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

SECOND EXPERT REPORT ON MEXICAN LAW

RODRIGO ZAMORA ETCHARREN AND DANIEL AMÉZQUITA DÍAZ

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14 April 2023

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I. Background

1. Reference is hereby made to: ***(i)*** the Expert Report on Mexican Law issued by the undersigned on June 8, 2022 (the "**First Expert Report**"), whereby a number of opinions in connection with various legal issues arising under Mexican Law regarding the case at bar filed by Claimants against the United Mexican States ("**UMS**" or "**Mexico**"), were issued. All capitalized terms used, and not otherwise defined herein, shall have the meaning attributed to such terms in the First Expert Report.

2. The qualifications and independence statements set forth in the First Expert Report remain applicable and shall be equally considered in the rendering of this Second Expert Report (as such term is defined below).

3. All legal sources and provisions set forth in the First Expert Report remain applicable and shall be equally considered in the rendering of this report (the "**Second Expert Report**"). Nothing said in the Expert Report issued by Mr. Jorge Asali Harfuch changes our opinion.

II. Scope of the Assignment

4. Based on the content, scope, and qualifications set forth in the First Expert Report, we have been requested by Holland & Knight (Dallas, TX, U.S.A.), counsel for Claimants to (i) provide general comments on the Expert Report issued by Mr. Jorge Asali Harfuch ("**Mr. Asali**"), dated December 2, 2022 (the "**Asali Report**"); (ii) refer to the points of disagreement or unsupported arguments, provided in the Asali Report; and (iii) issue our conclusions in connection thereto.

III. Work of Reference

5. In addition to the Asali Report, a number of legal authorities on the matter, judicial precedents (including *jurisprudencia*), case law, studies and various papers and books written by authorities on Mexican Law, were consulted and studied to support the arguments and statements herein provided.

IV. Summary of Opinions

6. Having reviewed Mr. Asali's report, our opinion on this matter stands as to the

fact that justice was not administered or granted promptly, completely and impartially to Claimants, since the civil and administrative proceedings were affected by several essential breaches in the process, including as follows:

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. Improper acts by judges for, allegedly, providing Pemex with information on the judgment on the merits to be issued by the Court;

iv. Issuance of decisions in violation of the exhaustiveness principle and the duty to motivate[1] in violation of Claimants' constitutional rights, particularly with respect to the fact that the Administrative Court in AP-821 did not consider Clause 15.1 (r) of Agreement 821 that provided the right for Pemex to early terminate the agreement due to lack of performance of 15 work orders;

v. Issuance of incoherent decisions and judgments; and

vi. 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).

7. Evidence continues to demonstrate that for over six years Claimants' efforts to obtain their day in court were futile, as these efforts were obstructed, derailed, or sabotaged.

V. Legal Nature, Applicable Law and Jurisdiction

8. Mexican legal doctrine refers to administrative contracts as those "entered by the public administration with private parties, with the direct purpose of satisfying a general interest and whose execution is governed by public law"[2].

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1 In this particular case, the duty to motivate responds to the duty of the Administrative Court to express the reasons for which the judgment was issued without considering the provisions of Clause 15.1 (r) of Agreement 821.

2 Amparo Judgment CP-803 [RZ- 008], p. 12.

9. Mr. Asali mistakenly asserts that the administrative nature of a contract implies that any dispute arising therefrom must be resolved before an Administrative Court[3].

10. This statement is inaccurate. At the time in which Claimants initiated the Civil Proceedings, jurisdiction of the courts to resolve disputes arising out of administrative contracts was not subject to the nature of the *agreement*, but rather to the nature of the *claims*[4].

11. Administrative Courts had jurisdiction to hear disputes related to final administrative resolutions and administrative acts, but there was no express law or binding legal precedent and, hence, no certainty as to which court had jurisdiction to resolve disputes arising from breaches to these contracts.

12. Moreover, judicial precedents issued by Mexican courts in this regard had decided the issue in different manners. No uniform interpretation had been issued by Mexican Courts[5].

