

## Pemex settles Commisa case

20 April 2017



Pemex paid US\$435 million to end the litigation / iStock.com/nattapon1975

Mexico's national oil company has settled a 13-year-old dispute with US engineering company KBR, ending a long-running fight over the enforcement of a US\$300 million ICC award that has been set aside in Mexico and upheld in New York.

In a [press release](https://www.kbr.com/about/newsroom/press-releases/2017/04/10/kbr-recovers-almost-half-billion-dollar-judgment-resolves-lengthy-commercial-dispute) (https://www.kbr.com/about/newsroom/press-releases/2017/04/10/kbr-recovers-almost-half-billion-dollar-judgment-resolves-lengthy-commercial-dispute) issued on 10 April, KBR revealed that Mexico's Pemex had paid it US\$435 million to end litigation and enforcement proceedings between the parties. The settlement comes nearly eight years after a majority ICC tribunal seated in Mexico City issued an award in KBR's favour.

The parties' original dispute relates to two agreements between a Pemex subsidiary and KBR's Mexican subsidiary Commisa. Commisa agreed to construct two offshore natural gas platforms for Pemex in the Bay of Campeche, which forms the southernmost curve of the Gulf of Mexico.

In 2004, Commisa filed a US\$323 million ICC claim against Pemex for multiple breaches of contract. It also alleged that the Mexican state-owned company had confiscated the platforms before the work was completed.

Five years later, a tribunal majority composed of Colombian arbitrator Jorge Suescún Melo and Canada's Henri Alvarez issued an [award](http://latinlawyer.com/article/1089089/kbr-enjoys-third-win-against-pemex) (http://latinlawyer.com/article/1089089/kbr-enjoys-third-win-against-pemex) in KBR's favour, upholding all but one of its claims and ordering Pemex to pay a total of US\$300 million in damages. Pemex's appointee to the tribunal, Mexican arbitrator Darío Oscós Coria, dissented.

The parties' enforcement wrangles began shortly afterwards. In 2010, KBR won confirmation of the award in the US District Court for the Southern District of New York. Pemex, however, appealed

that decision and launched a simultaneous challenge in the Mexican courts.

One year later, Mexico's Eleventh Collegiate Court set aside the award on the basis of laws passed during the arbitration, which provide that a Mexican government entity cannot be forced into arbitration.

Despite the set-aside ruling in Mexico, the US District Court for the Southern District of New York went on to [confirm the award again in 2013, ruling that the Mexican courts had "violated basic notions of justice."](http://globalarbitrationreview.com/article/1032609/pemex-award-upheld-in-us-despite-set-aside-in-mexico)

The US Court of Appeals for the Second Circuit upheld that judgment in August last year, deciding the lower court had properly exercised its discretion as recognising the annulment of the award in Mexico would undermine public confidence in the law. The court later denied Pemex's [request for a rehearing.](http://latinlawyer.com/article/1099028/pemex-requests-rehearing-in-commisa-case)

In a press release, president and CEO of KBR Stuart Bradie says the company is "glad to put this long-running issue" behind it. He says KBR has had an ongoing relationship with Pemex for several years and that the settlement "paves the way" for a productive association.

In the US enforcement proceedings, KBR was represented by US firm Bancroft and King & Spalding LLP in Washington, DC, New York and San Francisco. Two of the partners on the King & Spalding team – Jeffrey Bucholtz and Charles Correll Jr – also acted for the company in the ICC arbitration. Before the Mexican courts, the company retained [Von Wobeser y Sierra SC](http://ll250/firms/1135924/von-wobeser-y-sierra-sc).

Pemex retained a team from [Hogan Lovells LLP](http://ll250/firms/1134726/hogan-lovells-llp) to act for it in the US proceedings and relied on its in-house counsel for the arbitration. In Mexico, Bufete Hernandez Romo represented the company.

*Corporación Mexicana De Mantenimiento Integral, S De RL De CV v Pemex-Exploración y Producción*

*In the US Court of Appeals for the Second Circuit*

### **Bench**

Judges Winter, Jacobs and Raggi

### **Counsel to Corporación Mexicana De Mantenimiento Integral (Commisa)**

Bancroft

Partners Paul Clement, Zachary Tripp and William Levi in Washington DC

King & Spalding LLP

Partner Jeffrey Bucholtz and associate Brian Callanan in Washington DC, partner Richard Marooney in New York and Charles Correll Jr in San Francisco

**Counsel to Pemex-Exploración y Producción (PEP)**

Hogan Lovells LLP ([/ll250/firms/1134726/hogan-lovells-llp](#))

Partner Catherine Stetson in Washington, DC, partners Dennis Tracey III and Ira Feinburg and associates Hagan Scotten and Erin Meyer in New York, and partner Richard Lorenzo in Miami

**Counsel to the United States (amicus curiae)**

United States Attorney for the Southern District of New York Preet Bahara, assisted by David Jones, Caleb Hayes-Deats and Emily Daughtry

Joyce Branda, Douglas Letter and Sharon Swingle of the Civil Division of the Department of Justice in Washington, DC

Maray McLeod of the Department of State in Washington, DC

**Counsel to Mexico (amicus curiae)**

Cleary Gottlieb Steen & Hamilton LLP (in the application for en banc rehearing)

Partners Jonathan Blackman and Howard Zelbo in New York

Erik Jaffe of Erik S Jaffe PC in Washington, DC (before the three-judge panel)

**Counsel to the US Chamber of Commerce (amicus curiae)**

Peter Rutledge of the University of Georgia School of Law

Kathryn Comerford Todd and Tyler Green of the National Chamber Litigation Center in Washington, DC

*In the US District Court for the Southern District of New York*

**Bench**

Judge Hellerstein

**Counsel to Commisa**

King & Spalding LLP

Partners James Berger and Richard Marooney and associate Kana Ellis Kaplan in New York, partner Charles Correll in San Francisco, and Jeff Bucholtz in Washington, DC

## **Counsel to Pemex Exploration and Production**

Hogan Lovells LLP (/ll250/firms/1134726/hogan-lovells-llp)

Partners Dennis Tracey, Ira Martin Feinberg and Peter Joseph Denin, and associate Jordan Lancaster Estes in New York, and partner Richard Lorenzo in Miami

*In the Mexican set-aside proceedings*

*Eleventh Collegiate Court*

María Concepción Alonso Flores,  
Maria del Carmen Sánchez Hidalgo  
Salvador Martinez Calvillo

## **Counsel to Commis**

Von Wobeser y Sierra SC (/ll250/firms/1135924/von-wobeser-y-sierra-sc)

Partners Claus von Wobeser and Marco Tulio Venegas, and associate Alberto Muerzain Mexico City

## **Counsel to Pemex Exploration and Production**

Bufete Hernández Romo

Partner Miguel Angel Hernández Romo in Mexico City

*In the ICC arbitration proceedings*

## **Tribunal**

Jorge Suescún Melo (Colombia) (chair)  
Henri Alvarez (Canada) (appointed by the claimant)  
Darío Oscós Coria (Mexico) (appointed by the respondent)

## **Counsel to Commisa**

King & Spalding LLP

Partner Guillermo Aguilar-Alvarez and associate Ana Vohryzek in New York, partner Bobby Meadows in Houston, partner Charles Correll in San Francisco and Jeffrey Bucholtz in Washington, DC

## **Counsel to Pemex Exploration and Production**

In-house counsel – José Nestor Garcia Reza

Practice area :

Arbitration

Country :

Mexico, International