

# Panama Canal consortium ordered to pay

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An International Chamber of Commerce (ICC) tribunal has ordered the consortium working on a project to expand the Panama Canal to reimburse US\$847 million in advances paid by the Panama Canal Authority – the second award in favour of the state entity in one of the numerous cases filed over the project.

In a final award communicated to the parties on 12 December, a tribunal chaired by Swiss arbitrator Gabrielle Kaufmann-Kohler declared that the contractor Grupo Unidos por el Canal (GUPEC) should repay all outstanding advances, plus US\$13 million in interest for the late payment of an initial advance.

The panel, which included Guido Tawil of Argentina and Stephan Furst QC of the UK, also awarded the authority almost US\$6 million to cover a percentage of the legal and administrative costs of the arbitration.

However, the company that leads the consortium, Spanish engineering group Sacyr, says that the canal authority was also ordered to release US\$36 million of money it had withheld to pay for maintenance of the canal. It is understood that the authority disputes this amount.

All other claims for relief by GUPC were dismissed.

GUPC, a consortium that also includes Italy's Salini Impregilo, Belgian dredging group Jan De Nul and Panama's Urbana, won a contract in 2009 to design and construct a third set of locks on the Panama Canal. The project is part of a major expansion programme intended to double the capacity of the canal, a key conduit for international maritime traffic that links the Atlantic and Pacific Oceans.

The canal authority paid GUPC an initial US\$548 million to cover mobilisation costs and the installation of the plants, plus an “additional advance” of US\$299 million after the contract was commenced.

GUPC filed this ICC case in January 2017, requesting that a panel determine whether it was entitled to withhold the advances until other arbitrations arising from the spiralling cost of the project (originally budgeted to cost US\$3 billion) have been resolved. These include a number of dispute adjudication board proceedings and seven ICC cases, all of which are seated in Miami.

The canal authority prevailed in the first of the ICC cases in July 2017, when a majority tribunal composed of Belgium's Bernard Hanotiau and the UK's Robert Gaitskell [rejected](#) a US\$200 million claim by GUPC for additional costs arising from the construction of a cofferdam – a temporary enclosure to restrain the Pacific Ocean while works on the canal were conducted.

The majority ruled that the canal authority was not liable for the cost overruns and ordered GUPC to pay around US\$23 million towards its legal fees and costs. The consortium's appointee, Spanish arbitrator Bernardo Cremades, dissented; finding that the canal authority had breached a duty of good faith in failing to disclose certain information.

A Florida district court upheld the award in June 2018, holding that GUPC's challenge was time-barred.

In addition, GUPC and the canal authority each brought ICC claims against the other in 2015 over the production of aggregates and design of the concrete mix used in the project, as well as unforeseen faults and shears on the site and on-site laboratory requirements. GUPC seeks US\$337 million while the authority is claiming US\$265 million. A dispute adjudication board had previously awarded GUPC US\$265 million on this claim, which the authority paid.

Those two claims are pending before a tribunal chaired by Switzerland's Pierre-Yves Gunter and including Gaitskell and Mexico's Claus von Wobeser. The tribunal delivered a partial award in May 2017 upholding jurisdiction over claims by GUPC's shareholders as well as the authority's claims for delay damages.

GUPC brought two further ICC claims totalling US\$2.3 billion in late 2016. These reportedly relate to the quality of basalt on the canal bed, the design of lock gates and labour cost adjustments, along with other claims. Those claims are also being heard by a tribunal of Gunter, Gaitskell and von Wobeser.

In the ICC cases, GUPC is represented by White & Case LLP, Italian firm BonelliErede, Seyfarth Shaw in Washington, DC, and [Alemán, Cordero, Galindo & Lee](#) in Panama City. The canal authority has instructed Vinson & Elkins LLP, Mayer Brown LLP, Panamanian firm [Galindo, Arias & López](#) and Manus McMullan QC, a barrister at Atkin Chambers in London. In the US courts, it has also been using Reed Smith LLP.

Sacyr also filed a claim at the United Nations Commission On International Trade Law (UNCITRAL) against Panama in September 2018 under the Spain-Panama bilateral investment treaty. The state has retained Foley Hoag to defend that claim. In 2015, Salini also filed a notice of dispute under the Italy-Panama bilateral investment treaty, but does not appear ever to have filed the case.

One of the members of the Vinson & Elkins LLP team working on the ICC cases, London-based Scott Stiegler, has just been promoted to partner, the firm announced on 17 December.

*Grupo Unidos por el Canal v Panama Canal Authority*

*In the repayment of advances ICC arbitration*

Gabrielle Kaufmann-Kohler (Switzerland) (chair)  
Guido Tawil (Argentina)

Stephan Furst QC (UK)  
Counsel to Grupo Unidos por el Canal

Bonelli Erede

Antonio Crivellaro and Andrea Carlevaris in Milan

White & Case LLP

|Partners Carolyn Lamm, Hansel Pham, Matthew Drossos in Washington, DC, Phillip Capper and Paul Brumpton in London and Nicolas Bouchardie and Kirsten Odynski in Paris

Seyfarth Shaw

Richard McKim Preston and Jeffery Hummel in DC

[Alemán, Cordero, Galindo & Lee](#)

Alejandro Ferrer and Ana Maria Legendre in Panama City

**Counsel to the Panama Canal Authority**

Vinson & Elkins LLP

Partners James Loftis in Houston and Nick Henchie in London

Mayer Brown LLP

Barry Machlin in Chicago, Raid Abu-Manneh in London and Alejandro López Ortiz in Paris

[Galindo, Arias & López](#)

Diego Herrera in Panama City

[Bofill Mir & Alvarez Jana Abogados](#)

Partner Andres Jana in Santiago

Manus McMullan QC and Peter Land of Atkin Chambers in London

*In the cofferdam ICC arbitration*

**Tribunal**

Bernard Hanotiau (Belgium) (president)  
Bernardo Cremades (Spain)  
Robert Gaitskill QC (UK)  
Counsel to Grupo Unidos por el Canal

As above

**Counsel to the Panama Canal Authority**

As above

*In the production of aggregates/design of concrete arbitrations*

**Tribunal**

Pierre-Yves Gunter (Switzerland) (chair)  
Claus von Wobeser (Mexico)  
Robert Gaitskill QC (UK)  
Counsel to Grupo Unidos por el Canal

As above

**Counsel to the Panama Canal Authority**

As above

*In the basalt/concrete ICC arbitration*

**Tribunal**

Pierre-Yves Gunter (Switzerland)  
Claus von Wobeser (Mexico) (appointed by GUPC)  
Robert Gaitskill QC (UK) (appointed by the canal authority)  
Counsel to Grupo Unidos por el Canal

As above

**Counsel to the Panama Canal Authority**

As above

*In the dispute adjudication board proceedings*

Dispute adjudication board

Peter Chapman (UK) (Chair)  
Robert Smith (US) (nominated by ACP)  
Pierre Genton (Switzerland) (nominated by GUPC)  
Counsel to Grupo Unidos por el Canal

Bonelli Erede

Antonio Crivellaro in Milan

White & Case LLP

Phillip Capper and Paul Brumpton in London and  
Nicolas Bouchardie in Paris

Seyfarth Shaw

Richard McKim Preston and Jeffery Hummel in Washington, DC

[Alemán, Cordero, Galindo & Lee](#)

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Paris

Practice area : [Arbitration](#)  
Country : [Panama, International](#)  
Industry : Construction, Transportation