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[3] Asali Report, §26

[4] *Suprema Corte de Justicia de la Nación, Registro digital: 195007, Instancia: Pleno, Novena Época, Materias(s): Común, Tesis: P./J. 83/98, Fuente: Semanario Judicial de la Federación y su Gaceta. Tomo VIII, Diciembre de 1998, página 28, Tipo: Jurisprudencia. COMPETENCIA POR MATERIA. SE DEBE DETERMINAR TOMANDO EN CUENTA LA NATURALEZA DE LA ACCIÓN Y NO LA RELACIÓN JURÍDICA SUSTANCIAL ENTRE LAS PARTES. En el sistema jurídico mexicano, por regla general, la competencia de los órganos jurisdiccionales por razón de la materia se distribuye entre diversos tribunales, a los que se les asigna una especialización, lo que da origen a la existencia de tribunales agrarios, civiles, fiscales, penales, del trabajo, etcétera, y que a cada uno de ellos les corresponda conocer de los asuntos relacionados con su especialidad. Si tal situación da lugar a un conflicto de competencia, éste debe resolverse atendiendo exclusivamente a la naturaleza de la acción, lo cual, regularmente, se puede determinar mediante el análisis cuidadoso de las prestaciones reclamadas, de los hechos narrados, de las pruebas aportadas y de los preceptos legales en que se apoye la demanda, cuando se cuenta con este último dato, pues es obvio que el actor no está obligado a mencionarlo. Pero, en todo caso, se debe prescindir del estudio de la relación jurídica sustancial que vincule al actor y al demandado, pues ese análisis constituye una cuestión relativa al fondo del asunto, que corresponde decidir exclusivamente al órgano jurisdiccional y no al tribunal de competencia, porque si éste lo hiciera, estaría prejuzgando y haciendo uso de una facultad que la ley no le confiere, dado que su decisión vincularía a los órganos jurisdiccionales en conflicto. Este modo de resolver el conflicto competencial trae como consecuencia que el tribunal competente conserve expedita su jurisdicción, para resolver lo que en derecho proceda.* [RZ- 059]

[5] *Registro digital: 2013634, Instancia: Plenos de Circuito, Décima Época, Materias(s): Civil, Tesis: PC.I.C. J/43 C (10a.), Fuente: Gaceta del Semanario Judicial de la Federación. Libro 39, Febrero de 2017, Tomo II, página 987,Tipo: Jurisprudencia. CONTRATOS DE ADQUISICIÓN, DE PRESTACIÓN DE SERVICIOS O DE OBRA PÚBLICA, CELEBRADOS ENTRE LA ADMINISTRACIÓN PÚBLICA FEDERAL Y UN PARTICULAR. CUANDO ESTE ÚLTIMO RECLAMA SU INCUMPLIMIENTO, POR FALTA DE PAGO, CORRESPONDE CONOCER DE LA CONTROVERSIA RELATIVA A UN JUEZ DE DISTRITO EN MATERIA CIVIL. Conforme el artículo 1, párrafo primero, de la Ley Orgánica del*

