

International Centre for Settlement of Investment Disputes

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

Claimants

Vs.

UNITED MEXICAN STATES

Respondent

ICSID Case No. ARB/21/25

EXPERT REPORT ON MEXICAN LAW

RODRIGO ZAMORA ETCHARREN AND DANIEL AMÉZQUITA DÍAZ

8 June 2022

EXPERT REPORT ON MEXICAN LAW

by

Rodrigo Zamora Etcharren and Daniel Amézquita Díaz

1. We, Rodrigo Zamora Etcharren and Daniel Amézquita Díaz, have been asked by Holland & Knight (Dallas, TX, U.S.A.), counsel for Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC (collectively, “Claimants”) to provide an opinion as expert witnesses on various legal issues arising under Mexican law in connection with the case at bar filed by Claimants against the United Mexican States (“México” and collectively with Claimants, the “Parties”).

I. QUALIFICATIONS AND INDEPENDENCE

A. Rodrigo Zamora Etcharren

2. My full name is Rodrigo Zamora Etcharren.
3. I am a Mexican citizen and lawyer, admitted to practice in Mexico, and in good standing before all Federal and State Courts in Mexico, including Mexico’s Federal Supreme Court.
4. I obtained my law degree (J.D. equivalent) from the Escuela Libre de Derecho and a Master’s Law degree (LL.M.) from New York University’s Law School. After obtaining my master’s degree, I was a Foreign Associate at Kelley Drye & Warren, LLP. I am a member of the New York Bar Association.
5. I am the head of arbitration and commercial litigation at Galicia Abogados, where my practice encompasses all aspects of Mexican commercial litigation

and arbitration (both international and domestic). Before joining Galicia Abogados in 2017, I was a partner in Bufete Zamora Pierce (1997 - 2017).

6. I am a Professor in the Commercial Law Postgraduate Program of the Escuela Libre de Derecho, and a former professor at Universidad Panamericana and Instituto Tecnológico Autónomo de México. I have also participated in the drafting of Mexican laws.
7. I am a member of the Mexican Bar Association (former chair of its Commercial Arbitration Committee and its Commercial Law Division, former General Counsel, and former Second Vice President of its Board of Directors); the Institute for Transnational Arbitration; the Arbitration Commission of Mexico's ICC National Committee; and a Fellow of the Chartered Institute of Arbitrators. I have lectured and written on a wide variety of legal matters, both domestic and international.
8. My experience and qualifications are summarized in Annex-A to this Expert Report.
9. I am independent from the Parties, their legal advisors and the members of the Arbitral Tribunal. Other than my Mexican citizenship and all related aspects, and the work related to this Expert Report, I have no present or past relationship with any of the Parties, their legal advisors and the members of the Arbitral Tribunal.

B. Daniel Amézquita Díaz

10. My full name is Daniel Amézquita Díaz.

11. I am a Mexican citizen and lawyer, admitted to practice, and in good standing before all Federal and State Courts in Mexico, including Mexico's Federal Supreme Court and the Federal Tribunal of Administrative Justice.
12. I obtained my law degree (J.D. equivalent) and postgraduate studies in Tax Law from the Escuela Libre de Derecho, a diploma in American Law from Universidad Iberoamericana and Georgetown University, a specialization in European Union Law from Universidad Iberoamericana and Deusto, a diploma in International Commercial Arbitration from the International Chamber of Commerce and Escuela Libre de Derecho, and a Diploma in Anti-Corruption from Universidad Panamericana and ANADE (National Association of Company Lawyers), among others.
13. I am currently the administrative and constitutional litigation partner at Galicia Abogados, where my practice encompasses all aspects of Mexican administrative and constitutional litigation. Before joining Galicia Abogados in 2012, I was a partner in Chévez Ruiz Zamarripa y Cia.
14. Former professor at the Universidad Panamericana, Universidad Iberoamericana, Escuela Libre de Derecho and the Instituto Tecnológico Autónomo de México, lecturing on various subjects of international and tax law.
15. I am currently a member of ANADE, the International Academy of Customs Law and the Arbitration Commission of the International Chamber of Commerce, former coordinator of the Administrative Law Commission of the Mexican Bar and of the Administrative Law Committee of the ANADE.
16. My experience and qualifications are summarized in Annex-B to this Expert Report.

17. I am independent from the Parties, their legal advisors and members of the Arbitral Tribunal. Other than my Mexican citizenship and all related aspects, and the work related to this Expert Report, I have no present or past relationship with any of the Parties, their legal advisors and the members of the Arbitral Tribunal.

II. INTRODUCTION

A. Scope of Assignment

18. In formulating our opinions on the issues raised in this case, we have relied, in part, on our relevant education, training and years of professional experience as legal practitioners, as well as our general familiarity with Mexico, Mexican law and the Mexican legal system. We have also consulted and reviewed the sources of Mexican law referred to herein.
19. In order to carry out our assignment, we were provided with and, we thus have reviewed, case-specific materials and documents filed in this case and in proceedings in Mexico involving Claimants. A complete list of the documents that we took into consideration in the preparation of this declaration is attached herein.

B. Summary of Opinions

20. This Expert Report highlights some of the many substantive and procedural violations, which affected the administrative and civil proceedings initiated by Claimants before Mexican Courts. Prior to delving into the specifics of such procedures, it is relevant to understand Mexico's procedural legal system, which is explained in the following section.
21. Our overall opinion in this matter is that justice was not administered or granted promptly, completely and impartially to Claimants since all of the

proceedings initiated by them against Pemex (as such term is defined below), were affected by many essential breaches in the process, including:

- i. Issuance of irregular decisions and judgments *re* jurisdiction;
 - ii. Issuance of decisions on and/or admission of Pemex's requests in contradiction of the *res judicata* principle in violation of Claimants' constitutional rights;
 - iii. Issuance of decisions in contradiction of the *suplencia de la queja* principle in violation of Claimants' constitutional rights;
 - iv. Improper acts by judges for, allegedly, providing Pemex with information on the judgment on the merits to be issued by the Court;
 - v. Issuance of decisions in contradiction of the exhaustiveness principle in violation of Claimants' constitutional rights;
 - vi. Issuance of decisions in violation of the duty to motivate in violation of Claimants' constitutional rights;
 - vii. Issuance of incoherent decisions and judgments; and
 - viii. Irregular and excessive length of the proceedings initiated by Claimants against Pemex (*i.e.*, CP-803, CP-804, CP-821, AP-804 and AP-821).
22. The evidence shows that for over six years Claimants' efforts to obtain their day in court were futile, as these efforts were obstructed, derailed, or sabotaged.

III. MEXICO'S PROCEDURAL LEGAL SYSTEM

23. Mexico is a federation which supreme power (*Supremo Poder de la Federación*) is divided among the executive (headed by the President of

Mexico), legislative (vested in the Congress of the Union) and judicial (headed by the Supreme Court of Justice) branches.¹

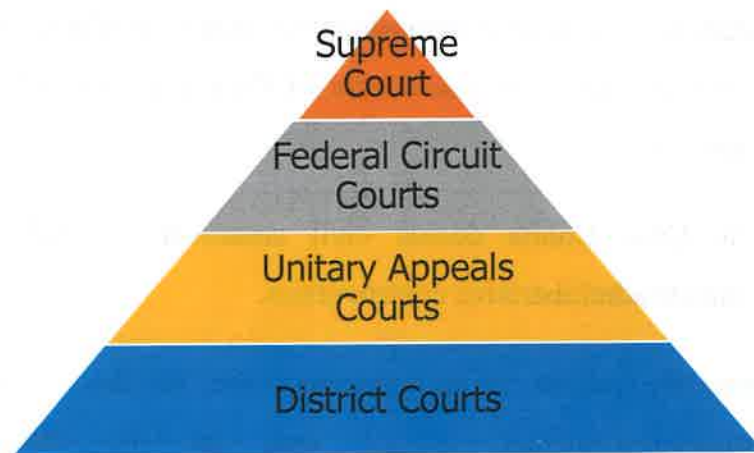
24. Administrative matters are governed separately from strictly civil matters. Administrative matters refer to all legal relationships between state-owned entities/governmental entities and corporations and/or individuals in which the former acts as a governmental authority² against the latter, while civil matters refer to legal relationships between individuals and/or corporations that are not acting in the course of their business and are not acting as authorities.
25. While Civil Courts decide civil controversies, Administrative Courts adjudicate administrative controversies.
26. Where the parties to an agreement are, on the one side, state-owned entities/governmental entities and, on the other side, private entities/individuals, disputes deriving from such agreement may be administrative-related disputes or civil/commercial-related disputes. In other words, administrative and civil disputes may derive from the same agreement and, thus, may result in both civil and administrative litigations.
27. In this case, disputes deriving from Agreements 804 and 821 resulted in independent, civil and administrative procedures (*see* §IV (B) and (C) of this Expert Report).

A. Civil Legal Sources, Courts and Procedure

¹ Constitution [RZ-001], Article 49.

² An act of authority is considered to be any voluntary and intentional, negative or positive fact attributable to a state agencies, consisting of a decision or an execution or both together, that produces an affectation in certain legal or factual situations,

28. The civil procedural laws sources are both federal and local. Succinctly, civil proceedings may be regulated by the Federal Code of Civil Procedure (a federal statute) or by each state's code of civil procedure (local statutes).
29. The Judicial branch is divided into federal and local courts.³ At a federal level the hierarchy of the courts is the following:



30. An ordinary civil proceeding is initiated by the submission of a claim before the relevant court of first instance (local or federal). Since the proceedings that are herein analyzed are only federal proceedings, the following summary of the Mexican judicial system will only pertain to federal courts.

i. First instance proceeding – Federal District Court

31. Once the claim is received by the Federal Court of first instance (namely, the District Court), it shall analyze whether all the requirements are met.⁴ If these

³ Constitution [RZ-001], Article 94.

⁴ Federal Code of Civil Procedure [RZ-002], Art. 322 provides that the claim must indicate the court before it is submitted, the name of claimant and that of defendant, the action that is exercised, the facts of the case, legal foundation and relief sought: “[l]a demanda expresará: I.- El tribunal ante el cual se promueva; II.- El nombre del actor y el del demandado. Si se ejercita acción real, o de vacancia, o sobre demolición de obra peligrosa o suspensión y demolición de obra nueva, o sobre daños y perjuicios ocasionados por una propiedad sobre otra, y se ignora quién sea la persona contra la que deba enderezarse la demanda, no será necesario indicar su nombre, sino que bastará con la designación inconfundible del inmueble,

are not met, the District Court may dismiss the claim;⁵ conversely, if these are met said Court shall accept the claim and order its registration.⁶

32. Once the claim is accepted by the District Court, it will also order that service of process be performed on defendant so that it may file its answer to the claim within a nine-day period.⁷
33. In claimant's claim⁸ and defendant's answer,⁹ evidence must be submitted. Following the exchange of memorials, an evidentiary hearing shall take place. The District Judge shall preside over the hearing in which procedural defenses will be decided and evidence will be received.¹⁰ After reception of evidence, the parties will make their final arguments and the District Judge will issue his/her judgment within a ten-day period.¹¹

ii. Second instance proceeding – Unitary Appeals Court

34. A party may file an appeal against the decision of a District Court within a five-day period following the notice date of said decision.¹² Such appeal shall be resolved by an appellate Court (namely, a Unitary Appeals Court).¹³

para que se tenga por señalado al demandado. Lo mismo se observará en casos análogos, y el emplazamiento se hará como lo manda el artículo 315; III.- Los hechos en que el actor funde su petición, narrándolos sucintamente, con claridad y precisión, de tal manera que el demandado pueda producir su contestación y defensa; IV.- Los fundamentos de derecho, y V.- Lo que se pida, designándolo con toda exactitud, en términos claros y precisos.”

⁵ Federal Code of Civil Procedure [RZ-002], Art. 327.

⁶ Federal Code of Civil Procedure [RZ -002], Arts. 323-325.

⁷ Federal Code of Civil Procedure [RZ-002], Art. 327.

⁸ Federal Code of Civil Procedure [RZ -002], Arts. 323 and 324.

⁹ Federal Code of Civil Procedure [RZ -002], Art. 331.

¹⁰ Federal Code of Civil Procedure [RZ -002], Art. 343.

¹¹ Federal Code of Civil Procedure [RZ -002], Art. 347.

¹² Federal Code of Civil Procedure [RZ -002], Art. 241.

¹³ Federal Code of Civil Procedure [RZ -002], Art. 242.

35. The Unitary Appeals Court will order that service on process be performed on third interested party (namely, the counterparty of the appellant in the first instance proceeding) so that it may file its answer to the appeal within a five-day period.¹⁴
36. A hearing to receive opening statements shall take place and be presided by the magistrate of the Unitary Appeals Court.¹⁵ Within a five-day period following said hearing, the magistrate shall issue its appeals judgment.¹⁶

iii. Third instance proceeding – Amparo

37. In Mexico, an *amparo* (direct or indirect)¹⁷ provides protection to the fundamental rights (recognized in the Constitution and in International treaties signed by Mexico) of all persons (individuals or corporations) that a public authority might have infringed.¹⁸ All authorities have the obligation to promote, respect, protect and guarantee fundamental rights in accordance with the principles of universality, interdependence, indivisibility and progressivity. In consequence, the State (including the Judicial branch) shall prevent, investigate, sanction and repair all violations of fundamental rights.¹⁹

¹⁴ Federal Code of Civil Procedure [RZ-002], Art. 252.

¹⁵ Federal Code of Civil Procedure [RZ-002], Art. 256.

¹⁶ Federal Code of Civil Procedure [RZ-002], Art. 256.

¹⁷ There are two different types of amparo procedures: direct amparo (*amparo directo*) and indirect amparo (*amparo indirecto*). Regarding judicial proceedings, the direct amparo is most commonly filed against the final judgment in such proceedings, and the indirect amparo against certain procedural orders, or against actions taken after the case ends or against persons who are foreign to the proceedings.¹⁶²

¹⁸ Constitution [RZ-001], Chapter I, Art. 1.

¹⁹ Constitution [RZ-001], Chapter I, Art. 1: “[...]todas las autoridades, en el ámbito de sus competencias, tienen la obligación de promover, respetar, proteger y garantizar los derechos humanos de conformidad con los principios de universalidad, interdependencia, indivisibilidad y progresividad. En consecuencia, el Estado deberá prevenir, investigar, sancionar y reparar las violaciones a los derechos humanos, en los términos que establezca la ley [...]”

