

RE: Meeting Request -- PDVSA Ad Hoc

Jose Cardenas <JC@thecormacgroup.com>

To:Erikson, Dan P. EOP/NSC <Daniel.P.Erikson@nsc.eop.gov>

Dear Dan, thank you again for taking the time to meet this morning. Hope to stay in touch on this issue.

Horacio shared with me this morning an article that was recently published by REDD. A good summary of where we are today.

REDD Insight: Venezuela takes another big swing as it plays catch-up with Crystallex
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Venezuela's battle to keep control of US oil refiner Citgo Petroleum is turning into one for the ages. Torn politically and without US recognition of its actual government, the country has been fighting creditor Crystallex International since 2017 to try and keep the Canadian miner from foreclosing on Citgo's indirect parent and selling it to pay a billion-dollar judgment.

Armchair quarterbacks have criticized how Venezuela's US-recognized government and its lawyers have handled the case, arguing that the sovereign could have settled years ago and avoided far more trouble. But the sovereign's lawyers have instead swung for the fences in a bid to beat the whole case. For example, it spent years trying to show that state oil company PDVSA wasn't an alter-ego of the sovereign, or at least that it wasn't after the US-recognized interim government took over. The Venezuelans' lawyers hung a lot of hope on a Supreme Court appeal, only to have the justices decline to so much as hear it.

Now, Venezuela is making another big, ambitious play. Late on 26 April, lawyers for Venezuela filed to disqualify Special Master Robert Pincus from overseeing the Citgo auction. They argued that the court-appointed lawyer had improperly shifted from being a neutral agent of the court to being an advocate.

To understand the situation, one has to go back a year, when the US sanctions office, OFAC, released its bombshell decision to stop opposing the sale. That allowed the court to launch a sales process for shares of PDV Holding, the indirect owner of Citgo. The process is on track to close as soon as July.

Sanctions imposed in 2019 blocked US persons from buying, or maybe even bidding on, any Venezuelan state assets. Lawyers joked about how an indefinite block on the asset sale could give Crystallex grounds for a new international arbitration case, this time against Washington.

But that never became necessary, as OFAC abruptly changed course, saying it would take a "favorable" view of any eventual license needed to complete the auction. OFAC told Pincus of that decision on 7 April 2023, and three weeks later, he released the agency's letter to the public in a court filing.

Court documents show that lawyers for PDV Holding were suspicious. They had requested permission to attend a January 2023 meeting between Pincus and US agencies, only to be denied. They tried to disqualify Pincus, but the judge overseeing the case said there was no evidence that the special master had departed from his proper role. They asked if there was any advocacy at that

meeting, and were told there wasn't. They ended up filing requests for communications between the special master and the government, under the US Freedom of Information Act.

Even then, the key document, Pincus's slide presentation from the 12 January 2023 meeting, was repeatedly withheld as being exempt from disclosure. PDV Holding sued, and when Pincus failed to defend the exemption, the Venezuelans received the slides on 4 April of this year.

The slides are mostly clear explanations of the state of play in the Crystallex-Venezuela litigation. But Venezuela and its state-owned enterprises keyed in on one section, where Pincus told OFAC how the agency could "ensure a successful sale process." He encouraged the agency to clarify its willingness to let a sale go ahead, and what limits it might place on one. Under "Potential paths forward," he laid out three options: a general license permitting the sale, a combination of licenses and guidance "providing assurances of a positive OFAC licensing policy," or for the government to "encourage a negotiated settlement."

Any of these would have been a change of sanctions policy from the "maximum pressure" rules imposed by the Trump Administration, which forbade the sale of any Venezuelan assets. And to read the Venezuelan parties' latest court filings, it turned Pincus from a neutral actor into an advocate. One who should be disqualified from the case.

Pincus has yet to respond in court. And more importantly, the Venezuelans don't contemplate next steps if they prevail. Should the sale process start over? Or could it keep going under new management? And what should happen to the OFAC guidance that followed Pincus's alleged advocacy? Venezuela would probably like to see it reversed, but that would be extraordinary even by the standards of this weird case.

But sometimes a motion doesn't need to prevail to have a desired effect. Officials of the US-recognized government have said in the past that the loss of Citgo under their watch would give Maduro electoral ammunition. If the Delaware court takes time to consider the motion and allows the PDV Holding auction to get delayed by even a couple of weeks, the sales hearing would end up sometime after Venezuela's 28 July presidential election.

If past results are any indication of future performance, this motion is a long shot. Venezuela has swung and missed again and again. But by repeatedly hitting long foul balls, it has stayed up at bat for longer than anyone thought possible. Let's see if this latest effort pushes the sale into a new presidential term, with all the possible changes that could bring.

by Steven Bodzin

Best Regards,

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