



## Von Wobeser in driver's seat for Costa Rica claim

Clemmie Spalton • Tuesday, 14 August 2012 (4 months ago)



Costa Rican traffic

An ICSID tribunal chaired by **Claus von Wobeser** has begun hearing a US\$350 million claim by a Spanish investor against Costa Rica over a concession to provide vehicle inspection services.

Galicia-based Supervisión y Control has a stake in a Costa Rican joint venture, Riteve SyC, that won a 10-year concession in 1998 to provide technical inspections of privately owned vehicles throughout the country.

Supervisión filed the claim in February under the Spain-Costa Rica bilateral investment treaty, alleging that Costa Rica's ministry of public works and transport failed to effect annual increases to the rates for inspection services as required by the concession contract. The rate has been fixed at US\$23 per vehicle since the contract began in 2002.

Costa Rica disputes this, arguing that the contract does not provide for automatic increases, but rather that Riteve must justify an increase on the basis of accounting information demonstrating a disturbance in the financial equilibrium of the contract, which it has failed to do.

The state has appointed French-Colombian **Eduardo Silva Romero**, a partner at Dechert in Paris, as its arbitrator on the panel. Supervisión meanwhile named ICSID first-timer **Joseph Klock**, a litigation partner at Rosco Klock in Coral Gables. The tribunal held its first session by telephone last month.

A team led by **Paolo Di Rosa** and **Patricio Grané** of Arnold & Porter in Washington, DC is defending the state. Supervisión is using New Orleans-based firm Fowler Rodriguez Valdes-Fauli.

The dispute appears to have erupted ahead of the expiration of Riteve's contract in July, with the government initially wavering over whether to renew it for a further 10 years or open the market to other participants to service the country's more remote areas. The government did ultimately renew the contract, deeming that there were no viable competitors.

The transport ministry suggested in June that the renewal of the contract means only the issue of the tariffs should be addressed in the ICSID case, putting the state's maximum liability at US\$70 million rather than the reported figure of US\$350 million.

However, the renewal of Riteve's contract has also prompted a group of Costa Rican citizens called Movement for National Dignity to file a lawsuit against the country's president, Laura

Chinchilla, and transport minister, Luis Llach. A minister told local press Chinchilla is confident the Supreme Court will throw out the case.

Costa Rica recently lost another ICSID case, filed by German nationals Marion and Reinhard Unglaube. In May a tribunal chaired by US arbitrator Judd Kessler has ordered the state to pay over US\$4 million for the expropriation of land in the Playa Grande beach resort on the country's northern Pacific coast.

Speaking to *GAR* in May, counsel to the Unglaubes – Sabine Konrad, a partner at K&L Gates in Frankfurt – said: "The Unglaubes are happy that the arbitration has come to a close, but the proof of the pudding will be whether the Costa Rican government abides by its international obligations to fulfil the award."

In 2010, the state successfully defended two ICSID cases; it won an award on jurisdiction in the *Alasdair Ross Anderson* case - a claim filed by Canadian nationals who lost money in a Ponzi scheme, after the tribunal ruled that the money lost did not constitute an investment under the terms of the Canada-Costa Rica bilateral investment treaty.

It also won a costs award worth US\$730,000 against Canadian orange growers *Quadrant Pacific Growth Fund and Canasco Holdings* after the claim was dismissed for the claimants' failure to pay the required advances.

*Supervision y Control S.A. v. Costa Rica* (ICSID Case No. ARB/12/4)

#### Tribunal

- Claus von Wobeser (Mexican) (President)
- Joseph Klock (US) (appointed by the claimant)
- Eduardo Silva Romero (Colombian/French) (appointed by the respondent)

#### Counsel to Supervision y Control

- Fowler Rodriguez Valdes-Fauli

Partners Luis Enrique Cuervo in Houston and George Fowler in New Orleans

#### Counsel to Costa Rica

- Arnold & Porter

Partners Paolo Di Rossa and Patricio Grané in Washington, DC

- Ministry of Foreign Trade, San Jose, Costa Rica

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