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Veeder accused of deliberate omission in yet another Pey Casado challenge

Douglas Thomson

24 February 2017



VV Veeder QC

Spanish newspaper publisher Victor Pey Casado has accused arbitrator **VV Veeder QC** of lying in a fresh attempt to disqualify him from an ICSID tribunal hearing a case against Chile filed just two days after a previous challenge failed.

In the new challenge filed on 23 February, Pey Casado accuses Veeder of lying “in the form of a deliberate omission” in a December statement responding to the previous challenge.

Both challenges are part of an attack on an award Veeder issued with fellow tribunal members **Franklin Berman QC** and **Alexis Mourre** last September. The award dismissed claims against Chile rooted in the expropriation of his publishing business by the regime of Augusto Pinochet in 1973.

The arbitrators are now considering a request that they rectify the award in the latest stage of a dispute that has lasted 20 years.

In the previous challenge – which was rejected by World Bank president **Jim Yong Kim** on 21 February – Pey Casado alleged that Veeder’s and Berman’s independence and impartiality were compromised by Chile’s prior instruction of other members of their London barristers’ set, Essex Court Chambers, in a dispute with Bolivia.

As part of that challenge, Pey Casado and the foundation’s counsel, **Juan Garcés** of Garcés y Prada in Madrid, highlighted Veeder’s original chairmanship of another ICSID arbitration between Canadian gold mining company Vanessa Ventures and Venezuela. Veeder [stepped down](#) from the tribunal in 2007 after Venezuela raised concerns about his links to counsel **Christopher Greenwood QC**, another member of Essex Court Chambers.

In his response to the challenge in December, Veeder said he resigned from the Vanessa Ventures case because he was co-counsel with Greenwood on another unrelated ICSID case. “I didn’t resign because he and I were both members of the same barristers’ chambers,” he said.

In his new challenge, Garcés alleges that this explanation was “incomplete and misleading”.

He notes that counsel to Venezuela in the Vanessa Ventures case were **Paolo di Rosa** and **Gaela Gehring Flores** of Arnold & Porter – the same pair of lawyers who are now representing Chile in the Pey Casado case. And he says that they specifically raised the problem of Veeder’s membership of Essex Court Chambers in their resignation request.

Pey Casado goes on to allege that Veeder’s “connivance” with Chile to the detriment of his own case is “an objective fact.” He compares the UK arbitrator with Michael Flynn, who recently resigned as US national security advisor in the administration of Donald Trump after misleading vice president Michael Pence over his contacts with the Russian ambassador in Washington.

As part of the latest challenge, Pey Casado also seeks access to confidential documents from the Vanessa Ventures arbitration to substantiate his allegation.

The challenge comes as part of a rectification proceeding Pey Casado filed in the wake of the award dismissing his claims last year. The proceeding is the seventh iteration of the case, which has rumbled on at ICSID in one form or another since 1998.

The first arbitration alone took 10 years and saw multiple arbitrator changes. After it concluded in 2008, there was a revision proceeding, an annulment proceeding and a supplementary decision proceeding, followed by the resubmission of the case to the tribunal chaired by Berman.

Since the award in September, Pey Casado has kept fighting despite a plea by the tribunal that he let the case end – initiating an interpretation proceeding and the present rectification proceeding.

A total of 15 different arbitrators have served on the various panels constituted to hear the case. A new panel to hear the interpretation proceedings is currently being constituted, with **Stephen Drymer** as the only confirmed appointee.

Di Rosa, as counsel to Chile, has been approached for comment.

Victor Pey Casado and Foundation Presidente Allende v Chile (ICSID Case No. ARB98/2)

In the resubmission proceedings

Second tribunal

- **Franklin Berman QC** (UK) (Chair)
- **VV Veeder QC** (UK) (replaced **Philippe Sands** in 2014)
- **Alexis Mourre** (France)

Counsel to Victor Pey Casado and Foundation Presidente Allende

- Garcés y Prada

Partner **Juan Garcés** in Madrid

- Gide Loyrette Nouel

Partner **Carole Malinvaud** and counsel **Alexandra Munoz** in Paris

- Buckley Sandler

Partner **Samuel Buffone** in Washington, DC

Counsel to Chile

- Arnold & Porter

Partners **Paolo Di Rosa** and **Gaela Gehring Flores** and associate **Mallory Silberman** in Washington, DC

- Carey & Cia

Partners **Jorge Carey** and **Gonzalo Fernández** and associate **Juan Carlos Riesco** in Santiago de Chile

In the annulment proceeding

Ad hoc annulment committee

- **Yves Fortier QC** (Canada)
- **Piero Bernardini** (Italy)
- **Ahmed El Koshery** (Egypt)

Counsel to Victor Pey Casado and Foundation Presidente Allende

- Garcés y Prada Abogados in Madrid

Partner **Juan Garcés** in Madrid

- Gide Loyrette Nouel

Partner **Carole Malinvaud** and associate **Alexandra Muñoz** in Paris

- Buckley Sander

Partner **Samuel Buffone** in Washington, DC

Counsel to Chile

- Foreign Investments Committee

Matías Mori Arellano and **Carlos Dettleff** in Santiago

- Arnold & Porter

Partners **Paolo Di Rosa**, **Jean Kalicki*** and associates **Samuel Witten** and **Mallory Silberman** in Washington, DC

*no longer with the firm

- Carey & Cia

Partners **Jorge Carey** and **Gonzalo Fernández Ruiz** in Santiago

In the original arbitration

Arbitral tribunal

- **Pierre Lalive** (President) (Switzerland) - appointed following the resignation of **Francisco Rezek** (Brazil)
- **Mohammed Chemloul** (Algeria) - appointed following the disqualification of **Mohammed Bedjaoui** (Algeria)
- **Emmanuel Gaillard** (France) - appointed by ICSID following the resignation of **Jorge Witker** (Mexico) and **Galo Leoro Franco** (Ecuador)

Counsel to Victor Pey Casado and Allende Foundation

- Cabinet Garcés y Prada Abogados

Partner **Juan Garcés** in Madrid

- Gide Loyrette Nouel

Partner **Carole Malinvaud** and associate **Alexandra Muñoz** in Paris

- Ropes & Gray LLP

Partner **Samuel Buffone** in Washington, DC

- Boston University School of Law

William W Park

Counsel to Chile

- Chief of justice, ministry of the economy, development and reconstruction, **Eduardo Escalona Vázquez**

- Department for defence of arbitrations relating to foreign investments, Ministry of Economy, Development and Reconstruction **Eduardo Bobadilla Brinkmann, Nicolás Muñoz Montes and Diego Rioseco Antezana**
- Carey & Cía

Partners **Jorge Carey** and **Gonzalo Fernández Ruiz** in Santiago

- Arnold & Porter (from 2007)

Partner **Paolo Di Rosa** in Washington, DC

- Winston & Strawn (from 2004 to 2007)

Partner **Paolo Di Rosa** in Washington, DC

- White & Case (from 1997 to 2004)
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