

**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

NOTICE OF ARBITRATION

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I. INTRODUCTION

1. Claimants (listed *infra* at Section II.A) submit this Notice of Arbitration (the “Notice”) against the United Mexican States (“México”) under the North American Free Trade Agreement (“NAFTA”) and the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL Arbitration Rules”).

2. Claimants are a group of prominent U.S. individuals and entities that own approximately 43 percent of Integradora de Servicios Petroleros Oro Negro, S.A.P.I. de C.V. (“Integradora Oro Negro,” referred to collectively with its subsidiaries as “Oro Negro”). Integradora Oro Negro is a Mexican holding company that, through its subsidiaries, owns and leases five state-of-the-art offshore drilling platforms (commonly known as “jack-up rigs”) to México’s state-owned oil and gas company, Petróleos Mexicanos (“Pemex”).

3. Pemex is a state-created monopoly that is an organ of the Mexican State through which México controls and operates its oil and gas industry—a critical part of México’s economy. As such, Pemex wields and exercises sovereign power in managing México’s oil and gas sector, including when contracting with vendors such as Oro Negro. Due to its monopoly power, Pemex is virtually the only potential client for all oil and gas services companies in México, including providers of jack-up rigs such as Oro Negro.

4. Between 2013 and 2015, Oro Negro entered into five agreements to lease its jack-up rigs to Pemex for terms ranging from three to five years. Under the original terms of the lease agreements, Pemex agreed to pay Oro Negro a daily rate on each jack-up rig, ranging from approximately USD 130,000 to USD 160,000. By 2015, based on the value of its jack-up rigs and its revenues from these lease agreements, Oro Negro’s enterprise value was approximately USD 1.8 billion, and therefore Claimants’ investment in Oro Negro was worth approximately USD 700 million. In late 2015 and 2016, however, Pemex imposed amendments to Oro Negro’s

leases that cut Oro Negro's revenues by half. Then, in 2017, Pemex unilaterally terminated Oro Negro's leases without compensation. México took these measures, which drove Oro Negro out of business, because Oro Negro refused to pay bribes to Mexican government officials, including Pemex officials. By doing so, México destroyed the value of Claimants' investment in Oro Negro.

5. Claimants invested in Oro Negro based on México's repeated representations, over many years, both prior to and during Claimants' investment, (a) encouraging foreign investment in México's offshore oil and gas industry, including by promising respect for the rule of law to attract foreign investors; and (b) promising a transparent, lawful and corruption-free oil and gas industry welcoming of foreign investment, including one in which investors would be insulated from corruption by means of Pemex's anti-corruption policies and controls.

6. México's representations regarding the Mexican oil and gas industry, however, proved false. Instead of delivering a transparent, lawful and corruption-free oil and gas industry welcoming of foreign investment, México allowed and turned a "blind eye" to rampant corruption, including in Pemex's dealings with its suppliers. Specifically, México allowed a "pay-to-play" system under which Pemex discriminated against Oro Negro for refusing to pay bribes.

7. On several occasions from 2012 to date, agents of the Mexican government requested bribes from Oro Negro and its principals. Oro Negro persistently refused those bribe requests. México's measures against Oro Negro, as described in this Notice, are a result of Oro Negro's refusal to pay bribes. Specifically, as a result of Oro Negro's refusal to engage in bribery, México singled out Oro Negro, subjecting it to increasingly prejudicial, unfair and non-commercial treatment, and ultimately cancelling Oro Negro's lease agreements. México thereby

destroyed Oro Negro's value and exposed its jack-up rigs to seizure by the company's creditors (the "Bondholders").

8. Among other evidence of México's discriminatory and retaliatory treatment of Oro Negro, Claimants have recorded statements by current and former senior Pemex officials confirming that Pemex singled out Oro Negro due to its refusal to pay bribes. These recordings indicate that officials at the highest levels of the Mexican political establishment, including a former Minister of Energy and Pemex's Chief Executive Officer ("CEO") from 2012 to early 2016, often requested bribes and retaliated against those, like Oro Negro and Claimants, who refused to pay them. Indeed, the evidence indicates that México had a pervasive "pay-to-play" system in place and that Oro Negro's refusal to participate led to its demise.

9. As set forth above, Oro Negro entered into agreements to lease its jack-up rigs to Pemex between 2013 and 2015. The initial terms of the lease agreements allowed Oro Negro to operate normally, pay its Bondholders and yield a return to its shareholders, including Claimants. However, starting in 2015, Pemex imposed several destructive amendments to Oro Negro's leases, which severely harmed Claimants' investments in Oro Negro. Pemex's demands began amidst the global decline in the price of oil, when Pemex's Board of Directors¹ issued government orders, known as "*acuerdos*," that (a) reduced Pemex's budget; and (b) authorized Pemex to amend its pre-existing contracts with suppliers to meet the reduced budget.² Relying on these *acuerdos*, and citing constraints on the national or Pemex budget, Pemex imposed drastic amendments on Oro Negro's contracts.

¹ As explained below (*infra* Section II.B), the Board of Directors is Pemex's highest management body and is comprised of ten members appointed by México.

² See Acuerdo CA-010/2015 (Feb. 13, 2015); Acuerdo CA-013/2016 (Feb. 26, 2016); Acuerdo CA-19/2016 (Mar. 4, 2016); Acuerdo CA-16/2017 (Mar. 1, 2017).

10. Ultimately, from 2015 to 2016, Pemex slashed the total lease payments due to Oro Negro under the jack-up rig lease agreements by half and altogether suspended two out of its five contracts with Oro Negro. Importantly, to induce Oro Negro to accept these highly unfavorable amendments, Pemex falsely stated that the rate reductions and suspensions would be temporary and that the contracts would return to their original terms by mid-2017.

11. In early 2017, however, México continued its retaliatory strangulation of Oro Negro. Specifically, Pemex decided to prolong the suspension of two of its leases for about one more year and that the prior daily rate reductions would be indefinite. These new terms placed Oro Negro in permanent financial distress.

12. Pemex threatened to unilaterally terminate Oro Negro's agreements if Oro Negro refused to accept the extended suspensions and the permanent daily rate reductions. Pemex knew that unilaterally terminating the leases would be catastrophic for Oro Negro because, due to Pemex's monopoly hold on the oil and gas sector, it was Oro Negro's only client. Moreover, to exert additional pressure on Oro Negro, Pemex ceased paying Oro Negro altogether.

13. By mid-August 2017, Pemex owed Oro Negro approximately USD 50 million in past due payments and was refusing to pay. Consequently, Oro Negro was facing a profound liquidity crisis, exacerbated by its fear that Pemex would carry out its termination threat and thereby cause Oro Negro to collapse. Left with no other choice, Oro Negro yielded to Pemex's new terms. Over the course of the following month, Pemex and Oro Negro exchanged drafts of the amendments to the leases incorporating Pemex's new terms. Pemex, however, refused to agree on the amendments. By mid-September 2017, Pemex was still refusing to make any payments to Oro Negro and Oro Negro feared that Pemex was preparing to terminate the lease

agreements. To protect itself and its stakeholders, including its creditors and employees, in September 2017, Oro Negro initiated restructuring proceedings before a Mexican court.

14. In early October 2017, the Mexican court responsible for the restructuring proceedings issued numerous injunctions to maintain Oro Negro's *status quo*, including an order enjoining Pemex from terminating the lease agreements and from acting in furtherance of any attempts to terminate them and instructing Pemex to continue paying Oro Negro the daily rates under the agreements, including paying any past due daily rates. In absolute disregard for the Mexican court orders, Pemex illegally terminated the lease agreements and acted in furtherance of its purported terminations by returning the jack-up rigs to Oro Negro and halting any payments to Oro Negro, including withholding all past due daily rates.

15. These terminations were unlawful and solely to persecute and retaliate against Oro Negro and its principals for refusing to join México's infrastructure of corruption. Through these terminations, México put Oro Negro out of business, thereby effectively expropriating Claimants' investment in Oro Negro without any compensation.

16. In contrast to its treatment of Oro Negro, México has provided strikingly favorable treatment to some of Oro Negro's competitors. For example, SeaMex Ltd. ("SeaMex"), one of Oro Negro's competitors, has more favorable terms in its lease agreements with Pemex than any other vendor of jack-ups in the country, *e.g.*, the leases' daily rates are higher, the duration of the leases are longer, Pemex can rarely impose fines on SeaMex in connection with deficient maintenance or operation of its rigs and it is virtually impossible for Pemex to terminate the leases. Further, México has not unilaterally terminated SeaMex's jack-up rig lease agreements, or those of any other supplier of jack-up rigs.

17. México's conduct has caused hundreds of millions of dollars in damages to Claimants, including the destruction of their investment in Oro Negro. Claimants, therefore, have no other option but to seek relief under NAFTA.

