

Guatemalan arbitrator faces trio of challenges from Venezuela

Tom Jones

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Venezuela has challenged Guatemalan arbitrator Álvaro Castellanos Howell in three active annulment proceedings the state faces at the International Centre for Settlement of Investment Disputes (ICSID) because of his alleged criticism of the state's judicial system.

The most recent challenge, registered on the ICSID website on 8 January, was filed in connection with an application by Barbadian trust manager Blue Bank International & Trusts to annul an ICSID award rejecting its US\$400 million claim against the state.

Venezuela filed its first two challenges in December in proceedings to annul awards in favour of Ohio-based bottlemaker Owens-Illinois and Swiss airport services company Flughafen AG.

All three challenges relate to an article penned by Castellanos Howell for Guatemalan daily newspaper *El Periodico* about proposed reforms to article 209 of the Guatemalan constitution (an English translation of the article is available [here](#)).

During the course of the article, Castellanos Howell noted suggestions by some that the reforms could lead to “a scenario like Venezuela” – “in other words, a scenario where there is no judicial independence from other branches of government.”

The Guatemalan arbitrator rejected the view by the article's opponents that the reforms would lead to “imminent Venezuelisation” of the country, but warned of the risk of “judicial dictatorship,” with an extreme right or left wing government exerting “forceful submission” to co-opt the other arms of government.

In all three cases, Venezuela is represented by a team from Guglielmino & Asociados in Buenos Aires. The firm argues that the article's criticisms of Venezuela, and its judicial system in particular, make it inappropriate for Castellanos Howell to consider the state's annulment applications.

The state also notes that the Guatemalan arbitrator has been appointed by ICSID in five annulment cases involving Venezuela over the last three years – which it says exceeds the acceptable rate of repeat appointments.

Castellanos Howell has not been challenged in the other two Venezuelan annulment cases pending at ICSID, where the state is relying on different counsel. In those two cases, filed by Highbury International and Venoklim, the state has instructed teams from Foley Hoag and [Curtis, Mallet-Prevost, Colt & Mosle LLP](#) respectively.

Counsel to the claimants are London-based public international law boutique Volterra Fietta for Owens Illinois Santiago-based [Bofill Mir & Alvarez Jana Abogados](#) for Flughafen and B Cremades y Asociados for Blue Bank. They did not comment on the latest challenges.

A tribunal chaired by Spain's Juan Fernández-Armesto awarded US\$455 million to Owens-Illinois's Dutch subsidiary, OI European Group, in 2015 following the Venezuelan government's unlawful expropriation of its majority interest in two manufacturing plants. Venezuela filed its annulment application a couple months later. Alongside Castellanos Howell, Italy's Piero Bernadini and Irish-US arbitrator David Pawlak are hearing the application.

Flughafen and its Chilean partner, Gestión e Ingeniería IDC, were also successful before a tribunal led by Fernández-Armesto – securing a US\$19 million award for the cancellation of a contract to build an airport in the Caribbean sea, the value of which has risen to US\$34 million with interest.

The ad hoc annulment committee is composed of three Latin Americans, with Colombia's Carlos Urrutia Valenzuela and Peru's Shoshana Zusman Tinman sitting alongside Castellanos Howell. It has already ordered Venezuela to post an “unconditional and irrevocable” bank guarantee for the full amount of the award plus interest and costs while the state's annulment application is heard.

Venezuela was more successful in the Blue Bank arbitration, in which a tribunal chaired by Sweden's Christer Söderlund ruled in April 2017 that it lacked personal jurisdiction over the claim as Blue Bank had exercised “extremely limited” powers over the trust assets at issue.

The case is famous for being the first in which ICSID upheld a challenge against an arbitrator, after Venezuela successfully [challenged](#) the claimant's original appointee to the tribunal, Spanish arbitrator and Baker McKenzie LLP partner José Maria Alonso, on the grounds that Baker & McKenzie's New York and Caracas offices were acting as claimant's counsel in another ICSID case against Venezuela – brought by Dutch coffee investor Longreef.

In another recent development at ICSID, Venezuela filed a request for rectification of a US\$409 million award in favour of Kansas-based Koch Minerals – owned by prominent US businessmen and Republican Party donors Charles and David Koch.

A tribunal chaired by the UK's VV Veeder QC issued the award in October, holding the state liable for the expropriation of local company Fertinitro. Although Koch Industries declined to make the award public at the time, it has since become public as a result of enforcement efforts in Washington, DC.

The basis of the rectification request filed in late December is presently unclear. Counsel to both sides of the dispute – Volterra Fietta for Koch and Shearman & Sterling LLP for Venezuela – did not respond to a request for comment.

OIEG BV v Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/25)

In the annulment proceeding

Ad hoc committee

Álvaro Castellanos Howell (Chair) (Guatemala)

Piero Bernadini (Italy)

David Pawlak (Ireland-US)

Counsel to OIEG BV

Volterra Fietta

Partners Robert Volterra and Giorgio Mandelli

Escritorio Muci-Abraham & Asociados (from July 2013)

José Antonio Muci Borjas in Caracas

Counsel to Venezuela

Procuraduría General de la República

Interim attorney general Reinaldo Enrique Muñoz Pedroza in Caracas

Guglielmino & Asociados

Osvaldo Guglielmino, Guillermo Moro, Pablo Parrilla, Nicolás Bianchi, Nicolás Caffo, Patricio Grané Riera and Alejandro Vulejser in Buenos Aires, and Diego Brian Gosis (who is also of counsel at GST in Miami) and Verónica Lavista in Miami

In the arbitration

Tribunal

Juan Fernández-Armesto (Spain) (chair)

Francisco Orrego Vicuña (Chile) (appointed by claimant)

Alexis Mourre (France) (appointed by Venezuela)

Counsel to OIEG BV

Volterra Fietta

Partners Robert Volterra, Stephen Fietta* and Giorgio Mandelli

*now at Fietta in London

Escritorio Muci-Abraham & Asociados (from July 2013)

José Antonio Muci Borjas in Caracas

Latham & Watkins LLP (until February 2013)

Counsel to Venezuela

Procuraduría General de la República

Interim attorney general Reinaldo Enrique Muñoz Pedroza in Caracas

Guglielmino & Asociados (from August 2014)

Osvaldo Guglielmino, Guillermo Moro, Pablo Parrilla, Nicolás Bianchi, Nicolás Caffo, Patricio Grané Riera and Alejandro Vulejser in Buenos Aires, and Diego Brian Gosis and Verónica Lavista in Miami

Shearman & Sterling LLP (until June 2014)

Partner Fernando Mantilla-Serrano (no longer with the firm) and associate Guillermo Salcedo-Salas in Paris; partner Christopher Ryan and of counsel Tom Wilner in Washington, DC; associates Anna Tevini and Thomas Parigot in New York

Flughafen Zürich AG and Gestión e Ingeniería IDC SA v Bolivarian Republic of Venezuela(ICSID Case No ARB/10/19)

Ad hoc annulment committee

Álvaro Castellanos Howell (Guatemala) (President)

Carlos Urrutia Valenzuela (Colombia)

Shoschana Zusman Tinman (Peru)

Counsel to Flughafen Zurich and Gestión e Ingeniería IDC

[Bofill Mir & Alvarez Jana Abogados](#)

Partners Andrés Jana and Rodrigo Gil and counsel Johanna Klein Kranenberg in Santiago

Counsel to Venezuela

Procuraduría General de la República in Caracas – viceprocurador general Reinaldo Muñoz Pedroza (from early 2015)

Guglielmino & Asociados in Buenos Aires (from late 2011)

Partner Osvaldo Guglielmino, of counsel Veronica Lavista and Diego Gosis (who is also of counsel at GST in Miami), counsel Nicolás Bianchi and associates Nicolás Caffo, Patricio Grané Riera, Guillermo Moro, Pablo Parrilla and Alejandro Vulejser in Buenos Aires

In the arbitration

Tribunal

Juán Fernandez Armesto (Spain) (President)

Henri Alvarez QC (Canada)

Raul Vinuesa (Argentina)

Counsel to Flughafen Zurich and Gestión e Ingeniería IDC[Bofill Mir & Alvarez Jana Abogados](#)

Partners Andrés Jana and Rodrigo Gil and counsel Johanna Klein Kranenberg in Santiago

Counsel to Venezuela

Procuraduría General de la República in Caracas – viceprocurador general Reinaldo Muñoz Pedroza (from early 2015)

Guglielmino & Asociados in Buenos Aires (from late 2011)

Partner Osvaldo Guglielmino, international lawyer Facundo Pérez Aznar* and of counsel Diego Gosis

*left in 2014 to pursue academic interests

Arnold & Porter Kaye Scholer LLP in Washington, DC (until November 2011)

Blue Bank International & Trust (Barbados) Ltd v Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/20)

Tribunal

Christer Söderlund (Sweden) (president)

George A Bermann (US) (appointed by the claimant)*

Loretta Malintoppi (Italy) (appointed by Venezuela)**

* Appointed following the disqualification of José María Alonso of Spain in 2013

** Appointed following the resignation of Santiago Torres-Bernárdez of Spain in 2013

Counsel to Blue Bank in the annulment proceeding

B Cremades y Asociados

Partners Bernardo Cremades Sr and Bernardo Cremades Jr and David Cairns in Madrid

WDA Legal

Partners Hernando Diaz Candia and Ramón Azpurua in Caracas and Miami

Counsel to Blue Bank in the arbitration

Bryan Cave

Pedro Martinez-Fraga, Ryan Reetz and Giovanni Angles in Miami and Emma Lindsay in New York

Counsel to Venezuela

Guglielmino & Asociados

17/1/2018

Guatemalan arbitrator faces trio of challenges from Venezuela - Latin Lawyer

Oswaldo Guglielmino, Verónica Lavista, Guillermo Moro, Pablo Parrilla, Nicolás Caffo, Nicolás Bianchi, Patricio Grané Riera and Alejandro Vulejser in Buenos Aires and Diego Gosis in Miami (and Quinn Smith as special counsel at the hearing)

Attorney general Reinaldo Muñoz Pedroza in Caracas

Practice area : [Arbitration](#)

Country : [Venezuela](#), [Guatemala](#), [International](#)

Industry : [Banking and Financial Services](#), [Manufacturing](#), [Aviation](#)