Tribunal Federal de Justicia Fiscal y Administrativa abrogada, y su correlativo 1, párrafo segundo, de la Ley vigente, el Tribunal Federal de Justicia Fiscal y Administrativa, actualmente Tribunal Federal de Justicia Administrativa, es un tribunal de lo contencioso administrativo (actualmente órgano jurisdiccional), dotado de plena autonomía para dictar sus fallos, con la organización y atribuciones que la propia ley establece, cuya competencia material está prevista en el numeral 14 de aquel ordenamiento abrogado y su correlativo 3 del vigente, que lo facultan para conocer de juicios en los que se demande la nulidad de resoluciones definitivas, actos administrativos o procedimientos vinculados con las diversas materias comprendidas en las fracciones que contienen, entre las que destacan la VII del artículo 14 y la VIII del 3, tocantes a la interpretación y cumplimiento de contratos de obra pública, adquisiciones, arrendamientos y servicios celebrados por las dependencias y entidades de la administración pública federal centralizada y paraestatal y las empresas productivas del Estado, así como las que estén bajo responsabilidad de los entes públicos federales cuando las leyes señalen expresamente la competencia del Tribunal. Sin embargo, cuando surge una controversia derivada del incumplimiento de una relación contractual que tiene como sustento obligaciones recíprocas que contrajeron las partes al celebrar un contrato bilateral de adquisición, de prestación de servicios o de obra pública, en un plano de igualdad, que debe dilucidarse a partir de esa premisa, es evidente que si la administración pública federal asume obligaciones recíprocas frente al particular, consistentes principalmente en el pago de los bienes adquiridos, servicios recibidos u obras ejecutadas, no está obligada en tanto ente público, sino en virtud de que el pago se pactó en un acuerdo de voluntades como contraprestación a su cargo, por lo que las partes se encuentran en un plano de coordinación. Por este motivo, si la entidad pública incurre en incumplimiento del contrato al negarse a realizar el pago a que está obligada, no puede considerarse un acto administrativo de carácter negativo, sino un mero incumplimiento contractual que cae dentro del ámbito del derecho civil, por lo cual no es el Tribunal Federal de Justicia Fiscal y Administrativa, actualmente el Tribunal Federal de Justicia Administrativa, el órgano que debe conocer del asunto, sino un Juez de Distrito en Materia Civil, con apoyo en el artículo 53, fracción I, de la Ley Orgánica del Poder Judicial de la Federación. [RZ- 060] and *Suprema Corte de Justicia de la Nación, Registro digital: 2017484, Instancia: Plenos de Circuito, Décima Época, Materias(s): Administrativa, Civil, Tesis: PC.I.C. J/69 C (10a.), Fuente: Gaceta del Semanario Judicial de la Federación. Libro 57, Agosto de 2018, Tomo II, página 1661,Tipo: Jurisprudencia. CONTRATOS DE OBRA PÚBLICA, CELEBRADOS ENTRE ORGANISMOS DESCENTRALIZADOS Y EMPRESAS DE PARTICIPACIÓN ESTATAL MAYORITARIA. LA ACCIÓN DE RESCISIÓN O CUMPLIMIENTO DE ESOS CONTRATOS CORRESPONDE A LA COMPETENCIA DEL TRIBUNAL FEDERAL DE JUSTICIA ADMINISTRATIVA. El artículo 3, fracción VIII, de la Ley Orgánica del Tribunal Federal de Justicia Administrativa, prevé que éste conocerá de los juicios promovidos contra las resoluciones definitivas, actos administrativos y procedimientos originados por fallos en licitaciones públicas y por la interpretación y cumplimiento de: contratos públicos, obra pública, adquisiciones, arrendamientos y servicios celebrados por las dependencias y entidades de la administración pública federal centralizada y paraestatal, y las empresas productivas del Estado, así como las que estén bajo responsabilidad de los entes públicos federales cuando las leyes señalen expresamente la competencia del Tribunal. Ahora bien, el texto legal analizado no distingue entre contratos celebrados por un ente de la administración pública federal y un particular y los celebrados entre entidades de la administración pública federal, para que en caso de controversia sobre su interpretación y cumplimiento se sometan a la potestad del Tribunal referido. Por tanto, en ambos casos la materia del juicio contencioso es la interpretación y el cumplimiento del contrato celebrado entre dependencias y entidades, entre dos (o más) entidades o entre dos (o más) dependencias, pues el precepto mencionado no excluye esa hipótesis. Entonces, si la acción ejercida por un organismo descentralizado tiene como propósito el pago derivado de un incumplimiento a un contrato de obra pública, que es de naturaleza administrativa, aunque en su suscripción participen dos entidades de la administración pública federal, la competencia para conocer de ese tipo de controversias corresponde, por afinidad, al Tribunal Federal de Justicia Administrativa, sin que para ello deba atenderse a que la relación jurídica sustancial entre las partes surgió en un plano de coordinación o de igualdad al contratar y donde las obligaciones, derechos y prestaciones recíprocas no derivaron de un procedimiento previo de licitación, invitación o adjudicación directa, que son propios de la contratación con un particular, porque lo relevante es que el objeto del contrato es una obra pública para satisfacer una necesidad colectiva que*

13. The case law on which Mr. Asali relies with respect to the Administrative Court's jurisdiction are in no way applicable to the Civil Proceedings initiated by Claimants on 2015, as these judicial precedents were issued long after, during the years 2018-2022.[6]

14. In this sense, the assertions made in the Asali Report[7] with respect to the Administrative Courts' jurisdiction are unsupported, as prior to 2022 there was no binding case law to assert that every dispute arising from the Agreements 803, 804 and 821 (the "Pemex Agreements") must have been resolved by Administrative Courts.[8]

15. This statement is confirmed by Mr. Asali in §101 of its report, which states that at the time the CP-803 initiated, the Supreme Court of Justice of the Nation had not yet confirmed that all disputes arising from an administrative contract -i.e. lack of payment- must be settled by administrative courts, regardless of the nature or type of action claimed. At this time, there were isolated discrepant criteria that still did not definitively and mandatorily determine the competent court.