II. PARTIES

A. Claimants³

18. Claimants, directly or indirectly (*i.e.*, through companies, trusts or special purpose vehicles), own approximately 43.2 percent of the shares of Integradora Oro Negro. Claimants, directly or indirectly, provided equity contributions to Integradora Oro Negro from 2012 to 2015 to become its shareholders. Claimants' names and contact details are as follows:⁴

- a. Alicia Grace ("Ms. A. Grace"), a U.S. citizen, with her address at [REDACTED]. Ms. A. Grace brings this claim on her own behalf under NAFTA Article 1116;⁵
- b. Ampex Retirement Master Trust ("Ampex Trust"), a trust organized under the laws of the state of Massachusetts, with the address of its trustee, State Street Bank and Trust Company, at One Lincoln Street, Boston, Massachusetts 02111, USA. Ampex Trust brings this claim on its own behalf under NAFTA Article 1116;⁶

³ Exhibits C-A.1 to A.31 are powers of attorney of each Claimant to Quinn Emanuel.

⁴ Pursuant to Article 3(b) of the UNCITRAL Arbitration Rules, this Notice provides the names and contact details of all Claimants. However, México should not communicate directly with any of the Claimants and all of México's communications to Claimants should be addressed to their counsel in this arbitration proceeding, as set forth below (*infra* at Paragraph 19).

⁵ Exhibit C-B.1 is a copy of Ms. A. Grace's U.S. passport.

⁶ Exhibit C-B.2 is a redacted copy of Ampex Trust's trust agreement, reflecting the name of the trust, the governing law of the trust and the name of the trustee. The trustee's address is publicly available at <http://www.statestreet.com/home.html>.

- c. Apple Oaks Partners, LLC (“Apple Oaks”), a limited liability company constituted under the laws of the state of California, with its address at 11150 Santa Monica Boulevard, Suite 1200, Los Angeles, California 90025, USA. Apple Oaks brings this claim on its own behalf under NAFTA Article 1116;⁷
- d. Brentwood Associates Private Equity Profit Sharing Plan (“Brentwood”), an investment vehicle organized under the laws of the United States, with its address at 11150 Santa Monica Boulevard, Suite 1200, Los Angeles, California 90025, USA. Brentwood brings this claim on its own behalf under NAFTA Article 1116. Brentwood’s sole beneficial owner is Frederick J. Warren (described *infra* at Paragraph 18(k));⁸
- e. Cambria Ventures, LLC (“Cambria”), a limited liability company constituted under the laws of the state of Delaware, with its address at 1679 South Dupont Highway, Suite 100, Dover, Delaware 19901, USA. Cambria brings this claim on its own behalf under NAFTA Article 1116;⁹
- f. Carlos Williamson-Nasi (“Mr. Williamson”), a U.S. citizen, with his address at [REDACTED]
[REDACTED]. Mr. Williamson brings this claim on his own behalf under NAFTA Article 1116, and also on behalf of the following enterprises under NAFTA Article 1117:¹⁰

⁷ Exhibit C-B.3 is a copy of a certificate issued by the state of California reflecting Apple Oaks’s name, address and place of constitution or organization.

⁸ Exhibit C-B.4 is a copy of a statement reflecting Brentwood’s existence and Frederick J. Warren’s beneficial ownership of Brentwood.

⁹ Exhibit C-B.5 is a copy of a certificate issued by the state of Delaware reflecting Cambria’s name, address and place of constitution or organization.

¹⁰ Exhibit C-B.6 is a copy of Mr. Williamson’s U.S. passport.

- i. Axis Oil Field Services, S. de R.L. de C.V. (“Axis Services”), a limited liability company constituted under the laws of México, with its address at Paseo de los Tamarindos, No. 90, Tower One, Ninth Floor, Bosques de las Lomas, Cuajimalpa, México City 05120, México. Axis Services is majority owned and controlled by Mr. Williamson and José Antonio Cañedo-White (described *infra* at Paragraph 18(s));¹¹
- ii. Axis Oil Field Holding, S. de R.L. de C.V. (“Axis Holding”), a limited liability company constituted under the laws of México, with its address at Paseo de los Tamarindos, No. 90, Tower One, Ninth Floor, Bosques de las Lomas, Cuajimalpa, México City 05120, México. Axis Holding is majority owned and controlled by Mr. Williamson and José Antonio Cañedo-White;¹²
- iii. Clue, S.A. de C.V. (“Clue”), a corporation constituted under the laws of México, with its address at Paseo de los Tamarindos, No. 90, Tower One, Ninth Floor, Bosques de las Lomas, Cuajimalpa, México City 05120, México. Clue is wholly owned and controlled by Mr. Williamson;¹³ and
- iv. Fideicomiso 305952 (“F. 305952”), a Mexican special purpose vehicle organized under the laws of México, with the address of its vehicle manager (*fiduciario*), HSBC México, S.A., Institución de Banca

¹¹ Exhibit C-B.7 is a copy of a certificate issued by the Mexican government reflecting Axis Services’s name and place of constitution or organization.

¹² Exhibit C-B.8 is a copy of a certificate issued by the Mexican government reflecting Axis Holding’s name and place of constitution or organization.

¹³ Exhibit C-B.9 is a copy of a certificate issued by the Mexican government reflecting Clue’s name and place of constitution or organization.

Múltiple, at Paseo de la Reforma, No. 355, Annex B, Eighth Floor, Cuauhtémoc Colony, México City 06500, México.¹⁴ F. 305952 is majority owned and controlled by Mr. Williamson and José Antonio Cañedo-White.

- g. Carolyn Grace Baring (“Ms. C. Grace”), a U.S. citizen, with her address at [REDACTED]. Ms. C. Grace brings this claim on her own behalf under NAFTA Article 1116;¹⁵
- h. Diana Grace Beard (“Ms. D. Grace”), a U.S. citizen, with her address at [REDACTED]. Ms. D. Grace brings this claim on her own behalf under NAFTA Article 1116;¹⁶
- i. Floradale Partners, LLC (“Floradale”), a limited liability company constituted under the laws of the state of Delaware, with its address at 1200 Union Sugar Avenue, Lompoc, California 93436, USA. Floradale brings this claim on its own behalf under NAFTA Article 1116;¹⁷
- j. Frederick Grace (“Mr. F. Grace”), a U.S. citizen, with his address at [REDACTED]. Mr. F. Grace brings this claim on his own behalf under NAFTA Article 1116;¹⁸

¹⁴ Exhibit C-B.10 is a redacted copy of F. 305952’s agreement, reflecting the name of the vehicle, the governing law of the vehicle, the name and address of the vehicle’s manager, and the vehicle’s owners.

¹⁵ Exhibit C-B.11 is a copy of Ms. C. Grace’s U.S. passport.

¹⁶ Exhibit C-B.12 is a copy of Ms. D. Grace’s U.S. passport.

¹⁷ Exhibit C-B.13 is a copy of a certificate issued by the state of California reflecting Floradale’s name, address and place of constitution or organization.

¹⁸ Exhibit C-B.14 is a copy of Mr. F. Grace’s U.S. passport.

- k. Frederick J. Warren (“Mr. Warren”), a U.S. citizen, with his address at [REDACTED].
[REDACTED].
Mr. Warren brings this claim on his own behalf under NAFTA Article 1116;¹⁹
- l. Frederick J. Warren IRA (the “Warren IRA”), an investment vehicle organized under the laws of the United States, with its address at 222 South Pennsylvania Avenue, Suite 200, Winter Park, Florida 32789, USA. The Warren IRA brings this claim on its own behalf under NAFTA Article 1116. The Warren IRA’s sole beneficial owner is Mr. Warren;²⁰
- m. Gary Olson (“Mr. Olson”), a U.S. citizen, with his address at [REDACTED].
[REDACTED]. Mr. Olson brings this claim on his own behalf under NAFTA Article 1116;²¹
- n. Genevieve T. Irwin (“Ms. Irwin”), a U.S. citizen, with her address at [REDACTED].
[REDACTED] [REDACTED] [REDACTED]. Ms. Irwin brings this claim on her own behalf under NAFTA Article 1116;²²
- o. Genevieve T. Irwin 2002 Trust (the “Irwin Trust”), a trust organized under the laws of the state of Connecticut, with the address of its trustee, Michael S. Arlein, at [REDACTED].

¹⁹ Exhibit C-B.15 is a copy of Mr. Warren’s U.S. passport.

²⁰ Exhibit C-B.16 is a copy of a statement reflecting the Warren IRA’s existence and Mr. Warren’s beneficial ownership of the Warren IRA.

²¹ Exhibit C-B.17 is a copy of Mr. Olson’s U.S. passport.

²² Exhibit C-B.18 is a copy of Ms. Irwin’s U.S. passport.

The Irwin Trust brings this claim on its own behalf under NAFTA Article 1116;²³

p. Gerald L. Parsky (“Mr. Parsky”), a U.S. citizen, with his address at [REDACTED].

