>
> *P: Por eso. Pero asumiendo esa hipótesis, ¿no sería esa su conclusión?*
>
> *R: <u>Sí. De acuerdo</u>.*[279]

194. However, Mr. Paz confirmed that México did not provide him with (or even make him aware of) the SAT Report or the September 18, 2018 Decision.[280] His conclusion that the Funds Seizure Order was valid therefore falls.

---

[277] SAT *Oficio* No. 500-74-02-01-02-2019-3401 (Mar. 15, 2019), Exhibit **C-471** (emphasis added).

[278] September 18 Order, Exhibit **C-176** (emphasis added).

[279] Spanish Tr. 2017: 6-13 (English Tr. 1773:13-18) (Mr. Paz) (emphasis added).

[280] Spanish Tr. 2009:8-2011:8; 2008:6-11; 2011:1-6 (English Tr. 1766:19-1768:15; 1765:22-1766:3; 1768:9-12) (Mr. Paz).

195. That alone is sufficient to show that the Funds Seizure Order—and México's taking of the Oro Negro Rigs—breached its obligations under the NAFTA.

196. Only **one conclusion** can be drawn from the suspect context of the Funds Seizure Order—which granted the prosecutor's request just days after a federal court rejected that same request out of hand: the Funds Seizure Order was obtained through corruption.

197. First, the Bondholders were represented by García González y Barradas Abogados ("**GGB**"), a law firm that—as Mr. Paz confirmed—has featured frequently in the press because its principals are currently the subject of criminal prosecution for extortion and corruption and is known to be a front for, and facilitator of, corruption.[281]

198. This appears to have been part of a concerted effort to weaponize México's criminal law procedures after Oro Negro's *Concurso* filings stymied the Bondholders' efforts to force Oro Negro to default on its bonds and cede the Rigs. [REDACTED]. [282] [REDACTED] [283]— [REDACTED]

[281] Spanish Transcript Tr. 2027:13-2028:7 (English Tr. 1782:5-21) (Mr. Paz). *See also* Spanish Tr. 1479:17-21 (English Tr. 1322:20-1323:2) (Mr. González Anaya).

[282] [REDACTED], Exhibit **C-356 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[283] [REDACTED], Exhibit **C-450 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

."[284]

[285]

199. True to its reputation, GGB harnessed the power and authority of the Mexican State to achieve the Bondholders' objectives.

200. *Second*, México and its witnesses failed to

"[286]

.

201. *Third*,

[287]

---

[284] Exhibit **C-374 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[285] Exhibit **C-451 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[286] Exhibit **C-458 (Confidential – Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[287] Exhibit **C-451 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**; , Exhibit **C-453 (Confidential - Subject to**

202. Those meetings came at consequential moments in the criminal process. It is clear that GGB was working (1) with the PGR and the SAT to improperly obtain and fabricate information and materials in relation to Oro Negro and (2) with the Mexican judge to issue orders allowing the Bondholders to take over the Rigs.

203. [288]

204. Similarly, [289] [290] [291]

205. This was no coincidence. Mr. Amerena had also acted for Tarek Abdala, the Treasurer of Veracruz, to embezzle money from public coffers using the very same Sham Companies listed in the Fraudulent Excel File.[292] In that case, GGB represented the former Governor of the Mexican

---

Protective Order and Procedural Order Nos. 1 and 3); , Exhibit **C-455 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**; Exhibit **C-457 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

[288] July 27, 2018 Request to PGR for Access by Alonso del Val Echeverria, Exhibit **C-5**; Spanish Tr. 1488:15-21 (English Tr. 1331:1-5) (Mr. González Anaya).

[289] , Exhibit **C-451 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**, p. 8. Spanish Tr. 1497:19-20 (English Tr. 1338:18-19) (Mr. González Anaya).

[290] Spanish Tr. 1898 :19-21 (English Tr. 1339:14-15) (Mr. González Anaya).

[291] , Exhibit **C-451 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**, pp. 8-9.

[292] Spanish Tr. 1502:22-1504:7 (English Tr. 1344:2-1345:3) (Mr. González Anaya).

state of Veracruz, Javier Duarte, who was also accused of using the Sham Companies to embezzle funds.[293] ██.

206. *Fourth*, Judge Cedillo is the <u>same judge</u> who issued an order on October 19, 2018 allowing the Bondholders to take control of the Oro Negro Rigs.[294] That order was not only based on the same Fraudulent Excel File, but is also highly suspect:

- The Rigs Takeover Order was based on the same evidence that México admits to be false.
- It was also disproportionate. To cover the same USD 500,000 in alleged tax liability (which was already covered by the Funds Seizure Order), Judge Cedillo ordered the seizure of the Oro Negro Rigs worth over USD 1 billion.
- Judge Cedillo also ordered México's Armed Forces to assist the Bondholders in taking the Oro Negro Rigs. This was highly irregular. Even Mr. Paz could not cite another example where México used its Armed Forces to take possession of a piece of property.[295]
- ██.[296]
- Just after rendering the Funds Seizure and Rigs Takeover Orders, Judge Cedillo was

[293] Spanish Tr. 1502:22-1504:7 (English Tr. 1344:2-1345:3) (Mr. González Anaya).

[294] *See Tribunal Superior de Justicia de la Ciudad de México*, Hearing Video (Oct. 18, 2018), Exhibit **C-427**.

[295] Spanish Tr. 2026:4-9 (English Tr. 1780:21-1781:3) (Mr. Paz) ("*P: ¿Pero usted me puede dar otro ejemplo donde ocurrió esto, donde se utilizó una orden para -- perdóneme, para utilizar las fuerzas armadas del gobierno para tomar posesión de un bien? R: Caso que yo conozca, no*.").

[296] ████████ Exhibit **C-428 (Highly Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3**████████ Exhibit **C-429 (Highly Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**.

promoted to appellate judge in December 2018.[297]

207. The Rigs Takeover Order, however was so flawed that the *Concurso* Court—and even a US bankruptcy court—ordered Judge Cedillo to withdraw it.[298]

208. *Finally*, and once again, México has failed to produce documents ordered by the Tribunal.

209. For example, the Tribunal ordered it to produce "documents or communications related to or prepared in connection with the Sham Companies Investigation" (Request No. 28), yet, once again, México produced no responsive documents. Likewise, the Tribunal ordered México to produce documents related to this investigation (Request No. 25) and "documents or communications related to or prepared in connection to the PGR's June 2018 request to SAT" (Request No. 26). But México produced none, although Mr. Paz confirmed that, at the very least, records must be kept of meetings with the PGR[299]—and naturally records and internal correspondence exist in relation to a matter as serious as a criminal investigation.

K. México Has Abused—And Continues To Abuse—Its Police Powers To Intimidate and Harass the Claimants

210. México used its sovereign powers—not only through Pemex, but also through its criminal law authorities—to destroy the Claimants' investments. However, it has also used those powers to intimidate and harass the Claimants in a bid to pressure them into dropping their claims.

211. Between June 2018 and the present, México initiated approximately a *dozen* criminal and tax proceedings against Oro Negro, its U.S. shareholders—including two Claimants—and former officers and employees. Those proceedings are based on allegations that are clearly false, as the

[297] Jan. 7, 2019 Superior Tribunal of México City Judicial Bulletin, http://www.poderjudicialcdmx.gob.mx/wpcontent/PHPs/boletin/boletin_repositorio/070120191.pdf, Exhibit **C-81**

[298] Order Granting Motion for an Ex Parte Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not be Issued (Bankr. S.D.N.Y. Oct. 23, 2018), Exhibit **C-33**; First Gil Statement, **CWS-1**, ¶ 126.

