The Arbitration Review of the Americas 2023 contains insight and thought leadership from 38 pre-eminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Latin America’s more interesting seats. This edition also contains an interesting think piece on concurrent delay as well as an excellent pair of reviews of decisions in the US and Canadian courts.

All articles come complete with footnotes and relevant statistics.

Visit globalarbitrationreview.com
Follow @GAR_alerts on Twitter
Find us on LinkedIn
## Contents

### CAM-CCBC: public consultation on new arbitration rules
Patrícia Kobayashi and Ana Flávia Furtado
Centre for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada

### Climate policies and investment: implications for disputes
Christopher Russo, Laura Sochat and Rebecca Rowden
Charles River Associates

### Concession contracts in times of crisis
Diego Brian Gosis, Quinn Smith and Ignacio L Torterola
GST LLP

### Concurrent delay: is there a continental shift?
Ted Scott and Meera Wagman
Secretariat

### Damages: geopolitics increases caseloads and complicates quantum
Jorge Baez, Robert Patton and Kurt G Strunk
NERA Economic Consulting

### International arbitration in the Caribbean
François Lassalle and Hana Doumal
BVI International Arbitration Centre

### Intra-EU investment treaty disputes in US courts
Alexander A Yanos
Alston & Bird LLP

### JAMS: overview of revised JAMS International Arbitration Rules, focus on D&I
Robert B Davidson and Niki Borofsky
JAMS

### Latin America: a fertile land for energy arbitration
Patrick Hébréard and Juliette Fortin
FTI Consulting

### Regulatory changes present new sources of renewable energy disputes
Seabron Adamson
Charles River Associates
Section 1782: can arbitration parties come to the US to obtain information located abroad? ........................................... 142
Anthony B Ullman and Diora M Ziyaeva
Dentons US LLP

Canada: rulings demonstrate judicial deference to arbitration ........................................................................................................... 153
Robert J C Deane, Craig R Chiasson and Paige Burnham
Borden Ladner Gervais LLP

Mexico: Lion award threatens arbitrators’ exclusive jurisdiction ...................................................................................................... 174
Luis Asali, Jorge Asali, Santiago Escobar and Roberto Cuchí
Bufete Asali

Panama: arbitration with the state and state entities ......................................................................................................................... 185
Margie-Lys Jaime
IPAL – Infante & Pérez Almillano

Peru ................................................................................................................................................................................................. 195
Diego Martínez, Ricardo Carrillo and Alexander Conde
Benites, Vargas & Ugaz Abogados

US arbitration hubs thriving thanks to robust judicial support .................................................................................................. 206
Adolfo E Jiménez, Marisa Marinelli, Brian A Briz and Katharine Menéndez de la Cuesta
Holland & Knight

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer–client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of July 2022, be advised that this is a developing area.

© Law Business Research 2022
Preface

Welcome to The Arbitration Review of the Americas 2023, one of Global Arbitration Review’s annual, yearbook-style reports. For the uninitiated, Global Arbitration Review is the online home for international arbitration specialists everywhere, telling them all they need to know about everything that matters in their chosen professional niche.

Throughout the year, we provide our readers with pitch-perfect news (every day), and other surveys and features; organise the liveliest events (under our GAR Live and GAR Connect banners [‘Connect’ when it is online]) and curate various time saving databases and know-how titles.

In addition, assisted by external contributors, we curate a series of online regional reviews that go deeper into local developments than the exigencies of journalism allow. The Arbitration Review of the Americas, which you are reading, is part of that series.

It contains insight and thought leadership inspired by the recent past from 38 pre-eminent practitioners. The 16 articles they’ve co-written give an invaluable retrospective on the year just gone, and what the year ahead may hold. All contributors are vetted for their standing and knowledge before being invited to take part.

These volumes also on occasion provide valuable background to get you up to speed quickly on a particular seat.

This edition covers Canada, Mexico, Panama, Peru and the United States; and has 11 overviews, including a thought-provoking look at the meaning of ‘concurrent delay’ around the region, using five scenarios, and another on how Latin American concession contracts are likely to cope with the various shocks the world has been experiencing of late.