38. Certain fundamental rights included in Chapter I of the Constitution are substantive (*i.e.* slavery prohibition) and other are procedural (*i.e.* due process). The main procedural fundamental rights recognized by the Constitution include the rights: (i) not to be deprived of one's own liberty, properties, possessions or rights without there being a trial followed before the relevant court compliant with procedure's essential formalities and laws (*i.e.* due process); (ii) for judgments to be issued applying the law (strictly or by interpretation) or general principles of law;²⁰ (iii) to only be bothered in his/her person, family, domicile, papers or possessions, upon a written order issued by a competent authority, properly indicating and explaining the legal grounds of such order;²¹ and (iv) to have justice administered by courts in accordance with the time periods and terms fixed by law, issuing decisions promptly, completely and impartially.²²
39. While all authorities have to respect and protect all fundamental rights, Articles 103 and 107 of the Constitution establish a general judicial challenge procedure against fundamental rights violations: the *amparo* procedure (*juicio de amparo*). All government agencies and officials (such as judges and magistrates) are subject to *amparo* review, as well as private entities acting

²⁰ Constitution [RZ-001], Chapter I, Art. 14: "[...] *[e]n los juicios del orden civil, la sentencia definitiva deberá ser conforme a la letra o a la interpretación jurídica de la ley, y a falta de ésta se fundará en los principios generales del derecho.*"

²¹ Constitution [RZ-002], Chapter I, Art. 16: "[...] *[n]adie puede ser molestado en su persona, familia, domicilio, papeles o posesiones, sino en virtud de mandamiento escrito de la autoridad competente, que funde y motive la causa legal del procedimiento. En los juicios y procedimientos seguidos en forma de juicio en los que se establezca como regla la oralidad, bastará con que quede constancia de ellos en cualquier medio que dé certeza de su contenido y del cumplimiento de lo previsto en este párrafo.*"

²² Constitution [RZ-001], Chapter I, Art. 17: "[...] *[t]oda persona tiene derecho a que se le administre justicia por tribunales que estarán expeditos para impartirla en los plazos y términos que fijen las leyes, emitiendo sus resoluciones de manera pronta, completa e imparcial. Su servicio será gratuito, quedando, en consecuencia, prohibidas las costas judiciales [...].*"

as authorities.²³ The *Amparo* proceedings are regulated by the Amparo Law (a federal statute).

40. The *amparo* claim has to be filed by the party (known as the *quejoso*) aggrieved by the law, international treaty, regulation or other act of authority which is challenged (known as the “*acto reclamado*”).²⁴
41. With certain exceptions, the *amparo* claim must be filed within a fifteen-day period following the day when the challenged action was notified to the aggrieved party (or when the aggrieved party has knowledge about its existence).²⁵
42. The orders and judgments issued in *amparo* proceedings are themselves subject to three different challenges: *revision*, *queja* and *reclamación*.²⁶
43. The *amparo* claim must meet certain requirements for its acceptance by the relevant Federal Circuit Courts (direct *amparo*) or the relevant Unitary Appeals Court (indirect *amparo*) (indistinctly referred to as the “Amparo Court”), including: (i) the name of the responsible authority (*autoridad responsable*), (ii) identification of the actions challenged (*actos reclamados*), and (iii) the grounds for the challenge (*conceptos de violación*). The Amparo

²³ Amparo Law [RZ-003], Arts. 107 and 170.

²⁴ Amparo Law [RZ-003], Art. 4: “[e]l juicio de amparo únicamente puede promoverse por la parte a quien perjudique la ley, el tratado internacional, el reglamento o cualquier otro acto que se reclame, pudiendo hacerlo por sí, por su representante, por su defensor si se trata de un acto que corresponda a una causa criminal, por medio de algún pariente o persona extraña en los casos en que esta ley lo permita expresamente; y sólo podrá seguirse por el agraviado, por su representante legal o por su defensor.”

²⁵ Amparo Law [RZ-003], Article 17: “El plazo para presentar la demanda de amparo es de quince días, salvo: [...]”

²⁶ Amparo Law [RZ-003], Article 80: “En el juicio de amparo sólo se admitirán los recursos de revisión, queja y reclamación; y tratándose del cumplimiento de sentencia, el de inconformidad [...]”

Law provides for several inadmissibility grounds that could prevent the admission of the *amparo* (direct or indirect).²⁷

44. The parties to an *amparo* proceeding are the following:

Amparo Claimant	Responsible Authority	Third Interested Party
<ul style="list-style-type: none">• Holder of the right that is violated.• Person whose legal sphere is affected.	<ul style="list-style-type: none">• Public authority.• Private parties when they perform acts equivalent to those of an authority, that affect rights and whose functions are determined by a general law	<ul style="list-style-type: none">• May be affected by Amparo resolution.

45. Upon accepting the *amparo* claim, the Amparo Court shall serve the parties and request the responsible authority to submit its report justifying its actions (*informe justificado*). At the same time, said Amparo Court shall rule on the temporary suspension of the challenged actions (*i.e.* suspension of the effects of the first instance ruling).

46. In its final judgment, the Amparo Court must decide whether the challenged actions violate the aggrieved party's fundamental rights. If so, the Amparo Court would grant the *amparo* to the aggrieved party (claimant in the Amparo proceedings) and the judgment will contain any of the following statements:

- i. declaration of invalidity of the decision, act or contested decision;

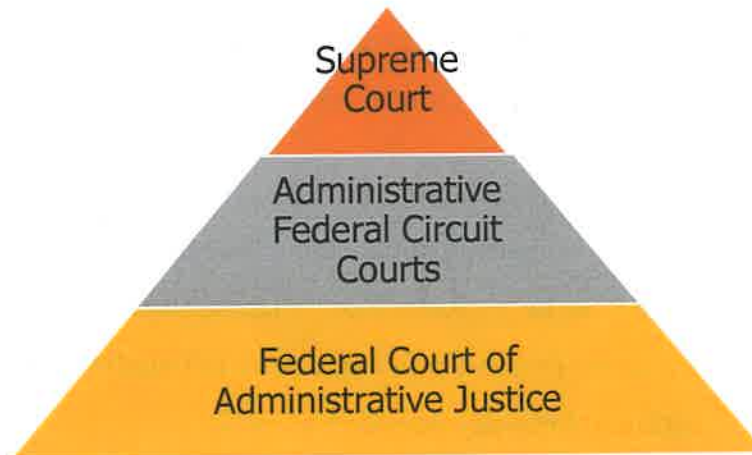
²⁷ Amparo Law [RZ-003], Arts. 61 and 63 provide that an amparo claim is inadmissible when it relates to: (i) acts of private entities or individuals; (ii) consented acts; (iii) irreparable acts; (iv) future and uncertain acts; (v) judgments that may be challenged through other means; (vi) an act that ceased to exist, among others.

- ii. public recognition of the fundamental right that have been violated; and/or
- iii. restoration of the aggrieved party in the integrity of its fundamental rights by adopting appropriate measures, and where appropriate, for its conservation.

B. Administrative Legal Sources, Courts and procedure

47. The administrative procedural laws sources are also both federal and local. Succinctly, administrative proceedings are regulated by the Federal Administrative Law (a federal statute) and by each state's relevant administrative proceedings laws (local statutes), and *amparo* proceedings are regulated by the Amparo Law (a federal statute).
48. The administrative adjudication system in Mexico consists of (i) a Federal Administrative Court, which is a specialized court within the executive branch, (ii) 30 state-level administrative courts, which are also within the executive branch;²⁸ (iii) Administrative Federal Circuit Courts within the judicial branch; and (iv) Supreme Court of Justice within the judicial branch. The hierarchy is the following:

²⁸ Sergio López-Ayllón, "A comparative-empirical law analysis of administrative courts in Mexico", Mexican Law Review, Vol. VII, No. 2, p. 19 available at <https://revistas.juridicas.unam.mx/index.php/mexican-law-review/article/view/7810/9785>.



49. An administrative procedure is initiated by the submission of a claim before the relevant court of first instance (local or federal). Since the proceedings that are herein analyzed are only federal proceedings, the following summary of the administrative court system will only pertain to federal courts.

i. First instance proceeding – Federal Court of Administrative Justice

50. Any decision by an authority (and/or state-owned entity, such as Pemex) can be challenge before the Federal Court of Administrative Justice (hereinafter the “Administrative Court”) within the thirty working days after the so-called decision is notified.²⁹

51. Once the Administrative Court receives the claim, it shall analyze whether all the requirements are met.³⁰ If these are not met, the Administrative Court may

²⁹ Federal Administrative Code of Contentious Procedure [RZ-004], Art. 13.

³⁰ Federal Administrative Code of Contentious Procedure [RZ-004], in accordance with Article 14 the claim must indicate the court before it is submitted, the name of claimant, the authority against which the procedure is initiated, the challenged judgment, the facts of the case, legal foundation and evidence: “La demanda deberá indicar: I. El nombre del demandante, domicilio fiscal, así como domicilio para oír y recibir notificaciones dentro de la jurisdicción de la Sala Regional competente, y su dirección de correo electrónico. Cuando se presente alguno de los supuestos a que se refiere el Capítulo XI, del Título II, de esta Ley, el juicio será tramitado por el Magistrado Instructor en la vía sumaria. II. La resolución que se impugna. En el caso de que se controvierta un decreto, acuerdo, acto o resolución de carácter general, precisará la fecha de su publicación. III. La autoridad o autoridades demandadas o el nombre y domicilio del particular demandado cuando el juicio sea

dismiss the claim;³¹ conversely, if these are met said Court shall admit the claim and order its registration. This Court will also assign the case to one of its Chambers.

52. After the admission of the claim, the relevant Chamber shall order that service of process be performed on defendant (namely, the authority against which the administrative procedure was initiated) so that it may file its answers within a thirty-day period.³²
53. In claimant's claim³³ and defendant's answer,³⁴ evidence must be submitted. Following said submission, the parties must file their closings statements within a five-day period.³⁵
54. Once the relevant Chamber receives the referred closing statements, it shall declare the closing of the proceedings and issue its final decision within a 45-day period.³⁶

promovido por la autoridad administrativa. IV. Los hechos que den motivo a la demanda. V. Las pruebas que ofrezca. En caso de que se ofrezca prueba pericial o testimonial se precisarán los hechos sobre los que deban versar y señalarán los nombres y domicilios del perito o de los testigos. En caso de que ofrezca pruebas documentales, podrá ofrecer también el expediente administrativo en que se haya dictado la resolución impugnada. Se entiende por expediente administrativo el que contenga toda la información relacionada con el procedimiento que dio lugar a la resolución impugnada; dicha documentación será la que corresponda al inicio del procedimiento, los actos administrativos posteriores y a la resolución impugnada. La remisión del expediente administrativo no incluirá las documentales privadas del actor, salvo que las especifique como ofrecidas. El expediente administrativo será remitido en un solo ejemplar por la autoridad, el cuál estará en la Sala correspondiente a disposición de las partes que pretendan consultarlo. VI. Los conceptos de impugnación. VII. El nombre y domicilio del tercero interesado, cuando lo haya. VIII. Lo que se pida, señalando en caso de solicitar una sentencia de condena, las cantidades o actos cuyo cumplimiento se demanda."

³¹ Federal Administrative Code of Contentious Procedure [RZ-004], Art. 8.

³² Federal Administrative Code of Contentious Procedure [RZ-004], Art. 19.

³³ Federal Administrative Code of Contentious Procedure [RZ-004], Art. 14.

³⁴ Federal Administrative Code of Contentious Procedure [RZ-004], Art. 20.

³⁵ Federal Administrative Code of Contentious Procedure [RZ-004], Art. 47.

³⁶ Federal Administrative Code of Contentious Procedure [RZ-004], Art. 49.

ii. *Second instance proceeding – Administrative Federal Circuit Court*

55. Once the Administrative Court issues its decision, any of the parties may challenge it by, either, by filing an *amparo* or filing an appeal as follows:
- 1) Claimant (i.e. the private entity/individual, such as Claimants) may file an *amparo (directo)*;³⁷
 - 2) Authority (i.e. the state-owned entity, such as Pemex) may file a second instance appeal (*revisión fiscal*).³⁸
56. Both, the *amparo* or the appeal, had to be submitted before an Administrative Collegiate Court (namely, the Administrative Amparo Court) within a fifteen-day period following the notice date of said judgment and shall be resolved jointly.³⁹
57. Note that the *amparo* claim shall only pertain issues brought before the attention of the lower court. In other words, the parties to the *amparo* proceeding are prevented from bringing new issues (that were not brought before the lower court) before the Administrative Amparo Court.⁴⁰
58. Following the admission of the *amparo* claim, the parties shall submit their respective closing statements within a fifteen-day period.⁴¹
59. The Administrative Amparo Court shall issue its final judgment within an approximate fourth-month period.

³⁷ Amparo Law [RZ-003], Art. 170.

³⁸ Federal Administrative Code of Contentious Procedure [RZ-004], Art. 63.

³⁹ Amparo Law [RZ-003], Art. 182.

⁴⁰ Amparo Law [RZ-003], Art. 174

⁴¹ Amparo Law [RZ-003], Art. 180.

iii. *Third instance proceeding – Supreme Court (review remedy)*

60. The review remedy is also available against administrative *amparo* judgments. Such remedy could be submitted before the Supreme Court of Justice within a ten-day period.⁴²
61. A review remedy against a direct *amparo* judgment shall be heard by the Supreme Court of Justice.⁴³ While a review remedy against an indirect *amparo* judgment, shall be heard by the Supreme Court of Justice or, if so decided by the Supreme Court, by the Federal Circuit Courts, as follows: (i) when the issue to be resolved is that of legality or constitutionality and when judicial precedents are available to resolve such issue, the Federal Circuit Courts shall resolve said remedy; and (ii) when there is no precedent available to decide such issue, the Supreme Court shall resolve the referred remedy.⁴⁴
62. There is no specific time-period for the Supreme Court (or if the case may be, the Collegiate Circuit Court) to issue its judgment on the review remedy.

IV. BACKGROUND OF CLAIMANTS' PROCEEDINGS IN MEXICO

63. As explained below (*see* §V of this Expert Report), several irregularities were found in all of the five proceedings initiated by Claimants against Pemex Exploración y Producción (“Pemex”) regarding the three agreements executed by and between such parties.

⁴² Amparo Law, [RZ-003], Art. 86.

⁴³ Amparo Law, [RZ-003], Arts. 81, 83 (section V) and 84 (section I (a) and III).

⁴⁴ The regulatory basis of the *amparo* procedure on review before the SCJN is found in Article 107 (section VIII) [RZ- 001], Articles 83 and 84 of the Amparo Law [RZ-003]; Article 10 (section II) of the Organic Law of the Federal Judicial Authority [RZ-005]; Recital Two (section III) of the General Plenary Agreement No. 5/2013 of the Supreme Court [RZ-006].

