

Claimant seeks to annul award over Peruvian bank

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The Levy siblings as children in the 1950s, soon after the family moved from France to Peru (Credit: Assault on Banco Nuevo Mundo, a website set up by the claimant's brother Jacques Levy Calvo)

After an ICSID tribunal dismissed her US\$7 billion claim against Peru over the takeover of her family's bank, French national Renée Rose Levy de Levi has applied to annul the award, retaining new counsel in the process.

ICSID registered the annulment request on 20 May. The claimant is challenging the award from February this year on the basis that the tribunal manifestly exceeded its powers, seriously departed from a fundamental rule of procedure, and failed to state the reasons on which the award was based.

In the arbitration, the claimant was represented by Lima-based law firm Estudio Paitán & Abogados. However, in the annulment proceeding, the claimant has instructed new counsel: Wöss & Partners in Mexico City and Washington, DC, Winston & Strawn in Paris, and Washington, DC. Canadian practitioner **Todd Weiler** and Peruvian practitioner **Christian Carbajal** join Wöss & Partners as co-counsel.

Peru is using one of the same firms it used in the arbitration, Sidley Austin. In the arbitration the state also retained local firm Estudio Navarro Ferrero & Pazos as co-counsel.

Although now based in New York, Levy is part of a family that moved to Peru from France in the 1950s and established a successful construction business, Gremco. The family set up Banco Nuevo Mundo in 1993 – their second foray into the Peruvian banking sector after running Banco Latino in the 1980s.

In the early 2000s, Peru's banking regulator ruled that Banco Nuevo Mundo should be closed following the bank's inability to meet payment obligations. At the time of the bank's closure, the bank was chaired by the claimant's brother, Jacques Levy Calvo. Her father indirectly owned shares in the bank, which were assigned to her without charge in 2005.

Levy filed the claim four years ago, seeking US\$4 billion in compensatory damages and a further US\$3 billion in moral damages for the indirect expropriation of the bank and other breaches of the France-Peru bilateral investment treaty.

In February, a tribunal chaired by **Rodrigo Oreamuno** of Costa Rica and featuring Chile's **Joaquín Morales Godoy**, appointed by the claimant, and Belgium's **Bernard Hanotiau**, appointed by Peru, unanimously upheld its jurisdiction to hear Levy's claim.

Oreamuno and Hanotiau went on to dismiss the claim on the merits and ordered Levy to bear ICSID's costs and the arbitrators' fees. They said Peru's actions had been necessary and legitimate because the bank had breached its payment obligations under Peruvian banking law.

Morales, the claimant's appointed arbitrator, disagreed. He accused the tribunal of misunderstanding Peru's system of banking and monetary regulation, the auditing methods used in relation to the bank and the effects of Peru's failure to submit requested evidence.

Morales also accused his co-arbitrators of failing to engage in a thorough analysis of the evidence. He said they had disregarded balance sheets, financial statements and testimony from the regulator that allegedly proved the bank's solvency at the time of the government's intervention.

Renée Rose Levy de Levi has also brought another ICSID claim against Peru under the France-Peru BIT with a Peruvian real estate company she co-owns, Gremcitel. In that case the claimants allege that Peru blocked their ability to develop oceanfront property in a historical area in the Chorrillos district of Lima.

The tribunal chaired by Swiss arbitrator **Gabrielle Kaufmann Kohler** held a hearing on jurisdiction and the merits in November. Kaufmann Kohler is sitting alongside Colombia's **Eduardo Zuleta** and Argentina's **Raúl Vinuesa**.

Renée Rose Levy de Levi v Peru

In the annulment proceedings
Ad hoc committee

Not yet constituted

Counsel to Renée Rose Levy de Levi

- Winston & Strawn

Partner **Mark Bravin** and of counsel **Nicole Silver** in Washington, DC, and of counsel **Maria Kostytska** in Paris and Washington, DC

- Wöss & Partners

Partners **Herfried Wöss** and **Adriana San Román Rivera** in Mexico City, partner **Christian Carbajal** in Lima, and partner **Dante Figueroa** in Washington, DC

- **Todd Weiler**, barrister and solicitor in London, Ontario

Counsel to Peru

- Sidley Austin

Partners **Stanimir Alexandrov**, **Jennifer Haworth McCandless** and **Marinn Carlson** in Washington, DC

In the original arbitration

Tribunal

Rodrigo Oreamuno (Costa Rica) (chair)
Joaquín Morales Godoy (Chile) (appointed by the claimant)
Bernard Hanotiau (Belgium) (appointed by Peru)

Counsel to Renée Rose Levy de Levi

- Estudio Paitán & Abogados

Carlos Paitán, **Christian Carbajal** and **José Salcedo** in Lima

Counsel to Peru

- Sidley Austin

Partners **Stanimir Alexandrov**, **Jennifer Haworth McCandless** and **Marinn Carlson** in Washington, DC

- Estudio Navarro Ferrero & Pazos

Juan Pazos, **Ricardo Puccio**, **Francisco Navarro Grau**, and **Aresio Viveros Zuazo** in Lima