

The State Of Creditor Recovery Efforts In Venezuela: Part 1

By **Richard Cooper** and **Boaz Morag** (June 4, 2018, 11:00 AM EDT)

This is the first part of a two-part article providing an update on the ongoing recovery efforts of creditors of the Republic of Venezuela and Venezuela's state-owned oil company, *Petróleos de Venezuela SA*, or PDVSA.

Part one below summarizes the magnitude of the claims against PDVSA and the republic, those that are in various stages of enforcement proceedings, as well as the much larger pool of additional claims that are not (yet) in litigation but could become the subject of judicial proceedings. Next, we provide an update on the pending enforcement proceedings in the United States and elsewhere and the possible ramifications of those proceedings directly for the creditors involved and indirectly for those other PDVSA and republic creditors watching from the sidelines. Next, we report on the status of the PDVSA Trust litigation in Florida,[1] by which a trust purportedly formed on PDVSA's behalf is suing various oil traders and individuals to recover billions of dollars in damages they allegedly caused PDVSA through a decade-long bid rigging and bribery scheme.

Even before last month's "fake" election in Venezuela, these past few weeks have seen a step-up in creditor efforts to pursue court judgments and judicial execution on the assets of PDVSA. Within days of obtaining an almost \$2 billion arbitral award against PDVSA and two subsidiaries, ConocoPhillips Co. initiated enforcement proceedings against various PDVSA operating assets in the Netherlands Antilles, and according to published reports, initially obtained (and then had partially lifted) various court-ordered attachments in the Dutch Antilles. In the United States, Crystallex should receive a decision by June 30, 2018, on whether PDVSA is the alter ego of the republic, possibly permitting it to enforce its \$1.4 billion judgment against PDVSA's assets in the United States, in particular its shares in PDV Holding Inc., through which PDVSA holds Citgo Petroleum Corp. Further, at least one commercial creditor of PDVSA has reportedly been the first to sue in New York seeking a judgment on a defaulted promissory note, perhaps foreshadowing similar actions by holders of defaulted PDVSA and republic bonds.

Outside of the courtrooms, the May 20 "election" confirmed that regime change in Venezuela is unlikely anytime soon, with the re-election of Nicolás Maduro as president for another six-year term. That perpetuation of the status quo in Caracas has already triggered additional sanctions from Washington, D.C., and there is some talk of additional actions that the Trump administration might pursue that go



Richard Cooper



Boaz Morag

beyond the recent attempts to cut PDVSA and the Venezuelan government off from critical suppliers and sources of funding.

Until recently, republic and PDVSA bondholders had little incentive (and some real disincentives) to litigate, but that may be changing for two reasons. First, the suspension on payments by both the republic and PDVSA on the bonds that started in November 2017 has continued, and there is little doubt today that aside from possible payments on PDVSA's secured 2020 bonds, the government and PDVSA are unlikely to make any payments on their bond indebtedness. Second, expropriation creditors may be on the verge of recovering, at least partially, on multibillion dollar awards and judgments, raising the concern of what will be left for the much larger pool of bondholders and other financial creditors.

Yet, each financial creditor group faces challenges in pursuing litigation apart from the costs. For all republic and PDVSA creditors who sue on bonds or notes, a U.S. court judgment would effectively cap the accrual of post-judgment interest at a rate substantially lower than the bond or note default rate at which the claims of a holder who does not litigate will accrue until payment. In addition, PDVSA bondholders must act through a trustee who will require an indemnity and possibly an upfront escrow before pursuing claims, and bondholders will have less say in how the litigation is pursued. Republic bondholders, on the other hand, are free to act individually, but as of now, there are no significant republic assets that are amenable to execution in the United States or elsewhere.

