

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SAINT-GOBAIN PERFORMANCE
PLASTICS EUROPE,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF
VENEZUELA; PETRÓLEOS DE
VENEZUELA, S.A.,

Defendants.

Civil Action No.: _____

**COMPLAINT TO REGISTER AND ENFORCE ICSID ARBITRATION AWARD AS A
FOREIGN JUDGMENT**

Saint-Gobain Performance Plastics Europe (“Plaintiff” or “Saint-Gobain”), by and through its undersigned counsel, for its complaint (the “Complaint”) hereby petitions this Court for an order pursuant to 22 U.S.C. § 1650a and 28 U.S.C. § 1738 registering as a foreign judgment an arbitral award (“the Award”), dated November 3, 2017 (Yanos Decl., Ex. 1),¹ and issued under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270 (the “ICSID Convention” or the “Convention”) in favor of Saint-Gobain and against Defendant the Bolivarian Republic of Venezuela (“Venezuela”), in a dispute arising from Venezuela’s expropriation of Saint-Gobain’s investment. Pursuant to 22 U.C.S. § 1650a, pecuniary obligations created by awards issued pursuant to the ICSID Convention “shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several

¹ As used in this Complaint, “Yanos Decl.” refers to the December __, 2018, Declaration of Alexander A. Yanos in Support of Saint-Gobain’s Complaint to Register and Enforce ICSID Arbitration Award as a Foreign Judgment.

States,” while “[t]he Federal Arbitration Act (9 U.S.C. 1 et seq.) shall not apply to enforcement of awards rendered pursuant to the convention.”

Therefore, 28 U.S.C. § 1738 requires that the Award be registered as a foreign judgment and granted full faith and credit in this district. Because this action involves a foreign sovereign, the registration of the Award as a foreign judgment must proceed following service pursuant to the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1602 *et seq.*

In support of its Complaint, Saint-Gobain further alleges as follows:

Parties, Jurisdiction, and Venue

1. Plaintiff Saint-Gobain is a corporation organized and existing under the laws of France. It is an indirect and wholly-owned subsidiary of Compagnie de Saint-Gobain and a member of the Compagnie de Saint-Gobain group of companies.

2. Defendant Venezuela is a foreign state within the meaning of the FSIA.

3. Defendant Petróleos de Venezuela S.A. (“PDVSA”) is, as this Court has already found, an alter ego of Venezuela. *See Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*, 1:17-mc-00151, 2018 U.S. Dist. LEXIS 138978, *71 (D. Del. Aug. 9, 2018) (finding that “PDVSA may be deemed the alter ego of Venezuela . . .”). PDVSA is an instrumentality of Venezuela within the meaning of 28 U.S.C. § 1603(b) and does business in Delaware through its wholly owned subsidiary and a Delaware corporation, PDV Holding, Inc. (“PDVH”). *Id.*

4. The Court has jurisdiction over Defendants pursuant to 28 U.S.C. §§ 1330(a) and 1605(a) and 22 U.S.C. § 1650a. In particular, Venezuela waived its immunity from the jurisdiction of this Court under 28 U.S.C. § 1605(a)(1) by becoming a party to the ICSID Convention and to the Treaty. Venezuela is likewise subject to the jurisdiction of this Court pursuant to 28 U.S.C. § 1605(a)(6)(B) because this action seeks confirmation of an award governed by a treaty in force in the United States calling for the recognition and enforcement of

arbitral awards, namely the ICSID Convention. In addition, the Court has subject matter jurisdiction pursuant to 22 U.S.C. § 1650a because this Complaint seeks to enforce a pecuniary obligation created by an arbitral award rendered under the ICSID Convention.

5. Venue in this District is proper under 28 U.S.C. § 1391(f)(3) because Defendant PDVSA is an instrumentality of Venezuela that does business in Delaware through PDVH. Venue is also proper under 28 U.S.C. § 1738 because the final judgment of a court of general jurisdiction of one of the several States is entitled to “full faith and credit” in “every court within the United States,” while 22 U.C.S. § 1650a requires that an ICSID award must be “given the same full faith and credit” as “a final judgment of a court of general jurisdiction of one of the several States.”