As so often with these reviews, a close reading yields many nuggets. For this reader, on this occasion, they included that:

- Brazil’s CAM-CCBC is about to get new rules;
- Mexico faces a wave of lithium-related claims. [This is in addition to the 21 or so arbitrations its Federal Electricity Commission is fighting, for which it has reserved $470 million]; and
- Secured creditors of Panamian PPP projects have the right to take part in any arbitrations related to the project under the local law, even if they haven’t taken possession of the security in question!

There’s also an excellent pair of reviews of decisions in the US and Canadian courts. Plus much, much more.
I wish you an enjoyable read. If you have any suggestions for a future edition, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
July 2022
IN SUMMARY

This article analyses recent international arbitration cases and drivers of cross-border disputes in the Americas. Investment claims relating to the pandemic seem likely, as do cases following Russia’s invasion of Ukraine. An economic downturn may trigger more disputes in the Americas. Geopolitics are likely to result in more claims as high energy prices hinder contractual performance, pandemic support programmes lead to investment claims and supply-chain constraints delay infrastructure projects. Calculations of quantum are likely to be complex. In investor–state disputes, an assessment of quantum may need to distinguish the effect of measures for which a respondent state is found liable from the impact of other policy measures. Such analyses present a particular challenge when breaches coincide with extreme economic and financial volatility, significant commercial disruption and extraordinary government pandemic-response policies.

DISCUSSION POINTS

- Recent economic trends
- Quantitative review of trends in arbitration in the Americas
- Fair and equitable treatment and quantum
- Potential for covid-related claims in Latin America
- Energy transition and the possibility of supply-chain disputes

REFERENCED IN THIS ARTICLE

- Westmoreland v Canada
- Mercer v Canada
- United States–Canada–Mexico Agreement
- ADP International SA and Vinci Airports SAS v Chile
Introduction

Since covid-19 was declared a pandemic over two years ago, the global economy and financial markets have experienced massive disruption and dislocation. Government action cushioned an initial sharp economic downturn, and the development and dissemination of vaccines kickstarted a recovery. However, the economic consequences of the pandemic – including high inflation, commodity price volatility and supply chain disruptions – are still present in many industries around the world. In addition, recovery efforts have been slowed by rising energy prices following Russia’s invasion of Ukraine. This article reviews recent economic trends in the Americas, analyses recent international arbitration cases and likely drivers of future cross-border disputes in the Americas, and comments on issues arising in the assessment of economic damages in such disputes.

Recent economic trends

After declining by 3.1 per cent in 2020, world output (as measured by real gross domestic product) rebounded in 2021. However, the global recovery is expected to slow substantially in 2022. Figure 1 shows the actual output growth for 2020 and 2021, as well as the forecast for 2022, for various regions and specific countries in the Americas.¹

As reported by the International Monetary Fund, global output in 2021 increased by 6.1 per cent, as many countries implemented expansionary fiscal and monetary policies to bolster their economic recovery and covid-19 vaccines became widely available to the public.² On average, emerging economies experienced higher growth rates than advanced economies in 2021. However, following the robust rebound in 2021, the global recovery has begun to decelerate in 2022 and is expected to continue to slow throughout the year, as a consequence of the war in Ukraine, increasing inflation and high energy prices. Compared with Canada and the United States, economies in Latin America, such as Brazil and Mexico, are expected to experience very low growth rates in 2022. In addition, rising inflation and policy tightening are expected to have more pronounced effects on economies in Latin America, and recent covid-19 lockdowns in China may further disrupt global supply chains.³

---

¹ ‘World Economic Outlook, April 2022: War Sets Back The Global Recovery’, International Monetary Fund, 19 April 2022.
² ‘Global economic recovery continues but remains uneven, says OECD’, OECD, 21 September 2021.
Rising inflationary pressure from energy price shocks is one of the most significant headwinds for the global economic recovery. For example, since the unprecedented collapse of oil prices during the early stages of the pandemic in April 2020, prices have been increasing steadily. Figure 2 shows the spot price of West Texas Intermediate (WTI) crude oil, along with some of the relevant key events, from January 2020 to May 2022.

In March and April 2020, oil prices declined precipitously. The pandemic undermined energy demand worldwide while, simultaneously, an oil price war between Russia and Saudi Arabia led to oversupply. By the summer of 2020, oil prices began to recover, as Saudi Arabia and Russia agreed to lower their oil production and OPEC+ agreed to extend production cuts. Oil prices continued to climb through 2021, as a consequence of the global rollout of covid-19 vaccines.

7 ‘Saudi Arabia And Russia Agree To Historic Oil Production Cuts, But They May Not Be Enough To Rescue The Market’, Forbes, 9 April 2020.
8 ‘OPEC and allies agree to extend record oil production cut’, CNBC, 6 June 2020. A number of non-OPEC member countries also participate in OPEC’s initiatives, such as voluntary supply cuts to further bind policy objectives between OPEC and non-OPEC members. This loose grouping of countries, known as OPEC+, includes Azerbaijan, Bahrain, Brunei, Kazakhstan, Malaysia, Mexico, Oman, Philippines, Russia, Sudan and South Sudan. ['OPEC Is Dead, Long Live OPEC+', Forbes, 2 August 2019.]
This rapid increase in oil prices was exacerbated by Hurricane Ida, which damaged US oil infrastructure in the Gulf of Mexico. Hurricane Ida shut down oil facilities for several weeks and more than 17.5 million barrels of oil were lost to the market, reducing US exports and leading to further increases in prices.\(^9\)

Even though the White House announced a planned release of strategic reserves in late 2021 and OPEC+ agreed to increase production gradually in early 2022, oil prices continued to rise.\(^10\) In March 2022, prices hit another record high, as the Russian invasion of Ukraine disrupted exports of Russian oil and the US and other countries imposed bans on Russian oil imports.\(^11\) Many experts expect oil prices to remain high for the foreseeable future, as the European Union recently imposed bans on oil from Russia while global demand remains strong.\(^12\)

Similar to oil prices, natural gas prices have increased rapidly over the past two years, adding to inflationary pressures across the world. Since reaching lows at the beginning of the pandemic in early 2020, natural gas prices have increased steadily and, by May 2022, reached levels not seen since 2008.\(^13\) Furthermore, in

---


\(^11\) ‘Biden bans Russia oil imports to US, warns US gasoline prices will rise further’, Reuters, 8 March 2022.

\(^12\) ‘3 reasons high oil prices are here to stay’, CNN, 3 June 2022.

\(^13\) ‘Natural gas surges above $9, hits the highest since 2008 as inventories stay low’, CNBC, 25 May 2022.
February 2021, natural gas spot prices exhibited extreme spikes during Winter Storm Uri on account of production and transportation disruptions. Figure 3 shows the spot prices for Henry Hub Natural Gas, along with relevant key events, from January 2020 to May 2022.14

Throughout 2020, natural gas prices remained low as a mild winter and the economic slowdown resulting from the pandemic muted demand.15 Increases in supply also contributed to prices remaining low (eg, in August 2020, Azerbaijan increased gas production, as a newly completed pipeline allowed exports to Greece and Italy).16 By the second half of 2021, however, natural gas prices began to recover, as governments eased covid-19 restrictions and global demand increased. Producers, meanwhile, were slow to increase output after 2020’s unprecedented downturn.17

---

15 ‘In 2020, US natural gas prices were the lowest in decades’, US Energy Information Administration, 7 January 2021.
16 ‘Azerbaijan has increased natural gas production and added a connection to Europe’, US Energy Information Administration, 12 October 2021.
17 ‘Natural gas prices are skyrocketing around the world. Here’s why the US may not suffer as much’, CNBC, 8 October 2021.
Furthermore, a colder and longer-than-expected 2020 winter depleted inventory levels worldwide, which led to further increases in prices. Similar to oil prices, natural gas prices continued to rise throughout 2022, with the Russian invasion of Ukraine disrupting exports of Russian gas to Europe and the US banning gas imports from Russia. The increase in natural gas prices has flowed through to increase costs across many industries, and prices are expected to remain at elevated levels as the US exports more gas to Europe to compensate for the shortfall from Russia.

