

JUDGE NATHAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

12 CV 7098

In the Matter of Arbitration between

CONOCOPHILLIPS PETROZUATA B.V.,

Petitioner,

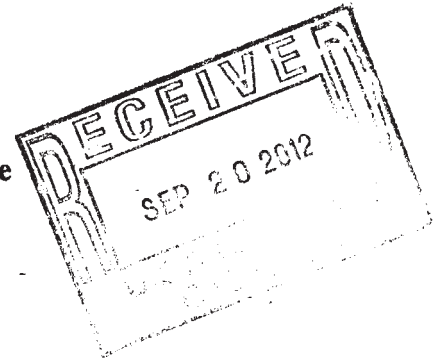
v.

PETRÓLEOS DE VENEZUELA, S.A.

Respondent.

Case No.:

ECF Case



**VERIFIED PETITION TO CONFIRM ARBITRATION AWARD**

Petitioner ConocoPhillips Petrozuata B.V. (“Petitioner” or “CPZ”), by Wachtell, Lipton, Rosen & Katz and Freshfields Bruckhaus Deringer US LLP, their attorneys, alleges as follows:

**NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

1. Petitioner brings this proceeding to confirm an arbitration award as to it (the “Final Award”) and to have judgment entered thereon, pursuant to Section 207 of the Federal Arbitration Act, 9 U.S.C. § 207. The Final Award, dated September 17, 2012, is attached as Exhibit A.

**PARTIES**

2. Petitioner is a company incorporated under the laws of The Kingdom of The Netherlands.

3. Respondent Petróleos de Venezuela, S.A. (“PdVSA”) is the national oil company of the Bolivarian Republic of Venezuela. As a first-tier, wholly owned and controlled

agency or instrumentality of the Bolivarian Republic of Venezuela, PdVSA is deemed a foreign state under the Foreign Sovereign Immunities Act. 28 U.S.C. § 1603(a)-(b).

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction to confirm an arbitral award against a foreign sovereign pursuant to 28 U.S.C. § 1330(a) in that this is an action under 28 U.S.C. § 1605(a)(6) to confirm an arbitration award that is governed by a treaty providing for the recognition and enforcement of arbitral awards, to wit, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the “New York Convention”).

5. This Court also has subject matter jurisdiction pursuant to Section 203 of the Federal Arbitration Act, 9 U.S.C. § 203, to confirm arbitral awards governed by said New York Convention.

6. This Court has personal jurisdiction over PdVSA pursuant to 28 U.S.C. § 1330(b).

7. Venue is proper in this District pursuant to 9 U.S.C. § 204 and 28 U.S.C. § 1391(f), as the Final Award was rendered pursuant to an arbitration that took place in the Southern District of New York.

### **FACTS**

#### **The Parties’ agreement**

8. On November 10, 1995, Conoco Orinoco Inc. (Petitioner CPZ’s predecessor-in-interest), and Maraven, S.A. (a wholly owned subsidiary of PdVSA and predecessor-in-interest to PdVSA Petróleo, S.A.) entered into the Petrozuata Association Agreement, which was to govern a joint venture between the parties known as the Petrozuata Project. Conoco Orinoco Inc. (and subsequently Petitioner CPZ) held a 50.1 percent interest in the Petrozuata Project, with Maraven, S.A. (and subsequently PDVSA Petróleo, S.A.) holding the remaining 49.9 percent.

9. The purpose of the Petrozuata Project was to extract, transport, upgrade and market extra-heavy crude oil from the Zuata area of the so-called “Orinoco Belt,” a region of Venezuela in which exist massive reserves of “extra heavy crude oil” requiring extensive technological and capital resources in order to develop, extract, and render marketable.

10. The Petrozuata Project was governed by the Petrozuata Association Agreement, as well as the Petrozuata Side Letter, which was likewise executed on November 10, 1995.

11. By the express terms of the Petrozuata Side Letter, PdVSA’s subsidiary, Maraven, S.A., covenanted that if Venezuela’s overall oil production was curtailed, Maraven S.A. would accept cutbacks to its own separate crude production such that, at a minimum, the Petrozuata Project would not be affected and would continue production at full capacity. This provision applied to production curtailments on the Venezuelan oil industry, including curtailments due to Venezuela’s international obligations as a member of the Organization of the Petroleum Exporting Countries (“OPEC”).

12. Contemporaneous with execution of the Petrozuata Association Agreement and the Petrozuata Side Letter, PdVSA executed the Petrozuata Guarantee in favor of Conoco Orinoco Inc., Petitioner CPZ’s predecessor-in-interest. In the Petrozuata Guarantee, PdVSA agreed to guarantee all of its subsidiary’s obligations under the Petrozuata Association Agreement, as well as under all “ancillary agreements” such as the Petrozuata Side Letter.

#### **The OPEC curtailments**

13. On October 27, 2006, PdVSA President Rafael Ramírez, who was likewise Energy Minister of Venezuela, announced that effective November 1, 2006 production at the Petrozuata Project would be reduced. This production cut resulted from Venezuela’s implementation of OPEC curtailments but was borne entirely by the projects in the Orinoco Belt. Peti-

tioner protested this production curtailment as violating the contractual obligations of PdVSA's subsidiary. The implementation of these curtailments also violated PdVSA's obligations as guarantor.

14. Notwithstanding the terms of the Petrozuata Side Letter, and the Petrozuata Guarantee, PdVSA and its subsidiary refused to comply with their contractual obligations and the OPEC curtailments substantially impacted the Petrozuata Project and resulted in significant lost revenues.

15. Despite the protections against OPEC curtailments that Petitioner bargained for and which were enshrined in the Petrozuata Side Letter and the Petrozuata Guarantee, production curtailments continued to be imposed on the Petrozuata Project through May 2007, notwithstanding ongoing protests by Petitioner or its affiliates.