PDVSA promissory noteholders may be best-positioned to act quickly since they do not need to go through a trustee. There may be assets available in the U.S. capable of execution once such noteholders get a judgment, and they can use the litigation and enforcement efforts to seek to locate other PDVSA assets that may have value and/or obtain a settlement from PDVSA by seeking to disrupt PDVSA's business. But for now at least, the determination of whether to pursue litigation may come down to a different question: Is sitting on the sidelines as other creditors pursue remedies going to disadvantage you on a relative basis as others get closer to possibly realizing on assets they may find? If the answer to that question is that it will, then we would expect other creditors to enter the proverbial ring and take a swing (possibly seeking past due interest and not the full accelerated principal amount to address the negative post-judgment interest rate issue).

The Claims the Republic and PDVSA Are Facing

The following table identifies the creditors who have already obtained arbitral awards and/or court judgments and who are currently pursuing enforcement efforts against one or both of PDVSA and the republic:

Claimant	Award/Judgment Debtor	Award/Judgment Amount
ConocoPhillips	PDVSA (and two subsidiaries)	\$2 billion
Crystallex	Republic	\$1.4 billion
Rusoro Mining Ltd.	Republic	\$1.4 billion
Oi European Group	Republic	\$0.5 billion
		Total: \$5.3 billion

In addition, two Koch Industries entities, Koch Minerals Sarl and Koch Nitrogen International Sarl, have proceedings pending to confirm an award by the International Centre for Settlement of Investment Disputes in their favor against the republic in the total amount of approximately \$370 million.[2]

The proceedings that have reached the award issuance/enforcement stage are just the tip of the iceberg. The republic and PDVSA have at least \$191 billion in liabilities, consisting of approximately (a) \$76 billion of nonfinancial liabilities, including \$16 billion resulting from nationalizations and \$57 billion owed to suppliers and contractors, and (b) \$115 billion in financial debt — excluding interest accrued on missed payments — and forward oil sales, which include around \$36 billion in bonds issued by the republic and approximately \$28 billion issued by PDVSA.[3] Most of these creditors have yet to take legal action.

While Venezuela and PDVSA were paying bondholders, there was little incentive and practical difficulties for financial investors to sue. But, since November 2017, the country has systematically defaulted on most of its unsecured bonds, and few investors think that is likely to change.[4] According to recent reports, in October 2017 the republic paid only \$83 million of its \$465 million obligations, in November it paid \$25 million of its \$183 million obligations, and in December it paid \$23 million of its \$242 million obligations.[5] Venezuela has not only dropped its “bondholder-first” policy, it is beginning to pick and choose which creditors to pay. PDVSA is behaving similarly. PDVSA has strategically defaulted on certain bonds while prioritizing payments to the holders of its 2020 bonds, which are secured by 51 percent shares of Citgo Holdings Inc. Accordingly, as discussed below, bondholders may now determine that the costs in time and legal fees of pursuing litigation are worth incurring in order to be able to share in litigation enforcement recoveries that expropriation creditors may be on the verge of receiving.

Another group of creditors that could start to embrace litigation is trade creditors who hold promissory notes issued by PDVSA in lieu of payment. Reports estimate that these notes represent over \$2 billion of PDVSA’s debt: \$1.15 billion originally issued to 10 suppliers and \$800 million to \$1.5 billion issued to SNC-Lavalin and Schlumberger.[6] Suppliers who in the past may have been interested in maintaining a long-term relationship with PDVSA may now be more keen on suing or finding investors with a different risk appetite to whom to sell their notes at a discount. These notes may be particularly appealing to certain litigious funds, as the notes do not include indenture-type restrictions on taking action and therefore allow individual holders to more easily sue PDVSA to obtain a judgment for the full face amount of the note rather than the steeply discounted purchase price they paid.