64. Note that from the referred five proceedings, three of them are civil (deriving from Agreements 803, 804 and 821) and two of them are administrative (deriving from Agreements 804 and 821).

A. Agreement 803

65. Agreement no. 444042803 was executed on 20 February 2012, on the one hand, by Bisell Construcciones e Ingeniería S.A. de C.V. (“Bisell”) and MWS Management Inc. (“MWS”, jointly with Claimants, Bisell and MWS referred to as “Claimants”) and, on the other hand, by Pemex (“Agreement 803”).⁴⁵
66. Claimants considered that Pemex breached Agreement 803, consequently, on 13 October 2015, Claimants filed a civil claim before the District Courts (in Veracruz) against Pemex due to Pemex’s breach of Agreement No. 803 (“CP-803”).
67. Claimants’ request of relief included Pemex’s specific performance of the following payment obligations: (i) US\$13’736,540.15 due to direct expenses related equipment; (ii) US\$1’713,286.32 due to direct expenses related to personnel; (iii) US\$2’418,761.64 due to indirect works related expenses; (iv) US\$2’576,286.28 corresponding to the profits agreed to in the Agreement 803; (v) US\$146,335.08 due to financing costs of the works; and (vi) US\$237,062.06 due to additional charges. Additionally, Claimants’ request of relief included (i) legal interests accrued over the amounts owed by Pemex; (ii) damages and losses; (iii) moral damages; and (iv) costs and expenses.⁴⁶
68. Even though dispute was clearly a civil one, on 15 October 2015, the Eleventh District Court (“11DC”) dismissed the claim due to lack of subject-matter

⁴⁵ First Appeal Judgment CP-803 [RZ- 007], p. 3.

⁴⁶ Amparo Judgment CP-803 [RZ- 008], p. 13.

jurisdiction (case docket 75/2015).⁴⁷ According to the 11DC, the nature of the dispute was administrative and not civil.⁴⁸

69. Since the grounds for dismissal were evidently erroneous, on 20 October 2015, Claimants filed an appeal against said dismissal. It took fifteen days for the Fourth Unitary Court in Civil Matters (in Veracruz) (“4UC”) to admit the appeal and register it under case docket number 35/2015 (as it was admitted on 4 November 2015).⁴⁹ As expected, on 30 December 2015, said appellate court overturned the 11DC’s dismissal decision, considering that the nature of the action was civil and not administrative (“First Appeal Judgment CP-803”).⁵⁰
70. Following the 4UC’s judgment, on 6 January 2016 (months after the filing of the claim), the 11DC admitted the complaint.⁵¹
71. Notwithstanding the fact that the 4UC had already ruled on the issue of jurisdiction, on 22 January 2016, Pemex moved to dismiss the admission of the claim due to lack of jurisdiction. Pemex’s motion was illegally admitted.⁵² Due to said admission, a stay of the proceeding was erroneously declared by the 11DC.⁵³
72. As the motion to dismiss was improperly admitted, on 2 February 2016, Claimants filed a motion to vacate said admission decision.⁵⁴ Regardless of

⁴⁷ First Appeal Judgment CP-803 [RZ- 007], p. 4.

⁴⁸ First Appeal Judgment CP-803 [RZ- 007], p. 4.

⁴⁹ First Appeal Judgment CP-803 [RZ- 007], p. 1.

⁵⁰ First Appeal Judgment CP-803 [RZ- 007], p. 13.

⁵¹ SISE 75/2015 [RZ-009].

⁵² SISE 75/2015 [RZ-009].

⁵³ SISE 75/2015 [RZ-009].

⁵⁴ SISE 75/2015 [RZ-009].

the fact that the 4UC had already decided the lack of jurisdiction issue, on 10 March 2016, the 11DC affirmed its decision to admit Pemex's motion to dismiss.⁵⁵

73. On 14 July 2016, the 11DC granted Pemex's motion to dismiss.⁵⁶ Such decision was amiss as it was contrary to the previous 4UC's decision. Expectedly, on 10 August 2016, the 4UC received the appeal filed by Claimants against the 11DC's decision to grant Pemex's motion to dismiss (case docket no. 30/2016 before the 4UC).⁵⁷ It took over twenty days for the 4UC (the same court that on 4 November 2015 issued the decision on lack of jurisdiction) to dismiss the appeal due to lack of jurisdiction to resolve whether said appeal was or not timely filed.⁵⁸
74. On 21 September 2016, the 11DC affirmed its decision to grant Pemex's motion to dismiss due to lack of jurisdiction and ordered the referral of the case to the Lower Chamber of the Federal Court of Tax and Administrative Justice (in Veracruz).⁵⁹
75. On 14 October 2016, Claimants appealed the 11DC's decision to granting Pemex's motion to dismiss.⁶⁰ On 26 January 2017, the 4UC vacated the 11DC's decision on granting Pemex's motion to dismiss.⁶¹ Approximately fifteen months had passed since Claimants had filed their claim, and its admission was still being discussed.

⁵⁵ SISE 75/2015 [RZ-009].

⁵⁶ SISE 75/2015 [RZ-009].

⁵⁷ SISE 30/2016 [RZ-010].

⁵⁸ SISE 30/2016 [RZ-010].

⁵⁹ SISE 75/2015 [RZ-009].

⁶⁰ SISE 36/2016 [RZ-011].

⁶¹ Amparo Judgment CP-803 [RZ- 008], p.2.

76. On 20 February 2017, Pemex filed an *amparo* claim against the 4UC's decision to vacate (*amparo* registered under docket no. 4/2017).⁶² On 2 March 2017, the First Unitary Court (in Veracruz) ("1UC") admitted the *amparo* claim.⁶³ On 9 March 2017, the 1UC suspended the effects of the 4UC's decision to vacate.⁶⁴ On 2 May 2017, the 1UC denied the *amparo* to Pemex ("Amparo Judgment CP-803").⁶⁵
77. On 2 June 2017, a review remedy (*recurso de revision*) was filed by Pemex against the *amparo* judgment (docket no. 233/2017).⁶⁶ On 10 May 2018, the First Federal Circuit Court in Civil Matter (in Veracruz) upheld the *amparo* judgment ("Review Judgment CP-803").⁶⁷ By now, again, almost two and a half years had passed since Claimants had filed their claim, and its admission was still being discussed.
78. Following an approximate 30 month stay period, on 11 June 2018, the District Court (11DC) finally resumed the proceeding (docket no. 75/2015).⁶⁸ Following the resumption of the proceeding, Claimants filed a supplemental claim submitting new evidence (15 August 2018)⁶⁹ and Pemex filed a supplemental answer submitting new evidence (12 September 2018).⁷⁰
79. Once more and for over two years (from August 2018 to January 2020) the District Court (11DC)'s proceeding was suspended due to an appeal filed by

⁶² SISE 36/2016 [RZ-011].

⁶³ Amparo Judgment CP-803 [RZ- 008], p.2.

⁶⁴ SISE 4/2017 [RZ-012].

⁶⁵ Amparo Judgment CP-803 [RZ- 008], p.28.

⁶⁶ Review Judgment CP-803 [RZ-013], p. 4.

⁶⁷ Review Judgment CP-803 [RZ-013], p. 46.

⁶⁸ Second Appeal Judgment CP-803 [RZ-014], p. 7.

⁶⁹ SISE 75/2015 [RZ-009].

⁷⁰ Second Appeal Judgment CP-803 [RZ-014], p. 8.

Pemex against certain decisions of the 11DC related to the evidence submitted by Pemex.

80. On 29 November 2019, the District Court (11DC) admitted Pemex's objection to the evidence submitted by Claimants in its August 2018 supplemental claim.⁷¹ On 11 December 2019, the District Court (11DC) dismissed certain documentary evidence submitted by Pemex.⁷² On 7 January 2020, Pemex filed an appeal against such decision (docket no. 1/2020) which was received by the 4UC.⁷³
81. Although, on 9 January 2020, the District Court (11DC) invited the parties to participate in an evidentiary hearing to be held on 17 January 2020.⁷⁴ On the date scheduled for the hearing, the District Court (11DC) decided not to hold such hearing since the appeal filed by Pemex against the dismissal of certain documentary evidence was pending of judgment (*see* ¶79 above).⁷⁵ This decision had an impact in the already substantially delayed proceeding.
82. Due to the covid-19 pandemic, the stay of the proceedings suffered an additional extension from 18 March 2020 to 30 November 2020.⁷⁶ Notwithstanding the stays of the proceedings, on 23 September 2020 the Appellate Court (4UC) decided the issue *re* the documentary evidence, vacating the District Courts (11DC)'s decision to dismiss and ordering the 11DC to receive such evidence.⁷⁷

⁷¹ SISE 75/2015 [RZ-009].

⁷² Second Appeal Judgment CP-803 [RZ-014], p.9.

⁷³ SISE 1/2020 [RZ-015].

⁷⁴ SISE 75/2015 [RZ-009].

⁷⁵ SISE 75/2015 [RZ-009].

⁷⁶ SISE 75/2015 [RZ-009].

⁷⁷ Second Appeal Judgment CP-803 [RZ-014], p. 16.

83. Claimants filed for the withdrawal of their claim from the District Court (11DC), on 5 April 2021.⁷⁸ After such withdrawal was filed, we found no evidence of any further participation of Claimants in this CP-803 Proceeding.⁷⁹

B. Agreement 804

84. Agreement no. 424043804 was executed on 20 March 2013, on the one hand, by Claimants and, on the other hand, by Pemex ("Agreement 804").⁸⁰

85. Claimants considered that Pemex breached Agreement 804. Consequently:

1) On 8 December 2015, Claimants filed a civil claim before the District Courts (in Veracruz) against Pemex due to Pemex's breach of Agreement 804 ("CP-804").⁸¹

2) On 5 March 2019, Claimants filed an administrative claim before the Federal Court of Administrative Justice against Pemex ("AP-804"): (i) claiming the breach of Agreement 804, and (ii) requesting the nullity of conciliation hearing minutes dated 21 January 2019, issued during proceeding no. UR-DPEP-R-CONC-23/2018 by Pemex stating that Claimants breached Agreement 804.

i. Civil proceeding 804 (CP-804)

86. In the civil proceeding that derived from Agreement 804 (that is CP-804), Claimants' request of relief included what the specific performance by Pemex

⁷⁸ SISE 75/2015 [RZ-009].

⁷⁹ SISE 75/2015 [RZ-009]. On 1 October 2021, the District Court (11DC) terminated said civil procedure.

⁸⁰ Amparo Judgment CP-804 [RZ-016], p.8.

⁸¹ Amparo Judgment CP-804 [RZ-016], p.7.

of payment obligations in the amount of US\$22 million. Additionally, Claimants' request of relief included (i) legal interests accrued over the amounts owed by Pemex; (ii) damages and losses; (iii) moral damages; and (iv) costs and expenses.⁸²

87. Less than 24 hours after receiving the claim, on 9 December 2015, the District Court (11DC) wrongly dismissed it due to lack of subject matter jurisdiction (docket no. 120/2015) concluding that the issue was not a civil but an administrative one.⁸³
88. As the dismissal decision was evidently mistaken, on 16 December 2015, Claimants appealed such District Court's decision to dismiss.⁸⁴ On 7 January 2016, such motion was admitted by the Third Unitary Court in Civil Matter (in Veracruz) ("3UC") and registered under case docket number 1/2016.⁸⁵ Unexpectedly, by judgment dated 12 February 2016, the appellate court (3UC) upheld the District Court's decision to dismiss the claim ("Appeal Judgment CP-804").⁸⁶
89. Convinced that the decision to dismiss was groundless, on 14 March 2016, Claimants filed an *amparo* claim against the appeal judgment. It took over seven months for the First Collegiate Tribunal in Civil Matter for the Seventh Circuit (case docket no. 214/2016) to decide the *amparo* claim. On 18 October 2016 (seven months after the claim had been filed), said court denied the *amparo* ("Amparo Judgment CP-804").⁸⁷

⁸² Amparo Judgment CP-804 [RZ-016], p.8.

⁸³ Dismissal District Court Judgment [RZ-017], p.9.

⁸⁴ Appeal Judgment CP-804 [RZ-018], p. 1.

⁸⁵ Appeal Judgment CP-804 [RZ-018], p. 2.

⁸⁶ Appeal Judgment CP-804 [RZ-018], p. 30.

⁸⁷ Amparo Judgment CP-804 [RZ-016], p.36.

90. Even when the process itself lasted for about ten months, since the District Court (11DC)'s dismissal decision was upheld, the claim was never deemed to be admitted to process. In other words, for over ten months Claimants attempted to have a day in court, and such attempt was futile, as the court never admitted their claim.

ii. Administrative proceeding 804 (AP-804)

91. As explained before,⁸⁸ on 5 March 2019, Claimants filed an administrative claim against: (i) the administrative resolution of Pemex to terminate Agreement 804; and (ii) the meeting minutes related to the termination that were issued by Pemex (as such minutes are considered to be administrative resolutions).

92. Claimants took legal action against several authorities (including Pemex and its Liability Unit Head) before the Administrative Court. Such claim was registered under docket no. 5403/19-17-06-5.

93. On 11 March 2019, the Administrative Court dismissed said claim for, allegedly, not falling within any of the admissibility scenarios.⁸⁹

94. Claimants filed an appeal against the above-mentioned dismissal, which was decided by the Administrative Court on 12 July 2019,⁹⁰ partially vacating the dismissal decision (as the dismissal was affirmed with respect to the minutes)

⁸⁸ See ¶85 (2) of this Expert Report.

⁸⁹ The admissibility scenarios are those referred to in Article 2 of Federal Administrative Code of Contentious Procedure [RZ-004].

⁹⁰ Official communication dated 2 July 2019 [RZ-019], issued by the Sixth Metropolitan Regional Chamber of the Administrative Court (docket no. 5403/19-17-06-5).

and ordering the admission into process of the administrative claim regarding the breach of the Agreement 804.⁹¹

95. Therefore, on 1 October 2019, the Administrative Court: (i) admitted the claim and relevant evidence; and (ii) granted Pemex a thirty-day period (from the publication date) to file its answer.⁹²

96. Against the referred decision to admit, Pemex filed an appeal on 10 December 2019 (which was admitted into process on 2 January 2020), claiming:⁹³

1) That its Liability Unit Head should not be a defendant to this process since it is not a party to Agreement 804.

2) The nature of the dispute is not administrative.

3) Administrative trials are not available to resolve breach of agreement issues.

97. On 28 January 2020, the Liability Unit Head of Pemex answered the claim.⁹⁴

98. On 20 August 2020 the Administrative Court,⁹⁵ agreed with Pemex that the Liability Unit Head was not a party to the proceeding.