[299] Spanish Tr. 1872:6-1873:13 (English Tr. 1657:2-21) (Mr. Izunza).

Claimants have explained at length in their previous submissions.[300]

212. México's suggestion that these investigations are the result of a legitimate exercise of its police powers cannot withstand scrutiny after the Evidentiary Hearing.

213. First, although México has issued four sets of arrest warrants and a request for an INTERPOL Red Notice, the United States has declined to even begin extradition proceedings against the Claimants and Oro Negro's management and INTERPOL declined to issue Red Notices. That is a clear indication that México's allegations lack any merit.

214. At the Evidentiary Hearing, Mr. Cañedo confirmed that he had reported the acts of corruption at Pemex to the U.S. Department of Justice and Securities and Exchange Commission and that both were investigating these acts, while, at the same time, considering Messrs. Cañedo, Gil, and others to be victims of México's actions.[301]

215. Second, México's actions have severely restricted the Claimants' ability to put their case, including in this arbitration.

216. The Claimants affirmed at the Evidentiary Hearing that other potential witnesses have declined to participate in this arbitration as a result of México's tactics. For example, Mr. Warren testified that Oro Negro's former board member, Luis Ramirez Corzo, did not submit a witness statement because "he was fearful of all the retribution and retaliation that's been exercised upon our Board members and our management."[302]

217. Third, while the Claimants have put forward clear evidence that numerous Mexican officials—Mr. Servín, Mr. Gracia Garcia, amongst others—have engaged in wrongdoing, none of those officials have been investigated for the facts of that wrongdoing (as far as the Claimants are

---

[300] SOC, Sections II(M); Reply, Sections II(H)-(I).

[301] English Tr. 380:2-382:3 (Spanish Tr. 419:9-421:18) (Mr. Cañedo).

[302] English Tr. 358:21-359:3 (Spanish Tr. 396:6-10) (Mr. Warren).

aware). This is puzzling, to say the least, as Mexican authorities have issued arrest warrants against Claimants in this arbitration on far less compelling evidence.[303] Tellingly, México declined to produce any documents in relation to these proceedings, despite being ordered to do so (Requests Nos. 24-34).

218. Finally, this improper conduct continued up to the Evidentiary Hearing in a clear bid to intimidate the Claimants:

- Messrs. Warren and Cañedo confirmed that México used its criminal cooperation agreements with the United States to compel the Federal Bureau of Investigations ("**FBI**") to pay visits to virtually all of the Claimants—including Mr. Warren himself.[304] That can only have been a bid to intimidate the Claimants, who were "shocked, outraged, and very angry."[305]
- Similarly, just days before he provided testimony at the Evidentiary Hearing, a Mexican Court rejected Mr. Gil's appeal against one of his arrest warrants.[306]
- And finally, as Mr. Cañedo explained, just days before the Evidentiary Hearing, México sought to reinstate the INTERPOL Red Notices that INTERPOL had earlier withdrawn, even though it invoked no new facts for that request.[307]

219. These brazen exercises of police powers prove—beyond the shadow of a doubt—that the destruction of Oro Negro and the taking of the Oro Negro Rigs was carried out by a sovereign State exercising its sovereign powers.

III. THE TRIBUNAL'S QUESTIONS: THE LEGAL CONSEQUENCES OF THE ESTABLISHED FACTS

220. Below the Claimants explain the legal consequences of the facts established at the Evidentiary Hearing—and, in so doing, address the four questions put to the Parties on May

---

[303] Reply, Section I(1)(ii).

[304] English Tr. 361:7-20 (Spanish Tr. 398:7-20) (Mr. Warren); English Tr. 378:22-379:15 (Spanish Tr. 418:4-22) (Mr. Cañedo).

[305] English Tr. 361:16-19 (Spanish Tr. 15-19) (Mr. Warren).

[306] Spanish Tr. 1920:2-20 (English Tr. 1695:2-14) (Mr. Izunza).

[307] English Tr. 379:16-22 (Spanish Tr. 419:1-8) (Mr. Cañedo).

18, 2022. Those questions go to three merits issues: (1) the Claimants' claim that México breached its NAFTA obligations by abusing its sovereign powers; (2) the claim that México breached the NAFTA through the corruption of its officials; and (3) the assertion that the acts of Pemex (as well as México's SAT, PGR, and judiciary) are attributable to México and México is estopped from arguing otherwise.

221. The Claimants explain that, (**A**) regardless of México's corrupt motives in destroying Oro Negro, that destruction (and the acts leading to it) was a breach of México's obligations under the NAFTA because it was discriminatory, arbitrary, untransparent, and a violation of the Claimants' legitimate expectations (Question 3). In addition, (**B**) México's failure to take effective action against corruption is itself an independent breach of the NAFTA because it violates express representations made to the Claimants as well as a transnational public policy requiring States to take effective action against corruption (Questions 1 and 2). Finally, **(C)** México is estopped from claiming that these actions are not attributable to it, not only because Pemex has sought to invoke the shield of sovereignty before other forums, but also because México (and Pemex) have argued that the Oro Negro Contracts were administrative law contracts and that Pemex is backed by the State (Question 4). In any event, there can be no doubt that México's breaches are the result of its sovereign conduct because they were carried out by its tax authorities, its prosecutors, and its judiciary (in addition to Pemex).

A. México's Arbitrary And Discriminatory Treatment Of The Claimants And Their Investments Breached NAFTA Articles 1105 And 1110—Whether As The Result Of Corruption Or Not (Question 3)

222. México's prejudicial treatment of the Claimants and their investments constitutes a breach of NAFTA Articles 1105 and 1110. This is true regardless of the reason for México's actions—whether corruption or otherwise.

223. **NAFTA Article 1105(1)** requires México to grant the Claimants' investment "treatment

in accordance with international law, including fair and equitable treatment and full protection and security." NAFTA tribunals have confirmed that fair and equitable treatment includes *inter alia* an obligation to respect the legitimate expectations of an investor;[308] an obligation to treat investments transparently;[309] an obligation not to take arbitrary measures with respect to the investment;[310] and an obligation not to discriminate against an investment,[311] amongst other protections.[312] NAFTA tribunals have also confirmed that *full* protection and security includes both *physical*[313] and *legal*[314] security.

224. For its part, **NAFTA Article 1110** governs cases in which México "substantially deprives" an investor of the use and enjoyment of its investment.[315] According to that provision, it may only do so if the expropriation is (1) for a public purpose, (2) on a non-discriminatory basis, (3) in accordance with due process of law and Article 1105(1) and (4) on payment of compensation.

225. As the Claimants have explained in their submissions, México's actions—taken together and separately—constitute breaches of NAFTA Articles 1105 and 1110. This is all the more clear following the Evidentiary Hearing.

226. First, México promised to support the Claimants' investment in the "Mexican Reform"—*i.e.*, México's ongoing large-scale reform in the oil and gas industry, promising transparency and fairness to foreign investors—and later to contract the Additional Rigs (*supra*, paras. Section I(B)-

[308] SOC, ¶¶ 462-470; Reply, ¶¶ 898-902.