Mr. Parsky brings this claim on his own behalf under NAFTA Article 1116;²⁴

q. Gerald L. Parsky IRA (the “Parsky IRA”), an investment vehicle organized under the laws of the United States, with its address at 10877 Wilshire Boulevard, Suite 2100, Los Angeles, California 90024, USA. The Parsky IRA brings this claim on its own behalf under NAFTA Article 1116. The Parsky IRA’s sole beneficial owner is Mr. Parsky;²⁵

r. John N. Irwin III (“Mr. Irwin”), a U.S. citizen, with his address at [REDACTED]. Mr. Irwin brings this claim on his own behalf under NAFTA Article 1116;²⁶

s. José Antonio Cañedo-White (“Mr. Cañedo”), a U.S. permanent resident, with his address at [REDACTED]. Mr. Cañedo brings this claim on his own behalf under NAFTA Article 1116, and also on behalf of the following enterprises under NAFTA Article 1117:²⁷

²³ Exhibit C-B.19 is a copy of the Irwin Trust’s trust agreement and some of its amendments, reflecting the name of the trust, the governing law of the trust and the name of the trustee. The trustee’s address is publicly available at <https://www.pbwt.com/michael-s-arlein/>.

²⁴ Exhibit C-B.20 is a copy of Mr. Parsky’s U.S. passport.

²⁵ Exhibit C-B.21 is a copy of a statement reflecting the Parsky IRA’s existence and Mr. Parsky’s beneficial ownership of the Parsky IRA.

²⁶ Exhibit C-B.22 is a copy of Mr. Irwin’s U.S. passport.

²⁷ Exhibit C-B.23 is a copy of Mr. Cañedo’s U.S. permanent resident permit.

- i. Axis Services, a limited liability company constituted under the laws of México, with its address at Paseo de los Tamarindos, No. 90, Tower One, Ninth Floor, Bosques de las Lomas, Cuajimalpa, México City 05120, México. Axis Services is majority owned and controlled by Mr. Williamson (described *supra* at Paragraph 18(f)) and Mr. Cañedo;²⁸
- ii. Axis Holding, a limited liability company constituted under the laws of México, with its address at Paseo de los Tamarindos, No. 90, Tower One, Ninth Floor, Bosques de las Lomas, Cuajimalpa, México City 05120, México.²⁹ Axis Holding is majority owned and controlled by Messrs. Williamson and Cañedo; and
- iii. F. 305952, a Mexican special purpose vehicle organized under the laws of México, with the address of its vehicle manager (*fiduciario*), HSBC México, S.A., Institución de Banca Múltiple, at Paseo de la Reforma, No. 355, Annex B, Eighth Floor, Cuauhtémoc Colony, México City 06500, México.³⁰ F. 305952 is majority owned and controlled by Messrs. Williamson and Cañedo.
- t. Nicholas Grace (“Mr. N. Grace”), a U.S. citizen, with his address at [REDACTED]. Mr. N. Grace brings this claim on his own behalf under NAFTA Article 1116;³¹

²⁸ Exhibit C-B.7 is a copy of a certificate issued by the Mexican government reflecting Axis Services’s name and place of constitution or organization.

²⁹ Exhibit C-B.8 is a copy of a certificate issued by the Mexican government reflecting Axis Holding’s name and place of constitution or organization.

³⁰ Exhibit C-B.10 is a redacted copy of F. 305952’s agreement, reflecting the name of the vehicle, the governing law of the vehicle, the name and address of the vehicle’s manager, and the vehicle’s owners.

³¹ Exhibit C-B.24 is a copy of Mr. N. Grace’s U.S. passport.

- u. Oliver R. Grace III (“Mr. O. Grace”), a U.S. citizen, with his address at [REDACTED]. Mr. O. Grace brings this claim on his own behalf under NAFTA Article 1116;³²
- v. ON5 Investments, LLC (“ON5”), a limited liability company constituted under the laws of the state of Florida, with its address at 222 South Pennsylvania Avenue, Suite 200, Winter Park, Florida 32789, USA. ON5 brings this claim on its own behalf under NAFTA Article 1116;³³
- w. Rainbow Fund, L.P. (“Rainbow”), a limited partnership constituted under the laws of the state of California, with its address at 888 West 6th Street, Floor 10, Los Angeles, California 90017, USA. Rainbow brings this claim on its own behalf under NAFTA Article 1116;³⁴
- x. Robert M. Witt (“Mr. Witt”), a U.S. citizen, with his address at [REDACTED]. Mr. Witt brings this claim on his own behalf under NAFTA Article 1116;³⁵
- y. Robert M. Witt IRA (the “Witt IRA”), an investment vehicle organized under the laws of the United States, with its address at 1200 Union Sugar Avenue, Lompoc, California 93436, USA. The Witt IRA brings this claim on its own

³² Exhibit C-B.25 is a copy of Mr. O. Grace’s U.S. passport.

³³ Exhibit C-B.26 is a copy of a certificate issued by the state of Florida reflecting ON5’s name, address and place of constitution or organization.

³⁴ Exhibit C-B.27 is a copy of a certificate issued by the state of California reflecting Rainbow’s name, address and place of constitution or organization.

³⁵ Exhibit C-B.28 is a copy of Mr. Witt’s U.S. passport.

behalf under NAFTA Article 1116. The Witt IRA's sole beneficial owner is Mr. Witt;³⁶

- z. Vista Pros, LLC ("Vista Pros"), a limited liability company constituted under the laws of the state of Florida, with its address at 222 South Pennsylvania Avenue, Suite 200, Winter Park, Florida 32789 USA. Vista Pros brings this claim on its own behalf under NAFTA Article 1116;³⁷ and
- aa. Virginia Grace ("Ms. V. Grace"), a U.S. citizen, with her address at [REDACTED]. Ms. V. Grace brings this claim on her own behalf under NAFTA Article 1116.³⁸

19. Claimants are represented in this arbitration proceeding by Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"). All communications to Claimants should be addressed exclusively to Quinn Emanuel at the following address:

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B. Respondent

20. The Respondent is México. Pursuant to México's instructions to Quinn Emanuel, México's contact information for purposes of this arbitration proceeding is:³⁹

³⁶ Exhibit C-B.29 is a copy of a statement reflecting the Witt IRA's existence and Mr. Witt's beneficial ownership of the Witt IRA.

³⁷ Exhibit C-B.30 is a copy of a certificate issued by the state of Florida reflecting Vista Pros's name, address and place of constitution or organization.

³⁸ Exhibit C-B.31 is a copy of Ms. V. Grace's U.S. passport.

Samantha Atayde-Arellano
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21. Claimants' claims arise out of the conduct of two State organs: the Ministry of Energy (*Secretaría de Energía*), the Mexican government body responsible for regulating the energy sector in México; and Pemex, México's state-owned oil and gas company.

22. Pemex is México's State organ responsible for exploring for and producing oil and gas.⁴⁰ Under Mexican law, Pemex is the "exclusive property of the federal Government"⁴¹ and México exerts absolute control over Pemex and all of its actions.⁴² Pemex's highest management body, its Board of Directors, is comprised of ten members—all appointed by México.⁴³ The Chairman of the Board of Directors is México's Energy Minister (*Secretario de*

³⁹ Exhibit C-C is an email dated March 16, 2018, from México to Quinn Emanuel, instructing Quinn Emanuel that it should address all communications regarding this arbitration proceeding to the address set forth here.

⁴⁰ *See, e.g.,* Ley de Petróleos Mexicanos [LPM] [Mexican Petroleum Law], Diario Oficial de la Federación [DOF] [Official Journal of the Federation] 11-08-2014, Art. 2. ("*Petróleos Mexicanos es una empresa productiva del Estado, de propiedad exclusiva del Gobierno Federal, con personalidad jurídica y patrimonio propios y gozará de autonomía técnica, operativa y de gestión, conforme a lo dispuesto en la presente Ley. Petróleos Mexicanos tendrá su domicilio en el Distrito Federal, sin perjuicio de que para el desarrollo de sus actividades pueda establecer domicilios convencionales, tanto en territorio nacional como en el extranjero.*") ["Petróleos Mexicanos is a productive state enterprise, belonging exclusively to the Federal Government, with a legal personality and its own estate, and is endowed with technical, operational, and managerial autonomy, in accordance with what is set forth in this Law. Petróleos Mexicanos will have its domicile in the Federal District [México City], without prejudice to its ability to establish other domiciles, in México or abroad, in order to carry out its activities."].

⁴¹ *See id.*

⁴² Pemex itself represents to its creditors (primarily, bondholders) that it is "controlled by the Mexican Government." *See, e.g.,* Petróleos Mexicanos, Annual Report (Form 20-F) (Dec. 31, 2017), at p.14, http://www.pemex.com/ri/reguladores/ReportesAnuales_SEC/20F%202017.pdf ("Pemex 2017 Annual Report").

⁴³ *See* LPM, Art. 13. ("*El Consejo de Administración, órgano supremo de administración de Petróleos Mexicanos, será responsable de definir las políticas, lineamientos y visión estratégica de Petróleos Mexicanos, sus empresas*

Energía), the head of México's Ministry of Energy. The remaining directors include: Mexico's Treasury Secretary (*Secretaría de Hacienda y Crédito Público*); three Mexican government officials appointed by the President of México; and five directors nominated by the President of México and approved by the Mexican Federal Senate.⁴⁴ All of Pemex's actions, including its commercial activities, such as the leasing of equipment, are under the control, at the direction of, and for the benefit of México.

23. As mentioned above, Pemex's Board of Directors is its highest management body and, as such, exercises ultimate decision-making authority in Pemex. For example, in 2015 and 2016, Pemex's Board of Directors issued a series of *acuerdos* instructing Pemex to amend its contracts with suppliers in order to adjust to México's budget reductions.

24. Under international law, the actions of Pemex are attributable to México pursuant to Article 4 (State Organ) of the Articles Governing the Responsibility of States for Internationally Wrongful Acts (the "ILC Articles") because Pemex is an organ of México.⁴⁵ They are also attributable to México through Article 1503(2) of NAFTA⁴⁶ because Mexican law

productivas subsidiarias y sus empresas filiales.") ["The Board of Directors, the supreme administrative body of *Petróleos Mexicanos*, shall be responsible for defining the policies, guidelines and strategic vision of *Petróleos Mexicanos*, its productive subsidiary companies and its affiliated companies."].

⁴⁴ See, e.g., LPM, Art. 15 (*"El Consejo de Administración estará integrado por diez consejeros, conforme a lo siguiente: I. El titular de la Secretaría de Energía, quien lo presidirá y tendrá voto de calidad y el titular de la Secretaría de Hacienda y Crédito Público; II. Tres consejeros del Gobierno Federal designados por el Ejecutivo Federal, y III. Cinco consejeros independientes, designados por el Ejecutivo Federal y ratificados por el Senado de la República, quienes ejercerán sus funciones de tiempo parcial y no tendrán el carácter de servidores públicos."*) ["The Board of Directors will be comprised of ten directors, in accordance with the following: I. The head of the Ministry of Energy, who will preside over the Board and have the casting vote, and the head of the Ministry of the Treasury; II. Three directors from the Federal Government appointed by the Federal Executive; and III. Five independent directors appointed by the Federal Executive and ratified by the Senate of the Republic, who will perform their functions on a part-time basis and will not have the character of public servants."].

⁴⁵ See ILC Articles, Art. 4, Yearbook of the Int'l L. Comm., 2001, Vol. II (Part Two) (Dec. 12, 2001), http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

⁴⁶ See NAFTA, Art. 1503(2) ("Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapters Eleven (Investment) and Fourteen (Financial Services) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party

delegates governmental authority to Pemex. To the extent México's actions are not covered by Article 1503(2), Pemex's actions are attributable to México under ILC Articles 5 (Persons Exercising State Authority), 7 (Excess of Authority or Contravention of Instructions), and 8 (Persons Operating under the Direction and Control of the State).

III. DESCRIPTION OF THE CLAIM

A. Claimants' Investment in México

1. Claimants Invested in Oro Negro Relying on México's Promises of Transparency and Fairness to Foreign Investors

25. Oro Negro was established against the backdrop of a large-scale reform of México's oil and gas industry and México's promises of transparency and fairness to foreign investors as part of its effort to attract foreign investment to the Mexican oil and gas industry.⁴⁷

26. In addition, since 2011, Pemex has claimed in its annual reports to investors and regulators that it maintains strict policies and controls to prevent and combat corruption.⁴⁸

has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.”).

⁴⁷ See, e.g., *Reforma Energética – Resumen Ejecutivo* [Energy Reform – Executive Summary], Gobierno de la República [Government of the Republic], https://www.gob.mx/cms/uploads/attachment/file/164370/Resumen_de_la_explicacion_de_la_Reforma_Energetica11_1_.pdf; *Palabras del Presidente Enrique Peña Nieto, Durante la Ceremonia Conmemorativa al 76º Aniversario de la Expropiación Petrolera* [Address of President Enrique Peña Nieto During the Commemorative Ceremony for the 76th Anniversary of the Mexican Oil Expropriation], Presidencia de la República [Presidency of the Republic] (Mar. 24, 2014), <https://www.gob.mx/presidencia/prensa/palabras-del-presidente-enrique-pena-nieto-durante-la-ceremonia-conmemorativa-al-76-aniversario-de-la-expropiacion-petrolera>; *La Ley de la Inversión Extranjera en México Promueve Facilidades y Garantías que Ofrece Nuestro País a los Inversionistas* [The Mexican Foreign Investment Act Promotes Convenience and Guarantees that Our Country Offers to Investors], Secretaría de Economía [Ministry of Economy] (Nov. 11, 2011), http://www.siam.economia.gob.mx/work/models/siam/posicionamiento/articulos_posicionamiento/La%20Ley%20de%20inversi%C3%B3n%20extranjera%20en%20M%C3%A9xico%20promueve%20facilidades%20y%20garant%C3%ADas%20que%20ofrece%20nuestro%20pa%C3%ADs%20a%20los%20inversionistas.pdf.

⁴⁸ See, e.g., *Petróleos Mexicanos, Annual Report (Form 20-F)* (Dec. 31, 2011), at 169; *Petróleos Mexicanos, Annual Report (Form 20-F)* (Dec. 31, 2012), at 162; *Petróleos Mexicanos, Annual Report (Form 20-F)* (Dec. 31, 2013), at 186; *Petróleos Mexicanos, Annual Report (Form 20-F)* (Dec. 31, 2014), at 19, 90; *Petróleos Mexicanos, Annual Report (Form 20-F)* (Dec. 31, 2015), at 20, 100; *Petróleos Mexicanos, Annual Report (Form 20-F)* (Dec. 31, 2016), at 101; *Petróleos Mexicanos, Annual Report (Form 20-F)* (Dec. 31, 2017), at 103.

México is also a party to numerous international agreements in which it represents that it has and will continue to implement effective anti-bribery policies and controls.⁴⁹

27. Accordingly, based on representations México made at the time of their investment, Claimants reasonably believed that México would respect the rule of law, would not use its sovereign power to extract bribes, would not impose commercially unreasonable terms on Oro Negro for refusing to pay bribes, and would not discriminate against Claimants' investments in Oro Negro.

2. Integradora Oro Negro and its Subsidiaries

28. Integradora Oro Negro is a Mexican holding company established in 2012 that is owned by a combination of Mexican pension funds and European, Mexican and U.S. individual and institutional investors. Claimants directly or indirectly (*i.e.*, through companies, trusts or special purpose vehicles) own approximately 43.2 percent of Integradora Oro Negro.

29. Each of the Claimants invested in México and made qualifying investments under Chapter 11 of NAFTA, by acquiring equity in Oro Negro between 2012 and 2015. Claimants were shareholders when México adopted the measures that Claimants are alleging violated Chapter 11 of NAFTA and still hold them today.

30. The business of Integradora Oro Negro and its subsidiaries is to own and lease five offshore drilling platforms, commonly known as “jack-up rigs.” Specifically, through five Singaporean special purpose vehicles, Integradora Oro Negro owns five state-of-the-art jack-up rigs (the “Jack-Up Rigs”)⁵⁰ named *Decus*, *Fortius*, *Impetus*, *Laurus* and *Primus*. Integradora Oro Negro also owns 100 percent of Perforadora Oro Negro, S. de R.L. de C.V. (“Perforadora Oro

⁴⁹ See, e.g., OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43; Mexico-OECD Anti-Bribery Convention, OECD (2018), <http://www.oecd.org/mexico/mexico-oecdanti-briberyconvention.htm>.

⁵⁰ Exhibit C-D is a chart depicting the ownership structure of Integradora Oro Negro, Perforadora Oro Negro and the Jack-Up Rigs.

Negro”), a Mexican oil services company.⁵¹ The Singaporean special purpose vehicles lease the Jack-Up Rigs to Perforadora Oro Negro, which, in turn, leases them to Pemex under five separate contracts (the “Oro Negro Contracts”).

31. Integradora Oro Negro’s funding, including to purchase the Jack-Up Rigs and operate the business of Oro Negro, comes from a combination of equity investments, in part by Claimants, and bond issuances. From 2012 to 2015, Oro Negro’s shareholders, including Claimants, made approximately USD 540 million in equity contributions to Oro Negro. In 2014, Oro Negro also raised funds by issuing USD 900 million in bonds on the Luxembourg Stock Exchange. One of Oro Negro’s largest Bondholders is Ship Finance International Limited (“SFIL”), a Bermuda company controlled by John Fredriksen (“Mr. Fredriksen”), a European shipping magnate. Notably, Mr. Fredriksen and his family also indirectly own and control Oro Negro’s main competitor, SeaMex.