16. Accordingly, the Asali Report is contradictory in itself. On the one hand, Mr. Asali states that every dispute arising from the Pemex Agreements must have been resolved by Administrative Courts[9] but, on the other hand, he asserts that no there was no binding legal precedent with respect to which court had jurisdiction to resolve disputes arising from said agreements.[10]

VI. Civil and Administrative Proceedings

A. Points of Disagreement or Unsupported Arguments, Provided in the Asali Report regarding CP-803

17. The Asali Report §93, points out that Pemex's motion to dismiss the claim due to

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corresponde a un interés público. Además, por mayor afinidad del contrato de obra pública con la materia administrativa, la acción de su rescisión o cumplimiento debe corresponder a la competencia del órgano jurisdiccional por razón de la materia y debe fincarse en el Tribunal indicado por razón de la naturaleza del contrato y de su facultad de conocer de juicios que versen sobre su interpretación y cumplimiento. [RZ- 061].

6 See JAH-0001, JAH-0007, JAH-0008, JAH-0009, JAH-0010 and JAH-0011.

7 Asali Report, §§26-27

8 Asali Report, §§28-29

9 Asali Report, §§28-29

10 Asali Report, §101

lack of jurisdiction was duly admitted, since Pemex had no appeared before the 11DC by the time in which the judgment on jurisdiction was issued (First Appeal Judgment CP-803)[11] and it brought new evidence and allegations to the case.

18. However, Pemex did not provide new evidence or arguments as mentioned by Mr. Asali. Pemex's allegations regarding the nature of Agreement 803 and the applicable jurisdiction had already been resolved by the 4UC on 30 December 2015, when such court overturned the 11 DC's decision to dismiss, considering (i) that the jurisdiction of the court was not subject to the nature of the contracts, but rather to the nature of the plaintiff's claims, and (ii) that the nature of the claim was civil and not administrative.[12]

19. Contrary to what Mr. Asali states, the 11 DC should not have admitted Pemex's motion to dismiss, as a final judgment had already been issued regarding the court's jurisdiction. Said judgment constituted *res judicata* and, accordingly, the analysis of issues that had already been resolved should have been dismissed and considered notoriously malicious or invalid. [13]

20. Pemex took advantage of the fact that there was no binding legal precedent with respect to the court's jurisdiction, as explained in §V, to delay the issuance of a substantive resolution by submitting motions that were notoriously malicious and groundless.

21. These motions prevented the 11DC to adjudicate on the merits, causing a delay in the administration of justice to the detriment of Claimants. Pemex's motion to dismiss delayed the issuance of a decision on the merits in the CP-803 for almost two and a half years.[14]

B. Points of Disagreement or Unsupported Arguments, Provided in the Asali Report regarding AP-804

22. At §115, Mr. Asali mistakenly asserts that Claimants did not file the withdrawal of their administrative claim until 3 June 2022 and that such motion was ratified on 14 June 2022.

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11 First Appeal Judgment CP-803 [RZ- 007]
12 First Appeal Judgment CP-803 [RZ-007], p. 13
13 See First Expert Report §§140, 145-152.
14 See First Expert Report §77.

23. Notwithstanding, Claimants filed for the withdrawal of their administrative claim on 18 March 2021 as referred to in the First Expert Report[15]. This means that Claimants' intention was to terminate the AP-804 since March, 2021.

24. It appears that, among others, Mr. Asali omitted to review this motion along with the administrative court judgment dated 5 April 2021[16] by which the Administrative Court acknowledged receipt of Claimants' withdrawal.