**The Petrozuata Guarantee calls for arbitration of disputes.**

16. The Petrozuata Guarantee contains a dispute resolution clause providing for arbitration before the International Chamber of Commerce ("ICC").

17. Section 4 of the Petrozuata Guarantee (attached as Ex. B) states:

All disputes arising in connection with this Guaranty, or the breach, termination, interpretation, enforceability or validity thereof, shall be finally settled by binding arbitration in New York, New York, USA, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with said Rules.<sup>1</sup>

18. The Petrozuata Guarantee is a contract evidencing a transaction involving commerce within the meaning of the Federal Arbitration Act.

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<sup>1</sup> The provisions quoted in paragraphs 17 and 32 of this Petition are from the English translations of the relevant agreement, as submitted in the arbitration.

**Arbitration before the ICC**

19. On December 30, 2009, Petitioner filed a Request for Arbitration before the ICC. Respondent answered the Request on April 15, 2010. As of July 1, 2010, an arbitral tribunal was constituted consisting of three arbitrators (the “Arbitral Tribunal”).

20. The Chair of the Arbitral Tribunal was Professor Pierre Tercier. The two party-nominated arbitrators were Dr. Horacio Alberto Grigera Naón and Dr. Ahmed Sadek El-Kosheri.

21. Pursuant to the ICC Rules, the parties executed the Terms of Reference on October 26, 2010, which outlined the issues to be determined by the Arbitral Tribunal.

22. Petitioner submitted the Statement of Claim on December 10, 2010.

23. Respondent submitted the Statement of Defense on May 10, 2011.

24. Petitioner submitted the Reply on August 10, 2011.

25. Respondent submitted the Rejoinder on November 10, 2011.

26. The arbitral hearing was held in New York, New York between January 10-13, 2012.

27. The arbitration as to Petitioner’s claim against PdVSA was consolidated with and considered by the Arbitral Tribunal along with the claim of a different Claimant (Phillips Petroleum Company Venezuela Limited) against PdVSA. The Final Award was not in favor of such other Claimant. This Petition seeks confirmation of the Final Award only insofar as it affects the claim brought by this Petitioner.

**The Final Award**

28. On September 17, 2012, the Arbitral Tribunal issued its unanimous Final Award which was received by the parties on September 19, 2012.

29. The Final Award was in writing and states the reasons upon which it was based.

30. In the Final Award, the Arbitral Tribunal made determinations as to Petitioner's claim including that:

- a. Respondent shall pay to Petitioner \$66,876,773.81, plus interest of 10.55% compounded on a quarterly basis as from the date of receipt of the Final Award and until date of payment.
- b. The Final Award is net of taxes and directs that any taxes applying under Venezuelan law to the payment shall be borne by Respondent.
- c. The arbitration costs shall be borne on an equal basis by each side.
- d. Each party shall bear its own legal costs.

31. The parties agreed that the decision of the arbitrators would be final and binding by agreeing to arbitration under the ICC Rules. Article 28(6) of the ICC Rules states:

Every Award shall be binding on the parties. By submitting the dispute to arbitration under these Rules, the parties undertake to carry out any Award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

32. In addition, the Petrozuata Guarantee states: "This agreement to arbitrate and any resulting award shall be enforceable in any court with competent jurisdiction." See Ex. B, § 4.

33. The Final Award arises from a commercial relationship that is not entirely between United States citizens, and it is thus governed by the New York Convention, as implemented by the Federal Arbitration Act, 9 U.S.C. §§ 201 *et seq.* 9 U.S.C. § 202.

34. This Court has jurisdiction to confirm the Final Award against PdVSA.

35. This petition is being filed within three years after the Final Award was made, as required by 9 U.S.C. § 207.

**Claim for Relief**  
**Confirmation of the Final Award**

36. The Federal Arbitration Act provides that the court “shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.” 9 U.S.C. § 207.

37. None of the grounds available for refusal or deferral of recognition or enforcement of an award is applicable.

38. The Final Award should be confirmed as to Petitioner.

WHEREFORE, Petitioner respectfully requests a judgment in its favor:

- A. confirming the Final Award as to Petitioner;
- B. awarding judgment pursuant to the Final Award in favor of Petitioner ConocoPhillips Petrozuata B.V. and against Respondent Petróleos de Venezuela, S.A. in the amount of \$66,876,773.81, plus interest of 10.55% compounded on a quarterly basis as from September 19, 2012, the date of receipt of the Final Award and until date of payment; and
- C. granting such other and further relief as the Court deems just and proper under the circumstances, together with the costs and expenses of this proceeding.

Dated: September 20, 2012

WACHTELT, LIPTON, ROSEN & KATZ



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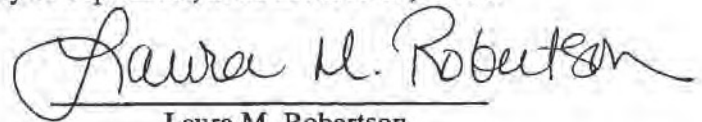
**VERIFICATION**

I, Laura M. Robertson, an attorney duly admitted to practice law in the State of Texas, declare that:

1. I hold the position of Managing Counsel for ConocoPhillips.
2. As to those portions of the foregoing Petition to Confirm Arbitration Award (the "Petition") that are within my personal knowledge, I hereby verify them to be true and correct, and the remainder of the Petition is true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Executed this 19 day of September, 2012 in Houston, Texas.



Laura M. Robertson

Sworn to before me this

19<sup>th</sup> day of September, 2012

  
Notary Public

My Commission Expires:

