
INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES

TECO GUATEMALA HOLDINGS, LLC

Claimant

v.

THE REPUBLIC OF GUATEMALA

Respondent

ICSID CASE No. ARB/10/23

CLAIMANT'S REQUEST FOR A SUPPLEMENTARY DECISION

WHITE & CASE^{LLP}

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9 June 2020

Counsel for Claimant

1. In accordance with Article 49(2) of the ICSID Convention and Rule 49 of the ICSID Arbitration Rules, Claimant TECO Guatemala Holdings, LLC (“TECO” or “Claimant”) hereby respectfully submits this request for a supplementary decision of the award rendered by the Tribunal on 13 May 2020 in the resubmission proceeding in *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23 (the “Award”).¹ This request arises out of the Tribunal’s omission to rule upon the matter of interest with respect to the award to Claimant of 75 percent of the costs it incurred more than seven years ago in connection with the original arbitration (the “Original Arbitration”), which resulted in the original award rendered on 19 December 2013 (the “Original Award”).²

2. Article 49(2) of the ICSID Convention provides in relevant part:

“The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award”³

3. As Professor Schreuer has observed, the “inadvertent omission of an item in the calculation of damages or a factor determining costs” are among the typical examples of omissions warranting a supplementary decision.⁴ In *Pac Rim v. El Salvador*, for example, the tribunal acknowledged that it had “inadvertently overlooked” a claim for post-award interest on the respondent’s costs “in listing and addressing the interest issues.”⁵ Observing that it considered it “appropriate to decide the Respondent’s Request summarily, without addressing all the submissions made by the Parties,”⁶ the tribunal proceeded to award the respondent interest on

¹ This Request is accompanied by a US\$ 10,000 filing fee, in accordance with ICSID’s 1 January 2019 Schedule of Fees.

² The Parties in the original arbitration filed their submissions on costs and replies thereto on 24 July 2013 and on 7 August 2013, respectively (*see* Original Award ¶¶ 76-77), and Claimant incurred the vast majority of its fees and expenses in the original arbitration earlier than these dates. *See, e.g.*, Original Award ¶¶ 61-75 (indicating that the hearing was held on 21 and 22 January 2013 and on 1, 8, and 9 March 2013, followed by the submission of post-hearing briefs and post-hearing replies).

³ ICSID Convention, Art. 49(2).

⁴ Christoph H. Schreuer et al., *The ICSID Convention: A Commentary* 853 (2009).

⁵ *Pac Rim Cayman, LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent’s Request for a Supplementary Decision, 28 Mar. 2017 ¶ 1.16.

⁶ *Pac Rim Cayman, LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent’s Request for a Supplementary Decision, 28 Mar. 2017 ¶ 1.15.

its legal costs by way of a supplementary decision rendered within four months of the respondent's supplementation request.⁷

4. Here, Claimant expressly requested in its resubmission Memorial that the Tribunal “order Respondent to bear all of Claimant’s costs incurred in the Original Arbitration, or, at a minimum, 75 percent of Claimant’s costs incurred in the Original Arbitration, as set forth in the chart below, *plus interest from the date of the Award in the Original Arbitration.*”⁸ Claimant reiterated this request in its resubmission Reply, stating that “the Tribunal should order Guatemala to bear all of TECO’s costs incurred in the Original Arbitration, or, at a minimum, 75 percent of its costs, *plus interest from the date of the Award in the Original Arbitration.*”⁹ In short, Claimant repeatedly and unequivocally submitted to the Tribunal a claim for an award of interest upon the costs it incurred in the Original Arbitration running from the date of the Original Award.

