

Kluwer Arbitration Blog

Guy walks into a court-house. Sky does not fall.

Luke Eric Peterson (Investment Arbitration Reporter) · Sunday, March 28th, 2010

I spent some time earlier this month covering the Chevron-Ecuador hearings that took place in the Federal District Court in New York City.

Much has been written about the outcome of those proceedings – and the denial of a request by Ecuador for an injunction against a bilateral investment treaty arbitration started some months ago by Chevron.

As a reporter covering international arbitration, I don't get to attend many hearings.

But, over the course of two days, I settled into the peanut gallery along with a handful of journalists, a lot of interested lawyers, and a few concerned citizens. There was even a press spokesperson for a group of Ecuadorian plaintiffs working the room – and distributing a press release that set out the case against Chevron's international arbitration claim.

Despite all these observers, Judge Leonard Sand appeared completely nonplussed.

After hearing the parties at length, the Judge took a brief recess.

I spent the time flipping through the voluminous media clippings on the case, and the written arguments that had been tabled earlier in the case.

When Judge Sand returned, he promptly issued his judgment from the bench.

That ruling was swiftly reported in the media, discussed on business news channels, and debated in cyberspace. A few days thereafter, a transcript of the proceedings and a written judgment were put into the public record.

I was rendered dumb.

Somehow amidst the glare of the media and the public sniping of the parties in a high-stakes and often-ugly \$27 Billion dispute, the Judge managed to go about his business, and see to the orderly disposition of the case.

I kept waiting for the other shoe to drop.

Surely the integrity of the proceedings were long ago “undermined” by the publication of the parties' pleadings.

The “orderly working” of the case must have been thrown into complete “disarray” by dint of the journalists, observers and PR flacks in the room.

Indeed, the much-dreaded “exacerbation” of the dispute was on my mind every time I saw a PR spokesperson corner a journalist in the press gallery.

We’ve read about all these scourges, after all.

They feed on the oxygen that comes when you open the doors to an investor-state lawsuit – or so I’ve been led to believe by the growing number of sweeping confidentiality orders issued by arbitral tribunals in investment treaty cases.

Yet, a funny thing happened in that New York court room: the other shoe never dropped.

Somehow, Judge Sand and the parties managed to operate under full public scrutiny.

And, neither they, nor justice, faltered.

It was flabbergasting.

And it just goes to show: sometimes you don’t need a gag-order to render a journalist speechless.

Luke Eric Peterson

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