6. The Court may exercise personal jurisdiction over Venezuela and its alter ego PDVSA pursuant to 28 U.S.C. § 1330(b).

The ICSID Convention and the Treaty

7. The ICSID Convention establishes a framework for the arbitration of investment disputes between “Contracting States” and nationals of other “Contracting States.” *See Yanos Decl., Ex. 2* (the ICSID Convention). The Convention also establishes the International Centre for Settlement of Investment Disputes (“ICSID”), a part of the World Bank, to administer arbitral proceedings governed by the ICSID Convention, including the arbitration yielding the Award.

8. Article 25(1) of the ICSID Convention gives tribunals acting within the ICSID framework jurisdiction over “any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute agree in writing to submit to the Centre.”

9. The ICSID Convention also obliges Contracting States to enforce ICSID awards. Article 54(1) of the Convention provides that:

Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

10. The United States has been a Contracting State to the ICSID Convention since 1966. The United States' obligations under Article 54(1) of the Convention are implemented in U.S. law at 28 U.S.C. § 1650a(a), which in relevant part states:

An award of an arbitral tribunal rendered pursuant to chapter IV of the Convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.

11. Awards rendered under the ICSID Convention are not subject to the same review under the Federal Arbitration Act as other international arbitration awards and do not require confirmation in the manner prescribed by the Federal Arbitration Act. This is established clearly at 28 U.S.C. § 1650a, which states “[t]he Federal Arbitration Act (9 U.S.C. 1 *et seq.*) shall not apply to enforcement of awards rendered pursuant to the Convention.” *See also Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 102 (2d Cir. 2017) (“Member states’ courts are . . . not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award; under the Convention’s terms, they may do no more than examine the judgment’s authenticity and enforce the obligations imposed by the award.”).

12. Instead, and by design, review of ICSID awards is encapsulated within the procedural framework of the ICSID Convention itself. ICSID Awards may be annulled or set aside only by specially-constituted *ad hoc* committees appointed by the Chairman of the

Administrative Council of ICSID (*ex officio* the President of the World Bank) on specific grounds enumerated in the ICSID Convention. *See* Yanos Decl., Ex. 2 Arts. 52-53.

13. The ICSID Convention entered into force for Venezuela on June 1, 1995. Venezuela formally withdrew from the ICSID Convention on January 25, 2012, with effect from July 25, 2012. Venezuela’s withdrawal from the ICSID Convention has no bearing on this case. Under Article 72 of the ICSID Convention, a State’s notice of withdrawal from the Convention “shall not affect the rights or obligations under th[e] Convention of that State . . . arising out of consent to the jurisdiction of [ICSID] given . . . before such notice was received.” *Id.*, Ex. 2.

14. Here, in Article 8 of the France-Venezuela Bilateral Investment Treaty dated April 30, 2004, France and Venezuela consented to submit disputes with one another’s investors arising under the Treaty to ICSID. Saint-Gobain accepted Venezuela’s offer to arbitrate Treaty disputes by notices of dispute sent to Venezuela July 4, 2011 and January 17, 2012. *See id.*, Ex. 1 ¶¶ 249, 253. Therefore, both parties consented to arbitrate this dispute before Venezuela’s denunciation of the ICSID Convention.

15. Indeed, Venezuela has never disputed the Tribunal’s jurisdiction over Saint-Gobain’s expropriation claims under the Treaty or the ICSID Convention.

The Arbitration and the Award

16. On March 29, 2011, Venezuelan President Hugo Chávez decreed the expropriation of Saint-Gobain’s 99.99% interest in NorPro Venezuela C.A., a company which manufactured ceramic proppants used during fracking to keep induced hydraulic fractures “propped” open. *See* Yanos Decl., Ex. 1 ¶¶ 245-47.