5. In the Award, the Tribunal found that Claimant “largely succeeded in its claims”¹⁰ and ruled that “Respondent shall bear its own costs and *reimburse 75% of Claimant’s costs*, including its contribution to the costs and expenses incurred by ICSID, arising in the proceedings before the Original Tribunal.”¹¹ Elsewhere in the Award, the Tribunal referenced and tabulated Claimant’s claim for costs incurred in the Original Arbitration and Respondent’s opposition thereto.¹² Nowhere in the Award, however, did the Tribunal mention or address Claimant’s request that it be awarded interest upon the costs it incurred in the Original Arbitration running

⁷ See *Pac Rim Cayman, LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent’s Request for a Supplementary Decision, 28 Mar. 2017. By contrast, the tribunal in *Enron v. Argentina* rejected an application for a supplementary decision for post-award interest where the claimant had made a request for pre-award, but not post-award interest, during the arbitration. *Enron Corp. and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Claimants’ Request for Rectification and/or Supplementary Decision of the Award, 25 Oct. 2007 ¶¶ 33-39, 56. Unlike in *Enron*, TECO expressly sought interest from the date of the Original Award on its claim for costs incurred in the Original Arbitration. See Resubmission Memorial ¶ 268; Resubmission Reply ¶ 246.

⁸ Resubmission Memorial ¶ 268 (emphasis omitted in part and added in part).

⁹ Resubmission Reply ¶ 246 (emphasis added).

¹⁰ See Resubmission Award ¶¶ 145-147.

¹¹ Resubmission Award ¶ 153 (emphasis added).

¹² See Resubmission Award ¶¶ 146, 148.

from the date of the Original Award. It thus is apparent that the Tribunal omitted to decide that question.

6. The omission is material, because 75 percent of Claimant’s costs incurred in the Original Arbitration amounts to US\$ 7,520,695.39 in nominal terms (before interest),¹³ and, if interest is applied on that amount at the US Prime rate plus 2 percent as from 19 December 2013, the date of the Original Award, such interest amounts to US\$ 3,454,058.70 as of 31 May 2020.

7. This also means that the Tribunal’s omission to decide this question has the consequence of awarding Claimant, in effect, only approximately 50 percent of its costs in the Original Arbitration, rather than 75 percent of those costs.¹⁴ Such an outcome is not consistent with the Original Award or the Tribunal’s resubmission Award. To recall, the Original Award held that “costs should be apportioned based on the principle the costs follow the event” and “reimburse[d] 75 percent of the costs supported by the Claimant” because “Claimant ha[d] been successful in its arguments regarding jurisdiction, as well as in establishing the Respondent’s responsibility.”¹⁵ The Parties’ relative success in the Original Arbitration has not been altered by the resubmission Award; indeed, if anything, Claimant has increased its success relative to Respondent in light of the significant additional damages awarded to Claimant in the resubmission Award.

8. With respect to the interest rate that should be applied to 75 percent of Claimant’s costs incurred in the Original Arbitration, the interest rate should be set at the US Prime rate plus 2 percent, for the reasons articulated in the Award.¹⁶

* * *

¹³ See Resubmission Award ¶ 146 (indicating that Claimant’s total costs incurred in the original arbitration amounted to US\$ 10,027,593.86; 75% of that amount equals US\$ 7,520,695.39).

¹⁴ Calculated by comparing the US\$ 7,520,695.39 against the total costs claimed by Claimant in the original arbitration updated at the US Prime rate plus 2% through 31 May 2020.

¹⁵ Original Award ¶¶ 777-779.

¹⁶ See Resubmission Award ¶ 135 (“[T]he Tribunal again considers that the appropriate rate is one that the Claimant would have been expected to pay to repair the injury. Here, the majority of the Tribunal agrees with the Original Tribunal that the US Prime rate of interest plus 2%, payable both pre- and post-Award until the date of payment, is an appropriate rate.”).

9. For all the reasons set forth above, Claimant therefore respectfully requests that the Tribunal supplement the Award by awarding Claimant interest on 75 percent of Claimant's costs incurred in the Original Arbitration (equal to US\$ 7,520,695.39) running from 19 December 2013, *i.e.*, the date of the Original Award.

Respectfully submitted,



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