Because of the increase in energy prices, companies may find it challenging to perform under contracts that are tied to key energy prices (eg, Henry Hub for gas and WTI for oil), particularly when the company has no hedge against increases in those prices. In the liquefied natural gas (LNG) market, for example, supply contracts have traditionally been tied to oil prices, but Henry Hub has gained favour as a tool for indexation. In addition, some LNG customers have signed fixed-price agreements in recent years. Regardless of the form of indexation, buyers of LNG are likely to struggle to the extent they do not have a timely mechanism for passing on the higher cost of fuel in markets where their products are sold. Further, in the case of fixed-priced contracts, sellers may have difficulty providing the fixed-price gas to the extent they need to meet production imbalances through market purchases and face higher transportation costs. Failure to perform on these contracts could lead to disputes.

Another area in which it could be difficult to perform in the higher-cost environment is in the construction of new infrastructure facilities. Increases in prices of raw materials have left turbine manufacturers struggling to maintain margins on their existing contracts to deliver turbines, affecting the electricity generation sector and investments in new wind farms. If margins erode even further, the contracts may end up being litigated.

On top of constrained energy supplies and higher energy prices, companies across the world face unusually steep cost increases resulting from inflation. Over the past 14 years, the Federal Reserve and other major central banks have aggressively printed money and acquired financial assets. Massive policy interventions during and after the global financial crisis have greatly increased the balance sheets of major central banks. In response to the pandemic, central banks pursued additional expansionary measures that led to further increases in their balance sheet holdings. For example, over the course of 2020 and 2021, the European Central Bank, the Bank of Japan and the US Federal Reserve...
increased their aggregate net financial asset holdings by approximately US$8 trillion.\textsuperscript{23}

\textsuperscript{23} Ibid.
These monetary expansions have contributed to inflation climbing to levels not witnessed since the 1970s. As shown in Figure 5, inflation is expected to rise to 11.2 per cent in Latin America for calendar year 2022, slowing modestly to 8.0 per cent in 2023. For the United States, analysts expect inflation for 2022 to be 7.7 per cent, but to fall back to 2.9 per cent next year. In Canada, inflation has risen steadily, with expected 2022 consumer price index growth reaching 5.6 per cent – elevated in comparison to recent levels but not as extreme as in other parts of the Americas – before slowing to 2.4 per cent in 2023.\textsuperscript{24}

Recent regional arbitration trends

Many significant disputes involving parties from the Americas are resolved through international arbitration. For example, a review of publications from Global Arbitration Review and Law360 on international arbitration cases in the Americas indicates that, from September 2020 to May 2022, more than 130 international arbitration proceedings were commenced involving at least one party from the Americas.\textsuperscript{25} Moreover, as many commercial arbitrations are confidential, these figures do not encompass all arbitration proceedings initiated over this period. The sector most frequently involved in these disputes is the energy sector, which accounts for approximately 25 per cent of cases. Manufacturing, construction, infrastructure and transportation account for 23 per cent of cases, mining for 18 per cent, finance, insurance and real estate for 12 per cent, and information and communications for 9 per cent.

One case, \textit{Westmoreland v Canada},\textsuperscript{26} was poised to raise fascinating questions of liability and damages, but was dismissed before these issues were heard. The case involved coal mines that had been purchased by Westmoreland Coal Company and that, according to the claim, allegedly should have been provided special compensation when the Province of Alberta decided to shift its fuel mix from coal to cleaner fuels. The claim – that Canada treated Westmoreland discriminatorily and unfairly under NAFTA by not providing special compensation – was dismissed by a tribunal on jurisdictional grounds.\textsuperscript{27}

The liability questions – whether there was in fact discriminatory and unfair treatment – would have required substantial analysis regarding whether a commitment made by Alberta to compensate coal power plant owners for early retirement also applied to coal mine owners. In our experience, when cases of undue discrimination are considered, the tribunal must determine whether the defendant applied dissimilar treatment to a similar situation or applied similar treatment to a dissimilar situation.