32. Oro Negro has no other business or sources of revenues other than the Oro Negro Contracts. Since its inception, Oro Negro’s only client has been Pemex. Further, due to México’s monopoly control over México’s oil and gas, it is virtually impossible for Oro Negro to lease its platforms to any other entity in México.

3. The Jack-Up Rigs

33. Oro Negro’s Jack-Up Rigs are generally of better quality than the platforms of other vendors in México because they (a) were built by the best shipyards in the world; (b) are more stable and thus safer;⁵² (c) can house larger crews, which gives Pemex more manpower to

⁵¹ Specifically, Integradora Oro Negro owns 99.99 percent of Perforadora Oro Negro directly and 0.01 percent through Operadora Oro Negro, S. de R.L. de C.V. (“Operadora Oro Negro”), a wholly owned direct Mexican subsidiary of Integradora Oro Negro.

⁵² Given the size of these structures, jack-up rigs can tilt as a result of water currents or strong winds.

extract oil and gas faster; (d) have bigger drills, which allow Pemex to extract oil and gas faster; and (e) have longer legs, which allow for drilling in deeper waters.

34. Each Jack-Up Rig is currently worth approximately USD 150 million—that value is without an associated lease agreement. If a rig is under lease, it significantly enhances that value because a lease ensures a revenue stream.

4. The Oro Negro Contracts

35. In 2012, Oro Negro commenced negotiations of the Oro Negro Contracts with Pemex. At that time, Pemex was desperate to lease jack-up rigs because it needed to increase its offshore oil and gas output to meet its overall production objectives (*supra* Section III.A.1).

36. Beginning in 2013, Oro Negro and Pemex entered into the five Oro Negro Contracts. The original terms of the Oro Negro Contracts are summarized below:⁵³

- a. *Primus*: On April 23, 2013, PEP⁵⁴ and Perforadora Oro Negro entered into lease no. 421003823 pursuant to which PEP leased *Primus* for 1,030 days (approximately two years and nine months) at a daily rate of approximately USD 159,000 for a total of USD 164,800,000, plus other payments (the “*Primus* Contract”);
- b. *Laurus*: On April 23, 2013, PEP and Perforadora Oro Negro entered into lease no. 421003824 pursuant to which PEP leased *Laurus* for 1,233 days (approximately three years and four months) at a daily rate of approximately USD 159,000 for a total of USD 197,280,000, plus other payments (the “*Laurus* Contract”);

⁵³ Exhibits C-E.1 to C-E.5 are the Oro Negro Contracts in Spanish.

⁵⁴ “PEP” is Pemex Exploration and Production (*Pemex Exploración y Producción*), a unit of Pemex responsible for exploring for and producing oil and gas. After an organizational reform within Pemex in mid-2015, PEP assigned the Oro Negro Contracts to Pemex Drilling and Services (*Pemex Perforación y Servicios*, “PPS”), a Pemex unit responsible for drilling.

- c. *Fortius*: On January 13, 2014, PEP and Perforadora Oro Negro entered into lease no. 421004800 pursuant to which PEP leased *Fortius* for 1,442 days (approximately four years) at a daily rate of approximately USD 161,000 for a total of USD 230,720,000, plus other payments (the “*Fortius Contract*”);
- d. *Decus*: On January 27, 2014, PEP and Perforadora Oro Negro entered into lease no. 421004806 pursuant to which PEP leased *Decus* for 1,342 days (approximately three years and seven months) at a daily rate of approximately USD 161,000 for a total of USD 214,720,000, plus other payments (the “*Decus Contract*”); and
- e. *Impetus*: On December 18, 2015, PPS and Perforadora Oro Negro entered into lease no. 641005817 pursuant to which PPS leased *Impetus* for 1,819 days (approximately five years) at a daily rate of approximately USD 130,000 for a total of USD 236,470,000, plus other payments (the “*Impetus Contract*”).

37. Under the initial terms of the Oro Negro Contracts, Oro Negro’s enterprise value was approximately USD 1.8 billion, making Claimants’ investment in Oro Negro worth approximately USD 700 million.

5. Oro Negro’s Performance Under the Oro Negro Contracts has Been Near Perfect

38. Perforadora Oro Negro’s performance of the Oro Negro Contracts has been almost perfect. Specifically, under the Oro Negro Contracts, Pemex pays Perforadora Oro Negro the daily rate depending on the amount of time the Jack-Up Rig is available and ready for Pemex to use (*i.e.*, not in repair or malfunctioning), regardless of whether Pemex uses it. This means that if the Jack-Up Rig is available and ready for use for 24 hours, Pemex pays 100 percent of the

daily rate; if the Jack-Up Rig is available and ready for use for only 12 hours, Pemex pays 50 percent of the daily rate.

52. From the inception of the Oro Negro Contracts until Pemex unilaterally terminated them, Pemex paid (or authorized payment but has not yet paid), on average, 99.5 percent of the daily rate under each Oro Negro Contract, meaning that the rigs were available and ready for use, on average, 99.5 percent of the time.

B. México's Persecution of Oro Negro

39. From 2012 to 2017, agents of the Mexican government solicited bribes from Oro Negro and its principals, which they refused to pay. México retaliated against Oro Negro by imposing drastic amendments on the Oro Negro Contracts to the detriment of Oro Negro (*i.e.*, daily rate reductions and suspensions that cut Oro Negro's revenues by half), until finally putting Oro Negro out of business entirely by unilaterally terminating the Oro Negro Contracts. Pemex's behavior towards Oro Negro was in part a result of Oro Negro's refusal to pay bribes. In contrast, some of Oro Negro's competitors have received significantly favorable treatment from Pemex.

40. The Claimants have, among other evidence, recorded statements by current and former senior Pemex officials confirming that Pemex singled out and discriminated against Oro Negro because it never paid bribes to Pemex. The recordings indicate that officials at the highest levels of the Mexican political establishment, including a former Minister of Energy and the CEO of Pemex from 2012 to early 2016, often requested bribes and retaliated against those who refused to pay them. Indeed, this evidence indicates that México had a pervasive "pay-to-play" system in place and that Oro Negro's refusal to participate led to its demise.

1. The Blatantly Favorable Terms of SeaMex's Contracts

41. Over the course of the last year, Oro Negro discovered that México granted substantially more favorable terms to some of Oro Negro's competitors, notwithstanding the superior quality of Oro Negro's Jack-Up Rigs and Oro Negro's near-perfect performance of the Oro Negro Contracts.

42. Pemex's preferential treatment of SeaMex, in particular, stands out. SeaMex is a company controlled in equal parts by (a) Seadrill Limited ("Seadrill"), a Bermuda-incorporated company controlled by Mr. Fredriksen—the same individual who controls SFIL, one of Oro Negro's largest Bondholders—and his family; and (b) Fintech Advisory, Inc. ("Fintech"), a New York-based investment fund controlled by David Martinez-Guzman ("Mr. Martinez"), a Mexican billionaire.

43. Beginning in 2014, SeaMex leased five offshore drilling platforms to Pemex (the "SeaMex Contracts"). The SeaMex Contracts contain terms that are strikingly more favorable to SeaMex as compared to Pemex's jack-up rig lease agreements with other vendors, including the Oro Negro Contracts:⁵⁵

- a. Daily rates under the SeaMex Contracts are higher than daily rates under all other jack-up rig lease agreements (making the total value of each SeaMex Contract tens of millions of dollars higher than the total value of any other vendor's jack-up rig lease agreement);
- b. The SeaMex Contracts are significantly longer than all other jack-up rig lease agreements;

⁵⁵ Exhibits C-F.1 to C-F.5 are the SeaMex Contracts in Spanish.

- c. The SeaMex Contracts provide for almost no penalties for deficient maintenance and operation of the jack-up rigs, whereas all other jack-up rig lease agreements contain severe penalties that are easily triggered; and
- d. Finally, unlike all other jack-up rig lease agreements, the SeaMex Contracts do not allow Pemex to terminate them except in cases of breach by SeaMex or *force majeure*.

44. Seadrill itself acknowledges that the SeaMex Contracts are eminently favorable in that it is virtually impossible for Pemex to terminate them. In a conference call with investors, a Seadrill representative stated that the company is “confident that [the SeaMex Contracts] are absolutely secure.”⁵⁶ No other Pemex supplier could make such a representation.

45. Given the superior quality of Oro Negro’s Jack-Up Rigs and Oro Negro’s near-perfect performance of the Oro Negro Contracts, there is no justification for Pemex’s blatantly preferential treatment of SeaMex.