⁹¹ Official communication dated 1 October 2019 [RZ-020], issued by the Sixth Metropolitan Regional Chamber of the Administrative Court (docket no. 5403/19-17-06-5) and published on 29 November 2019.

⁹² Official communication dated 1 October 2019 [RZ-020], issued by the Sixth Metropolitan Regional Chamber of the Administrative Court (docket no. 5403/19-17-06-5) and published on 29 November 2019.

⁹³ Official communication dated 2 January 2020 [RZ-021], issued by the Sixth Metropolitan Regional Chamber of the Administrative Court (docket no. 5403/19-17-06-5).

⁹⁴ Official communication dated 4 February 2020 [RZ-022], issued by the Sixth Metropolitan Regional Chamber, of the Federal Court of Administrative Justice, on the Administrative Trial 5403/19-17-06-5.

⁹⁵ Official communication dated 20 August 2020 [RZ-023], issued by the Sixth Metropolitan Regional Chamber of the Administrative Court (docket no. 5403/19-17-06-5).

99. Pemex filed an appeal against the admission of file UR-DPEP-R-CONC-23/2018 as evidence. In doing so Pemex argued that such file was no longer related to the Claimants' claim.⁹⁶
100. On 2 December 2021, the Administrative Court agreed with Pemex and determined that file UR-DPEP-R-CONC-23/2018 should not be admitted as evidence.⁹⁷
101. By this moment, it was clear that Pemex was employing deliberate efforts to use all remedies available to Pemex with the purpose to obstruct, delay, derail or sabotage AP-804 and that Claimants' efforts to resist such tactics were futile. Therefore, on 18 March 2021, Claimants filed for the withdrawal of their administrative claim. There is no indication in the case file that Claimants have taken any further action in this proceeding.

C. Agreement 821

102. Agreement no. 421004821 was executed on 28 February 2014, on the one hand, by Drake-Finley, S. de R.L. de C.V., Finley Resources, Inc., and Drake-Mesa, S. de R.L. de C.V. ("DFD", jointly with Claimants referred to "Claimants") and, on the other hand, by Pemex ("Agreement 821").⁹⁸
103. For some time Pemex issued some work orders, then Pemex stopped issuing those work orders under Agreement 821. Such decision was considered by Claimants to be a breach of Agreement 821; consequently, Claimants filed a

⁹⁶ Official communication dated 18 August 2021 [RZ-024], issued by the Sixth Metropolitan Regional Chamber of the Administrative Court (docket no. 5403/19-17-06-5).

⁹⁷ Official communication dated 2 December 2021 [RZ-025], issued by the Sixth Metropolitan Regional Chamber of the Administrative Court (docket no. 5403/19-17-06-5).

⁹⁸ District Court Judgment CP-821 [RZ-026], p.2.

civil claim (29 April 2016) before the District Courts (in Mexico City) (“CP-821”).⁹⁹

104. In response to Claimants’ civil lawsuit, Pemex terminated Agreement 821. Such termination is considered to be an administrative resolution. Since Claimants considered the termination groundless, on 4 September 2017, Claimants filed an administrative claim before the Administrative Court against resolution no. PEP-DG-SSE-759-2017 dated 28 August 2017 (“Pemex-Resolution”) by which Pemex terminated Agreement 821 (“AP-821”).
105. As allowed by Mexican law, Claimants filed their claim before Mexican courts (civil and administrative, respectively); such decision was accepted by Pemex when it decided not to request (in its answer to the claim) the remittal of the civil case to arbitration.

i. Civil proceeding 821 (CP-821)

106. Claimants’ request of relief included the specific performance by Pemex of (i) payment obligations in the amount of US\$120’856,548.84, (ii) payment of non-retrievable expenses in accordance with Clause 17 of Agreement 821, and (iii) payment of various concepts provided for in Agreement 821. Additionally, Claimants’ request of relief included payment of legal interests accrued over said amounts, damages and legal costs and expenses.¹⁰⁰

⁹⁹ District Court Judgment CP-821 [RZ-026], p.1.

¹⁰⁰ District Court Judgment CP-821 [RZ-026], pp. 2-7.

107. On 3 May 2016, the claim was admitted by the Eight District Court of the First Circuit in Mexico City (“8DC”) and registered under docket no. 200/2016-I.¹⁰¹
108. On 11 July 2016, Pemex filed its answer to the claim. Said answer did not raise any issue regarding the existence of an arbitration clause in Agreement 821 nor did it request the referral of the case to arbitration.¹⁰²
109. The evidentiary stage of the proceeding lasted for about 14 months (from 22 July 2016 to 18 September 2017).
110. Following the conclusion of said evidentiary stage, and even though none of the parties requested the referral of the case to arbitration, on 8 November 2017, the District Court (8DC) unexpectedly issued its judgment declaring that the 8DC lacked jurisdiction, as Agreement 821 provided for arbitration as the mechanism to resolve disputes (“District Court Judgment CP-821”).¹⁰³
111. Such decision to refer the case to arbitration, despite the fact that none of the parties requested such referral, directly breached Mexican arbitral law and judicial precedents.
112. Since none of the parties requested said referral, on 16 November 2017, Claimants filed an appeal against such judgment (appeal that was registered under case docket number 898/2017 and 899/2017).¹⁰⁴

¹⁰¹ District Court Judgment CP-821 [RZ-026], p.7.

¹⁰² District Court Judgment CP-821 [RZ-026], p.7. *See* article 1464 (I) of the Commerce Code that provides that the request for referral shall be made by the party interested in such referral in its first writ on the merits.

¹⁰³ District Court Judgment CP-821 [RZ-026], p.28.

¹⁰⁴ First Appeal Judgment CP-821 [RZ-027], p.1.

113. On 6 February 2018, the appellate court (the Third Unitary Court in Mexico City (“3UC”)) forwarded the case file to the Unitary Circuit Court of the Auxiliary Center of the Seventh Region (located in Guerrero) in order for such court to support the 3UC in issuing a judgment.¹⁰⁵ On 19 April 2018, the 3UC (with support of the referred Auxiliary Court) wrongly upheld the District Court’s judgment (“First Appeal Judgment CP-821”).¹⁰⁶
114. As expected, both parties, independently, filed their amparo claims against the appellate court’s judgment (3UC’s judgment) which were admitted by the Tenth Collegiate Court (“10CC”) on 7 June 2018. Said *amparo* claims were registered under case docket numbers 425/2018 and 426/2018.¹⁰⁷
115. It was foreseeable that, the Amparo Court (10CC) would grant the amparo. On 8 February 2019, the Amparo Court (10CC): (i) granted the amparo; (ii) vacated the Appellate Court’s judgment; and (iii) ordered the Appellate Court (3UC) to assume jurisdiction (“First Amparo Judgment CP-821”).¹⁰⁸
116. Following the Amparo Court (10CC)’s judgment, the Appellate Court (3UC) (under docket no. 898/2017) assumed jurisdiction and, on 2 April 2019 (almost three years after Claimants filed the civil claim against Pemex), issued its final judgment, declaring that: (i) Claimants failed to prove their case; and (ii) Pemex was not liable (“Second Judgment of the Court of Appeals CP-821”).¹⁰⁹ On 10 April 2019, Pemex filed an *amparo* claim against the Appellate Court (3UC)’s latest judgment requesting it did to order

¹⁰⁵ SISE 898/2017 [RZ-028].

¹⁰⁶ First Appeal Judgment CP-821 [RZ-027], p.3.

¹⁰⁷ SISE 425/2018 [RZ-029] and SISE 426/2018 [RZ-030].

¹⁰⁸ First Amparo Judgment CP-821 [RZ-031], p. 211.

¹⁰⁹ Second Amparo Judgment CP-821 [RZ-032], p. 24.

Claimants to cover Pemex's legal costs.¹¹⁰ On 22 August 2019, the Amparo Court (10CC) ordered the Appellate Court (3UC) to decide the issue of costs ("Second Amparo Judgment CP-821").¹¹¹

117. On 9 September 2019, following the amparo court's judgment, the Appellate Court (3UC) determined the issue of costs (docket no. 898/2017) ("Third Judgment of the Court of Appeals CP-821") without ordering Claimants to cover Pemex's costs.¹¹²
118. On 24 September 2019, Pemex filed an *amparo* against such judgment requesting the third time to order Claimants to pay the costs of the proceedings (docket no. 783/2019).¹¹³ On 10 October 2019, Claimants also filed an *amparo* claim against the same judgment.¹¹⁴ On 22 June 2020, the Amparo Court (10CC) granted Pemex's *amparo* and ordered the Appellate Court (3UC) to issue a new judgment regarding costs (docket no. 783/2019) ("Third Amparo Judgment CP-821").¹¹⁵
119. On 23 October 2020, following the Amparo Court (10CC)'s orders, the Appellate Court (3UC) decided the issue of costs (docket no. 898/2017) ("Fourth Judgment of the Court of Appeals CP-821").¹¹⁶ Pemex filed an *amparo* against this judgment, which was granted by the Amparo Court (10CC), on 28 September 2021, vacating the latest judgment of the Appeals Court (3UC) and ordering such court to order Claimants to pay the costs of

¹¹⁰ Second Amparo Judgment CP-821 [RZ-032], p. 25.

¹¹¹ Second Amparo Judgment CP-821 [RZ-032], p. 163.

¹¹² Fourth Judgment of the Court of Appeals CP-821 [RZ-033], p. 2.

¹¹³ Fourth Judgment of the Court of Appeals CP-821 [RZ-033], p. 2.

¹¹⁴ SISE 875/2019 [RZ-034].

¹¹⁵ Third Amparo Judgment CP-821 [RZ-035], p. 182.

¹¹⁶ Fourth Judgment of the Court of Appeals CP-821 [RZ-033], pp. 76 and 80.

the proceedings (docket no. 540/2020) (“Fourth Amparo Judgment CP-821”).¹¹⁷

120. The evidence shows that Pemex was employing deliberate efforts to use all remedies available to Pemex not only to obstruct, delay, derail or sabotage CP-821, but also to obtain more economic benefits from Claimants by seeking in several instances the order for Claimants to pay the costs of the proceedings.
121. Almost five years after initiating CP-821, Claimants filed for the withdrawal of its claims on 19 March 2021.¹¹⁸
122. On 21 October 2021, following the Amparo Court (10CC)’s orders contained in the Fourth Amparo Judgment CP-821, the Appellate Court (3UC) issued a new judgment under docket no. 898/2017 (“Fifth Judgment of the Court of Appeals CP-821”): (i) confirming its conclusions contained in the Second Judgment of the Court of Appeals CP-821 that were not subjected to the *amparo*; and (ii) ordering Claimants to pay the costs of the proceedings.¹¹⁹
123. On 12 April 2021, the 3UC under docket 898/2017 confirmed that no other motion nor stage of the proceeding was pending.¹²⁰

ii. Administrative proceeding 821

124. As explained before, in response to Pemex’s groundless termination of Agreement-821, on 4 September 2017, Claimants submitted an administrative claim before the Administrative Court against resolution no. PEP-DG-SSE-

¹¹⁷ Fourth Amparo Judgment CP-821 [RZ-036], p. 57.

¹¹⁸ Withdrawal writs [RZ-037].

¹¹⁹ Fifth Judgment of the Court of Appeals CP-821 [RZ-038], p. 85.

¹²⁰ SISE 898/2017 [RZ-028].

759-2017 (“Pemex-Resolution 821”) dated 28 August 2017 issued by Pemex terminating Agreement 821.¹²¹

125. Almost a month later, on 3 October 2017, the Twelfth Chamber of the Administrative Court decided not to admit the claim but to refer it to the High Chamber of said court.¹²²
126. Thereafter, on 10 November 2017, Pemex filed its answer to the claim (which was received by the Administrative Court on 16 November 2017).¹²³ Finally, following the admission of the relevant closing statements, on 4 June 2018, the Administrative Court declared the closing of the proceedings.¹²⁴
127. On 4 October 2018, the Administrative Court determined that Pemex-Resolution 821 was valid, as it deemed that Claimants breached Agreement 821 for the reasons expressed in Pemex-Resolution 821 (“Administrative Court Judgment AP-821”).¹²⁵
128. Claimants were convinced that Pemex Resolution-821 was invalid and, therefore, on 18 January 2019, it filed an amparo (*amparo directo*) against Administrative Court Judgment AP-821 (docket no. 74/2019) before the Fourteenth Administrative Collegiate Court (“14CC”).¹²⁶
129. It took over a year for the Amparo Court (14CC) to decide on the admission of the *amparo* claim. Finally, on 30 January 2020, the Amparo Court (14CC) dismissed the amparo claim as it considered that Claimants submitted new

¹²¹ Administrative Court Judgment AP-821 [RZ-039], p. 1.

¹²² Administrative Court Judgment AP-821 [RZ-039], p. 2.

¹²³ Administrative Court Judgment AP-821 [RZ-039], p. 3.

¹²⁴ Administrative Court Judgment AP-821 [RZ-039], p. 7.

¹²⁵ Administrative Court Judgment AP-821 [RZ-039], p. 250.

¹²⁶ Judgment dated 30 January 2020 [RZ-040], issued by the Fourteenth Administrative Collegiate Court (docket no. 74/2019).

arguments that were not made before the Administrative Court (the first instance court).¹²⁷

130. The above-mentioned *amparo* judgment is not within the time limit established in judicial precedents of six months.¹²⁸ The time that the Amparo

¹²⁷ Judgment dated 30 January 2020 [RZ-040], issued by the Fourteenth Administrative Collegiate Court (docket no. 74/2019).

¹²⁸ SUSPENSIÓN DEL ACTO RECLAMADO EN EL AMPARO INDIRECTO. DEBEN CONSIDERARSE SEIS MESES COMO TIEMPO PROBABLE DE DURACIÓN DEL JUICIO PARA FIJAR LA GARANTÍA CORRESPONDIENTE. [RZ-041]. Tesis No. III.5o.C.34 K, *Tribunales Colegiados de Circuito* (Full-Panel Circuit Courts), *Semanario Judicial de la Federación y su Gaceta (SJFG)* (Judicial Weekly of Federation), *Novena Época* (Ninth period), T. XXXII, October 2010, No. 163540, p. 3207: “Tratándose de la suspensión en amparo indirecto debe tomarse en cuenta como tiempo probable de duración del juicio constitucional el de seis meses, para fijar la garantía correspondiente, atendiendo al número de órganos jurisdiccionales que se han creado en función del cúmulo de asuntos que resuelven; así mismo, que a diferencia del directo, en aquél existe la posibilidad de ofrecer y desahogar pruebas, ha de celebrarse la audiencia constitucional conforme a lo establecido en el artículo 155 de la Ley de Amparo, la que puede suspenderse o diferirse por diversas circunstancias; además, se trata de un procedimiento que tiene dos instancias, en virtud de que el perjudicado por la sentencia del Juez de Distrito puede interponer el recurso de revisión, en el que incluso existe la posibilidad de que se ordene la reposición del procedimiento conforme a lo dispuesto por el artículo 91, fracción IV, de la referida legislación, lo que indudablemente alargaría aún más el pronunciamiento de la resolución definitiva. Por tanto, si la suspensión del acto reclamado por regla general subsiste hasta en tanto se dicte la sentencia ejecutoria, no debe pasarse por alto la complejidad del problema constitucional controvertido. De ahí que no sea factible establecer que en tres meses habría terminado el juicio.”