On May 9, 2018, White Beech SNC LLC, a Delaware affiliate of a Canadian engineering and construction company, was the first noteholder to seek a court judgment in the United States as a result of a January 2018 missed payment by PDVSA. After acquiring the note, it sued PDVSA, as borrower, and PDVSA Petróleo SA, as guarantor, on a PDVSA Petróleo senior guaranteed note originally issued to SNC-Lavalin International Co. Inc. on Oct. 4, 2016, in the amount of approximately \$25 million plus interest.[7]

Although claims not yet reduced to an arbitral award or court judgment constitute the vast majority of potential litigation claims against the republic and Venezuela, \$5 billion of judgments in the enforcement stage out of a total of approximately \$193 billion are circling Venezuela’s most important properties and the largest source of its foreign exchange, which are also the assets that would be critical to any overall debt restructuring. The potential success of ConocoPhillips, Crystallex and other creditors may begin a race to the bottom for strategic assets outside of Venezuela. If this risk materializes, a cascade of litigation and enforcement actions against the republic and PDVSA is likely to follow. The next section provides our outlook of how the few currently active cases may tip the balance for Venezuela.

Status of Individual Proceedings

Key Highlights From Recent Collection Efforts Against Venezuela and PDVSA

ConocoPhillips

In the late 1990s, subsidiaries of ConocoPhillips Co. entered into two ventures with PDVSA to produce, transport and sell extra-heavy crude oil in Venezuela. Between 2001 and 2007, the Venezuelan government effectively nationalized the oil industry and expropriated Conoco's interests in the two projects. Following that expropriation, Conoco commenced two arbitrations: one against the government of Venezuela before an ICSID tribunal for claims under the Venezuela-Netherlands bilateral investment treaty, and the other against PDVSA and its subsidiaries before an International Chamber of Commerce tribunal for claims arising out of the contracts for the two ventures.

On April 24, 2018, the ICC tribunal issued an award for ConocoPhillips in the amount of nearly \$2 billion, plus post-award interest (the "ICC award").^[8] Whereas PDVSA is liable under the ICC award for the full \$2 billion under the respective oil project venture agreements, PDVSA Petróleo is jointly liable with PDVSA for approximately \$489 million, and Corpoguanipa SA is jointly liable for just under \$1.5 billion of the total \$2 billion.

The ICC tribunal found that certain actions taken by Venezuela constituted "discriminatory actions" under the terms of ConocoPhillips' agreements with PDVSA, for which PDVSA undertook to compensate ConocoPhillips. Though the tribunal found that PDVSA was required to indemnify Conoco for certain of the government's actions, the tribunal rejected ConocoPhillips's claim that PDVSA was itself liable for breaching the contracts by helping to implement the government's policies.

Upon receiving the ICC award, ConocoPhillips immediately commenced two enforcement proceedings. The first was filed in the U.S. District Court for the Southern District of New York and sought to obtain a U.S. court judgment confirming the arbitral award. This proceeding requires ConocoPhillips to serve PDVSA, and allows PDVSA at least 60 days to respond, which has not yet started to run. To date, ConocoPhillips has not sought any prejudgment attachments on PDVSA's U.S. assets, such as its shares in PDV Holding.

ConocoPhillips also initiated attachment proceedings in the Netherlands Antilles, where PDVSA Petróleo has facilities for processing and storing oil for export. According to press reports, ConocoPhillips received court orders on an ex parte and prejudgment basis attaching PDVSA Petróleo's interests in those facilities in an amount up to \$636 million.^[9] This figure reflects the \$489 million liability of PDVSA Petróleo under the ICC award plus 30 percent to cover accruing interest and costs as is the practice of the Netherlands Antilles courts.

The attachments ordered to date are "conservatory" in that they preclude PDVSA Petróleo from dealing in or dissipating its assets in the Antilles. Once ConocoPhillips obtains an Antilles court judgment under the New York Convention recognizing the ICC award, the attachment orders will become "executory" and ConocoPhillips will then be able to realize on the value of the attached assets.