17. Saint-Gobain filed a request for ICSID arbitration against Venezuela on May 25, 2012. In its Request, Saint-Gobain sought compensation for Venezuela’s unlawful expropriation of its investment in Venezuela. *Id.* ¶¶ 5, 266.

18. Saint-Gobain's request for arbitration was registered as ICSID Case Number ARB/12/13 on June 15, 2012.

19. Consistent with the ICSID Convention and Arbitration Rules, a three-member Tribunal was constituted for the case. Three eminent international lawyers constituted the Tribunal: Judge Charles N. Brower, a U.S. citizen and former judge of the Iran-U.S. Claims Tribunal, appointed by Saint-Gobain; Mr. Gabriel Bottini, an Argentine citizen and former Director of International Affairs and Disputes of the Treasury-Attorney General's Office of Argentina, appointed by Venezuela; and Prof. Dr. Klaus Sachs, a German citizen and noted international arbitrator, jointly selected by the parties as President of the Tribunal.

20. Following the exchange of voluminous written submissions, the Tribunal held a four-day oral hearing at the World Bank from February 2 to 5, 2015.

21. On December 30, 2016, the Tribunal rendered a Decision on Liability and the Principles of Quantum ("Decision on Liability"). *See* Yanos Decl., Ex. 3 (Decision on Liability). In the Decision on Liability, the Tribunal found that Venezuela had breached Article 5 of the Treaty by expropriating Saint-Gobain's investment without paying compensation. *See id.* ¶ 908.

22. The Decision on Liability also discussed, at length, the principles upon which the Tribunal would assess the quantum of compensation to be paid to Saint-Gobain. *See id.* ¶¶ 566-905. The Tribunal then gave the parties two months to attempt to reach agreement on the amount of compensation to be paid to Saint-Gobain, failing which it would hear further submissions on outstanding quantum issues. *See id.* ¶ 907.

23. Venezuela and Saint-Gobain were not able to reach agreement on the quantum of compensation to be paid. The parties accordingly submitted further extensive pleadings and

expert testimony on the appropriate quantum of compensation for Venezuela's unlawful expropriation of Saint-Gobain's investment.

24. Subsequently, on November 3, 2017, the Tribunal issued its Award pursuant to Chapter IV (Articles 48-49) of the ICSID Convention. The Tribunal ordered Venezuela to pay Saint-Gobain compensation as follows:

- (i) US\$ 29.6 million as the principal amount of compensation for the expropriation of Saint-Gobain's investment in Venezuela;
- (ii) US\$ 4.8 million as pre-award interest from May 15, 2010 through March 31, 2017, with further pre-award interest through November 3, 2017 to be calculated at a rate equal to 2% over the average 6-month U.S. Treasury bill rate, compounded annually;
- (iii) Post-award interest on the principal amount of compensation at a rate equal to 2% over the average 6-month U.S. Treasury bill rate, compounded annually;
- (iv) The costs of the arbitration, in the amount of US\$ 1,303.189.99;
- (v) Two-thirds of Saint-Gobain's legal fees and expenses in the amount of US\$ 4,634,532.05; and
- (vi) Post-award interest on costs at a rate equal to 2% over the average 6-month U.S. Treasury bill rate, compounded annually.

See Yanos Decl., Ex. 1 ¶ 72.

25. A detailed calculation of amounts payable under the Award (US\$ 42,342,379.31 as of December 7, 2018) is attached. *See Yanos Decl., Ex. 4.*

26. The Award is binding on Venezuela and its alter ego PDVSA. Pursuant to Article 53 of the ICSID Convention, Venezuela and its alter ego PDVSA are obligated to "abide by and

comply with the terms of the award” unless and “except to the extent that enforcement shall have been stayed” by an *ad hoc* committee constituted under Article 52 of the ICSID Convention.

27. The Award has not been stayed. To the contrary, an ICSID *ad hoc* committee constituted on June 7, 2018 at Venezuela’s request has expressly *refused* to stay the Award.

28. In a Procedural Order issued on October 24, 2018 (the “Procedural Order”), the *ad hoc* committee found “no circumstances that require the stay of enforcement of the Award.” *See Yanos Decl., Ex. 5* (Procedural Order, dated Oct. 24, 2018) ¶ 25. The *ad hoc* committee also announced the suspension of its proceedings due to Venezuela’s repeated failure to pay mandatory advances on costs. *See id.* ¶¶ 27-30.

29. Neither Venezuela nor its alter ego PDVSA have paid any of the amounts due under the Award.

COUNT ONE

For Registration of the Award as a Foreign Judgment Pursuant to 22 U.S.C. § 1650a

30. Plaintiff Saint-Gobain restates and reincorporates all of the foregoing paragraphs of this Complaint as though fully set forth herein.

31. The Award was rendered by an arbitral tribunal pursuant to the ICSID Convention.

32. Article 54(1) of the ICSID Convention requires Contracting States to “recognize an award rendered pursuant to [the ICSID] Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.”

33. Article 54(1) is incorporated into U.S. law by 22 U.S.C. § 1650a, which requires that the Award “shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.”

34. Finally, 28 U.S.C. § 1738 requires this Court to accord full faith and credit to the judgments of the several states.

35. For all these reasons, the Court should register the Award as a Foreign Judgment.

COUNT TWO

For Enforcement of the Award Pursuant to 22 U.S.C. § 1650a

36. Plaintiff Saint-Gobain restates and reincorporates all of the foregoing paragraphs of this Complaint as though fully set forth herein.

37. 22 U.S.C. § 1650a, requires that “[t]he pecuniary obligations imposed by” the Award “shall be enforced as if the award were a final judgment of a court of general jurisdiction of one of the several States.”

38. For all these reasons, the Court should enforce the pecuniary obligations of the Award.

PRAYER FOR RELIEF

WHEREFORE, Saint-Gobain respectfully requests that the Award be registered in this Court and that such Judgment be made a final personal judgment of this Court in favor of Saint-Gobain and against Venezuela and its alter ego, PDVSA, and directing as follows:

- A. Ordering Venezuela and PDVSA to pay to Saint-Gobain an amount equal to the pecuniary obligations of the Award (calculated at US\$ 42,342,379.31 as of December 7, 2018), and comprising:
 - a. US\$ 29.6 million as the principal amount of compensation for the expropriation of Saint-Gobain’s investment in Venezuela; plus US\$ 4.8

million as pre-award interest from May 15, 2010 through March 31, 2017, with further pre-award interest through November 3, 2017 in the amount of US\$ 542,189.80, and post-award interest rate of 2% over the average 6-month U.S. Treasury bill rate, compounded annually (equal to US\$ 1,218,115.14 as of December 7, 2018);

- b. US\$ 1,303,189.99 as the costs of the arbitration; and US\$ 4,634,532.05 representing two-thirds of Saint-Gobain's legal fees and expenses, both subject to post-award interest through the date of satisfaction of the Award at a rate of 2% over the average 6-month U.S. Treasury bill rate, compounded annually (equal to US\$ 244,352.32 as of December 7, 2018); and

- B. Granting such other and further relief against Venezuela and PDVSA as the Court may deem just and proper.

Dated: December 12, 2018

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Saint-Gobain Performance Plastics Europe

(b) County of Residence of First Listed Plaintiff Courbevoie, France
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Laura Davis Jones (#2436), Peter J. Keane (#5503), Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Fl., Wilmington, DE 19801 (302-652-4100)

DEFENDANTS

Bolivarian Republic of Venezuela; Petroleos de Venezuela, S.A.

County of Residence of First Listed Defendant Venezuela
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input checked="" type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

22 U.S.C. 1650a, 28 U.S.C. 1738

Brief description of cause:

Action to register and enforce ICSID arbitration award as a foreign judgment (22 U.S.C. 1650a, 28 U.S.C. 1738)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 42,342,379.31

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/12/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Laura Davis Jones

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____