

**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. 16

**ON THE CLAIMANTS' REQUEST TO EXCLUDE MR. JIMÉNEZ'S WITNESS
TESTIMONY FROM THE RECORD**

Tribunal

Prof. Diego P. Fernández Arroyo, President

Mr. Andrés Jana Linetzky, Arbitrator

Mr. Gabriel Bottini, Arbitrator

Secretary of the Tribunal

Ms. Patricia Rodríguez Martín

September 3, 2021

I. Procedural Background

1. On 13 July 2021, the Respondent filed its Rejoinder submission, together with, *inter alia* a witness statement by Mr. Jiménez.
2. On 13 August 2021, the Claimants sent a letter to the Tribunal, requesting the exclusion of Mr. Jiménez’s witness statement (the **Claimants’ request**). In summary, the Claimants raised two main arguments in support of their request: (i) Mr. Jiménez’s statement lacks any factual testimony and is not an independent expert report. As such, Mr. Jiménez’s testimony does not comply with any of the requirements of the relevant and applicable International Bar Association Rules for either type of submission; and (ii) the Respondent abuses its sovereign authority over its own legal system, under which it is illegal for Mr. Jiménez, a current employee of the Mexican government, to submit expert opinions in support of Respondent.
3. On 16 August 2021, the Tribunal invited the Respondent’s comments on the Claimants’ request by 20 August 2021.
4. On 17 August 2021, the Respondent wrote to the Tribunal requesting an extension of the deadline for filing its observations on the Claimants’ request. By email of the same day, the Tribunal granted the Respondent’s request for an extension.
5. On 23 August 2021, the Respondent filed its comments on the Claimants’ request. The Respondent does not deny Mr. Jiménez’s status as an employee of Mexico’s tax authority but argues that party-related witness statements can be admitted, in which case it is up to the Tribunal to determine what, if any, probative value may be assigned to his statement. Respondent insists that Mr. Jiménez is a witness who explains “*the way in which Mexican tax authority applies tax laws*”, a “*knowledge*” acquired and derived from his professional practice as a public official. The Respondent also rejects the Claimants’ argument about Mexico’s abuse of sovereign authority and argues that the Claimants have not provided any legal basis in support of their claim and invoke inapplicable laws to support their claim.

II. The Tribunal’s Analysis

6. The Tribunal has carefully read all the arguments submitted by the Parties on this issue and is fully aware of the significance of guaranteeing the full respect of the fundamental procedural principles regarding the production of evidence according to the applicable rules.
7. Taking those considerations into account, the Tribunal does not find sufficient reasons, at this stage, to exclude Mr. Jiménez’s witness statement from the record.
8. The Tribunal will consider the weight of this evidence in due course, having in mind that “*each party remains free to challenge the content of the witness statement or expert report by all available means of evidence and the Tribunal remains free to assess the probative value of the witness statement or expert report in its discretion*”, according to § 20.4 of PO 1.

III. Order

9. On the basis of the foregoing considerations, the Tribunal rejects Claimants' request.

On behalf of the Tribunal,

[Signed]

Professor Diego P. Fernández Arroyo
President of the Tribunal
Date: September 3, 2021
Seat of the arbitration: Toronto, Canada