

**IN THE MATTER OF AN ARBITRATION UNDER THE
NORTH AMERICAN FREE TRADE AGREEMENT**

- and -

**THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

- between -

Alicia Grace; Ampex Retirement Master Trust; Apple Oaks Partners, LLC; Brentwood Associates Private Equity Profit Sharing Plan; Cambria Ventures, LLC; Carlos Williamson-Nasi in his own right and on behalf of Axis Services, Axis Holding, Clue and F. 305952; Carolyn Grace Baring; Diana Grace Beard; Floradale Partners, LLC; Frederick Grace; Frederick J. Warren; Frederick J. Warren IRA; Gary Olson; Genevieve T. Irwin; Genevieve T. Irwin 2002 Trust; Gerald L. Parsky; Gerald L. Parsky IRA; John N. Irwin III; José Antonio Cañedo-White in his own right and on behalf of Axis Services, Axis Holding and F. 305952; Nicholas Grace; Oliver Grace III; ON5 Investments, LLC; Rainbow Fund, L.P.; Robert M. Witt; Robert M. Witt IRA; Vista Pros, LLC; Virginia Grace

Claimants

v.

The United Mexican States

Respondent

PROCEDURAL ORDER NO. 12

**DECISION ON THE PARTIES' REQUESTS
FOR PROTECTION OF INFORMATION**

Tribunal

Prof. Diego P. Fernández Arroyo, President

Mr. Andrés Jana Linetzky, Arbitrator

Mr. Gabriel Bottini, Arbitrator

Secretary of the Tribunal

Ms. Patricia Rodríguez Martín

May 27, 2021

I. Procedural Background

1. On March 22, 2021, the Claimants filed their Reply Memorial, indicating that it contained references to “Confidential” and “Highly Confidential” information (the “Unredacted Version”) protected by the protective orders issued by the District Court for the Southern District of New York under 28 U.S.C. Section 1782 (the “Protective Orders”). The Claimants further indicated that, pursuant to the Protective Orders, this Unredacted Version of their Reply Memorial should not be viewed by or shared with anyone outside of the Respondent’s legal team and the Tribunal.
2. On March 23, 2021, the Claimants filed a new version of their Reply Memorial, redacting information classified as “Highly Confidential”. The Claimants noted that “the Reply contains references to highly confidential information and documents which may not be viewed or shared with anyone outside of Respondent’s legal team and the Tribunal.” Further, they indicated that the redacted version “may be viewed and/or shared with representatives of Respondent outside of the legal team” requesting that the Claimants and the Tribunal “treat the entire submission confidentially.”
3. On April 12, 2021, in accordance with § 5(i) of Procedural Order No. 3, the Claimants filed a redacted version of their Reply Memorial, redacting both “Confidential” and “Highly Confidential” information, along with a Transparency Schedule requesting the protection of certain information. The Claimants also resubmitted the version of their Reply Memorial which redacted the information classified as “Highly Confidential”.
4. On May 3, 2021, the Respondent objected to the Claimants’ March 23, 2021, version. The Respondent argued that the Claimants were unilaterally imposing confidentiality requirements on the Tribunal and the Respondent, beyond those established in Procedural Orders No. 1 and 3. In particular, the Respondent objected to the Claimants’ submission of two redacted versions of the Reply Memorial, as well as to the Claimants’ request that the Unredacted Version should not be shared with anyone outside of the Respondent’s legal team and the Tribunal. The Respondent requested the Tribunal to declare that the version of the Reply Memorial redacting “Highly Confidential” information should be considered irrelevant for these proceedings (the “Respondent’s Request”).
5. On May 4, 2021, the Tribunal invited the Claimants to comment on the Respondent’s letter of May 3, 2021.
6. On May 11, 2021, the Claimants submitted their comments in response to the Respondent’s Request. In summary, the Claimants argued that Procedural Orders No. 1 and 3 require that the Parties comply with the provisions of the Protective Orders. According to the Claimants, the Protective Orders restrict the distribution of material

designated as “Highly Confidential” to the Respondent’s counsel and the Tribunal. Therefore, the only way for the Claimants to abide by the Protective Orders and Procedural Order No. 3 is to create two versions: one which redacts “Highly Confidential” information, for the Respondent’s internal use, and the Unredacted Version, which can only be shared with the Respondent’s legal team and the Tribunal.

II. The Tribunal’s Analysis

7. The Tribunal understands that the Respondent objects to the Claimants’ submission of two redacted versions of the Reply Memorial and to the Claimants’ request that the version containing “Highly Confidential” information should not be shared with and viewed by anyone other than the Respondent’s legal team and the Tribunal.
8. At the outset, the Arbitral Tribunal feels compelled to formulate a preliminary observation. A general lack of communication and cooperation appears to, at least partly, explain the pending request before the Arbitral Tribunal. The Arbitral Tribunal is mindful of the fact that the procedural context of the case is exceptional and that the submission of two redacted versions of the Claimants’ Reply can be justified, particularly since it does not unduly affect the Respondent’s position and ability to present its case in these proceedings. This notwithstanding, the Arbitral Tribunal considers that the Claimants’ initial communication with the Respondent failed to dispel any uncertainties. The Parties are encouraged to embrace a spirit of cooperation and communication which could avoid similar requests in the future.
9. As to the Respondent’s objection to the “unilateral requirement” set by the Claimants, the Arbitral Tribunal agrees that the Unredacted Version of the Reply Memorial be shared only with the legal team of the Respondent.
10. The Arbitral Tribunal welcomes the Respondent’s position that it does not, as a matter of principle, object to maintaining the confidentiality of the information or documents covered by the Protective Orders.
11. The Arbitral Tribunal confirms that, as a matter of principle, the Parties are certainly not free to impose unilateral requirements as regards the disclosure of documents. The Parties in this regard must comply with the rules set out in Procedural Orders No. 1 and 3.
12. The Arbitral Tribunal accepts the Claimants’ submission that, to further comply with the Protective Orders, the Claimants had to submit two redacted versions in order to allow the Respondent’s counsel to be able to access all information relevant to the case.

13. The Arbitral Tribunal recalls that it has, on various occasions, already allowed the Parties to produce documents for “attorneys’ eyes only.” In the present situation, the Respondent has failed to evidence how its position in the present proceedings would be unduly affected by the limitation that the Unredacted Version of the Reply Memorial shall only be viewed by and shared with the Respondent’s legal team.
14. Finally, the Tribunal notes that the Respondent has not objected to any of the redactions proposed by the Claimants contained in its Transparency Schedule, nor has the Respondent itself requested any redactions. Pursuant to § 5(iii) of Procedural Order No. 3, the Reply Memorial will therefore be published with the redactions proposed by the Claimants on April 12, 2021.

III. Order

15. For the reasons set out above, the Arbitral Tribunal rejects the Respondent’s Request and orders that the Reply Memorial shall be published with the redactions proposed by the Claimants on April 12, 2021.

On behalf of the Tribunal,

[Signed]

Professor Diego P. Fernández Arroyo
President of the Tribunal
Date: May 27, 2021
Seat of the arbitration: Toronto, Canada