[309] SOC, ¶¶ 475-479; Reply, ¶¶ 949-950.

[310] SOC, ¶¶ 471-474; Reply, ¶¶ 889-897, 947.

[311] SOC, ¶¶ 471-474; Reply, ¶¶ 940-948.

[312] SOC, ¶¶ 480-490; Reply, ¶¶ 956-961.

[313] SOC, ¶¶ 528-531; Reply, ¶¶ 972-989.

[314] SOC, ¶¶ 532-542; Reply, ¶¶ 972-989.

[315] *See e.g.*, *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. The United Mexican States*, ICSID Case No. ARB (AF)/04/5, Award (Nov. 21, 2007), ¶ 240, **CL-100**.

(C)), but broke those promises, favoring Oro Negro's competitor, Seamex, by contracting the more expensive Seamex Rigs rather than the Additional Rigs, taking deliberate actions to destroy the Claimants' investments through delayed payments, cancelled and suspended rigs, and ultimately the seizure of the Rigs.

227. This is a breach of NAFTA Article 1105—a violation of the Claimants' legitimate expectations—as NAFTA tribunals have established.[316] México conceded at the Evidentiary Hearing that "*las expectativas legítimas de un inversionista pueden constituir un factor para evaluar una potencial violación del nivel mínimo de trato*,"[317] even though it argued in its written submissions that "*el concepto de 'expectativas legítimas' no es un elemento del TJE conforme al derecho internacional consuetudinario*."[318] However, México continues to argue that "*es difícil entender cómo estas declaraciones tan genéricas* [as it alleges that the Claimants' representations are] *implicaron algún compromiso particular por parte de México*."[319] That, of course, is not true. When Mexican officials promised to support the Claimants' investments in Oro Negro (and thus in México), the Claimants legitimately expected that México would not use its police powers to discriminate against the Claimants in favor of Seamex, engage in corrupt practices, collude illegally with the Bondholders and destroy their investments. Moreover, numerous tribunals have found that, where a State approves an investment, claimants may form legitimate expectations that the State will not then seek to withdraw that approval for illegitimate reasons.[320] In any event, however, numerous tribunals have found that a State's commitments—including in contracts or

---

[316] SOC, ¶¶ 462-470; Reply, ¶¶ 898-902.

[317] Spanish Tr. 289:8-10 (English Tr. 260:5-7) (Mr. Román).

[318] Rejoinder, ¶ 617.

[319] Spanish Tr. 292:12-14 (English Tr. 262:15-17) (México's Opening Presentation).

[320] *See MTD Equity Sdn. and MTD Chile, S.A. v. República de Chile*, ICSID Case No. ARB/01/7, Award, May 25, 2004, Exhibit **RL-110**, ¶ 166.

administrative acts or laws—may give rise to legitimate expectations—including, as in *Rumeli*, that a State organ will not unjustly terminate a contract.[321]

228. Second, Mexican officials terminated the Oro Negro Contracts on an entirely non-transparent and spurious basis. México's witnesses admit that the justification put forward was not the *real* justification for termination and have failed to advance any credible justification (*supra*, paras. Section I(H)). The real justification, based on the record evidence, appears to have been to favor Seamex and the Bondholders, and to punish Oro Negro and the Claimants for availing themselves of their constitutional and legal rights to file for bankruptcy protection. And yet, the "real" reasons for the termination remain hidden by México to this day.

229. This is a clear breach of México's obligation to act transparently under NAFTA Article 1105. There can be no doubt that México's decision was not "based on objectively verifiable factors and after an appropriate time period which is not unnecessarily rushed," as in the *Global Telecom* award.[322] It was not only arbitrary pursuant to the criteria put forward by the *EDF v. Romania* tribunal: México's decision (1) inflicted "damage on the investor without serving any apparent legitimate purpose;" (2) was "not based on legal standards but on discretion, prejudice or personal preference;" (3) was "taken for reasons that are different from those put forward by the decision maker;" and (4) was "taken in wilful disregard of due process and proper procedure."[323] It was also directly targeted at Oro Negro without any legitimate purpose.

230. Third, Mexican officials subjected Oro Negro to crippling payment delays and ultimately refused to make overdue payments (*supra*, Sections I(D) and (I)). At the same time, acting with

---

[321] *See Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award (Jul. 29, 2008), Exhibit **CL-124**, ¶ 615.

[322] *See Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Award (Mar. 27, 2020), Exhibit **CL-399**, ¶ 608.

[323] *EDF (Services) Ltd. v. Romania*, ICSID Case No. ARB/05/13, Award (Oct. 8, 2009), Exhibit **CL-161**, ¶ 303.

impunity, Mexican officials declined to order Pemex to pay Oro Negro the Contractual Penalty and flouted court decisions ordering payment of outstanding sums to Oro Negro and declaring Pemex's termination invalid (*supra*, Section I(I)). These actions, which followed careful coordination with representatives of owners of Oro Negro's competitor, breached the NAFTA for the same reasons.

231. Fourth, México discriminated against Oro Negro by treating its competitors more favorably. Mexican officials granted contracts with better terms, ordered payment of outstanding amounts under those contracts on time (rather than up to almost one year late), and ordered Pemex to perform its obligations under its contracts with those competitors (*supra*, Section I(I)).

232. México does not contest this, but instead argued at the Evidentiary Hearing that "*el estándar de nivel mínimo de trato del artículo 1105 del TLCAN no protege en contra de actos discriminatorios, ya que esto está cubierto por los artículos 1102 y 1103*."[324] However, as numerous NAFTA tribunals have confirmed, "under the NAFTA, there are two types of discrimination: nationality-based discrimination and discrimination that is founded on the targeting of a particular investor or investment."[325]

233. Finally, in a clear abuse of its sovereign powers, México ordered the seizure of the Oro Negro Rigs through a court decision that was clearly corrupted (*supra*, Section I(J)) and opened twelve criminal and tax investigations (as well as issuing Arrest Warrants, requesting INTERPOL Red Notices, and filing aggressive requests for assistance from U.S. authorities) in a clear bid to prevent the Claimants from pursuing their rights (*supra*, Section I(K)). In a final blow and crushing abuse of sovereign power, the same corrupt Judge Cedillo, who issued the order to seize the Oro

[324] Spanish Tr. 295:5-11. (English Tr. 264:18-265:1) (México's Opening Presentation).

[325] *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award, June 8, 2009, Exhibit **RL-0090**, para. 542 n. 1087.

Negro Rigs, issued the similarly corrupt order to freeze Oro Negro's funds—the Funds Seizure Order—based on nothing more than a self-serving recitation of facts during a short oral presentation relating to the baseless criminal investigation, causing Oro Negro to go into liquidation and lose the Oro Negro Rigs to the Bondholders.[326]

234. In its **Question No. 3**, the Tribunal asked the Parties "to elaborate on the concept of 'abuse of power' which appears to be put forth by the Claimants in relation with multiple proceedings allegedly launched by México" and "to discuss the legal basis of such concept and the relevance (or lack of relevance) it may have within the NAFTA."

235. México's abuse of power is a breach of its NAFTA obligations in two respects.

236. *First*, México's Funds Seizure Order led to the physical taking of the Oro Negro Rigs.