See also: SUSPENSIÓN. MONTO DE LA GARANTÍA TRATÁNDOSE DE RESOLUCIONES SOBRE CONTROVERSIAS DE ARRENDAMIENTO QUE CONTENGAN CANTIDAD LÍQUIDA O DE FÁCIL CUANTIFICACIÓN Y CONDENA A PRESTACIONES DE TRACTO SUCESIVO POR VENCER. [RZ-042]. Jurisprudencia No. I.9o.C. J/4 C (10a.), *Tribunales Colegiados de Circuito* (Full-Panel Circuit Courts), *Semanario Judicial de la Federación y su Gaceta (SJFG)* (Judicial Weekly of Federation), *Décima Primera Época* (Eleventh period), T. III, May 2021, No. 2023120, p. 2347: “Atendiendo a los criterios establecidos en la jurisprudencia sentada por la Primera Sala de la Suprema Corte de Justicia de la Nación, de rubro: “SUSPENSIÓN EN AMPARO DIRECTO. PARA QUE SURTA EFECTOS LA CAUCIÓN, SU MONTO DEBE RESPONDER ÚNICAMENTE POR LOS DAÑOS Y PERJUICIOS QUE PUDIERAN CAUSARSE AL TERCERO PERJUDICADO CON ESA MEDIDA.” y en la tesis aislada de la Segunda Sala de ese Alto Tribunal, de rubro: “SUSPENSIÓN EN AMPARO. EL MONTO DE LA CAUCIÓN QUE SE FIJA AL QUEJOSO PARA QUE SURTA EFECTOS, DEBE RESPONDER ÚNICAMENTE POR LOS DAÑOS Y PERJUICIOS QUE PUEDEN CAUSARSE AL TERCERO PERJUDICADO COMO CONSECUENCIA JURÍDICA DE LA SUSPENSIÓN DEL ACTO RECLAMADO.”, la caución que se fija para la eficacia de la suspensión decretada en un juicio de amparo directo, sólo debe garantizar las consecuencias derivadas del otorgamiento de esa medida, esto es, los daños y perjuicios que se puedan causar al tercero perjudicado, por no encontrarse en aptitud

Court (14CC) took to issue the dismissal judgment doubled the time limit provided for the amparo courts to issue a final and complete judgment re *amparo* claim.

131. Finally, Claimants filed a remedy review (*recurso de revisión*) before the Supreme Court against the dismissal judgment of Amparo Court (14CC). The Supreme Court dismissed such remedy,¹²⁹ and, hence, this administrative proceeding was concluded.¹³⁰

de incorporar, durante la vigencia de la suspensión, los derechos que le confiere el acto reclamado, y que los daños y perjuicios no se asimilan al monto total del numerario que se integraría al patrimonio del tercero perjudicado, dado que la suspensión no incide en el derecho de fondo al pago de esas prestaciones, sino a la suma que correspondería al rendimiento que legalmente produciría tal prestación durante ese lapso. Ahora bien, tratándose de controversias de arrendamiento, en las que las prestaciones, por regla general, son periódicas y de tracto sucesivo, es menester precisar que la falta de posesión del inmueble, en perjuicio del demandante, deriva, en principio, de la causa generadora del litigio natural; sin embargo, una vez dictada la sentencia, el conflicto se resuelve y si la resolución es favorable, se está en aptitud de recuperar dicha posesión y obtener el pago de las rentas vencidas; en esas condiciones, en caso de decretarse la suspensión de la ejecución de dicha sentencia, el accionante no podrá obtener la posesión del inmueble en disputa, ni proceder al cobro de las cantidades líquidas o liquidables, habida cuenta que la medida cautelar decretada impide promover la ejecución de esa determinación. En ese contexto, si la sentencia contiene cantidad cierta o de fácil cuantificación, como sería el caso de rentas vencidas, en que su monto podría establecerse desde el incumplimiento hasta la fecha de emisión del acto reclamado, los posibles daños y perjuicios derivados de la suspensión corresponderán, por cada concepto, al interés legal que se cauce al quejoso por el otorgamiento de la medida, durante el lapso de seis meses, tiempo probable de duración del juicio de amparo, pues como ya se estableció, la medida cautelar no incide en las prestaciones ya obtenidas, pues ese aspecto no es materia de estudio en la resolución suspensiva. En cambio, respecto de las prestaciones que aún no se generan, pero que se seguirán produciendo por la posesión del bien, cuya entrega, precisamente, habrá de impedirse temporalmente con motivo de la suspensión, la garantía por concepto de daños deberá estar referida a las cantidades que se dejen de percibir por concepto de rentas durante el periodo de resolución del juicio de amparo; y como perjuicios, los intereses legales que se originen durante el propio periodo, pues la falta de disposición del bien y, por tanto, el ingreso patrimonial referido, será en razón de la suspensión del acto reclamado.

¹²⁹ SISE 74/2019 [RZ-043].

¹³⁰ Decision dated 30 January 2020 [RZ-040], issued by the Fourteenth Administrative Collegiate Court (docket no. 74/2019).

V. IRREGULARITIES OF MEXICO'S AUTHORITIES

132. In this section of the Expert Report, we will proceed to explain some of the irregularities that occurred in the above-mentioned proceedings (both, civil and administrative), all of which worked against Claimants' substantive and procedural rights.

133. Claimants litigated for several years in Mexican courts. Nevertheless, due to several deficiencies in these proceedings, no appropriate decision or judgment on the merits was ever issued. No due justice was administered or granted to Claimants.

A. Irregular judgments *re* jurisdiction in civil proceedings

134. Several irregularities were found in all of the civil proceedings initiated against Pemex. In this section, we will only refer the main irregularities as well as the most relevant constitutional and legal breaches and violations of Claimants' rights.

135. First Violation. In the civil proceedings, issues regarding competence or jurisdiction were raised by the authority *ex officio*. In the course of each of the civil proceedings, the relevant Court questioned its own jurisdiction. In civil proceedings CP-803 and CP-804 one of issues addressed by the courts was whether the District Court (11DC) had subject-matter jurisdiction over the dispute, while in civil proceeding CP-821 the court analyzed whether an arbitral tribunal had exclusive jurisdiction over the dispute.

136. Claimants initiated the first two cases (CP-803 and CP-804) on late 2015 (only two months apart from each other). Both were heard by the 11DC (Civil District Court) and were immediately dismissed by such court due to an alleged lack of subject-matter jurisdiction as it concluded that the disputes in those cases were of administrative nature instead of civil.

137. Since Claimants did not agree with the dismissal judgments both of them appealed said judgments. These appeals were received and resolved by two Appellate Courts located within the same region (Veracruz).
138. Second Violation. Some of the decisions *re* jurisdiction were inconsistent with each other. It is interesting and alarming, at the same time, that the analysis and conclusions reached in the resulting appeal judgments were abruptly different from each other. On the one hand, the Appellate Court (3UC in Veracruz) decided that the District Court (11DC) was right to dismiss CP-804 claim, as it was an administrative one. On the other hand, in CP-803, the Appellate Court (4UC in Veracruz) decided that the District Court (11DC) was wrong to dismiss such claim, as it was a civil one. The contradiction is clear and blatant.
139. Third Violation. Pemex was aware of proceedings that it should not have been aware of, as service of process was never performed on Pemex. In CP-804 (where the Appellate Court confirmed the administrative nature of the claim), Pemex attempted to submit its position. The substantial breach and violation here is that Pemex was not supposed to be aware of the existence of the proceeding as CP-804 was not officially initiated and, thus, service of process was not even performed on Pemex. This issue was even noted by the Appellate Court (3UC in Veracruz).
140. Fourth Violation. General principles of law (such as the *res judicata* principle) were violated by the courts when issuing a decision on an issue that was previously decided by a higher court. Notwithstanding the fact that in CP-803 the Appellate Court (4UC) had already decided on the subject-matter jurisdiction issue, the District Court (11DC), after admitting the claim, the 11DC heard, admitted and granted Pemex's request to declare that the District Court (11DC) lacked subject-matter jurisdiction over the dispute, as Pemex

deemed it to be an administrative one. The reasons as to why the District Court (11DC) was wrong to admit and grant Pemex's request are two-fold: (i) the issue was already resolved by the Appellate Court (*res judicata*); and (ii) the judgment issued by the District Court (11DC) was contrary to that of the Appellate Court (which is a higher court in hierarchy).

141. Fifth Violation. The District Court illegally referred the matter to arbitration when none of the parties had requested such referral. With respect to CP-821, the District Court (8DC in Mexico City) *ex officio* analyzed and decided that it lacked jurisdiction over the dispute and referred the case to arbitration because the Agreement 821 included an arbitration agreement. What is more, both parties: (i) appealed this decision to refer the case to arbitration and (ii) filed *amparos* against the Appellate Court's decision confirming the referral to arbitration. The intention of the parties was thus clear: none of them sought the dispute to be settled by arbitration.
142. In accordance with Mexican Law, the remittance to arbitration will only proceed when a party so requests it. In this case, none of the parties brought this issue into question, which, under Mexican law, is construed to be an implicit submission to Mexican courts.
143. Article 1424 of Commerce Code (which contains the Mexican arbitral law) provides that a court must refer the dispute to arbitration only when:¹³¹ (i) an arbitral agreement is present; and (ii) a party requested the court to refer the case to arbitration in its first writ on merits (*see* Article 1464 (I)). The lack of referral request will translate into an implicit submission of the parties to the

¹³¹ Commerce Code [RZ-044], Article 1424: "*El juez al que se someta un litigio sobre un asunto que sea objeto de un acuerdo de arbitraje, remitirá a las partes al arbitraje en el momento en que lo solicite cualquiera de ellas, a menos que se compruebe que dicho acuerdo es nulo, ineficaz o de ejecución imposible [...]*".

judicial court.¹³² Therefore, considering that in this case both parties made evident their desire not to arbitrate the dispute, the District Court (11DC) was wrong to refer, *ex officio*, the case to arbitration. Such illegal referral caused DFD an undue loss of time of over 18 months and caused the court that issue a judgment on the merits to be different from the court that actually reviewed and analyzed the evidence.

144. The *ex officio* action of the District Court was contrary to Article 17 of the Constitution and Article 1424 of the Commerce Code in violation of Claimants' fundamental rights.

B. District Court's irregular decisions in civil proceedings

145. In CP-803, the courts acted in violation of the Mexican Constitution, specifically, in violation of the procedural and substantive rights of Claimants.
146. Article 17 of the Constitution establishes the right of all individuals and corporations for justice to be administered to them in a promptly, complete and impartial manner.¹³³ In line with this constitutional right, Article 57 of the Federal Code of Civil Procedure provides the obligation of a court to

¹³² See Supreme Court's Judgment No. 6916/2019, p. 9, available at: https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2020-03/ADR-6916-2019-200303.pdf

¹³³ Constitution [RZ-001], Article 17: "[...] *Toda persona tiene derecho a que se le administre justicia por tribunales que estarán expeditos para impartirla en los plazos y términos que fijen las leyes, emitiendo sus resoluciones de manera pronta, completa e imparcial. [...] Siempre que no se afecte la igualdad entre las partes, el debido proceso u otros derechos en los juicios o procedimientos seguidos en forma de juicio, las autoridades deberán privilegiar la solución del conflicto sobre los formalismos procedimentales*". The undersigned experts have translated this article as follows: "Every person has the right to have justice administered by courts that will be expeditious to impart it within the terms and time limits established by law, issuing their resolutions in a prompt, complete and impartial manner. [...] Provided that equality between the parties, due process or other rights are not affected in trials or proceedings conducted in the form of a trial, the authorities must give priority to the solution of the conflict over procedural formalities."

dismiss a motion when it is notoriously malicious or invalid.¹³⁴ A motion is notoriously invalid when, from a *prima facie* review, it is evident that said motion should not be granted.¹³⁵

147. Additionally, Mexican law recognizes the legal figure of *res judicata* (*cosa juzgada*) in accordance to which an issue that has been finally resolved (meaning that no other remedy is available to challenge it) shall not be, for the second time, heard or resolved.¹³⁶ Consequently, in accordance with the principle of *res judicata* a motion that calls for the analysis of issues that have already been resolved should be dismissed for being notoriously malicious or invalid.

¹³⁴ Federal Code of Civil Procedure [RZ-002], Article 57 “*Los tribunales no admitirán nunca incidentes, recursos o promociones notoriamente maliciosos o improcedentes. Los desecharán de plano, sin necesidad de mandarlos hacer saber a las otras partes, ni dar traslado, ni formar artículo*”.

¹³⁵ INCIDENTES, RECURSOS O PROMOCIONES NOTORIAMENTE MALICIOSOS O IMPROCEDENTES. SU CONNOTACIÓN [RZ-045]. Tesis No. 1a. XXXIV/2014 (10a.), Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN) (First chamber of the Supreme Court of Justice of the Nation), *Semanario Judicial de la Federación y su Gaceta (SJFG)* (Judicial Weekly of Federation), *Décima Época* (Tenth period), T. 1, February 2014, No. 2005535, p. 665: “*El artículo 57 del Código Federal de Procedimientos Civiles prevé que los tribunales no admitirán nunca incidentes, recursos o promociones notoriamente maliciosos o improcedentes, y que los desecharán de plano, sin necesidad de mandarlos hacer saber a las otras partes, ni dar traslado ni formar artículo. Al respecto, la malicia en las promociones se presenta cuando en ellas se identifica la mala fe del promovente, por ejemplo, cuando busca retardar la ejecución de alguna resolución o evitar que una decisión judicial se materialice; por su parte, la notoria improcedencia se configura cuando de la simple lectura de la promoción se advierte en forma patente y absolutamente clara la certeza y plena convicción de que la admisión o acogimiento de lo pedido no dará lugar a una decisión diferente de la que pueda tomarse desde luego; de manera que lo que el citado artículo trata de evitar es la tramitación de promociones que resulten ociosas o intrascendentes, ya sea porque tengan un evidente propósito dilatorio, o porque se formulen peticiones infundadas por no concurrir los presupuestos de hecho o de derecho que las justifiquen pues, en esas circunstancias, no es indispensable la previa audiencia del interesado ni que se admita su promoción, por ser inútil su tramitación al carecer del derecho subjetivo o procesal correspondiente, por la propia improcedencia de la petición formulada dentro del procedimiento respectivo, esto, en aras de observar los principios de prontitud y expeditéz procesal contenidos en el artículo 17, párrafo segundo, de la Constitución Política de los Estados Unidos Mexicanos.*”

¹³⁶ Federal Code of Civil Procedure [RZ-002], Article 354, 355 and 356.

