

Spanish Flour Production Cos. Win \$490M From Venezuela

By Caroline Simson

Law360, New York (July 28, 2017, 7:21 PM EDT) -- Venezuela has been ordered to pay nearly half a billion dollars to Spanish subsidiaries of Mexico's Gruma SAB de CV, a corn flour and tortilla producer, by a World Bank tribunal that found the country had breached its international obligations with regard to the company's flour production businesses there.

Gruma SAB de CV, whose brands include the Mission Foods Corp. that supplies tortillas and similar products to U.S. grocery stores, said late Thursday that the International Centre for the Settlement of Investment Disputes tribunal ruled in favor of Valores Mundiales SL and Consorcio Andino SL, awarding them \$430.4 million in damages, plus approximately \$54 million in interest — which will continue increasing until the award is paid — and nearly \$6 million in legal fees and costs. The award was issued by the tribunal on July 25.

The claims centered on Venezuela's adoption of an expropriation decree in 2010 and its imposition of special administrators to supervise and control the affairs of Valores Mundiales and Consorcio Andino's companies in Venezuela. Those companies were Molinos Nacionales CA and Derivados de Maíz Seleccionado DEMASECA CA, which own various plants, factories and flour mills in Venezuela.

The tribunal determined that Venezuela had breached its international obligations by failing to treat Valores Mundiales' and Consorcio Andino's investments fairly and that the country took arbitrary measures that impeded the management and development of the companies' investments. It also determined the country had improperly impeded the free transfer of funds related to the investments, according to Gruma.

The award had not been made public as of Friday.

"We're pleased with the result," said Covington & Burling LLP partner Miguel López Forastier, who was part of the legal team representing the claimants. "We're pleased that an international tribunal recognized that Venezuela has been in violation of its international obligations for more than 8 years now and it has issued an award accordingly."

Valores Mundiales and Consorcio Andino were not successful in all of their claims: the tribunal dismissed a claim for indirect expropriation, according to Gruma.

The tribunal determined that although the administrators were exercising some control in the

companies and were involved in the affairs of the company, that control did not rise to the level of indirect expropriation, López Forastier told Law360.

The tribunal also concluded that even though the companies were worth substantially less as a result of the administrators and the expropriation decree — the execution of which was suspended but could still be revived — they still had some value, according to López Forastier.

Attorneys for Venezuela did not immediately respond to a request for comment on Friday evening.

Gruma said in a 2010 report that Molinos Nacionales and Derivados de Maíz Seleccionado are the two big companies whose joint operations make Gruma the second-largest producer of corn and wheat in Venezuela.

The tribunal was comprised of presiding arbitrator Eduardo Zuleta, the claimants' appointed arbitrator, Horacio A. Grigera Naón, and Yves Derains, who was appointed by the chairman of the administrative council.

The claimants are represented by Miguel López Forastier, José E. Arvelo, Mary T. Hernández, Carolina González and Clovis Trevino of Covington & Burling LLP, Gruma SAB de CV, and Zobrist Law Group.

Venezuela is represented by its Attorney General and by Ronald Goodman, Luis Parada, Alberto Wray, Kenneth Figueroa, Diego Cadena, Gisela Paris, Melinda Kuritzky, Ofilio Mayorga, Manuela de la Helguera and José Rebolledo of Foley Hoag LLP.

The case is Valores Mundiales, S.L. and Consorcio Andino S.L. v. Bolivarian Republic of Venezuela, case number ARB/13/11 in the International Centre for the Settlement of Investment Disputes.

--Editing by Pamela Wilkinson.