2. Pemex’s Destructive Amendments of the Oro Negro Contracts

i. *2015 Amendments*

46. On June 26, 2015, citing supposedly necessary budget reductions due to the global decline in the price of oil, Pemex imposed destructive amendments to the Oro Negro Contracts, which began Oro Negro’s financial strangulation.

47. Specifically, Pemex reduced the daily rates under the *Primus*,⁵⁷ *Laurus*,⁵⁸ *Fortius*⁵⁹ and *Decus*⁶⁰ Contracts from approximately USD 160,000 to approximately USD

⁵⁶ Exhibit C-G is the transcript of a February 2015 telephone conference among Seadrill and its investors during which Seadrill made this assertion.

⁵⁷ Exhibit C-H.1 is a copy of the June 26, 2015 *Primus* Contract amendment.

⁵⁸ Exhibit C-H.2 is a copy of the June 26, 2015 *Laurus* Contract amendment.

⁵⁹ Exhibit C-H.3 is a copy of the June 26, 2015 *Fortius* Contract amendment.

130,000. Pemex also falsely promised Oro Negro that the rate reductions would apply only for a temporary period, from June 2015 to May 2016, at which time the daily rates would return to USD 160,000, the originally agreed-upon amount (the “2015 Amendments”).

ii. *2016 Amendments*

48. Just as the rate reductions in the 2015 Amendments were set to expire, Pemex reneged on its promise that those Amendments would be temporary and imposed further modifications of the Oro Negro Contracts to Oro Negro’s severe financial detriment. Pemex imposed these terms again promising that they would be temporary and that the Oro Negro Contracts would soon return to their original terms.

49. Specifically, on November 14, 2016, Pemex again reduced the daily rates under the *Fortius*⁶¹ and *Decus*⁶² Contracts—this time from approximately USD 160,000 to approximately USD 116,300—and the daily rate under the *Impetus* Contract⁶³ from approximately USD 130,000 to approximately USD 116,300. Additionally, Pemex unilaterally suspended the *Laurus* Contract⁶⁴ and the *Primus* Contract.⁶⁵ The rate reductions and suspensions, collectively, are referred to here as the “2016 Amendments.” Pemex represented to Oro Negro that the 2016 Amendments were temporary and would expire in around mid-2017.

50. The 2015 Amendments and the 2016 Amendments cut Oro Negro’s revenues by half. As a result, the value of Claimants’ investment in Oro Negro was almost destroyed.

⁶⁰ Exhibit C-H.4 is a copy of the June 26, 2015 *Decus* Contract amendment.

⁶¹ Exhibit C-I.1 is a copy of the November 14, 2016 *Fortius* Contract amendment.

⁶² Exhibit C-I.2 is a copy of the November 14, 2016 *Decus* Contract amendment.

⁶³ Exhibit C-I.3 is a copy of the November 14, 2016 *Impetus* Contract amendment.

⁶⁴ Exhibit C-I.4 is a copy of the November 14, 2016 *Laurus* Contract amendment.

⁶⁵ Exhibit C-I.5 is a copy of the November 14, 2016 *Primus* Contract amendment.

3. México's Efforts to Drive Oro Negro Out of Business

51. México's persecution of Oro Negro did not stop with the 2015 Amendments and the 2016 Amendments.

52. In March 2017, based on the continuation of its supposed budgetary constraints, Pemex informed Oro Negro that, again, it would not fulfill its commitment to return the Oro Negro Contracts to their original terms. Specifically, Pemex informed Oro Negro that it would (a) continue to pay Oro Negro a reduced daily rate of USD 116,300 under the *Fortius*, *Decus* and *Impetus* Contracts until December of 2017; and (b) extend the *Laurus* Contract's suspension until November of 2017 and the *Primus* Contract's suspension until November of 2018 (the "2017 Terms").⁶⁶ This time, however, Pemex did not promise to return the Oro Negro Contracts to their original terms, meaning that the 2017 Terms would be permanent. The 2017 Terms would place Oro Negro in indefinite financial distress, leaving it with barely enough cash to pay interest to its Bondholders, but not to invest or grow, much less pay dividends to its shareholders.

53. To force Oro Negro to submit to the 2017 Terms, Pemex (a) threatened Oro Negro with unilateral termination of all of the Oro Negro Contracts; and (b) ceased to pay under the Oro Negro Contracts. By August 2017, Pemex owed Oro Negro approximately USD 50 million in past due daily rate payments. As a result, Oro Negro was strapped for cash and facing a severe liquidity crisis.

54. Pemex knew that it was financially strangling Oro Negro and that, if Pemex unilaterally terminated the Oro Negro Contracts, Oro Negro would collapse. As set forth above (*supra* Paragraph 3), Pemex is the largest company in México, a state-sponsored and run monopoly, and the only current viable client of oil and gas services companies in México such as

⁶⁶ Exhibit C-J is a copy of a letter in Spanish from Pemex to Perforadora Oro Negro describing the 2017 Terms, with an English translation.

Oro Negro. Oro Negro therefore knew that, even though Pemex had no lawful reason to terminate the Oro Negro Contracts, Oro Negro would collapse if Pemex carried out its threat. Oro Negro thus had no choice but to accept the 2017 Terms.

55. On August 11, 2017, Oro Negro informed Pemex that it would accept the 2017 Terms. Oro Negro and Pemex prepared and exchanged numerous drafts of amendments to the Oro Negro Contracts reflecting the 2017 Terms. However, by September 2017, Pemex had not agreed on the amendments.

4. México's Destruction of Oro Negro's Sole Source of Revenues

56. On September 11, 2017, fearing that Pemex was preparing to unilaterally terminate all of the Oro Negro Contracts and due to Pemex's continued refusal to make any more payments, Perforadora Oro Negro (the party to the Oro Negro Contracts) filed a request with a Mexican court to initiate restructuring proceedings (in Spanish, *concurso mercantil*).⁶⁷ On September 29, 2017, Integradora Oro Negro and six of its subsidiaries, including the Singaporean special purpose vehicles, followed suit.⁶⁸ Oro Negro sought the protections of México's insolvency law in order to protect the interests of all of its stakeholders, including its employees and its creditors.

57. With Oro Negro on the brink of collapse, México took the final step to complete its financial strangulation of Oro Negro. On October 3, 2017, Pemex terminated the *Primus*,⁶⁹

⁶⁷ Exhibit C-K is a copy in Spanish of the petition to initiate *concurso mercantil* filed by Perforadora Oro Negro, with an English translation. Oro Negro disclosed this filing to the public on September 22, 2017. Oro Negro discloses significant developments regarding its operations and finances to the public because, as set forth above (*supra* Section III.A.2), its bonds trade on European debt exchanges.

⁶⁸ Exhibit C-L is a copy in Spanish of the petition to initiate *concurso mercantil* filed by Integradora Oro Negro and six of its subsidiaries, with an English translation.

⁶⁹ Exhibit C-M.1 is a copy in Spanish of the October 3, 2017 *Primus* Contract termination, with an English translation.

Laurus,⁷⁰ *Fortius*⁷¹ and *Decus*⁷² Contracts on the ground that other companies had agreed to lease to Pemex platforms similar to the Jack-Up Rigs at a daily rate of approximately USD 116,300, which Oro Negro had supposedly refused to accept. Additionally, Pemex terminated the *Impetus* Contract on the ground that Oro Negro had filed for *concurso mercantil*.⁷³

58. Among other evidence, Claimants have recorded statements by current and former senior Pemex officials confirming that part of the reason Pemex unilaterally terminated the Oro Negro Contracts was to retaliate against Oro Negro for filing for *concurso*.

59. Pemex's unilateral terminations are unlawful. Pemex claimed that Oro Negro had refused to accept a daily rate of USD 116,300. Not so. Oro Negro had already accepted the 2017 Terms. The true reason that Pemex unilaterally terminated the Oro Negro Contracts was Oro Negro's refusal to accede to México's bribe requests and its subsequent filing for restructuring. Importantly, under Mexican law, a party to a contract may not terminate the contract because its counterparty files for *concurso mercantil*.⁷⁴ Any such termination is

⁷⁰ Exhibit C-M.2 is a copy in Spanish of the October 3, 2017 *Laurus* Contract termination, with an English translation.

⁷¹ Exhibit C-M.3 is a copy in Spanish of the October 3, 2017 *Fortius* Contract termination, with an English translation.

⁷² Exhibit C-M.4 is a copy in Spanish of the October 3, 2017 *Decus* Contract termination, with an English translation.

⁷³ Exhibit C-M.5 is a copy in Spanish of the October 3, 2017 *Impetus* Contract termination, with an English translation.