\textsuperscript{24} Source: IMF, World Economic Outlook, April 2022.
\textsuperscript{25} Note this is a general review of relevant GAR and Law360 publications rather than a comprehensive review of all international arbitration disputes in the Americas.
\textsuperscript{26} \textit{Westmoreland Coal Company v Government of Canada}, ICSID Case No. UNCT/20/3.
\textsuperscript{27} Final Award, ICSID Case No. UNCT/20/3, 31 January 2022.
As borne out in Mercer v Canada\textsuperscript{28} – a case in which NERA provided expert economic testimony – dissimilar treatment does not necessarily equate to discriminatory and unfair treatment if a dissimilar situation can be established. In other words, different circumstances can justify different treatment under a reasonable and consistently applied government or regulatory policy. Nevertheless, in Westmoreland v Canada, the claimant noted that a Canadian company had been paid to close its coal mine, while Westmoreland, an American company, had not. Had the case moved forward, its specific fact pattern would have given the tribunal much to consider as to whether different circumstances justified that different treatment.

Similarly, assessments of quantum would have raised issues beyond the traditional areas of expert debate such as the quantum of lost profits, which typically involve examination of revenue and costs forecasts in the actual and counterfactual scenarios and debate over the proper discount rate. The economic damages experts would have had to consider how, and to what degree, Westmoreland could have mitigated its lost opportunities in Alberta outside the province. As noted, this case would also have required analysis to determine if coal plants and coal mines were both properly eligible for special compensation under the province’s policy.

Looking ahead, the volume and nature of investor–state arbitration in North America could be affected by the 2020 replacement of NAFTA with the United States–Canada–Mexico Agreement.\textsuperscript{29} Some legal observers have noted that under the new agreement, the scope of potential arbitration claims that may be pursued is in some respects narrower than under NAFTA. Hence, the

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure_6.png}
\caption{Publicly Disclosed International Arbitration Cases in the Americas by Sector September 2020 – May 2022}
\end{figure}

\textsuperscript{28} Mercer International Inc v Government of Canada, ICSID Case No. ARB(AF)/12/3.
\textsuperscript{29} Also known as T-MEC, CUSMA or USMCA,
Damages in commercial and investor–state disputes

NERA Economic Consulting

59

Arbitration Review of the Americas 2023

A change in framework could reduce the volume of investor–state claims within North America.\(^{30}\)

**Covid-related investor–state arbitrations**

Measures taken by national governments in the covid-19 pandemic may affect the value of investments in those countries and give rise to claims in investor–state arbitrations. Such claims could entail complex calculations of damages.

Legal and policy commentators have pointed to a variety of measures taken in the context of the pandemic that may become the focus of investor allegations.\(^{31}\) These include:

- lockdowns and travel bans;
- government takeovers of private hospitals;
- price controls;
- capital controls;
- mandatory production orders;
- export bans; and
- support to domestic businesses.

In addition, policies aimed at addressing the economic consequences of the pandemic may attract claims. These include, inter alia, measures suspending or reducing rent payments or payments due on mortgages and other loans; staying bankruptcy proceedings; and reducing or suspending payments due for the provision of toll roads, water, energy or other services.\(^{32}\) If these actions can be alleged to have harmed the value of an investment, an investor may advance a claim under a bilateral investment treaty or under the dispute resolution clause of a multilateral trade treaty.