237. Taken alone, the Funds Seizure Order was (at the very least) a breach of the Minimum Standard of Treatment because it was arbitrary, non-transparent, and a "manifest injustice in the sense of a lack of due process leading to an outcome which offends a sense of judicial propriety."[327] It harkens to the more recent findings of arbitral tribunals, like the *Lion v. México* tribunal, which found that a Mexican judiciary decision based on clearly bogus grounds was a violation of NAFTA Article 1105.[328]

238. The Funds Seizure Order also led to México's taking of the Claimants' investments. México's actions leading to that order sought to—and did—prevent Oro Negro from accessing its funds: México (1) refused to pay on time and then at all, (2) cancelled the New Rigs (which caused

---

[326] *See* Seizure Order (Sept. 25, 2018), [REDACTED] Exhibit **C-416 (Confidential - Subject to Protective Order and Procedural Order Nos. 1 and 3)**; [REDACTED], Exhibit **C-417 (Confidential Subject to Protective Order and Procedural Order Nos. 1 and 3)**; Rig Return Order (May 15, 2019), Exhibit **C-150**.

[327] *Loewen, Award*, ¶ 132, Exhibit **CL-166**.

[328] *LMC v. Mexico*, ICSID Case No. ARB(AF)/15/2, Award (Sept. 20, 2021).

Oro Negro to forfeit its down payment of USD 125 million), (3) terminated the Oro Negro Contracts (which deprived Oro Negro of its revenue stream without payment of the Contractual Penalty due to it), and (4) disproportionately and illegitimately seized Oro Negro's funds with the Funds Seizure Order. This led to the liquidation of Oro Negro and the Bondholders' taking of the Oro Negro Rigs.

239. This expropriation was illegal. It was for no public purpose—it was in fact for a private purpose, in order to benefit the Bondholders—and México discriminated against the Claimants and Oro Negro (which was the only Pemex rig supplier to be treated in this way)— in breach of due process and Article 1105(1) for all of the reasons explained above, and, of course, with no compensation. In *Hydro v. Albania*, for example, a tribunal concluded that a criminal seizure order illegally expropriated the claimants' investment because (1) the government that brought the initial criminal complaint was close to the claimants' competitors; (2) a government representative warned the claimants that it was not a good idea to oppose the state; (3) the criminal process exhibited serious shortcomings and flaws in the factual allegations; and (4) INTERPOL rejected the state's request for a red notice.[329]

240. *Second*, through its twelve criminal and tax investigations, México "improperly and without justification, mounted an illegitimate 'campaign' against" the Claimants (in the words of the *Vivendi* tribunal)[330] in breach of NAFTA Article 1105(1).

241. By the time many of those investigations had commenced, the Rigs had already been taken. However, the investigations have prevented the Claimants from putting forward certain witnesses,

---

[329] *Hydro and others v. Albania*, ICSID Case No. ARB/15/28, Award (Apr. 24, 2019), ¶ 724.

[330] *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award (Aug. 20, 2007), ¶ 7.4.19, Exhibit **CL-79**.

including Pemex's former CFO, Mr. Corzo, and Mr. Del Val;[331] inhibited the ability of the Claimants and counsel to put on their case in this arbitration by preventing key Claimants and witnesses from travelling to México; and caused great fear to the Claimants. That is a clear breach of the Tribunal's own directions to "make all the efforts to collaborate for the arbitration to take place in an effective way, and to abstain to adopt any unjustified measure that may aggravate the dispute."[332]

242. However, perhaps most importantly, the multitude of investigations, based on demonstrably baseless grounds, years after the facts, remove any doubt that nothing about this dispute is "*meramente contractual*,"[333] as México claims. The illegitimate termination of the contract was a tool among many. México also deployed the full police powers of the State and Mexican authorities—in Pemex, the SAT, the PGR, and the judiciary—deprived the Claimants of their rights under the Oro Negro Contracts and stripped them of the Oro Negro Rigs.

243. Therefore, there can be no doubt that these actions breach México's obligations under the NAFTA. This is true independent of the reasons for this conduct. However, there can be no doubt *why* Mexican officials acted in this manner.

B. Corruption—The Only Explanation For México's Prejudicial Conduct—Leads To A Separate Breach Of NAFTA Articles 1105 And 1110 (Questions Nos. 1 And 2)

244. Corruption—and, in particular, the Claimants' refusal to participate in a corrupt pay-to-play system—is what motivated México's actions. That, in and of itself, and separately from México's arbitrary, untransparent and discriminatory conduct, leads to an independent breach of the NAFTA.

---

[331] *See e.g.*, Spanish Tr. 290:6-290-12 (English Tr; 260:22-261:15) (México's Opening Presentation).

[332] PO 6, ¶ 77.

[333] Spanish Tr. 202:16 (English Tr. 188:8) (México's Opening Presentation).

1. The Evidentiary Hearing Established That Mexican Officials Sought Bribes From Oro Negro And Retaliated Against Oro Negro When It Refused (Question 2)

245. The Evidentiary Hearing established that Mexican officials sought kickbacks from Oro Negro and retaliated against Oro Negro when it refused to be a part of their pay-to-play system.

246. In its **Question No. 2**, the Tribunal asked the Parties "to clarify to what extent and pursuant to what methodology the Arbitral Tribunal can or must assess the existence of a concrete causal link between (possible) evidence of corruption and an alleged violation of the NAFTA" and, notably "the relevance and applicability—for this NAFTA proceeding—of the 'red flag methodology.'"

247. In assessing the Claimants' corruption claims, the appropriate standard is not the "*umbral de prueba elevado*" advocated by México at the Evidentiary Hearing,[334] but a practical and pragmatic approach that "acknowledges the difficulty of proving corruption as well as the importance of exposing corruption where it exists."[335] As the *Union Fenosa* tribunal explained "corruption is rarely proven by direct cogent evidence; but, rather, it usually depends upon an accumulation of circumstantial evidence," which is "as good as direct evidence in proving corruption."[336] This is the position of the majority of tribunals, as the *Infinito* tribunal confirmed: "[T]ribunals tend to focus on circumstantial evidence, relying on indicia or red flags."[337] It does not require the Tribunal to lower the evidentiary standard, but rather, in the words of the *Glencore* tribunal, it is "nothing less than the time-honoured methodology followed by tribunals in all

[334] Spanish Tr. 284:13-14 (English Tr. 256:7-15) (México's Opening Presentation).

[335] *Lao Holdings N.V. v. Lao People's Democratic Republic I*, ICSID Case No. ARB(AF)/12/6, Award (Aug. 6, 2019), ¶ 109, Exhibit **CL-0398**.

[336] *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award, Aug. 31, 2018, ¶ 7.52, Exhibit **RL-99** (emphasis added).

[337] *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award (June 3, 2021), ¶ 181, Exhibit **CL-426** (emphasis added).

jurisdictions to establish truth based on indicia or circumstantial evidence: if a party marshals evidence that proves the existence of certain indicia, and it is possible to infer from these indicia (using experience and reason) that a certain fact has occurred, the tribunal may take such fact as established."[338] Indeed, circumstantial evidence is used before State courts reviewing arbitral awards to find that corruption has taken place.

248. By contrast, there is no support for México's assertion that "*ante la gravedad de las acusaciones en contra de México, el 'umbral' probatorio se incrementa*."[339] Tellingly, México does not cite to a single authority to establish this proposition.