⁷⁴ See Ley de Concursos Mercantiles [LCM] [Bankruptcy Code], as amended, Official Journal of the Federation [DOF], Jan. 10, 2014 (Mex.), Art. 87 (“Artículo 87.- *Se tendrá por no puesta, salvo las excepciones expresamente establecidas en esta Ley, cualquier estipulación contractual que con motivo de la presentación de una solicitud o demanda de concurso mercantil, o de su declaración, establezca modificaciones que agraven para el Comerciante los términos de los contratos.*”) [“Any contractual stipulation, except for the exceptions expressly established in this Law, that, because of the presentation of a bankruptcy petition or demand, or its declaration, is subject to modifications that worsen the terms of the contract for the Merchant, will be deemed not to have taken place.”].

unenforceable. Accordingly, Pemex's unilateral terminations of the Oro Negro Contracts are unenforceable as a matter of Mexican law.

60. In addition to being unlawful under Mexican insolvency law, Pemex's unilateral terminations of the Oro Negro Contracts also violated Mexican court orders. Specifically, on October 5 and 11, 2017, the Mexican judge presiding over the *concurso mercantil* (the "Concurso Judge"), issued various injunctions to protect Perforadora Oro Negro's assets and operations, including an order (a) enjoining Pemex from terminating the Oro Negro Contracts and from acting in furtherance of its purported October 3 terminations; and (b) instructing Pemex to pay all past due daily rates and to continue paying the daily rates under the Oro Negro Contracts (the "Termination Injunction").⁷⁵

61. Pemex violated the Termination Injunction. Specifically, acting in furtherance of its unilateral terminations, Pemex (a) returned all of the Jack-Up Rigs to Perforadora Oro Negro (the *Impetus* Jack-Up Rig in October and the *Decus, Fortius, Primus* and *Laurus* Jack-Up Rigs in November and December); and (b) ceased to make any more payments under the Oro Negro Contracts.⁷⁶ Importantly, by the time Pemex returned the Jack-Up Rigs, Pemex owed Perforadora Oro Negro approximately USD 100 million in past due daily rates. Notwithstanding that the Termination Injunction ordered Pemex to pay all past due daily rates, and that Perforadora Oro Negro is in restructuring and in desperate need of cash, Pemex continues to refuse to pay the USD 100 million it owes.

⁷⁵ Exhibits C-N and C-O are copies in Spanish, respectively, of the October 5 and 11 orders, with English translations. As the *Concurso* Judge ruled on December 29, 2017, the Termination Injunction applies retroactively, *i.e.*, since the date that Perforadora Oro Negro filed for *concurso*. Exhibit C-P is a copy in Spanish of the December 29 order, with an English translation. Therefore, it is irrelevant that Pemex's unilateral terminations of the Oro Negro Contracts were two days before the Termination Injunction.

⁷⁶ Exhibits C-Q.1 to C-Q.4 are copies in Spanish of the documents reflecting Pemex's delivery of the Jack-Up Rigs to Perforadora Oro Negro, with English translations.

62. Importantly, the *Concurso* Judge has already ruled that Pemex’s terminations of the Oro Negro Contracts “are not valid” and, therefore, that the Oro Negro Contracts continue to be valid and enforceable.⁷⁷ Pemex, however, continues to disregard the Termination Injunction.

63. Oro Negro has also initiated actions before a Mexican civil court and the *Concurso* Judge seeking a declaration that Pemex’s termination of the Oro Negro Contracts was unlawful.⁷⁸ These suits are currently pending.

64. Furthermore, under the Oro Negro Contracts, if Pemex unilaterally terminates them, it must pay all of the remaining daily rates through the end of the term of the Contracts. This amounts to approximately USD 815 million. Consistent with its plan to destroy Oro Negro, Pemex has failed to make this payment.

5. México’s Orchestration of the Attempted Seizure of the Jack-Up Rigs by Bondholders of Oro Negro

65. Pemex conspired with Oro Negro’s Bondholders to terminate the Oro Negro Contracts so that the Bondholders, which include the owners of SeaMex, could take control of the Jack-Up Rigs and lease them back to Pemex. Specifically, from approximately March to September 2017, officials at the highest levels of Pemex met on various occasions with a group

⁷⁷ In late January 2018, Pemex filed an *amparo* (which is a challenge against a court order on the ground that it violates the Mexican Constitution) against the Termination Injunction. On February 21, 2018, the *amparo* judge stayed the Termination Injunction pending a final decision on the *amparo* on the ground that, although the Termination Injunction is lawful and appropriate under Mexican insolvency law, maintaining it as to Pemex threatened Pemex’s financial survival. Integradora Oro Negro and Perforadora Oro Negro appealed the stay and, in late April 2018, an appellate *amparo* panel upheld the stay. Now, the *amparo* court must decide Pemex’s *amparo*. Attached as Exhibit C-R is the appellate decision upholding the stay.

⁷⁸ On October 26, 2017, Perforadora Oro Negro, which is not a Claimant in this case, sued Pemex in a Mexican federal court seeking a declaratory judgment that Pemex’s purported terminations of the *Decus*, *Fortius*, *Laurus* and *Primus* Contracts are unlawful and unenforceable and that, as such, Pemex must perform under these Contracts by reinstating the Jack-Up Rigs and by paying Perforadora Oro Negro the daily rates from the date of the purported terminations until reinstatement. This case is pending. Relatedly, on November 7, 2017, Perforadora Oro Negro filed a motion before the *Concurso* Judge seeking a declaratory judgment that Pemex’s purported termination of the *Impetus* Contract is unlawful and unenforceable and that, as such, Pemex must perform under this Contract by reinstating the *Impetus* Jack-Up Rig and by paying Perforadora Oro Negro the daily rates from the date of the purported termination until reinstatement. The motion is pending.

of investment funds that purport to own the majority of Oro Negro's bonds (the so-called "Ad-Hoc Group of Bondholders"). In these meetings, Pemex and the Ad-Hoc Group of Bondholders agreed that they would force Oro Negro to accept the 2017 Terms, which would lead to a drastic reduction in Oro Negro's revenues but would allow Oro Negro to have barely enough cash to pay interest on the bonds. If Oro Negro refused, Pemex would terminate the Oro Negro Contracts and lease the Jack-Up Rigs from the Bondholders after they took control of the Jack-Up Rigs.

C. Mexico's Pattern of Corruption has Recent Analogues in Latin America

66. From 2014 to date, Brazilian law enforcement agencies have uncovered one of the largest corruption schemes in history.⁷⁹ The government entity at the center of that corruption scandal (known commonly as "*Lava Jato*") is Petróleo Brasileiro S.A. ("Petrobras"), Brazil's state-owned oil company and Pemex's analogue in Brazil.⁸⁰ The *Lava Jato* corruption scheme involved the payment of hundreds of millions of dollars in bribes, by numerous Brazilian and foreign companies, to Brazilian officials, including Petrobras officials, in exchange for Petrobras contracts.⁸¹

67. To date, Brazilian authorities have indicted dozens of Brazilian officials, including Petrobras officials, senior corporate executives and domestic and foreign corporations for participating in the bribery scheme.⁸²

⁷⁹ See *Caso Lava Jato: Linha do Tempo* [*Lava Jato* Case: Timeline], Ministério Público Federal do Brasil [Federal Public Prosecutor of Brazil], <http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/parana/linha-do-tempo> (last visited June 16, 2018) ("ODB Timeline").

⁸⁰ See *id.*; Plea Agreement at B-2, B-5, *United States v. Odebrecht S.A.*, No. 16-643 (E.D.N.Y. Dec. 21, 2016) ("ODB Plea Agreement").

⁸¹ See ODB Timeline; ODB Plea Agreement at B-7.

⁸² See ODB Timeline.

68. At the heart of *Lava Jato* is Odebrecht, S.A. (“ODB”), the largest construction company in Brazil. Brazilian authorities have prosecuted ODB for paying tens of millions of dollars in bribes to government officials in Brazil and numerous other countries.⁸³ In connection with those bribes, Brazilian courts have convicted, among others, Marcelo Odebrecht, one of ODB’s largest shareholders and its former CEO.⁸⁴

69. Notably, Brazil’s evidence against ODB includes that it paid at least USD 10.5 million in bribes to Emilio Lozoya Austin (“Mr. Lozoya”), Pemex’s CEO from 2012 to early 2016.⁸⁵ This is consistent with evidence developed by the Claimants. Specifically, Mr. Lozoya was CEO of Pemex during the time period in which Pemex entered into the Oro Negro Contracts and the SeaMex Contracts. The Claimants have recorded statements from senior Pemex officials, current and former, indicating that Mr. Lozoya often took bribes, including in connection with the SeaMex Contracts.