148. In CP-803 the issue *re* subject-matter jurisdiction, (*i.e.* whether the claim was a civil or an administrative one) was decided on 30 December 2015 by the Appellate Court (4UC) in the First Appeal Judgment CP-803 confirming that the nature of the dispute was civil not administrative. Following the Appellate Court's orders, the district court (11DC) admitted the civil claim filed by Claimants.
149. Notwithstanding the fact that the issue *re* subject-matter jurisdiction was already resolved by the Appellate Court (*res judicata*), Pemex moved to dismiss the admission of Claimants' claim due to lack of jurisdiction. The District Court (11DC) admitted and later granted Pemex's motion to dismiss (which was finally overruled by the Appellate Court (4UC)).¹³⁷
150. Following the principle of *res judicata* and in application of Article 57 of the Federal Code of Civil Procedure, since the issue of jurisdiction was decided by the Appellate Court (4UC), the District Court (11DC) should have dismissed Pemex's motion as it was notoriously malicious and invalid.
151. The fact that: (i) the Appellate Court (4UC) vacated (for the second time) the decision of the District Court (11DC); (ii) the Amparo Court (1UC) confirmed the Appellate Court's decision; and (iii) the First Federal Circuit Court upheld the Amparo Court's decision, proves that Pemex's motion was indeed notoriously malicious and invalid.
152. In conclusion, by admitting and granting Pemex's notoriously malicious and invalid motion, the District Court (11DC) failed to comply with Article 17 of the Constitution in violation of Claimants' fundamental rights.

¹³⁷ This decision of the Appellate Court (4UC) was later confirmed on 2 May 2017, by the Amparo Court (1UC) and upheld by the First Collegiate Court on 10 May 2018 (*see* ¶¶ 76-77 of this Expert Report).

C. Amparo Court's irregular decisions in civil proceedings

153. The undersigned experts also found that courts in CP-804 violated the principle of *suplencia de la queja* in violation of Claimants' constitutional rights. Such finding is explained below.
154. Article 17 of the Constitution provides the obligation of the courts to administer justice in a prompt, complete and impartial manner, prioritizing the solution of the dispute over procedural formalisms.¹³⁸ In compliance with this constitutional duty, an amparo court is allowed to, *ex officio*, in certain cases decide in favor of the aggrieved party even if its amparo arguments are insufficient (*suplencia de la deficiencia de la queja* "suplencia de la queja").¹³⁹

¹³⁸ Constitution [RZ-001], Article 17: "[...] Toda persona tiene derecho a que se le administre justicia por tribunales que estarán expeditos para impartirla en los plazos y términos que fijen las leyes, emitiendo sus resoluciones de manera pronta, completa e imparcial. [...] Siempre que no se afecte la igualdad entre las partes, el debido proceso u otros derechos en los juicios o procedimientos seguidos en forma de juicio, las autoridades deberán privilegiar la solución del conflicto sobre los formalismos procedimentales". The undersigned experts have translated this article as follows: "Every person has the right to have justice administered by courts that will be expeditious to impart it within the terms and time limits established by law, issuing their resolutions in a prompt, complete and impartial manner. [...] Provided that equality between the parties, due process or other rights are not affected in trials or proceedings conducted in the form of a trial, the authorities must give priority to the solution of the conflict over procedural formalities."

¹³⁹ SUPLENCIA DE LA DEFICIENCIA DE LA QUEJA EN LAS MATERIAS CIVIL, MERCANTIL Y ADMINISTRATIVA. PROCEDE RESPECTO DE LA FALTA O DEL ILEGAL EMPLAZAMIENTO DEL DEMANDADO AL JUICIO NATURAL [RZ-046], *Jurisprudencia* (Jurisprudence) P./J. 149/2000, *Pleno de la Suprema Corte de Justicia de la Nación* (SCJN) (Full court of the Supreme Court of Justice of the Nation), *Semanario Judicial de la Federación y su Gaceta* (SJFG) (Judicial Weekly of Federation), *Novena Época* (Ninth period), T.XII, December 2000, No. 190656, p. 22: "Conforme a lo dispuesto por la fracción VI del artículo 76 bis de la Ley de Amparo, en materias distintas a la penal, agraria y laboral, opera la suplencia de la deficiencia de los conceptos de violación y de los agravios cuando se advierte que ha habido en contra del quejoso o del particular recurrente una violación manifiesta de la ley que lo haya dejado sin defensa. Ahora bien, si el emplazamiento del demandado al juicio natural constituye una formalidad esencial del procedimiento por ser necesario para una adecuada defensa, se sigue que la falta de verificación de tal emplazamiento o su práctica defectuosa se traduce en una violación manifiesta a la ley que produce indefensión, pues se estaría ante la infracción procesal de mayor magnitud y de

155. This principle (*suplencia de la queja*) shall be applied by the courts when a flagrant violation of the law takes place against the aggrieved party and/or when (due to the insufficiency of the arguments) the aggrieved party would be left defenseless. Specifically, in accordance with judicial precedent, Federal Circuit Courts (like the 10CC that issued Amparo Judgment CP-804) must analyze and decide over all of the procedural violations that the aggrieved party brought to its attention (including the procedural violations that such court may have identified by applying the *suplencia de la queja* principle).¹⁴⁰ Additionally, in accordance with the referred precedent, an example of a flagrant violation would be to wrongly dismiss or accept jurisdiction.
156. In case CP-804, the Amparo Court (10CC) found that the arguments of Claimants were not submitted before the Appellate Court (3UC) and,

carácter más grave dada su trascendencia en las demás formalidades del procedimiento al afectar la oportunidad de alegar y de ofrecer y desahogar pruebas, lo que obliga a los juzgadores de amparo a suplir la queja deficiente al respecto y, por tanto, a no dejar de examinar esa cuestión sólo porque el planteamiento específico no se haya hecho valer en la demanda de garantías, no pudiendo estimarse inoperantes los agravios relativos por esa razón."

¹⁴⁰ SUPLENCIA DE LA QUEJA EN MATERIA MERCANTIL POR VIOLACIÓN MANIFIESTA DE LA LEY. OPERA RESPECTO DE LA PROCEDENCIA DE LA VÍA, AL SER UN PRESUPUESTO PROCESAL QUE DEBE ESTUDIARSE DE OFICIO ANTES DE RESOLVER LA CUESTIÓN PLANTEADA. [RZ-047], Tesis X. 2o. 2 c (10ª), *Tribunales Colegiados de Circuito* (Full-Panel Circuit Courts), *Semanario Judicial de la Federación y su Gaceta (SJFG)* (Judicial Weekly of Federation), *Décima Época* (Tenth period), T. 2, January 2021, No. 2022616, p. 1367: "*De conformidad con lo dispuesto por los artículos 107, fracción III, inciso a), de la Constitución Federal y 174, párrafo segundo, de la Ley de Amparo, cuando por primera vez se promueva un amparo directo, el Tribunal Colegiado se encuentra obligado a decidir respecto de todas las violaciones procesales que se hagan valer, así como las que advierta en suplencia de la queja, cuando así proceda; de ahí que el juzgador de amparo tiene que hacer la declaratoria de oficio cuando se trate de una violación manifiesta de la ley en perjuicio del quejoso, por ello, cuando la autoridad responsable indebidamente tramite un juicio mercantil en la vía ordinaria, siendo procedente la vía oral mercantil, el Juez, en aras de garantizar la seguridad jurídica de las partes en el proceso, debe, en suplencia de la queja, conceder el amparo por tratarse de una violación manifiesta de la ley en perjuicio del quejoso, que lo deja sin defensa, dado que la procedencia de la vía es un presupuesto procesal insoslayable."*

therefore, it determined that these were not admissible at the amparo stage. However, from the record of the CP-804 case, it is clear that Claimants identified the same violations before the Appellate Court (3UC) and the Amparo Court (10CC), it only used different wording in formulating them. In this case, the argument (*re* procedural violation) that was not reviewed or considered by the Amparo Court (10CC), carrying an improper dismissal of the jurisdiction to hear the case, violating Claimants' rights.

157. This being a flagrant violation, the Amparo Court (10CC) had the obligation to apply and follow the *suplencia de la queja* principle in order to prioritize the solution of the dispute over procedural formalities. When the Amparo Court (10CC) decided that the arguments (pertaining the competence) were new and thus invalid, it violated constitutional Article 17.

D. Administrative Court irregular decisions

158. The undersigned experts found that in the administrative proceedings the principle of exhaustivity was violated and that the duty to motivate was breached

1) Violation of exhaustivity principle

159. Article 17 of the Constitution provides the obligation of the courts to administer justice in a prompt, complete and impartial manner, analyzing and resolving each of the issues submitted by the aggrieved party.¹⁴¹

¹⁴¹ GARANTÍA A LA IMPARTICIÓN DE JUSTICIA COMPLETA TUTELADA EN EL ARTÍCULO 17 DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS. SUS ALCANCES. [RZ-048], Tesis 1a. CVIII/2007, Primera Sala de la Suprema Corte de Justicia (First Chamber of the Supreme Court), *Semanario Judicial de la Federación y su Gaceta (SJFG)* (Judicial Weekly of Federation), Novena Época (Ninth period), T. XXV, May 2007, No. 172517, p. 793: "El derecho fundamental contenido en el referido precepto constitucional implica, entre otras cosas, el deber de los tribunales de administrar justicia de manera completa, en atención a los cuestionamientos planteados en los

160. In other words, when issuing a decision the amparo court has the obligation to analyze and resolve each of the issues brought to its attention without contradicting itself (known as the exhaustiveness principle).¹⁴²
161. In AP-821, the Administrative Court mistakenly found that: (i) Pemex had the right to early terminate Agreement 821; (ii) Pemex did not hinder the performance of the work orders by Claimants; and (iii) Claimants' expert report was unrelated to Claimants' claims.
162. According to the Administrative Court, since Claimants failed to perform work order no. 028/2016, Pemex had the right to early terminate Agreement 821 in accordance with clause 15.1 (s) which provides that "*the agreement will be terminated if the contractor fails to comply with any of the terms of the agreement.*"¹⁴³
163. However, the Administrative Court failed to consider Clause 15.1 (r) of Agreement 821, which establishes that "*The agreement may be terminated by*

asuntos sometidos a su consideración, analizando y pronunciándose respecto de cada punto litigioso".

¹⁴² SENTENCIAS DE AMPARO. SU CUMPLIMIENTO DEBE SER TOTAL, ATENTO A LOS PRINCIPIOS DE CONGRUENCIA Y DE EXHAUSTIVIDAD. [RZ-049], Tesis 2a. XCVI/2013 (10a.), Segunda Sala de la Suprema Corte de Justicia (Second Chamber of the Supreme Court), *Semanario Judicial de la Federación y su Gaceta (SJFG)* (Judicial Weekly of Federation), *Décima Época* (Tenth period), T. 1, Book XXVI, November 2013, No. 2004994, p. 649: "*Acorde al nuevo sistema de materia de cumplimiento de sentencias de amparo, establecido por el legislador en la Ley de Amparo vigente a partir del 3 de abril de 2013, dicho cumplimiento, debe ser total, sin excesos o defectos, por tanto, tratándose del pronunciamiento de sentencias o laudos, deben contener la declaración de la autoridad en relación con la solución integral del conflicto conforme a los principios de congruencia y de exhaustividad, que obligan a dirimir todas las cuestiones litigiosas, entre las que se encuentran tanto las que son materia de ejecución de la sentencia de amparo, como las que quedaron definidas o intocadas por la propia ejecutoria; de ahí que la autoridad debe reiterarlas en la sentencia o laudo que cumplimente*".

¹⁴³ See Administrative Court Judgment AP-821 [RZ-039], pp. 189-224, whereby clause 15.1 (s) of Agreement 821 is transcribed. Note that the undersigned experts translated the wording of said clause from Spanish into English, the original version reads as follows: "*en caso de que el contratista incumpla con sus obligaciones en los términos establecidos en el contrato*"

PEP if [...] (r) fifteen work orders are not performed by the contractor”. Therefore, for Pemex to have the right to early terminate the agreement due to lack of performance of work orders, it was necessary to demonstrate that Claimants had failed to perform, in aggregate, 15 work orders. In other words, failure to perform one work order was not sufficient for Pemex to early terminate Agreement 821.¹⁴⁴

164. In this regard, the Administrative Court should have performed a thorough analysis of the termination clauses, which would have led it to conclude that the lack of performance of one work order was not sufficient to legally and validly terminate Agreement-821.
165. Additionally, according to the contract interpretation principle where “specific controls over general” specific terms prevails over the general ones. In this case, the specific terms would be clause 15.1(r) which expressly establishes that the Agreement 821 can be terminated by Pemex in the event that fifteen work orders are not performed properly by Claimants. On the other side, the general terms would be clause 15.1(s) which provides that any breach to the Agreement will be a cause of termination. In this case, the Administrative Court failed to analyzed clause 15.1 (r) over clause 15.1 (s) and therefore violated the referred principle.

¹⁴⁴ See Administrative Court Judgment AP-821 [RZ-039], pp. 189-224, whereby clause 15.1 (r) of Agreement 821 is transcribed. Note that the undersigned experts translated the wording of said clause from Spanish into English, the original version reads as follows: “*PEP podrá, en cualquier momento rescindir administrativamente el Contrato, sin necesidad de declaración judicial o arbitral, mediante el procedimiento establecido en esta Cláusula, en caso de que el CONTRATISTA se ubique en cualquiera de los siguientes supuestos: [...] (r) En caso de que el contratista acumule 15 (quince) órdenes de trabajo incumplidas durante el Periodo de Ejecución del Contrato*”.

