

## BIG SUITS

### Crystallex International v. Venezuela; Mobil Cerro Negro v. Venezuela



Yanos



Friedman

Even as political and economic instability grows in Venezuela, its government continues to face hefty arbitration awards over expropriations initiated by the late president Hugo Chavez.

After duking it out before both an arbitration panel and a federal court in Washington, D.C., a team of partners at Freshfields Bruckhaus Deringer in D.C. and New York clinched more than \$1.2 billion for their client, Canadian mining company Crystallex. Meanwhile, although a World Bank tribunal recently annulled most of a \$1.4 billion award to Exxon Mobil Corp., the oil company's lawyers at Steptoe & Johnson LLP have asked

a federal judge to order Venezuela to pay the company more than \$188.3 million, the amount Exxon Mobil says it is still owed as repayment for the 2007 expropriation of its oil assets.

On March 25 U.S. District Judge Rudolph Contreras of the District of Columbia ordered the government of Venezuela to pay Crystallex for "depriv[ing] Crystallex of the benefit of its investment" in a gold mine there in violation of a bilateral investment treaty. Venezuela violated its treaty with Canada when it denied Crystallex a permit, seized the Las Cristinas gold mine and rescinded an agreement to allow Crystallex to operate the facility.

The ruling confirmed a \$1.2 billion award from an arbitration tribunal at the World Bank's International Centre for Settlement of Investment Disputes (ICSID) in April 2016. In the underlying arbitration dispute, initiated by Crystallex in 2011, Freshfields' D.C.-based partners **Nigel Blackaby** and **Caroline Richard** and counsel **Alex Wilbraham** represented the mining company. At the D.C. district court, Freshfields partner **Elliot Friedman** teamed up with Hughes Hubbard & Reed partners **Alexander Yanos** and **Meaghan Gragg**.

Venezuela was represented by Foley Hoag partner **Lawrence Martin**, who did not respond to a request for comment.

On March 13, Steptoe partner **Steven Davidson** asked U.S. District Judge Paul Engelmayer of the Southern District

of New York to lift his 2015 stay on payment of the \$188.3 million award to Exxon Mobil, plus legal fees and \$68 million in interest. On March 9, an annulment committee had affirmed the portion of the \$1.4 billion 2014 award related to expropriation of Exxon Mobil's La Ceiba oil assets, but annulled the portion related to its Cerro Negro Project, saying that the original tribunal had exceeded its powers by holding that general international law regulated the compensation due, rather than a liability cap in the contract.

The matter is one of two international arbitration cases related to the 2007 expropriation of Exxon Mobil's investments in Venezuela. One case based on the arbitration clause in the contract went before the ICC International Court of Arbitration, where Exxon Mobil won \$908 million. The current matter, based on violations of a bilateral investment treaty, went before ICSID, where a panel of international arbitrators Gilbert Guillaume, Gabrielle Kaufmann-Kohler and Ahmed Sadek El-Kosheri decided in favor of Exxon Mobil in 2014. Venezuela then moved to annul the award.

As in the underlying ICSID arbitration, Exxon Mobil was represented in the annulment by a team led by Covington & Burling partners **Thomas Cabbage III** and **Miguel Lopez Forastier** in Washington, D.C., and by London's **Gaëtan Verhoosel** from Three Crowns.

Curtis, Mallet-Prevost, Colt & Mosle partners **George Kahale III**, **Benard Preziosi Jr.** and **Miriam Harwood** in New York and **Gabriela Alvarez-Avila Curtis** in Mexico represented Venezuela.

—*Monika Gonzalez Mesa and Cogan Schneier*

## Hughes Hubbard & Reed