PDVSA's oil exports are reportedly on the order of about \$1.8 billion a month,^[10] about 24 percent of which passes through facilities in the Antilles.^[11] These attachment orders have had the effect of freezing PDVSA's access to its oil reserves and blending facilities there; PDVSA has reportedly recalled its oil vessels from Dutch Caribbean waters and suspended any further shipments there to avoid asset seizures. It has been reported that the ultimate destination for Venezuelan heavy crude blended in the Antilles are PDVSA customers in China and India. Long-term and significant disruption of oil flows to Chinese customers would put the republic at risk of defaulting on its repayment obligations under

approximately \$19 billion of Chinese loans to Venezuela.[12]

It is fairly clear that PDVSA was caught flat-footed by ConocoPhillips and is now scrambling to deal with the blocking of inventory in the Antilles by redirecting vessels and considering alternative payment terms to keep oil assets coming to those facilities out of the name of PDVSA Petr leo. How effective PDVSA will be in devising a workaround that keeps its products flowing to its Chinese and Indian customers and keeps Citgo supplied is yet to be determined.

The interruption in PDVSA operations in the Antilles has also been a source of concern to Antilles government officials, as the facilities used by PDVSA entities also supply the oil products used on Cura ao, Bonaire and the other Antilles islands, whose residents faced a shortage of oil and gasoline as a result of the effects of the attachment orders. Consequently, on May 21, 2018, the courts in the Antilles modified the previously issued attachment orders to permit oil facilities on Cura ao and Bonaire to continue operating by directing PDVSA Petr leo to continue to deliver oil to the Antilles for the benefit of the local oil companies, with the proceeds of those deliveries being placed in escrow under a sharing arrangement between ConocoPhillips and PDVSA. The funds would be released once the ICC award is recognized in the Antilles, which could take two months or so depending on the extent to which PDVSA and PDVSA Petr leo resist recognition.[13] This shared escrow account also provides in theory a process by which PDVSA Petr leo could pay off its debt to ConocoPhillips over time.

On May 24, 2018, it was reported that an Aruba court lifted a previously entered attachment order upon the determination that the oil in question belonged to Citgo Petroleum and not to PDVSA or PDVSA Petr leo.[14] As a result of the partial lifting of the conservatory attachments originally entered, it is unclear how much of ConocoPhillips' \$489 million award against PDVSA Petr leo will be satisfied out of assets in the Antilles and how long that process will take even if ConocoPhillips were to obtain a prompt recognition of the ICC award and an Antilles court judgment.

In addition, within a matter of months, it is expected that ConocoPhillips will receive its award in its ICSID case against Venezuela. In that proceeding, the republic has already been found liable, but the award quantifying ConocoPhillips' damages has yet to be issued. This could create another multibillion dollar headache for the republic and, by extension, for PDVSA.

Crystallex

Even before it obtained its \$1.4 billion arbitral award against Venezuela, Crystallex commenced proceedings in Delaware in an effort to aid in enforcement of its forthcoming award. The company brought an action in the U.S. District Court for the District of Delaware against PDVSA under the Delaware Uniform Fraudulent Transfer Act, or DUFTA,[15] challenging a series of dividend payments from Citgo to its parent company and wholly owned PDVSA subsidiary, PDV Holding Inc., and ultimately to PDVSA, in addition to the pledge of 50.1 percent of Citgo shares as security for PDVSA's 2020 bond issuance and the pledge of the remainder of Citgo shares as security for a financing agreement with Rosneft. The net effect of these transactions was to transfer roughly \$3 billion from the U.S. back to Venezuela, and to potentially prevent judgment creditors from obtaining a priority lien on PDVSA's shares in Citgo. After obtaining its arbitral award, Crystallex obtained a court judgment confirming the award, then brought another proceeding in Delaware seeking to enforce the judgment against the republic by executing upon the assets of PDVSA on the grounds that PDVSA is the alter ego of the republic.[16]

On Nov. 24, 2017, Crystallex announced a \$441 million settlement with the government of Venezuela,

which was approved by the Ontario bankruptcy court overseeing Crystallex's bankruptcy proceeding. That settlement apparently required Venezuela to make an initial payment to Crystallex, which was not timely made.[17] Notwithstanding the settlement, Crystallex has maintained its enforcement actions against Venezuela and has not publicly asked the Delaware court to refrain from issuing any decisions.