---


Claims made by investors may include, for example, that measures: improperly favoured certain investors based on nationality; did not provide foreign investors with fair and equitable treatment; improperly restricted the claimant’s ability to transfer funds out of the respondent country; or amounted to expropriation of an investment.33

The first pandemic-related claim at the International Centre for Settlement of Investment Disputes was brought by French airport operators against the Republic of Chile.34 The claimants allege losses relating to their concessions operating the international airport in Santiago, owing to flight closures and other pandemic-related restrictions.35

Other pandemic-related claims seem to be on the horizon. One example relates to the Peruvian government’s 2020 emergency measure suspending collection of tolls on its roads. According to Peruvian government officials, one concessionaire has declared its intention to file an arbitration claim against Peru and other toll operators are expected to follow suit.36 The Peruvian Constitutional Court found the government’s emergency measures to be unconstitutional in August 2020.37

Another potential filing relates to Mexico’s 2020 restrictions on the production of renewable energy. The Mexican government attributed the policy to the decline in demand caused by a reduction in economic activity during the pandemic. However, an industry group described the measure as an excuse to provide an advantage to the state energy company in selling traditional fossil fuel-based energy, and observers indicate a claim is likely.38

Respondent states may advance a variety of legal arguments in defence of the measures, including that the policy actions were necessary to safeguard health, security and other essential interests in a crisis.39 However, claimants may argue that such measures were not necessary or proportionate to address the challenges posed by covid-19. Some commentators have noted that recently signed bilateral investment treaties (BITs) often give states more scope to carry out emergency measures even if these may harm an investment, whereas many earlier BITs were more restrictive.40

34 ADP International SA and Vinci Airports SAS v Chile [ICSID Case No. ARB/21/40].
36 ‘Perú recibe la primera notificación de intención de arbitraje por la gestión del covid19’, Ciar Global, 8 June 2020.
Assessments of quantum in such cases may be complex. For example, if a tribunal finds that a policy measure implemented in the context of the pandemic exceeded what was necessary and proportionate, a damages assessment may need to compare the effect of the disputed measure on the claimant with a but-for scenario in which a lesser or otherwise different policy measure was implemented (rather than no measure).

**Project delays**

A major transformation of the energy sector is afoot throughout the Americas, with power companies investing in greening their power supply to meet greenhouse gas emissions reduction targets. In Latin America alone, the energy transition will require hundreds of gigawatts in new clean-energy facilities. Much of this will be accomplished through utility-scale investment, although technological change has allowed some consumers to take energy supply decisions into their own hands and build rooftop solar and other forms of behind-the-meter generation. New investment in clean energy technologies benefits from favourable economics and, in some countries, favourable tax treatment. In addition, as battery costs decline, utilities and their customers will increasingly rely on batteries to manage electricity demand economically.

The major energy transition investments being undertaken in the energy sector depend on supply chains that are relatively new in the Americas and that have exhibited vulnerability in the face of burgeoning demand. The pandemic has triggered shortages in some key components, semiconductors in particular. In addition, some new clean technologies require raw materials that are scarce or difficult to commercialise at scale.

In addition to strained supply chains, investments in clean energy projects in Latin America face further challenges. For example, starting well before the pandemic, local communities have opposed many large projects and engaged in tactics such as road blockades. In other cases that ended up in litigation, government bodies have allegedly acted prejudicially against project developers, for example by denying permits, that impede their ability to carry out the necessary investments.41

In the United States, energy transition investments are in full development. President Biden announced a 30-gigawatt-by-2030 national offshore wind energy goal. Individual US states are procuring contracts to facilitate construction of thousands of megawatts of new offshore wind capacity, yet the commercial operation dates for these facilities may be pushed back due to various supply-chain constraints and litigation related to effects of the new facilities on the

---

local environment and communities. Time will tell which projects make it on time and which do not.

Notably, offshore wind reflects a global investment environment, with European developers leading most investments in the United States. For delayed projects, the parties may be able to work out solutions. Nevertheless, we anticipate that some parties will inevitably seek to resolve their disputes through international arbitration. To the extent that delays may be tied to the pandemic, parties may seek contractual protection from the standard liquidated damages. Not all contracts are the same, and the applicability of pandemic-related relief from missed milestones or delayed commercial operation will need to be assessed based on the particulars of each contract.