C. Points of Disagreement or Unsupported Arguments, Provided in the Asali Report regarding AP-821

25. With respect to the *amparo directo* filed against the Administrative Court Judgment AP-821, the Asali Report claims that Claimants argued that the termination of the Agreement 821 was illegal because it violated to their detriment certain articles of the North America Free Trade Agreement ("**NAFTA**"), which should be applicable as foreign companies that made investments in Mexican territory. [17]

26. If Mr. Asali's intent is to imply that Claimants asserted breached of the NAFTA before the 14CC, this is not correct.

27. According to the second paragraph of Article 1° of the Constitution[18], Mexican courts should construe and apply human rights norms in accordance with the Constitution and the international treaties, favoring at all times the broadest protection for individuals. Among these treaties is the NAFTA.

28. As provided by Article 1°, of the Constitution, Claimants argued that the 14CC should consider that certain provisions under the NAFTA created human rights that should be applied in their favor when ruling on their commercial claims. Notwithstanding, the 14CC determined that NAFTA should not be applied, as it does not contain human rights[19].

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15 Withdrawal AP-804 [RZ-062].
16 Administrative Court Judgment AP-804 [RZ- 063].
17 Asali Report, §§133-134
18 Constitution [RZ-001], Article 1°.
19 Judgment dated 30 January 2020 [RZ-040], pp. 130-132.

29. On the other side, under NAFTA, an investor could bring arbitration claims that the host State (directly or indirectly) expropriated its investment or failed to afford the investor or its investment certain standards of treatment, namely: the minimum standard of treatment (including the State's obligation to afford investments fair and equitable treatment, which is the most common basis for investment treaty claims), national treatment, and most-favored-nation treatment[20].

30. In this sense, the allegations asserted by Claimants in their amparo lawsuit with respect to their human rights shall not be considered as a claim under NAFTA. Contrary to what Mr. Asali tries to imply, the allegations brought by Claimants before the 14CC are in no way related with a breach of the NAFTA.

VII. Irregularities of Mexican Authorities

A. Irregular Length of the Proceedings

31. Mr. Asali constantly asserts that he did not observe any delays that could not be reasonably explained, nor decisions of the authorities that could be considered atypical or erroneous. In this regard, he refers that all legal proceedings were duly and ordinarily handled by the Mexican authorities given their complexity.[21]

32. We will not explain here again in detail the irregularities that we found with respect to the length of the proceedings, which were thoroughly set out in the First Expert Report.[22] Said explanations suffice to address the misconceptions with respect to these irregularities provided in the Asali Report.[23]

33. Based on a binding judicial precedent[24], Mr. Asali points out that the time periods established by law for the process of a lawsuit do not always correspond to reality and that said delays do not constitute a violation of due process. Notwithstanding and although the duration of trials depends on several factors, there is a standard of *reasonable time* which the authorities must comply with. The violation to this

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20 See NAFTA Articles 1102 – 1117.
Available at http://www.sice.oas.org/trade/nafta_s/CAP11_1.asp#A1116

21 Asali Report, §§135-144

22 See First Expert Report, §§134-202

23 Asali Report, §§177-188

24 JAH-0034

standard constitutes a violation of due process.[25]

34. Contrary to what the Asali Report states, the authorities did not resolve the disputes that were submitted by Claimants within a *reasonable time* considering all the alleged factors.

35. As stated in the First Expert Report, the authorities in charge of the proceedings incurred in several irregularities.[26] Given that most of the delays were caused by these irregularities, it should be concluded that the authorities' actions constitute a violation of due process.

B. Violation of the res judicata principle and failure to issue coherent judgments

36. The Asali Report does not coincide with the First Expert Report with respect to the 11DC's violation to the *res judicata* principle regarding the jurisdiction matters referred to in § VI.A of said report.

37. Mr. Asali asserts that the initial judgments in a trial can be overturned in light of new evidence or supporting arguments provided by the party which was served process following the issuance of the relevant initial order.[27] Said position is groundless, as Pemex did not provide new evidence or arguments in light of which the 11DC could have ignored a prior judgment of a higher court. The Asali Report recognizes this hierarchy.[28]

38. On the other hand, Mr. Asali cites certain judicial precedents that the undersigned do not consider applicable to the specific case, since these are only applicable to injunctions granted in amparo proceedings. In this regard, the nature of amparo proceedings is different from that of civil and administrative proceedings and, therefore, the same rules do not apply.

