

# Newspaper Owner Launches New DQ Bid In Chile Case

By **Caroline Simson**Share us on: [□](#) [□](#) [□](#) [□](#)

Law360, New York (March 7, 2017, 7:13 PM EST) -- British arbitrator Franklin Berman is facing another challenge from a centenarian Spanish newspaper owner whose publication was seized in 1973 by Chilean dictator Augusto Pinochet, a disqualification bid that arose just days after the publisher targeted his own appointee in similar fashion.

Victor Pey Casado, whose \$330 million damages claim was rejected in September by a tribunal led by Berman, said in a March 4 disqualification proposal that a letter Berman sent on March 1 asking to recuse himself from the proceeding weighing the disqualification bid against Casado's appointee V.V. Veeder demonstrates Berman's bias against the claimant. Pey Casado had moved Feb. 23 to **disqualify** Veeder.

Pey Casado claims that Berman's letter suggests that the disqualification proposal should be denied before all the parties have been heard in the issue, according to the French-language document.

Berman had told the secretary general of the International Centre for the Settlement of Investment Disputes, the forum where the claim was originally filed in 1998, that it "does not seem to me right" that he should decide on the new challenge to Veeder, which was launched by Pey Casado and a foundation that held his newspaper shares just days after his previous request to disqualify both Berman and Veeder from the proceedings **failed**. The third member of the panel is Chile's appointee, Alexis Mourre.

Were Berman to decide on this latest challenge to Veeder, any ruling he made would open him to an accusation that he lacked the necessary objectivity and impartiality, either because he had just been subject to a challenge by the same parties, or because the circumstances that prompted the original challenge — that he and Veeder are members of the same barristers' chambers in England that represented Chile in another proceeding — still exists, Berman wrote in the letter.

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Moreover, the new challenge is based on these same grounds, meaning that it's similar to an appeal of the earlier decision, said Berman, who was appointed to the proceeding by the ICSID administrative council.

"For all of the above reasons, it would be more conducive to the health of the arbitration system under the [ICSID] Convention and the [ICSID] rules if the new challenge, like the old, were to be heard and decided by the chairman of the Administrative Council," Berman wrote. "That would not, in my view, be in any sense incompatible with the provisions of the Convention and the rules, taken in their entirety."

ICSID rules stipulate that arbitrator challenges should be heard by the two remaining members of the tribunal, according to the letter.

Berman and Veeder are both members of [Essex Court Chambers](#) in London. Two other barristers from those chambers had previously represented Chile in cases before the International Court of Justice, meaning that Veeder and Berman could not be impartial in proceedings involving the South American nation, Pey Casado has previously argued.

Berman wrote his letter a day after Pey Casado sent a brief to ICSID arguing that Berman should recuse himself from the proceeding, citing his membership in Essex Court Chambers. Berman didn't refer to the brief in his letter.

In the latest challenge against Veeder, Pey Casado claims that answers the arbitrator supplied in connection with the previous inquiry into the alleged conflict of interest were "incomplete and misleading."

Pey Casado also argued that ICSID should defer the challenges against Berman and Veeder to the [Permanent Court of Arbitration](#) in the Netherlands, saying the ICSID administrative council — which will decide on the challenge if Berman excludes himself — is the entity that had received Veeder's allegedly misleading answers and decided on the previous challenge.

On Monday, however, ICSID denied the request to refer the matter as it related to Berman to the Permanent Court of Arbitration. The request as it relates to Veeder remains outstanding.

Pey Casado's attorney declined to comment Tuesday.

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An attorney for Chile, [Arnold & Porter Kaye Scholer](#) partner Gaela K. Gehring Flores described the latest disqualification bid as "patently abusive."

"Perhaps this is not apparent to others, but it appears to me to be objectively abusive at this point, and it's astounding," she told Law360 on Tuesday.

These filings are just the latest chapter in an arbitration that has been before ICSID for nearly two decades.

Last September, the tribunal **decided** on a resubmission proceeding that followed the partial annulment of an initial \$10 million award granted in 2008 to Pey Casado and a foundation that held his newspaper shares.

Both sides felt the 2008 award was wrong, leading to the partial annulment in 2013. Pey Casado, who turned 101 last year, insisted that the Chilean government had been unjustly enriched and sought between \$92 million and \$330 million in a new arbitration.

His claims were rejected in their entirety in September, however. Pey Casado and his foundation were ordered to pay \$160,000 in costs to Chile, according to the Sept. 13 award. The arbitration continues as the tribunal considers the claimants' request to rectify the September award.

Pey Casado and the President Allende Foundation are represented by Juan Garcés of Garcés & Prada Abogados and Carole Malinvaud and Alexandra Muñoz of [Gide Loyrette Nouel](#).

Chile is represented by Paolo Di Rosa, Gaela Gehring Flores and Mallory Silberman of Arnold & Porter Kaye Scholer; Carlos Álvarez Voullième, Liliana Macchiavello and Victoria Fernández-Armesto of Chile's Investment Promotion Agency and Jorge Carey, Gonzalo Fernández and Juan Carlos Riesco of Carey & Cia.

The case is Pey Casado et al. v. Republic of Chile, case number ARB/98/2, at the International Center for the Settlement of Investment Disputes.

--Editing by Jill Coffey.

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