249. On the contrary, the record is replete with cases in which tribunals have found—on the basis of circumstantial evidence alone—that Government officials have engaged in corruption. For example:

250. The *World Duty Free v. Kenya* tribunal looked to "red flags" to establish that a payment of USD 2 million to the President of Kenya was an illegal bribe.[340] While there was no *direct* evidence that the President (or any other Government official) requested a bribe or promised favors in exchange for the payment, the *World Duty Free* tribunal concluded that payments of USD 2 million "could not be considered as a personal donation for public purposes" and, therefore, "were made not only in order to obtain an audience with President Moi […], but above all to obtain during that audience the agreement of the President on the contemplated investment."[341]

251. In *Metal-Tech v. Uzbekistan*, the investor had paid a "consultant"—an active government official—to "assist" with the investment at its start but could not show that the "consultant"

---

[338] *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award (Aug. 27, 2019), ¶ 670, Exhibit **CL-219**.

[339] Reply, ¶ 428.

[340] *Metal-Tech v. Uzbekistan*, ICSID Case No. ARB/10/3, Award (Oct. 4, 2013), ¶ 243, Exhibit **CL-275**.

[341] *World Duty Free v. Kenya,* ICSID Case No. ARB/00/7, Award (Oct. 4, 2006), ¶ 136, Exhibit **CL-199**.

provided any consulting services and could not provide "any plausible reason for making substantial payments to" the consultant.[342] On this basis, the tribunal found that "the only conclusion that can be drawn from these facts is that [the consultant] was paid to use his position in the Uzbek government to facilitate the establishment of the Claimant's investment" in breach of local law.[343]

252. In *Churchill Mining v. Indonesia*, the tribunal found that the established facts revealed "the existence of a large-scale fraudulent scheme implemented to obtain four coal mining concession areas."[344] Even though it was the investor's business partner (not the investor) that engaged in such corrupt conduct, the tribunal found that the claimant was responsible because it had "willful[ly] disregard[ed]" the corruption.[345]

253. In *Lao Holdings N.V. v. Laos*, the tribunal found that it was "more probable than not" that payments to a local consultant were in fact payments to bribe Government officials because there was "no documentation of any consultancy" and "no explanation of the work" done.[346]

254. On any applicable standard, therefore, the evidence on record establishes that México destroyed Oro Negro because Oro Negro refused to participate in México's "pay-to-play" system.

255. First, México and its witnesses have still failed to offer any justification for the fact that Oro Negro's competitors—and namely Seamex—received more valuable contracts with more favorable—and frankly, as México's own witnesses have admitted, inexplicably one-sided,

---

[342] *Metal-Tech v. Uzbekistan*, ICSID Case No. ARB/10/3, Award (Oct. 4, 2013), ¶ 325, Exhibit **CL-275**.

[343] *Id.*

[344] *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award (Dec. 6, 2016), ¶ 510, Exhibit **CL-272**.

[345] *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award (Dec. 6, 2016), ¶ 167, Exhibit **CL-272**.

[346] *Lao Holdings N.V. v. Lao People's Democratic Republic I*, ICSID Case No. ARB(AF)/12/6, Award (Aug. 6, 2019), ¶ 148, Exhibit **CL-398**.

anomalous-terms, even though—in the case of Seamex—they offered inferior rigs (as México does not contest) (*supra*, paras. 85-93). The Seamex Contracts are all the more suspect given the extensive links between Seamex and those in the Peña Nieto Government as well as the "anomalous" (to borrow Mr. González Anaya 's word) nature of the contracting process (*supra*, paras. 95-110). México's failure to offer any plausible justification for that more favorable treatment—and its failure to produce documents that *do* exist and *are* in its possession—leave only one explanation, as in the case cited above.

256. Second, after publication of an internal report showing that Oro Negro had not engaged in corruption, México created payment and other problems for Oro Negro while, in parallel, individuals close to Mexican officials sought to act as "*operador*" to process illicit payments to Mexican officials (*supra*, Sections I(D)-(E)). Similarly, México has not offered any justification for this unfavorable treatment and did not produce relevant documents even though its witnesses confirmed that they exist (*supra*, paras. 108-111). México's argument that Messrs. Cañedo and Gil "*tienen un interés evidente en este arbitraje y obviamente en su resultado*"[347] ignores that numerous tribunals have relied on the evidence of witnesses (including witnesses that were claimants).[348] México's position is indeed quite cynical, as it means that the victims of wrongful acts could never testify in front of tribunals. The fact remains that no witness on México's side contradicted Messrs. Cañedo and Gil's testimonies.

---

[347] Spanish Tr. 241:15 (English Tr. 219:22) (México's Opening Presentation).

[348] *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (May 24, 2007), pp. 60-61, Exhibit **CL -0074** (relying on witness evidence to conclude that Canada Post has provided access to its facilities to another company, but had not made available the same to UPS or others); *Mesa Power Group, LLC v. Government of Canada*, UNCITRAL, PCA Case No. 2012-17, Award (Mar. 24, 2016), p. 140, Exhibit **CL-0086** (relying on witness evidence to conclude that the generation and manufacturing obligations imposed on the Korean Consortium were not "fictitious"); *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award (Jul. 29, 2008), pp. 94-97, Exhibit **CL-0124** (relying on witness evidence to conclude that a local partner had colluded with the government to terminate the investment contract).

257. Finally, México terminated the Oro Negro Contracts and seized the Oro Negro Rigs for no justifiable—and, as noted, non-transparent—reason (*supra*, Sections I(H) and (J)). [REDACTED] who ultimately took possession of the Oro Negro Rigs (*supra*, Sections I(G) and (I)) [REDACTED]. Once again, México's failure to produce evidence that its witnesses confirmed existed (*supra*, paras. 108-111) is remarkable and proves that the evidence it possesses would harm its case and prove that of the Claimants. As in *Lao Holding*, it is "more probable than not" that Mexican officials caused Pemex to engage in such conduct for corrupt reasons— in particular, given the total absence of any justifiable grounds for termination and the reality that the Bondholders sought to force Oro Negro to default and take over its rigs. Similarly, the dubious circumstances of the Funds Seizure Order all point to the reality that this decision was procured by corruption.

258. This was also confirmed by Mexican officials within Pemex—Pemex's former CFO told Mr. Warren that the Seamex Contracts were a "payoff" to Mr. Martínez"[349] and other former Pemex employees confirmed the same to Black Cube investigators and also that Oro Negro's "problem" was that it did not participate in the pay-to-play system (*supra*, paras. 152-158).

2. The Corrupt Acts of Mexican Officials Violated México's NAFTA Obligations (Question 1)

259. México's destruction of Oro Negro for a corrupt purpose also gives rise to an independent breach of Article 1105 and an additional basis for liability under Article 1110.

[349] English Tr. 325:14-326:1 (Spanish Tr. 365 :9-19) (Mr. Warren).

260. In its **Question No. 1**, the Tribunal "invite[d the Parties] to elaborate and clarify how the fight against corruption and the existence of a corresponding transnational public policy are legally relevant in the assessment of a possible breach of NAFTA Article 1105" and specifically "on the possible interplay of such transnational public policy with the concept of 'legitimate expectations' and/or any other elements they deem relevant on the specific point."