166. In addition, the Administrative Court found that Pemex did not cause Claimants' alleged breach of Agreement 821.¹⁴⁵ It further found that Pemex complied with its contractual obligations under Agreement 821.¹⁴⁶
167. In its analysis, the Administrative Court failed to consider the evidence submitted by Claimants of several communications sent by Pemex ordering the suspension of the works.¹⁴⁷
168. Finally, the Administrative Court also decided that the expert report (*re costs*) submitted by Claimants was unrelated with Claimants' claims and, thus, was not considered in its analysis.¹⁴⁸
169. By failing to consider in its entirety the evidence submitted by Claimants (*i.e.* clause 15.1 (r) of Agreement 821, Pemex's suspension orders and DFD's expert report), the Administrative Court violated the referred-to exhaustiveness principle.
- ii. Failure to motivate (in law and fact)*
170. In AP-821, Administrative Court also violated Claimants' fundamental right (guaranteed by Article 16 of the Constitution)¹⁴⁹ of legal certainty whereby

¹⁴⁵ Administrative Court Judgment AP-821 [RZ-039], p. 203.

¹⁴⁶ Administrative Court Judgment AP-821 [RZ-039], p. 203.

¹⁴⁷ Administrative Court Judgment AP-821 [RZ-039], p. 206.

¹⁴⁸ Administrative Court Judgment AP-821 [RZ-039], p. 227.

¹⁴⁹ Constitution [RZ-001], Article 16: "*Nadie puede ser molestado en su persona, familia, domicilio, papeles o posesiones, sino en virtud de mandamiento escrito de la autoridad competente, que funde y motive la causa legal del procedimiento. En los juicios y procedimientos seguidos en forma de juicio en los que se establezca como regla la oralidad, bastará con que quede constancia de ellos en cualquier medio que dé certeza de su contenido y del cumplimiento de lo previsto en este párrafo. [...]*."

any judgment has to be duly motivated by the authority, on both law and fact (*fundamentación y motivación*).¹⁵⁰

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SEGURIDAD JURÍDICA. ALCANCE DE LAS GARANTÍAS INSTRUMENTALES DE MANDAMIENTO ESCRITO, AUTORIDAD COMPETENTE Y FUNDAMENTACIÓN Y MOTIVACIÓN, PREVISTAS EN EL ARTÍCULO 16, PRIMER PÁRRAFO, DE LA CONSTITUCIÓN FEDERAL, PARA ASEGURAR EL RESPETO A DICHO DERECHO HUMANO. [RZ-050], Tesis IV.2o.A.50 K (10a.), *Tribunales Colegiados de Circuito* (Collegiate Circuit Courts), *Semanario Judicial de la Federación y su Gaceta (SJFG)* (Judicial Weekly of Federation), *Décima Época* (Tenth period), T. III, Book 3, February 2014, No. 2005777, p. 2241: "De las jurisprudencias 1a./J. 74/2005 y 2a./J. 144/2006, de la Primera y Segunda Salas de la Suprema Corte de Justicia de la Nación, publicadas en el *Semanario Judicial de la Federación y su Gaceta*, Novena Época, Tomos XXII, agosto de 2005, página 107, de rubro: "PROCEDIMIENTO SEGUIDO EN UNA VÍA INCORRECTA. POR SÍ MISMO CAUSA AGRAVIO AL DEMANDADO Y, POR ENDE, CONTRAVIENE SU GARANTÍA DE SEGURIDAD JURÍDICA." y XXIV, octubre de 2006, página 351, de rubro: "GARANTÍA DE SEGURIDAD JURÍDICA. SUS ALCANCES.", respectivamente, se advierte una definición clara del contenido del derecho humano a la seguridad jurídica, imbibido en el artículo 16, primer párrafo, de la Constitución Política de los Estados Unidos Mexicanos, el cual consiste en que la persona tenga certeza sobre su situación ante las leyes, o la de su familia, posesiones o sus demás derechos, en cuya vía de respeto la autoridad debe sujetar sus actuaciones de molestia a determinados supuestos, requisitos y procedimientos previamente establecidos en la Constitución y en las leyes, como expresión de una voluntad general soberana, para asegurar que ante una intervención de la autoridad en su esfera de derechos, sepa a qué atenerse. En este contexto, de conformidad con el precepto citado, el primer requisito que deben cumplir los actos de molestia es el de constar por escrito, que tiene como propósito que el ciudadano pueda constatar el cumplimiento de los restantes, esto es, que provienen de autoridad competente y que se encuentre debidamente fundado y motivado. A su vez, el elemento relativo a que el acto provenga de autoridad competente, es reflejo de la adopción en el orden nacional de otra garantía primigenia del derecho a la seguridad, denominada principio de legalidad, conforme al cual, las autoridades sólo pueden hacer aquello para lo cual expresamente les facultan las leyes, en el entendido de que la ley es la manifestación de la voluntad general soberana y, finalmente, en cuanto a fundar y motivar, la referida Segunda Sala del Alto Tribunal definió, desde la Séptima Época, según consta en su tesis 260, publicada en el Apéndice al *Semanario Judicial de la Federación 1917-1995*, Tomo VI, Materia Común, Primera Parte, página 175, de rubro: "FUNDAMENTACIÓN Y MOTIVACIÓN.", que por lo primero se entiende que ha de expresarse con exactitud en el acto de molestia el precepto legal aplicable al caso y, por motivar, que también deben señalarse con precisión las circunstancias especiales, razones particulares o causas inmediatas que se hayan tenido en consideración para su emisión, siendo necesario, además, que exista adecuación entre los motivos aducidos y las normas aplicables, lo cual tiene como propósito primordial, confirmar que al conocer el destinatario del acto el marco normativo en que el acto de molestia surge y las razones de hecho consideradas para emitirlo, pueda ejercer una defensa adecuada ante el mismo. Ahora bien, ante esa configuración del primer párrafo del artículo 16 constitucional, no cabe asumir una postura dogmatizante, en la que se entienda que por el solo hecho de establecerse dichas condiciones, automáticamente todas las autoridades emiten actos de molestia debidamente fundados y motivados, pues la práctica confirma que los referidos requisitos son con frecuencia inobservados, lo que sin embargo no demerita el hecho de que la Constitución

171. The duty to duly motivate on law (*fundamentación*), in accordance with judicial precedent, is the duty of the authority to accurately identify the legal precepts applicable to the particular case.¹⁵¹ The duty to motivate on fact (*motivación*), in accordance with the referred judicial precedent, is the duty of the authority to analyze the relevant issues by applying the law to the facts of the question. The facts considered and analyzed by the authority must be identified by such authority.^{152 153}

establezca esa serie de condiciones para los actos de molestia, sino por el contrario, conduce a reconocer un panorama de mayor alcance y eficacia de la disposición en análisis, pues en la medida en que las garantías instrumentales de mandamiento escrito, autoridad competente y fundamentación y motivación mencionadas, se encuentran contenidas en un texto con fuerza vinculante respecto del resto del ordenamiento jurídico, se hace posible que los gobernados tengan legitimación para aducir la infracción al derecho a la seguridad jurídica para asegurar su respeto, únicamente con invocar su inobservancia; igualmente se da cabida al principio de interdicción de la arbitrariedad y, por último, se justifica la existencia de la jurisdicción de control, como entidad imparcial a la que corresponde dirimir cuándo los referidos requisitos han sido incumplidos, y sancionar esa actuación arbitraria mediante su anulación en los procedimientos de mera legalidad y, por lo que atañe al juicio de amparo, a través de la restauración del derecho a la seguridad jurídica vulnerado.” (emphasis added)

¹⁵¹ *Íbid.*

¹⁵² FUNDAMENTACIÓN Y MOTIVACIÓN. [RZ-051], Jurisprudence, Segunda Sala de la Suprema Corte (Second Chamber of the Supreme Court), Semanario Judicial de la Federación y su Gaceta (SJFG) (Judicial Weekly of Federation), Séptima Época (Seventh period), Vol. 97-102, §3, No. 238212, p. 143: “De acuerdo con el artículo 16 de la Constitución Federal, todo acto de autoridad debe estar adecuada y suficientemente fundado y motivado, entendiéndose por lo primero que ha de expresarse con precisión el precepto legal aplicable al caso y, por lo segundo, que también deben señalarse, con precisión, las circunstancias especiales, razones particulares o causas inmediatas que se hayan tenido en consideración para la emisión del acto; siendo necesario, además, que exista adecuación entre los motivos aducidos y las normas aplicables, es decir, que en el caso concreto se configuren las hipótesis normativas.”

¹⁵³ FUNDAMENTACION Y MOTIVACION DE LOS ACTOS ADMINISTRATIVOS. [RZ-052], Jurisprudence VI. 2o. J/248, Tribunales Colegiados de Circuito (Collegiate Circuit Courts), Semanario Judicial de la Federación y su Gaceta (SJFG) (Judicial Weekly of Federation), Octava Época (Eighth period), No. 64, April 1993, No. 216534, p. 43: “De acuerdo con el artículo 16 constitucional, todo acto de autoridad debe estar suficientemente fundado y motivado, entendiéndose por lo primero que ha de expresarse con precisión el precepto legal aplicable al caso y por lo segundo, que también deben señalarse con precisión, las circunstancias especiales, razones particulares o causas inmediatas que se hayan tenido en consideración para la emisión del acto, siendo necesario además, que exista adecuación entre los motivos aducidos y las normas aplicables, es decir, que en el caso concreto se configure la hipótesis normativa. Esto es, que cuando el precepto en comento previene que nadie puede ser molestado en su persona, propiedades o derechos sino en virtud de

172. The Administrative Court determined that the suspension of the works and Pemex's insolvency did not prevent Claimants from complying with the work orders. Beyond the irrationality of such conclusion, the Administrative Court did not motivate such reasoning in law or in fact. Therefore, the Administrative Court violated Claimants' fundamental rights as established in Article 16 of the Constitution.

iii. Failure to issue coherent judgments

173. Article 17 of the Constitution requires authorities to issue coherent judgments.¹⁵⁴ The law recognizes two types of coherence (*coherencia*): internal and external. Internal coherence means that the conclusions and findings must be consistent and reasonable with respect to the analysis and considerations of the judgment.¹⁵⁵ External coherence means that the

mandamiento escrito de autoridad competente que funde y motive la causa legal del procedimiento, está exigiendo a todas las autoridades que apeguen sus actos a la ley, expresando de que ley se trata y los preceptos de ella que sirvan de apoyo al mandamiento relativo. En materia administrativa, específicamente, para poder considerar un acto autoritario como correctamente fundado, es necesario que en él se citen: a).- Los cuerpos legales y preceptos que se estén aplicando al caso concreto, es decir, los supuestos normativos en que se encuadra la conducta del gobernado para que esté obligado al pago, que serán señalados con toda exactitud, precisándose los incisos, subincisos, fracciones y preceptos aplicables, y b).- Los cuerpos legales, y preceptos que otorgan competencia o facultades a las autoridades para emitir el acto en agravio del gobernado."

¹⁵⁴ SENTENCIAS. SU CONGRUENCIA. [RZ-053], Jurisprudence VI.2o.J. 296, *Tribunales Colegiados de Circuito* (Collegiate Circuit Courts), *Semanario Judicial de la Federación y su Gaceta* (SJFG) (Judicial Weekly of Federation), *Novena Época* (Ninth period), T. XXVIII, October 2008, No. 168546, p. 2293: "*Es requisito de toda sentencia la congruencia entre los considerandos y los puntos resolutivos, en tanto que ésta constituye una unidad y los razonamientos contenidos en los primeros son elementos fundamentales para determinar el alcance preciso de la decisión, pues es en ellos en donde el juzgador hace los razonamientos adecuados para llegar a una determinación, la cual debe ser clara y fundada, características que dejan de cumplirse cuando existe entre ellos una incompatibilidad en su sentido o son incongruentes con las consideraciones expresadas en la sentencia, pues si existe incompatibilidad entre el contenido de los puntos resolutivos de la sentencia se provoca incertidumbre respecto a su sentido y alcances."*

¹⁵⁵ SENTENCIA. CONGRUENCIA INTERNA Y EXTERNA. [RZ-054], Tesis XXI.2o.12 K, *Tribunales Colegiados de Circuito* (Collegiate Circuit Courts), *Semanario Judicial de la Federación y su Gaceta* (SJFG) (Judicial Weekly of Federation), *Novena Época* (Ninth period), T. VI, August 1997, No. 198165, p. 813: "*El principio de congruencia que debe regir en toda*

judgment must be consistent with the claims, defenses, facts and relief sought by the parties.

174. In AP-821, when analyzing Claimants' claims, the Administrative Court found that "*it was impossible for the minimum amount of the agreement to be applied on the first 30 days of the contract*". In contradiction with such finding, when analyzing Pemex's defenses, said court found that "*there was not an exact date for the minimum amount of the agreement to be applied, which means that such amount could be applied during the last month of the agreement*".¹⁵⁶
175. In other words, the Administrative Court found it impossible to apply the minimum amount during the first 30-days of the contract, but at the same time, considered it possible to apply said amount during the last month of Agreement 821. These conclusions are clearly contradictory and issued in favor of Pemex. Such contradiction is not only blatant but in violation of the coherence Constitutional principle.
176. It is evident that the Administrative Court was not impartial in its reasoning, as it changed its analysis and conclusions regarding the same issue favoring

sentencia estriba en que ésta debe dictarse en concordancia con la demanda y con la contestación formuladas por las partes, y en que no contenga resoluciones ni afirmaciones que se contradigan entre sí. El primer aspecto constituye la congruencia externa y el segundo, la interna. En la especie, la incongruencia reclamada corresponde a la llamada interna, puesto que se señalan concretamente las partes de la sentencia de segunda instancia que se estiman contradictorias entre sí, afirmándose que mientras en una parte se tuvo por no acreditada la personalidad del demandado y, por consiguiente, se declararon insubsistentes todas las promociones presentadas en el procedimiento por dicha parte, en otro aspecto de la propia sentencia se analiza y concede valor probatorio a pruebas que específicamente fueron ofrecidas y, por ende, presentadas por dicha persona; luego, esto constituye una infracción al principio de congruencia que debe regir en toda sentencia."

Pemex's case. Thus, it could be concluded that the judgment lacks internal coherence in direct violation of Article 17 of the Constitution.

E. Irregular length of the proceedings

177. In these sections, the undersigned experts analyze the length of the civil and administrative proceedings, finding that their length was excessively long. The reasoning for such conclusions are explained below.

i. Civil proceedings (CP-803, CP-804 and CP-821)

178. As previously explained, Article 17 of the Constitution guarantees the administration of the justice in a prompt and expeditious manner. In all of the civil proceedings, the undersigned expert noted an undue delay in the resolution of the disputes.