To the extent damages that go beyond contractually stipulated delay amounts can be claimed, the analyses will require thoughtful and careful work to construct reasonable but-for assumptions. As noted, cost increases derive from a variety of factors ranging from the ground war in Europe to central bank policies to supply chain constraints. While it is difficult to predict the specific nature of any given claim, it is clear that isolating a quantum of damages directly tied to a set of alleged acts will require the expert to parse out the effects of various economic drivers.

* The authors would like to thank colleagues Spencer Kang and Sigela Muharremi for research assistance and Willis Geffert and David Tabak for useful comments on earlier drafts.

Jorge Baez is a director based in NERA’s Miami office. He specialises in providing damages assessment and industry and market economic expert advice in litigation and arbitration proceedings in the areas of securities, finance and commercial litigation. Mr Baez’s testimony and advisory work has involved the analysis of equity, bond, option, swap and futures trading, as well as issues relating to hedge funds, mutual funds and pension funds. He has analysed the quantum of damages and lost profits in merger, bankruptc, and breach of contract cases. His work has focused on industries such as banking, health care, telecommunications, consumer goods, information technology, oil and gas, and real estate. Mr Baez has provided expert testimony at trials in US Federal District Court, and in Spanish and Swiss courts, in addition to presenting
to government regulators in the US and Mexico. Mr Baez is from Quito, Ecuador, and is fluent in English and Spanish.

Kurt G Strunk is a managing director based in NERA’s New York City office. His disputes and advisory practice focuses on the intersection of energy and finance. He serves as a testifying expert in international arbitration, complex commercial litigation and regulatory proceedings. He has provided expert testimony and reports on over 100 occasions, and has been retained as an expert in arbitrations before the London Court of International Arbitration, the American Arbitration Association, the International Institute for Conflict Prevention and Resolution, and the International Chamber of Commerce. Mr Strunk has addressed the quantum of damages in construction disputes and other delay cases, breaches of contract and alleged expropriations. His testimonies benefit from his deep sector-specific expertise and knowledge to address liability, damages and causation. Mr Strunk has extensive knowledge of the electric power industry, including the commercial and institutional frameworks for independent power development, concessions and other infrastructure contracts, fuel supply arrangements, and competitive solicitations. In oil and gas, Mr Strunk has advised on mergers and acquisitions, valuation, restructuring, contracting, tariff-making, commodity procurement, risk management and product pricing. Mr Strunk’s professional experience spans six continents and includes work in English, Spanish and French. He is recommended as a leading international energy expert by Who’s Who Legal.

Robert Patton is a director based in NERA’s Toronto office, specialising in financial economics and valuation. In this role, he applies two decades of experience in economics, finance and valuation to questions arising in legal disputes, public policy and business. He has submitted expert reports in venues including multiple Canadian provincial courts and the English High Court and has been qualified as an expert witness and testified at trial. In commercial disputes and
international arbitration, Mr Patton has analysed damages in matters alleging breach of contract, expropriation, breaches relating to fair and equitable treatment, defamation and other causes of action. *Who’s Who Legal: Arbitration* has described Mr Patton as a ‘knowledgeable, thorough, responsive, objective and fair’ expert and lists Mr Patton in its ‘most highly regarded’ category.

NERA Economic Consulting is a global firm of experts dedicated to applying economic, finance and quantitative principles to complex business and legal challenges. For more than six decades, we have been creating strategies, studies, reports, expert testimony and policy recommendations for government authorities and the world’s leading law firms and corporations. We bring academic rigour, objectivity and real-world industry experience to issues arising from competition, regulation, public policy, strategy, finance and litigation.

NERA Economic Consulting
1166 Avenue of the Americas
New York, NY 10036
United States
Tel: +1 212 345 3000

www.nera.com

Jorge Baez
jorge.baez@nera.com

Robert Patton
robert.patton@nera.com

Kurt G Strunk
kurt.strunk@nera.com