261. México's corrupt actions breach NAFTA Article 1105 in two distinct ways.

262. First, México's conduct breaches the Minimum Standard of Treatment because México acted arbitrarily and discriminatorily in violation of a transnational public policy against corruption.

263. Such a transnational policy requires States to take effective action against corruption and bribery in the public sector. For example, the United Nations Convention Against Corruption (the so-called Mérida Convention) requires States to "develop and implement or maintain effective, coordinated anti-corruption policies," to "take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption," and to "take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary."[350] The Mérida Convention, in the words of the *Lao Holding* tribunal, "embodies what has become a principle of customary international law."[351]

264. México does not deny this, but instead argued at the Evidentiary Hearing that such transnational public policy "does not imply that a rule of customary international law can be derived"[352] from such a policy.

---

[350] United Nations Convention Against Corruption (2003), Arts. 5(1), 9(1), 11(1), Exhibit **CL-190** (emphasis added).

[351] *Lao Holdings N.V. v. Lao People's Democratic Republic I*, ICSID Case No. ARB(AF)/12/6, Award (Aug. 6, 2019), ¶ 105, Exhibit **CL-398**.

[352] Spanish Tr. 293:1-2 (English Tr. 263:1-3) (México's Opening Presentation).

265. That is wrong. Such a policy is an element of the Minimum Standard of Treatment under international law—independently of whether it forms a separate rule of customary international law.

266. While the existence of a rule of customary international law is determined by State practice and *opinio juris*, the content of an existing rule of customary international law—such as the Minimum Standard of Treatment—may be determined by the Tribunal alone, without any reference to such standards.[353]

267. A transnational public policy requiring States to take effective action against corruption and bribery is clearly part of NAFTA Article 1105. The Minimum Standard of Treatment under international law serves as "a floor, an absolute bottom, below which conduct is not accepted by the international community."[354] It is meant to provide a broad and flexible standard that protects an investor against conduct that States agree is unacceptable—*i.e.*, conduct that is "arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety."[355] A State's failure to put in place effective measures to prevent corruption—allowing, for example, the destruction of an investor because it failed to pay bribes—is necessarily "arbitrary,

---

[353] It is settled law that "[w]hen parties to a treaty agree that a tribunal may render binding decisions on the interpretation or application of that treaty, the decisions of that tribunal constitute, for the States concerned, both State practice and—thanks to the requirement of explicit ratiocination in terms of international law—opinio juris." Michael Reisman, "*Canute Confronts the Tide: States versus Tribunals and the Evolution of the Minimum Standard in Customary International Law*," ICSID Review - Foreign Investment Law Journal (2015), Exhibit **CL-417**; *see also Mesa Power Group LLC v. Government of Canada*, PCA Case No. 2012-17, Award (Mar. 24, 2016), ¶¶ 496-502, 504-505, 512, 553, Exhibit **CL-86**; *Windstream Energy LLC v. The Government of Canada*, PCA Case No. 2013-22, Award (Sept. 27, 2016), ¶¶ 350-352, 355-361, Exhibit **CL-85**.

[354] *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award, June 8, 2009, ¶ 615, Exhibit **RL-90**.

[355] *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award (Apr. 30, 2004), ¶ 98, Exhibit **CL-113**. This is true "even if a government were not acting in a discriminatory manner" (and thus domestic investors are subject to the same treatment). *S.D. Myers, Inc. v. Government of Canada,* UNCITRAL, Second Partial Award (Oct. 21, 2002), ¶ 259, Exhibit **CL-298**.

grossly unfair, unjust or idiosyncratic" and "discriminatory."

268. In any event, however, the overwhelming consensus found in the agreements to which México itself is a party—as well as the undeniable statements of international law scholars—leaves no doubt that such a rule exists under customary international law separate from the Minimum Standard of Treatment. The Mérida Convention, for example, was adopted by the U.N. General Assembly with the votes of 186 out of 195 States (including México's vote) and ratified by 189 states (including México).[356] Tellingly, while numerous scholars have confirmed that such a rule does exist,[357] México can point to no *opinio juris* supporting its contention that no such rule exist.

269. México also argues that "*no existe ningún solo caso en el que se haya confirmado que la obligación de nivel mínimo de trato conforme al TLCAN fuera incumplida por meras alegaciones de corrupción.*,"[358] but that misses the point. The reality is that few investors have claimed that acts of corruption breach their treaty rights, no doubt, because they fear the types of repercussions that the Claimants in this arbitration has suffered. Tellingly, México has also failed to identify a "single case" in which a tribunal found that a failure to take effective action against corruption and bribery was *not* an element of the Minimum Standard of Treatment. In contrast, numerous tribunals have confirmed that "a request for a bribe by a State agency is a violation of the fair and equitable treatment obligation"[359] and that "[c]orruption, if found, would constitute a grave violation of the standard of fair and equitable treatment."[360]

---

[356] United Nations Convention Against Corruption: Signature and Ratification Status, Exhibit **CL-189**.

[357] *See e.g.*, *EDF (Services) Ltd. v. Romania*, ICSID Case No. ARB/05/13, Award (Oct. 8, 2009), ¶ 221, Exhibit **CL-161**; *Liman Caspian Oil v. Kazakhstan*, ICSID Case No. ARB/07/14, Award (Jun. 22, 2010), ¶ 422, Exhibit **CL-201**.

[358] Spanish Tr. 294:5-9 (English Tr. 264:1-4) (México's Opening Presentation).

[359] *EDF (Services) Ltd. v. Romania*, ICSID Case No. ARB/05/13, Award (Oct. 8, 2009), ¶ 221, Exhibit **CL-161**.

[360] *Liman Caspian Oil v. Kazakhstan*, ICSID Case No. ARB/07/14, Award (Jun. 22, 2010), ¶ 422, Exhibit **CL-201** (emphasis added).

270. In this case, there can be no doubt that México failed to take effective action against corruption and bribery. Three successive Pemex CEOs (Messrs. Lozoya, González Anaya, and Treviño) put in place a system of corruption that led to the discriminatory treatment that Oro Negro suffered. While México has now belatedly brought criminal charges against Mr. Lozoya, that was only because a very high-profile Brazilian investigation revealed that he had been involved in corruption with the Brazilian company Odebrecht. Had México taken the type of action required of it under international law—and enshrined in the agreements that it has ratified—Oro Negro would have been spared the fate that it ultimately suffered. However, México did not, and it must bear the consequences of its failure. For several years, México also has done nothing to investigate the very serious allegations of corruption laid bare by the Claimants in this arbitration now. Again, it must suffer the consequences of its action.

271. <u>Second</u>, México's conduct breaches the Claimants' legitimate expectation that their investments would not be subject to corruption. Those legitimate expectations arose in three ways.

272. *First*, the Claimants reasonably expected that México would not subject their investments to corrupt practices *independent of any explicit representations made to the Claimants*.

273. While legitimate expectations often arise from specific representations, they "need not be based on an explicit assurance."[361] An investor "will have an expectation that its business may be conducted in a normal framework free of interference from government regulations which are not underpinned by appropriate public policy objectives."[362] In *Vivendi II*, for example, the tribunal found that the claimants "had every reason to expect that [the government] would not mount an

---

[361] *Saluka Investments BV (The Netherlands) v. Czech Republic, UNCITRAL, Partial Award (Mar. 17, 2006), ¶ 329, CL-143.*

[362] *Merrill & Ring Forestry L.P. v. The Government of Canada*, UNCITRAL, Award (Mar. 31, 2010), ¶ 233, Exhibit **CL-138**.

illegitimate campaign to force them, on threat of recission, to renegotiate a lower tariff."[363] Similarly, the Claimants had "every reason to expect" that Mexican officials would not take prejudicial action against Oro Negro because it refused to pay bribes and, more generally, that the Claimants could do business in México without being subject to corruption (a reality that Mr. González Anaya confirmed).

274. *Second*, Mexican officials made explicit assurances to the Claimants that México would maintain strict anti-corruption regulations—and thus that their investments would not be subject to bribery or corruption. Pemex's CEO represented to the Claimants that Pemex complied with the FCPA and would continue to do so as Pemex planned to issue equity as part of the "Mexican Moment" (*supra*, para. 38). In addition, the Oro Negro Contracts contained explicit representations that Mexican officials in Pemex would not engage in corruption (*supra*, para. 40). The Claimants were justified in relying on the representations of Pemex's CEO—which, Mr. Warren confirmed, they did (*supra*, para. 44)—as well as México's representations in the Oro Negro contract, as México's expert, Mr. Asali conceded (*supra*, para. 41). México also specifically promised, through Pemex, that it would not engage in any corrupt practices in its dealings with the Claimants by including specific promises and representations in this regard in all of the oro Negro Contracts.[364]

275. Numerous tribunals have recognized that express representations—even when only made orally—may give rise to legitimate expectations. For example, in *Kardassopoulos v. Georgia*, a tribunal found that the fact that Government officials endorsed orally, and were closely involved in negotiation of, joint venture and concession agreements created legitimate expectations that

---

[363] *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award (Aug. 20, 2007), ¶ 7.4.42, n 355, Exhibit **CL-79**.

[364] *See e.g.*, Oro Negro Primus Contract, Exhibit **C-E.1**, p. 5, Art. 27.

those agreements were validly concluded.[365] The same is true here.

276. *Third*, México also made commitments to the general public that investments would not be subject to corruption. For example:

- In the Energy Reform, México promised to "[c]*ombatir de manera efectiva la corrupción en el sector energético*" and "*sancionar a quienes realicen actos u omisiones que constituyan conductas ilícitas o prácticas indebidas, para obtener beneficios económicos ilegítimos*."[366]
- In its SEC filings, Pemex represented in a sworn statement that "[c]ertain rules have been enacted in order to promote a culture of ethics and prevent corruption in our daily operations."[367]
- In México's *Código Penal Federal* as well as its *Código Federal de Procedures Penales*, the solicitation and receipt of bribes[368] and extortion—*i.e.*, threatening to, or actually causing, harm if a bribe is not paid[369]—are crimes, which public officials are obliged to report.[370]

277. The Claimants therefore had a legitimate expectation (1) that México would maintain effective safeguards against corruption and (2) that, to the extent certain bad actors existed within

---

365 *Ioannis Kardassopoulous v. Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award (Mar. 3, 2010), ¶¶ 191, 194, Exhibit **CL-134**.

366 Energy Reform – Executive Summary, https://www.gob.mx/cms/uploads/attachment/file/164370/Resumen_de_la_explicacion_de_la_Reforma_Energetica11_1_.pdf, Exhibit **C-94**, pp. 3, 22.

367 Petróleos Mexicanos, Form 20-F (2012), Exhibit **C-89B**.

368 Paz Report, ¶ 110 ("*El servidor público que por sí, o por interpósita persona solicite o reciba ilícitamente para sí o para otro, dinero o cualquier beneficio, o acepte una promesa, para hacer o dejar de realizar un acto propio de sus funciones inherentes a su empleo, cargo o comisión*.").

369 Código Penal para el Distrito Federal, Article 236 ("*Al que obligue a otro a dar, hacer, dejar de hacer o tolerar algo, obteniendo un lucro para sí o para otro causando a alguien un perjuicio patrimonial, se le impondrán de dos a ocho años de prisión y de cien a ochocientos días multa.*"), Exhibit **R-022**.

370 Código Nacional de Procedimientos Penales, Art. 222, Exhibit **RL-0015**.

the system, México would act to punish them and put an end to corrupt practices.

278. Tribunals have found that such general representations give rise to legitimate expectations as an "investor's legitimate expectations are based upon an objective understanding of the legal framework within which the investor has made its investment.[371] In *Saluka v. Czech Republic*, for example, a tribunal found that the claimant had a legitimate expectation that "in case the Czech Government should consider and provide financial support to overcome these problems, it would do so in a consistent and even-handed way" in accordance with its legislative framework.[372]

279. México must bear the consequences of its failure to take effective action against corruption.

C. These Breaches Are Attributable To México Alone (Question No. 4)

280. These breaches were carried out by Mexican officials in Pemex (México's *empresa productiva del Estado*); the PGR (México's prosecutor), the SAT (México's tax authority); and México's judiciary (in particular, Judge Cedillo as well as prosecutor Perez Hicks, the same prosecutor that has opened all of the criminal investigations). México does not deny that the latter four are organs of the State, but claimed at the Evidentiary Hearing that "*los actos de Pemex no pueden atribuirse a México sencillamente porque la modificación y terminación de contratos comerciales son actos meramente comerciales.*"[373]

281. That is clearly wrong. Pemex is a State organ under ILC Article 4 (*i.e.*, "any person or entity which has that status [*i.e.*, of a State organ] <u>in accordance with the internal law</u> of the State"[374]).

---

[371] *Murphy Exploration and Production Company International v. Republic of Ecuador II*, PCA Case No. 2012-16 (formerly AA 434), Partial Final Award (May 6, 2016), ¶ 248, Exhibit **CL-145**.

[372] *Saluka Investments BV (The* Netherlands*) v. Czech Republic*, UNCITRAL, Partial Award (Mar. 17, 2006), ¶ 329, Exhibit **CL-143**.

[373] Spanish Tr. 207:17-20 (English Tr. 192:15-17) (México's Opening Presentation).

[374] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Art. 4(1), Exhibit **RL-0158**.

282. Article 27 of the Mexican Constitution expressly provides that "*Pemex actúa como un órgano del Estado y en ejercicio de la autoridad gubernamental respectiva, en la medida en que lo hace por orden y cuenta de la Nación mexicana*."[375] Under Mexican law, Pemex is an "*empresa productiva del Estado*" and considered part of México's "*Administración Pública Federal*"[376] and "*de propriedad exclusiva del Gobierno Federal,*" its assets being "*sujetos al régimen de dominio público de la Federación*."[377] Pemex's CEO is appointed by the President of México and its Board, which is chaired by the Minister of Energy, is comprised solely of political appointees (three are appointed by the President and five are named by the President and approved by the Senate).[378] Pemex's budget is set and controlled by the Mexican legislature and executive.[379]

283. Yet, even on México's own articulation of the relevant standard at the Evidentiary Hearing—*i.e.*, "whether, under NAFTA, the Company in question exercises delegated powers of public authority"[380]—Pemex's acts would still be attributable to México under international law. The Mexican legislature granted the power to "*celebrar con el Gobierno Federal y con personas físicas o morales toda clase de actos, convenios, contratos, suscribir títulos de crédito y otorgar todo tipo de garantías, manteniendo el Estado Mexicano en exclusiva la propiedad sobre los hidrocarburos que se encuentren en el subsuelo, con sujeción a las disposiciones legales aplicables*."[381] México thus also breached its obligations under Chapter 15 of the NAFTA, because Pemex exercised delegated governmental authority and México had failed to ensure that

---

[375] Second Lopez Expert Report, Exhibit **CER-4**, ¶ 110.

