

UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES
BETWEEN STATES AND NATIONALS OF OTHER STATES AND THE
INSTITUTION RULES AND ARBITRATION RULES OF THE INTERNATIONAL
CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, CHAPTER 11 OF THE
NORTH AMERICAN FREE TRADE AGREEMENT, AND
CHAPTER 14 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

FINLEY RESOURCES, INC.
MWS MANAGEMENT, INC.
PRIZE PERMANENT HOLDINGS, LLC

Claimants

v.

THE UNITED MEXICAN STATES

Respondent

**SUPPLEMENT TO REQUEST FOR INTERIM MEASURES OF PROTECTION:
PEMEX'S LATEST ACTIONS AGAINST CLAIMANTS' INVESTMENTS**

Andrew B. Derman
Andrew Melsheimer
Gabriel Ruiz
TJ Auner
Julia Segovia

Holland & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
1.214.969.1700

ATTORNEYS FOR CLAIMANTS

December 18, 2021

1. On December 14, 2021, Claimants submitted their Request for Interim Measures to protect the Tribunal's jurisdiction. In the two following days, Pemex took further action against the 821 Contract and the US\$ 41.8 million performance guarantee. As such, Claimants submit this supplement.
2. On December 15, 2021, four men appeared at the law office of an attorney in Mexico City. Her name is Cristina Vizcaino, and she represented the parties to the 821 Contract in litigation in Mexico. Her statement explaining what transpired is attached.
3. One of the men was a Pemex official. The second was a Mexican public notary. The other two did not identify themselves. They demanded that Ms. Vizcaino acknowledge receipt of the "finiquito" documents for the 821 Contract. Apparently, Pemex proceeded to terminate the contract unilaterally.
4. Ms. Vizcaino explained that she is not authorized to accept documents on Claimants' behalf. She refused to accept the "finiquito" documents and asked the men to leave. They did not.
5. Instead, the four men tried to convince her to receive the documents. Eventually, they left but remained outside her building. They then attached the documents to her door. In all, this lasted approximately one and a half hours.
6. Ms. Vizcaino believes that this conduct was unethical and inappropriate for a public notary. As such, she reported it to the appropriate authority. Later, the documents that the men had attached to her office door disappeared.
7. On December 16, 2021, a group of three men returned to Ms. Vizcaino's office. One was an internal attorney at Pemex named Moises Romero Cordero and another was a notary public. The men explained that they had left a citation in her mailbox the day before, advising of their return.
8. Again, the men sought to have Ms. Vizcaino receive and sign for Pemex's unilateral "finiquito" of the 821 Contract. Ms. Vizcaino explained that she is not authorized to receive such documents on behalf of the Claimants and asked them to leave. Ultimately, the men taped the documents to the door of Ms. Vizcaino's office.
9. The following images are from outside Ms. Vizcaino's office on December 16:



10. Claimants’ Request for Interim Measures explains that the “finiquito” process is designed to allow the contracting parties to agree on an amicable, final settlement and termination of the

821 Contract. According to Pemex, Clause 18(5) of the 821 Contract allows Pemex to proceed unilaterally if the Contractor (the counterparty) does not participate in the settlement process:¹

If the Contractor does not appear for the Finiquito [settlement], PEP [Pemex] can proceed unilaterally, and if the Finiquito results in the Contractor owing a balance, and it denies paying it, PEP can pursue the payment before the appropriate authority.

Claimants' Request for Interim Measures explains that the parties to the 821 Contract were not properly notified of the "finiquito." Thus, Pemex's efforts to proceed unilaterally is an absolute nullity.

11. Pemex further contends that the 821 Contract terminates under Clause 18(6) once it receives payment based on its unilateral "finiquito":²

The term of the Contract ends when the Finiquito (settlement) is finalized, or in the case that there is a balance for either of the Parties, once the balance is paid in full.

12. Since Claimants submitted their Request for Interim Measures, Pemex has attempted to have an attorney — who has repeatedly told Pemex that she lacks authority to act on behalf of Claimants — to acknowledge receipt of its unilateral "finiquito." By doing so, Pemex would proceed to claim against Claimants' US\$ 41.8 million performance guarantee.³ Mexico has already objected to the Tribunal's jurisdiction arguing that Claimants do not have an "existing investment." If Mexico (through Pemex) continues with its improper unilateral "finiquito," Mexico will be eliminating two of Claimants' investments (i.e., the 821 Contract and the US\$ 41.8 million guarantee), and thus, creating additional grounds for its argument about the Tribunal's jurisdiction.

¹ Clause 18(5) provides,

En caso de que el CONTRATISTA no comparezca al Finiquito, PEP procederá a realizarlo de manera unilateral y, en el supuesto que del Finiquito se desprenda que existe saldo a favor del CONTRATISTA y éste se niegue a cobralo, PEP podrá consignar el pago ante la autoridad que corresponda.

² Clause 18(6) provides,

La vigencia del Contrato concluirá hasta que se formalice el Finiquito o, en el caso de que de éste resulten saldos a favor de cualquiera de las Partes, hasta la fecha en que se paguen en su totalidad las cantidades correspondientes.

³ As explained in Claimants' Request for Interim Measures, Pemex has already demanded payment from the bond company.

13. Unless the Tribunal acts, Claimants expect that Mexico will continue to engage in these unjustified and retaliatory attacks. A quick Google search reveals that retaliation appears to be common when arbitrating over Pemex’s treatment of foreign investments. In another pending NAFTA/ICSID arbitration involving Pemex, other U.S. investors have been subjected to the same treatment:⁴

Since initiating this arbitration, the Mexican government has made every effort to fiercely retaliate against certain of the Claimants and Oro Negro, including by initiating close to eight criminal investigations against Oro Negro, its employees and lawyers, and recently issuing arrest warrants and requesting Interpol Red Notices against two of the Claimants and three individuals who are key witnesses in this NAFTA proceeding. These criminal investigations are based on fabricated evidence and replete with red flags of corruption, suggesting that Mexican prosecutors and judges may have taken bribes from Oro Negro’s creditors or their agents in pursuit of México’s criminal charges against Oro Negro.

14. To preserve the Tribunal’s jurisdiction, Claimants respectfully request the Tribunal to take immediate action and order Mexico to cease any further action that may deprive the Tribunal of jurisdiction to hear Claimants’ claims, to wit, any action related to the “finiquito” of the 821 Contract or making a claim against the US\$ 41.8 million performance guarantee. Claimants also request any other measures that the Tribunal deems appropriate under the circumstances, including an interim award of costs associated with submitting this Request. Claimants further reserve all rights.

Respectfully,



HOLLAND & KNIGHT LLP

Andrew B. Derman
Andrew Melsheimer
Gabriel Ruiz
TJ Auner
Julia Segovia

ATTORNEYS FOR CLAIMANTS

⁴ *Alicia Grace and others v United Mexican States*, ICSID Case No. UNCT/18/4, Claimants’ Statement of Claim (Oct. 7, 2019) ¶ 5, available at, <https://www.transnational-dispute-management.com/legal-and-regulatory-detail.asp?key=27321>.