On Jan. 3, 2018, the U.S. Court of Appeals for the Third Circuit ruled that as to the allegedly fraudulent dividend payments made to PDVSA, PDV Holding was a nondebtor transferor, and as such cannot be liable for a fraudulent transfer under DUFTA.[18] This decision impedes Crystallex's ability to recover its \$1.4 billion judgment against the republic from PDVSA or its U.S. affiliates, but it does leave Crystallex able to pursue a DUFTA claim against PDVSA if Crystallex can first demonstrate that PDVSA is Venezuela's "alter ego." Crystallex is also seeking the alter ego determination so that it can enforce its judgment against PDVSA's assets in the United States, namely its shares in PDV Holdings, and thereby acquire control of Citgo subject to the pledges and other transactions it is challenging under DUFTA.

The Delaware court has held hearings on Crystallex's alter ego argument and has stated that it will resolve any pending motions with regard to the alter ego question by June 30, 2018.[19] Given the significant ramifications to Venezuela and PDVSA from an alter ego finding by the Delaware court, one must consider the possibility that Venezuela will do something before the court rules to consummate its existing settlement (or enter into a new settlement) with Crystallex rather than risk an adverse ruling. On the other hand, if Venezuela were confident that the Delaware court would rule in its favor and reject an alter ego finding, that could provide one explanation why Venezuela is letting the case reach a decision rather than performing the settlement it already agreed to and thereby mooting the litigation.

ConocoPhillips also has DUFTA and alter ego claims on file in Delaware, which were commenced in anticipation of its yet-to-be-issued award in its bilateral investment treaty arbitration against Venezuela. To date, those proceedings have been stayed pending the resolution of the Crystallex proceedings.

Rusoro Mining Ltd.

On Aug. 22, 2016, Rusoro Mining Ltd., a Canadian gold miner, won a nearly \$1 billion ICSID award against the government of Venezuela for the expropriation of Rusoro's gold-mining assets, which totals almost \$1.4 billion with interest and costs.[20] In October 2016, Rusoro filed a petition to confirm the arbitration award in the U.S. District Court for the District of Columbia, which was granted on March 1, 2018.

On May 7, 2018, Rusoro filed a lawsuit against Venezuela and PDVSA in the U.S. District Court for the Southern District of Texas, seeking, much like Crystallex in Delaware, to enforce the judgment against the republic by attaching PDVSA's assets (including its shares in PDV Holdings) on alter ego grounds and arguing that PDVSA and its subsidiaries unlawfully transferred assets to repatriate their wealth and therefore shield those assets from creditors like Rusoro.[21] Because PDVSA has at least 60 days to respond to this complaint and the Delaware court is expected to rule by June 30, 2018, the outcome of Rusoro's suit could be influenced, if not practically foreclosed, were the Delaware court to rule in Crystallex's favor on the alter ego claim or if ConocoPhillips promptly obtains confirmation of its ICC award against PDVSA from the federal court in New York and then seeks to enforce it against PDVSA's shares in PDV Holdings, before Rusoro can litigate its alter ego claim to judgment in Texas.[22]

Oi European Group

On March 10, 2015, an ICSID tribunal issued a \$462 million award in favor of Oi European Group BV, or

OIEG, for claims arising out of the expropriation of OIEG's property in Venezuela. After Venezuela failed to pay the award, OIEG commenced proceedings in U.S. district courts in Washington, D.C., and New York seeking recognition and enforcement of the award. OIEG dismissed the New York action and is proceeding exclusively in Washington.

In the Washington action, Venezuela moved to dismiss OIEG's enforcement action and alternatively argued for a stay of the case pending the resolution of its ICSID annulment proceeding. The court granted the stay and ordered the parties to report developments in the annulment proceedings.[23] As a practical matter, the stay freezes OIEG enforcement efforts in the United States pending resolution of the annulment proceeding.