70. As a result of *Lava Jato* and the attendant evidence of bribe payments by ODB to government officials in numerous countries, many of those countries have taken measures against the officials that received such bribes. For example, numerous officials in Peru, Ecuador and Colombia are under arrest or have already been convicted.⁸⁶ In México, however, the outcome has been strikingly different. México has taken virtually no measures as a result of the ODB revelations and has essentially given Mr. Lozoya a free pass.⁸⁷

⁸³ *See id.*

⁸⁴ *See id.*

⁸⁵ *See* Azam Ahmed, *Mexico Could Press Bribery Charges. It Just Hasn’t*, N.Y. TIMES (June 11, 2016), <https://www.nytimes.com/2018/06/11/world/americas/mexico-odebrecht-investigation.html>.

⁸⁶ *See id.*

⁸⁷ *See id.*

71. México's treatment of the ODB revelations and Mr. Lozoya's bribes confirms that México condones and fosters corruption.

IV. MÉXICO BREACHED ITS OBLIGATIONS UNDER NAFTA AND INTERNATIONAL LAW

A. México Violated its Obligation to Guarantee Fair and Equitable Treatment

72. NAFTA Article 1105(1) requires México to treat U.S. investors and their investments in México in accordance with international law, and accord both investors and investments fair and equitable treatment and full protection and security.⁸⁸

73. However, México has failed to accord fair and equitable treatment to Claimants and their investment in Oro Negro or to accord full protection and security. Specifically, México's conduct violated Claimants' and their investment's rights to transparency and treatment that is not arbitrary or discriminatory, among other fundamental tenets of fair and equitable treatment. México's actions also violated Claimants' legitimate expectation that México would uphold the rule of law and act in accordance with its own laws, policy statements and representations, including in Pemex's annual reports to its regulators and investors. What Claimants certainly did not expect—nor should they tolerate—is a system of bribery and corruption so pervasive that it is a pre-condition for doing business in México.

74. These actions, which individually and taken together violate NAFTA Article 1105(1), include:

- a. requesting bribes in order to provide equitable treatment, including allowing Oro Negro to maintain financially viable terms in the Oro Negro Contracts;
- b. retaliating against Oro Negro when it refused to pay bribes;

⁸⁸ See NAFTA, Art. 1105(1) ("Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.").

- c. imposing crippling reductions to the daily rates under the Oro Negro Contracts, which significantly impaired the value of Oro Negro;
- d. unlawfully inducing Oro Negro to accept the 2015 and 2016 Amendments based on fraudulent representations by Pemex that it would return the Oro Negro Contracts to their original terms;
- e. destroying Oro Negro by unilaterally terminating the Oro Negro Contracts in violation of Mexican law and without compensation;
- f. violating the *Concurso* Judge's Termination Injunction;
- g. conspiring with the Ad-Hoc Group of Bondholders to destroy Oro Negro and dispossess it of the Jack-Up Rigs;
- h. through all of the above, violating Claimants' legitimate expectation that their investment would be treated in a fair and non-discriminatory manner; and
- i. through all of the above, treating Claimants' investment in México less favorably than the investments of other investors.

75. Furthermore, México's actions against Oro Negro, and consequently against Claimants' investments in that company, are in and of themselves breaches of NAFTA because México's fraudulent inducement of Oro Negro into the 2015 and 2016 Amendments, and subsequent unilateral termination of the Oro Negro Contracts, was an unlawful exercise of México's sovereign authority. These measures constitute a violation of the fair and equitable treatment contemplated in NAFTA Article 1105(1).

76. Finally, the discriminatory actions by Pemex toward Oro Negro, in comparison with its like competitors, including SeaMex, constitute a separate violation of the fair and equitable treatment obligation under NAFTA. México has treated Claimants and their

investment in Oro Negro significantly less favorably than other investors and their investments by, *inter alia*, (a) granting more favorable lease terms to competitors despite the superior quality of Oro Negro's Jack-Up Rigs and its near-perfect performance of the Oro Negro Contracts; (b) singling out Oro Negro for drastic rate reductions, the suspension of 40 percent of its Contracts and the suspension of payment under three of the Contracts including as retaliation for Oro Negro's refusal to pay bribes; and (c) destroying Oro Negro's investment by unilaterally terminating the Oro Negro Contracts without paying compensation.

B. México Expropriated Claimants' Investment

77. NAFTA Article 1110 obliges México not to expropriate, directly or indirectly, Claimants' investment in México.⁸⁹

78. Because Oro Negro refused to pay bribes to Mexican officials, México, over the course of the 2015-2017 renegotiations of the Oro Negro Contracts, indirectly expropriated Claimants' investment. By refusing to pay compensation owed under the Oro Negro Contracts, requiring Oro Negro to accept financially unviable terms that strangled it and then purporting to unlawfully terminate the Oro Negro Contracts, México destroyed the only possible revenue stream available to Oro Negro, resulting in a creeping expropriation of the value of Claimants' shares in Oro Negro. This then created an opportunity for Oro Negro's creditors (the Bondholders) to try to seize Oro Negro's primary assets, the Jack-Up Rigs. These actions had no public purpose; on the contrary, they were taken for an illicit purpose, corruption. México also

⁸⁹ See NAFTA, Art. 1110 ("1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law and Article 1105(1); and (d) on payment of compensation in accordance with paragraphs 2 through 6. 2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value. 3. Compensation shall be paid without delay and be fully realizable.").

expropriated Claimants' investment in a discriminatory manner that denied Oro Negro due process and occurred without any compensation.

V. JURISDICTION

A. Claimants are Investors

79. Under NAFTA Article 1139, an "investor of a Party" is defined as "a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment." NAFTA Article 201 defines a "national" as "a natural person who is a citizen or a permanent resident of a Party" and an "enterprise" as "any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association."

80. As explained above (*supra* Section II.A), Claimants are either nationals or enterprises of the United States.

B. Claimants Have an Investment

81. NAFTA Article 1139 defines an "investment" as follows:

(a) an enterprise; (b) an equity security of an enterprise; [. . .] (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise; (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution [. . .]

82. Claimants' direct and indirect shareholdings in Oro Negro and other Mexican entities who in turn are shareholders of Oro Negro are therefore investments under NAFTA.

C. Consent to Arbitration

83. Under NAFTA Article 1122(1), México "consents to the submission of a claim to arbitration in accordance with the procedures set out in [NAFTA]."

84. Under NAFTA Article 1121(1), in order to submit a claim on its own behalf per NAFTA Article 1116, an investor must (a) consent to arbitration; and (b) waive its rights to initiate or continue any proceeding seeking damages against the Respondent based on the same measures underlying that investor's claim in the arbitration. Claimants hereby consent to arbitration and waive their rights in accordance with these provisions.⁹⁰

85. Claimants demand submission of the claims in this Notice against México to arbitration pursuant to NAFTA Article 1120 in accordance with all of the procedures for arbitration set out in NAFTA and Article 3 of the UNCITRAL Arbitration Rules.

VI. PROCEDURE

A. Applicable Law

86. According to NAFTA Article 1131, the Tribunal shall decide the issues in dispute in accordance with "this Agreement and applicable rules of international law."

B. Number and Appointment of Arbitrators

87. NAFTA Article 1123 specifies that "the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties." Claimants and México have therefore agreed on the number and method of appointment of the arbitrators.

88. Pursuant to NAFTA Article 1123 and Article 7 of the UNCITRAL Arbitration Rules, Claimants will appoint their arbitrator after submitting this Notice.

C. Venue of the Arbitration

89. Pursuant to NAFTA Article 1130 and Article 16 of the UNCITRAL Arbitration Rules, Claimants propose that the seat of this arbitration be Washington, D.C., USA.

⁹⁰ Claimants' consents to arbitration and waivers are attached as Exhibits C-A.1 to A.31.

D. Language of the Arbitration

90. Pursuant to Article 17 of the UNCITRAL Arbitration Rules, Claimants propose that the language of the arbitration be English.

VII. REQUEST FOR RELIEF

91. For the reasons in this Notice, Claimants respectfully request that the Tribunal issue an award (the “Award”) that:

- a. Declares that México breached its obligations under NAFTA and international law;
- b. Orders México to compensate Claimants in full for México’s breaches of its obligations under NAFTA and international law in an amount which shall be quantified at a later stage, but which is estimated to be at least USD 700 million;
- c. Orders México to pay Claimants the full costs of the arbitration, including, but not limited to, compensation for all arbitrators’ fees and costs, legal fees, and expenses incurred by Claimants in connection with the present dispute; and
- d. Orders México to pay applicable pre- and post-Award interest from the date of Claimants’ loss and any further applicable interest on the amount the Tribunal awards until México complies with such Award.

92. Claimants reserve their rights to modify or supplement the claims and prayer for relief stated in this Notice, to advance further claims, arguments and prayers for relief, to produce factual and legal evidence as they may deem necessary to complete or supplement the presentation of their claims, and to respond to any arguments or allegations raised by México.

Date: June 19, 2018

Respectfully submitted on behalf of Claimants,

A handwritten signature in blue ink, appearing to read "J. Morillo", is positioned above a horizontal line.

Juan P. Morillo
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Philippe Pinsolle

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