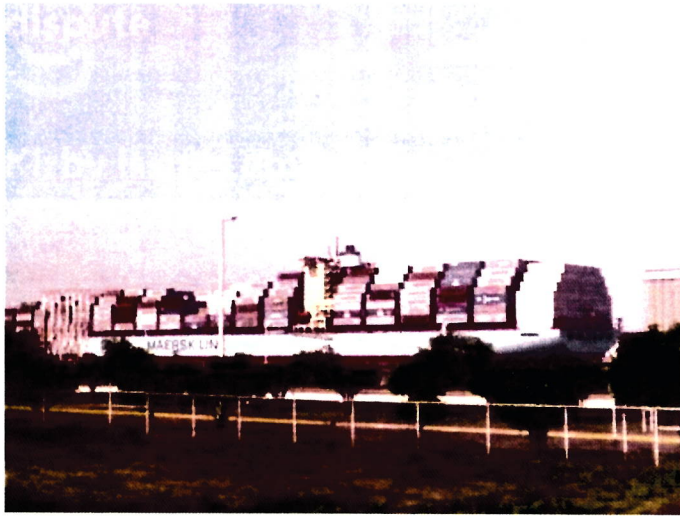




## Kirby issues emergency order in Mexican port dispute

Tom Jones • Thursday, 26 May 2016 (*Yesterday*)

Paris-based arbitrator **Jennifer Kirby** has issued an order under the ICC's emergency arbitrator procedure in favour of Mexican construction group ICA in a dispute over a terminated contract to build a port terminal.



A container ship in Puerto Lázaro Cárdenas

In an order issued on 18 May, Kirby granted interim relief to prevent Danish-owned port operating company APM Terminals from collecting US\$40 million in performance bonds issued by ICA when it agreed to build the port terminal in 2012.

Kirby, a former deputy secretary general of the ICC Court, issued the order under the institution's emergency arbitrator provisions, which allow parties to seek urgent interim relief before the constitution of an arbitral tribunal. ICA made the application on 30 April, and later filed for arbitration on 10 May.

In proceedings seated in New York, Kirby concluded that the issue of the performance of the contract would ultimately have to be resolved by the tribunal, but that to allow APM to collect on the bonds in the meantime would "exacerbate the dispute" and potentially cause "serious harm".

However, Kirby refused to grant ICA other interim measures related to the pending construction work at the port, such as preventing APM from using the same subcontractors that ICA had originally enlisted.

The dispute relates to a US\$900 million project to build a new container terminal at Mexico's largest port, Lázaro Cárdenas.

APM, a subsidiary of Denmark's AP Moller-Maersk, signed an agreement with ICA for the first phase of a four-stage expansion of the cargo port in 2012. ICA says the contract gave it the possibility of securing work for the second and third phases of the project, subject to successful completion of the first phase for a contract price of US\$79 million.

ICA maintains that APM sought to vary the proposals for works on the port, including changes to the design and structural changes to the pier. The Mexican group contends that these proposals changed the scope of the works beyond what had been originally agreed.

APM dismissed ICA from the project last December, blaming it for delays and defects that "continuously and systematically" breached the contract. ICA contends that it had completed 70 per cent of the works at the point of termination.

Work on the port terminal resumed in February without ICA's involvement, and it is scheduled to open for business in late 2016.

ICA is represented by a team from Mexican firm Von Wobeser y Sierra SC, led by partners **Claus von Wobeser** and **Adrián Magallanes**, while APM Terminals is using a team from Baker & McKenzie in Miami and in Mexico City.

This is the second time that Von Wobeser y Sierra has obtained interim relief under the ICC's emergency arbitrator procedure. Last July, the firm helped a group of shareholders in Mexican insurer Seguros Argos obtain relief from emergency arbitrator **Christian Leathley** in a dispute with Dutch insurance group Aegon, before going on to prevail on the merits. That case has been described as the first Latin American dispute where measures were granted under the ICC provisions.

*ICA v APM Terminals*

Emergency arbitrator **Jennifer Kirby**

Counsel to ICA

- Von Wobeser y Sierra, SC

Partners **Claus von Wobeser** and **Adrián Magallanes** with associates **Katarina Lundahl**, **Pablo Fautsch** and **Rodrigo Macin** in Mexico City

Counsel to APM Terminals

- Baker and McKenzie

Partner **Luis O'Naghten** with associate **Jessica Marroquin** in Miami, with partners

**Salvador Fonseca and Jorge Guadarrama and associates Alfonso José Antonio Curiel Valtierra,**

**Leyla Bello Escobar and Yañez Juan Carlos Zamora Müller in Mexico City**

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