[376] Second Lopez Expert Report, Exhibit **CER-4**, ¶ 99.

[377] Pemex Law at Articles 2 and 88, Exhibit **CL-83**.

[378] Pemex Law at Articles 13 and 15, Exhibit **CL-83**.

[379] Pemex Law at Article 100, Exhibit **CL-83**.

[380] Spanish Tr. 209:12-18 (English Tr. 194:4-8) (México's Opening Presentation).

[381] Pemex Law at Article 7, Exhibit **CL-83**; *see also* Pemex Law at Article 6, Exhibit **CL-83**.

Pemex act in a manner consistent with México's obligations under Chapter 11 of the NAFTA (in particular, Articles 1105 and 1110, as explained above).

284. Moreover, Pemex has claimed in sworn statements in U.S. courts—including in relation to Oro Negro—that it is immune from jurisdiction because it is a sovereign organ.[382] Sovereign immunity can only be invoked by States and State organs. Pemex—and México—have also alleged that Pemex's termination of the Oro Negro Contracts was not illegal because the Oro Negro Contracts are administrative law contracts and Pemex was acting "in the public interest," exercising its administrative *ius varandi* pursuant to a Government directive (*i.e.*, the DACS). The Claimants have relied on these types of representations—and notably the representation that México stood behind Pemex (*supra*, para. 30).

285. In **<u>Question No. 4</u>**, the Tribunal asked that the Parties "further elaborate on the Claimants' argument that the Respondent is estopped from invoking in the present proceeding a position on the relationship between Pemex and México (relevant for the issue of attribution), which is different from the one adopted by Respondent and Pemex before US courts"—and specifically "the legal basis of the concept of estoppel as well as its relevance with the NAFTA proceedings for questions of attribution."

286. México's inconsistent statements have consequences under international law. México cannot use its status as a State organ as both a sword and a shield. As the ICJ has established, "inconsistency between claims or allegations put forward by a State, and its previous conduct in connection therewith, is not admissible (*allegans contraria non audiendus est*)."[383] This is no idiosyncrasy of international law, but instead reflects the reality that "[a]lmost all systems of law

---

[382] SOC, ¶¶ 18-19.

[383] *Temple of Preah Vihear Case (Cambodia v. Thailand, Merits)*, Separate Opinion of Vice-President Alfaro (June 15, 1962), ICJ Reports (1962), p. 40, Exhibit **CL-393**.

prevent parties from blowing hot and cold."[384] Tribunals have found that States are estopped from raising arguments where they have raised contrary arguments in other circumstances.[385] For example, in *Karkey Karadeniz v. Pakistan*, a tribunal found that Pakistan was "estopped" from arguing that the claimants' investment must be deemed invalid on the basis of an alleged breach of domestic law, because "Pakistan has consistently maintained that [the claimant's] investment was established in accordance with Pakistani laws," including by "maintaining before the Supreme Court" to the same effect."[386]

287. The same is true here. Pemex and México have made repeated representations before this Tribunal and in other fora suggesting that Pemex is an organ of the State. While México has argued that U.S. courts apply a different legal standard than this Tribunal will apply when assessing whether Pemex is a State organ, México ignores that what *is* relevant are the facts that México has conceded in these other fora: *e.g.*, that Pemex is "under the total control and exclusive ownership of the Mexican government,"[387] that Pemex and its subsidiaries are "all organs of the federal government of México,"[388] that its function is to "explore and develop México's hydrocarbons for the benefit of its people in conformity with Article 27 of the Mexican Constitution,"[389] that

---

[384] *See Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award (Aug. 22, 2017), ¶¶ 626-628, Exhibit **CL-407**. *See also ADC Affiliate Ltd. et. al. v. Hungary*, ICSID Case No. ARB/03/16, Award (Oct. 2, 2006), ¶ 475 ("Almost all systems of law prevent parties from blowing hot and cold."), Exhibit **CL-120**.

[385] *ADC Affiliate Ltd. et. al. v. Hungary*, ICSID Case No. ARB/03/16, Award (Oct. 2, 2006), ¶ 475, Exhibit **CL-120**.

[386] *See Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award (Aug. 22, 2017), ¶¶ 626-628, Exhibit **CL-407**.

[387] *See* Declaration of Julio Mora Salas, *Castillo, et al. v. P.M.I. Holdings, N.S., Inc., et al.*, No. 4:14-cv-03435, ECF 174-1, at ¶ 2 (S.D. Tex. Apr. 25, 2016) (emphasis in original), Exhibit **C-92**.

[388] *Alvarez del Castillo et al. v. P.M.I. Comercio Internacional, S.A. de C.V.*, Motion to Dismiss (Feb. 16, 2016), at p. 9 (emphasis added), Exhibit **CL-91**.

[389] Declaration of Juan Carlos Gonzales Magallanes, *Castillo, et al*. v. P*.M.I. Holdings, N.S., Inc., et al.*, No. 4:14-cv-03435, ECF 160-2, at ¶ 4 (S.D. Tex. Feb. 16, 2016), Exhibit **C-90**.

Pemex's debt was "backed by the Mexican Government";[390] that Pemex possessed an "administrative *ius variandi* power" according to which it "could terminate early" the Oro Negro Contracts,[391] and that Pemex terminated those contracts for "reasons of public interest."[392]

288. México's attempt to avoid liability with the hollow assertion that Pemex is not a State organ—despite its contradictory statements in this and other fora—only goes to underscore just how untenable México's case in this arbitration really is. México knows full well that its officials destroyed the Claimants' investments for illegitimate reasons, causing the Claimants substantial financial and personal prejudice. The Claimants should wait no longer for relief. They respectfully ask this Tribunal to grant the relief requested at paragraph 1052 of the Reply and compensate them for their losses as a result of México's patently illegal conduct.

[390] English Tr. 474:8-9 (Spanish Tr. 524 :15-17) (Mr. Cañedo).

[391] Spanish Tr. 1770:13-1771:21 (English Tr. 1572:21-1574:2) (Mr. Asali).

[392] Attached as Exhibit **C-93** is the authorization of Pemex's Board of Directors resulting in the termination of the Oro Negro Contracts. Each of Pemex's letters terminating the Oro Negro Contracts (Exhibits **C-M.1 – C-M.5**) cite to that authorization. This was confirmed by México's witnesses. *See* Spanish Tr. 1784:11-18 (English Tr. 1585:1-6) (Mr. Asali).

Respectfully submitted on behalf of Claimants,

[Signed]

____

Juan P. Morillo
David M. Orta
Philippe Pinsolle
Gabriel F. Soledad
Dawn Y. Yamane Hewett
Alexander G. Leventhal
Serafina Concannon
Kayla A. Feld
Julianne F. Jaquith
Gregg Badichek
Ana Paula Luna Pino
Woo Yong Chung

Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street N.W., Suite 900
Washington, D.C. 20005
United States of America