



Resolution of the Incident of Incompetence by  
Declinatory  
Federal Civil Ordinary Trial 75/2015  
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Poder Judicial de la Federación

**Poza Rica de Hidalgo, Veracruz, on  
September twenty-first, two thousand and  
sixteen.**

**SEEN** to resolve in the notifications of the ordinary civil trial 75/2015, the incident of incompetence for declining due to the matter filed by the defendant Pemex Exploración y Producción, through its legal representative Ivonne Hernández Rubí; and

**RESULT:**

**LAWSUIT**

**FIRST. [...]**

**DISPOSAL**

**SECOND. [...]**

**APPEAL**

**THIRD. [...]**

**ADMISSION**

**FOURTH. [...]**

**INCIDENT OF LACK OF COMPETENCE BY  
SUBJECT**

**FIFTH. [...]**

[...]

## **CLOSING OF THE PROBATION PERIOD**

**EIGHTH.** Likewise, once the aforementioned period granted by order of May 19, two thousand and sixteen expired, the evidentiary period was declared closed and eleven hours and twenty minutes on June twenty-third of two thousand and sixteen were indicated to hold the hearing of allegations.

## **INITIAL HEARING**

**NINTH.** The aforementioned hearing of allegations had verifiable at the time and day indicated, appreciating from the reading of the same that both parties' defendant in the main and claimant in the incidental made allegations, leaving the records in view of the undersigned for the issuance of the resolution, which on this date was emits; and;

In this order of ideas, through the resolution of July fourteen, two thousand and sixteen, the incident of merit was resolved; Dissatisfied with said resolution, the plaintiff filed an appeal, which was heard by the Fourth Unitary Court of the Seventh Circuit, registering it under number 30/2016.

Thus, by means of a ruling dated September 2 of this year, the referred unitary court estimated that it was unable to proceed in terms of numeral 246 of the Federal Code of Civil Procedures, that is, to review whether the appeal was filed on time, whether it was well admitted. and qualify the degree with which it was admitted; since said resolution having been dictated by the secretary in charge of the office without having legal powers to do so, in terms of articles 43 and 161 of the Organic Law of the Judiciary of the Federation, since it cannot rule on a matter, if it does not have the corresponding authorization from the Council of the Federal Judiciary, and in the file in which it acts, said secretary did not have said authorization, since the hearing of allegations was held by the head of this Court and the authorization granted to the secretary, the person in charge of the office was only for matters of mere procedure and resolutions of an urgent nature;

therefore, said court considered that said omission constituted a violation of the essential formalities of the procedure and declared said appeal inadmissible.

Therefore, this district court, on September 8, determined that in order not to transgress the formalities of the procedure and cause a violation of the guarantees of legality and legal certainty to the parties, it was ordered that the records remain at the hearing for the issuance of the corresponding resolution; without such a situation corresponding to revoking its own determinations.

## **CONSIDERING**

### **CONSIDERATIONS OF THE INCIDENT OF LACK OF COMPETENCE DUE TO DECLINE**

**THIRD.** The incident party formulated the reasons for disagreement that it considers grounds for decreeing incompetence due to pleas based on the matter, which by procedural economy are considered reproduced, supported by jurisprudence number 2a./J. 58/2010, supported by the Second Chamber of the Supreme Court of Justice of the Nation, visible at page eight hundred and thirty, volume XXXI, corresponding to the month of May two thousand and ten, published in the Judicial Weekly of the Federation and its Gazette, Ninth Epoch that says:

**CONCEPTS OF VIOLATION OR TORT TO COMPLY WITH THE PRINCIPLES OF CONGRUENCE AND COMPLETENESS IN THE JUDGMENTS OF AMPARO, THEIR TRANSCRIPTION IS UNNECESSARY.** *Of the precepts included in Chapter X "Of sentences", of the first title "General Rules", of the first book "Of amparo in general", of the Law of Amparo, there is no obligation for the judge to transcribe the concepts of violation or, as the case may be, grievances, to comply with the principles of consistency and exhaustiveness in judgments, since such principles are satisfied when the points subject to debate are specified, derived from the request for amparo or from the writ expressing grievances, studies them and gives them an answer, which must be linked and correspond to the proposals of legality or constitutionality effectively raised in the corresponding document,*

*without introducing aspects other than those that make up the litigation. However, there is no prohibition to make such transcription, leaving it to the prudent discretion of the judge to carry it out or not, taking into account the special characteristics of the case, without detracting from the fact that, in order to satisfy the principles of completeness. and consistency, the legality or unconstitutionality approaches that have actually been asserted.*

The same occurs with the claims of the plaintiff in the main, Bisell Construcciones e Ingeniería Sociedad Anónima de Capital Variable and MWS Management Inc., through its legal representative Raúl López Gallegos when hearing the incident, without prejudice to responding to them in this resolution (pages 332 to 346).

## **STUDY OF INCIDENTAL LITIS OF THE INCIDENT OF LACK OF COMPETENCE DUE TO DECLINE**

**FOURTH.** The statements made by the incidental plaintiff are well-founded, in attention to the following reasoning:

In the first place, it must be said that the resolution that is issued is due to the processing of the incident of incompetence due to pleas filed by the defendant in the main, that once it was summoned and became aware of the original claim, it decided to file said incident at the not having had the opportunity to intervene in the appeal filed by the plaintiff in the main against the notification of October 15, two thousand and fifteen, in order to question the jurisdiction of this Federal Court, hence, added to the fact that that decision After processing the incident of merit, it was finalized as the appeal for revocation asserted by the defendant in incidental matters against the agreement that admitted the incident at hand was declared admissible but unfounded.

On the other hand, it should be noted that this resolution does not have the objective of contradicting the criterion of Superiority embodied in the resolution of December 30, 2015 issued in civil law 35/2016, of the index of the Fourth Unitary Court of the Seventh Circuit , based in Veracruz, Veracruz, in which the appeal filed by the plaintiff mainly against the notification of October 15, two thousand and fifteen, was resolved, in which this Federal Court declared that it lacked jurisdiction

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to hear the lawsuit filed by Bisell Construcciones e Ingeniería Sociedad Anónima de Capital Variable and MWA MANAGEMENT INC, through its legal representative Raúl López Gallegos, because, as will be seen in the following paragraphs, there are new elements and evidence that demonstrate the incompetence of this court to resolve the claims of the plaintiff companies.