PDVSA Trust Litigation

In our **prior articles** on the PDVSA U.S. Litigation Trust suit, we noted that the trust's standing to assert PDVSA's claims was a contested and threshold issue the Florida court would need to resolve before reaching the merits of the trust's claims to recover damages on PDVSA's behalf. The court has scheduled the hearing on the defendants' challenge to the trust's standing to start on June 28, 2018, and continue on June 29 if necessary. This will be a critical initial hurdle for the trust to overcome, and it is unclear when the magistrate judge, who initially heard the standing issue, will render her report and recommendation on the standing issue, which is then subject to review by the district court judge.

The Florida court has also scheduled a deadline for the defendants to make their respective motions to dismiss on grounds other than standing. The defendants have informally raised a number of grounds under which they intend to challenge the sufficiency of the antitrust and Racketeer Influenced and Corrupt Organizations Act claims asserted by the trust, which are the claims that provide for the recovery of treble damages.

Finally, it does not appear that the mere filing of this suit has resulted in announced settlements with any of the named defendants (and certainly not any of the deep-pocketed defendants), suggesting that the trust will have to overcome many obstacles and spend significant amounts of time before it sees any payday from this litigation. On the other hand, if the trust can establish its standing and then survive the motions to dismiss with its claims largely intact, there is a chance that the prospect of extensive and invasive merits discovery could result in some settlements in due course. Conversely, this could be a drawn-out battle where the trust does not see any meaningful recovery for years, if at all.

Richard J. Cooper is a senior partner and Boaz S. Morag is counsel at Cleary Gottlieb Steen & Hamilton LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See generally, Richard J. Cooper and Boaz S. Morag, PDVSA US Litigation Trust: What Creditors Should Know About the Trust, Its Claims and Its Implications for Venezuela's Restructuring (Mar. 15, 2018), available at <https://client.clearygottlieb.com/52/691/uploads/pdvs-us-litigation-trust---what-creditors-should-know-about-thetrust--its-claims-and-its-implications-for-venezuela-s-restructuring.pdf>; Richard J. Cooper and Boaz S. Morag, Update on PDVSA US Litigation Trust v. Lukoil Pan Americas et al. (Apr. 10, 2018), available at <https://client.clearygottlieb.com/52/691/uploads/2018-04-10-update-on->

pdvsa-us-litigation-trust-v.-lukoil-pan-americas.pdf.

[2] Am. Compl., Koch Minerals SARL et al. v. Bolivarian Republic Of Venezuela, No. 17-02559 (D. D.C. May 24, 2018), ECF No. 7.

[3] See generally, Mark A. Walker and Alice Chong, Restructuring certain Debt of the Republic of Venezuela and PDVSA on the same Terms (Mar. 12, 2018), available at <http://www.millsteinandco.com/images/pdfs/RESTRUCTURING%20CERTAIN%20DEBT%20OF%20THE%20REPUBLIC%20OF%20VENEZUELA%20AND%20PDVSA%20ON%20THE%20SAME%20TERMS.pdf>.

[4] Robin Wigglesworth, Venezuela: what happens now after official default, Financial Times (Nov. 14, 2017), available at <https://www.ft.com/content/5f07e298-c326-11e7-a1d2-6786f39ef675>.

[5] Jonathan Wheatley, Venezuela stopped bond payments in September, Financial Times (Apr. 9, 2018), available at <https://www.ft.com/content/c291cb76-3c20-11e8-b9f9-de94fa33a81e>.

[6] Jonathan Wheatley, Venezuela National Oil Company Sued in New York, Financial Times (May 9, 2018), available at <https://www.ft.com/content/bb555002-53be-11e8-b3ee-41e0209208ec>.

[7] White Beech SNC LLC v. Petroleos De Venezuela SA, No. 18-04148 (S.D.N.Y. 2018).

[8] Ex. A (Final Award), Phillips Petroleum Co. Venezuela Ltd. v. Petróleos de Venezuela, No. 18-03716 (S.D.N.Y. Apr. 24, 2018), ECF No. 8-1, available at http://res.cloudinary.com/lbresearch/image/upload/v1525081480/conoco_award2_303118_1044.pdf.

