Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Venezuela Oil Co. On The Hook For $40M Bond

By **Emma Whitford**

Law360 (March 5, 2021, 9:16 PM EST) -- A New York judge has ordered Venezuela's national oil company to repay about $40 million it owed to a Portuguese pipeline company on a defaulted bond, saying the oil giant failed to prove that it was impossible to repay the debt due to U.S. sanctions.

Petróleos de Venezuela SA and its subsidiary did not manage to turn up documents from Portuguese banks showing that the banks had declined to honor attempted wire transfers from PDVSA to Cimontubo-Tubagens E Soldadura LDA of Portugal, U.S. District Judge George B. Daniels wrote.

The decision comes after Judge Daniels entertained the possibility in December that sanctions might have been partly to blame for the missing payments in light of PDVSA's argument that debt denominated in U.S. dollars could be sanctionable. The court gave PDVSA the go-ahead to obtain discovery from three banks by Feb. 1: Banco Espirito, Banco BIC and Novo Banco S.A.

"Defendants have not put forth any evidence uncovered during that time period that would support an impossibility defense," Judge Daniels wrote Thursday. "Indeed, defendants have been afforded an additional month beyond that deadline and the evidence defendants did discover is inconsistent with an impossibility defense."

According to the opinion, Banco BIC provided documents including an email stating that it had not identified any blocked money transfers from PDVSA to Cimontubo.

This email "contradicts any defense of impossibility," Judge Daniels ruled.

Banco Espirito, a former PDVSA client, said relevant paperwork had been transferred to Novo Banco, according to the order. As of Thursday, "defendants have not provided this court with any update on the discovery, if any, from Novo Banco."

Cimontubo filed the current suit in New York state court in June 2020, and it was removed to federal court the following month. According to the company, PDVSA owes it about $38.3 million on the bond plus $1.8 million in interest. PDVSA issued the bond in late 2016, defaulting nearly three years later, in November 2019.

Judge Daniels granted summary judgment to Cimontubo on Thursday, awarding the company damages totaling $40.13 million. A magistrate judge will consider attorneys fees, costs and interest, court records show.

The outcome was not entirely unexpected, as Judge Daniels said during oral arguments in December that he would likely sign off on the judgment bid if PDVSA failed to turn up compelling evidence of sanctions interference.

Thursday's order did not touch on arguments by PDVSA that the underlying transaction with Cimontubo was tainted with fraud.

Counsel for PDVSA declined to comment Friday.

Stuart Riback of Wilk Auslander LLP, counsel for Cimontubo, told Law360 by phone that "we're gratified the judge saw things our way."

Cimontubo-Tubagens E Soldadura LDA is represented by Stuart M. Riback and Scott M. Watnik of Wilk Auslander LLP.

Petróleos de Venezuela SA and PDVSA Petróleo SA are represented by Dennis H. Tracey III and Robin L. Muir of Hogan Lovells.

The case is Cimontubo-Tubagens E Soldadura LDA v. Petroleos De Venezuela SA et al., case number 1:20-cv-05382, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Caroline Simson. Editing by Peter Rozovsky.