



[...]

1. The contractual compliance by the difference of the minimum sum up to the amount of \$120'856,548.84 USD (one hundred and twenty million, eight hundred and fifty-six thousand five hundred forty-eight American dollars 84/100 USD), to which PEP was contractually obliged in accordance to the clause 5 of the Contract No. 421004821, since it was due to causes attributed to the defendant that it was not possible to exercise the minimum amount to which it was obliged and, consequently, the actualization of the original costs of the works in order to adjust them to the real conditions.

2. The payment of non-recovered expenses generated, due to the suspension of works what took place during the validity of the contract, in accordance to the clause 17 of the Contract No. 421004821, and before the lack of budgetary sufficiency. The above with respect to the following terms:

a) It is required the payment of the sum determined as non-recovered expenses corresponding to 108 days in suspension of the working order 012-2014 of October 28, 2014, from 14 to 19 November, 2014, and from November 20 to March 1, 2015, in attention to the arguments and elements of evidence that are submitted in the lawsuit. Accounting to be determined in Incident of Execution of Sentence.

b) It is required the payment that is determined as non-recovered expenses corresponding to 98 days in the Suspension of the working order No. 023/2015

of July 20, 2015, from August 8 to November 2, 2015, in attention to the arguments and elements of evidence that are submitted in the lawsuit. Accounting to be determined in Incident of Execution of Sentence.



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c) It is required the payment that is determined as non-recovered expenses corresponding to 105 days in the Suspension of the working order No. 027-2015 of December 24, 2015, from January 16, 2016 to April 26, 2016, in attention to the arguments and elements of evidence that are submitted in the lawsuit. Accounting to be determined in Incident of Execution of Sentence.

3.- The payment and recognition of the financial expenses, in accordance to clause 5 of the Contract No. 421004821, derived from the lack of payment of the pretensions 1 and 2 as well as the diverse non-paid estimations in the times provided for in the contract and its actualization up to the moment when the sums owed to the company I represent to, are effectively paid, accounting to be determined in Incident of Execution of Sentence.

Due to non-compliance with the obligations of the contract, it is worth mentioning that the company I represent to had endless damages to his patrimony, since it has had it will be (sic) forced to face future lawsuits and some others that have already been presented by various providers, which allow me to refer to the following:

a. In relation to the company CALFRAC DE MÉXICO, S.A. DE C.V.; I let you know that, due to the execution of the works provided for in the contract, the company I represent to had to subcontract diverse works of hydraulic fracture and in order to pay for the

services we were obliged (sic) to sign two promissory notes for an amount of \$2'500'000.00 (two million [...])

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contractual of PEP, as it will be pointed out in the corresponding considerations chapter.

5. The payment of judiciary expenses and costs that emerge from this trial.”

SECOND. By order dated May 3 of two thousand and sixteen (page 197), the trial was admitted and it was ordered to summon the defendant party so that in a term of nine days produced the response to the lawsuit filed against him.

THIRD. By diligence carried out on June 8, two thousand and sixteen (page 244), the defendant PEMEX REFINACIÓN was summoned.

FOURTH. In writing submitted to the Common Correspondence Office of the District Court in Civil Matters in the Federal District, on July eleventh two thousand and sixteen, sent by matter of turn to this court the next day (pages 255 to 326), the defendant

through of their attorneys Héctor Omar Lopez Reynoso and

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Francisco Leonardo Santos Rodríguez, replied to the lawsuit filed against them and opposed as exceptions and defenses the following:

I. - DEFENSE OF *SINE ACTIONE AGIS*. This defense is made to consist of denial generic extremes of actions exercised, having the effect of throwing the burden to prove to the plaintiffs, as well as that of obliging your Honor, to informally examine, each and every one of the constituent elements of attempted actions.

II. THE PLUS PETITIO EXCEPTION, which consists of the undeniable fact that the plaintiff intends to collect amounts to which it does not have the right, since it does not exist nor has it existed a breach by the company I represent to, nor there have been much fewer suspensions of the works object of the contract, derived from causes attributable to the defendant, coupled with the fact that in an otherwise unfair manner, intends to collect the difference of the minimum amount agreed in the contract that has not been exercised to date and that would correspond to works which must necessarily be carried out under the contract so that pretending to collect them without realizing the works, is necessarily excessive and does not corresponds to it.

III. LACK OF ACTION AND RIGHT to claim the benefits indicated in its lawsuit by virtue of the fact that the defendant has not breached to date none of those that are inherent to its contracting capacity, as well as that in the absence of suspensions of work attributable to it, lacks action and right to claim unrecoverable expenses and on the other hand, since no amount is owed and all estimates presented as of the date of

work carried out has been covered in terms of the contract and the corresponding amending agreement, lacks action and right to require them.



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IV. THE ONCE DERIVING OF THE ARTICLES 1939 OF THE FEDERAL CIVIL CODE CONSIDERING THE LACK OF COMPLIANCE OF THE CONDITIONS FOR THE PLAINTIFF TO CLAIM ANY PAYMENT OBLIGATION ESTABLISHED IN THE PUBLIC WORKS CONTRACT AT UNIT PRICES IN RELATION WITH CLAUSE 6.3 OF SAID INSTRUMENT AND WITH ARTICLE 126 OF THE POLITICAL CONSTITUTION OF THE UNITED STATES OF MEXICO.

V. THE DERIVED OF ARTICLE 35 OF THE LAW OF PETROLEOS MEXICANOS, in relation with clause 27 of the contract itself (CONCILIATION) and which is made to consist of the undeniable fact that at no time, until date, the parties have submitted a request for conciliation for disagreements derived from the breach of contract, as established by the aforementioned clause 27 of the contract.

VI.- THE ONE DERIVED OF ARTICLE 1949 OF THE FEDERAL CIVIL CODE and which consists of the undeniable fact that the party plaintiff has not fully complied with its obligations, given that during the time elapsed since the beginning of the works and validity of the contract, has breached it, which caused my client will apply conventional penalties in terms of the provisions of the contract itself, as proven by the documents corresponding to the payment of estimates and deduction of said penalties that as annex 22, is add to the present, as well as that in various occasions he has had to reiterate that he must comply with its obligations and even, that it must attend meetings to which they have been summoned analyze problems derived from the contract itself, such and as was duly indicated in the response to the facts of the claim.

VII. THE ONE THAT DERIVATES OF ARTICLE 324 OF THE FEDERAL CODE OF CIVIL PROCEDURES, because the plaintiff abstained to accompany with its demand the documentation

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to prove that the alleged no recoverable expenses that it claims for alleged suspensions of the works, as well as the damages that also claims, therefore it must be considered that it lost the right that in time it could have exercised and any documentation in support of its claims should not be received.

VIII. THE ONE DERIVATING FROM THE JURISPRUDENCE 1.70.C. J/9, SUPPORTED FOR THE SEVENTH COLLEGIATE COURT IN CIVIL MATTERS OF THE FIRST CIRCUIT, UNDER The HEADING OF: "DAMAGES. THE RIGHT TO THEM MUST BE DEMONSTRATED IN AN INDEPENDENT FORM TO THE BREACH OF THE OBLIGATION ON WHICH THEY ARE FOUNDED, SINCE THE LATTER DOES NOT IMPLY THAT THEY ARE NECESSARILY AND INDEFECTIBLY CAUSED"; AS WELL AS ARTICLE 2110 OF THE FEDERAL CIVIL CODE FOR AS MUCH AS THE ALLEGED DAMAGE SUFFERED BY THE PLAINTIFF.

IX. EXCEPTION OF LACK OF EFFECTIVENESS OF THE CLAIMED DAMAGE. - It is well explored in the Law that the effectiveness of the damage refers to two main aspects, the first one aimed at having a negative impact in the goods or rights and secondly that it deals with actual damage that excludes any simply hypothetical future damage such as frustration of Simple expectations. Therefore, if the plaintiffs do not refer, much less prove such matters, it lacks action to claim them.