[9] See Associated Press, Curacao Court Oks Conoco Seizing Venezuelan Oil Assets, The Seattle Times (May 13, 2018), available at <https://www.seattletimes.com/business/curacao-court-oks-conoco-seizing-venezuelan-oil-assets/>.

[10] Wheatley, *supra* note 7.

[11] See Marianna Parraga, Update 3-PDVSA halts Caribbean storage, shipping; diverts oil cargo: sources data, Reuters (May 8, 2018), available at <https://af.reuters.com/article/energyOilNews/idAFL1N1SF1F6>.

[12] See Corina Pons Exclusive: Venezuela faces heavy bill as grace period lapses on China loans — sources, Reuters (Apr. 27, 2018), available at <https://www.reuters.com/article/us-venezuela-china/exclusive-venezuela-faces-heavy-bill-as-grace-period-lapses-on-china-loans-sources-idUSKBN1HY2K0>.

[13] Argus Media, PdV to restore oil exports, pay ConocoPhillips debt, (May 22, 2018), available at <https://www2.argusmedia.com/en/news/1684952-pdv-to-restore-oil-exports-pay-conocophillips-debt>.

[14] Reuters, Aruba Court Lifts Conoco Seizures on PDVSA's Oil Cargoes, Reorg Research (May 23, 2018), available at <https://af.reuters.com/article/commoditiesNews/idAFL2N1SU2FF>.

[15] Del. Code Ann. tit. 6, §§ 1301-1312 (West 2017).

[16] For more detailed background on the various Crystallex proceedings and Crystallex's efforts to recover from PDVSA on an alter ego theory of liability, see Richard J. Cooper and Boaz S. Morag, Venezuela's Imminent Restructuring and the Role Alter Ego Claims May Play in this Chavismo Saga, SSRN (Nov. 9, 2017) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3068455.

[17] In April 2018, Crystallex appears to have recovered some portion of a \$43 million account balance funded by the Venezuelan Ministry of Defense years earlier to pay for repairs performed by Huntington Ingalls Inc. or its predecessors in Mississippi to two Venezuelan naval frigates. According to court records, the \$43 million account balance was released to Crystallex to be shared between it and Huntington Ingalls, but the split between them was not publicly disclosed. Unopposed Mot. to Vacate Order, Northrop Grumman Ship Sys.'s, Inc. v. The Ministry of Def. of the Republic of Venezuela, No. 02-00785 (S.D. Miss. Apr. 4, 2018), ECF No. 369, 369-1.

[18] For more detailed analysis of the Third Circuit decision, see Richard J. Cooper and Boaz S. Morag, Third Circuit Dismissed Crystallex's Fraudulent Transfer Claim But Potential Liability Remains for PDVSA (Jan. 5, 2018), available at <https://www.clearyogottlieb.com/~media/files/third-circuit-dismisses-crystallex-fraudulent-transfer-claim--cooper--morag-crystallex-dufta-3d-cir-article-1-5-2018.pdf>.

[19] Notice, Crystallex Int'l Corp. v. Venezuela, No. 17-00151 (D. Del. May 1, 2018), ECF No. 61.

[20] Pet. to Confirm Arbitration Award, Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela, No. 16-02020 (D. D.C. Oct. 10, 2016), ECF No. 1.

[21] Compl., Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela, No. 18-01458 (S.D. Tex. May 7, 2018), ECF No. 1.

[22] Whether ConocoPhillips can seek a prejudgment attachment of PDVSA assets in the United States before obtaining confirmation of its ICC award and a U.S court judgment would depend on whether either or both sets of the oil project agreements contain waivers of sovereign immunity that are broad enough under the U.S. Foreign Sovereign Immunities Act to include prejudgment attachments. See 28 U.S.C. § 1609(d) (requiring explicit waiver of immunity from attachment prior to judgment).

[23] Oi European Grp. BV v. Bolivarian Republic of Venezuela, No. 16-01533 (D. D.C. 2016).