39. Finally, there were other inconsistencies in the judgments issued by the Mexican judicial authorities that the Asali Report does not address, and which also constituted a violation to the Constitutional principle of consistency in judicial

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25 JAH-0034
26 See First Expert Report, §§134-188
27 Asali Report, §153
28 Asali Report, §162

judgments and decisions.[29]

40. For example, Mr. Asali fails to address the fact that the Administrative Court in AP-821 did not consider Clause 15.1 (r) of Agreement 821, when deciding 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.

41. Clause 15.1 (r) establishes that "The agreement may be terminated by PEP if [...] (r) fifteen work orders are not performed by the contractor". As referred to in the First Expert Report, 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[30].

42. Mr. Asali does not refer or gives any explanation of this matter and other inconsistencies in the judgments issued by the Mexican judicial authorities that have been pointed out by the undersigned.

C. Irregular ex-parte communications

43. In §§164-175 of the Asali Report, it is argued that *ex-parte* communications with judges is a common practice in Mexico. Notwithstanding, it is not a common practice for Judges to comment on the terms that a judgment will be issued.

44. In the same sense, it is not a common practice for the defendant to have access to the information of a lawsuit before being served process.

45. Likewise, the undersigned do not agree that the identification information of the parties is always public. On the contrary, in most cases such information is confidential and, as a consequence, it is redacted in any publications.

D. Referral to arbitration

46. Mr. Asali also asserts that claims under CP-821 were duly referred to arbitration

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29 See First Expert Report, §§173-176

30 See First Expert Report, §§161-165

by the 8DC based on the last paragraph of Article 1424 of the Commerce Code.[31]

47. In this regard, the Asali Report fails to consider that, the Parties' intention was to settle the dispute before judicial courts. Otherwise, Claimant would have filed the request for arbitration before the correspondent institution or Pemex would have requested the referral of the case to arbitration.[32]

48. In accordance with Mexican law, the remittance to arbitration will only proceed when a party so requests it. In this case, as referred to in §141 of the First Expert Report, none of the parties brought this issue into question, which, under Mexican law, is construed to be an implicit submission to Mexican courts.

49. Article 1424 of the Commerce Code provides that a court must refer the dispute to arbitration only when: (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 judicial court. Therefore, considering that in this case both parties made evident their desire not to arbitrate the dispute, the 11DC was wrong to refer, *ex officio*, the case to arbitration.

50. On the other hand, Mr. Asali does not address the fact that even though Article 1424 of the Commerce Code provides that when a resident abroad has expressly submitted to arbitration and intends to bring an individual or collective dispute, the judicial court shall refer the parties to arbitration, the referral to arbitration shall be ordered by the court in its first ruling. In other words, the court must either resolve on the admission of the claim or refer it to arbitration.

51. If we follow Mr. Asali's line of argument, the decision of the 8DC regarding lack of jurisdiction cannot be sustained under the Mexican arbitration law, since, if applicable, the 8DC should have ordered the referral to arbitration instead of admitting the claim.

52. The fact that the 8DC has determined to refer to arbitration once all the procedural

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31 Commerce Code [RZ-044], Article 1424: "*Sin menoscabo de lo que establece el primer párrafo de este artículo, cuando un residente en el extranjero se hubiese sujetado expresamente al arbitraje e intentara un litigio individual o colectivo, el juez remitirá a las partes al arbitraje.* [...]".

32 See First Expert Report, §§106-107

stages of the trial have been completed violates Article 1424 of the Commercial Code, whose intention is that the resident abroad initiating the claim has the assurance that the dispute will be resolved in less time, among other matters.[33]

53. In this sense, contrary to what Mr. Asali points out,[34] the violations committed by the 8DC were not cured with the issuance of a decision on the merits, since the referral to arbitration judgment caused a significant delay (eighteen months) in the proceeding.

