

Kluwer Arbitration Blog

Chevron Ecuador Dispute Heats Up

Roger Alford (General Editor) (Notre Dame Law School) · Monday, January 30th, 2012

Last week was a blockbuster one in the ongoing battle between Chevron and Ecuador. On Wednesday, the arbitral tribunal adjudicating Chevron's BIT claim issued an [Interim Award](#) ordering Ecuador "to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within or without Ecuador of any judgment against [Chevron] in the Lago Agrio Case."

The tribunal was at pains to emphasize the interim award was final and binding under Article 32 of the UNCITRAL Rules, which means that Chevron could pursue recognition and enforcement of the award in jurisdictions around the world. It could do so offensively by seeking declaratory relief in Ecuador (or elsewhere), or defensively in response to an attempt by the Ecuador plaintiffs to seek enforcement of the Ecuador judgment. Of course, the Interim Award is only binding on Ecuador and Chevron, so it is not clear what a domestic court outside Ecuador would do with an award imposing injunctive relief on Ecuador.

Meanwhile, on Thursday the Second Circuit issued its long-awaited opinion in [Chevron v. Naranjo](#). The Second Circuit's crucial holding was that New York's Uniform Foreign Money-Judgments Recognition Act precludes declaratory injunctive relief by a foreign judgment debtor. "There is ... no legal basis for the injunction that Chevron seeks, and, on these facts, there will be no such basis until judgment-creditors affirmatively seek to enforce their judgment in a court governed by New York or similar law."

The Second Circuit had little sympathy for Chevron's attempt to pursue an antienforcement injunction, particularly given the comity concerns at stake.

"[W]hen a court in one country attempts to preclude the courts of every other nation from ever considering the effect of that foreign judgment, the comity concerns become far greater. In such an instance, the court risks disrespecting the legal system not only of the country in which the judgment was issued, but also those of other countries, who are inherently assumed insufficiently trustworthy to recognize what is asserted to be the extreme incapacity of the legal system from which it emanates. The court presuming to issue such an injunction sets itself up as the definitive international arbiter of the fairness and integrity of the world's legal systems."

But at the same time, the Second Circuit emphasized that it expressed "no views on the merits of

the parties' various charges and counter-charges regarding the Ecuadorian legal system and their adversaries' conduct of this litigation, which may be addressed as relevant in other litigation before the district court or elsewhere." It also avoided any decision with respect to the underlying RICO claims that Chevron has filed against the Ecuador plaintiffs and their lawyers, focusing simply on the improper procedural device that Chevron sought to employ to enjoin enforcement of the Lago Agrio judgment abroad.

Where does the case go from here? In Ecuador, Chevron has [appealed](#) to Ecuador's highest court to review the case. No word yet as to whether Chevron will seek to have the arbitral tribunal's Interim Award recognized and enforced in Ecuador. The arbitral tribunal is scheduled to hold hearings on February 11-12 to determine what steps Ecuador is taking to prevent enforcement of the Lago Agrio judgment.

As for the Ecuador plaintiffs' efforts to enforce the judgment, there is no indication that Chevron will post an appeal bond, which means that the Ecuador plaintiffs are free to pursue enforcement anywhere in the world where Chevron has assets.

It appears that the Ecuador plaintiffs will not seek to have the judgment enforced within the United States. Ecuador Plaintiffs' lawyer James Tyrrell [stated](#) yesterday that "The Ecuadorean plaintiffs are not coming to New York to enforce this judgment." Given the locus of Chevron's assets, it is not obvious why the plaintiffs have adopted this strategy, unless they have reason to believe that there is a high probability that the judgment would not be enforced.

There is, of course, the option of pursuing enforcement abroad. If the [Invictus Memo](#) is reliable, the Ecuador plaintiffs have identified twenty-seven nations where Chevron has substantial activities, including countries that are friendly with Ecuador, such as Colombia and Venezuela. That memo candidly states the ultimate end game strategy for the Ecuador plaintiffs:

"After approximately seventeen total years of litigation in the United States and Ecuador, the case against Chevron now enters its most critical, multi-faceted, and labor intensive.... With the ultimate goal of effecting and swift and favorable settlement, the strategy of the Plaintiffs' Team will incorporate the following components: ... managing the public relations impact of Chevron's manipulation of the Cabrera narrative ... [and] identifying jurisdictions globally that are most hospitable to an enforcement action."

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please [subscribe here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Monday, January 30th, 2012 at 8:25 am and is filed under [Anti-suit injunction](#), [BIT](#), [Investment Arbitration](#), [North America](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.