179. The following chart summarizes the length of each of the civil proceedings:

Proceeding	Claim submission date	Last judgment on procedural issues	First judgment on the merits	Latest judgment date and concept
CP-803	13-Oct-2015	10-May-2018 Final dismissal of Pemex's motion to dismiss.	Inexistent After almost six years of procedural motions, writs, remedies, judgments and memorials, the court terminated the proceedings without deciding	1-Oct-2021 Termination of proceedings due to procedural inactivity

			on the merits of the case.	
CP-804	8-Dic-2015	18-Oct-2016 Final judgment dismissing Bisell and MWS's claim.	Inexistent After almost a year of procedural related disputes, the court finally dismissed Bisell and MWS's claim without delving into the merits of the case.	18-Oct-2016 Final judgment dismissing Bisell and MWS's claim
CP-821	29-Apr-2016	8-Feb-2019 First Amparo Judgment CP-821.	2-Apr-2019 Second Judgment of the Court of Appeals CP-821. After almost three years of procedural related disputes, the court finally decided on the merits on behalf of Pemex.	21-Oct-2021 Fifth Judgment of the Court of Appeals CP-821.

180. It is evident that in all of the procedures justice was not administered in an expeditious or prompt manner, as it took: (i) over a year (in CP-804) to finally dismiss the case without ever delving into the merits of the case; (ii) over three years (in CP-821) to settle the disputes *re* jurisdiction; and (iii) over six years (in CP-803) to settle the disputes regarding jurisdiction without ever resolving the merits of the case.
181. From the review of the files of the civil proceedings, it is clear that Claimants did not have its day in court.

ii. *Administrative proceedings (AP-804 and AP-821)*

182. An unjustified delay takes place¹⁵⁷ when the judgment is not issued within a reasonable period. There are four parameters to measure the reasonableness of the length of a procedure: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities; and, d) the harm on the parties caused due to the length of the proceeding.¹⁵⁸
183. In accordance with the Inter-American Court of Human Rights, the principle of "reasonable time" (principle known in Mexican as short term (*breve plazo*)), is intended to prevent parties from being party to a procedure which length is unknown and therefore prejudicial due to unnecessary delays.¹⁵⁹ Unjustified delays constitute a violation of due process rights (guaranteed in Article 17 of the Constitution).
184. In AP-804, without justification, it took the Administrative Court more than two months to comply with the order to receive the administrative claim.¹⁶⁰ We found no justification for such delay because, following the Inter-American Court of Human Rights parameters: (a) the issue was not complex

¹⁵⁷ American Convention on Human Rights [RZ-055], Article 8 (1): "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

¹⁵⁸ PLAZO RAZONABLE. [RZ-056], Jurisprudence, Inter-American Court of Human Rights, <https://www.corteidh.or.cr/sitios/tess/tr172.htm>: "Duración del proceso. Para determinar la razonabilidad del plazo se valoraron los cuatro elementos que la jurisprudencia ha establecido: a) complejidad del asunto; b) actividad procesal del interesado; c) conducta de las autoridades judiciales, y d) afectación generada en la situación jurídica de la persona involucrada en el proceso. La razonabilidad del plazo al que se refiere ese precepto se debe apreciar en relación con la duración total del proceso, desde el primer acto procesal hasta que se dicte sentencia definitiva."

¹⁵⁹ Suárez Rosero v. Ecuador [RZ-057], Interamerican Court of Human Rights, 12 November 1997, Sequence C No. 35, ¶70.

¹⁶⁰ See § IV (B) (ii) of this Expert Report.

as the court needed only to admit the claim; (b) there was no procedural activity by the parties nor by the authorities; and (c) Claimants were negatively affected by such delay.¹⁶¹

185. It should be also noted that while the administrative claim was submitted on 5 March 2019, as of the date of this Expert Report, the administrative procedure (triggered by such claim) is still ongoing. In other words, more than three years have passed, and no judgment of the dispute has been issued, in clear violation of Article 17 of the Constitution.

186. Finally, in AP-821, Claimants filed a remedy review (*recurso de revisión*) against the Administrative Court Judgment AP-821 before the Administrative Federal Circuit Court, which, according to Article 92 of the Amparo Law, should have been decided within a ninety-day period. Nevertheless, in violation of the Amparo Law and Article 17 of the Constitution, it took over a year for such court to issue said decision. The violation to Claimants' fundamental rights is clear, since it took more than one year for the Administrative Federal Circuit Court to issue a decision on the merits.

187. The following chart summarizes the length of each of the administrative proceedings:

Proceeding	Claim submission date	Last action	Judgment on first instance	Second Instance claim submission	Judgment on second instance
AP-804	5-March-2019	17-Feb-2022:	Inexistent	N/A	N/A

¹⁶¹ See ¶ IV (B) (ii) of this Expert Report.

		PEMEX answered the claim.	After almost 3 years of procedural motions, writs, remedies, judgments and memorials, there is still a pending judgment regarding this claim		
AP-821	4-Sept-2017	18-Oct-2016 Final judgment dismissing Bisell and MWS's claim.	4- Oct- 2018	18-Jan-2019	30-Jan-2020 Judgment issued by the Federal Circuit Court after one year

188. It is clear that justice was not administered in an expeditious or prompt manner, as it took: (i) over three years (in AP-804) to commence the trial; and (ii) over one year (in AP-821) to get the final decision from the Administrative Federal Circuit Court, even though the Amparo Law orders authorities to issue their judgments within a ninety-day period after reception of the case file.¹⁶²

¹⁶² Amparo Law [RZ-003], Art. 183.

F. Irregular *ex parte* communications

189. *Ex parte* communications (re the resolution that was pending to be issued) between Pemex and the Magistrates of the Superior Chamber of the Administrative Court violate the Ethics Code of the Administrative Court and Claimants' Due Process rights.
190. The Ethics Code of the Administrative Court provides the duty for the Magistrates to (i) reject any kind of recommendation that may influence its judgment (*see* articles 4.1 and 4.4 of said Ethics Code); (ii) avoid giving advantage or privileges to any of the parties (*see* article 5.1 of the referred Ethics Code); and to (iii) avoid any appearance of giving preferential treatment to any of the legal representatives of the parties (*see* article 5.7 of said Ethics Code); ¹⁶³
191. In accordance with Mr. Kernion's witness declaration, the Magistrates of the Superior Chamber of the Administrative Court in AP-821 had *ex parte* communications with Pemex's representatives informing them the terms of the resolution such Court was about to issue, terms that were not share with Claimants.
192. In accordance with the above referred articles of the Ethics Code, Magistrates shall refrain from having *ex parte* communications where it may be influenced by such party, may be give advantage to such party and/or may appear to be giving preferential treatment to said party (such as providing such party with the resolution information that is not providing to the party with whom such magistrate is not communicating). If the communication referred by Mr.

¹⁶³ Ethics Code of the Administrative Code [RZ-058] Art. 4.1, 4.4

Kernion took place between the judge and Pemex, the Ethics Code and Claimants' Due Process rights were clearly violated.

VI. CONCLUSIONS

193. As a summary of all of the above, it is our opinion that, notwithstanding Claimants' efforts, they did not have their day in court.
194. In addition, the District Court (in CP-803) should have rejected Pemex's motion to dismiss, as such motion was notoriously malicious and invalid, as well as contrary to the text of the Constitution.
195. The District Court (in CP-821) should have refrained from remanding the dispute to arbitration.
196. The Amparo Court (in CP-804) should have applied the principle of *suplencia de la queja* and, thus, should have considered Claimants' arguments *re* subject-matter jurisdiction instead of dismissing them based on mere formalities.
197. The judicial authorities in the civil proceedings should have guaranteed that the disputes be resolved expeditiously and promptly.
198. The decision of the Administrative Court (in AP-821) failed to comply with several of the constitutional principles that guarantee the protection of Claimants' fundamental rights.
199. The decision of the Administrative Court (in AP-821) failed to comply with the constitutional principle of exhaustivity (provided in Article 17 of the Constitution) by not considering material evidence submitted by Claimants.
200. The decision of the Administrative Court (in AP-821) failed to comply with the constitutional principle of coherence.

201. The decision of the Administrative Court (in AP-821) failed to comply with the constitutional principle of motivating (in law and fact) its judgment.

202. The decision of the Administrative Court (in AP-804) failed to comply with the constitutional principle of administering justice in a prompt and expeditious manner by allowing or causing unjustified delays.

VII. GENERAL STATEMENTS

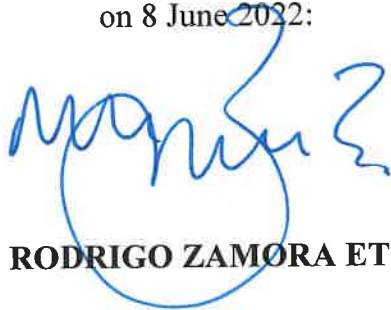
203. This Expert Report has been originally prepared in English. Although the undersigned are prepared to give testimony at the Evidentiary Hearing in said language, we would prefer to give it in Spanish.

VIII. DECLARATION OF INDEPENDENCE

204. We confirm that what is set forth in this Expert Report reflects the true, impartial, and independent opinion to the best of the knowledge and belief of the experts who participated in its preparation.

205. The authors confirm that the information included in this Expert Report is true and correct based on their experience and knowledge, and on the objective analysis of the documentation made available to them.

206. This Expert Report is signed by the experts who participated in its preparation on 8 June 2022:



RODRIGO ZAMORA ETCHARREN



DANIEL AMÉZQUITA DÍAZ

ANNEXES

Annex A - Rodrigo Zamora Etcharren CV

Annex B – Daniel Amezcuita Díaz CV

RZ – 001 Constitution

RZ – 002 Federal Code of Civil Procedure

RZ – 003 Amparo Law

RZ – 004 Federal Administrative Code of Contentious Procedure

RZ – 005 Organic Law of the Federal Judicial Authority

RZ – 006 General Plenary Agreement No. 5/2013 of the Supreme Court

RZ – 007 First Appeal Judgement CP-803

RZ – 008 Amparo Judgement CP-803

RZ – 009 SISE 75/2015

RZ – 010 SISE 30/2016

RZ – 011 SISE 36/2016

RZ – 012 SISE 4/2017

RZ – 013 Review Judgement CP-803

RZ – 014 Second Appeal Judgement CP-803

RZ – 015 SISE 1/2020

RZ – 016 Amparo Judgement CP-804

RZ – 017 Dismissal District Court Judgement

RZ – 018 Appeal Judgement CP-804

RZ – 019 Official communication dated 2 July 2019

RZ – 020 Official communication dated 1 October 2019

RZ – 021 Official communication dated 2 January 2020

RZ – 022 Official communication dated 4 February 2020

RZ – 023 Official communication dated 20 August 2020

RZ – 024 Official communication dated 18 August 2021

RZ – 025 Official communication dated 2 December 2021

RZ – 026 District Court Judgement CP-821

RZ – 027 First Appeal Judgement CP-821

RZ – 028 SISE 898/2017

RZ – 029 SISE 425/2018

RZ – 030 SISE 426/2018

RZ – 031 First Amparo Judgement CP-821

RZ – 032 Second Amparo Judgement CP-821

RZ – 033 Fourth Judgement of the Court of Appeals CP-821

RZ – 034 SISE 875/2019

RZ – 035 Third Amparo Judgement CP-821

RZ – 036 Fourth Amparo Judgement CP-821

RZ – 037 Withdrawal writs

RZ – 038 Fifth Judgement of the Court of Appeals CP-821

RZ – 039 Administrative Court Judgement AP-821

RZ – 040 Judgement dated 30 January 2020

RZ – 041 SUSPENSIÓN DEL ACTO RECLAMADO EN EL AMPARO INDIRECTO. DEBEN CONSIDERARSE SEIS MESES COMO TIEMPO PROBABLE DE DURACIÓN DEL JUICIO PARA FIJAR LA GARANTÍA CORRESPONDIENTE.

RZ – 042 SUSPENSIÓN. MONTO DE LA GARANTÍA TRATÁNDOSE DE RESOLUCIONES SOBRE CONTROVERSIAS DE ARRENDAMIENTO QUE CONTENGAN CANTIDAD LÍQUIDA O DE FÁCIL CUANTIFICACIÓN Y CONDENA A PRESTACIONES DE TRACTO SUCESIVO POR VENCER.

RZ – 043 SISE 74/2019

RZ – 044 Commerce Code

RZ – 045 INCIDENTES, RECURSOS O PROMOCIONES NOTORIAMENTE MALICIOSOS O IMPROCEDENTES. SU CONNOTACIÓN

RZ – 046 SUPLENCIA DE LA DEFICIENCIA DE LA QUEJA EN LAS MATERIAS CIVIL, MERCANTIL Y ADMINISTRATIVA. PROCEDE RESPECTO DE LA FALTA O DEL ILEGAL EMPLAZAMIENTO DEL DEMANDADO AL JUICIO NATURAL

RZ – 047 SUPLENCIA DE LA QUEJA EN MATERIA MERCANTIL POR VIOLACIÓN MANIFIESTA DE LA LEY. OPERA RESPECTO DE LA PROCEDENCIA DE LA VÍA, AL SER UN PRESUPUESTO PROCESAL QUE DEBE ESTUDIARSE DE OFICIO ANTES DE RESOLVER LA CUESTIÓN PLANTEADA

RZ – 048 GARANTÍA A LA IMPARTICIÓN DE JUSTICIA COMPLETA TUTELADA EN EL ARTÍCULO 17 DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS. SUS ALCANCES.

RZ – 049 SENTENCIAS DE AMPARO. SU CUMPLIMIENTO DEBE SER TOTAL, ATENTO A LOS PRINCIPIOS DE CONGRUENCIA Y DE EXHAUSTIVIDAD.

RZ – 050 SEGURIDAD JURÍDICA. ALCANCE DE LAS GARANTÍAS INSTRUMENTALES DE MANDAMIENTO ESCRITO, AUTORIDAD COMPETENTE Y FUNDAMENTACIÓN Y MOTIVACIÓN, PREVISTAS EN EL ARTÍCULO 16, PRIMER PÁRRAFO, DE LA CONSTITUCIÓN FEDERAL, PARA ASEGURAR EL RESPETO A DICHO DERECHO HUMANO.

RZ – 051 FUNDAMENTACIÓN Y MOTIVACIÓN.

RZ – 052 FUNDAMENTACIÓN Y MOTIVACIÓN DE LOS ACTOS ADMINISTRATIVOS.

RZ – 053 SENTENCIAS. SU CONGRUENCIA.

RZ – 054 SENTENCIA. CONGRUENCIA INTERNA Y EXTERNA.

RZ – 055 American Convention on Human Rights

RZ – 056 PLAZO RAZONABLE, Jurisprudence of the Inter-American Court of Human Right

RZ – 057 Suárez Rosero v. Ecuador, Inter-American Court of Human Rights, 12 November 1997, Sequence C No. 35

RZ – 058 Ethics Code of the Administrative Code