54. Also, the 8DC decision caused for the judgment on the merits to be issued by the Appellate Court (3UC) which had not been the one that received the evidence (almost three years after Claimants filed the civil claim against Pemex).[35]

55. As stated in the First Expert Report, the *ex officio* action of the 8DC was contrary to Article 17 of the Constitution and Article 1424 of the Commerce Code in clear violation to Claimants' rights.[36]

VIII. Conclusions

56. The undersigned reaffirm the conclusions reached out in the First Expert Report.

57. Mexican authorities did not comply with the *reasonable time* standard to resolve the disputes and adjudicate on the merits in clear violation of due process.

58. Mexican authorities and Pemex took advantage of the uncertainty regarding jurisdiction to delay the issuance of a substantive ruling.

59. Judicial and Administrative Courts should have dismissed Pemex's notoriously malicious and invalid motions aimed at delaying justice.

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33 See "*INICIATIVA CON PROYECTO DE DECRETO POR EL QUE SE REFORMA EL ARTÍCULO 1424 DEL CÓDIGO DE COMERCIO.*" "*[P]or consiguiente, un residente en el extranjero tendrá absoluta seguridad de que su litigio en materia mercantil se substanciara de acuerdo a lo pactado y se resolverá en menor tiempo, con costos previamente establecidos, lo que conllevara a dar más certidumbre y facilidad a los extranjeros a realizar actividades económicas en nuestro país.*"
Available at:
https://legislacion.scjn.gob.mx/Buscador/Paginas/wfProcesoLegislativoCompleto.aspx?q=HpCAHl9wwarDa35+atplYXNQFR5YdLI5rsvBLwAlptydXIxBntY+3aC8zS16QEsgJlgVJC4llabvNmy0Hfqpog==

34 Asali Report, §178

35 See First Expert Report, §§110-116

36 See First Expert Report, §§141-144

60. Even though *ex-parte* communications with Judges is a common practice in Mexico; it is not a common practice for Judges to comment on the terms that a judgment will be issued or for the defendant to have access to the information of a lawsuit before being served process.

61. The decision issued by the 8DC once all the procedural stages of the trial have been completed regarding lack of jurisdiction cannot be sustained under the Mexican arbitration law as it violates Claimants' rights.

62. Mr. Asali's Report is contradictory in itself and some of its assertions are unsupported or misleading. Also, Mr. Asali has omitted to review and analyze all the inconsistencies in the judgments issued by the Mexican judicial authorities referred to in the First Expert Report as they are not addressed in his report.

63. In summary, in our opinion, justice was not administered or granted promptly, completely and impartially to Claimants.

IX. General Statements

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

65. We confirm that what is set forth in this Second 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.

Mexico City, 14 April 2023.

RODRIGO ZAMORA ETCHARREN

DANIEL AMÉZQUITA DÍAZ

X. Annexes

Annex A - Rodrigo Zamora Etcharren CV
Annex B – Daniel Amezquita 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
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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
RZ – 059 COMPETENCIA POR MATERIA. SE DEBE DETERMINAR TOMANDO EN CUENTA LA NATURALEZA DE LA ACCIÓN Y NO LA RELACIÓN JURÍDICA SUSTANCIAL ENTRE LAS PARTES.
RZ – 060 CONTRATOS DE ADQUISICIÓN, DE PRESTACIÓN DE SERVICIOS O DE OBRA PÚBLICA, CELEBRADOS ENTRE LA ADMINISTRACIÓN PÚBLICA FEDERAL Y UN PARTICULAR. CUANDO ESTE ÚLTIMO RECLAMA SU INCUMPLIMIENTO, POR FALTA DE PAGO, CORRESPONDE CONOCER DE LA CONTROVERSIA RELATIVA A UN JUEZ DE DISTRITO EN MATERIA CIVIL.
RZ – 061 CONTRATOS DE OBRA PÚBLICA, CELEBRADOS ENTRE ORGANISMOS DESCENTRALIZADOS Y EMPRESAS DE PARTICIPACIÓN ESTATAL MAYORITARIA. LA ACCIÓN DE RESCISIÓN O CUMPLIMIENTO DE ESOS CONTRATOS CORRESPONDE A LA COMPETENCIA DEL TRIBUNAL FEDERAL DE JUSTICIA ADMINISTRATIVA.
RZ – 062 Withdrawal AP-804
RZ – 063 Administrative Court Judgment AP-804