X. DEFENSE OF DARKNESS, DEFICIENCY AND AMBIGUITY OF THE LAWSUIT, SUPPORTED BY THE IMPERATIVE OF ARTICLE 322, SECTION III, OF THE FEDERAL CODE FOR CIVIL PROCEDURES.

XI. PRESCRIPTION. The present exception is asserted in terms of article 1161, fraction II, in accordance with the plaintiff's confession contained in fact 4, of his statement of claim,

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considering that from the cited date the plaintiff was able to file any action of a contentious nature before the alleged lack of working orders, highlighting that from the notification of the official communication referred to in the aforementioned fact at the date of filing the lawsuit more than two years had elapsed, which configured the prescription of the action, especially that said document was not contested or challenged in the administrative way, reason why it enjoys a presumption of validity in terms of article 8 of the Federal Law of Administrative Procedure and 42 of the Federal Law of Contentious-Procedure."

FIFTH. Following the proceeding, in a decision of July twenty-two of sixteen (page 360), it was ordered to open the evidentiary stage during a normal term of thirty days for offering and venting evidence.

Therefore, through decision of August eleventh of two thousand and sixteen (page 516), the following evidence from the plaintiff was admitted.

I. DOCUMENTARIES. - Each and every one of which the prosecuting party accompanied its initial statement of claim (from one to four hundred and seventy-one).

II. Engineering expert report.

referred to in the International Chamber of Commerce Arbitration Rules in force from January 1st (first), 2012, (two thousand and twelve) or the Rules that replaces it, if such figure is considered.

The contract administrative rescission and termination procedures established by PEP are of an administrative nature, so they will not be a matter of arbitration.

It is expressly agreed by PEP and the CONTRACTOR, that the latter may only resort to the Arbitration instance once it has exhausted the mechanisms established in the CLAUSE 27 "CONCILIATION" and CLAUSE 28 "PREVENTION AND RESOLUTION OF DISPUTES TECHNICAL OR ADMINISTRATIVE NATURE MECHANISMS".

47.3 Jurisdiction.

In the event that PEP administratively rescinds the Contract or terminate the Contract in advance, as well as in the case that PEP, in accordance with Clause Sixteenth, deny a CONTRACTOR request to terminate the contract early and the CONTRACTOR chooses to challenge such determinations, the parties expressly agree to submit to the jurisdiction of the Courts with jurisdiction in Mexico City, Federal District, therefore, the CONTRACTOR irrevocably waives to submit to any other federal instance and/or non-jurisdictional..."

From the above transcription it is clear that The parties to the contract agreed to submit the disagreements, discrepancies, differences or disputes arising from the interpretation or

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execution of the Contract or that are related to it, and that have not been resolved by any of the mechanisms provided for in the Contract, to arbitration conducted in according to the Rules of Arbitration of the Chamber of Commerce; setting as exception submit to the jurisdiction of the Courts with jurisdiction in Mexico City, Federal District, waiving the contractor irrevocably to submit to any other federal and/or non-jurisdictional instance, only in the event that:

- Pemex Exploración y Producción administratively rescinds the Contract or early terminates the Contract, or;
- Pemex Exploración y Producción, pursuant to the Sixteenth Clause, deny a request from the contractor to terminate the contract and the contractor in advance choose to challenge those determinations.

Therefore, based on the precepts invoked and what was agreed by the parties, it is concluded

that the benefits claimed by the plaintiff in the present trial are to be settled by arbitration and not through a dispute before the Federal Courts with jurisdiction in Mexico City.

Additionally, and given that the parties can contractually agree on the way in which they will resolve their disputes, it is estimated that this District Court in Civil Matters in Mexico City, is not competent to address this matter and resolve it.

In such conditions, this District Court declares that it lacks jurisdiction to address the trial in question corresponding as agreed by the parties to the International Court of Arbitration ICC to address the disputes that are claimed here; therefore, plaintiff's rights are reserved to assert them before the corresponding instance.